

* NOT YET APPROVED *

Resolution No. _____

Resolution of the Council of the City of Palo Alto Authorizing the City Manager or Their Designee to Execute an Amendment to the Power Purchase Agreement with Ameresco Half Moon Bay LLC for the Purchase of up to 60,000 Megawatt-Hours per Year of Biogas Energy over a Term of up to 20 Years for a Total Not to Exceed Amount of \$147.2 Million

R E C I T A L S

A. The City of Palo Alto entered into a Power Purchase Agreement (PPA) with Ameresco Half Moon Bay LLC (Ameresco) in 2005 to purchase 50% of the output of the Ox Mountain landfill-gas-to-energy (LFGTE) project for a term of 20 years, aiming to secure a baseload source of renewable energy for the City.

B. In 2022, Ameresco determined that additional landfill was available at the Ox Mountain landfill and proposed an amendment to the PPA to increase the generating capacity of the LFGTE project, increase the contract price, and extend the contract term by approximately 17 years.

C. Utilities staff has conducted an economic assessment of the amendment and concluded that it would provide a net benefit to the City.

D. The proposed amendment would increase Palo Alto's electric supply by 7.2% during the 2029-2046 period, enhance the supply portfolio's diversity, and aid the City's compliance with its Renewable Portfolio Standard (RPS) obligations.

E. The proposed Ox Mountain PPA amendment offers a strategic opportunity to secure a long-term supply of baseload renewable energy, enhance the resilience of the City's electric supply portfolio, and advance the City's sustainability objectives.

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

SECTION 1. The Council hereby authorizes the City Manager, or their designee, to execute Amendment No. 1 (Exhibit A) to the Power Purchase Agreement (PPA) with Ameresco Half Moon Bay LLC (Ameresco) to increase the generating capacity of the Ox Mountain LFGTE project, increase the contract price, and extend the contract term by approximately 17 years.

SECTION 2. The Council hereby increases the maximum spending authority under the PPA from \$61,800,000 to \$147,200,000.

SECTION 3. The Council hereby waives the application of the anti-speculation requirement of Section D.1 of the City's Energy Risk Management Policy as it may apply to surplus electricity purchases resulting from the City's execution of this amendment, due to the

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small increase in the facility’s generating capacity, the significant uncertainty surrounding the City’s load and hydroelectric generation projections, and the City’s need for the output to continue complying with its Renewable Portfolio Standard (RPS) procurement and Resource Adequacy requirements.

SECTION 4. The Council hereby finds that the execution of this amendment does not meet the definition of a project under the California Environmental Quality Act (CEQA), pursuant to Public Resources Code Section 21065 and CEQA Guidelines 15378 because this activity would not result in a reasonably foreseeable direct or indirect change in the environment.

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

AMENDMENT NO. 1
TO
POWER PURCHASE AGREEMENT

This Amendment No. 1 to the Power Purchase Agreement dated January 19, 2005 (“First Amendment”) is made and entered into as of _____ (the “First Amendment Effective Date”), by and between Ameresco Half Moon Bay LLC, a Delaware limited liability company, (“Ameresco” or “Seller”) and the City of Palo Alto, a chartered city organized under the laws of the State of California (“Palo Alto” or “Buyer”) regarding the purchase and sale of additional energy from an expansion of Ameresco’s Plant located at the Ox Mountain Landfill (“Ox Mountain”).

Ameresco and Palo Alto may be referred to herein individually as a “Party” and collectively as the “Parties.” Capitalized terms used, but not defined herein shall have the meaning ascribed to such term in the Agreement.

RECITALS

WHEREAS, Palo Alto and Ameresco entered into a Power Purchase Agreement, dated January 19, 2005 (the “Agreement”), whereby Palo Alto purchases a Percentage Share of the Output from Ameresco’s facilities at the Ox Mountain Landfill (the “Ox Mountain”); and

WHEREAS, Ameresco is pursuing the permitting, installation and interconnection of additional generating capacity at Ox Mountain (referred to in the Agreement as “Expansion Plant”) with the goal of increasing the capacity of the facility by up to 3.0 MW (“Additional Capacity”); and

WHEREAS, on March 29, 2023 Ameresco and Palo Alto entered into a non-binding Letter of Intent wherein Ameresco intends to sell to Palo Alto, and Palo Alto intends to purchase from Ameresco, fifty percent (50%) of the Additional Capacity; and

WHEREAS, Ameresco anticipates that the Additional Capacity from the Expansion Plant will reach commercial operation during the first calendar quarter of 2026.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AMENDMENT

1. Section 1.9.1 is added to the Agreement as follows:

Section 1.9.1 Expansion Plant Commercial Operation Date: The date upon which Commercial Operation of the Expansion Plant first occurs.

2. Section 1.13.1 is added to the Agreement as follows:

Section 1.13.1 Expansion Plant Energy: The electricity generated by the Expansion Plant, of which a Percentage Share will be delivered to Buyer by the Seller

pursuant to this Agreement (as amended) at the Point of Interconnection, as expressed in units of kilowatt-hours (kWh) or megawatt-hours (MWh).

3. Section 2.1 Term is amended by adding the following paragraph to the end of existing Section 2.1:

Effective as of the Expansion Plant Commercial Operation Date, the Agreement shall continue until the twentieth (20th) anniversary of the Expansion Plant Commercial Operation Date.

4. Section 2.3 Price is amended by adding the following paragraph to the end of Section 2.3:

At and after the Expansion Plant Commercial Operation Date, Buyer shall pay Seller \$0.074 per kWh of Energy and Expansion Plant Energy delivered to Buyer at the Point of Interconnection, which price shall be escalated at the rate of either (i) 1% (of the then-current price) annually for years in which the CPI is three percent (3%) or less for the preceding twelve (12) months, or (ii) 2% (of the then-current price) annually for years in which the CPI is greater than three percent (3%) for the preceding twelve (12) months. The price escalation shall take effect on the anniversary of the first day of the first full month following the Expansion Plant Commercial Operation Date or, in the event the Expansion Plant Commercial Operation Date falls on the first day of the month, the Expansion Plant Commercial Operation Date. For the avoidance of doubt, at and after the Expansion Plant Commercial Operation Date, this pricing applies to both the initial Output and the Expansion Plant Output. CPI shall be defined as the Consumer Price Index, published by the U.S. Bureau of Labor Statistics as the “CPI Index – All Urban Consumers (West Region)”.

If any Additional Capacity from the Expansion Plant does not qualify as resource adequacy capacity for the purposes of meeting Buyer’s resource adequacy compliance requirements, as determined by the California Independent System Operator (CAISO), the price per MWh of all Energy delivered to Buyer at the Point of Interconnection shall be discounted by \$0.00093/kWh from the then-current Price.

4. Section 2.5 Right of First Refusal for Expansion Plant and Expansion Plant Output is amended by adding the following sub-section (c):

(c) As of the First Amendment Effective Date, Seller anticipates constructing and operating an Expansion Plant with an Additional Capacity up to three (3.0) MW (the “First Expansion Plant Output”), with an expected, but not guaranteed, Expansion Plant Commercial Operation Date in the first calendar quarter of 2026. In compliance with Section 2.5, Seller has offered Buyer the right to purchase its Percentage Share of the First Expansion Plant Output, and Buyer has exercised its right to take all of its Percentage Share of the First Expansion Plant Output.

5. Conditions Precedent. This First Amendment shall have no effect unless or until Seller provides written notice to Buyer that each of the following conditions have been achieved

or waived: (a) Seller has a fully executed amendment to that certain Landfill Gas Purchase Agreement between Ameresco Half Moon Bay, LLC and Browning-Ferris Industries of California, Inc., extending the term of that agreement for twenty (20) years from the date of the Expansion Plant Commercial Operation Date; and (b) Seller has obtained all material permits and authorizations from applicable Government Authorities to construct, own and operate the Expansion Plant. If Seller has not satisfied condition precedent (a) by December 31, 2024, Buyer may terminate this First Amendment by sending written notice to Seller.

6. Termination Right. If Seller, in its sole discretion, determines that the Expansion Plant is not economical, Seller may, by providing written notice to Buyer, terminate this First Amendment at any time on or before the later of (i) May 1, 2025, or (ii) 30 days after Seller's receipt of final approval for the Expansion Plant from San Mateo County under the California Environmental Quality Act and from the Bay Area Air Quality Management District with respect to the Ox Mountain air permit. Any termination of this First Amendment under Section 5 or 6 shall be a "no-fault" termination, and (i) no default or Event of Default will be deemed to have occurred under the Agreement in respect of any such termination, (ii) neither Party shall have any further liability to the other Party hereunder as a result of such termination, and (iii) the Agreement (without this First Amendment) will remain in full force and effect. If Seller has not satisfied the conditions precedent of this section and provided notice of same to Buyer prior to June 30, 2025, then Buyer may terminate this First Amendment by sending written notice to Seller.

7. Terms and Conditions of the Agreement. Other than as expressly set forth in this First Amendment, all of the terms and conditions of the Agreement, and the respective rights and performance obligations under the same, not otherwise modified by, or made inconsistent with, the provisions of this First Amendment, shall remain in full force and effect and shall apply to this First Amendment; provided that to the extent there is a conflict between the terms of this First Amendment and the terms of the Agreement, the terms of this First Amendment shall control to the extent of such conflict.

8. Governing Law. This First Amendment shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of California.

9. Counterparts. This First Amendment may be executed in two or more counterparts, each of which shall constitute an original, but all of which when taken together shall constitute but one and the same Agreement. Signatures to this First Amendment transmitted by facsimile, email, portable document format (or .pdf) or by any other electronic means intended to preserve the original graphic and pictorial appearance of this First Amendment shall have the same effect as the physical delivery of the paper document bearing original signature.

10. No Other Amendment. Except as expressly amended hereby, the terms and provisions of the Agreement remain in full force and effect and are ratified and confirmed by the Parties in all respects as of the First Amendment Effective Date.

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be signed as of the First Amendment Effective Date.

**THE CITY OF PALO ALTO,
CALIFORNIA**

**AMERESCO HALF MOON BAY LLC
By Ameresco, Inc., its sole member**

Approval as to Form:

By: _____

Name: Amy Bartell

Date: _____

By: _____

Name: _____

Title: _____

**THE CITY OF PALO ALTO,
CALIFORNIA**

Approval by Utilities Director

By: _____

Name: Dean Batchelor

Date: _____

**THE CITY OF PALO ALTO,
CALIFORNIA**

Approval by City Manager

By: _____

Name: _____

Date: _____