



City of Palo Alto

City Council Staff Report

(ID # 6049)

Report Type: Consent Calendar

Meeting Date: 9/21/2015

Summary Title: Mercuria Gas Contract Assignment

Title: Adoption of a Resolution Approving an Assignment, Assumption, and Consent Agreement with J.P. Morgan Ventures Energy Corporation and Mercuria Energy Gas Trading LLC

From: City Manager

Lead Department: Utilities

Recommendation

Staff recommends Council adopt a resolution (Attachment A) to:

1. Approve an Assignment, Assumption and Consent Agreement (Assignment Agreement) with J.P. Morgan Ventures Energy Corporation (J.P. Morgan) and Mercuria Energy Gas Trading LLC (Mercuria);
2. Waive the application of investment-grade credit rating requirement of section 2.30.340(c) of the Palo Alto Municipal Code, which applies to energy companies that do business with the City; and
3. Delegate the City Manager or his designee, the authority to execute on behalf of the City the Assignment Agreement with J.P. Morgan and Mercuria effectively assigning the Base Contract for Sale and Purchase of Natural Gas (Master Agreement) with J.P. Morgan to Mercuria.

Executive Summary

The City of Palo Alto (City) has been doing business with J.P. Morgan since Council approved a Master Agreement with that counterparty in 2007 (Ordinance 4936). In October 2014, JPMorgan Chase & Company sold to Mercuria a portion of its physical commodities trading business including the entity with which the City engages in natural gas transactions. Council approval of the attached resolution will authorize the City Manager to execute the attached Assignment Agreement causing the Master Agreement to be assigned to Mercuria as of the date of its execution so that transactions entered into after that date will be entered into with Mercuria.

Background

In 2007, the City executed a number of Master Agreements including one with J.P. Morgan to enable gas commodity and related services transactions. The Master Agreements utilize the

North American Energy Standards Board template with some additional special provisions. In subsequent years, the City has transacted frequently with J.P. Morgan for gas commodity and for gas-related services including scheduling and daily balancing activities.

In 2012 Council approved amendments to the Gas Utility Long-term Plan Objectives, Strategies and Implementation Plan (Resolution #9244) establishing the practice of purchasing all gas volumes at monthly and daily index-based market prices and implementing monthly market price-based gas commodity rates for all Palo Alto gas customers.

Discussion

The City engages regularly with J.P. Morgan in natural gas transactions. Council approval of the attached resolution will authorize the City Manager to execute the attached Assignment Agreement causing the Master Agreement to be assigned to Mercuria as of the date of its execution so that transactions entered into after that date will be entered into with Mercuria. According Palo Alto Municipal Code section 2.30.340(c), gas counterparties “shall obtain and maintain during the term of the contract the minimum credit rating established as of the date of the award of the contract of not less than a BBB- credit rating established by Standard & Poor’s and a Baa3 credit rating established by Moody’s Investors Services”. Because Mercuria is a privately-held company, there is no published credit rating. However, the City retains consulting services from ACES, a nationwide energy management company, and ACES’ analysis of Mercuria’s financial health resulted in an implied credit rating of BBB, a credit standing consistent with the City’s requirement.

In addition, Mercuria will provide the City with a \$415,000 letter of credit at such time as a transaction is entered into with the City. This amount was calculated by the City’s Energy Risk Manager to be sufficient to cover the very limited risk involved with this contract because the City purchases nearly all gas volumes at monthly and daily market index prices, and therefore, does not incur the kind of market price risk associated with long-term, fixed-price purchases. The letter of credit amount was based conservatively on cold January usage purchased at high winter prices.

Council approval of the attached resolution will authorize the City Manager to execute the attached Assignment Agreement causing the Master Agreement to be assigned to Mercuria as of the date of its execution, thus enabling the City to enter into new business transactions with the new entity.

Resource Impact

There is no resource impact resulting from adoption of the proposed resolution. All gas is purchased at monthly and daily index-based market prices through a competitive bidding process involving all Council-approved gas counterparties, and the gas commodity rate varies monthly with the market price.

Policy Implications

Approval of the attached resolution is in conformance with the Utilities Strategic Plan to negotiate supply contracts to minimize financial risk.

Environmental Review

Adoption of the resolution approving the Novation Agreement does not constitute a project for the purposes of the California Environmental Quality Act.

Attachments:

- Attachment A: Resolution Approving an Assignment, Assumption, and Consent Agreement with J.P. Morgan and Mercuria (PDF)
- Attachment B: Assignment Assumption and Consent Agreement (PDF)
- Attachment C: Standard Letter of Credit Form (PDF)

* NOT YET APPROVED *

Resolution No. _____

Resolution of the Council of the City of Palo Alto Approving an
Assignment, Assumption, and Consent Agreement with J.P. Morgan
Ventures Energy Corporation and Mercuria Energy
Gas Trading LLC

R E C I T A L S

- A. In March 2007 the Palo Alto City Council adopted Ordinance 4936 approving J.P. Morgan Ventures Energy Corporation (“J.P. Morgan”) as a counterparty eligible to do business with the City of Palo Alto (“City”).
- B. J.P. Morgan has been an active counterparty transacting gas commodity and gas commodity-related services with the City.
- C. The City purchases gas for the portfolio at month and daily index-based prices and changes retail rates monthly to reflect those market prices.
- D. In October of 2014, JP Morgan Chase & Company sold J.P. Morgan Ventures Energy Corporation to Mercuria Energy Gas Trading LLC (“Mercuria”).
- E. Mercuria is a privately-held company that does not have a published credit rating.

The Council of the City of Palo Alto does hereby RESOLVE as follows:

SECTION 1. The Council approves the Assignment, Assumption and Consent Agreement (“Assignment Agreement”) with J.P. Morgan Ventures Energy Corporation (“J.P. Morgan”) and Mercuria Energy Gas Trading LLC (“Mercuria”).

SECTION 2. The Council waives the application of the investment-grade credit rating requirement of section 2.30.340(c) of the Palo Alto Municipal Code, which applies to energy companies that do business with the City.

SECTION 3. The Council delegates to the City Manager, and/or his designee, the authority to execute on behalf of the City the Assignment Agreement with J.P. Morgan and Mercuria which assigns the Base Contract for Sale and Purchase of Natural Gas with J.P. Morgan to Mercuria as of the date of execution.

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* NOT YET APPROVED *

SECTION 4. The Council's approval of this Assignment, Assumption and consent Agreement does not meet the definition of a project under the California Environmental Quality Act (CEQA), pursuant to Public Resources Code Section 21065.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

City Clerk

APPROVED AS TO FORM:

Senior Deputy City Attorney

Mayor

APPROVED:

City Manager

Director of Utilities

Director of Administrative Services

ATTACHMENT B

ASSIGNMENT, ASSUMPTION AND CONSENT AGREEMENT

THIS ASSIGNMENT, ASSUMPTION AND CONSENT AGREEMENT (the “*Assignment Agreement*”) is made and entered into this ____ day of September, 2015 (the “*Execution Date*”) by and among **J.P. Morgan Ventures Energy Corporation** (“*Assignor*”), **Mercuria Energy Gas Trading LLC** (“*Assignee*”), and **City of Palo Alto** (“*Consenting Party*”) (Assignor, Assignee and Consenting Party are sometimes referred in this Assignment Agreement as a “*Party*” and collectively as the “*Parties*”).

WHEREAS, Assignor and Consenting Party are parties to that certain NAESB Base Contract for Sale and Purchase of Natural Gas dated March 12, 2007 entered into between Assignor and Consenting Party (together with all amendments and modifications, the “*Subject Agreement*”) (a copy of which is attached hereto at Exhibit 1);

WHEREAS, Assignor desires to assign and delegate to Assignee, from and after the Effective Time (as defined in Section 1 below), all of its rights, duties and obligations in the Subject Agreement (except with respect to the Residual Subject Agreements, as defined in Section 5(j) below), and Assignee desires to accept such assignment and delegation and to assume all such rights, duties and obligations with the effect that (a) Assignee and Consenting Party are parties to the Subject Agreement and transactions entered by Assignee and Consenting Party after the Effective Time, in accordance with the terms hereof;

WHEREAS, Assignor and Assignee desire to obtain Consenting Party’s written consent to assign or transfer the Subject Agreement, and Consenting Party desires to grant such consent in accordance with the terms hereof;

WHEREAS, with effect from and including the Effective Time, the Consenting Party wishes to accept the Assignee as its sole counterparty with respect to the Subject Agreement (except with respect to the Residual Subject Agreements) and the Assumed Liabilities; and

WHEREAS, the Parties have entered into this Assignment Agreement subject to the satisfaction of certain conditions precedent, as set forth herein.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. **Assignment**. Effective as of the Novation Date Assignor hereby assigns to Assignee all of its right, title, benefit, privileges and interest in and to the Subject Agreement that are to be performed or accrue on and after the Effective Time and that do not relate to a calculation period or delivery period (however defined) ending before the Effective Time. For purposes of this Assignment Agreement, “*Effective Time*” shall mean the beginning of the hour ending 0100 eastern prevailing time on the Novation Date. “*Novation Date*” shall have the same meaning as the Execution Date.

2. **Assumption**. Effective as of the Effective Time, Assignee hereby accepts such assignment and assumes and agrees to observe and perform the Liabilities of Assignor under or

relating to the Subject Agreement which are to be performed or accrue on and after the Effective Time, to the extent such Liabilities arise from or relate to acts, omissions or events occurring or conditions arising on or after the Effective Time (collectively, the “*Assumed Liabilities*”). All Liabilities other than the Assumed Liabilities, including but not limited to Liabilities: (i) arising from or relating to acts, omissions or events occurring or conditions arising prior to the Effective Time under the Residual Subject Agreements but which have not been settled, paid or performed as of the Effective Time; or (ii) due and payable or due to be performed after the Effective Time under the Residual Subject Agreements, but which accrued with respect to or otherwise related to a calculation period or delivery period (however defined) ending prior to the Effective Time (collectively, the “*Excluded Liabilities*”) shall remain and be the obligation and responsibility of Assignor, and Assignee shall not assume, discharge, perform or be responsible in any way for any Excluded Liabilities. For purposes of this Section 2, “*Liabilities*” means indebtedness, obligations, duties and other liabilities (including in respect of or arising out of any breach of contract or actual or alleged failure of Assignor to perform any obligation), whether absolute, accrued, contingent, fixed or otherwise, or whether due or to become due with respect to the Subject Agreement and the Assumed Liabilities.

3. **Acceptance by Consenting Party.** Effective as of and from the Effective Time, Consenting Party hereby consents to the assignment of the Subject Agreement and accepts Assignee as the party to perform only the Assumed Liabilities of Assignor under the Subject Agreement.

4. **Releases.**

(a) Effective as of and from the Effective Time, Consenting Party hereby releases and forever discharges Assignor and Assignor’s Guarantor(s), if any, from any and all further obligations to Consenting Party with respect to the Assumed Liabilities, including any liability of any type as a consequence of, or relating to, the Subject Agreement, including, without limitation, all manner of action and inaction, cause or causes of action, suits, debts, dues, sums of money, claims and demands whatsoever at law or in equity arising out of, or which are in any way related to, the Subject Agreement, provided that, for certainty, the foregoing shall not release or discharge Assignor or Assignor’s Guarantor(s), if any, in respect of the settlement, payment or performance of any Excluded Liabilities, and all such Excluded Liabilities shall remain and be the obligation and responsibility of Assignor and Assignor’s Guarantor(s), if any, and shall be paid or performed by Assignor to the Consenting Party in accordance with the terms of the Residual Subject Agreements.

(b) Effective as of and from the Effective Time, Assignor hereby releases and forever discharges Consenting Party from any and all further obligations to Assignor with respect to the Subject Agreement and from any and all liability of any type as a consequence of, or relating to, the Subject Agreement, including, without limitation, all manner of action and inaction, cause or causes of action, suits, debts, dues, sums of money, claims and demands whatsoever at law or in equity, arising out of or which are in any way related to, the Subject Agreement; provided that, for certainty, the foregoing shall not release or discharge Consenting Party in respect of the settlement, payment or performance of any Liabilities: (i) arising from or relating to acts, omissions or events occurring or conditions existing prior to the Effective Time under the Residual Subject Agreements but which have not been settled, paid or performed as of

the Effective Time; or (ii) due and payable or due to be performed after the Effective Time under the Residual Subject Agreements, but which accrued with respect to or otherwise related to a calculation period or delivery period (however defined) ending prior to the Effective Time, (i), and (ii) collectively constitute the “**Consenting Party Excluded Liabilities**”), and all such Consenting Party Excluded Liabilities shall remain and be the obligation and responsibility of Consenting Party and shall be paid or performed by Consenting Party to the Assignor in accordance with the terms of the Residual Subject Agreements. For purposes of this Section 4(b), “**Liabilities**” means indebtedness, obligations, duties and other liabilities (including in respect of or arising out of any breach of contract or actual or alleged failure of Consenting Party to perform any obligation), whether absolute, accrued, contingent, fixed or otherwise, or whether due or to become due with respect to the Residual Subject Agreements and the Consenting Party Excluded Liabilities.

5. **Master Agreement.** Effective at the Effective Time, Assignee and Consenting Party agree that the following amendments will be applicable to the Subject Agreement as between Assignee and Consenting Party, it being agreed that no such amendments shall be applicable to the Residual Subject Agreements as between Assignor and Consenting Party:

- a) **Assignor References.** References to Assignor are replaced in the Subject Agreement with “Mercuria Energy Gas Trading LLC”.
- b) **Addresses for Notices.** The notices section on the cover sheet to the Subject Agreement and in Exhibit C, Part (H) is hereby amended by replacing the notice information for Assignor with the information of Assignee set forth in Exhibit 2 attached hereto.
- c) **Net Settlement Amount.** Section 10.4 of Exhibit B is hereby deleted in its entirety.
- d) **Construction.** Section 14.13 of Exhibit B is hereby deleted in its entirety.
- e) **Financial Information.** Section K of Exhibit C is hereby amended to delete the following:

“and (ii) within 60 Days following the end of each of the first three fiscal quarters of its fiscal year, a copy of the quarterly unaudited consolidated financial statements for such fiscal quarter”

and further amended by inserting the following after the first sentence of Section K:

“Within sixty (60) Days following the end of each of the first three fiscal quarters of Supplier’s fiscal year, City shall have the right, after providing reasonable advance notice, at its sole cost and expense to review in-person at Supplier’s offices during normal working hours a copy of Supplier’s quarterly unaudited consolidated financial statements for each fiscal quarter. City shall have the right to take notes but not copy such financial statements, with the same being subject to Section 14.10 of the Contract.”

f) Credit Support Provider.

The second sentence of the definition of “Credit Support Provider in Exhibit C, Section L is deleted in its entirety.

g) Supplier Downgrade Event.

(i) The phrase “and a Supplier Downgrade Event has not occurred” is deleted in its entirety from Exhibit C, Section G.(1) of the Subject Agreement.

(ii) The definition of “Supplier Downgrade Event” in Exhibit C, Section L is deleted in its entirety.

h) Posted Performance Assurance.

The first sentence in Exhibit C, Section G.(2) of the Subject Agreement is deleted in its entirety and replaced with the following:

“If the City becomes ineligible to hold and use Posted Performance Assurance, then it shall be considered a "Downgraded Party", or with respect to a Custodian which is no longer a Qualified Institution, a "Downgraded Custodian", as the case may be, the event that caused City or its Custodian to become ineligible to hold Posted Performance Assurance shall be a "City Downgrade Event" or “Credit Rating Event” and the following provisions shall apply.”

i) Potential Event of Default. All references to “or Potential Event of Default” in the Subject Agreement are hereby deleted.

j) Irrevocable Transferable Standby Letter of Credit.

(i) Section A.(2) of Exhibit C of the Subject Agreement is deleted in its entirety and replaced with the following:

“Supplier Letter of Credit. In order to secure the payment obligations of Supplier hereunder, Supplier shall deliver to City a Letter of Credit at such time as a transaction is entered into between the parties, which shall thereafter be maintained in accordance with the terms and conditions of this Contract.”

(ii) The form of Letter of Credit attached to the Subject Agreement as Exhibit II is hereby deleted in its entirety and replaced with the form of Letter of Credit attached hereto as Exhibit [xxx].

(iii) The definition of “Letter of Credit” in Exhibit C, Section L of the Subject Agreement is hereby modified by (a) by deleting and replacing in line four the

word, “and” (after the words, “may require”), with the words “, which such changes”, and (b) adding the word “reasonably” before the word, “acceptable” in line five thereof.

k) Credit Events of Default.

Section F.(2) of Exhibit C of the Subject Agreement is deleted in its entirety and replaced with “RESERVED”.

Assignor and Consenting Party agree that, notwithstanding the assignment to and assumption by the Assignee of the Subject Agreement, the Subject Agreement (without any of the amendments set forth herein or otherwise agreed to by Consenting Party and Assignee) (such agreement between Assignor and Consenting Party, together with any transactions entered into thereunder, if any, are collectively referred to as the “**Residual Subject Agreements**”) shall continue to govern the relationship between Assignor and Consenting Party with respect to the Excluded Liabilities and the Consenting Party Excluded Liabilities, and such Residual Subject Agreements shall be an independent obligation as between Assignor and Consenting Party.

In no event shall any acts or omissions occurring under any subsequent transactions entered into under the Subject Agreement as between Assignee and Consenting Party impact or otherwise have any effect on the Residual Subject Agreements, it being expressly agreed by Assignee that Consenting Party and Assignor can exercise any and all rights under the Residual Subject Agreements without the consent or approval of Assignee. In the same manner, in no event shall any acts or omissions occurring under the Residual Subject Agreements as between Assignor and Consenting Party impact or otherwise have any effect on any subsequent transactions entered into under the Subject Agreement, it being expressly agreed by Assignor that Consenting Party and Assignee can exercise any and all rights under any subsequent transactions entered into under the Subject Agreement without the consent or approval of Assignor.

6. **Further Actions.** Each of the Parties hereto covenants and agrees, at its own expense, to execute and deliver, at the request of another Party hereto, such further instruments of transfer and assignment, and to take such other action, as such other Party may reasonably request to more effectively consummate the assignments and assumptions contemplated by this Assignment Agreement.

7. **Governing Law, Jurisdiction, Jury Trial Waiver.**

(a) The validity, interpretation and performance of this Assignment Agreement and each of its provisions shall be governed by the applicable laws of the State of California, without regard to its conflict of law provisions.

(b) With respect to any suit, action or proceeding relating to this Assignment Agreement (each a “**Proceeding**”), each Party irrevocably submits to the exclusive jurisdiction of the federal courts sitting in the Northern District of the State of California; provided, however, that if the federal courts sitting in the Northern District of the State of California refuse jurisdiction, the Parties agree to the exclusive jurisdiction of the state courts sitting in the County of Santa Clara, State of California wherever venue may properly be laid.

(c) Each Party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any Proceeding. Each Party (i) certifies that no representative, agent or attorney of any other Party has represented, expressly or otherwise, that such other Party or Parties would not, in the event of such a Proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and each of the other Parties hereto have been induced to enter into this Assignment Agreement by, among other things, the mutual waivers and certifications in this Section.

8. **Representations.**

(a) Each Party hereby represents and warrants to the others as of the Execution Date and as of the Effective Time that:

(i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, is duly qualified to do business in those jurisdictions in which it is necessary for the conduct of its business, except for failures which in the aggregate are not material to the other Parties, and has all requisite corporate or other similar power and authority and the legal right to own and operate its properties and to conduct its business as currently conducted;

(ii) the execution, delivery, and performance by it of this Assignment Agreement does not require any consent, license, approval or authorization of, or other action by, or any notice or filing with, any governmental entity or any other person other than such as have already been obtained;

(iii) the execution, delivery and performance by it of this Assignment Agreement are within its organizational powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents or any government rule applicable to it or result in the breach, default or termination of any agreement to which it is a party including the Subject Agreement (as between Assignee and Consenting Party) and the Residual Subject Agreement (as between Assignor and Consenting Party);

(iv) this Assignment Agreement has been duly executed and delivered on its behalf; constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except where enforceability may be limited or otherwise impacted by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and except where enforceability is subject to the application of equitable principles or remedies;

(v) no petition or notice has been presented, no order has been presented, no order has been made and no resolution has been passed for its bankruptcy, liquidation, winding-up or dissolution, and no receiver, trustee, custodian or similar fiduciary has been appointed over the whole or any part of any of its assets or income, and it has not received any notice that any other person has any plan or intention of, filing, making or obtaining any such petition, notice, order or resolution or of seeking the appointment of a receiver, trustee, custodian or similar fiduciary;

(vi) it is acting for its own account, and it has made its own independent decisions to enter into this Assignment Agreement and as to whether this Assignment Agreement is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary; and

(vii) it is not relying on any communication (written or oral) of any other Party as investment advice or as a recommendation to enter into this Assignment Agreement; it being understood that information and explanations related to the terms and conditions of this Assignment Agreement shall not be considered to be investment advice or a recommendation to enter into this Assignment Agreement. No communication (written or oral) received from any other Party shall be deemed to be an assurance or guarantee as to the expected results of this Assignment Agreement.

(b) Each of the Assignor and Consenting Party hereby represents and warrants to each other and to the Assignee based on its actual knowledge as of the Execution Date that:

(i) as of the Execution Date and as of the Effective Time, it has made no prior transfer (whether by way of security or otherwise) of the Subject Agreement or any interest or obligation in or under the Subject Agreement;

(ii) as of the Effective Time, all obligations of the Assignor and the Consenting Party under each of the Assigned Transactions required to be performed on or before the Novation Date have been fulfilled; and

(iii) as of the Execution Date and as of the Effective Time, no Event of Default (as defined in the Subject Agreement) with respect to the Party providing the representation and warranty has occurred and is continuing under, as applicable, the Subject Agreement (as between Assignee and Consenting Party) or the Residual Subject Agreements (as between Assignor and Consenting Party).

9. **Entire Agreement.** This Assignment Agreement, and all exhibits and schedules hereto, represents the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes all prior oral and written and all contemporaneous oral negotiations, commitments and understandings between the Parties.

10. **No Third Party Beneficiaries.** This Assignment Agreement is entered into for the sole benefit of the Parties, and except as specifically provided herein, no other person shall be a direct or indirect beneficiary of, or shall have any direct or indirect cause of action or claim in connection with, this Assignment Agreement.

11. **Counterparts.** The Parties agree that this Assignment Agreement may be executed in counterparts and that, when taken together, such counterparts constitute but one agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement as of the date first above written.

Assignor:

J.P. Morgan Ventures Energy Corporation

By: _____

Name: _____

Title: _____

Assignee:

Mercuria Energy Gas Trading LLC

By: _____

Name: _____

Title: _____

Consenting Party:

City of Palo Alto

By: _____

Name: _____

Title: _____

City of Palo Alto

Approval as to form:

By: _____

Name: _____

Title: _____

EXHIBIT 1

Subject Agreement(s)

See Attached Documents

EXHIBIT 2

Assignee Contact Information

NOTICES AND CORRESPONDENCE:

Mailing Address: Mercuria Energy Gas Trading LLC
20 E. Greenway Plaza, Suite 650
Houston, Texas 77046
Attention: Contract Administration
Telephone No.: (832) 209-2400
Facsimile No.: (832) 209-2401

With a copy to:

Mailing Address: Mercuria Energy Gas Trading LLC
20 E. Greenway Plaza, Suite 650
Houston, Texas 77046
Attention: Legal Department
Telephone No.: (832) 209-2400
Facsimile No.: (832) 209-2401

PHYSICAL CONFIRMATIONS:

Mailing Address: Mercuria Energy Gas Trading LLC
20 E. Greenway Plaza, Suite 650
Houston, Texas 77046
Attention: Physical Confirmations
Telephone No.: (832) 209-2495
Facsimile No.: (832) 209-2421
Email: physconfirmsna@mercuria.com

FINANCIAL CONFIRMATIONS:

Mailing Address: Mercuria Energy Gas Trading LLC
20 E. Greenway Plaza, Suite 650
Houston, Texas 77046
Attention: Backoffice
Telephone No.: +31 30 254 8793
Facsimile No.: +31 30 254 1126
Email: backoffice@mercuria.com

INVOICE & SETTLEMENTS:

Mailing Address: Mercuria Energy Gas Trading LLC
20 E. Greenway Plaza, Suite 650
Houston, Texas 77046

Attention: Physical Settlements
Telephone No.: (832) 209-2494
Facsimile No.: (832) 209-2401
Email: physsettlementsna@mercuria.com

Federal Tax ID No. **47-1372646**

DUNS No. **079486733**

Wire Transfer: Societe Generale New York Branch
245 Park Avenue
New York, NY 10167
ABA: 0260-0422-6
Account: 203378
Swift# SOGEUS33
CHIPS: 422
Other Details: Credit to Mercuria Energy Gas Trading LLC

SCHEDULING:

Mailing Address: Mercuria Energy Gas Trading LLC
20 E. Greenway Plaza, Suite 650
Houston, Texas 77046

East Desk:

Attention: Joe Casas
Telephone No.: (832) 531-7565
Email: jcasas@mercuria.com

West Desk:

Attention: Karen Glenny
Telephone No.: (832) 531-7587
Email: kglenny@mercuria.com

ATTACHMENT C

IRREVOCABLE STANDBY LETTER OF CREDIT

Issuing Bank:

TBD

Applicant:

Enter Applicant

Applicant's Address

Beneficiary:

XXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXX

Letter of Credit No. _____

Date of Issuance: xxxxxxxxxxxx, 201x

Date of Expiration: xxxxxxxxxxxx, 20xx

QUOTE.

We, _____ (the "Bank"), hereby issue our irrevocable stand-by letter of credit number _____ in favor of xxxxxxxxxxxxxxxx Corporation (the "Beneficiary"), by order and for the account of XXXXXXXXXXXXX (the "Applicant"), in the amount of USD _____ (the "Maximum Amount") (this "Letter of Credit"), which is available at our counters located at _____, against presentation to us of one or more of the following statements, dated and signed by your representative (collectively, the "Presentation Documents"):

1. "An Event of Default (as defined in the xxxxxxxxxxxxxxxx between Applicant and Beneficiary and Applicant dated as of _____ between Applicant and Beneficiary, as the same may have been amended (the "Master Agreement/NAESB")) has occurred with respect to Applicant under the Master Agreement, and Applicant's payment to Beneficiary of \$[amount] is due and owing and Applicant has failed to make such payment in accordance with the terms of the Master Agreement/NAESB. Wherefore, Beneficiary hereby demands payment of the above referenced amount under Letter of Credit No. [_____]"; or

2. "An Early Termination Date (as defined in the xxxxxxxxxxxxxxxx between Beneficiary and Applicant dated as of _____ between Applicant and Beneficiary, as the same may have been amended (the "Master Agreement/NAESB")) has occurred or been designated with respect to the Applicant and the Applicant has failed to make all payments due and owing to Beneficiary in accordance with the terms of the Master Agreement/NAESB, and Applicants payment to Beneficiary of \$[amount] is due and owing. Wherefore, Beneficiary hereby demands payment of the above referenced amount under Letter of Credit No. [____]."

3. "This Letter of Credit No. [_____] will expire in twenty (20) or fewer Local Business Days, and beneficiary has not received an extension of said Letter of Credit or other acceptable

replacement collateral in accordance with the terms of the [name of Contract(s)] dated as of _____ between Applicant and beneficiary. Wherefore, beneficiary hereby demands payment of the entire undrawn amount available under Letter of Credit No. [_____]"

SPECIAL CONDITIONS:

- A) Partial and multiple drawings are permitted.
- B) Presentations exceeding the total amount of this Letter of Credit are acceptable for purposes of presentation. Notwithstanding the foregoing, however, the Bank's payment obligation is limited to the available amount under this Letter of Credit, which, in turn, shall never exceed the Maximum Amount.
- C) Presentation of documents via facsimile are acceptable.
- D) Typographical errors are not to be construed as a discrepancy.
- E) Any fees for advising (if required), amendment or cancellation are for the Applicant's account.

We hereby engage with the beneficiary that documents drawn under and in strict compliance with the terms of this credit will be duly honored upon presentation as specified on or before the relevant expiration date then in effect. The Bank shall not be required to verify the authenticity of any documents presented or to form a conclusion on any declarations made. Any document purporting to be the document described will be accepted.

The expiration date of this Letter of Credit shall be automatically extended for successive one year periods, unless we elect not to extend the then-current expiration date of this Letter of Credit, and a notice of non-extension is sent to the Beneficiary's address set forth above by registered mail or by nationally recognized courier, not less than sixty (60) days prior to the then-current expiration date

This Letter of Credit is subject to the International Standby Practices 1998, known as International Chamber of Commerce Publication No. ISP98 ("ISP98"), and, to the extent not addressed by ISP98, shall be governed by the laws of the State of New York (without regard to its conflict of law principles), including Article 5 of the New York Uniform Commercial Code, except to the extent that the terms hereof are inconsistent with the provisions of ISP98.

WE AGREE THAT IF THIS CREDIT WOULD OTHERWISE EXPIRE DURING, OR WITHIN 30 DAYS AFTER, AN INTERRUPTION OF OUR BUSINESS FOR ANY REASON THEN THIS CREDIT SHALL EXPIRE ON THE 30TH DAY FOLLOWING THE DAY ON WHICH WE RESUME OUR BUSINESS AND ANY DRAWING ON THIS CREDIT WHICH COULD PROPERLY HAVE BEEN MADE EXCEPT FOR SUCH INTERRUPTION SHALL BE PERMITTED DURING SUCH EXTENDED PERIOD.