

1 [Authorizing Agreements - Purchase of Electricity and Related Products and Services for
2 CleanPowerSF - Public Utilities Commission - Waiver of Certain Administrative Code and
3 Environment Code Provisions]

4 **Ordinance delegating authority under Charter, Section 9.118, to the General Manager of**
5 **the Public Utilities Commission to enter into agreements with terms in excess of ten**
6 **years or requiring expenditures of \$10,000,000 or more for power and related products**
7 **and services required to supply San Francisco's community choice aggregation**
8 **program, CleanPowerSF, subject to specified conditions; authorizing the use of pro**
9 **forma agreements for the purchase and sale of power and related products; and**
10 **authorizing deviations from certain contract requirements in the Administrative Code**
11 **and the Environment Code.**

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

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

20 Section 1. General Background.

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

25 (b) The City has elected to implement a CCA program to provide San Francisco
residents and businesses the option to receive cleaner, more sustainable electricity at rates

1 comparable to PG&E's rates. See Ordinance Nos. 86-04, 147-07, 232-09, 45-10, 200-12, and
2 78-14; and Resolution Nos. 348-12, 331-13, and 75-15.

3 (c) In May 2016, the San Francisco Public Utilities Commission (PUC) launched
4 CleanPowerSF with initial service to almost 8,000 accounts. In July 2019, PUC completed the
5 final phase of customer enrollment. CleanPowerSF now serves over 400,000 accounts. As
6 required by State law for all CCA programs, customers are given several opportunities to opt
7 out of CleanPowerSF service.

8 (d) CleanPowerSF currently offers two levels of supply service: Green, the default
9 service taken by more than 98% of customers, which contains at least 40% renewable and
10 80% greenhouse-gas free energy; and SuperGreen, a premium option selected by 1.6% of
11 customers, which offers 100% renewable and greenhouse-gas free energy.

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

16 (f) City law requires standard contract provisions to protect the City's interests,
17 ensure accountability, and promote important social values. In Ordinance Nos. 75-15, 223-
18 15, and 8-18, the Board of Supervisors authorized the PUC to use certain pro forma contracts
19 for procurement of energy and energy-related products and deviate from certain otherwise
20 applicable contracting requirements, subject to specified conditions. The Board also
21 delegated authority to the PUC General Manager (General Manager) to enter into agreements
22 with terms in excess of ten years or requiring expenditures of \$10,000,000 or more, subject to
23 specified conditions.

1 Section 2. Background: Short-term Contracts for Electricity and Electricity-related
2 Products.

3 (a) To secure the best possible prices and terms, PUC needs to engage, in an
4 expedited time frame, in a continual process of procuring power and simultaneously
5 negotiating a mix of short-term contracts for a diverse supply of electricity and electricity-
6 related products with multiple suppliers.

7 (b) The wholesale energy markets are highly dynamic and complex with multiple
8 market participants competing for energy supplies. To be competitive and to obtain the lowest
9 cost supplies for their customers, participants must be able to execute contracts for supplies
10 in very short time frames, sometimes within days of receipt of the offer to purchase or sell the
11 energy supplies.

12 (c) All energy market participants use industry-standard pro forma contracts; many
13 public and private utilities and energy suppliers will not execute energy transactions with
14 terms under five years using any contract other than the industry-standard pro forma
15 contracts. Using these agreements facilitates negotiations by focusing the parties on the
16 elements that are most likely to differ from one transaction to another: price, quantity, location,
17 and duration. These pro forma contracts provide standard terms and conditions that address
18 common issues, but allow parties to determine which provisions to include in a particular
19 contract.

20
21 Section 3. Results of Solicitation for Long-term Renewable Energy Contracts for
22 CleanPowerSF.

23 (a) The PUC issued a Request for Offers in September 2019 (2019 RFO) seeking
24 bids for energy, environmental attributes, and capacity from new or existing eligible renewable
25 resources located in Northern California, for contracts of up to 25 years in duration. The RFO

1 stated a preference for projects located in the nine-county Bay Area and invited bidders to
2 propose energy storage projects that are stand-alone or co-located with a renewable energy
3 facility. A copy of the renewable energy RFO is on file with the Clerk of the Board of
4 Supervisors in File No. 191203.

5 (b) The PUC received more than 43 bids from 13 different companies, for supplies
6 from 16 different renewable energy generation and energy storage resources. After the
7 evaluation team reviewed the bids to determine compliance with minimum qualifications and
8 criteria specified in the RFO, the PUC shortlisted bidders for further consideration and
9 possible negotiations. The shortlisted bidders are: Candela Renewables, LLC; EDF
10 Renewables, Inc.; E.ON Climate & Renewables North America, LLC; Intersect Power; LS
11 Power Development; NextEra Energy Resources Development, LLC; Recurrent Energy
12 Development Holdings, LLC; Solar Frontier Americas, Inc.; and TGP Energy Management,
13 LLC.

14 (c) The RFO invited the bidders to submit proposals for community benefits to be
15 invested in San Francisco and/or the county in which the renewable project is or will be
16 located. Community Benefits are firm commitments on the part of the bidder to be delivered to
17 the community during the term of the contract in accordance with the PUC's 2011 Community
18 Benefits Policy and 2009 Environmental Justice Policy, which direct the PUC and its partner
19 firms to be a good neighbor to all who are directly impacted by its activities and investments.

20 (d) In its regular meeting of October 22, 2019, the PUC Commission approved the
21 pool of qualified bidders for energy supply contracts referenced in subsection (b) above, and
22 authorized the General Manager to negotiate energy supply contracts with one or more of
23 those bidders, and to execute one or more contracts, subject to the following conditions:

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

1 (2) the renewable energy supplied under a contract pursuant to the
2 renewable energy RFO is from resources located in Northern California;

3 (3) the counterparties to any contract must maintain an acceptable credit
4 rating or provide equivalent credit support or performance assurance for the duration of the
5 contract through an acceptable credit mechanism;

6 (4) the total combined volume of power procured under contracts pursuant to
7 the renewable energy RFO shall not exceed 350 megawatts per year;

8 (5) the duration of any contract under the renewable energy RFO shall not
9 exceed 25 years, unless the Commission approves a contract extension; and

10 (6) the total cost of all energy supply contracts under the renewable energy
11 RFO shall not exceed \$35 million per year.

12 (e) PUC expects to negotiate contracts with one or more of the bidders identified in
13 subsection (b) above, for renewable energy and energy storage projects and to make
14 purchases under one or more of the contracts after approvals and final pricing. PUC
15 anticipates that delivery of energy from the executed contracts will begin in 2021. The
16 General Manager will not execute any contracts unless the conditions specified by the PUC
17 Commission have been satisfied, including requirements for program rates. Final program
18 rates will provide for program cost recovery, including energy procurement and administrative
19 and financial costs of program implementation.

20
21 Section 4. Grant of Authority to Use Industry Standard Pro Forma Power Contracts.

22 As approved in Ordinance Nos. 75-15, 223-15, and 8-18, and for the reasons stated
23 therein in addition to the reasons stated above, for purchases of energy and related products
24 and services necessary to provide service, the Board of Supervisors, as stated in subsection
25

1 (c) below, authorizes the use of the following standardized contracts that deviate from the
2 City's contract forms for the purchase of energy and energy-related products.

3 (a) Western System Power Pool (WSPP) Agreement. The WSPP is a group of
4 more than 300 publicly-owned and private utilities, CCAs, and energy traders, including
5 Alameda Municipal Power, the City of Palo Alto, the City of Roseville, the Sacramento
6 Municipal Utility District, and Silicon Valley Power, all of which operate publicly-owned utilities.
7 The City, through PUC, is a member of the WSPP. The WSPP has developed an agreement
8 that sets forth standard terms and conditions for the purchase and sale of power and related
9 products and services. A copy of the current WSPP agreement is on file with the Clerk of the
10 Board of Supervisors in File No. 191203, and is incorporated herein by reference as though
11 fully set forth. The WSPP agreement has been approved by the Federal Energy Regulatory
12 Commission (FERC). The WSPP agreement is periodically updated and modified subject to
13 the approval of FERC. The Board of Supervisors authorized the use of the WSPP agreement
14 to procure electricity and related products in Ordinance Nos. 75-15, 223-15, and 8-18.

15 (b) The Edison Electric Institute (EEI) Master Agreement. The EEI, in collaboration
16 with more than 80 member utilities, power marketers, power generators, and customer
17 representatives, developed an agreement that sets forth standard terms and conditions for the
18 purchase and sale of power and related products and services. The EEI agreement is
19 updated as needed to reflect market changes. A copy of the current EEI agreement is on file
20 with the Clerk of the Board of Supervisors in File No. 191203 and is incorporated herein by
21 reference as though fully set forth. The Board of Supervisors authorized the use of the EEI
22 agreement in Ordinance No. 75-15, 223-15, and 8-18.

23 (c) The Board of Supervisors authorizes the use of the WSPP agreement and the
24 EEI agreement for the purchase and sale of energy and related products and services that do
25

1 not exceed five years, notwithstanding that the terms of those agreements may deviate from
2 the City's standard contract terms; and the Board of Supervisors authorizes modifications to
3 the form agreements so long as such modifications, in the judgment of the General Manager
4 and the City Attorney, do not materially decrease the City's rights or materially increase its
5 liabilities.

6
7 Section 5. Grant of Authority to Use City Pro Forma Power Contracts.

8 (a) The PUC has developed its own standardized contract forms for short- and long-
9 term contracts for energy and related products and services, combining standard industry
10 terms with key City requirements. Ordinance Nos. 75-15, 223-15, and 8-18 authorized the
11 use of form agreements developed by PUC for CleanPowerSF purchases. Each of these
12 form agreements is on file with the Clerk of the Board of Supervisors in File No. 191203 and is
13 incorporated herein by reference as though fully set forth:

- 14 (1) Renewable Power Purchase Agreement; and
- 15 (2) Power Purchase and Sale Agreement.

16 (b) The Board of Supervisors approves the pro forma contracts referenced in
17 subsections (a)(1) and (2) above, developed by PUC for the purchase of power and related
18 products and services, notwithstanding that the terms of those agreements may deviate from
19 the City's standard contract terms; and the Board of Supervisors authorizes modifications to
20 the pro forma contracts so long as such modifications, in the judgment of the General
21 Manager and the City Attorney, do not materially decrease the City's rights or materially
22 increase its liabilities.

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

3 (a) Where the General Manager finds and documents in writing both that the
4 transaction represents the best opportunity available to the City to obtain essential services
5 and products in a manner beneficial to the City, and that it is not feasible to add all standard
6 City contract provisions to the agreement, the Board of Supervisors hereby grants waivers of
7 the following standard contract provisions for transactions using the WSPP, EEI, or City pro
8 forma agreements to the extent found necessary by the General Manager, and provided the
9 General Manager finds such waivers to be reasonable and in the public interest:

10 (1) Implementing the MacBride Principles (Administrative Code Chapter
11 12F);

12 (2) Increased participation by small and micro local businesses in City
13 contracts (Administrative Code Chapter 14B);

14 (3) The competitive bidding requirement (Administrative Code Section 21.1);

15 (4) First source hiring requirements (Administrative Code Chapter 83); and

16 (5) The tropical hardwood and virgin redwood ban (Environment Code
17 Chapter 8).

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

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

3 (2) Sweatfree Contracting (Administrative Code Section 12U.4); and

4 (3) Food service waste reduction (Environment Code Section 1605).

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

7
8 Section 7. Community Benefits in 2019 RFO.

9 The Board of Supervisors finds that the community benefits component of the 2019
10 RFO for renewable energy supplies is reasonable and beneficial to the City and authorizes its
11 inclusion in contracts, where the General Manager deems feasible and appropriate, so long
12 as the PUC Commission finds, in a public meeting, that the community benefits component is
13 reasonable and serves a utility-related purpose.

14
15 Section 8. Delegation of Authority Under Charter Section 9.118 to the PUC General
16 Manager.

17 Pursuant to its authority under Charter Section 9.118, the Board of Supervisors
18 delegates authority to the General Manager to enter into the following contracts:

19 (a) For renewable energy and energy storage supplies for CleanPowerSF from
20 bidders selected by competitive solicitation as described above in Section 3 of this ordinance,
21 using contracts with terms in excess of 10 years or requiring expenditures of \$10,000,000 or
22 more including amendments to such agreements with an impact of greater than \$500,000,
23 subject to the following conditions:

24 (1) The total cost of the contracts with terms from 1 to 25 years shall not
25 exceed \$35,000,000 per year.

1 (2) The City’s payment obligations shall be special limited obligations of the
2 City payable solely from the revenues of CleanPowerSF.

3 (3) All conditions established by the PUC Commission shall be met, including
4 but not limited to requirements regarding program rates, program expansion, and electricity
5 portfolio content so long as the contract term does not exceed 25 years, inclusive of
6 extensions, and subject to the conditions specified above in Section 3.

7 (b) The PUC shall submit annual reports to the Board of Supervisors that include
8 annual costs for CleanPowerSF operations, the rates charged by the PUC to CleanPowerSF
9 customers to recover costs, and a comparison of CleanPowerSF rates to PG&E rates.

10
11 Section 9. Effective Date.

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

16
17 APPROVED AS TO FORM:
18 DENNIS J. HERRERA, City Attorney

19 By: _____
20 THERESA CHO
21 Deputy City Attorney
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