

**VOLUME COMMITMENT COMMERCIAL
GAS SERVICE AGREEMENT**

This Volume Commitment Commercial Gas Service Agreement ("Agreement") is entered into as of the date of attestation thereto by the City Clerk, 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 Minnesota Power - Hibbard Renewable Energy Center, hereinafter called the "Customer", and shall constitute a Large Volume Gas Service Contract for account number 27-06-38975.

WITNESSETH

WHEREAS, Utility provides natural gas service to customers in the city of Duluth; and

WHEREAS, Utility has contract for the transport of its supply of natural gas with pipeline transportation companies, which contracts provide for the delivery of specified quantities of natural gas within specific time parameters and which require the Utility to pay increased costs and fees if the Utility exceeds its contracted quantities within said parameters; and

WHEREAS, Customer wishes to be able to purchase natural gas from Utility for the purpose of providing a back-up source of energy for generating steam; and

WHEREAS, Utility is willing to provide such natural gas service 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. Absolute Volume Limit: shall mean an absolute limit on the amount of Gas that Utility will deliver to Customer within any Day, which Limit shall be 12,000 MCF per Day.
- B. Cold Weather Day: shall mean any Day with regard to which the National Weather Service for Duluth, Minnesota recorded a temperature of 15 degrees below Zero Fahrenheit or less at the Duluth International Airport during the preceding night and for which the forecast high temperature for the subject Day was forecast to be 5 degrees Fahrenheit or less.
- C. Cold Weather Day Rate: shall mean the rate charged to Customer for Gas supplied to Customer during a Cold Weather Day set forth in C-1, C-2 or C-3 of Exhibit A, attached hereto and made a part hereof, as applicable.
- D. Customer's System: shall mean the system of pipes, valves, controls, and other 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.
- E. 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.
- F. Delivery Point: shall mean that point within Customer's Property where Gas which has flowed through the Utility System and through Utility's Meter enters into Customer's System for distribution, use and consumption on and in Customer's Property.
- G. Director: shall mean the Director of the Department of Public Works and Utilities or his or her designee.
- H. Gas: shall mean natural gas.

- I. “Interday Rate” is the rate paid by the Utility to a Gas supplier for Gas purchased by Utility from that supplier which is in excess of the Gas nominated by Utility from said supplier for the subject Day and which is purchased from said supplier on less than 26 hours’ notice.”
- J. MCF: shall mean thousand cubic feet.
- K. 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.
- L. Non-Notice Rate: shall mean the rate charged by Utility to Customer for Gas when Customer consumes Gas in excess of the Volume Commitment but has failed to provide notice to Utility as provided for in Subparagraph E. of Paragraph 3 below, which rate shall be that set forth in N-3, N-4 or C-3 in Exhibit A as applicable.
- M. Normal Rate: shall mean the rate charged to Customer for Gas as provided for in Subparagraphs A. and B. of Paragraph 3 below and in N-1, N-2, C-1 or C-2 of Exhibit A.
- N. Property: shall mean the property of Customer located at 50th Avenue West and Main Street, Duluth, Minnesota, 55807 to which the Utility will deliver Gas pursuant to this Agreement and upon which such Gas will be consumed.
- O. Purchased Gas Adjustment: shall mean the difference between the anticipated rate to be paid by the Utility for the purchase of Gas as determined by the Director from time to time, used in securing the approval of the Duluth Public Utilities Commission of the Utility’s base rate for Gas, and the rate actually paid by Utility to any Gas supplier for Gas supplied to Customer.
- P. 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 Customer and other customers throughout the City.

Q. Volume Commitment: shall mean the volume of Gas which Utility commits to supply to Customer during any day, said amount being 2,000 MCF per Day, subject to the provisions of Paragraph 7. below.

2. **PURCHASE AND SALE:**

A. Volume Commitment

Subject to the terms and conditions of this Agreement, including but not limited to Paragraph 7. below, Utility hereby commits to sell and deliver Gas to the Customer up to the amount of the Volume Commitment on an interruptible basis, at the Delivery Point, the location.

B. Absolute Volume Limit

Subject to the terms and conditions of this Agreement, in addition to the amount of the Volume Commitment, Utility may but shall not be required to sell and deliver to Customer a volume of Gas in excess of the Volume Commitment but not to exceed the amount of the Absolute Volume Limit.

3. **PRICE, VOLUME LIMIT, NOTICE AND PENALTIES**

A. Generally

Except as hereinafter provided for, Utility agrees that Customer shall be deemed to be a Rate Class 50 customer and the price charged to Customer per MCF shall be the Normal Rate established for Rate Class 50 customers from time to time by the Utility. It is understood that Utility's costs for purchasing and transporting Gas may vary from time to time in response to market and weather conditions and Utility reserves the right to modify its Normal Rate from time to time in response to changes in its costs of purchasing and transporting Gas, provided that any such changes that are made in the rates paid by Customer shall be the same as those charged to other Rate Class 50 customers except as otherwise provided for in this Agreement.

B. Rate Class Changes

Utility shall have the right from time to time to make changes in its rate class structure or to assign a different rate class to Customer. If Utility proposes to make any such change in its rate class structure or in the rate class assigned to Customer, Utility agrees to give Customer not less than Sixty (60) days' notice prior to the implementation of any such changes. Customer shall have the right to request modification of such structural change or such rate classification change or may have the right to terminate this Agreement as provided for in Paragraph 4 below. If Customer does not so request changes and does not so terminate this Agreement, the revised structure or rate classification, as applicable, shall be effective after said notice period.

C. Volume Limit Generally

Because of the volume of Gas which Customer consumes and its effect on the Utility's costs of securing transportation capacity to provide Gas to the Utility System and to all customers of Utility, it is of critical importance that Customer not exceed the amount of the Utility's Volume Commitment as set forth in Paragraph 2 above without providing Utility with notice of its intent to do so as set forth in Subparagraph E. below.

D. Additional Gas--Limit

At the request of Customer, Utility may, but shall not be obligated to, sell and deliver Gas to Customer on any Day, including a Cold Weather Day, in excess of the Volume Commitment as set forth in the Paragraph, but in no event in excess of the Absolute Volume Limit, at the discretion of the Director. The rates applied to the sale and deliver of such Gas to Customer shall be those set forth in N-2, N-3, N-4, C-2 or C-3 of Exhibit A as applicable.

E. Notice Requirement

Customer hereby agrees and commits that it will provide notice that it desires to consume Gas in an amount in excess of the Volume Commitment during any Day not later than 7:00 o'clock

on the day prior to the commencement of such Day. Such notice can be given by telephone by speaking to one of the persons specified in a written notice from the City's Director of Public Works and Utilities at the telephone number specified in such notice or by e-mail addressed to such person at the e-mail address specified in such notice. Provided that if such notice is given by telephone, Customer shall confirm said notice by a following e-mail; and in any case, Customer shall request an e-mail from the recipient of said notice confirming receipt. No such notice shall be deemed to have been given unless the Customer has received such a confirming e-mail. The occurrence of any event on or in the Property or affecting Customer's operations or maintenance thereof, whether within or not within the control of Customer, shall not excuse Customer from providing such notice to Utility.

F. Failure of Notice

In the event that Customer shall have consumed Gas in any Day in excess of the Volume Commitment and shall have failed to give Utility the Notice required by Subparagraph E above, Customer agrees to pay for all Gas consumed during such Day at the appropriate Non-notice Rate as set forth in N-3, N-4 and C-3 of Exhibit A as appropriate. In addition, if Utility incurs any penalties charged by any entity transporting Gas to the Utility System as a result of Customer exceeding the Volume Commitment for any Day, Customer agrees that it will reimburse Utility for the amount of any such penalty as part of its standard utility bill; provided that Utility will supply reasonable documentation of the amount of such penalty Utility was required to pay to the transporting entity.

G. Payments

Utility will bill Customer on a monthly basis for all Gas delivered to Customer during the preceding billing period. The amount of said bill will include the amount based on the volume of Gas delivered to Customer at the rates set forth in Exhibit A, the amount of any penalties

assessed against the Utility as described in Subparagraph E, above and any other standard costs of Utility providing Gas service to Customer. Any amount not paid to Utility when due as shown on such bill will bear interest from said due date at the rate of 12 % per year simple annual interest.

4. **TERM**

The Term of this Agreement shall be deemed to be month-to-month, subject to the right of either party to terminate this Agreement on Thirty (30) days prior notice to the other party as provided for in Paragraph 7. below.

5. **CODE CHAPTER 48 APPLICABLE**

The provision of Natural 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.

6. **PROPERTY FACILITIES & EQUIPMENT**

A. **Generally**

Utility shall own, control and maintain the Utility System, the Meter, isolation valves and other equipment required or used for supplying Gas service from Utility's mains up to and through the Gas meter. Customer shall own, control and maintain the Customer's System 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. Meter Protection

Customer shall be responsible for protection of the Meter or Meters located on the Property and in the event that the any such Meter is damaged or destroyed by 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 of the Property upon which the Utility System is located for the purposes of inspecting, testing, repairing, maintaining and replacing any elements of said System. Subject to Customer's reasonable security and safety requirements, Customer shall give Utility and its agents full and complete access to those portions of the Property upon which the Customer's System is located for the purpose of inspecting and testing elements of said System. 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.

7. 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.

8. **NOTICES**

Except as provided for in Subparagraph E 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:

In the Case of Utility:

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

In the Case of Customer

Minnesota Power, a division of ALLETE, Inc.
ATTN: Director, Fuel Strategy and Sourcing
30 West Superior Street
Duluth, MN 55802

With copies to: Hibbard Renewable Energy Center
Minnesota Power, a division of ALLETE, Inc.
ATTN: Plant Manager
4913 Main Street
Duluth, MN 55807
and
Minnesota Power, a division of ALLETE, Inc.
ATTN: Legal Services
30 West Superior Street
Duluth, MN 55802

9. **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 as of the date of Attestation set forth below.

CITY OF DULUTH

MINNESOTA POWER – Hibbard Renewable
Energy Center

Mayor

By: _____

ATTEST:

City Clerk

Date: _____

APPROVED:

Countersigned:

City Attorney

City Auditor