



City of Palo Alto

City Council Staff Report

(ID # 9414)

Report Type: Consent Calendar

Meeting Date: 8/13/2018

Summary Title: Natural Gas Master Agreement with the City of Redding

Title: Resolution of the Council of the City of Palo Alto Authorizing the City Manager to Purchase a Portion of the City's Natural Gas Requirements From the City of Redding Under Specified Terms and Conditions During Calendar Years 2018 through 2030, Inclusive

From: City Manager

Lead Department: Utilities

Recommendation

Staff recommends that the City Council:

Approve the attached resolution (Attachment A) authorizing the City Manager or his designee to purchase a portion of the City's natural gas requirements from the City of Redding (Redding) under specified terms and conditions during calendar years 2018 through 2030, inclusive, subject to the following limitations:

- a. The date for natural gas delivery for each transaction shall not exceed 36 months from the date the transaction is executed;
- b. The delivery date for any transaction shall not extend beyond December 2030;
- c. The maximum aggregate transaction limit under the Master Agreement shall be \$100 million;
- d. All transactions are subject to the Palo Alto Municipal Code; and
- e. All transactions are subject to the City's Energy Risk Management Policy, Guidelines and Procedures.

Executive Summary

An active set of creditworthy counterparties is essential to ensure that the City of Palo Alto Utilities ("City") meets its obligation to meet customers' natural gas demands. On August 15, 2016, Council approved an ordinance modifying the Municipal Code to streamline the purchase and sale of wholesale utility commodities and services and to explicitly allow for a Council-approved standard form agreement.

On October 4, 2016, Council adopted Resolution 9628 approving the Standard Form Master Agreement that is now available to all financially strong natural gas suppliers for execution with

non-substantive changes. The Master Agreement with Redding (Attachments B-D) is the standard form Master Agreement with non-substantive negotiated changes. The attached proposed resolution (Attachment A) authorizes the City Manager to purchase natural gas under a Master Agreement with Redding within maximum expenditure and transaction term limits.

In 2009, the City of Redding, along with the City of Santa Clara and the Modesto Irrigation District, formed the MSR Energy Authority to engage in a natural gas prepay. Redding may have excess discounted gas available for sale to a qualified counterparty. The Master Agreement will enable potential future gas transactions between Palo Alto and Redding.

Background

Approved Counterparties

Palo Alto has approved Master Agreements with the following counterparties:

1. EDF trading North America, LLC;
2. Sequent energy management, L.P.;
3. BP Energy Company;
4. ConocoPhillips Company
5. Powerex Corp; and
6. Shell Energy North America (US), L.P.

Under Resolutions 9586 and 9627, Council delegated authority to the City Manager to transact under the Master Agreements subject to certain conditions and restrictions including a \$100 million expenditure limit applied to each Master Agreement. The cost of natural gas purchased under the Master Agreements is a function of market prices and the City's actual gas use. Most of the city's gas needs are purchased based on a monthly index price; retail gas commodity rates are based on that same monthly market price index. The City's expected gas commodity cost is about \$12 million annually, however gas prices are volatile and unpredictable and actual costs incurred and passed through to ratepayers could be different.

Discussion

All transactions under the Master Agreement with Redding will be executed in accordance with the Council-approved Energy Risk Management Policy, and internally-approved Energy Risk Management Guidelines and Procedures. Council is provided with an update of all executed transactions under the Master Agreements in the quarterly Energy Risk Management reports.

As discussed above, the City of Redding, along with the City of Santa Clara and the Modesto Irrigation District, formed the MSR Energy Authority to prepay for natural gas. Redding may have excess discounted gas available for sale to a qualified counterparty. Palo Alto is a tax-exempt municipal gas utility serving retail gas customers; therefore Palo Alto is a qualified buyer. The Master Agreement with Redding will enable Palo Alto to purchase gas at a discount to the monthly market price index. Staff recommends a maximum transaction limit of \$100 million for Redding, the same as each of the City's other Master Agreements.

The Master Agreement in Attachments B-D is substantively the same as the Council-approved Standard Form Agreement. The Credit Support Addendum (Exhibit B) was modified only to reflect Redding's status as a municipality, and the provisions were drafted with corporate counterparties in mind. For example, language regarding credit support in the form of a guarantee was deleted. Language regarding audited financial statements was changed to reflect the Comprehensive Annual Financial Report (CAFR) process adhered to by municipalities. Redding's credit rating is Fitch AA-, indicating the municipality is financially stable and meets Palo Alto's counterparty credit requirements.

Resource Impact

The FY 2019 Adopted Budget accounts for the estimated gas usage and commodity costs, this agreement does not impact the financial assumptions used in these estimates.

Policy Implications

Authorizing the City Manager or designee to buy and sell natural gas to meet load obligations under the Master Agreement with Redding conforms to the existing Council-approved Energy Risk Management Policy and the Palo Alto Municipal Code.

Environmental Review

Council's authorization for the City Manager to purchase natural gas from Redding does not constitute a project for the purposes of the California Environmental Quality Act, under Public Resources Code Section 21065, thus environmental review is not required.

Attachments:

- Attachment A: Resolution Authorizing the City Manager to Purchase a Portion of the City's Natural Gas Requirements from the City of Redding
- Attachment B: NAESB Base Contract Redding
- Attachment C: NAESB Special Provisions Redding
- Attachment D: NAESB Credit Addendum Redding

NOT YET APPROVED

Resolution No. _____

Resolution of the Council of the City of Palo Alto Authorizing the City Manager to Purchase a Portion of the City’s Natural Gas Requirements from the City of Redding Under Specified Terms and Conditions during Calendar Years 2018 through 2030, Inclusive

RECITALS

A. On April 19, 2012, the Council adopted Resolution #9244 amending the Gas Utility Long-Term Plan (GULP) Objectives, Strategies, and Implementation Plan to discontinue the laddering purchase strategy and implement gas supply rates that change monthly according to market prices, as described in Staff Report #2552.

B. In accordance with GULP, the City must purchase and, incidental to purchases, sell gas to meet the needs of its gas customers by contracting for terms varying from less than one month to one month. The City's Energy Risk Management Policies, described in Staff Report #5026, provide that the City will purchase only that quantity of gas meeting its load requirements at the time a transaction is executed.

C. By Ordinance No. 5387, adopted August 15, 2016, Council approved changes to the Municipal Code specifically streamlining the purchase and sale of wholesale utility commodities and services and explicitly allowing for standard form Master Agreements.

D. The standard form Master Agreement is based on the North American Energy Standards Board, Inc. (NAESB) Base Contract for Sale and Purchase of Natural Gas 2006 version and includes Special Provisions and a Credit Support Addendum.

E. By Resolution 9586 adopted May 16, 2016 and by Resolution 9627 adopted October 4, 2016, Council Authorized the City Manager to purchase a portion of the City’s natural gas requirements from certain prequalified natural gas suppliers under specified terms and conditions during calendar years 2016 through 2022, inclusive.

NOW, THEREFORE, the Council of the City of Palo Alto RESOLVES as follows:

SECTION 1. The Council hereby authorizes the City Manager or his designee, the General Manager of Utilities, to purchase a portion of the City’s natural gas requirements from the City of Redding by negotiating one or more individual transactions, including, but not limited to, contracts, addenda, confirmations, and transactions.

SECTION 2. The purchases negotiated under Section 2 shall conform to the following requirements:

- a. The maximum expenditure with the City of Redding will be \$100 million;
- b. The maximum term of any transaction shall not exceed three years, commencing on the delivery date of the transaction. The sentence preceding notwithstanding, the City may enter into a transaction greater than three years, if the Council grants prior approval to such transaction;
- c. No transaction entered into with any of the referenced suppliers shall exceed beyond December 31, 2030.

SECTION 3. The Council hereby finds and determines that the adoption of this Resolution does not constitute a project under Public Resources Code Section 21065, thus no California Environmental Quality Act assessment is required.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

Senior Asst. City Attorney

City Manager

Director of Administrative
Services

Director of Utilities

Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: _____

The parties to this Base Contract are the following:

PARTY A City of Redding	PARTY NAME	PARTY B CITY OF PALO ALTO
777 Cypress Ave Redding, CA 96001	ADDRESS	250 Hamilton Avenue Palo Alto, California 94301
www.reupower.com	BUSINESS WEBSITE	www. _____
	CONTRACT NUMBER	_____
<u>121588599</u>	D-U-N-S® NUMBER	<u>17-892-8479</u>
x US FEDERAL: 94-6000401 □ OTHER:	TAX ID NUMBERS	√ US FEDERAL: □ OTHER:
California	JURISDICTION OF ORGANIZATION	California
<input type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP x Other: Public Entity	COMPANY TYPE	<input type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP √ Other: California chartered municipal corporation
N/A	GUARANTOR (IF APPLICABLE)	N/A
Party is a producer, processor, fabricator, refiner, commercial user, or merchandiser of the Gas under this contract: x Yes □ No □ Not Selected	PARTY CFTC CLASSIFICATION	Party is a producer, processor, fabricator, refiner, commercial user, or merchandiser of the Gas under this contract: √ Yes □ No □ Not Selected
CONTACT INFORMATION		
<u>3611 Avtech Parkway, Redding CA 96002</u> ATTN: <u>Manager – Resource Planning</u> TEL#: <u>530.245.7012</u> FAX#: <u>530.339.7389</u> EMAIL: _____	▪ COMMERCIAL	<u>City of Palo Alto</u> ATTN: <u>Karla Dailey</u> TEL#: <u>650-329-2523</u> FAX#: <u>650-326-1507</u> EMAIL: <u>karla.dailey@cityofpaloalto.org</u>
<u>17120 Clear Creek Rd, Redding CA 96001</u> ATTN: <u>Manager – Energy Trading & Scheduling</u> TEL#: <u>530.245.7025</u> FAX#: <u>530.245.7010</u> EMAIL: _____	▪ SCHEDULING	<u>City of Palo Alto</u> ATTN: <u>Karla Dailey</u> TEL#: <u>650-329-2523</u> FAX#: <u>650-326-1507</u> EMAIL: <u>karla.dailey@cityofpaloalto.org</u>
<u>3611 Avtech Parkway, Redding CA 96002</u> ATTN: <u>Manager – Resource Planning</u> TEL#: <u>530.245.7012</u> FAX#: <u>530.339.7389</u> EMAIL: _____	▪ CONTRACT AND LEGAL NOTICES	<u>City of Palo Alto</u> ATTN: <u>Senior Assistant City Attorney/Utilities</u> TEL#: <u>650-329-2171</u> FAX#: <u>650-329-2948</u> EMAIL: <u>amy.bartell@cityofpaloalto.org</u>
<u>3611 Avtech Parkway, Redding CA 96002</u> ATTN: <u>Manager - Finance</u> TEL#: <u>530.339.7377</u> FAX#: <u>530.339.7389</u> EMAIL: _____	▪ CREDIT	<u>City of Palo Alto</u> ATTN: <u>tarun Narayan</u> TEL#: <u>650-329-2362</u> FAX#: <u>650-323-8356</u> EMAIL: <u>Tarun.narayan@cityofpaloalto.org</u>
<u>17120 Clear Creek Rd, Redding CA 96001</u> ATTN: <u>Settlements</u> TEL#: <u>530.245.7044</u> FAX#: <u>530.245.7010</u> EMAIL: <u>settlements@reupower.com</u>	▪ TRANSACTION CONFIRMATIONS	<u>City of Palo Alto</u> ATTN: <u>Karla Dailey</u> TEL#: <u>650-329-2523</u> FAX#: <u>650-326-1507</u> EMAIL: <u>karla.dailey@cityofpaloalto.org</u>
ACCOUNTING INFORMATION		
ATTN: <u>Settlements</u> TEL#: <u>530.245.7044</u> FAX#: <u>530.245.7010</u> EMAIL: <u>settlements@reupower.com</u>	▪ INVOICES ▪ PAYMENTS ▪ SETTLEMENTS	<u>City of Palo Alto</u> ATTN: <u>Eric Wong</u> TEL#: <u>650-329</u> FAX#: <u>650-326-1507</u> EMAIL: <u>eric.wong@cityofpaloalto.org</u>
BANK: <u>US Bank, NA</u> ABA: <u>121122676</u> ACCT: <u>157503239400</u> OTHER DETAILS: <u>City of Redding General Account</u>	WIRE TRANSFER NUMBERS (IF APPLICABLE)	BANK: <u>US Bank, NA</u> ABA: <u>121122676</u> ACCT: <u>153499268313</u> OTHER DETAILS: _____
BANK: _____ ABA: _____ ACCT: _____ OTHER DETAILS: _____	ACH NUMBERS (IF APPLICABLE)	BANK: _____ ABA: _____ ACCT: _____ OTHER DETAILS: _____
ATTN: _____ ADDRESS: _____	CHECKS (IF APPLICABLE)	ATTN: _____ ADDRESS: _____

Base Contract for Sale and Purchase of Natural Gas

(Continued)

This Base Contract incorporates by reference for all purposes the General Terms and Conditions for Sale and Purchase of Natural Gas published by the North American Energy Standards Board. The parties hereby agree to the following provisions offered in said General Terms and Conditions. In the event the parties fail to check a box, the specified default provision shall apply. Select the appropriate box(es) from each section:

Section 1.2 <input checked="" type="checkbox"/> Oral (default) Transaction Procedure <input type="checkbox"/> Written	Section 10.2 <input type="checkbox"/> No Additional Events of Default (default) Additional Events of Default <input checked="" type="checkbox"/> Indebtedness Cross Default <input checked="" type="checkbox"/> Party A: \$50,000,000 <input checked="" type="checkbox"/> Party B: \$50,000,000 <input type="checkbox"/> Transactional Cross Default <u>Specified Transactions:</u> _____ _____
Section 2.7 <input checked="" type="checkbox"/> 2 Business Days after receipt (default) Confirm Deadline <input type="checkbox"/> _____ Business Days after receipt	
Section 2.8 <input type="checkbox"/> Seller (default) Confirming Party <input type="checkbox"/> Buyer <input checked="" type="checkbox"/> <u>Either Party</u>	
Section 3.2 <input checked="" type="checkbox"/> Cover Standard (default) Performance Obligation <input type="checkbox"/> Spot Price Standard	Section 10.3.1 <input checked="" type="checkbox"/> Early Termination Damages Apply (default) Early Termination Damages <input type="checkbox"/> Early Termination Damages Do Not Apply
Note: The following Spot Price Publication applies to both of the immediately preceding.	
Section 2.31 <input checked="" type="checkbox"/> Gas Daily Midpoint (default) Spot Price Publication <input type="checkbox"/> _____	Section 10.3.2 <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) Other Agreement Setoffs <input type="checkbox"/> Bilateral (default) <input checked="" type="checkbox"/> Triangular OR <input type="checkbox"/> Other Agreement Setoffs Do Not Apply
Section 6 <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) Taxes <input type="checkbox"/> Seller Pays Before and At Delivery Point	
Section 7.2 <input type="checkbox"/> 25 th Day of Month following Month of delivery (default) Payment Date <input type="checkbox"/> Day of Month following Month of delivery <input checked="" type="checkbox"/> Net 20 Days from receipt of invoice	Section 15.5 <u>California</u> Choice Of Law
Section 7.2 <input checked="" type="checkbox"/> Wire transfer (default) Method of Payment <input type="checkbox"/> Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check	Section 15.10 <input type="checkbox"/> Confidentiality applies (default) Confidentiality <input type="checkbox"/> Confidentiality does not apply <input checked="" type="checkbox"/>
Section 7.7 <input checked="" type="checkbox"/> Netting applies (default) Netting <input type="checkbox"/> Netting does not apply	
<input checked="" type="checkbox"/> Special Provisions Number of sheets attached: 6 <input checked="" type="checkbox"/> Addendum(s): Credit Support Addendum <input checked="" type="checkbox"/> Attachment(s): Tax Use Certificate <input checked="" type="checkbox"/> Attachment(s): Certification of Nondiscrimination	

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Base Contract in duplicate.

CITY OF REDDING	<i>PARTY NAME</i>	CITY OF PALO ALTO Approval by Mayor:
By: _____	<i>SIGNATURE</i>	By: _____
Dan Beans	<i>PRINTED NAME</i>	Liz Kniss
Electric Utility Director	<i>TITLE</i>	City Manager, for Mayor
_____, 2018	<i>DATE</i>	_____, 2018
		CITY OF PALO ALTO Approval as to form:
		By: _____
		Elisa Larson
		Counsel to the City of Palo Alto
		_____, 2018
		CITY OF PALO ALTO Approval by City Manager:
		By: _____
		James Keene
		City Manager
		_____, 2018
		CITY OF PALO ALTO Approval by Administrative Services Director:
		By: _____
		Administrative Services Director
		_____, 2018

General Terms and Conditions Base Contract for Sale and Purchase of Natural Gas

SECTION 1. PURPOSE AND PROCEDURES

1.1. These General Terms and Conditions are intended to facilitate purchase and sale transactions of Gas on a Firm or Interruptible basis. "Buyer" refers to the party receiving Gas and "Seller" refers to the party delivering Gas. The entire agreement between the parties shall be the Contract as defined in Section 2.9.

The parties have selected either the "Oral Transaction Procedure" or the "Written Transaction Procedure" as indicated on the Base Contract.

Oral Transaction Procedure:

1.2. The parties will use the following Transaction Confirmation procedure. Any Gas purchase and sale transaction may be effectuated in an EDI transmission or telephone conversation with the offer and acceptance constituting the agreement of the parties. The parties shall be legally bound from the time they so agree to transaction terms and may each rely thereon. Any such transaction shall be considered a "writing" and to have been "signed". Notwithstanding the foregoing sentence, the parties agree that Confirming Party shall, and the other party may, confirm a telephonic transaction by sending the other party a Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means within three Business Days of a transaction covered by this Section 1.2 (Oral Transaction Procedure) provided that the failure to send a Transaction Confirmation shall not invalidate the oral agreement of the parties. Confirming Party adopts its confirming letterhead, or the like, as its signature on any Transaction Confirmation as the identification and authentication of Confirming Party. If the Transaction Confirmation contains any provisions other than those relating to the commercial terms of the transaction (i.e., price, quantity, performance obligation, delivery point, period of delivery and/or transportation conditions), which modify or supplement the Base Contract or General Terms and Conditions of this Contract (e.g., arbitration or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 1.3 but must be expressly agreed to by both parties; provided that the foregoing shall not invalidate any transaction agreed to by the parties.

Written Transaction Procedure:

1.2. The parties will use the following Transaction Confirmation procedure. Should the parties come to an agreement regarding a Gas purchase and sale transaction for a particular Delivery Period, the Confirming Party shall, and the other party may, record that agreement on a Transaction Confirmation and communicate such Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means, to the other party by the close of the Business Day following the date of agreement. The parties acknowledge that their agreement will not be binding until the exchange of nonconflicting Transaction Confirmations or the passage of the Confirm Deadline without objection from the receiving party, as provided in Section 1.3.

1.3. If a sending party's Transaction Confirmation is materially different from the receiving party's understanding of the agreement referred to in Section 1.2, such receiving party shall notify the sending party via facsimile, EDI or mutually agreeable electronic means by the Confirm Deadline, unless such receiving party has previously sent a Transaction Confirmation to the sending party. The failure of the receiving party to so notify the sending party in writing by the Confirm Deadline constitutes the receiving party's agreement to the terms of the transaction described in the sending party's Transaction Confirmation. If there are any material differences between timely sent Transaction Confirmations governing the same transaction, then neither Transaction Confirmation shall be binding until or unless such differences are resolved including the use of any evidence that clearly resolves the differences in the Transaction Confirmations. In the event of a conflict among the terms of (i) a binding Transaction Confirmation pursuant to Section 1.2, (ii) the oral agreement of the parties which may be evidenced by a recorded conversation, where the parties have selected the Oral Transaction Procedure of the Base Contract, (iii) the Base Contract, and (iv) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.

1.4. The parties agree that each party may electronically record all telephone conversations with respect to this Contract between their respective employees, without any special or further notice to the other party. Each party shall obtain any necessary consent of its agents and employees to such recording. Where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, the parties agree not to contest the validity or enforceability of telephonic recordings entered into in accordance with the requirements of this Base Contract.

SECTION 2. DEFINITIONS

The terms set forth below shall have the meaning ascribed to them below. Other terms are also defined elsewhere in the Contract and shall have the meanings ascribed to them herein.

2.1. "Additional Event of Default" shall mean Transactional Cross Default or Indebtedness Cross Default, each as and if selected by the parties pursuant to the Base Contract.

2.2. "Affiliate" shall mean, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of at least 50 percent of the voting power of the entity or person.

- 2.3. "Alternative Damages" shall mean such damages, expressed in dollars or dollars per MMBtu, as the parties shall agree upon in the Transaction Confirmation, in the event either Seller or Buyer fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer.
- 2.4. "Base Contract" shall mean a contract executed by the parties that incorporates these General Terms and Conditions by reference; that specifies the agreed selections of provisions contained herein; and that sets forth other information required herein and any Special Provisions and addendum(s) as identified on page one.
- 2.5. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 2.6. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.
- 2.7. "Confirm Deadline" shall mean 5:00 p.m. in the receiving party's time zone on the second Business Day following the Day a Transaction Confirmation is received or, if applicable, on the Business Day agreed to by the parties in the Base Contract; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.
- 2.8. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.9. "Contract" shall mean the legally-binding relationship established by (i) the Base Contract, (ii) any and all binding Transaction Confirmations and (iii) where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, any and all transactions that the parties have entered into through an EDI transmission or by telephone, but that have not been confirmed in a binding Transaction Confirmation, all of which shall form a single integrated agreement between the parties.
- 2.10. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu to be paid by Buyer to Seller for the purchase of Gas as agreed to by the parties in a transaction.
- 2.11. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.12. "Cover Standard", as referred to in Section 3.2, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract, then the performing party shall use commercially reasonable efforts to (i) if Buyer is the performing party, obtain Gas, (or an alternate fuel if elected by Buyer and replacement Gas is not available), or (ii) if Seller is the performing party, sell Gas, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming party.
- 2.13. "Credit Support Obligation(s)" shall mean any obligation(s) to provide or establish credit support for, or on behalf of, a party to this Contract such as cash, an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, guaranty, or other good and sufficient security of a continuing nature.
- 2.14. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.15. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.16. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.17. "EDI" shall mean an electronic data interchange pursuant to an agreement entered into by the parties, specifically relating to the communication of Transaction Confirmations under this Contract.
- 2.18. "EFP" shall mean the purchase, sale or exchange of natural Gas as the "physical" side of an exchange for physical transaction involving gas futures contracts. EFP shall incorporate the meaning and remedies of "Firm", provided that a party's excuse for nonperformance of its obligations to deliver or receive Gas will be governed by the rules of the relevant futures exchange regulated under the Commodity Exchange Act.
- 2.19. "Firm" shall mean that either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.
- 2.20. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.21. "Guarantor" shall mean any entity that has provided a guaranty of the obligations of a party hereunder.
- 2.22. "Imbalance Charges" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.
- 2.23. "Indebtedness Cross Default" shall mean if selected on the Base Contract by the parties with respect to a party, that it or its Guarantor, if any, experiences a default, or similar condition or event however therein defined, under one or more agreements or instruments, individually or collectively, relating to indebtedness (such indebtedness to include any obligation whether present or future, contingent or otherwise, as principal or surety or otherwise) for the payment or repayment of borrowed money in an aggregate amount greater than the threshold specified in the Base Contract with respect to such party or its Guarantor, if any, which results in such indebtedness becoming immediately due and payable.

- 2.24. "Interruptible" shall mean that either party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability, except such interrupting party may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.
- 2.25. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.26. "Month" shall mean the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.
- 2.27. "Payment Date" shall mean a date, as indicated on the Base Contract, on or before which payment is due Seller for Gas received by Buyer in the previous Month.
- 2.28. "Receiving Transporter" shall mean the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.
- 2.29. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.30. "Specified Transaction(s)" shall mean any other transaction or agreement between the parties for the purchase, sale or exchange of physical Gas, and any other transaction or agreement identified as a Specified Transaction under the Base Contract.
- 2.31. "Spot Price " as referred to in Section 3.2 shall mean the price listed in the publication indicated on the Base Contract, under the listing applicable to the geographic location closest in proximity to the Delivery Point(s) for the relevant Day; provided, if there is no single price published for such location for such Day, but there is published a range of prices, then the Spot Price shall be the average of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day; and (ii) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.
- 2.32. "Transaction Confirmation" shall mean a document, similar to the form of Exhibit A, setting forth the terms of a transaction formed pursuant to Section 1 for a particular Delivery Period.
- 2.33. "Transactional Cross Default" shall mean if selected on the Base Contract by the parties with respect to a party, that it shall be in default, however therein defined, under any Specified Transaction.
- 2.34. "Termination Option" shall mean the option of either party to terminate a transaction in the event that the other party fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer for a designated number of days during a period as specified on the applicable Transaction Confirmation.
- 2.35. "Transporter(s)" shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular transaction.

SECTION 3. PERFORMANCE OBLIGATION

- 3.1. Seller agrees to sell and deliver, and Buyer agrees to receive and purchase, the Contract Quantity for a particular transaction in accordance with the terms of the Contract. Sales and purchases will be on a Firm or Interruptible basis, as agreed to by the parties in a transaction.

The parties have selected either the "Cover Standard" or the "Spot Price Standard" as indicated on the Base Contract.

Cover Standard:

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the positive difference, if any, between the purchase price paid by Buyer utilizing the Cover Standard and the Contract Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller for such Day(s) excluding any quantity for which no replacement is available; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in the amount equal to the positive difference, if any, between the Contract Price and the price received by Seller utilizing the Cover Standard for the resale of such Gas, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually taken by Buyer for such Day(s) excluding any quantity for which no sale is available; and (iii) in the event that Buyer has used commercially reasonable efforts to replace the Gas or Seller has used commercially reasonable efforts to sell the Gas to a third party, and no such replacement or sale is available for all or any portion of the Contract Quantity of Gas, then in addition to (i) or (ii) above, as applicable, the sole and exclusive remedy of the performing party with respect to the Gas not replaced or sold shall be an amount equal to any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the quantity of such Gas not replaced or sold. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

Spot Price Standard:

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Spot Price; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Contract Price. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

3.3. Notwithstanding Section 3.2, the parties may agree to Alternative Damages in a Transaction Confirmation executed in writing by both parties.

3.4. In addition to Sections 3.2 and 3.3, the parties may provide for a Termination Option in a Transaction Confirmation executed in writing by both parties. The Transaction Confirmation containing the Termination Option will designate the length of nonperformance triggering the Termination Option and the procedures for exercise thereof, how damages for nonperformance will be compensated, and how liquidation costs will be calculated.

SECTION 4. TRANSPORTATION, NOMINATIONS, AND IMBALANCES

4.1. Seller shall have the sole responsibility for transporting the Gas to the Delivery Point(s). Buyer shall have the sole responsibility for transporting the Gas from the Delivery Point(s).

4.2. The parties shall coordinate their nomination activities, giving sufficient time to meet the deadlines of the affected Transporter(s). Each party shall give the other party timely prior Notice, sufficient to meet the requirements of all Transporter(s) involved in the transaction, of the quantities of Gas to be delivered and purchased each Day. Should either party become aware that actual deliveries at the Delivery Point(s) are greater or lesser than the Scheduled Gas, such party shall promptly notify the other party.

4.3. The parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Transporter that includes Imbalance Charges, the parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Buyer's receipt of quantities of Gas greater than or less than the Scheduled Gas, then Buyer shall pay for such Imbalance Charges or reimburse Seller for such Imbalance Charges paid by Seller. If the Imbalance Charges were incurred as a result of Seller's delivery of quantities of Gas greater than or less than the Scheduled Gas, then Seller shall pay for such Imbalance Charges or reimburse Buyer for such Imbalance Charges paid by Buyer.

SECTION 5. QUALITY AND MEASUREMENT

All Gas delivered by Seller shall meet the pressure, quality and heat content requirements of the Receiving Transporter. The unit of quantity measurement for purposes of this Contract shall be one MMBtu dry. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter.

SECTION 6. TAXES

The parties have selected either "Buyer Pays At and After Delivery Point" or "Seller Pays Before and At Delivery Point" as indicated on the Base Contract.

Buyer Pays At and After Delivery Point:

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas at the Delivery Point(s) and all Taxes after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

Seller Pays Before and At Delivery Point:

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s) and all Taxes at the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

SECTION 7. BILLING, PAYMENT, AND AUDIT

7.1. Seller shall invoice Buyer for Gas delivered and received in the preceding Month and for any other applicable charges, providing supporting documentation acceptable in industry practice to support the amount charged. If the actual quantity delivered is not known by the billing date, billing will be prepared based on the quantity of Scheduled Gas. The invoiced quantity will then be adjusted to the actual quantity on the following Month's billing or as soon thereafter as actual delivery information is available.

7.2. Buyer shall remit the amount due under Section 7.1 in the manner specified in the Base Contract, in immediately available funds, on or before the later of the Payment Date or 10 Days after receipt of the invoice by Buyer; provided that if the Payment Date is not a Business Day, payment is due on the next Business Day following that date. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with this Section 7.2.

7.3. In the event payments become due pursuant to Sections 3.2 or 3.3, the performing party may submit an invoice to the nonperforming party for an accelerated payment setting forth the basis upon which the invoiced amount was calculated. Payment from the nonperforming party will be due five Business Days after receipt of invoice.

7.4. If the invoiced party, in good faith, disputes the amount of any such invoice or any part thereof, such invoiced party will pay such amount as it concedes to be correct; provided, however, if the invoiced party disputes the amount due, it must provide supporting documentation acceptable in industry practice to support the amount paid or disputed without undue delay. In the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law or in equity to enforce its rights pursuant to this Section.

7.5. If the invoiced party fails to remit the full amount payable when due, interest on the unpaid portion shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

7.6. A party shall have the right, at its own expense, upon reasonable Notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Contract. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such invoices or billings are objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. All retroactive adjustments under Section 7 shall be paid in full by the party owing payment within 30 Days of Notice and substantiation of such inaccuracy.

7.7. Unless the parties have elected on the Base Contract not to make this Section 7.7 applicable to this Contract, the parties shall net all undisputed amounts due and owing, and/or past due, arising under the Contract such that the party owing the greater amount shall make a single payment of the net amount to the other party in accordance with Section 7; provided that no payment required to be made pursuant to the terms of any Credit Support Obligation or pursuant to Section 7.3 shall be subject to netting under this Section. If the parties have executed a separate netting agreement, the terms and conditions therein shall prevail to the extent inconsistent herewith.

SECTION 8. TITLE, WARRANTY, AND INDEMNITY

8.1. Unless otherwise specifically agreed, title to the Gas shall pass from Seller to Buyer at the Delivery Point(s). Seller shall have responsibility for and assume any liability with respect to the Gas prior to its delivery to Buyer at the specified Delivery Point(s). Buyer shall have responsibility for and assume any liability with respect to said Gas after its delivery to Buyer at the Delivery Point(s).

8.2. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims. EXCEPT AS PROVIDED IN THIS SECTION 8.2 AND IN SECTION 15.8, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.

8.3. Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury (including death) or property damage from said Gas or other charges thereon which attach before title passes to Buyer. Buyer agrees to indemnify Seller and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury (including death) or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4. The parties agree that the delivery of and the transfer of title to all Gas under this Contract shall take place within the Customs Territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States 19 U.S.C. §1202, General Notes, page 3); provided, however, that in the event Seller took title to the Gas outside the Customs Territory of the United States, Seller represents and warrants that it is the importer of record for all Gas entered and delivered into the United States, and shall be responsible for entry and entry summary filings as well as the payment of duties, taxes and fees, if any, and all applicable record keeping requirements.

8.5. Notwithstanding the other provisions of this Section 8, as between Seller and Buyer, Seller will be liable for all Claims to the extent that such arise from the failure of Gas delivered by Seller to meet the quality requirements of Section 5.

SECTION 9. NOTICES

9.1. All Transaction Confirmations, invoices, payment instructions, and other communications made pursuant to the Base Contract ("Notices") shall be made to the addresses specified in writing by the respective parties from time to time.

9.2. All Notices required hereunder shall be in writing and may be sent by facsimile or mutually acceptable electronic means, a nationally recognized overnight courier service, first class mail or hand delivered.

9.3. Notice shall be given when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of successful transmission. If the day on which such facsimile is received is

not a Business Day or is after five p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving party. Notice via first class mail shall be considered delivered five Business Days after mailing.

9.4. The party receiving a commercially acceptable Notice of change in payment instructions or other payment information shall not be obligated to implement such change until ten Business Days after receipt of such Notice.

SECTION 10. FINANCIAL RESPONSIBILITY

10.1. If either party ("X") has reasonable grounds for insecurity regarding the performance of any obligation under this Contract (whether or not then due) by the other party ("Y") (including, without limitation, the occurrence of a material change in the creditworthiness of Y or its Guarantor, if applicable), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount, for a term, and from an issuer, all as reasonably acceptable to X, including, but not limited to cash, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or guaranty. Y hereby grants to X a continuing first priority security interest in, lien on, and right of setoff against all Adequate Assurance of Performance in the form of cash transferred by Y to X pursuant to this Section 10.1. Upon the return by X to Y of such Adequate Assurance of Performance, the security interest and lien granted hereunder on that Adequate Assurance of Performance shall be released automatically and, to the extent possible, without any further action by either party.

10.2. In the event (each an "Event of Default") either party (the "Defaulting Party") or its Guarantor shall: (i) make an assignment or any general arrangement for the benefit of creditors; (ii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iii) otherwise become bankrupt or insolvent (however evidenced); (iv) be unable to pay its debts as they fall due; (v) have a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all of its assets; (vi) fail to perform any obligation to the other party with respect to any Credit Support Obligations relating to the Contract; (vii) fail to give Adequate Assurance of Performance under Section 10.1 within 48 hours but at least one Business Day of a written request by the other party; (viii) not have paid any amount due the other party hereunder on or before the second Business Day following written Notice that such payment is due; or ix) be the affected party with respect to any Additional Event of Default; then the other party (the "Non-Defaulting Party") shall have the right, at its sole election, to immediately withhold and/or suspend deliveries or payments upon Notice and/or to terminate and liquidate the transactions under the Contract, in the manner provided in Section 10.3, in addition to any and all other remedies available hereunder.

10.3. If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right, by Notice to the Defaulting Party, to designate a Day, no earlier than the Day such Notice is given and no later than 20 Days after such Notice is given, as an early termination date (the "Early Termination Date") for the liquidation and termination pursuant to Section 10.3.1 of all transactions under the Contract, each a "Terminated Transaction". On the Early Termination Date, all transactions will terminate, other than those transactions, if any, that may not be liquidated and terminated under applicable law ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is legally permissible, and upon termination shall be a Terminated Transaction and be valued consistent with Section 10.3.1 below. With respect to each Excluded Transaction, its actual termination date shall be the Early Termination Date for purposes of Section 10.3.1.

The parties have selected either "Early Termination Damages Apply" or "Early Termination Damages Do Not Apply" as indicated on the Base Contract.

Early Termination Damages Apply:

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract and (ii) the Market Value, as defined below, of each Terminated Transaction. The Non-Defaulting Party shall (x) liquidate and accelerate each Terminated Transaction at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value, as defined below, of such Terminated Transaction(s) shall be due to the Buyer under the Terminated Transaction(s) if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and (y) where appropriate, discount each amount then due under clause (x) above to present value in a commercially reasonable manner as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant Terminated Transactions).

For purposes of this Section 10.3.1, "Contract Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the Contract Price, and "Market Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the market price for a similar transaction at the Delivery Point determined by the Non-Defaulting Party in a commercially reasonable manner. To ascertain the Market Value, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. A party shall not be required to enter into a replacement transaction(s) in order to determine the Market Value. Any extension(s) of the term of a transaction to which parties are not bound as of the Early Termination Date (including but not limited to "evergreen provisions") shall not be considered in determining Contract Values and

Market Values. For the avoidance of doubt, any option pursuant to which one party has the right to extend the term of a transaction shall be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the Non-Defaulting Party in a commercially reasonable manner.

Early Termination Damages Do Not Apply:

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract.

The parties have selected either "Other Agreement Setoffs Apply" or "Other Agreement Setoffs Do Not Apply" as indicated on the Base Contract.

Other Agreement Setoffs Apply:

Bilateral Setoff Option:

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to setoff any Net Settlement Amount against (i) any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract; and (ii) any amount(s) (including any excess cash margin or excess cash collateral) owed or held by the party that is entitled to the Net Settlement Amount under any other agreement or arrangement between the parties.

Triangular Setoff Option:

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option, and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to setoff (i) any Net Settlement Amount against any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract; (ii) any Net Settlement Amount against any amount(s) (including any excess cash margin or excess cash collateral) owed by or to a party under any other agreement or arrangement between the parties; (iii) any Net Settlement Amount owed to the Non-Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Non-Defaulting Party or its Affiliates to the Defaulting Party under any other agreement or arrangement; (iv) any Net Settlement Amount owed to the Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Defaulting Party to the Non-Defaulting Party or its Affiliates under any other agreement or arrangement; and/or (v) any Net Settlement Amount owed to the Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Defaulting Party or its Affiliates to the Non-Defaulting Party under any other agreement or arrangement.

Other Agreement Setoffs Do Not Apply:

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party may setoff any Net Settlement Amount against any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract.

10.3.3. If any obligation that is to be included in any netting, aggregation or setoff pursuant to Section 10.3.2 is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and net, aggregate or setoff, as applicable, in respect of the estimate, subject to the Non-Defaulting Party accounting to the Defaulting Party when the obligation is ascertained. Any amount not then due which is included in any netting, aggregation or setoff pursuant to Section 10.3.2 shall be discounted to net present value in a commercially reasonable manner determined by the Non-Defaulting Party.

10.4. As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Net Settlement Amount, and whether the Net Settlement Amount is due to or due from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of the Net Settlement Amount, provided that failure to give such Notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the Defaulting Party against the Non-Defaulting Party. The Net Settlement Amount as well as any setoffs applied against such amount pursuant to Section 10.3.2, shall be paid by the close of business on the second Business Day following such Notice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount as adjusted by setoffs, shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

10.5. The parties agree that the transactions hereunder constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

10.6. The Non-Defaulting Party's remedies under this Section 10 are the sole and exclusive remedies of the Non-Defaulting Party with respect to the occurrence of any Early Termination Date. Each party reserves to itself all other rights, setoffs, counterclaims and other defenses that it is or may be entitled to arising from the Contract.

10.7. With respect to this Section 10, if the parties have executed a separate netting agreement with close-out netting provisions, the terms and conditions therein shall prevail to the extent inconsistent herewith.

SECTION 11. FORCE MAJEURE

11.1. Except with regard to a party's obligation to make payment(s) due under Section 7, Section 10.4, and Imbalance Charges under Section 4, neither party shall be liable to the other for failure to perform a Firm obligation, to the extent such failure was caused by Force Majeure. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined in Section 11.2.

11.2. Force Majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of Firm transportation and/or storage by Transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars, or acts of terror; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. Seller and Buyer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

11.3. Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary Firm transportation unless primary, in-path, Firm transportation is also curtailed; (ii) the party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, Seller's ability to sell Gas at a higher or more advantageous price than the Contract Price, Buyer's ability to purchase Gas at a lower or more advantageous price than the Contract Price, or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Contract; (iv) the loss of Buyer's market(s) or Buyer's inability to use or resell Gas purchased hereunder, except, in either case, as provided in Section 11.2; or (v) the loss or failure of Seller's gas supply or depletion of reserves, except, in either case, as provided in Section 11.2. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

11.4. Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the party experiencing such disturbance.

11.5. The party whose performance is prevented by Force Majeure must provide Notice to the other party. Initial Notice may be given orally; however, written Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written Notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.

11.6. Notwithstanding Sections 11.2 and 11.3, the parties may agree to alternative Force Majeure provisions in a Transaction Confirmation executed in writing by both parties.

SECTION 12. TERM

This Contract may be terminated on 30 Day's written Notice, but shall remain in effect until the expiration of the latest Delivery Period of any transaction(s). The rights of either party pursuant to Section 7.6, Section 10, Section 13, the obligations to make payment hereunder, and the obligation of either party to indemnify the other, pursuant hereto shall survive the termination of the Base Contract or any transaction.

SECTION 13. LIMITATIONS

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

SECTION 14. MARKET DISRUPTION

If a Market Disruption Event has occurred then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or on a method for determining a replacement price for the Floating Price) for the affected Day, and if the parties have not so agreed on or before the second Business Day following the affected Day then the replacement price for the Floating Price shall be determined within the next two following Business Days with each party obtaining, in good faith and from non-affiliated market participants in the relevant market, two quotes for prices of Gas for the affected Day of a similar quality and quantity in the geographical location closest in proximity to the Delivery Point and averaging the four quotes. If either party fails to provide two quotes then the average of the other party's two quotes shall determine the replacement price for the Floating Price. "Floating Price" means the price or a factor of the price agreed to in the transaction as being based upon a specified index. "Market Disruption Event" means, with respect to an index specified for a transaction, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) both parties agree that a material change in the formula for or the method of determining the Floating Price has occurred. For the purposes of the calculation of a replacement price for the Floating Price, all numbers shall be rounded to three decimal places. If the fourth decimal number is five or greater, then the third decimal number shall be increased by one and if the fourth decimal number is less than five, then the third decimal number shall remain unchanged.

SECTION 15. MISCELLANEOUS

15.1. This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party (and shall not relieve the assigning party from liability hereunder), which consent will not be unreasonably withheld or delayed; provided, either party may (i) transfer, sell, pledge, encumber, or assign this Contract or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements, or (ii) transfer its interest to any parent or Affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any such assignment, transfer and assumption, the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder.

15.2. If any provision in this Contract is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Contract.

15.3. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach.

15.4. This Contract sets forth all understandings between the parties respecting each transaction subject hereto, and any prior contracts, understandings and representations, whether oral or written, relating to such transactions are merged into and superseded by this Contract and any effective transaction(s). This Contract may be amended only by a writing executed by both parties.

15.5. The interpretation and performance of this Contract shall be governed by the laws of the jurisdiction as indicated on the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

15.6. This Contract and all provisions herein will be subject to all applicable and valid statutes, rules, orders and regulations of any governmental authority having jurisdiction over the parties, their facilities, or Gas supply, this Contract or transaction or any provisions thereof.

15.7. There is no third party beneficiary to this Contract.

15.8. Each party to this Contract represents and warrants that it has full and complete authority to enter into and perform this Contract. Each person who executes this Contract on behalf of either party represents and warrants that it has full and complete authority to do so and that such party will be bound thereby.

15.9. The headings and subheadings contained in this Contract are used solely for convenience and do not constitute a part of this Contract between the parties and shall not be used to construe or interpret the provisions of this Contract.

15.10. Unless the parties have elected on the Base Contract not to make this Section 15.10 applicable to this Contract, neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any transaction to a third party (other than the employees, lenders, royalty owners, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially all of a party's assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of this Contract, (iii) to the extent necessary to implement any transaction, (iv) to the extent necessary to comply with a regulatory agency's reporting requirements including but not limited to gas cost recovery proceedings; or (v) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. Subject to Section 13, the parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.

In the event that disclosure is required by a governmental body or applicable law, the party subject to such requirement may disclose the material terms of this Contract to the extent so required, but shall promptly notify the other party, prior to disclosure,

and shall cooperate (consistent with the disclosing party's legal obligations) with the other party's efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the other party.

15.11. The parties may agree to dispute resolution procedures in Special Provisions attached to the Base Contract or in a Transaction Confirmation executed in writing by both parties

15.12. Any original executed Base Contract, Transaction Confirmation or other related document may be digitally copied, photocopied, or stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidence on paper, the Transaction Confirmation, if introduced as evidence in automated facsimile form, the recording, if introduced as evidence in its original form, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the recording, the Transaction Confirmation, or the Imaged Agreement on the basis that such were not originated or maintained in documentary form. However, nothing herein shall be construed as a waiver of any other objection to the admissibility of such evidence.

DISCLAIMER: The purposes of this Contract are to facilitate trade, avoid misunderstandings and make more definite the terms of contracts of purchase and sale of natural gas. Further, NAESB does not mandate the use of this Contract by any party. **NAESB DISCLAIMS AND EXCLUDES, AND ANY USER OF THIS CONTRACT ACKNOWLEDGES AND AGREES TO NAESB'S DISCLAIMER OF, ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THIS CONTRACT OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT NAESB KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. EACH USER OF THIS CONTRACT ALSO AGREES THAT UNDER NO CIRCUMSTANCES WILL NAESB BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THIS CONTRACT.**

The copyright in this Contract is owned by NAESB, and market participants are encouraged to review NAESB Copyright Policy and Companies with Access to NAESB Standards under the Copyright Policy posted by NAESB on its website at <https://www.naesb.org/pdf2/copyright.pdf>. Please review this posting and if your company's name is not listed as having access, please obtain access by contacting the NAESB Office per the contact information in the Copyright Policy.

TRANSACTION CONFIRMATION
FOR IMMEDIATE DELIVERY

EXHIBIT A

Letterhead/Logo	Date: _____, ____ Transaction Confirmation #: _____			
This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated _____. The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt unless otherwise specified in the Base Contract.				
SELLER: _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____	BUYER: _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____			
Contract Price: \$_____/MMBtu or _____				
Delivery Period: Begin: _____, ____ End: _____, ____				
Performance Obligation and Contract Quantity: (Select One) <table style="width: 100%; border: none;"> <tr> <td style="width: 33%; vertical-align: top; padding: 5px;"> Firm (Fixed Quantity): _____ MMBtus/day <input type="checkbox"/> EFP </td> <td style="width: 33%; vertical-align: top; padding: 5px;"> Firm (Variable Quantity): _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of <input type="checkbox"/> Buyer or <input type="checkbox"/> Seller </td> <td style="width: 33%; vertical-align: top; padding: 5px;"> Interruptible: Up to _____ MMBtus/day </td> </tr> </table>		Firm (Fixed Quantity): _____ MMBtus/day <input type="checkbox"/> EFP	Firm (Variable Quantity): _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of <input type="checkbox"/> Buyer or <input type="checkbox"/> Seller	Interruptible: Up to _____ MMBtus/day
Firm (Fixed Quantity): _____ MMBtus/day <input type="checkbox"/> EFP	Firm (Variable Quantity): _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of <input type="checkbox"/> Buyer or <input type="checkbox"/> Seller	Interruptible: Up to _____ MMBtus/day		
Delivery Point(s): _____ (If a pooling point is used, list a specific geographic and pipeline location):				
Special Conditions: _____ _____				
Seller: _____ By: _____ Title: _____ Date: _____	Buyer: _____ By: _____ Title: _____ Date: _____			

EXHIBIT A
SPECIAL PROVISIONS TO BASE CONTRACT FOR
SALE AND PURCHASE OF NATURAL GAS - GENERAL TERMS AND CONDITIONS
(FORM NAESB Standard 6.3.1-9/5/06 (Revised by R15003/R15007, 4/4/16)
BY AND BETWEEN
CITY OF PALO ALTO
AND
CITY OF REDDING

DATED: _____, 2018

SECTION 1.2 [Oral Transaction Procedure], line 13: after “agreed to” add “, in writing,”.

SECTION 1.3 shall be amended by deleting subsections (iii) and (iv) of the last sentence and replacing them with the following new subsections: “(iii) the Special Provisions, (iv) the Base Contract, and (v) these General Terms and Conditions”.

SECTION 1.4 is amended by adding the following after the third sentence: “Promptly upon request by a party, the other party shall provide a copy of such recording to the party making the request.”

SECTION 1.5 is added to SECTION 1, as follows:

“City is a municipal utility governed by the City of Palo Alto, by and through its Council, which has all powers necessary and appropriate to a municipal corporation, including but not limited to the authority granted by the City Charter, Article XI, Section 9(a) of the California Constitution, California Government Code Section 39732 and California Public Utilities Code Section 10002, to establish, purchase, and operate public works to furnish its inhabitants with natural gas. Under this authority, City is engaged in the business of delivering natural gas to its residential and commercial customers in Palo Alto, California.”

SECTION 1.6 is added to SECTION 1, as follows:

“(i) Supplier is either an eligible contract participant or a producer, processor, commercial user of, or merchant handling natural gas that offers or enters into any Transactions hereunder solely for the purposes related to its business as such; (ii) Supplier is, and the City reasonably believes Supplier to be, a commercial party that is offered or enters into Transactions solely for purposes related to its business as such; and (iii) the Transactions are intended to be physically settled for immediate or deferred delivery.”

SECTION 2.4, line 1: after “incorporates” add “the Cover Sheet and”.

SECTION 2.6 is amended and restated in its entirety, as follows: “‘Business Day’ shall mean any Day except Saturday, Sunday, a Day that is a regular holiday declared by City pursuant to Palo Alto Municipal Code Section 2.08.100 or a Day that is a Federal Reserve Bank holiday.”

SECTION 2.9 is amended by deleting the “and” before “(iii)”, and inserting at the end of that provision before “.” the following: “and (iv) the Credit Support Addendum to Base Contract for Sale and Purchase of Natural Gas attached hereto as Exhibit B and as subsequently executed by the Parties”.

SECTION 2.13 is amended to (i) replace the words “to provide or establish” with the words, “to provide, maintain, or establish”.

SECTION 2.23, at the end of the sentence after the words, “immediately due and payable”, the following: “(after giving effect to any applicable notice requirement or grace period)”.

SECTION 3.1, line 3: add a third sentence, as follows: “If a transaction is not designated as Firm or Interruptible, the transaction shall be deemed to be Firm.”

SECTION 3.2 [Cover Standard], in the last sentence: after “payable” add “within”, and delete “presentation” and replace with “receipt”.

SECTION 3.5 is added to SECTION 3, as follows:

“Notwithstanding any other provision of this SECTION 3, if a party fails to deliver or receive Gas for three or more consecutive Business Days and such failure is not excused by the terms of the Transaction Confirmation, by Force Majeure, or by the other party’s failure of performance, then upon one Business Day’s prior written Notice and for so long as the non-performing party fails to deliver or receive Gas, the performing party may suspend its performance under such Transaction Confirmation and shall not be obligated to resume its performance until the non-performing party provides two Business Days’ prior written Notice of its intention to perform such obligation (“Notice to Resume Contractual Performance”); provided, however, if the performing party has entered into a replacement contract for a term of 31 Days or less during the suspension period, such performing party may defer its obligation to resume delivering or receiving Gas until after the expiration of the term of the replacement contract; provided further, that the performing party provides written Notice of its execution of such replacement contract to the non-performing party within two Business Days of the performing party’s receipt of the Notice to Resume Contractual Performance.”

SECTION 7.1, line 3: after “actual quantity” add “delivered”.

SECTION 7.4, line 2: after “it must provide,” add “within 60 Days”; and line 3: delete “without undue delay”.

SECTION 7.5, line 3: delete “, plus two percent per annum”.

SECTION 8.3 is hereby amended by adding the following sentence to the end of this paragraph:

“Neither party shall be obligated to indemnify, defend, or hold the other party harmless to the extent any liability, suit, action, damage, loss or expense arises out of or in connection with any intentional act, negligent act or failure to act on the part of the other party, its officers, agents, or employees.”

SECTION 10.1 is amended and restated in its entirety, as follows: “During the term of this Contract, the parties shall comply with the requirements of the Credit Support Addendum to Base Contract for Sale and Purchase of Natural Gas and any subsequent amendments thereto.”

SECTION 10.2, line 9: delete “or” before “[ix]”; and in line 11, after “Additional Event of Default;” add:

“(x) during any 90-Day period on a rolling basis fail to perform a Firm obligation to deliver or receive Gas, as contemplated by Section 3.2, five or more times; or (xi) make any representation or warranty with respect to its financial statements (consolidated or unconsolidated balance sheet, income statement and statement of cash flow) or position that is false or materially misleading;”

SECTION 10.3: Insert the following at the end of Section 10.3:

“Failure by the Non-Defaulting Party to promptly exercise its rights to terminate and liquidate all transactions upon the occurrence of an Event of Default shall not be deemed to be a waiver of such right.”

SECTION 10.3.1 [Early Termination Damages Apply], add a third paragraph, as follows:

“The Non-Defaulting Party shall aggregate the costs that the Non-Defaulting party incurs in liquidating and accelerating each Terminated Transaction, or otherwise settling obligations arising from the cancellation and termination of each Terminated Transaction, including brokerage fees, commissions, and other similar transaction costs and expenses reasonably incurred by the Non-Defaulting Party, including costs associated with hedging its obligations, transaction costs associated with obtaining replacement supplies or markets (e.g., brokerage fees, or other such payments), additional transportation balancing or hub services costs, and similar costs incurred in transporting the replacement Gas to or from the replacement Gas seller or buyer, and reasonable attorneys’ fees (at trial and on appeal) and other reasonable litigation and administrative fees and costs incurred in connection with recovering any such costs owed to it by the Defaulting Party under this Contract (collectively ‘Costs’). Notwithstanding the limitation of liability set forth in Section 13, such Costs shall be due and payable by the Defaulting Party to the Non-Defaulting Party within 10 Business Days after receipt by the Defaulting Party of the Non-Defaulting Party’s statement of Costs.”

SECTION 10.3.2 [Other Agreement Setoffs Apply; Bilateral Setoff Option], line 3: after the first sentence, add: “Notwithstanding any provision to the contrary herein, any Net Settlement Amount that the Non-Defaulting Party may owe the Defaulting Party shall be equal to zero dollars.”; at the end of the section add:

“The obligations of the Non-Defaulting Party and the Defaulting Party under this Contract or otherwise in respect of such amounts shall be deemed satisfied and discharged to the extent of any such setoff. The Non-Defaulting Party will give the Defaulting Party Notice of any setoff effected under this section provided that failure to give such notice shall not affect the validity of the setoff. Nothing in this paragraph shall be deemed to create a charge or other security interest. The rights provided by this Section are in addition to and not in limitation of any other right or remedy (including any right to setoff, counterclaim, or otherwise withhold payment) to which a party may be entitled (whether by operation of law, contract or otherwise).

‘setoff’ as used herein means setoff, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the Non-Defaulting Party is entitled or subject (whether arising under this Contract, another contract, and applicable law or otherwise) that is exercised by, or imposed on, the Non-Defaulting Party.”

SECTION 10.3.2 [Other Agreement Setoffs Apply; Triangular Setoff Option], line 3: after the first sentence, add: “Notwithstanding any provision to the contrary herein, any Net Settlement Amount that the Non-Defaulting Party may owe the Defaulting Party shall be equal to zero dollars.”; line 5: delete the rest of the section after “(ii)” and replace with:

“any Net Settlement Amount payable to the Defaulting Party against any amount(s) payable by the Defaulting Party to the Non-Defaulting Party and/or its Affiliates under any other agreement or arrangement between the Defaulting Party and/or its Affiliates and the Non-Defaulting Party and/or its Affiliates. The obligations of the Non-Defaulting Party, the Non-Defaulting Party’s Affiliates, if any, and the Defaulting Party under this Contract or otherwise in respect of such amounts shall be deemed satisfied and discharged to the extent of any such setoff. The Non-Defaulting Party will give the Defaulting Party Notice of any setoff effected under this section provided that failure to give such notice shall not affect the validity of the setoff. Nothing in this paragraph shall be deemed to create a charge or other security interest. The rights provided by this Section are in addition to and not in limitation of any other right or remedy (including any right to setoff, counterclaim, or otherwise withhold payment) to which a party may be entitled (whether by operation of law, contract or otherwise).

‘setoff’ as used herein means setoff, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the Non-Defaulting Party is entitled or subject (whether arising under this Contract, another contract, and applicable law or otherwise) that is exercised by, or imposed on, the Non-Defaulting Party.”

SECTION 10.4, line 2: delete “, and whether the Net Settlement Amount is due to or due from the Non-Defaulting Party.”; line 8: delete “, plus two percent per annum;”.

SECTION 11.5, line 1: after “the other party” add “of the dates on which Force Majeure commenced and terminated; line 3: after “Upon providing” add “such timely”; line 6: add a new sentence, as follows: “If the affected party fails to provide written notice of the event or occurrence to the other party as soon as reasonably possible, the affected party will not be relieved of its obligation to make or accept delivery of Gas to the extent and for the duration of Force Majeure.”

SECTION 15.1, line 4: after “either party may” add “without the prior approval of the other party”; line 6: delete clause (ii) and replace with the following through the end of that sentence: “transfer or assign its interest to any Affiliate of such party, so long as such Affiliate’s creditworthiness equals or exceeds that of such assigning party or its Credit Support Provider, as applicable, as of the date the Base Contract is entered into by such party; provided, however, that in each of (i) and (ii), before any such assignment, transfer and assumption becomes effective, any such assignee shall agree, in writing, to be bound by the terms and conditions of this Contract and the assigning party shall agree, in writing, to remain liable for the obligations of the assignee hereof and shall deliver such tax and enforceability assurance as the non-assigning party may reasonably request. Notwithstanding any provision to the contrary, any direct or indirect change of control of either party (whether voluntary or by operation of law) shall be deemed an assignment and shall require the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed. Upon request, the party subject to a change of control shall promptly deliver financial statements, information and other evidence satisfactory to the requesting party regarding the proposed change of control and, among other things, creditworthiness of the other party after such change.”

SECTION 15.13 is added to SECTION 15, as follows:

“With respect to any proceeding in connection with any claim, counterclaim, demand, cause of action, dispute and controversy arising out of or relating to this Contract, the parties hereby consent to the exclusive jurisdiction of the federal courts for the Northern District of the State of California; provided, however, that if such 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.”

SECTION 15.14 is added to SECTION 15, as follows:

“Notwithstanding California Civil Code § 1654, this Contract shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the manner in which this Contract was negotiated, prepared, drafted or executed.”

SECTION 15.15 is added to SECTION 15, as follows:

“The parties do hereby represent and warrant that the General Terms and Conditions of the Base Contract have not been modified, altered, or amended in any respect except for these Special Provisions which are attached to and made a part of the Base Contract.”

SECTION 15.15 is added to SECTION 15, as follows:

“Nondiscrimination. As set forth in Palo Alto Municipal Code section 2.30.510, Party A agrees that in the performance of this Contract, it shall not discriminate in the employment of any person because of that person’s race, skin color, gender, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, pregnancy, genetic information or condition, housing status, marital status, familial status, weight or height of such person. Party A acknowledges that it has read and understands the provisions of Chapter 2.30 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Chapter 2.30 pertaining to nondiscrimination in employment, including completing the Certification of Nondiscrimination furnished by Party B and attached to the Base Contract.”

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Base Contract in duplicate.

<p>CITY OF PALO ALTO Approval by Mayor:</p> <p>By: _____ Name: James Keene Title: City Manager for Mayor Date: _____, 2018</p>	<p>CITY OF REDDING _____</p> <p>By: _____ Name: Dan Beans Title: Electric Utility Director Date: _____, 2018</p>
<p>City of Palo Alto Approved as to form:</p> <p>By: _____ Name: Elisa Larson Title: Counsel to the City of Palo Alto Date: _____, 2018</p>	
<p>City of Palo Alto Approval by City Manager:</p> <p>By: _____ Name: James Keene Title: City Manager Date: _____, 2018</p>	
<p>City of Palo Alto Approval by Administrative Services Director:</p> <p>By: _____ Name: _____ Title Administrative Services Director, Chief Financial Officer Date: _____, 2018</p>	

Certification of Nondiscrimination

As suppliers of goods or services to the City of Palo Alto, the firm and individuals listed below certify that they do not and will not during the course of this contract discriminate in the employment of any person because of the race, skin color, gender, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, pregnancy, genetic information or condition, housing status, marital status, familial status, weight or height of such person and that they are in compliance with all Federal, State and local directives and executive orders regarding nondiscrimination in employment.

THE INFORMATION HEREIN IS CERTIFIED CORRECT BY SIGNATURE(S) BELOW.

Authorized Signature: _____

Date: _____

EXHIBIT B

**CREDIT SUPPORT ADDENDUM TO BASE CONTRACT FOR
SALE AND PURCHASE OF NATURAL GAS – GENERAL TERMS AND CONDITIONS
(FORM NAESB Standard 6.3.1-9/5/06 (Revised by R15003/R15007. 4/4/16))
BY AND BETWEEN
CITY OF PALO ALTO
AND
CITY OF REDDING**

This Credit Support Addendum (“Addendum”) constitutes an Addendum to, and supplements, forms a part of, and amends, that certain Base Contract for Sale and Purchase of Natural Gas entered into by and between the parties affecting transactions thereunder. Capitalized terms used in this Credit Support Addendum that are not herein defined shall have the meanings ascribed to them in the Contract. References to sections not herein included shall be to those sections set forth in the Contract.

A. Supplier’s Credit Requirements.

- (1) Supplier’s Security Threshold. As used in this Addendum, “Supplier’s Security Threshold” means, on any date of determination, the lowest of (a) the amount of any dollar limit set forth in the following table based on the higher applicable Credit Rating for Supplier, as applicable; (b) the dollar limit in an amount equal to zero if an Event of Default has occurred and is continuing with respect to Supplier.

Supplier’s Credit Rating		<u>Security Threshold</u>
<u>Moody’s</u>	<u>Fitch</u>	
A3 or above	A- or above	U.S. \$20,000,000
Baa1	BBB+	U.S. \$15,000,000
Baa2	BBB	U.S. \$10,000,000
Baa3	BBB-	U.S. \$ 5,000,000
Below Baa3	BBB-/Negative or below	U.S. \$ 0

(2) Performance Assurance.

- (a) Security Threshold. If at any time, and from time to time, during the term of this Contract, the Contract Exposure for Supplier exceeds Supplier’s Security Threshold, then City may request that Supplier provide Performance Assurance in an amount expressed in U.S. dollars equal to the amount by which the Contract Exposure exceeds Supplier’s Security Threshold. On any Business Day (but no more frequently than weekly with respect to a Letters of Credit and daily with respect to cash), Supplier, at its sole cost, may request that the amount of Performance Assurance be reduced based upon a decrease in the Contract Exposure as calculated on such Business Day. Any Performance Assurance being provided or returned shall be delivered within two (2) Business Days of the date of such request. The amount of Performance Assurance that Supplier provides shall be rounded upwards to the next multiple of U.S. \$100,000, and the

amount of Performance Assurance that City returns shall be rounded down to the next multiple of U.S. \$100,000.

(b) City of Redding Downgrade Event. If at any time a “City of Redding Downgrade Event” occurs in respect of Supplier, then City may require Supplier to provide Performance Assurance in an amount determined by City in a commercially reasonable manner.

(c) Credit Assurance. If City has reasonable grounds to believe that Supplier’s creditworthiness or performance under this Contract has become unsatisfactory, then City may provide Supplier with written notice requesting Performance Assurance in an amount determined by the City in a commercially reasonable manner. Within three (3) Business Days of receipt of such notice, Supplier shall provide Performance Assurance to City.

B. City of Palo Alto Downgrade Event. If at any time a “City of Palo Alto Downgrade Event” occurs, in respect of City, then Supplier may require City to provide Performance Assurance in an amount determined by Supplier in a commercially reasonable manner. City will be deemed to comply with any request of Supplier for Performance Assurance in accordance herewith if City furnishes to Supplier upon request a resolution adopted by its city council, determining that City’s retail gas rates are set at levels sufficient to recover all costs of providing Gas to City’s retail gas customers, including but not limited to the costs that City incurs with respect to all such Transaction Confirmations executed in accordance with this Contract.

C. Grant of Security Interest; Remedies. To secure its obligations under this Contract, and to the extent it delivers Performance Assurance hereunder as the Providing Party, each Party hereby grants to the Requesting Party, as secured party, a present and continuing first priority security interest in, lien on, and right of setoff against, all Performance Assurance in the form of cash, and any and all proceeds resulting therefrom, held by or on behalf of the Requesting Party. The Providing Party agrees to take such further action as the Requesting Party may reasonably require in order to perfect, maintain and protect the Requesting Party’s security interest in such collateral.

Upon the occurrence and continuance of an Event of Default with respect to the Providing Party, then, unless the Providing Party has satisfied in full all of its payment and performance obligations under this Contract that are then due, the Requesting Party may exercise any of the rights and remedies of a secured party under applicable law with respect to all Performance Assurance, exercise its right of setoff against any and all Performance Assurance, draw on any Letter of Credit issued for its benefit, and liquidate all Performance Assurance then held by the Requesting Party free from any claim or right of any nature whatsoever of the Providing Party. The Requesting Party shall either apply the proceeds of the Performance Assurance realized upon exercise of such rights or remedies to reduce the Providing Party’s obligations under this Contract, in such order as it elects, and the Providing Party shall remain liable for any amounts owing to the Requesting Party after such application, subject to the Requesting Party’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full, or hold such proceeds as collateral security to secure the performance of the Providing Party’s obligations under this Contract.

D. Credit Events Of Default. The following events (“Credit Events”) shall be additional Events of Default under Section 10.2 of the Contract and the Non-Defaulting Party shall have the right to exercise any of the remedies provided for under Section 10 upon the occurrence of a Credit Event as provided herein.

- (1) The failure of the Defaulting Party to establish, maintain, extend or increase Performance Assurance when required pursuant to this Addendum; or
- (2) The failure of the Defaulting Party to timely provide financial information as required by this Addendum, and such failure is not remedied within thirty (30) Days after written notice of such failure is given to the Defaulting Party; or
- (3) The failure of the Defaulting Party to comply with or perform any material agreement or obligation provided for in this Credit Support Addendum; or
- (4) A Letter of Credit Default.

E. Financial Information. Upon request, Providing Party shall deliver to Requesting Party (i) within one hundred sixty (160) Days following the end of its fiscal year, a copy of the audited financial statements for General Fund and Enterprise Fund. In all cases the statements of both parties shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles or such other principles then in effect.

F. General.

- (1) No failure or delay by either party hereto in exercising any right, power, privilege, or remedy hereunder shall operate as a waiver thereof;
- (2) The headings in this Credit Support Addendum are for convenience of reference only, and shall not affect the meaning or construction of any provision thereof; and
- (3) In the event of any inconsistency between the provisions of this Credit Support Addendum and the Contract (including any Special Provision thereto), this Credit Support Addendum will prevail for purposes of this Credit Support Addendum. In the event of any inconsistency between the provisions of the Credit Support Addendum and any document provided pursuant to Section (A)(2) or as Performance Assurance (“Credit Support Document(s)”), the terms and conditions of the Credit Support Document(s) will prevail. A Transaction Confirmation may not amend or conflict with the terms and provisions contained in this Credit Support Addendum. If the parties desire to modify or change provisions set forth in this Credit Support Addendum, then such amendment or modification shall be contained in writing (separate from a Transaction Confirmation) and shall be effective only upon prior written execution by the parties. If a Transaction Confirmation contains provisions which conflict with this Credit Support Addendum, it shall not otherwise invalidate any Transaction agreed to by the parties and the transaction shall constitute a Transaction without such provisions.

G. Definitions. Terms used herein not otherwise defined in the Contract shall have the meanings specified below:

“Bankrupt” means with respect to any entity, such entity (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such case filed against it is not dismissed in sixty (60) Days, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee,

conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

“City of Palo Alto Downgrade Event” means (i) City of Palo Alto’s underlying rating, determined without reference to third party credit enhancement, on its utility revenue bonds (“Debt”) by S&P or Moody’s is respectively below BBB- or Baa3, and (ii) City of Palo Alto’s City Council lacks the legal authority under the California Constitution, the California Government Code, the California Public Utilities Code, the Charter of the City of Palo Alto and the Palo Alto Municipal Code under which the City was created, organized and authorized to enter into this Contract, to adjust gas rates as necessary to recover the City’s costs of providing retail gas service to its customers.

“City of Redding Downgrade Event” means (i) City of Redding’s underlying rating, determined without reference to third party credit enhancement, on its utility revenue bonds (“Debt”) by Fitch or Moody’s is respectively below BBB- or Baa3, and (ii) City of Redding’s City Council lacks the legal authority under the California Constitution, the California Government Code, the California Public Utilities Code, the General Law status of the City of Redding and the Redding Municipal Code under which the City of Redding was created, organized and authorized to enter into this Contract, to adjust electric rates as necessary to recover the City of Redding’s costs of providing retail electric service to its customers.

“Contract Exposure” means the amount equal to (i) determined pursuant to Section 10.3.1, an amount that would be payable by the Providing Party to the Requesting Party, as if an Early Termination Date had been declared pursuant to Section 10.3 (notwithstanding whether or not an Event of Default has occurred) and all transactions had been terminated; (ii) plus the net amount of all other payments owed but not yet paid between the Parties, whether or not such amounts are then due, for performance already provided pursuant to any and all transactions conducted under this Contract; (iii) less the amount of any Performance Assurance then held by the Requesting Party.

“Credit Rating” means (i) with respect to a Party or its Credit Support Provider, if any, the lower of its long-term senior unsecured debt rating (not supported by third party credit enhancement) or its issuer rating by the specified rating agency, and (ii) with respect to a financial institution, the lower of its long-term senior unsecured debt rating (not supported by third party credit enhancement) or its deposit rating by the specified rating agency. In the event of an inconsistency in rating by two rating agencies (a “split rating”), the lowest rating assigned shall control. In the event a Party and its Credit Support Provider are both rated, the lowest rating assigned shall control.

“Fitch” means Fitch Ratings Inc., or its successor.

“Letter of Credit” means one or more irrevocable, transferable standby letters of credit issued by a Qualified Institution, in form and amount acceptable to the party in whose favor the Letter of Credit is issued in its sole discretion. The costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

“Letter of Credit Default” means with respect to an outstanding Letter of Credit that is held by the Requesting Party, the occurrence of any of the following events: (i) the Providing Party fails to extend or replace such Letter of Credit delivered as Performance Assurance hereunder at least twenty (20) Business Days prior to its expiration, or (ii) the Letter of Credit delivered hereunder

shall expire, terminate or otherwise cease or fail to remain in full force and effect for any reason, or (iii) the Qualified Institution which issued such Letter of Credit hereunder fails to maintain the requirements of a Qualified Institution as specified herein or fails to comply with or perform its obligations under such Letter of Credit and such failure is not remedied within five (5) Business Days after written notice of such failure is given to Requesting Party, or (iv) the Qualified Institution which issued such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit, or (v) the Qualified Institution which issued such Letter of Credit shall become Bankrupt. Upon the occurrence of a Letter of Credit Default, the Providing Party agrees to transfer to the Requesting Party either a substitute Letter of Credit or other Performance Assurance, in each case on or before the second (2nd) Business Day after receipt by the Providing Party of written notice from the Requesting Party.

“Moody's” means Moody's Investors Service, Inc., or its successor.

“Performance Assurance” means collateral in the form, amount and for the term reasonably acceptable to the Requesting Party, including, but not limited to, cash, a Letter of Credit, or other security acceptable to the Requesting Party. If the collateral is in the form of cash, such cash shall be placed by the Requesting Party in a segregated, interest-bearing escrow account on deposit with a Qualified Institution and interest shall accrue to the Providing Party. The requirement to maintain a segregated escrow account shall not apply if the Requesting Party or its Credit Support Provider, if any, has a Credit Rating of at least A- by S&P or A3 by Moody's.

“Providing Party” means the party providing or being requested to provide (a) Performance Assurance, or (b) Financial Information hereunder.

“Qualified Institution” means a U.S. commercial bank or a U.S. branch of a foreign bank (which is not an Affiliate of either Party) (i) duly organized under the laws of the United States (or any state or a political subdivision thereof), (ii) having assets of at least U.S. \$10 Billion, and (iii) having a Credit Rating of at least A- by S&P and at least A3 by Moody's.

“Requesting Party” means the party requesting (a) Performance Assurance or (b) Financial Information be provided to it by the Providing Party hereunder.

“S&P” means Standard & Poor's Ratings Services (a division of McGraw-Hill, Inc.) or its successor.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Credit Support Addendum in duplicate.

<p>CITY OF PALO ALTO Approval by Mayor:</p> <p>By:</p> <p>Name: James Keene Title: City Manager, for Mayor Date: _____, 2018</p>	<p>CITY OF REDDING _____</p> <p>By:</p> <p>Name: Dan Beans Title: Electric Utility Director Date: _____, 2018</p>
<p>City of Palo Alto Approved as to Form:</p> <p>By:</p> <p>Name: Elisa Larson Title: Counsel to the City of Palo Alto Date: _____, 2018</p>	
<p>City of Palo Alto Approval by City Manager:</p> <p>By:</p> <p>Name: James Keene Title: City Manager Date: _____, 2018</p>	
<p>City of Palo Alto Approval by Administrative Services Director, Chief Financial Officer:</p> <p>By:</p> <p>Name: Title: Administrative Services Director, Chief Financial Officer Date: _____, 2018</p>	