

DISCUSSION

On August 3, 2023, Ameresco informed AMP staff of their request to assign this agreement to their lender, HA RNG 1 LENDER LLC, for use as collateral on a loan for Ameresco's new business activities. The loan is unrelated to the potential expansion of the Ox Mountain power plant. The form of the assignment is a separate assignment agreement, attached in Exhibit A. The power plant will revert to the lender only in the case of a default on the loan.

According to Section 10.1 of AMP's PPA with Ameresco, attached in Exhibit B, "The rights and obligations of this Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed."

As part of the review of the proposed assignment agreement by AMP's legal counsel, multiple sections were identified that could potentially limit AMP's rights and remedies contained within the PPA. AMP's counsel proposed new language that strengthened all such sections, ensuring AMP's rights and remedies, as well as Assignee's obligations, would remain with the assignment of the contract. Importantly, AMP also retains the ability to reasonably determine that the Assignee has the technical and financial capability to perform the obligations of the PPA prior to the transfer. The final assignment agreement is the result of negotiations between AMP, Palo Alto, HA RNG 1 LENDER LLC, and Ameresco.

FINANCIAL IMPACT

There is no financial impact.

EXHIBITS

- A. Assignment Agreement
- B. Power Purchase Agreement
- C. Resolution Recommending City Council Approval of Assignment Agreement and Delegation to the General Manager to Execute Said Assignment Agreement

