



## City Council Staff Report

**From: City Manager**

**Report Type: CONSENT CALENDAR**

**Lead Department: Utilities**

**Meeting Date: November 27, 2023**

Staff Report:2309-2081

### TITLE

Adoption of a Resolution Approving a Consent and Direct Agreement With HA RNG 1 Lender LLC and Ameresco Half Moon Bay LLC Consenting to Ameresco Half Moon Bay LLC's Assignment of its Rights in its 2005 Power Purchase Agreement With the City to HA RNG 1 Lender LLC , and Authorizing the City Manager or 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. CEQA Status – Not a Project under Public Resources Code 21065

### RECOMMENDATION

Staff recommends the City Council adopt a Resolution:

1. Approving and authorizing the City Manager or designee to execute the Consent and Direct Agreement with HA RNG 1 Lender LLC and Ameresco Half Moon Bay LLC on behalf of the City; and
2. Authorizing the City Manager or designee to execute any documents necessary to administer the City's renewable energy power purchase agreements (PPAs) with the following six counterparties in a manner consistent with the Palo Alto Municipal Code and City Council approved policies:
  - a. PPM Energy, Inc (Resolution 8472, November 2004)<sup>1</sup>
  - b. Ameresco Santa Cruz LLC (Resolution 8473, November 2004)<sup>2</sup>
  - c. Ameresco Half Moon Bay LLC (Resolution 8495, January 2005)<sup>3</sup>
  - d. Ameresco Keller Canyon LLC (Resolution 8552, August 2005)<sup>4</sup>
  - e. Ameresco Johnson Canyon LLC (Resolution 8971, October 2009)<sup>5</sup>
  - f. Ameresco San Joaquin LLC (Resolution 9055, May 2010)<sup>6</sup>

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<sup>1</sup> Staff Report 424:04: <https://www.cityofpaloalto.org/files/assets/public/v/1/agendas-minutes-reports/reports/city-manager-reports-cmrs/year-archive/2004/11-november/3907.pdf>

<sup>2</sup> Staff Report 461:04: <https://www.cityofpaloalto.org/files/assets/public/v/1/agendas-minutes-reports/reports/city-manager-reports-cmrs/year-archive/2004/11-november/3905.pdf>

<sup>3</sup> Resolution 8495: <https://www.cityofpaloalto.org/files/assets/public/v/1/city-clerk/resolutions/reso-8495.pdf>

<sup>4</sup> Resolution 8552: <https://www.cityofpaloalto.org/files/assets/public/v/1/city-clerk/resolutions/reso-8552.pdf>

<sup>5</sup> Resolution 8971: <https://www.cityofpaloalto.org/files/assets/public/v/1/city-clerk/resolutions/reso-8971.pdf>

<sup>6</sup> Resolution 9055: <https://www.cityofpaloalto.org/files/assets/public/v/1/city-clerk/resolutions/reso-9055.pdf>

## **EXECUTIVE SUMMARY**

Since 2009, the City of Palo Alto has purchased electricity generated from a landfill gas facility at the Ox Mountain Landfill in Half Moon Bay from Ameresco Half Moon Bay LLC (“Seller”), under a power purchase agreement executed in 2005 (“2005 PPA”). In September 2023, Ameresco RND Holdings I LLC, a limited liability corporation owned by the same parent company as the Seller, executed a loan from HA RNG 1 LENDER, LLC (“Lender”) to support Seller’s new business activities. The loan is secured in part by an assignment by the Seller to the Lender of all of its rights, title and interest in the 2005 PPA. The City’s consent is required for this assignment.

Under the proposed Consent and Direct Agreement, the City consents to the collateral assignment of all of the Seller’s rights, title and interest in the 2005 PPA to the Lender. The Agreement also provides that in the event the Lender forecloses on and takes assignment of the 2005 PPA, or assigns it to a third party, the City’s interests and obligations under the PPA will remain intact. Staff recommends that the City Council approve this collateral assignment agreement and delegate authority to the City Manager to execute similar administrative documents related to the City’s six renewable energy PPAs that currently lack such authority, ensuring the efficient and timely handling of routine matters without the need for Council action. Council has routinely delegated this type of administrative authority for PPAs to the City Manager since 2013.

## **BACKGROUND**

In January 2005, the City of Palo Alto executed a power purchase agreement with Ameresco Half Moon Bay LLC (“Seller”) to purchase 50% of the electric output generated by Seller’s landfill gas electric generating facility located at the Ox Mountain landfill in Half Moon Bay ([Resolution 8495](https://www.cityofpaloalto.org/files/assets/public/v/1/city-clerk/resolutions/reso-8495.pdf)<sup>7</sup>). (The other 50% of the facility’s electric output is being purchased by the City of Alameda under the same contractual terms as the City’s 2005 PPA.) The project achieved commercial operation in April 2009, which commenced the 20-year contract term of the 2005 PPA. Since the 2005 PPA took effect, Seller has met all of its contractual obligations, and the facility has reliably provided electrical energy, resource adequacy capacity, and renewable energy credits (RECs) to the City since it began commercial operation.

## **ANALYSIS**

The City is required under section 10.1 of the 2005 PPA to consent in writing prior to any assignment by the Seller of its rights or obligations to another party, and such consent “shall not be unreasonably withheld or delayed”. HA RNG 1 LENDER LLC (“Lender”) provided a loan to Ameresco RNG Holdings I LLC (Holdings), a limited liability corporation owned by the same parent company as the Seller, secured in part by the collateral assignment by the Seller of all of its rights, title, and interest in the 2005 PPA.

The proposed collateral assignment (Exhibit A to Attachment A) of the 2005 PPA by the Seller triggers the consent requirement of section 10.1 of the 2005 PPA. The Seller proposed the

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<sup>7</sup> Resolution 8495: <https://www.cityofpaloalto.org/files/assets/public/v/1/city-clerk/resolutions/reso-8495.pdf>

attached Consent and Direct Agreement which the City Attorney's Office reviewed and negotiated modifications to maintain the City's rights and remedies as well as assignee's obligations under the 2005 PPA. Specifically, the attached agreement requires that, if the Lender forecloses on and takes assignment of the 2005 PPA, the Lender will be substituted for the Seller and assume all of the Seller's rights and obligations under the 2005 PPA. If the Lender further assigns or sells its interest in the 2005 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 2005 PPA obligations as well. This language is intended to ensure that the proposed assignment will not jeopardize the continued delivery of renewable electric output from the Ox Mountain landfill gas electric generating facility.

In addition to approval of the Consent and Direct Agreement with Lender and Holdings, staff recommends that Council delegate authority to the City Manager or their designee to execute any other administrative documents related to the City's six renewable energy PPAs that currently lack such a delegation of authority, that are consistent with the Palo Alto Municipal Code and City Council approved policies. Such a delegation of authority will ensure that the City is able to carry out routine administrative obligations, such as this approval of the Consent and Direct Agreement with Lender and Holdings, in a timely and efficient manner, without requiring any further action by Council. Experience has shown that routine administrative changes related to a project (particularly when the project owner seeks financing for the project) often require additional consent from the City, which staff can address with the City Manager and City Attorney's Office, so long as the changes do not exceed Council's original funding authority, and are consistent with the Palo Alto Municipal Code and Council-approved policies. Council has routinely provided this delegation of authority to the City Manager for all renewable energy PPAs starting in 2013; staff now seeks to extend this delegation of authority to the six renewable energy PPAs (approved between 2004 and 2010) that do not yet have it.

#### **FISCAL/RESOURCE IMPACT**

Approval of this collateral consent and direct agreement will have no fiscal or resource impact on the City.

#### **STAKEHOLDER ENGAGEMENT**

The consideration of this collateral consent and direct agreement does not involve or impact any stakeholders.

#### **ENVIRONMENTAL REVIEW**

The approval of this collateral consent and direct agreement and delegation of authority to the City Manager does not meet the definition of a project under Public Resources Code 21065 because it is an administrative government activity that will not result in any direct or indirect physical change to the environment as a result and therefore California Environmental Quality Act (CEQA) review is not required.

**ATTACHMENTS**

Attachment A: Resolution Approving Ameresco Consent and Direct Agreement

Attachment B: HASI-Ameresco - Direct Agreement

**APPROVED BY:**

Dean Batchelor, Director of Utilities

Staff: James Stack, PhD, Senior Resource Planner