[Authorizing Agreements - Purchase of Electricity and Related Products and Services for CleanPowerSF - Public Utilities Commission]

**Ordinance delegating authority under Charter, Section 9.118, to the General Manager of the Public Utilities Commission to enter into agreements with terms in excess of ten years or requiring expenditures of $10,000,000 or more for power and related products and services required to supply San Francisco's community choice aggregation program, CleanPowerSF, subject to specified conditions, as defined herein; and authorizing deviations from certain otherwise applicable contract requirements in the Administrative Code and the Environment Code.**

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
**Additions to Codes** are in *single-underline italics Times New Roman font*.
**Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.
**Board amendment additions** are in double-underlined Arial font.
**Board amendment deletions** are in ~~strikethrough Arial font~~.
**Asterisks (* * * *)** indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

**Section 1. Background**.

(a) State law allows cities and counties to develop Community Choice Aggregation (CCA) programs, through which local governments supply electricity to serve the needs of participating customers within their jurisdictions while the existing utility continues to provide services such as customer billing, transmission, and distribution.

(b) The City elected to implement a CCA program to provide San Francisco residents and businesses the option to receive cleaner, more sustainable electricity at rates comparable to PG&E's rates. See Ordinance Nos. 86-04, 147-07, 232-09, 45-10, 200-12 and 78-14; and Resolution Nos. 348-12, 331-13 and 75-15.

(c) In May 2016, the San Francisco Public Utilities Commission (PUC) launched San Francisco's CCA program, CleanPowerSF, with initial service to almost 8,000 accounts. In November 2016, PUC expanded its service and CleanPowerSF now serves about 80,000 accounts. As required by State law for all CCAs, customers are given several opportunities to opt out of CleanPowerSF service.

(d) CleanPowerSF currently offers two levels of supply service: Green, the default service taken by most customers, which contains 40% renewable energy; and SuperGreen, a premium option selected by 3.94% of customers, which offers 100% renewable energy.

(e) The goals of CleanPowerSF are to provide affordable and reliable electricity services, cleaner energy alternatives advancing the City's Greenhouse Gas reduction goals, investment in local renewable energy projects and jobs, and long-term rate and financial stability.

(f) Public and private utilities and energy suppliers use industry-standard pro forma contracts to ensure the availability of essential services in a timely and cost-effective manner. Using these agreements can help facilitate negotiations by focusing the parties on the elements that are most likely to differ from one transaction to another: price, quantity, location, and duration. These contracts provide standard terms and conditions that address common issues, but allow parties to determine which provisions to include in a particular contract.

(g) City law requires standard contract provisions to protect the City's interests, ensure accountability, and promote important social values. For the initial phase of CleanPowerSF service, in Ordinance Nos. 75-15 and 223-15, the Board of Supervisors authorized the PUC to use certain pro forma contracts and deviate from certain otherwise applicable contracting requirements, subject to specified conditions. The Board also delegated authority to the PUC General Manager to enter agreements with terms in excess of ten years or requiring expenditures of $10,000,000 or more, subject to specified conditions.

**Section 2. Expansion of CleanPowerSF Service to San Francisco Customers.**

State law requires cities that offer CCA service to offer service to all residential customers; many CCA programs, including CleanPowerSF, have added customers in phases to mitigate financial and operational risk. The CleanPowerSF Phasing Policy (adopted in the CleanPowerSF Business Practice Policies on December 8, 2015, by PUC Resolution 15-0267) provides that service will be offered to additional customers throughout San Francisco in a manner that is financially prudent and operationally feasible. The PUC expects additional phases of service to meet the following conditions: program rates are sufficient to cover program costs and rates are projected to be at or below PG&E rates at the launch of each phase; supply commitments are sufficient to meet new projected customer demand; staffing and systems and/or qualified third party service providers can handle additional transactions and customer account volumes; sufficient and reasonably priced credit, collateral and working capital support is available; and required approvals have been obtained.

In May 2017 the PUC completed a study of the options for expanding CleanPowerSF to offer service to all customers in San Francisco. On May 9, 2017, the PUC Commission adopted in a public meeting the goal of completing City-wide enrollment into CleanPowerSF by July 2019. The CleanPowerSF Growth Plan, Final Report, is on file with the Clerk of the Board of Supervisors in File No. 171172.

The PUC anticipates launching a large program expansion in 2018, with further expansion to all customers in the City in 2019, although exact expansion dates will depend on available power supply and program costs. To meet these aggressive implementation date targets and secure the best possible prices and terms, PUC will need to negotiate a mix of electricity contracts with multiple suppliers simultaneously in an expedited time frame.

**Section 3. Contracts Needed for CleanPowerSF Expansion.**

(a) The electricity supplies needed to expand CleanPowerSF service throughout the City will be obtained through a mix of long-term (10 to 25 years) and shorter term contracts. To acquire the electricity products necessary to supply this program expansion and meet the program's portfolio content goals and regulatory obligations, the PUC issued two Requests for Offers ("RFO"), one in June 2017 (described in subsection (1) below) and one in September 2017 (described in subsection (2) below). To ensure it had adequate credit support for these purchases and other program requirements, the PUC also issued an RFP for a bank credit facility in July 2017 (described in subsection (3) below).

(1) On June 22, 2017, the PUC issued an RFO seeking bids for energy, environmental attributes, and capacity from new or existing eligible renewable resources, for contracts of up to 25 years in duration. A copy of the renewable energy RFO is on file with the Clerk of the Board of Supervisors in File No. 171172, and is incorporated herein by reference as though fully set forth. The PUC received more than 300 bids from 32 different companies, for supplies from more than 70 different projects, 83% of which are located in California. Over 90% of the bids offered energy from new renewable resources. After the evaluation team reviewed the bids to determine compliance with minimum qualifications and criteria specified in the RFO, the PUC shortlisted two subsets of bidders for further consideration and possible negotiations. For projects with initial contract delivery dates in 2018 or 2019, the selected bidders are 8minutenergy Renewable LLC; Avangrid Renewables LLC; Calpine Energy Services L.P.; E.ON Climate & Renewables North America LLC; First Solar; Frontier Renewable; FTP Power LLC, dba Sustainable Power Group (sPower); Morgan Stanley Capital Group Inc.; NextEra Energy Resources Acquisitions LLC; Shell Energy North America (US) L.P.; SunPower Corporation Systems; Terra-Gen LLC; Wadham Energy L.P.; and Wind Wall Development LLC. For projects with initial contract delivery dates in 2020 or

2021, the selected bidders are 8minutenergy Renewable LLC; E.ON Climate & Renewables North America, LLC; EDF Renewable Development, LLC; EDP Renewables North America LLC; First Solar; Lendlease Energy Development LLC; NextEra Energy Resources Acquisitions, LLC; NRG Renew, LLC; Sempra Renewables, LLC; and SunPower Corporation, Systems.

The RFO invited Respondents to submit proposals for community benefits to be invested in San Francisco County and/or the county in which the renewable project is or will be located. Community Benefits are firm commitments on the part of the bidder to be delivered to the community during the term of the contract in accordance with the SFPUC's 2011 Community Benefits Policy and 2009 Environmental Justice Policy, which directs the SFPUC and its partner firms to be a good neighbor to all who are directly impacted by its activities and investments. Community benefits must support non-profit or charitable activities and may not go to, nor benefit, any employee of the SFPUC. The contractor may provide community benefits in the form of a direct financial contribution, volunteer hours, in-kind contributions, or a combination thereof. Community benefits are a "zero-dollar task," meaning no hours or dollars are allocated in the selected contractor's costs under the contract.

(2) On September 12, 2017, the PUC issued an RFO seeking bids for shaped energy, renewable energy, carbon-free energy, and capacity for contracts of up to three years in length, with start dates as early as 2018 and as late as 2021. A copy of the shaped energy RFO is on file with the Clerk of the Board of Supervisors in File No. 171172, and is incorporated herein by reference as though fully set forth. These bids are not for electricity produced by pre-specified projects; instead, the bidder provides a portfolio of electricity supply from a variety of available sources responsive to the need the PUC identified. The RFO excluded bids containing power purchased from coal or nuclear plants. PUC received bids from five companies. After the evaluation team reviewed the bids to

determine compliance with minimum qualifications and criteria specified in the RFO, the PUC shortlisted five bidders for further consideration and possible negotiations. The selected bidders are Calpine Energy Services L.P.; Constellation; Direct Energy Business Marketing LLC; Morgan Stanley Capital Group Inc.; and Shell Energy North America (U.S.) L.P.

(3) On July 18, 2017, the PUC issued an RFP for a bank credit facility. A copy of the bank RFO is on file with the Clerk of the Board of Supervisors in File No. 171172, and is incorporated herein by reference as though fully set forth. After evaluating the responses, PUC selected JPMorgan Chase Bank, N.A. (JPMorgan) for further discussions and negotiations. PUC anticipates negotiating a credit agreement to provide liquidity support, as needed, for power purchases, regulatory requirements, and other financial obligations of the program through letters of credit or loans. The credit agreement will have a maximum term of six years and a maximum credit commitment of $150 million.

(b) Negotiation and Execution of Contracts. PUC expects to negotiate contracts with one or more bidders for power and to make purchases under one or more of the contracts after approvals and after final pricing. PUC anticipates that some purchases will be made in early 2018, and additional purchases will be made over the next few years, through 2021. ~~The PUC Commission in public meetings will consider authorizing one or more of these contracts. PUC expects the Commission to review and consider approvals related to the RFOs for power supply in its regular Commission meeting on November 14, 2017.~~ PUC also expects to successfully conclude negotiations with JPMorgan for the bank credit facility, which ~~will~~ <u>is expected to</u> be considered by the PUC Commission in a public meeting in <u>January 2018</u> ~~2017~~. The General Manager will not execute any contracts unless conditions specified by the PUC Commission have been satisfied, including requirements for program rates. Final program rates will provide for program cost recovery including energy procurement and administrative and financial costs of program implementation.

(c) In a public meeting on November 14, 2017, the PUC Commission approved the pool of qualified bidders for energy supply contracts and authorized the General Manager to negotiate energy supply contracts with one or more of those bidders, and to execute one or more contracts, subject to the following conditions:

(1) the total cost of the executed contracts is consistent with the rate setting methodology adopted by the Commission in Resolution 15-0112;

(2) the renewable energy supplied is from resources eligible to be counted as California Renewables Portfolio Standard Portfolio Content Category 1 or Portfolio Content Category 2 resources;

(3) the counterparties to any contract must be creditworthy;

(4) the total combined volume of power procured under contracts from the two competitive solicitations shall not exceed 435 MW per year;

(5) the duration of any contract under the renewable energy RFO shall not exceed 25 years, and the duration of any contract under the shaped energy RFO shall not exceed three years;

(6) the total quantity of Resource Adequacy Capacity procured shall not exceed the expected quantity established by state law and regulation for load of 435 MW per year; and

(7) the total cost of all energy supply contracts shall not exceed $175 million per year.

The Commission further determined it would review the expected costs of CCA service and consider authorizing the General Manager to finalize the schedule of rates and charges for the next expansion to additional customers; the contracts would not be effective until the PUC has reviewed the CleanPowerSF risk assessment for the proposed portfolio of contracts to be executed; and the General Manager would report to the SFPUC on the final schedule of rates and charges prior to commencement of the opt-out process. See Resolution No. 17-0226, which is on file with the Clerk of the Board of Supervisors in File No. 171172, and is incorporated herein by reference as though fully set forth.

**Section 4. Grant of Authority to Use Standard Power Contracts.**

As approved in Ordinances 75-15 and 223-15, and for the reasons stated there in addition to the reasons stated above, for purchases of power and related products and services necessary to provide CleanPowerSF service, the Board of Supervisors authorizes the use of the following standardized contracts that deviate from the City's contract forms.

(a) Western System Power Pool ("WSPP") Agreement. The WSPP is a group of more than 300 publicly-owned and private utilities, including Alameda Municipal Power, the City of Palo Alto, the City of Roseville, the Sacramento Municipal Utility District, and Silicon Valley Power, all of which operate publicly-owned utilities. The City, through PUC, is a member of the WSPP. The WSPP has developed an agreement that sets forth standard terms and conditions for the purchase and sale of power and related products and services. A copy of the current WSPP agreement is on file with the Clerk of the Board of Supervisors in File No.171172, and is incorporated herein by reference as though fully set forth. The WSPP agreement has been approved by the Federal Energy Regulatory Commission ("FERC"). The WSPP agreement is periodically updated and modified subject to the approval of FERC. The Board of Supervisors authorized the use of the WSPP agreement for CleanPowerSF purchases in Ordinance No. 75-15.

(b) The Edison Electric Institute (EEI) Master Agreement. The EEI, in collaboration with more than 80 member utilities, power marketers, power generators, and customer representatives, developed an agreement that sets forth standard terms and conditions for the purchase and sale of power and related products and services. The EEI agreement is updated as needed to reflect market changes. A copy of the current EEI agreement is on file with the Clerk of the Board of Supervisors in File No. 171172 and is incorporated herein by reference as though fully set forth. The Board of Supervisors authorized the use of the EEI agreement for CleanPowerSF purchases in Ordinance No. 75-15.

(c) City Pro forma Agreements. In connection with the recent RFOs for power supplies, the PUC has developed its own standardized contract forms for three different types of energy supply, combining standard industry terms with key City requirements. Ordinance No. 75-15 authorized the use of form agreements developed by PUC for CleanPowerSF purchases. Each of these form agreements is on file with the Clerk of the Board of Supervisors in File No. 171172 and is incorporated herein by reference as though fully set forth:

(1) Renewable Power Purchase Agreement (New Facility);

(2) Renewable Power Purchase Agreement (Existing Facility); and

(3) Power Purchase and Sale Agreement.

(d) The Board of Supervisors authorizes the use of the WSPP agreement and the EEI agreement for the PUC's purchase of power and related products and services, notwithstanding that the terms of those agreements may deviate from the City's standard contract terms; the Board of Supervisors authorizes modifications to the form agreements so long as such modifications, in the judgment of the General Manager and the City Attorney, do not materially decrease the City's rights or materially increase its liabilities.

(e) The Board of Supervisors approves the pro forma contracts developed by PUC for the purchase of power and related products and services, notwithstanding that the terms of those agreements may deviate from the City's standard contract terms; the Board of Supervisors authorizes modifications to the form agreements so long as such modifications, in the judgment of the General Manager and the City Attorney, do not materially decrease the City's rights or materially increase its liabilities.

**Section 5. Agreement for a Bank Credit Facility.**

The Board of Supervisors authorizes the General Manager, subject to the conditions in Section 7, to enter an agreement for liquidity support with JPMorgan, or with another entity if negotiations with JPMorgan do not result in an acceptable agreement. The General Manager may utilize the waivers in Section 6 below and may make modifications to the standard City agreements so long as such modifications, in the judgment of the General Manager and the City Attorney, do not materially decrease the City's rights or materially increase its liabilities.

**Section 6. Waiver of Certain Contract-Related Requirements in the Administrative Code and the Environment Code.**

(a) Where the General Manager finds and documents in writing both that the transaction represents the best opportunity available to the City to obtain essential services and products in a manner beneficial to the City, and that it is not feasible to add all standard City contract provisions to the agreement, the Board of Supervisors hereby grants waivers of the following standard contract provisions to the extent found necessary by the General Manager, and finds such waivers to be reasonable and in the public interest:

(1) Implementing the MacBride Principles (Admin. Code Chapter 12F);

(2) Increased participation by small and micro local businesses in City contracts (Admin. Code Chapter 14B);

(3) The competitive bidding requirement (Admin. Code Section 21.1);

(4) First source hiring requirements (Admin. Code Chapter 83); and

(5) The tropical hardwood and virgin redwood ban (Environ. Code Chapter 8).

(b) Where the General Manager finds and documents in writing both that the agreement represents the best opportunity available to the City to obtain essential services and products in a manner beneficial to the City, and that it is not feasible to add all standard City contract provisions to the agreement, the Board of Supervisors waives the requirement to include in the agreement references to the following City Code provisions to the extent found necessary by the General Manager, and finds such waivers to be reasonable and in the public interest:

(1) Public access to meeting and records of non-profit organizations (Admin. Code Section 12L);

(2) Sweatfree Contracting (Admin. Code Section 12U.4);

(3) Food service waste reduction (Environ. Code Section 1605).

(c) The waivers specified in this Section 6 shall apply only to contracts which include language requiring compliance with all applicable federal, state, and local laws.

**Section 7. Conditions on Contract Authority Granted in this Ordinance.**

(a) The City's payment obligations under these contracts for CleanPowerSF power supply and bank credit facility to support CleanPowerSF expansion to offer service throughout San Francisco shall be special limited obligations of the City payable solely from the revenues of CleanPowerSF.

(b) The total cost of the power supply contracts authorized by this ordinance, with terms from one to twenty-five years, shall not exceed $175 million per year.

(c) The total credit commitment under the bank credit facility agreement shall not exceed $150 million over the term of the agreement, which shall not exceed six years.

(d) The contracts shall be approved by the PUC acting through its Commission in a public meeting. The Commission may delegate approval authority to the General Manager, subject to conditions specified by the Commission in a public meeting.

(e) All conditions established by the PUC shall be met, including but not limited to requirements regarding program rates, program expansion, and electricity portfolio content.

<u>(f) The PUC shall submit annual reports to the Board of Supervisors that include annual program costs, the rates charged by the PUC to CleanPowerSF customers to recover costs, and a comparison of CleanPowerSF rates to PG&E rates.</u>

**Section 8. Community Benefits in Renewable Power RFO.**

The Board of Supervisors finds that the community benefits component of the RFO for renewable energy supplies is reasonable and beneficial to the City and authorizes its inclusion in contracts, where the General Manager deems feasible and appropriate, so long as the PUC Commission finds, in a public meeting, that the community benefits component is reasonable and serves a utility purpose.

**Section 9. Delegation of Authority Under Charter Section 9.118 to the PUC General Manager.**

Pursuant to its authority under Charter Section 9.118, the Board of Supervisors delegates to the PUC General Manager authority to purchase renewable and shaped energy supplies and credit support for CleanPowerSF from bidders selected by competitive solicitation as described above in Section 3 of this ordinance, using contracts with terms in excess of ten years or requiring expenditures of ten million dollars or more including amendments to such agreements with an impact of greater than $500,000, so long as the contract term does not exceed 25 years, and subject to the conditions specified above in Section 7.

**Section 10. Effective Date.**

This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within 10 days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: ______________________________
THERESA L. MUELLER
Deputy City Attorney

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# City and County of San Francisco
## Tails
## Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

**File Number:** 171172 **Date Passed:** January 23, 2018

Ordinance delegating authority under Charter, Section 9.118, to the General Manager of the Public Utilities Commission to enter into agreements with terms in excess of ten years or requiring expenditures of $10,000,000 or more for power and related products and services required to supply San Francisco's community choice aggregation program, CleanPowerSF, subject to specified conditions, as defined herein; and authorizing deviations from certain otherwise applicable contract requirements in the Administrative Code and the Environment Code.

December 13, 2017 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

December 13, 2017 Budget and Finance Committee - RECOMMENDED AS AMENDED

January 09, 2018 Board of Supervisors - PASSED ON FIRST READING

Ayes: 11 - Breed, Cohen, Farrell, Fewer, Kim, Peskin, Ronen, Safai, Sheehy, Tang and Yee

January 23, 2018 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Breed, Cohen, Farrell, Fewer, Kim, Peskin, Ronen, Safai, Sheehy, Tang and Yee

File No. 171172

**I hereby certify that the foregoing Ordinance was FINALLY PASSED on 1/23/2018 by the Board of Supervisors of the City and County of San Francisco.**

**Angela Calvillo**
**Clerk of the Board**

Mark E. Farrell

**Mark E. Farrell**
**Mayor**

1/25/18

**Date Approved**