

FIRST AMENDMENT TO THE
POWER PURCHASE AND SALE AGREEMENT FOR ELECTRICITY FROM
QUALIFYING RENEWABLE RESOURCES BY AND BETWEEN THE CITY OF
SANTA CLARA AND AMERESCO FORWARD LLC

This First Amendment to the Power Purchase and Sale Agreement for Electricity from Qualifying Renewable Resources by and Between the City of Santa Clara and Ameresco Forward LLC (the “Amendment”) is dated as of March _____, 2023, by and between the City of Santa Clara, California, a chartered California municipal corporation with its principal place of business located at 1500 Warburton Avenue, Santa Clara, CA 95050 (“City”), and Ameresco Forward LLC, a Delaware limited liability company (“Seller”). City and Seller are sometimes individually referred to herein as “Party” and collectively as “Parties.”

Recitals

A. City, as Buyer and Ameresco, as Seller, are Parties to that certain Power Purchase and Sale Agreement for Electricity from Qualifying Renewable Resources by and Between the City of City and Ameresco Forward LLC, effective as of May 25, 2010 (the “Agreement”).

B. The Parties desire to amend the Agreement on the terms set forth in this Amendment.

Agreements

In consideration of the covenants and agreements contained in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, City and Ameresco, each intending to be legally bound, hereby agree as follows:

1. Recitals. Each of the above recitals is true and correct and incorporated herein as an integral part of this Amendment.

2. Section 10.01. Section 10.01 of the Agreement is hereby amended by adding the following subsection 10.01(g):

“(g) Subject to the terms and conditions of this subsection, Seller may terminate the Agreement by December 31, 2025 (the “Early Termination Date”). Seller may extend the Early Termination Date (“Extended Early Termination Date”) in one-year increments; provided, prior to the expiration of the Early Termination Date, or expiration of the Extended Early Termination Date, Seller gives the City: (1) written notice of its intent to extend the Early Termination Date; and (2) \$50,000 within sixty (60) days of this written notice for each one-year extension for the Early Termination Date or Extended Early Termination Date. In addition to Seller’s compliance with the foregoing requirements, if applicable, no early termination of this Agreement shall be effective unless all of the following conditions are met:

(i) Seller provides written Notice of Termination to Buyer of its intent to terminate the Agreement at least six (6) months prior to the effective date of the termination (the “Early Termination Effective Date”);

(ii) Seller pays the City \$250,000 by the Early Termination Effective Date; and

(iii) In the event Seller sets an Early Termination Effective Date earlier than the Early Termination Date, Seller shall pay the City \$29,167 for each full or partial month the Early Termination Effective Date precedes Early Termination Date.”

3. Section 10.02 Notice of Termination is amended by adding the following to the end of that section:

“Notwithstanding the foregoing, Notice of Termination shall have the meaning contained in subsection 10.1(g) for any early termination processed thereunder and, accordingly, the first two sentences of this Section 10.2 are not applicable to such termination.”

4. Continuing Effect. Except as specifically amended hereby, all of the terms and conditions of the Agreement shall remain in full force and effect. In the event of any conflict between the terms and provisions of the Agreement and this Amendment, the terms and provisions of this Amendment shall govern and prevail.

5. Miscellaneous. Capitalized terms not otherwise defined in this Amendment shall have the meanings given to them in the Agreement as amended by this Amendment. This Amendment shall be governed by and construed in accordance with the laws of the State of California. This Amendment may be executed in two or more original or electronically transmitted (via facsimile or e-mail) counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

(Signatures on Page 3 of 3)

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IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

AMERESCO:

AMERESCO FORWARD LLC,
a Delaware limited liability company
By: Ameresco, Inc., its sole member

By: _____
Name: _____
Title: _____

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

GLEN R. GOOGINS
City Attorney

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“CITY”