

* NOT YET APPROVED *
Resolution No. _____

Resolution of the Council of the City of Palo Alto Approving a Consent and Direct Agreement Between the City of Palo Alto, HA RNG 1 Lender LLC, and Ameresco Half Moon Bay LLC, and Authorizing the City Manager or their Designee to Execute any Documents Necessary to Administer Six Renewable Energy Power Purchase Agreements Approved from 2004-2010 in a Manner Consistent with the City Council's Prior Funding Authorization, the Palo Alto Municipal Code and City Council-Approved Policies

R E C I T A L S

A. On January 18, 2005, the City Council of Palo Alto approved Resolution 8495, approving the long-term power purchase agreement (PPA) with Ameresco Half Moon Bay LLC (Seller) for the purchase of electricity generated by landfill gas electric generating facilities.

B. The City of Palo Alto (City) executed the PPA with Seller on January 19, 2005, under which the City agreed to purchase renewable energy from the Seller's landfill-gas-to-energy facility for a contract term of 20 years, commencing on the commercial operation date of the generation facility.

C. The generation facility achieved commercial operation and began delivering renewable electricity to the City on April 1, 2009, and Seller has fulfilled all of its contractual obligations under the PPA to the City's satisfaction to date.

D. Under Section 10.1 of the PPA, the City is required to consent in writing prior to any assignment of the rights or obligations under the PPA to another party.

E. The City has been informed that HA RNG 1 LENDER LLC (Lender) has agreed to provide a loan to Ameresco RNG Holdings I LLC (Holdings), a limited liability corporation owned by the same parent company as Seller, with such loan secured in part by the collateral assignment by the Seller of all of its rights, title, and interest in, to, and under the PPA.

F. Ameresco's lender proposed a separate assignment agreement (Exhibit A), which the City Attorney's Office has reviewed and negotiated modifications to maintain the City's rights and remedies as well as Assignee's obligations as written in the PPA.

G. The Consent and Direct Agreement requires that, in the event Lender forecloses on and takes assignment of the PPA, it will assume all of Seller's rights and obligations; if the Lender further assigns or sells its interest in the PPA, the subsequent owner must first assume in writing all of the Seller's rights and obligations and demonstrate that it has the technical and financial capability to perform or cause to be performed the Seller's PPA obligations as well.

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

SECTION 1. The Council hereby approves and authorizes the City Manager or their designee to execute the Consent and Direct Agreement (Exhibit A) among the City of Palo Alto, HA RNG 1 Lender LLC, and Ameresco Half Moon Bay LLC.

SECTION 2. The Council hereby authorizes the City Manager or their designee to execute any documents necessary to administer the City's renewable energy power purchase agreements with the following six counterparties in a manner consistent with the City Council's prior funding authorization, the Palo Alto Municipal Code and applicable Council-approved policies:

- a. PPM Energy, Inc (Resolution 8472, November 2004)
- b. Ameresco Santa Cruz LLC (Resolution 8473, November 2004)
- c. Ameresco Half Moon Bay LLC (Resolution 8495, January 2005)
- d. Ameresco Keller Canyon LLC (Resolution 8552, August 2005)
- e. Ameresco Johnson Canyon LLC (Resolution 8971, October 2009)
- f. Ameresco San Joaquin LLC (Resolution 9055, May 2010)

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SECTION 3. The Council finds that the adoption of this resolution approving the Consent and Direct Agreement and delegating administrative authority to the City Manager is not a project subject to California Environmental Quality Act (CEQA) review because adoption of this resolution is an administrative government activity that will not result in any direct or indirect physical change to the environment as a result (CEQA Guidelines section 15378(b)(5)).

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

Assistant City Attorney

City Manager

Director of Utilities

Director of Administrative Services