



**CITY OF PALO ALTO
CITY COUNCIL
Special Meeting**

**Monday, November 27, 2023
Council Chambers & Hybrid
5:30 PM**

Agenda Item

6. 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



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)¹
 - b. Ameresco Santa Cruz LLC (Resolution 8473, November 2004)²
 - c. Ameresco Half Moon Bay LLC (Resolution 8495, January 2005)³
 - d. Ameresco Keller Canyon LLC (Resolution 8552, August 2005)⁴
 - e. Ameresco Johnson Canyon LLC (Resolution 8971, October 2009)⁵
 - f. Ameresco San Joaquin LLC (Resolution 9055, May 2010)⁶

¹ 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>

² 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>

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

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

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

⁶ 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)⁷). (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

⁷ 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

* 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.

* NOT YET APPROVED *

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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* NOT YET APPROVED *

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

CONSENT AND DIRECT AGREEMENT

This CONSENT AND DIRECT AGREEMENT (this “Agreement”), dated as of October 11, 2023, is entered into by and among (i) The City of Palo Alto, a chartered city organized and existing under the laws of the State of California (together with its permitted successors and assigns, the “Undersigned”), (ii) HA RNG 1 LENDER LLC, a limited liability company organized and existing under the laws of the State of Delaware (the “Lender” and, together with its successors, designees, and assigns, the “Secured Parties”), and (iii) Ameresco Half Moon Bay LLC, a limited liability company organized and existing under the laws of the State of Delaware (together with its permitted successors and assigns, other than the Lender or a Subsequent Owner (as defined below), the “Assignor”).

RECITALS

A. Assignor has contracted for the rights to the landfill gas collected from the Ox Mountain Landfill that will be used in a landfill gas-fueled electric generation facility on a site at the Ox Mountain Landfill (the “Plant”).

B. Assignor and the Undersigned entered into that certain Power Purchase Agreement, dated as of January 19, 2005 (as further amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof, the “Assigned Agreement”).

C. Pursuant to that certain Amended and Restated Loan Agreement, dated as of September 28, 2023, by and between Ameresco RNG Holdings I LLC, a Delaware limited liability company (“Holdings”), and the Lender (as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “Loan Agreement”), the Lender has agreed to provide a loan to Holdings, with such loan secured in part by the collateral assignment by the Assignor of all of its rights, title, and interest in, to, and under the Assigned Agreement to and for the benefit of the Secured Parties.

D. It is a condition precedent to the obligations of the Lender to make the loan that this Agreement be executed and delivered by the Assignor, the Lender, and the Undersigned.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows (provided that, in the event of any conflict between this Agreement and the Assigned Agreement, this Agreement shall govern and control in all cases):

1. Definitions. Each capitalized term used and not otherwise defined herein will have the meaning assigned to such term (whether directly or by reference to another document or agreement) in the Assigned Agreement.

2. Assignment and Agreement

(a) **Consent to Collateral Assignment.** The Undersigned (i) is hereby notified and acknowledges that the Lender has made extensions of credit to the Assignor, pursuant to the terms of the Loan Agreement and other agreements and documents related thereto (each a “Financing Document” and together the “Financing Documents”), in reliance upon the execution and delivery by the Undersigned of this Agreement; (ii) consents to the collateral assignment of all of the Assignor’s right, title, and interest in, to, and under the Assigned Agreement, including, without limitation, all of the Assignor’s rights to receive all payments due and to become due to the Assignor under or with respect to the Assigned Agreement (collectively, the “Assigned Interests”); and (iii) acknowledges the right of the Lender, in the exercise of the Lender’s rights and remedies pursuant to the Financing Documents, upon written notice to the Undersigned, to make all demands, give all notices, take all actions, and exercise all rights of the Assignor under the Assigned Agreement (including, without limitation, subsequent assignments of the Assigned Agreement or the Assigned Interests, as provided herein).

(b) **Subsequent Owner.** (i) The Undersigned agrees that, if the Lender notifies the Undersigned in writing that it has foreclosed on and taken assignment of the Assigned Agreement, or assigned or sold the Assigned Interests or any portion thereof, then (A) the Lender or its permitted successor, assignee, and/or designee, or any purchaser of the Assigned Interests following a permitted sale, assignment, or other transfer of the Assigned Interests (a “Subsequent Owner”) will be substituted for the Assignor under the Assigned Agreement and (and further, Lender through this Agreement and without further writings or instruments being necessary can, and hereby does, assume all of the Assignor’s rights and obligations as of the date of such foreclosure, and is duly substituted for the Assignor in such case) and (B) the Undersigned shall (1) recognize the Lender or the Subsequent Owner, as the case may be, as its counterparty or beneficiary, as applicable, under the Assigned Agreement and (2) continue to perform its obligations under the Assigned Agreement in favor of the Lender or the Subsequent Owner, as the case may be; *provided that* such Subsequent Owner has assumed in writing (through an “Assumption Agreement”) all of the Assignor’s rights and obligations (including, without limitation, the obligation to cure any then-existing payment and performance defaults, but excluding any obligation to cure any then-existing performance defaults which by their nature are incapable of being cured) under the Assigned Agreement (“Incurable Defaults”); but further *provided, however*, that the Undersigned does not waive any rights it may have under the Assigned Agreement for such Incurable Defaults), and which Assumption Agreement must be fully executed

before any other party besides Lender becomes a Subsequent Owner under this Agreement by any permitted sale, assignment or other transfer, and further before Lender may assign or otherwise transfer the rights and obligations of the Assigned Agreement to any other party, and *provided further* that, in the case of any such assumption of the Assigned Agreement by a Subsequent Owner, the Undersigned has reasonably determined that such purchaser or transferee has the technical and financial capability to perform the Assignor's obligations under the Assigned Agreement to no less than the extent possessed by the Assignor immediately prior to such transfer, or if such Subsequent Owner lacks such capabilities, such Subsequent Owner has contracted with advisors or contractors who possess such capabilities, as reasonably determined by the Undersigned; and (ii) without limiting anything herein, the warranties provided by the Undersigned under the Assigned Agreement shall continue in full force and effect (until the expiration of the applicable warranty periods set forth in the Assigned Agreement) in the event that the Lender or a Subsequent Owner succeeds to the Assignor's right, title, and interest in the Assigned Agreement. For avoidance of doubt, except for Lender, no party may become a Subsequent Owner without first executing an Assumption Agreement in a form reasonably acceptable to the Undersigned.

(c) **No Amendments.** The Undersigned agrees that it shall not, without the prior written consent of the Lender or Subsequent Owner, (i) sell, assign, encumber or otherwise transfer any of its rights under the Assigned Agreement, other than in accordance with the Assigned Agreement, (ii) consent to any assignment or other transfer by the Assignor of its rights under the Assigned Agreement, (iii) consent to any material amendment of the Assigned Agreement, (iv) terminate, cancel or suspend performance under the Assigned Agreement, except as provided in the Assigned Agreement or by operation of law, or (v) consent to any voluntary termination, cancellation, or suspension of performance by the Assignor under the Assigned Agreement; *provided, however*, that the Undersigned may, without the prior consent of the Lender or Subsequent Owner, assign, sell, or otherwise transfer its right, title, and interest in the Assigned Agreement (in whole or in part) so long as the Undersigned contemporaneously assigns this Agreement to the acquiring party.

(d) **Right to Cure.** The Lender may cure any breach or default by the Assignor under the Assigned Agreement. In the event of a default by the Assignor in the performance of any of its obligations under the Assigned Agreement, or upon the occurrence or non-occurrence of any event or condition under the Assigned Agreement that would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable the Undersigned to terminate the Assigned Agreement (such default, event, or condition and the Assignor's failure to cure the same, a "Default"), the Undersigned shall not terminate the applicable Assigned Agreement until it first gives prompt written notice of such Default to the Lender and affords the Lender or its designee(s) or assignee(s) a period of no more than 10 days (or, if such Default is a nonmonetary default, such longer period as is required so long as any such party has commenced and is diligently pursuing appropriate action to cure such Default, *provided* that such longer period will not exceed 30 days) from receipt of such notice to cure such Default; *provided, however*, that, if possession of the Plant is necessary to cure such Default and the Lender or its designee(s) or assignee(s) has commenced foreclosure proceedings, the Lender or its designee(s) or assignee(s) will be allowed a reasonable time to complete such proceedings; *provided, further*, that, if the Lender or its designee(s) or assignee(s) is prohibited from curing any such Default by any process, stay, or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency

proceeding or other similar proceeding, then the time periods specified herein for curing a Default will be extended for the period of such prohibition. If the Assigned Agreement is rejected or otherwise terminated as a result of any bankruptcy or insolvency proceeding affecting the assigning party, then, to the extent permitted by applicable law, the non-assigning party will, at the request of the Lender, enter into a new agreement with Lender or a permitted assignee thereof having terms no less favorable to the non-assigning party than the terms of the Assigned Agreement; *provided* that any obligations of the assigning party that were outstanding at the time of any such bankruptcy or insolvency proceeding are paid in full or brought current, as the case may be, at the time any such new agreement is entered into (without taking into account the effect of any such bankruptcy or insolvency proceedings).

(e) **Limitations on Liability.** The Undersigned acknowledges and agrees that neither the Lender nor a Subsequent Owner will have any liability or obligation under the Assigned Agreement merely as a result of entering into this Agreement, nor will the Lender or a Subsequent Owner be obligated or required to (A) perform any of the Assignor's obligations under the Assigned Agreement, except during any period in which the Lender or a Subsequent Owner has assumed the Assignor's rights and obligations under the Assigned Agreement pursuant to Section 2(b)(i) above, or (B) take any action to collect or enforce any claim for payment. If the Lender or a Subsequent Owner has assumed the Assignor's rights and obligations under the Assigned Agreement (Lender and/or Subsequent Owner still being obligated to observe the terms of such Assigned Agreement) pursuant to Section 2(b)(i) above, the sole recourse of the Undersigned in seeking enforcement of the obligations under such Assigned Agreement will be limited to claims against the interests held by the Lender or a Subsequent Owner in the Plant.

(f) **Delivery of Notices.** The Assignor shall deliver to the Lender, concurrently with the delivery thereof to the Assignor, a copy of each notice, request, or demand given by the Undersigned to the Assignor pursuant to the Assigned Agreement relating to a default by the Assignor under the Assigned Agreement.

3. Payments Under the Assigned Agreement

(a) **Payments.** The Undersigned shall pay all amounts (if any) payable by it under the Assigned Agreement in the manner and as and when required by the Assigned Agreement directly into the account specified on Exhibit A hereto, or to such other person, entity, or account as specified from time to time by the Lender to the Undersigned in writing. Notwithstanding the foregoing, from and after such time as any entity or person has become a Subsequent Owner pursuant to the terms hereof, the Undersigned shall pay all such amounts directly to such Subsequent Owner or an account designated by the Subsequent Owner.

(b) **No Offset, Etc.** All payments required to be made by the Undersigned under the Assigned Agreement will be made without any offset, recoupment, abatement, withholding, reduction, or defense whatsoever, other than those allowed by the terms of the Assigned Agreement or applicable law.

4. Representations and Warranties of the Undersigned. The Undersigned hereby represents and warrants, in favor of the Lender, as of the date hereof, that:

(a) the Undersigned (i) a chartered city and municipal corporation in the State of California, (ii) is duly qualified, authorized to do business on, and in good standing in every jurisdiction necessary to perform its obligations under the Assigned Agreement and this Agreement, and (iii) has all requisite power and authority to enter into and to perform its obligations hereunder and under the Assigned Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby;

(b) the execution, delivery and performance by the Undersigned of this Agreement and the Assigned Agreement have been duly authorized by all necessary corporate or other action on the part of the Undersigned and do not require any approvals, filings with, or consents of any entity or person, which have not previously been obtained or made;

(c) with respect to the Undersigned, each of this Agreement and the Assigned Agreement is in full force and effect, has been duly executed and delivered on behalf of the Undersigned by the appropriate officers of the Undersigned, and constitutes the legal, valid, and binding obligation of the Undersigned, enforceable against the Undersigned in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally, and (ii) general equitable principles (whether considered in a proceeding in equity or at law);

(d) there is no legislation, litigation, action, suit, proceeding or investigation pending or, to the Undersigned's knowledge, threatened against the Undersigned before or by any court, administrative agency, arbitrator, or governmental authority, body, or agency that, if adversely determined, individually or in the aggregate, (a) could adversely affect the performance by the Undersigned of its obligations hereunder or under the Assigned Agreement, (b) could have a material adverse effect on the condition (financial or otherwise), business, or operations of the Undersigned, or (c) questions the validity, binding effect, or enforceability of this Agreement or of the applicable Assigned Agreement, any action taken or to be taken pursuant hereto or thereto, or any of the transactions contemplated hereby or thereby;

(e) all governmental approvals necessary for the execution, delivery and performance by the Undersigned of its obligations under the Assigned Agreement have been obtained and are in full force and effect, except those governmental approvals routinely obtained during the ordinary course of business during the execution of the Plant;

(f) Assignor has performed all of its obligations under the Assigned Agreement in all material respects, and neither the Undersigned nor Assignor is in breach or default of any of its obligations thereunder beyond any notice and cure periods (nor has any event occurred which would constitute a default but for the giving of notice or passage of time);

(g) to the Undersigned's knowledge, there are no facts entitling the Undersigned to any claim, counterclaim, offset or defense against Assignor with respect to the Assigned Agreement;

(h) Assignor does not owe any indemnity payments or other amounts to the Undersigned under the Assigned Agreement, and the Undersigned is not aware of any existing counterclaims, offsets, or defenses against the Assignor under the Assigned Agreement; and

(i) all representations and warranties made by the Undersigned in the Assigned Agreement were true and correct in all material respects on and as of the date when made and, except for those that by their terms speak as of a specific date, are true and correct in all material respects on and as of the date of this Agreement.

Each of the representations and warranties set forth in this Section 4 will survive the execution and delivery of this Agreement and the Assigned Agreement and the consummation of the transactions contemplated hereby and thereby.

5. Miscellaneous

(a) **Notices.** Any communications between the parties hereto or notices provided herein to be given may be given to the following addresses:

If to the Assignor:

c/o Ameresco, Inc.
111 Speen Street, Suite 410
Framingham, MA 01701
Attention: Spencer Doran Hole, EVP & CFO
Telephone: (508) 661-2200
Email: dhole@ameresco.com

with a copy (not constituting notice) to:

Ameresco, Inc.
111 Speen Street, Suite 410
Framingham, MA 01701
Attention: General Counsel
Email: dcorrsin@ameresco.com and legalnotices@ameresco.com

If to the Undersigned:

Amy Bartell
City Attorney's Office
250 Hamilton Ave, 8th Floor
Palo Alto, CA 94301
Telephone: 650-329-2171
Email: Amy.Bartell@CityofPaloAlto.org

If to the Lender: HA RNG 2 Lender LLC

One Park Place, Suite 200
Annapolis, MD 21401
Attention: Legal Department
Telephone: (410) 571-9860
Fax: (410) 571-6199

Email: legaldepartment@hasi.com

All notices and communications provided for hereunder must be in writing and sent (a) by electronic mail (email), (b) by registered or certified mail with return receipt requested (postage prepaid), or (c) by an internationally recognized overnight delivery service (with charges prepaid). Notices under this Section 5 will be deemed given only when actually received. Any party may change its address for notice hereunder by giving of 30 days' notice to the other parties in the manner set forth hereinabove.

(b) **Governing Law and Venue.** This Agreement (i) will be governed by, construed, and enforced in accordance with governing law of the Assigned Agreement, and (ii) is subject to the venue provisions of the Assigned Agreement.

(c) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when delivered (including electronic delivery in Portable Document Format (.pdf)) is an original, but all of which together constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto.

(d) **Headings Descriptive.** The headings of the several sections and subsections of this Agreement are inserted for convenience only and do not in any way affect the meaning or construction of any provision of this Agreement.

(e) **Severability.** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction will (to the full extent permitted by law) not invalidate or render unenforceable such provision in any other jurisdiction.

(f) **Amendment, Waiver.** Neither this Agreement nor any of the terms hereof may be terminated, amended, restated, amended and restated, supplemented, or otherwise modified except by an instrument in writing signed by the Undersigned and the Lender.

(g) **Successors and Assigns.** This Agreement is binding upon and benefits the Undersigned, the Lender, and their respective permitted successors and assigns.

(h) **Third-Party Beneficiaries.** The Undersigned and the Lender hereby acknowledge and agree that Secured Parties are intended third-party beneficiaries of this Agreement.

(i) **Refinancing.** The Undersigned agrees and acknowledges that the loan and other secured obligations under the Loan Agreement may be refinanced, extended, renewed, or replaced from time to time pursuant to another bank financing, an institutional financing, a capital markets financing, a lease financing, or any other combination thereof or other form of financing and that, in any such event, (i) this Agreement will remain in full force and effect and continue to apply in favor of the Lender or any replacement collateral agent and secured parties (the replacement collateral agent and secured parties in such case being the "New Secured Parties") under such refinancing, extension, renewal, replacement, or other arrangements, including, as applicable, any additional or replacement credit or security documents entered into in connection therewith, and

(ii) the terms “Lender,” “Loan Agreement,” “Financing Documents,” and “Secured Parties,” as used hereunder will in each case be deemed to refer to such parties, loans, or agreements, as may be the case, under or in connection with the applicable refinancing, extension, renewal, replacement, or other arrangements; *provided* that the Assignor shall deliver notice to the Undersigned of the identity of such new parties and new payment instructions within 15 days of such refinancing, and further provided that such New Secured Parties have agreed in writing in a form reasonably acceptable to Undersigned to assume the obligations of this Agreement prior to becoming New Secured Parties.

(j) **Further Assurances.** The Assignor and the Undersigned hereby agree to execute and deliver all such instruments and take all such action as may be reasonably necessary to effectuate fully the purposes of this Agreement.

(k) **WAIVER OF TRIAL BY JURY.** THE PARTIES HERETO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION BROUGHT ON OR WITH RESPECT TO THIS AGREEMENT.

(l) **Entire Agreement.** This Agreement embody the entire agreement and understanding between the parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof.

[Remainder of Page Intentionally Left Blank; Signature Pages Immediately Follow]

IN WITNESS WHEREOF, the parties hereto, by their officers duly authorized, intending to be legally bound, have caused this Agreement to be duly executed and delivered as of the date first above written.

AMERESCO HALF MOON BAY LLC, as Assignor

By: _____

Name:

Title:

THE CITY OF PALO ALTO, as Undersigned

By: _____

Name:

Title:

CITY OF PALO ALTO

By: _____

Name: Dean Batchelor

Title: Director of Utilities

APPROVED AS TO FORM:

By: _____

Name: Amy Bartell

Title: Assistant City Attorney

HA RNG 1 LENDER LLC
as Lender

By: _____
Name:
Title:

Exhibit A

Payment Instructions

Wilmington Trust/M&T Bank

1100 North Market Street

Wilmington, DE 19890-1605

ABA NO. 031100092

For Credit to Account # 158428-000

For Credit to Account Name: Ameresco RNG – Revenue AC