TO:       HONORABLE CITY COUNCIL

FROM:       CITY MANAGER       DEPARTMENT: UTILITIES

DATE:       MARCH 10, 2008

SUBJECT:  ADOPTION OF A RESOLUTION APPROVING AMENDMENT NO. 1 TO THE LONG-TERM POWER PURCHASE AGREEMENT WITH AMERESCO KELLER CANYON, L.L.C. FOR THE PURCHASE OF ELECTRICITY GENERATED BY LANDFILL GAS FOR A TERM OF 20 YEARS AND AN AMOUNT NOT TO EXCEED $21.7 MILLION

RECOMMENDATION

Staff recommends that Council adopt the attached resolution approving Amendment No. 1 to the Long-Term Power Purchase Agreement with Ameresco Keller Canyon, LLC. for a 50% share of the 3.0 to 4.3 megawatt (MW) (gross) capacity of the Keller Canyon landfill generating facility located in Pittsburg, California.

- The amended contract price is $62.50/MWh in year 1, escalating at 1.5% per year, increased from the original $59.00/MWh in year 1, also escalating at 1.5% per year.

- The amended total contract amount is $21.7 million, reduced from the original $22.8 million due to a reduction in generation capacity.

- The term of the agreement is 20 years, unchanged from the original agreement.

- The resolution authorizes the City Manager to sign the amendment to the agreement on behalf of the City.
BACKGROUND

On March 5, 2007 the City Council approved revised Long-Term Electric Acquisition Plan (“LEAP”) Guidelines (CMR:318:07), which direct staff to pursue a target level of new renewable purchases of 20% of the expected portfolio load by 2008 and increasing to a 30% target level by 2012 and 33% by 2015, while ensuring that the retail rate impact does not exceed 0.5 ¢/kWh on average. To date, Council has approved five long-term renewable energy contracts. Three of these contracts are operating (PPM High Winds, PPM Shiloh I Wind, and Ameresco Santa Cruz Landfill) and account for 13.5% of supply, one is under construction (Ameresco Half Moon Bay Landfill), which will account for 4% of supply, and one is preparing to initiate construction (Ameresco Keller Canyon) which will provide another 1% of supply. Staff is currently negotiating with additional parties to meet the targets for 2008 and beyond.

On August 5, 2005, the City entered into a power purchase agreement with Ameresco Keller Canyon, L.L.C. Energy, Inc. (“Ameresco”) to provide renewable power generated by the proposed Keller Canyon Landfill electric generating facility to be located in Pittsburg, California (CMR:350:05, Resolution #8552). The contract amount was $22.8 million over the 20-year term of the agreement, with a planned installed gross capacity of 3.0 to 4.3 MW, and a net capacity at the point of interconnection between 2.8 MW and 4.1 MW. Alameda Power & Telecom (AP&T) is purchasing 50% of the output from the proposed plant and the City is purchasing the other 50%.

On August 22, 2007, Ameresco notified the City and AP&T that the initial capacity of the plant will be 3.808 MW (gross nameplate). On December 4, 2007, Ameresco notified the City and AP&T that due to a series of significant unanticipated cost overruns incurred by the project to comply with local building codes, fire protection, habitat protection and air quality permitting requirements, Ameresco is now unable to obtain financing for the project with the pricing in the original agreement. Ameresco requested a 6% contract price increase in order to be able to move forward with construction.

Ameresco has been a diligent and cooperative supplier to date, and has earned a stellar reputation in the industry. Ameresco was named the 2007 Industry Partner of the Year by the U.S. Environmental Protection Agency’s Landfill Methane Outreach Program.

DISCUSSION

Staff recommends that Council adopt a Resolution approving Amendment No. 1 to the Long-Term Power Purchase Agreement with Ameresco Keller Canyon, LLC. for a 50% share of the 3.0-4.3 MW (gross) capacity of the Keller Canyon landfill generating facility located in Pittsburg, California. The term of the agreement is 20 years, unchanged from the original agreement. The new total contract amount is $21.7 million in spite of the increased capital costs, due to the facility’s slightly lower generation capacity.

The Ameresco Keller Canyon project has incurred additional project capital costs of over $2.5 million dollars. Staff has reviewed documentation of the various additional expenses, and has verified that costs have been incurred by the project in order to comply with local building codes, CMR:150:08
fire prevention, habitat protection, and air permitting requirements, that were not anticipated by Ameresco or included in the economic modeling of the project. Staff believes that Ameresco has worked in good faith to contain the construction costs while not adversely impacting the quality of the project, and that the requested price increase of 6% is in the best interests of the City. Ameresco is shouldering a substantial portion of the additional costs, and the price even after the increase is substantially lower than the replacement costs. AP&T staff are requesting approval from the Alameda City Council in parallel with this request.

The City could instead reject the price increase request, in which case the City would need to procure an equivalent amount of renewable electricity at a substantially higher price, and AP&T would then hold the right of first refusal to purchase Palo Alto’s share of the output at the proposed price.

A copy of the original contract is provided as Attachment C for Council and available to the public on file with the City Clerk. The key terms of the contract, as amended, are as follows:

- **Term:** 20 years, with deliveries commencing when construction is completed and the facility is operational. The Keller Canyon facility is expected to be operational by November 2008.

- **Quantity:** 50% of the output from the facility. Keller Canyon will have a gross capacity of 3.808 MW, (2.895 MW net), with expected annual generation of 22,800 to 30,000 MWh (11,400–15,000 MWh to Palo Alto, or approximately one percent of the City’s annual load). The contract includes a right to purchase the output from additions to the facility at a price determined at the time that additions are proposed, and the option for Palo Alto and AP&T to each assign its share of the contract to the other. Any such amendments would be subject to Council approval.

- **Product:** Electric generation from landfill gas (LFG) operates around the clock, except for scheduled and unplanned equipment outages. NCPA will serve as scheduling coordinator for the facility.

- **Price:** $62.50/MWh in the first year, escalating at 1.5% per year, for a total contract amount of $21,700,000, based on estimated generation. The price in year 20 is $82.93/MWh.

- **Credit:** Ameresco, Inc. is a small company relative to the large investment-grade energy companies and does not have a credit rating from Moody’s or Standard and Poor’s. Energy deliveries are tied to a specific generator and specific location, as opposed to market contracts whose deliveries are often backed by financial strength or collateral rather than a physical asset. The contract includes minimum equipment availability requirements, and provisions to allow Palo Alto or Alameda to take over operations of the facility should Ameresco stop operating the facility. Council waived the investment-grade credit rating requirement for this vendor, otherwise applicable to electric power contracts.
• Off-Ramps: Either party may terminate the contract if the other party does not meet its obligations under the contract, which include performance, payment, and meeting permitting, construction, and operation date milestones. The contract includes penalty payments for late completion of the project. Should the contract be terminated due to default, any damages, such as landfill gas energy replacement cost, that may be incurred are only due to the non-defaulting party. Venue for dispute resolution is the County of San Francisco instead of Santa Clara County due to the joint purchase with AP&T.

RESOURCE IMPACT

The estimated annual cost is $696,000 in the first year, rising to $1,112,000 in year 20. The average impact of the proposed change in contract price is approximately $48,000 per year, with a total cost impact of $960,000 over 20 years. These costs have been factored into long-term budget projections, and will be included in future budget year proposals. Annual costs may fluctuate slightly due to the as-delivered nature of a generator-specific purchase, but is expected to be within 5% of the estimated cost.

The 20-year price schedule is $62.50/MWh escalating at 1.5% per year, which is roughly $8.00/MWh below the current projected prices for base load electricity. This difference means there is a slightly favorable retail rate impact relative to market prices of about -0.1¢/kWh. The contract facilitates meeting the renewable energy supply procurement targets within the ½¢/kWh limit approved by Council.

POLICY IMPLICATIONS

Renewable energy supplies are required to meet the targets established by Council in LEAP Guideline #6 (Renewable Energy Supply). The proposed renewable energy supply contract is a key element of the LEAP Implementation Plan (CMR:169:06) and supports the Council-approved Utilities Strategic Plan (CMR 432:02). The contract also supports the City’s Sustainability Policy Statement, adopted June 18, 2007 (CMR:260:07), the Green Government Pledge, adopted July 19, 1999 (CMR 284:99), the Palo Alto Climate Protection Plan (CMR:435:07), and elements of the Comprehensive Plan, specifically:

1. GOAL N-9: A clean, efficient, competitively-priced energy supply that makes use of cost-effective renewable resources, and Policies

2. POLICY N-44: Maintain Palo Alto’s long-term supply of electricity and natural gas while addressing environmental and economic concerns.

3. POLICY N-48: Encourage the appropriate use of alternative energy technologies.
ENVIRONMENTAL REVIEW

Execution of the Amendment does not constitute a project pursuant to Sec.21065 of the California Environmental Quality Act (CEQA), thus no environmental assessment is required. Ameresco Keller Canyon, L.L.C. assumes responsibility for future CEQA compliance associated with development, finance, construction and operation of the facility.

ATTACHMENTS

A: Resolution approving Amendment No. 1 to a contract with Ameresco Keller Canyon, L.L.C. to purchase electricity generated by landfill gas from the Keller Canyon Landfill generating facility.
B: Amendment No. 1 to Long-term power purchase agreement (landfill gas electric power) made between the City of Palo Alto, as Purchaser and Ameresco Keller Canyon, L.L.C.
C: Long-term power purchase agreement (landfill gas electric power) made between the City of Palo Alto, as Purchaser and Ameresco Keller Canyon, L.L.C. Attachment C is included as an attachment in Council member packets and available for review by the public in the City Clerk’s Office.

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