

# COUNCIL COPY

## PUBLIC WORKS AND UTILITIES COMMITTEE

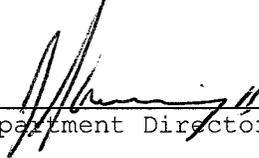
11-0557R

RESOLUTION AUTHORIZING PROFESSIONAL SERVICES  
AGREEMENT WITH BP CANADA ENERGY MARKETING CORP. FOR  
ASSET MANAGEMENT SERVICES.

### CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter in an agreement, a copy of which is on file in the office of the city clerk as Public Document No. \_\_\_\_\_, with BP Canada Energy Marketing Corp. for professional services relating to asset management of the city's underutilized gas pipeline and gas storage capacity with receipts therefrom to be paid to 520-500-1900-4805 (Gas Fund, Public Works & Utilities, Public Work's Director's Office, Reimbursements).

Approved:

  
\_\_\_\_\_  
Department Director

Approved for presentation to council:

  
\_\_\_\_\_  
Chief Administrative Officer

Approved as to form:

  
\_\_\_\_\_  
Attorney

Approved:

  
\_\_\_\_\_  
Auditor

PW&U/ATTY GBJ:cjk 10/17/2011

STATEMENT OF PURPOSE: This resolution authorizes the city to enter into an agreement with BP Canada Energy Marketing Corp. to assist the city in managing its natural gas transportation and storage capacity to the best advantage of the city and its natural gas customers.

The city's major demand for natural gas service is as fuel for furnaces and hot water heaters during the colder months of the year. This makes the city's demand for natural gas both cyclical, with a higher demand in the winter, and also highly speculative, depending on when the heating season begins, how long it is and how cold the winter is. This variable demand situation is industry-wide. In order to insure that it has sufficient gas to meet the demands of a long and severe winter, the city purchases supplies in excess of normal anticipated

demand.

However, the rate of production of natural gas is relatively constant. This requires that the city secure capacity in storage facilities, usually underground storage in the southern part of the country, to accumulate natural gas against the demands of winter. It also requires that the city purchase pipeline capacity (essentially the right to use existing pipelines for specific times) so that it can transport its gas from its storage facilities to a point from which the city can distribute it to its customers.

Because the city must purchase both natural gas and storage and transportation facilities based on a "worst case scenario," a normal or mild winter will leave the city with excess capacity including storage and pipeline capacity that would go to waste if not used.

The purpose of this agreement is to use BP to market the unused portion of the city's storage and pipelines capacity. Under the agreement the city would transfer its entire capacity to BP. BP would commit to transfer back to the city that portion of the capacity that the city should prove to actually need and would market the remaining capacity to the larger market with the proceeds to be split between the parties, retaining 20 percent of the net proceeds and paying 80 percent of the net proceeds to the city.

For the past three years, the city has entered into a similar agreement with Tenaska Marketing Ventures.

11-0557R  
REPLACEMENT  
AGREEMENT

## ASSET MANAGEMENT AGREEMENT ADDENDUM

This Asset Management Agreement Addendum (the "Addendum") is made and entered into effective as of November 1, 2011 (the "Effective Date"), by and between BP Canada Energy Marketing Corp. ("BP"), a Delaware company, and the City of Duluth, a municipal corporation ("Counterparty"). BP and Counterparty are referred to hereinafter individually as a "Party" and collectively as the "Parties".

WHEREAS, Counterparty wishes to engage BP's asset management experience to share in potential financial value with the Duluth gas utility and to help manage the City-gate gas needs;

WHEREAS, BP and Counterparty are parties to that certain Base Contract for Sale and Purchase of Natural Gas dated March 1, 2004, which is attached hereto as Attachment A. (the "Base Contract");

WHEREAS, pursuant to the Base Contract, when Counterparty purchases Gas on a Firm basis for its City-gate gas needs from BP, BP's obligation to deliver Gas is excused only for reasons of Force Majeure; and

WHEREAS, the Parties desire to provide for BP's provision of asset management services to the Counterparty, which will require the Counterparty's release of FERC regulated transportation capacity;

NOW, THEREFORE, in consideration of the mutual premises and agreements set forth hereinafter, the sufficiency of such consideration being acknowledged by the Parties, the Parties hereby agree as follows:

### **ARTICLE I. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions.** The following terms when used herein shall have the meanings set forth below.

"Commodity Charges" shall mean all commodity charges, ACA surcharges, GRI surcharges and other tariff charges assessed by a Pipeline, pursuant to the approved tariff or governing documents of such pipeline as a result of the actual transportation or storage of Gas, and in the case of storage, shall include any and all withdrawal and injection charges.

"Demand Charge(s)" shall mean any and all demand/reservation charges assessed by a Pipeline pursuant to the approved tariff of such pipeline.

"Fuel" means the quantity of Gas consumed by a Pipeline in transporting or storing Gas and includes any provision by such pipeline for lost and unaccounted for Gas, as determined in accordance with the approved tariff or governing documents of such pipeline.

"Gas Supplier" means a third party seller of Gas to Counterparty under the terms of a Gas Supply Contract

"Gas Supply Contract(s)" means (i) future Gas supply agreements entered into between the Counterparty and other third parties; or (ii) a replacement contract(s) entered into by and between Counterparty and a third party that replaces any or all of contracts identified under (i) for the same aggregate quantity of Gas set forth in the original Gas Supply Contracts,

"Index" means the means the midpoint price (in \$US/MMBtu) published by the McGraw-Hill Companies, or its successor in interest in Platts in Gas Daily, under the table "Daily price survey (\$/MMBtu)."

"Inside FERC Price" means the index price (in \$US/MMBtu) published by the McGraw-Hill Companies, or its successor in interest in Platts Inside FERC's Gas Market Report, under the table "Prices of Spot Gas Delivered to Pipelines (per MMBtu)" under the heading "Northern Natural Gas Co." under "Ventura, Iowa" under the column "Index."

"Pipeline(s)" means any pipeline(s) (or storage facilities) on which BP has acquired Released Capacity from the Counterparty under the terms of this Addendum.

"Physical Storage Inventory" means Gas actually delivered into the Storage.

"Receipt Point(s)" means the primary receipt point(s) designated in the Transportation Agreement(s) where BP receives Gas for transport on the Released Capacity, and/or as applicable, the receipt point(s) designated in the Storage Agreement(s) where BP receives Gas for injection into storage.

"Released Capacity" means the transportation and storage capacity on the applicable Pipelines that will be released by the Counterparty to BP under the terms of this Addendum, as such capacity is identified pursuant to that chart set forth below in Section 3.3.

"Released Capacity Consideration" has the meaning set forth in Section 5.1.

"Storage Agreement(s)" shall mean those agreements for storage services as listed on the chart set forth in Section 3.3

herein below.

“Summer” means the months of the year including April, May, June, July, August, September, and October

“Transportation Agreement(s)” shall mean those agreements for transportation services as listed on the chart set forth in Section 3.3 below with respect to the Released Capacity.

“Winter” means the months of the year including November, December, January, February, and March.

#### ARTICLE II. TERM

The Addendum shall be effective for the Released Capacity from November 1, 2011 through October 31, 2012 (the “Term”), unless (i) this Addendum and the AMA Transaction are terminated as a result of an Event of Default under the Base Contract, (ii) the Parties otherwise mutually agree in writing to terminate this Addendum and the AMA Transaction, or (iii) this Addendum and the AMA Transaction are terminated due to Governmental Requirements. To the extent that any of the foregoing in (i)-(iii) occur, the Term shall end on the date the event in (i)-(iii) occurs. Each Party’s obligations regarding payment and indemnification arising under this Addendum shall survive the termination of this Addendum for a period of time equal to the time for which the applicable statute of limitations applies. Prior to the end of the Term, either Party may request an extension of the Term for up to two (2) additional one year periods upon written notice to the other Party and acceptance in writing of such extension by such other Party.

#### ARTICLE III. CAPACITY RELEASE

- 3.1 **Intent of Parties.** It is the intention of the Parties that this Addendum and the AMA Transaction, together with the applicable provisions, if any, of the Pipeline’s FERC-approved tariff, as may be amended from time to time, contains all of the terms and conditions governing the Counterparty’s release to BP of the Released Capacity. BP will provide nominating, accounting and such other services to the Counterparty pursuant to the terms of this Addendum and in association with optimization activities provided hereunder.
- 3.2 **Capacity Release.** Counterparty will release the Released Capacity for the referenced term below in accordance with the terms of this Addendum. As between the Parties, BP will defend and indemnify the Counterparty from Pipeline charges due to any act or omission by BP in breach of this Addendum. Counterparty will retain the benefits of any retroactive rate adjustments by the Pipeline(s) affecting the Released Capacity. The Parties shall execute any further documents required to effect the release of transportation service in accordance with this Addendum.
- 3.3 **Release Terms.** The Counterparty shall release the Released Capacity to BP pursuant to the following terms and conditions:

A. **Pipeline: Great Lakes Gas Transmission (“GLGT”)**

1. Releasing Shipper Shipper Contract No: FT049

Releasing Shipper Rate Schedule: FT

Maximum Daily Quantity (“MDQ”): 6,000 MMBTU/day

Conditions of Recall: Upon the termination of the AMA Transaction.

Term of Release:

Begin: November 1, 2011

End: October 31, 2012

Demand Charge(s) (Including Applicable Surcharges): Zero rate release

Primary Delivery Points: Central Zone/Duluth City Gate

Primary Receipt Points: Emerson

2. Releasing Shipper Shipper Contract No: FT7377

Releasing Shipper Rate Schedule: FT

Maximum Daily Quantity (“MDQ”): 1,500 MMBTU/day

Conditions of Recall: Upon the termination of the AMA Transaction.

Term of Release:

Begin: November 1, 2011

End: October 31, 2012

Demand Charge(s) (Including Applicable Surcharges): Zero rate release

Primary Delivery Points: Eastern Zone/Duluth City Gate

Primary Receipt Points: Emerson

3. Releasing Shipper Shipper Contract No: FT7643

Releasing Shipper Rate Schedule: FT

Maximum Daily Quantity ("MDO"): 1,950 MMBTU/day

Conditions of Recall: Upon the termination of the AMA Transaction.

Term of Release:

Begin: November 1, 2011

End: October 31, 2012

Demand Charge(s) (Including Applicable Surcharges): Zero rate release

Primary Delivery Points: Duluth City Gate

Primary Receipt Points: ANR Storage

**B. Pipeline: Northern Natural Gas ("NNG")**

1. Releasing Shipper Shipper Contract No: 109190

Releasing Shipper Rate Schedule: TFX

Maximum Daily Quantity ("MDO"): 17,150 MMBTU/day (Winter) and 10,627 MMBTU/day (Summer)

2. Releasing Shipper Shipper Contract No: 22160

Releasing Shipper Rate Schedule: TF

Maximum Daily Quantity ("MDO"): 20,000 MMBTU/day (Winter) and 10,000 MMBTU/day (Summer)

Conditions of Recall: Upon the termination of the AMA Transaction.

Term of Release:

Begin: November 1, 2011

End: October 31, 2012

Demand Charge(s) (Including Applicable Surcharges): Zero rate release

Primary Delivery Points: Duluth City Gate

Primary Receipt Points: Carlton, Ventura, Welcome and Demarc

**C. Storage Provider: Northern Natural Gas ("NNG")**

Releasing Shipper  
Contract No. 106193

Releasing Shipper  
Rate Schedule: FDD

Maximum Storage  
Quantity (MSQ): 750,000 MMBtus (FDD-specify0

Maximum Withdrawal Rights: 13,008 MMBtus/Day

Maximum Injection Rights: 8254 MMBtus/Day

Conditions of Recall: Upon the termination of the AMA Transaction.

2012

Term of Release:  
Begin: November 1, 2011

End: October 31,

Demand Charge(s) (Including Applicable Surcharges): Zero Rate Release

Primary Delivery Points: Ogden

Secondary Delivery Points: N/A

D. Storage Provider: ANR ("ANR")

Releasing Shipper  
Contract No. 113611

Releasing Shipper  
Rate Schedule: FSS

Maximum Storage  
Quantity (MSQ): 250,000 MMBtus

Maximum Withdrawal Rights: 3450 MMBtus/Day

Maximum Injection Rights: 1500 MMBtus/Day

Conditions of Recall: Upon the termination of the AMA Transaction.

Term of Release:  
Begin: November 1, 2011

End: October 31, 2012

Demand Charge(s) (Including Applicable Surcharges): Zero Rate Release

Primary Delivery Points: Farwell

Secondary Delivery Points: N/A

The Parties agree that the Counterparty shall remain liable to the Pipeline for any and all Demand Charges related to the Released Capacity. The posting of each release shall contain a statement that the capacity is being released to BP as asset manager in accordance with FERC Order 712, 712A and 712B under an asset management arrangement between the parties requiring BP to deliver a quantity of gas up to the MDQ of the released Transportation Capacity on each Day during the Term.

3.4 Contract with the Pipeline(s). BP shall execute a transportation agreement(s) for the Released Capacity with the Pipeline(s) to satisfy the Pipeline(s) requirements, in addition to taking any and all other actions required by the Pipeline(s) as a condition to taking the Released Capacity. If BP is unable to execute the transportation agreement(s) with the Pipeline(s), the AMA Transaction and this Addendum shall terminate with no further performance obligation or damages (save and except for payments due and owing as a result of past performance) being owed by either Party.

3.5 Receipt and Delivery Points. The Pipeline(s)'s tariff may permit BP to change primary receipt and delivery points under the Transportation Agreements. Notwithstanding any tariff provisions permitting such a change, BP shall not change primary receipt or delivery points under the Transportation Agreements without the prior written consent of the Counterparty.

3.6 Storage Inventory.

(a) Transfer of Initial Storage Inventory. As part of the release of the Storage Capacity, Counterparty shall transfer and sell to BP at a Contract Price of \$0.00/MMBtu the Initial Storage Inventory as of the first day of the Term. The Parties will estimate the Initial Storage Inventory, and agree to true up the actual inventory acquired by BP based on information supplied by each Storage provider. The intent of the parties is that BP acquires title to all Counterparty's Gas held in the Storage capacity at the beginning of

the Term.

- (b) **Storage Plan.** On or before five Business Days prior to the beginning of each storage cycle, Counterparty shall provide to BP a schedule setting forth the quantity of Gas that Counterparty estimates will be injected into storage, in lieu of delivery to Customer at Delivery Points, each Day during the relevant period or the quantity of Gas that Counterparty estimates will be requested from storage each Day during the relevant period.
- (c) **Daily Balancing Activities.** On each day during the Term, daily balancing of Counterparty's actual Gas requirements each day at the Delivery Point(s) will occur utilizing the Storage Capacity (the "Daily Balancing Activities"). Counterparty shall be responsible for all Fuel and Commodity Charges arising as a result of the Counterparty's Daily Balancing Activities.
- (d) **Storage Inventory Accounts.** During the Term, BP will maintain an account for the Counterparty Storage Inventory based upon the injections and withdrawals requested by Counterparty and the Daily Balancing Activities. BP shall also maintain an account of the actual Physical Storage Inventory and BP's storage inventory as a result of BP's activities during the Term in order to track Counterparty's requested injections and withdrawals, the Daily Balancing Activities and the actual injections and withdrawals in order to facilitate monthly billing to Counterparty.
- (e) **Injections.** Counterparty may request, by the deadline in Section 4 below, that BP inject Gas on any Day during the Term into the Storage capacity in an amount up to (i) the Maximum Storage Quantity less (ii) the Counterparty Storage Inventory on such Day, and being further subject to the Daily Balancing Activities and the Maximum Daily Injection Quantity. BP will determine whether or not the Gas is actually physically injected into storage on any given Day. Any and all payments arising as a result of such request shall be paid in accordance with the terms of the Contract for the Month in which the Gas was requested to be injected notwithstanding the fact the Gas may not have actually been injected into storage by BP.
- (f) **Withdrawal.** Counterparty may request, by the deadline in Section 4 below, that BP withdraw Gas on any Day during the Term for transport to Counterparty at the Delivery Point(s) in an amount up to Counterparty Storage Inventory on such Day, being further subject to the Daily Balancing Activities and the Maximum Daily Withdrawal Quantity. BP will determine whether or not the Gas is actually physically withdrawn from storage on any given Day. Any and all payments owed for the withdrawn amount of Gas from storage shall be paid in accordance with the terms of the Contract for the Month in which the Gas was requested to be withdrawn.
- (g) **End of Term Storage Transfer.** BP shall manage the Physical Storage Inventory such that the Physical Storage Inventory equals the Counterparty Storage Inventory at the expiration of the Term. On the expiry or termination of this Addendum, BP shall transfer title to the Customer Storage Inventory to Counterparty such that Counterparty shall have full title to such Gas. The Gas shall be transferred by BP to Counterparty at a Contract Price of \$0.00/MMBtu. Notwithstanding the foregoing, for NNG Storage, if the Physical Storage Inventory exceeds the Customer Storage Inventory Counterparty shall pay BP an amount for such Gas equivalent to the Index under the heading "Others" at Northern, Ventura on the day of transfer. If the Physical Storage Inventory is less than the Customer Storage Inventory BP shall pay Counterparty an amount for such Gas equivalent to the Index under the heading "Others" at Northern, Ventura on the day of transfer. For ANR Storage, if the Physical Storage Inventory exceeds the Customer Storage Inventory Counterparty shall pay BP an amount for such Gas equivalent to the Index under the heading "Canadian Gas" at Dawn,, Ontario on the day of the transfer. If the Physical Storage Inventory is less than the Customer Storage Inventory BP shall pay Counterparty an amount for such Gas equivalent to the Index under the heading "Canadian Gas" at Dawn, Ontario on the day of transfer.

#### ARTICLE IV. PERFORMANCE OBLIGATIONS

- 4.1 **Supply of Information.** The Counterparty shall reasonably provide timely information to BP to facilitate BP's nomination and scheduling of Gas made the subject of the AMA Transaction for delivery at the Delivery Point(s). The Counterparty shall also provide any relevant information in respect of this Addendum and the AMA Transaction to BP in a reasonably timely manner to ensure that Imbalance Charges will not occur, including any operational changes or circumstances, if applicable, that may impact the Counterparty's Gas requirements. If the Counterparty fails to provide such information to BP, the Counterparty shall be responsible for Imbalance Charges that are incurred by BP as a result of the Counterparty's failure to timely provide such information to BP. It is understood that Counterparty will make daily nominations for day- to- day supply requirements as well as intra day changes.
- 4.2 **BP Delivery Obligation.** Subject to the terms of the AMA Transaction and the Base Contract, on any Day during the Term, BP will deliver to the Counterparty a volume of Gas equal to the Counterparty's Gas requirements up to the MDQ of the Released Capacity. Counterparty will provide to BP notice, on or before 8:00 a.m. Central Standard Time on the Business Day before each Day ("Notice") for any Gas that Counterparty requires at the Delivery

Point(s) and for any Gas Counterparty desires to inject into or withdraw from Storage. To the extent that Counterparty has not contracted for a sufficient quantity of Gas under Gas Supply Contracts to meet its requirements on any Day, BP agrees to sell the required quantity of Gas to Counterparty at a market price, which will be as agreed upon at the time. Such market price will include any Fuel and Commodity Charges applicable for transporting Gas from Receipt Points to the Delivery Point.

**4.3 Timely Instructions.** The timeliness of the information provided by the Counterparty for purposes of Section 4.1 shall be determined by ascertaining whether BP was given a commercially reasonable amount of time from BP's receipt of the relevant information prior to the nominating and scheduling deadlines established by the applicable Pipeline, unless express deadlines are otherwise set forth in the Base Contract or this Addendum.

**4.4 Gas Supply Contract(s)/Gas Purchased from BP/Customer Storage Inventory.** The Parties acknowledge and agree that a portion of the Gas to be transported under the Released Capacity (i) has been or will be purchased by Counterparty from Gas Suppliers under the terms of Gas Supply Contract(s), (ii) will be purchased by Counterparty from BP at the Delivery Point and (iii) may be supplied from the Counterparty Storage Inventory. As permitted by FERC Order 712, during the Term BP has agreed to purchase Gas from Counterparty that it obtains from Gas Supply Contracts, at a Contract Price equal to the Inside FERC Price at the Receipt Point(s) for the Released Capacity, as applicable, under the terms and conditions of the Base Contract, with such Gas being re-sold after its transportation on the Released Capacity to the Delivery Point under the AMA Transaction back to Counterparty in accordance with the terms and conditions of the Base Contract at a Contract Price of the Inside FERC Price plus Commodity and Fuel charges. For any Gas that Counterparty instructs that BP deliver into storage in lieu of delivery to the Delivery Point, Counterparty agrees to pre-pay BP for such Gas. In addition to the prepayment of the Contract Price, Counterparty agrees that BP will charge Counterparty for any injection fees charged by the Storage provider for the injection of Gas and any withdrawal fees charged by the Storage provider upon a request by Counterparty to withdraw such Gas. Such injection and withdrawal charges will be payable regardless of whether such Gas is physically injected or withdrawn. In the event that Counterparty has prepaid BP for Gas that remains in Storage at the end of the Term, to the extent that Counterparty has already paid the Fuel and Commodity charges, BP will reimburse Counterparty for such charges. This Section 4.4 is subject to the following additional terms and conditions:

(a) **Provision of Information.** In addition to the obligations set forth under this Article IV, Counterparty shall also timely provide information to BP to facilitate BP's nomination and scheduling of Gas made the subject of the Gas Supply Contracts and Counterparty Storage Inventory for receipt at the Receipt Point(s), or alternatively Counterparty shall cause the responsible party under the Gas Supply Contracts to timely supply such information to BP. Counterparty shall also provide any relevant information in respect of the Gas Supply Contracts to BP. On each Day, Counterparty shall also take any commercially reasonable actions required to deliver or cause to be delivered at the applicable Receipt Point(s) a quantity of Gas under the Gas Supply Contracts and from Counterparty Storage Inventory in the aggregate equivalent to the timely instructions provided to BP to avoid the imposition of Imbalance Charges. Further Counterparty shall provide BP with, or cause BP to be provided with, timely information concerning any operational changes or circumstances affecting the Gas Supply Contract(s), if applicable, that may impact Counterparty's Gas requirements as soon as possible to avoid the imposition of Imbalance Charges. Counterparty shall also maintain in full force and effect during the Term, without suspension, the Gas Supply Contracts. To the extent that Counterparty's actions or inactions under this Section 4.4(a) result in the imposition of Imbalance Charges, Counterparty shall be liable for the same, and to the extent that BP pays such Imbalance Charges, Counterparty shall reimburse BP for such charges.

(b) **Specific Terms of Purchase and Sale.**

(i) **Counterparty Sale to BP:** In addition to the terms and conditions set forth in the Base Contract, the following terms and conditions shall govern Counterparty's sale of Gas to BP with respect to Gas supplied to BP by Counterparty as a result of the Gas Supply Contracts:

**Delivery Period.** Same as the AMA Transaction.

**Performance Obligation and Contract Quantity**

Counterparty shall provide Notice to BP on a monthly basis of the quantity of Gas for the respective Gas Supply Contract(s) that Counterparty will deliver on a Firm basis to BP on each Day during the next delivery Month at the Receipt Point(s), with BP's obligations to purchase such Gas being expressly limited by the Individual Receipt Point MDQs. If the amount exceeds the Receipt Point MDQs, BP shall not be required to take the Gas under this Addendum or otherwise accept the Gas at any other receipt point(s). Counterparty's Notice must be submitted in writing to BP at least six (6) Business Days before the beginning of the delivery Month in accordance with this Addendum.

**Contract Price per MMBtu:**

(A) For Gas purchased by BP from Counterparty at any Receipt Point pursuant to Gas Supply Contracts, the Contract Price will be equal to the Inside FERC Price, Ventura, Iowa; and (B) For Gas purchased by Counterparty from BP at any Delivery Point pursuant to Gas Supply Contracts, the Contract Price will be equal to the Inside FERC Price, Ventura, Iowa, plus applicable Commodity Charges plus Fuel.

(ii) **Counterparty Storage Inventory.** In addition to the terms and conditions set forth in the Base Contract, the following terms and conditions shall govern the Gas purchased by Counterparty at any Delivery Point from BP for delivery into the Counterparty Storage Inventory:

**Delivery Period.** Same as the AMA Transaction.

**Performance Obligation and Contract Quantity:**

Counterparty shall provide Notice to BP on a monthly basis of the quantity of Gas from the Counterparty Storage Inventory that it wants BP to deliver on Firm basis on each Day during the next delivery Month at the Delivery Point(s), with BP's obligations to deliver such Gas being expressly limited by the Individual Delivery Point MDQs. If the amount exceeds the Delivery Point MDQs, BP shall not be required to deliver the Gas under this Addendum or otherwise accept the Gas at any other deliver point(s). Counterparty's Notice must be submitted in writing to BP at least six (6) Business Days before the beginning of the delivery Month in accordance with this Addendum. Any Gas delivered to Counterparty pursuant to this provision shall reduce the Counterparty Storage Inventory proportionately.

**Contract Price per MMBtu:** For Gas purchased by Counterparty from BP at any Delivery Point that Counterparty requests be moved into Storage, the Contract Price will be pre-paid prior to the month of delivery at the Contract Price agreed to by the parties plus the applicable Commodity Charges, Fuel and injection and withdrawal fees.

(iii) **Contract Quantity Limitations.** To the extent that the Counterparty and BP have entered into Fixed Price Transactions or Firm transactions under the Base Contract for Delivery Periods covered by the Term, notwithstanding anything else in the Base Contract to the contrary, BP shall not be obligated to enter into Gas sales to Counterparty as a result of Gas Supply Contracts in a quantity on any Day exceeding: (i) the MDQ, less (ii) the daily quantity of Gas made the subject of any such Fixed Price or Firm transactions governed by this Addendum.

- (c) **Limited Agency Obligations.** On Counterparty's behalf and subject to the timely receipt of information from Counterparty, BP shall nominate and schedule the Gas to be purchased and received by BP from Counterparty at the Receipt Point(s). Counterparty shall undertake any and all commercially reasonable actions required by the applicable Transporter(s) to allow BP to engage in such limited agency obligations. Notwithstanding anything to the contrary set forth in the Base Contract, the Parties acknowledge and agree that (i) BP shall not have any responsibility for determining the quantity of Gas, if any, that Counterparty should purchase under the Gas Supply Contracts to satisfy its Gas requirements, (ii) except as agreed upon in a separate and mutually agreed upon Transaction Confirmation, BP shall not be responsible for supplying any Gas to Counterparty under the terms of this Addendum to replace the Gas made the subject of the Gas Supply Contracts to the extent that the Gas is not delivered to BP, and (iii) BP's responsibilities under this Addendum with respect to the Gas Supply Obligations are expressly limited to nominating and scheduling Gas on Counterparty's behalf at the Receipt Point(s) according to Counterparty's timely instructions, which have been made in Counterparty's sole discretion and judgment.
- (d) **Risk Allocation.** Notwithstanding anything set forth in the Base Contract necessarily including this Addendum, Counterparty assumes the risks of the (i) the failure of a third party Gas Supplier under the Gas Supply Contracts to deliver Gas to Counterparty at the applicable Receipt Point(s) that is not due to the negligence of BP, or (ii) the failure of any of the Counterparty Storage Inventory to be available and such failure is not due to the negligence or willful misconduct of BP, or (iii) Counterparty's failure to deliver Gas to BP at the Receipt Point(s) that is not due to the negligence of BP, or (iv) an event of Force Majeure under the Gas Supply Contract or the Base Contract including but not limited to (a) an event of force majeure under the Gas Supply Contract or an event of Force Majeure under the Base Contract, as applicable, or (b) the curtailment, interruption or the unavailability, operational flow order or other event(s) impacting transportation or storage services that impair BP's ability to utilize the Released Capacity to store or transport Gas not due to the negligence of BP, whether an event of force majeure is declared by the Transporter or not. BP's delivery obligation shall be decreased accordingly. For purposes of clarity with respect to the Gas Supply Obligations, BP shall have no liability of any nature to Counterparty under the Base Contract by reason of any failure by a

Gas Supplier to deliver Gas under a Gas Supply Contract(s) at the Receipt Point(s) to Counterparty, or Counterparty's failure to deliver such Gas under the Base Contract to BP, including but not limited to any and all liabilities, costs, damages, and/or Imbalance Charges.

- (e) **Timely Instructions.** The timeliness of the instructions provided by Counterparty (or by the party responsible for conveying any such instructions under the Gas Supply Contracts) for purposes of this Section 4.4 shall be determined by ascertaining whether BP was given a commercially reasonable amount of time from BP's receipt of the nomination and scheduling instructions from Counterparty (or the responsible party) prior to the nominating and scheduling deadlines established by the applicable Pipeline, unless express deadlines are otherwise set forth in the Base Contract, necessarily including this Addendum.

#### ARTICLE V. CONSIDERATION

- 5.1 Released Capacity Consideration.** The Parties agree that in addition to the consideration included in the economic terms of the AMA Transaction, BP shall pay the Counterparty eighty percent (80%) of the profit received from BP's optimization activities related to the utilization of any of the Released Capacity that is not used to serve the Counterparty's Gas requirements (such profit sharing being referred to as the "Released Capacity Consideration"). The Released Capacity Consideration is being provided to the Counterparty as part of the consideration in exchange for the Released Capacity, with such optimization payments being made by BP on a monthly basis in accordance with the terms of the Base Contract.)
- 5.2 Optimization Activities and Profit Calculation.** The Parties agree that BP may utilize the Released Capacity for optimization purposes. Specifically, on any Day during the Term, optimization activities performed by BP may include but are not limited to (i) buy Gas from third parties at receipt point(s) on the Released Capacity; (ii) transport Gas on the Released Capacity; (iii) sell Gas to third parties at delivery point(s) on the Released Capacity, (iv) buy Gas from third parties and transport into the storage capacity, (v) transport gas out of storage for sale to third parties, or (vi) re-release any of the Released Capacity to a third party, with any of the foregoing being performed by any means consistent with applicable law, including, without limitation, by capturing value associated with overruns, segmented and/or unutilized capacity, or by redirecting receipts and/or deliveries. BP shall use its sole discretion in optimizing the Released Capacity, but the intent is to create profit while providing a reliable supply of gas for Counterparty's customers in accordance with the express terms provided herein or in the AMA Transaction
- 5.3** Counterparty will not be at risk for any optimization activities that result in a loss. The Parties acknowledge and agree that nothing herein in any manner constitutes a guaranty or promise of profits as a result of the optimization activities. For purposes of determining profits, any billing adjustments or true-ups resulting in the ordinary course of business, whether as a result of an audit or due to any authorized action taken by the Pipeline or a third party, shall also be considered and adjustments made as appropriate to reconcile the amounts owed between the Parties.
- (i) **BP's Optimization Responsibilities.** In conjunction with the optimization activities, BP shall:
- (A) maintain accounting records and make any necessary adjustments and/or reconciliations to ensure that the revenues, expenses, profits and losses related to the optimization activities are properly attributed to the Parties; and
- (B) provide a monthly summary of all optimization activities to Counterparty.
- (ii) **Delivery Obligations.** To the extent that BP's optimization activities under this Section 5.2 commit the Released Capacity for optimization opportunities (such capacity being "Committed Optimization Capacity"), BP shall remain obligated under the AMA Transaction to satisfy the Counterparty's Gas requirements. However, the Parties agree that if the Committed Optimization Capacity (or any portion thereof) is unavailable due to the curtailment, interruption not due to the negligence of BP or the unavailability of such capacity whether an event of force majeure is declared by the Pipeline or not, BP shall not have an obligation to deliver any such Gas to the Counterparty under the AMA Transaction.
- 5.4 Taxes.** Each Party is responsible for paying Taxes on the economic benefits and burdens related to the specific activities entered into under this Addendum, including but not limited to the Released Capacity Consideration and/or the repayment of the same. Nothing herein shall in any manner modify the terms and conditions of the Base Contract with respect to the payment of Taxes pertaining to the purchase and sale of Gas under the AMA Transaction.

#### ARTICLE VI. DEFAULT AND REMEDIES

- 6.1 Events of Default.** The following actions or inactions by a Party under this Addendum shall constitute an Event of Default under the Base Contract:
- (a) breach of any material obligation under this Addendum (save and except for any breach addressed hereinafter) if

such breach is not cured by the Party in breach within five (5) Business Days after written notice of such breach from the Non-defaulting Party; or

(b) Counterparty takes, or fails to take, any action necessarily required of it by the Pipeline(s) or under this Addendum related to the Released Capacity which results in BP's inability, in whole, to utilize the Released Capacity on any Day, such as but not limited to allowing the Transportation Agreement(s) or Storage Agreement(s) to be suspended or terminated in whole or in part, and such failure is not cured by the Counterparty within two (2) Business Days after Notice is provided to the Counterparty by BP under the Base Contract.

- 6.2 **Remedies.** If an Event of Default has occurred and is continuing, the Non-Defaulting Party may exercise any and all rights and remedies afforded to it under the this Addendum or the Base Contract. To the extent the Non-Defaulting Party elects to terminate and liquidate all transactions under the Base Contract on the Early Termination Date, necessarily including the AMA Transaction, this Addendum shall also terminate and the Released Capacity shall be automatically recalled.

#### ARTICLE VII. MISCELLANEOUS

- 7.1 **Compliance with Governmental Requirements.** The Parties agree that BP's provision of asset management services under this Addendum may be subject to local, state, or Federal laws, rules, and regulations (collectively "Governmental Requirements"). The Parties agree to comply with all Governmental Requirements applicable to this Addendum, and the Counterparty agrees that it shall not require or request BP to perform any action, or to omit to perform any action that either a court or governmental agency has declared or that BP's legal counsel provides a written opinion stating is impermissible under Governmental Requirements. Without limiting the generality of the foregoing, if any governmental agency of competent jurisdiction should determine that the obligations and duties contemplated in this Addendum cannot be performed in accordance with applicable Governmental Requirements, wholly or in part, the Parties shall immediately suspend performance under this Addendum, and shall suspend the corresponding obligations to deliver and receive Gas under the AMA Transaction. BP and Counterparty shall, within ten (10) Days of such a determination, meet to determine whether this Addendum can be revised so that the services contemplated herein can be performed fully in accordance with applicable Governmental Requirements while preserving the economic benefits afforded to both Parties under the current structure as closely as possible. In the absence of a superseding written agreement entered into between the Parties within the later of (i) thirty (30) Days following such event, or (ii) twenty (20) Days after such meeting (or the next Business Day if such Day is not a Business Day under either case), this Addendum shall terminate along with the AMA Transaction (such Day being the Early Termination Date for purposes of this section), with (a) no damages being owed by either Party as a result of the termination of this Addendum, such as but not limited to the loss of optimization activities/management services, (b) no affect occurring under the Base Contract with respect to transactions unrelated to the Addendum, and (c) damages being calculated for the AMA Transaction as a result of its liquidation and termination on such Early Termination Date. On such Early Termination Date, BP shall determine the damages for the AMA Transaction in accordance with Section 10 of the Base Contract; provided however, that for purposes of determining the amount owed with respect to the liquidation and termination of the AMA Transaction, any and all Costs otherwise allowed under Section 10.3.1. shall be excluded from the calculation (save and except to the extent that the Parties have entered into a Fixed Price or Basis Price transaction in which case costs associated with undoing any related hedge transactions, such as but not limited to brokerage fees, commissions, and other similar transaction costs and expenses reasonably incurred by a Party shall be allowable), and provided further that for purposes of determining the resulting amount owed for the termination and liquidation of the AMA Transaction, the Market Value of such Terminated Transaction shall be determined by using the mid-point, as it may be estimated, between the bid price and the ask price for such Terminated Transaction to reflect that neither Party is a Defaulting Party and accordingly the intent of the Parties is not to ascertain liquidated damages from a Non-Defaulting Party's perspective. The respective Parties shall have the same rights and remedies related to the calculation and dispute of the resulting Net Settlement Amount owed with respect to the termination and liquidation of the AMA Transaction as those set forth in Section 10.
- 7.2 **Further Assurances.** The Parties agree to execute and deliver such additional instruments or documents as may be necessary to carry out the purposes of this Addendum.
- 7.3 **Authority to Execute.** Each of the Parties to this Addendum represents and warrants that, as of the Effective Date, (i) it has full and complete authority to enter into and perform this Addendum; (ii) the person who executes this Addendum on its behalf has full and complete authority to do so and is empowered to bind it thereby; and (iii) it is not insolvent and has not sought protection from its creditors under the United States Bankruptcy Code, or under any similar laws.
- 7.4 **Miscellaneous.** This Addendum may be executed in multiple counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument. The headings and subheadings contained in this Addendum are used solely for convenience and do not constitute a part of this Addendum between the Parties

and shall not be used to construe or interpret the provisions of this Addendum. Except as expressly otherwise provided in this Addendum, all covenants, representations, warranties, acknowledgments, agreements, rights and obligations of the Parties under this Addendum that are capable of having effect after the termination of this Addendum for any reason, shall survive and remain in full force and effect beyond, and not be affected by, the termination of this Addendum. Any dispute arising out of this Addendum shall be brought in a federal court in the State of Minnesota.

- 7.5 Entirety and Amendments.** This Addendum constitutes the entire agreement (save and except for the AMA Transaction) between the Parties regarding the asset management services to be provided under this Addendum, and supersedes and replaces any prior and contemporaneous communications, understandings and agreements between the Counterparty and BP related to such subject matter, whether written or verbal, express or implied. No modification, amendment, supplementation or alteration of the terms and provisions of this Addendum shall be or become effective except by written amendment executed by the duly authorized representative of the Parties. Except as set forth herein, the Base Contract shall remain unchanged.
- 7.6 Assignment.** Notwithstanding anything in the Base Contract to the contrary, neither Party may assign the Base Contract, necessarily including this Addendum, without the prior written consent of the other Party, unless such assignment is to an affiliate of such Party; however, in order to be effective, any consent to such assignment must also be permitted by applicable law, including without limitation FERC regulations concerning asset management arrangements and capacity release rules.
- 7.7 One Agreement.** The Parties agree and acknowledge that this Addendum shall be considered part of the Base Contract as such term is defined in the General Terms and Conditions, but shall not be considered an "addendum" so as to constitute a part of the Base Contract. Accordingly, the Parties agree and acknowledge that this Addendum is part and parcel to the Base Contract, and accordingly the Base Contract, this Addendum and the AMA Transaction shall be deemed to constitute one integrated agreement for all purposes; provided, however that this Addendum may be terminated separate and apart from the transactions under the Base Contract in accordance with the terms and conditions set forth in this Addendum, necessarily resulting in the termination of the AMA Transaction.
- 7.8 Defined Terms.** Any capitalized terms set forth herein that are not otherwise defined herein, shall have the meaning set forth in the Base Contract.
- 7.9 Survival of Terms.** To the extent that this Addendum is terminated, the Parties agree that any and all terms and conditions of this Addendum that are necessary to effectuate the Parties' rights and remedies as a result of an Event of Default shall survive the termination of this Addendum until such time as the rights and remedies and all disputes related thereto are fully and finally resolved.
- 7.10 Conflicting Terms.** The Parties agree that to the extent any terms and conditions set forth in this addendum conflict with any terms set forth in the Base Contract, this Addendum shall govern for all purposes.
- 7.11 Existing Transactions.** The Parties previously entered into existing transactions under the Base Contract; therefore, to the extent that such existing transactions are related to the delivery of Gas that was transported on capacity made the subject of the Released Capacity prior to the beginning of the Term, the Parties shall enter into replacement transactions (including the AMA Transaction) which shall be effective as of the beginning of the Term upon the same commercial terms and conditions (save and except for the Delivery Point(s)).

IN WITNESS WHEREOF, and with the intent to be legally bound, the Parties hereto have caused this Addendum to be executed by their duly authorized officers or representatives as of the Effective Date.

**CITY OF DULUTH**

**BP CANADA ENERGY MARKETING CORP**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Don Ness

Name: \_\_\_\_\_

Title: Mayor

Title: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

**APPROVED:**

\_\_\_\_\_  
City Auditor

\_\_\_\_\_  
City Attorney