

Meeting Date: 4-9-13

AGENDA REPORT

Agenda Item # 6B2

City of Santa Clara, California



Date: April 2, 2013
To: City Manager for Council Action
From: John C. Roukema, Director of Electric Utility
Subject: Approval of the Consent and Agreement with RE Rosamond One LLC and Deutsche Bank Trust Company Americas for Assignment of the Power Purchase Agreement for Green Electric Power

EXECUTIVE SUMMARY:

On July 14, 2011, the City, through its municipal utility Silicon Valley Power (SVP), and RE Rosamond One LLC executed a Power Purchase Agreement for up to 55,600 megawatt hours per year of electricity generated from a solar photovoltaic power plant located in Kern County, California and interconnecting to the Rosamond Substation. Recurrent Energy is the developer of the RE Rosamond One LLC solar photovoltaic project. Power deliveries are expected to begin at the end of 2013. RE Rosamond One LLC requests the City's consent to assignment of the agreement to Deutsche Bank Trust Company Americas, which is providing debt funding to Rosamond to build and operate the project. A copy of the Consent and Agreement is available for review in the Council offices.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

This agreement provides for Deutsche Bank Trust Company, as the Collateral Agent for the project, to have the right to pay for Rosamond's obligations under the Power Purchase Agreement and to have the opportunity to cure any defaults under the contract.

ECONOMIC/FISCAL IMPACT:

There is no cost to the City other than administrative staff time and expense by approval of this Consent and Assignment.

RECOMMENDATION:

That Council approve, and authorize the City Manager to execute, the Consent and Agreement with RE Rosamond One LLC and Deutsche Bank Trust Company Americas regarding the assignment of the Power Purchase Agreement with RE Rosamond One LLC for the purchase of green electric power.



John C. Roukema
Director of Electric Utility

APPROVED:


Julio J. Fuentes
City Manager

Documents Related to this Report:

- 1) *Consent and Agreement with RE Rosamond One LLC and Deutsche Bank Trust Company Americas*

CONSENT AND AGREEMENT

CONSENT AND AGREEMENT, dated as of _____, 2013 (this "Agreement"), among the City of Santa Clara, a California municipal corporation (the "Power Purchaser"), RE Rosamond One LLC, a Delaware limited liability company ("Assignor"), and Deutsche Bank Trust Company Americas, a New York banking corporation, as collateral agent (together with its successor and permitted assigns in that capacity, the "Collateral Agent") under the Collateral Agency Agreement, dated as of _____, 2013, among Assignor, the Collateral Agent, the holders of Assignor's Notes (as defined below) and the other parties thereto ("Collateral Agency Agreement").

The parties agree as follows, anything in the Assigned Agreement (as defined below) to the contrary notwithstanding:

ARTICLE 1 ASSIGNED AGREEMENT

References herein to the "Assigned Agreement" shall be references to the Renewable Energy Power Purchase Agreement, dated July 14, 2011, between the Power Purchaser and Assignor, as supplemented by letter agreement, dated April 2, 2012, and as further amended, supplemented or otherwise modified from time to time.

ARTICLE 2 CONSENT TO ASSIGNMENT

Assignor hereby requests the Power Purchaser's consent to the assignment by Assignor to the Collateral Agent, for the benefit of the holders of certain notes (the "Notes") issued by Assignor and other secured parties under the Collateral Agency Agreement, of Assignor's right, title and interest in, to and under the Assigned Agreement, to secure, among other things, Assignor's payment obligations under the Notes. The Power Purchaser hereby consents to such collateral assignment. The Power Purchaser agrees that the Collateral Agent or its designee shall have the right, but not the obligation, to pay amounts due from Assignor under the Assigned Agreement and to perform any other act, duty or obligation required of Assignor thereunder or to cure any default of Assignor thereunder.

ARTICLE 3 PAYMENTS TO ACCOUNT

The Power Purchaser and Assignor agree that all payments to be made by the Power Purchaser to Assignor under the Assigned Agreement will be made directly to the following account: [insert account and wire transfer information].

**ARTICLE 4
FURTHER AGREEMENTS**

The Power Purchaser agrees to deliver to the Collateral Agent, concurrently with delivery thereof to Assignor, a copy of each notice of default or of force majeure given by the Power Purchaser under the Assigned Agreement, together with a description of the action that the Power Purchaser has taken or proposes to take with respect thereto.

**ARTICLE 5
RIGHTS TO CURE**

5.1 The Power Purchaser agrees that, notwithstanding any right it may have under the Assigned Agreement, at law, in equity or otherwise, it will not take any action to terminate or suspend the Assigned Agreement unless it has given the Collateral Agent at least 60 days (or 30 days, in the case of a payment default) prior written notice of its intent to terminate or suspend the Assigned Agreement, specifying the condition giving rise to such termination or suspension; If the Collateral Agent cures or causes to be cured the condition(s) giving rise to the right of termination or suspension within such period, the Power Purchaser shall not terminate or suspend the Assigned Agreement; *provided, however,* that if the Collateral Agent has commenced foreclosure or other proceedings to obtain direct or indirect possession or control of some or all of the property and assets of Assignor, or of equity interests in Assignor, under the Collateral Agency Agreement or any related security document and has cured all payment defaults, the Collateral Agent shall have a further period of 90 days in which to effect a cure of such condition(s). The Power Purchaser shall continue performance under the Assigned Agreement until expiration of the cure period, whereupon the Power Purchaser may exercise rights and remedies available to it under the Assigned Agreement if any such condition then remains uncured. Notwithstanding the foregoing, the Power Purchaser shall not be obligated to give the Collateral Agent prior notice and an opportunity to cure an "Event of Default" occurring under Section 7.2(d) of the Assigned Agreement for failure to achieve a milestone within 18 months following the relevant milestone deadline.

5.2 If, as a result of an exercise of remedies under the Collateral Agency Agreement or any related security document, the Collateral Agent or a transferee or purchaser acquires direct or indirect title to or direct or indirect control of some or all of the property and assets of Assignor, or of equity interests in Assignor, and cures all defaults under the Assigned Agreement which are able to be cured by such entity, then any default of Assignor which is not able to be cured by such entity shall no longer be deemed to be a default under the Assigned Agreement.

**ARTICLE 6
FURTHER RIGHTS**

6.1 If the Collateral Agent or a holder of a Note succeeds to Assignor's rights and interests under the Assigned Agreement, whether by foreclosure or otherwise, such entity shall assume liability for Assignor's obligations under the Assigned Agreement, but such liability shall not include any liability for claims of the Power Purchaser against Assignor arising prior to such assumption of the Assigned Agreement; *provided, however,* that the liability of the Collateral Agent or such holder under the Assigned Agreement shall be limited to the Collateral

Agent's or such holder's interest in the assets and properties formerly owned by Assignor and obtained via foreclosure or other exercise of remedies under the Collateral Agency Agreement or any related security document.

6.2 Upon the exercise by the Collateral Agent of remedies under the Collateral Agency Agreement or any related security document, the Collateral Agent may, upon direction of the requisite number of holders of the Notes, but shall not be obligated to, on behalf of Assignor, assign the rights and interests of Assignor hereunder and under the Assigned Agreement to any purchaser or transferee of the property and assets of Assignor, if the purchaser or transferee assumes all of the obligations of Assignor under the Assigned Agreement.

6.3 If the Assigned Agreement is terminated or rejected in connection with a bankruptcy, insolvency, winding up or similar occurrence with respect to Assignor, then, at the request of the Collateral Agent, upon direction of the requisite number of holders of the Notes, Assignor will execute and deliver to the Collateral Agent or its designee a new agreement for the balance of the remaining term under the original Assigned Agreement containing the same conditions, agreements, terms, provisions and limitations as the original Assigned Agreement.

ARTICLE 7 FURTHER AGREEMENTS

7.1 The Power Purchaser confirms that (i) all milestones set forth in the Assigned Agreement that were required to be met prior to the date of this Agreement have been met or waived, or (ii) all Delay Liquidated Damages owed by Assignor to the Power Purchaser as of the date of this Agreement have been paid in full.

ARTICLE 8 REPRESENTATIONS

The Power Purchaser hereby represents and warrants to the Collateral Agent that:

8.1 The Power Purchaser is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of California and has all requisite power and authority to conduct, execute, deliver and perform its obligations under this Agreement and the Assigned Agreement.

8.2 The execution, delivery and performance by the Power Purchaser of this Agreement and the Assigned Agreement have been duly authorized by all necessary action, and do not and will not (x) require any consent or approval that has not been obtained, (y) violate any provision of the Power Purchaser's charter documents, or any law, rule, regulation, order, writ, judgment, injunction, decree or award having applicability to the Power Purchaser, or (z) result in a breach of or constitute a default under any agreement to which the Power Purchaser is a party.

8.3 The Assigned Agreement and this Agreement each has been duly executed and delivered and is in full force and effect and constitutes the legal, valid and binding obligation of the Power Purchaser enforceable against the Power Purchaser in accordance with its terms

except as enforceability may be limited by general principles of equity and by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally. The Power Purchaser has not assigned, transferred or pledged the Assigned Agreement or any interest therein or consented to any such assignment, transfer or pledge, except as described herein.

8.4 No consent, license, approval or authorization of, or other action by, or any notice or filing with, any court or administrative or governmental body or any other entity is necessary in connection with the execution, delivery and performance by the Power Purchaser of the Assigned Agreement or this Agreement other than those which have been duly obtained by the Power Purchaser and which are in full force and effect.

8.5 There is no pending or, to the Power Purchaser's knowledge, threatened action or proceeding affecting the Power Purchaser before any court, governmental agency, regulatory body or arbitrator which could adversely affect the ability of the Power Purchaser to perform its obligations under, or which purports to affect the legality, validity or enforceability of, this Agreement or the Assigned Agreement.

8.6 To the Power Purchaser's knowledge, there exists no default under the Assigned Agreement. The Power Purchaser has duly performed, complied with, and fulfilled all covenants, agreements and conditions contained in the Assigned Agreement required to be performed or complied with by it on or before the date hereof. The Assigned Agreement is in full force and effect and all conditions precedent thereunder have been satisfied or waived.

ARTICLE 9 AMENDMENTS TO ASSIGNED AGREEMENT

The Power Purchaser acknowledges that there are no amendments, supplements or modifications to the Assigned Agreement, except as specified in the definition of "Assigned Agreement". Each of the Power Purchaser and Assignor agrees that it will not amend, supplement or otherwise modify the Assigned Agreement or assign the Assigned Agreement or its rights thereunder except with the Collateral Agent's prior written consent (which consent may be given only with the consent of the requisite number of holders of the Notes) or as contemplated hereby.

ARTICLE 10 ADDRESSES FOR NOTICES

All notices, consents, certificates, waivers, documents and other communications required or permitted to be delivered to any party under the terms of this Agreement (a) must be in writing, (b) must be personally delivered, transmitted by a nationally recognized courier service or transmitted by facsimile or as a ".pdf" attachment to an e-mail message, and (c) must be directed to such party at its address or facsimile number set forth below. All notices will be deemed to have been duly given and received on the date of delivery if delivered personally, three days after delivery to the courier if transmitted by courier, or the date of transmission with confirmation of receipt if transmitted by facsimile, whichever occurs first. Any party may

change its address or facsimile number for purposes hereof by notice to all other parties.

For Assignor:

[to be provided]

For the Power Purchaser;

[to be provided]

For the Collateral Agent:

Deutsche Bank Trust Company Americas,
as Collateral Agent
60 Wall Street, 27th Floor
MS: NYC 60-2710
New York, New York 10005
Attention: Project Finance Team Manager/[RE Rosamond One]
Facsimile: 732-578-4636

ARTICLE 11 MISCELLANEOUS

11.1 This Agreement will be binding upon the successors and assigns of the Power Purchaser and will inure to the benefit of the parties and their respective successors and assigns. Any holder of a Note may transfer, assign or grant its rights hereunder in connection with an assignment or transfer of all or any part of its interest in its Notes.

11.2 THIS AGREEMENT WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA, OTHER THAN CONFLICT OF LAW PRINCIPLES THEREOF THAT WOULD APPLY THE LAWS OF ANOTHER JURISDICTION.

11.3 Any provision of this Agreement which is invalid or prohibited in any jurisdiction will, as to such jurisdiction, be ineffective and severable from the rest of this Agreement to the extent of such invalidity or prohibition, without impairing or affecting the validity of any other provision of this Agreement, or of such provision in any other jurisdictions. The parties agree to replace any provision which is ineffective by operation of this Section 11.3 with an effective provision that as closely as possible corresponds to the spirit and purpose of the ineffective provision and this Agreement as a whole.

11.4 No amendment or waiver of any provision of this Agreement will be effective unless it is in writing and signed by all of the parties.

11.5 This Agreement may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed shall be an original, but all of which shall together constitute one and the same instrument.

11.6 Any suit, action or proceeding arising out of or relating to this Agreement may be instituted in any federal or state court sitting in Santa Clara County, and the Power Purchaser irrevocably waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of the venue or the jurisdiction or the convenience of the forum of any such suit, action or proceeding and irrevocably submits to the jurisdiction of any such court, in any such suit, action or proceeding.

11.7 All references to the Collateral Agent contained herein refer to the Collateral Agent not acting in its individual capacity but solely as Collateral Agent acting at the written direction of the holders of the Notes in accordance and subject to the Collateral Agency Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties, intending to be legally bound, have caused this Agreement to be signed on the date first above written.

RE ROSAMOND ONE LLC

By: 
Name: Michael Metzner
Title: Chief Financial Officer

CITY OF SANTA CLARA

By: _____

Name: Julio J. Fuentes

Title: City Manager

Approved as to form:

Richard E. Nosky, Jr.

City Attorney

Attest:

Rod Diridon, Jr.

City Clerk

**DEUTSCHE BANK TRUST COMPANY
AMERICAS, acting solely as Collateral Agent and
not in its individual capacity**

By: Deutsche Bank National Trust Company

**By: _____
Name:
Title:**

**By: _____
Name:
Title:**