

GAS TRANSPORTATION COMMITMENT
COMMERCIAL SERVICE AGREEMENT

This GAS TRANSPORTATION AGREEMENT ("Agreement") is entered into this ____ day of _____, 2016, by and between THE CITY OF DULUTH, a municipal corporation, acting by and through the Department of Public Works and Utilities, hereinafter referred to as the "Utility", and ME GLOBAL, INC. a Delaware Corporation, hereinafter called the "Customer.

WITNESSETH

WHEREAS, Utility is a provider of Gas to serve its customers in the city of Duluth which it conveys to such customers by means of Gas mains and services owned by it; and

WHEREAS, Customer is an industrial consumer of Gas in the City, consuming Gas in the performance of their operations; and

WHEREAS, Customer wishes to itself purchase Gas to meet its needs and is willing to pay Utility to transport such Gas from the City's Town Border Station to Customer's Property where such Gas will be consumed by Customer; and

WHEREAS, Utility is willing to provide facilities for such transportation to Customer under the terms and conditions of the Agreement and Customer is willing to agree to be bound by such terms and conditions

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS

The following terms shall have the means hereinafter ascribed to them for the purposes of this Agreement:

- A. Balancing Payment: shall mean the monthly payment between the Parties representing the aggregate of the Daily Balancing Payments and the Monthly Balancing Payments for any month.
- B. Business Day: shall mean Monday through Friday of any week but excluding New Year's Day, Martin Luther king Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving, and Christmas Day.
- C. Critical Day: shall mean any Day determined to be a "Critical Day" by any company owning and operating a Pipeline which transports Gas to the Utility System and announced by said company to be a "Critical Day" at any time on the day of or in advance of the subject Day.
- D. Customer: shall mean Customer and agent or entity used by Customer to purchase, secure, Gas for transportation pursuant to this Agreement or any other person or entity used by Customer to implement the terms and conditions of this Agreement.
- E. Customer's System: shall mean the system of piping, valves, and equipment used to distribute Gas from the Delivery Point to and throughout Customer's Property and any and all equipment to which such Gas is delivered, used or consumed.
- F. Daily Balance shall mean the amount of Excess Gas or of Deficit Gas consumed by Customer during any Day.
- G. Daily Balancing Payment: shall mean that portion of the Balancing Payment between the Parties representing the aggregate of the amount of the Daily Balances, computed as provided for in Subparagraph B. of Paragraph 6 below, for any month.
- H. Day: shall mean any 24 hour period commencing at 9:00 O'clock A.M. and ending at 9:00 O'clock A.M. on the following day.

- I. Deficit Gas: shall mean the amount of Gas delivered to the Delivery Point in any Day which exceeds the amount of Gas Nominated by Customer for delivery on that Day by a factor of Five (5 %) percent.
- J. Delivery Month: shall mean the particular month with regard to which Customer delivers to Utility a Nomination for the delivery of Gas purchased by Customer to a specified Pipeline, causes the delivery of said Gas so nominated to said Pipeline and takes delivery of Gas from the Utility System.
- K. Delivery Point: shall mean that point within Customer's Property where Gas has flowed through the Utility System and through Utility's Meter and has entered into Customer's System for distribution, use and consumption on and in Customer's Property.
- L. Director: shall mean the Director of the Department of Public Works and Utilities or his or her designee.
- M. Excess Gas: shall mean the amount of Gas delivered to the Delivery Point in any Day which is less than the amount of Gas Nominated by Customer for delivery on that Day by a factor of Five (5%) percent.
- N. Gas: shall mean natural gas.
- O. MCF: shall mean thousand cubic feet.
- P. Meter: shall mean the metering device owned by Utility located at the Delivery Point and used to measure the volume of Gas delivered to Customer at the Delivery Point.
- Q. Monthly Balancing Payment: shall mean a payment between the parties representing the amount by which the amount of Gas nominated by Customer in any month exceed the amount delivered to Customer in any month or by which the amount of Gas delivered to Customer in any month exceeded the amount of Gas nominated by Customer in such month, computed as provided for in Subparagraph C of Paragraph 6 below.

- R. Nominate shall mean the act by Customer of preparing a Nomination as provided for hereunder and of delivering said Nomination to Utility.
- S. Nomination: shall mean a commitment by Customer to purchase Gas on the open market for Gas and to have a specific quantity of such Gas delivered to Utility at the Pipeline specified by Utility on any specified Day for delivery to Customer at the Property.
- T. Pipeline: shall mean a pipeline entity transporting Gas from suppliers and delivering such Gas to a Town Border Station.
- U. Property: shall mean the property of Customer located at 200 East Carterett Street, Duluth, Minnesota, 55808 to which the Utility will transport Customer's Gas pursuant to this Agreement and upon which such Gas will be consumed.
- V. SCADA: shall mean the Utility's System Control and /Data Acquisition system for remotely recording and reporting to the Utility data pertaining to the delivery of Gas to the Property.
- W. Town Border Station shall mean the location where Gas is delivered by a Pipeline to the Utility's Utility System.
- X. Utility System: shall mean the system of mains, services, valves, controls, other piping and other equipment used by the Utility to provide Gas services to Customers and other customers throughout the City.

2. NOMINATION

A. Pipeline Designation

Not less than Thirty (30) days prior to the commencement of any Delivery Month, Utility shall provide Notice to Customer of the identity of the Pipeline that Customer should cause deliveries of Gas to be made during such Delivery Month.

B. Monthly Nominations

No less than Five (5) Business Days prior to the commencement of any Deliver Month, Customer shall deliver to Utility in writing Nominations, in the form of that attached hereto as Exhibit A or in another form approved in writing by the Director, setting forth the volume of Gas to be delivered by Customer to the Utility System on each day of the Delivery Month and shall identify the source of supply from which such Gas was purchased.

C. Daily Nomination Adjustments

Customer may modify its Nomination pertaining to any identified day by providing Notice to Utility prior to 6:00 A.M. on the Business Day most immediately preceding such identified day, setting forth the volume of Gas to be delivered by Customer to the Utility System on such identified day.

3. TRANSPORTATION

In consideration of the payment of the fees as hereinafter provided for, Utility hereby agrees to accept delivery of daily volume of Gas Nominated by Customer and delivered to the Pipeline designated by Utility pursuant to Paragraph 2 A. above and to transport said Gas through its Utility System to Customer's Delivery Point up to an amount of not to exceed Fifteen Hundred (1,500) MCF per day subject to the terms and conditions of this Agreement.

4. GAS DELIVERY, PROPERTY FACILITIES & EQUIPMENT

A. Generally

Utility shall own, control and maintain all pipe, valves, shut-offs, Gas meters and other equipment required or used for supplying Gas service from Utility's mains up to and through the Gas meter used to measure and record the volume of Gas supplied to the Property.

Customer shall own, control and maintain all pipe, valves, equipment and other devices of any kind connected to Customer's Gas supply facilities and Utility shall have no rights or

responsibilities therefore; provided that Utility shall have the right but not the obligation to require that Customer repair, replace or disconnect from Customer's System any equipment or facilities that in the opinion of the Director constitutes as violation of applicable codes or are otherwise unsafe and to interrupt service to Customer if in the exercise of the Director's discretion, safety considerations require such interruption.

B. Delivery

Subject to the provisions of Paragraph 9. below, Utility shall deliver to Customer at the Delivery Point such quantity of Gas as Customer's operations on the Property shall require provided that Utility shall not in any case have any obligation to deliver to Customer a quantity of Gas which exceeds the amount of Gas Nominated by Customer with regard to that Day or which exceeds the volume of Gas which Customer has caused to be delivered to the appropriate Pipeline on that Day.

C. Meter Protection; SCADA

Customer shall be responsible for protection of the Utility's Gas meter or meters located on the Property including SCADA equipment related thereto and in the event that the any such meter is damaged or destroyed be any cause whatsoever, Customer shall promptly notify Utility of such damage or destruction and shall reimburse Utility for the cost of repairing or replacing any such meter.

C. Access

Customer shall give Utility and its agents full and complete access to those portions of the Property upon which the facilities described in this Section are located for the purpose of maintaining, repairing or replacing such facilities. In the event that the Director shall determine in the exercise of his or her discretion that the Utility needs such access and such access is denied by Customer, Utility may interrupt Gas service to the Property until such access is

provided. In addition, Customer shall be responsible for providing and maintaining a 120 volt, 15 amp electrical service to provide electrical power to the SCADA system connected to Customer's meter or meters and shall pay all costs of providing power to said system.

5. **TRANSPORTATION FEE; BALANCING PAYMENTS**

A. **Generally**

From the date of the signing of this Agreement and until June 1, 2019, Customer shall pay to Utility a fee equal to \$0.75 per MCF. From June 1, 2019 and thereafter during the Term of this Agreement and as extended thereafter, Customer shall pay to Utility a fee equal to \$0.95 per MCF. In addition to the fees set forth in this Subparagraph, Customer shall pay Balancing Payments.

B. **Time for Payment**

Utility will invoice Customer for all transportation charges on or after the Tenth (10th) day of the month following the month during which the Gas to which such charges pertain was transported by Utility. Utility will provide notice of the amount of Balancing Payments owed to either party on or after the Tenth (10th) day of the month following the month during which the Gas which is the subject of such Balancing Payments was delivered by Customer to the Pipeline. Any Balancing Payments due and payable from Utility to Customer shall first be deducted from any other charges payable by Customer to Utility; only in the event that, after deducting the amount due from Customer to Utility, if there is a remaining balance owed to Customer shall Utility pay Customer for any unpaid Balancing Payments. All such charges shall be due and payable within Ten (10) days of their being invoiced to the paying party.

6. **REPORTING; BALANCING**

A. Reporting

In the ordinary course of its transactions with the Pipelines, Pipelines will supply to Utility an accounting of the volume of Gas which Customer had delivered to Utility's System on each Day of said Month. Utility shall be entitled to rely on said accounting in determining the amount of the Balancing Payments owed by either party to the other pursuant to this Paragraph.

B. Daily Balancing Payments

Upon receipt of the accounting described in Subparagraph A above, Utility shall compare the volume of Gas delivered by Customer on each Day of said month with the volume of Gas delivered to Customer's Property on said Day and shall determine if a portion of said Gas constituted Deficit Gas or Excess Gas or neither and if any Deficit Gas was delivered on a Critical Day. In the event that the volume of Gas delivered to Customer on any Day constitutes Excess Gas, Customer shall be entitled to a credit against the amount owed to Utility under this Agreement in an amount equal to the total amount of Excess Gas, priced at Gas Daily Emerson, Viking GL Average per MCF minus One Dollar (\$1.00) per MCF for each MCF of Excess Gas not delivered to Customer on that Day. In the event that the volume of Gas delivered to Customer on any Day constitutes Deficit Gas, Customer shall owe Utility an amount equal to the total amount of Deficit Gas, priced at Gas Daily Emerson, Viking GL Average per MCF plus One Dollar (\$1.00) per MCF for each MCF of Deficit Gas delivered to Customer, provided that in the event that Deficit Gas is delivered to Customer on a Critical Day, Customer shall owe Utility an amount equal to the total amount of Deficit Gas on said Critical Day, priced as Gas Daily Emerson, Viking GL Average per MCF plus One Hundred Dollars (\$100.00) per MCF for each MCF of Deficit Gas delivered to Customer on such Critical Day. On a monthly basis the amounts of the charges pertaining to the Daily Balance for each Day,

computed as provided for in this Subparagraph shall be aggregated and the shall be either added to or deducted from the amount owed by Customer to Utility under this Agreement.

C. Monthly Balancing Payments

In addition to the Daily Balancing Payments, upon receipt of the accounting described in Subparagraph A above, Utility shall compare the volume of Gas nominated by Customer any month with the volume of Gas delivered to Customer's Property during said month. In the event that the volume of Gas nominated by Customer in any month exceeds the volume of Gas delivered to Customer during said month, Customer shall be entitled to a credit against the amount owed to Utility under this Agreement in an amount equal to the amount by which the volume nominated exceeds the volume delivered, priced at Gas Daily Emerson, Viking GL Average per MCF minus One Dollar (\$1.00) per MCF for each MCF of Gas not delivered to Customer during said month. In the event that the that the volume of Gas delivered to Customer in any month exceeds the volume of Gas nominated by Customer during said month, Customer shall owe Utility an additional amount equal to the amount by which the volume of Gas delivered to Customer exceeded the amount of Gas nominated by Customer during that month, priced at Gas Daily Emerson, Viking GL Average per MCF plus One Dollar (\$1.00) per MCF for each MCF of Gas delivered to Customer.

7. TERM

The Term of this Agreement run from the date of signing this Agreement through June 1, 2021, unless sooner terminated as hereinafter provided for.

8. CODE CHAPTER 48 APPLICABLE

The provision of Gas to the Property shall be generally subject to the terms and conditions of Chapter 48 of the Duluth City Code, 1959, as amended and particularly Article I thereof except to the extent that the terms and conditions of this Agreement are in actual conflict with the

provisions of said Chapter 48 in which event the terms and conditions of this agreement shall be deemed to be controlling.

9. **SERVICE INTERRUPTION**

Nothing to the contrary otherwise contained herein, Utility shall have the right to temporarily reduce or interrupt Gas service to Customer when in the exercise of his or her discretion the Director determines it is reasonable or prudent to do so in the event that Utility's supply of Gas otherwise available to serve Customer has been reduced or has ceased to be available for any cause whatsoever, or when the Director, in the exercise of his or her reasonable discretion, determines that it is necessary for the health, safety or welfare of persons in the vicinity of the Property or of the general public. Customer agrees that Utility shall have no liability of any kind for any injury or damages of any kind whatsoever arising in any way out of such reduction or interruption of Gas services to Customer including but not limited to consequential damages or punitive damages and Customer specifically waives any and all causes of action against Utility and the City of Duluth in general for any such damages. Utility hereby agrees to restore Gas service to Customer as provided for herein as soon as the Director determines in the exercise of his or her discretion that such services can be reasonably and prudently restored.

10. **DEFAULT AND TERMINATION**

A. **General Default:**

In the event that the Director shall determine in the exercise of his or her reasoned discretion, that Customer is in default of any of its obligations under this Agreement, Director may cause Notice to be sent to Customer notifying Customer of said default and requiring correction or rectification of said default within Ten (10) Days of the sending of such notice or, if the nature of such default is not subject correction or rectification within said Ten (10) day period,

requiring that such correction or rectification be commenced immediately and that correction or rectification be completed as expeditiously as possible. If Customer shall fail to so correct or rectify such default within the aforesaid time frames, Director may terminate this Agreement and terminate the supply of Gas to Customer.

B. Special Default

In the event that the Director shall determine in the exercise of his or her reasoned discretion, that Customer is in default of any of its obligations under this Agreement and determines that such condition of default constitutes a danger of resulting in death or injury to persons or substantial damage to property, the Director may immediately terminate this Agreement and terminate the supply of Gas to Customer's Property; provided that the Director shall cause notice to be sent to Customer as expeditiously as is reasonably possible under the circumstances.

11. OBEY ALL LAWS

Customer agrees that it will obey all laws, ordinances, rules and regulations promulgated by any authority having the legal authority to do so which are applicable to Customer's business and operations.

12. NOTICES

Except as provided for in Subparagraph D of Paragraph 3 above, all notices to be given pursuant to this Agreement shall be deemed to have been given by depositing the same in the U.S. Mail, postage pre-paid addressed to the other party as follows or by transmitting said notice by e-mail addressed to the other party at the e-mail address set forth below, provided that a contemporaneous written copy of any such notice shall be retained by the transmitting party:

In the Case of Utility:

City of Duluth
Director of Public Works & Utilities
411 West First Street
Room 211B, City Hall
Duluth, MN 55802
e-mail address

In the Case of Customer:

Scott Schudalia
Duluth Plant Manger
ME-Elecmetal
200 Carterett St.
Duluth, MN 55808
sschudalia@meglobal.com

13. **APPLICABLE LAW**

This Agreement, together with all of its terms, covenants and conditions is made in the State of Minnesota and shall be interpreted in accordance with the laws of the state of Minnesota.

IN WITNESS WHEREOF, the respective parties hereto have caused this agreement to be duly executed and signed the _____ day of _____, 2016.

CITY OF DULUTH

ME GLOBAL, INC. a Delaware Corporation

Mayor

By: _____

ATTEST:

City Clerk

APPROVED:

Countersigned:

City Attorney

City Auditor