

1 **[Solar Energy Agreements with Recurrent Energy.]**

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3 **Ordinance approving a 25-Year Power Purchase Agreement and Site Lease Agreement**
4 **with RE-SFCITY1, LP (Recurrent), a wholly owned subsidiary of Recurrent Energy, to**
5 **finance, construct, own, operate, and maintain a solar photovoltaic power plant on the**
6 **rooftop of the North Storage Basin Reservoir and certain adjacent land on the Sunset**
7 **Reservoir property located at the intersection of 24th Avenue and Ortega Street, San**
8 **Francisco, and to sell all electricity generated by the project to the City acting through**
9 **its Public Utilities Commission.**

10 NOTE: Additions are *single-underline italics Times New Roman*;
11 deletions are *~~strike-through italics Times New Roman~~*.
12 Board amendment additions are double-underlined;
Board amendment deletions are ~~strikethrough normal~~.

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

14 Section 1. Findings: The Board of Supervisors of the City and County of San
15 Francisco hereby finds, determines and declares that:

16 (a) Background

17 (1) In May 2001, the Board of Supervisors approved Ordinance No. 124-01
18 directing the Public Utilities Commission (PUC) and the Department of the Environment (ENV)
19 to adopt plans to implement all practical transmission, conservation, efficiency and renewable
20 alternatives to fossil fuel generation in the City and County of San Francisco (the City).

21 (2) In November 2001, the San Francisco electorate adopted Propositions B
22 and H, to promote the development and use of renewable energy in the City.

23 (3) In November 2002, the Board of Supervisors approved Resolution No.
24 827-02 endorsing the Electricity Resource Plan as a policy guideline to be used in proposing
25

1 and implementing specific actions, and directing the PUC and ENV to pursue the
2 development of renewable energy and energy conservation programs.

3 (4) In March 2002, the Board of Supervisors approved Resolution No. 158-02
4 directing ENV to work with the PUC to develop a plan to reduce greenhouse gas emissions to
5 20% below 1990 levels by 2012. Pursuant to this resolution, ENV and the PUC published a
6 Climate Action Plan for San Francisco.

7 (5) The Climate Action Plan for San Francisco provides that the PUC should
8 continue to identify suitable sites and oversee installation of solar systems at municipal
9 facilities, and should work with other City agencies such as the Airport, the Port, and the
10 Department of Parking and Traffic to develop large-scale solar projects.

11 (b) Selection Process and Environmental Review

12 (1) On March 10, 2008, PUC issued a request for proposals (RFP) to sell
13 electricity to the PUC Power Enterprise from two solar photovoltaic power plants constructed,
14 operated and maintained respectively on PUC property at the Sunset Reservoir and Port
15 property at Pier 96.

16 (2) On March 25, 2008, the San Francisco Planning Department, Major
17 Environmental Analysis section determined that the proposed 4.97 Megawatts-peak solar
18 photovoltaic project at the Sunset Reservoir (the Solar Project) was categorically exempt from
19 environmental review under the California Environmental Quality Act; a copy of this
20 determination is on file with the Clerk of the Board of Supervisors in File No. _____.

21 (3) On April 18, 2008, PUC received five proposals in response to the RFP,
22 three of which were deemed not to be responsive to the RFP requirements and were
23 eliminated from final consideration, and two proposals which proceeded through to selection
24 and evaluation.

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1 (4) PUC staff and the Human Rights Commission review of the proposals
2 resulted in the selection of Recurrent Energy as the best qualified firm.

3 (5) On May 13, 2008, the PUC adopted Resolution No. 08-0078, a copy of
4 which is on file with the Clerk of the Board of Supervisors in File No. _____,
5 approving the selection of Recurrent Energy; awarding agreement No. CS-921, Power
6 Purchase & Site Lease Agreement, and authorizing the General Manager to enter into
7 negotiations for leases and power purchase agreements for installations at the Sunset
8 Reservoir and at Pier 96.

9 (6) On December 9, 2008, the PUC adopted Resolution No. 08-0222 which
10 authorized the General Manager to execute CS-921, a 25-Year power purchase agreement
11 (PPA) and a site lease agreement (Lease) with Recurrent for the Sunset Reservoir site,
12 subject to approval by Board of Supervisor. Copies of PUC Resolution No. 08-0222, the PPA
13 and the Lease are on file with the Clerk of the Board of Supervisors in File No.

14 _____.

15 (7) The PUC intends to submit agreements related to installation of a solar
16 project at the Pier 96 site to the Board at a later date.

17 (c) Key PPA Terms

18 (1) The General Manager and Recurrent will execute the Lease only if: (i)
19 the City provides written notice to Recurrent confirming delivery of the premises on or before
20 May 31, 2009, and (ii) Recurrent does not provide written notice to the City rejecting the site
21 due to risks from the condition of the site on or before June 30, 2009. If the Lease is not
22 executed, the PPA will terminate and the City will reimburse Recurrent for 50% of certain third
23 party development costs, up to a cap of \$100,000.

24 (2) The PPA provides that the City will purchase the power produced by the
25 Solar Project at the contract price of \$235.00 /MWh, escalated at 3% per year. The estimated

1 cost of electricity from the projects at Sunset Reservoir and Pier 96 will be approximately
2 \$2,000,000 a year, escalated at 3% per year. The PPA is for a term of 25 years.

3 (3) The PPA requires that the PUC take all action necessary to include all
4 estimated annual payments under the PPA in the PUC's budget for each fiscal year funded
5 from PUC power revenues.

6 (4) The City pays only 25% of the contract price for any power produced
7 above 120% of the annual expected output of the Solar Project.

8 (5) Recurrent is responsible for design, installation, interconnection and
9 regulatory approval of the Solar Project.

10 (6) Seven years after the effective date, the City has a one-time opportunity
11 to buy the Solar Project at the higher of fair market value or \$33,000,000.

12 (7) The PPA includes a clause approved by the Risk Manager, indemnifying,
13 holding harmless and agreeing to defend Recurrent from acts, claims, liabilities and losses
14 arising from acts or omissions of the City in the performance of its obligations under the PPA,
15 except those arising by reason of the sole negligence of Recurrent.

16 (8) The City may terminate the PPA at any time for a public purpose subject
17 to compensating Recurrent for its associated unavoidable losses, including in the case of a
18 termination after commencement of commercial operation, the present value of the City's
19 projected payments pursuant to the PPA for the remainder of the term.

20 (9) The City may suspend the PPA for a public purpose for up to two years,
21 subject to (a) compensating Recurrent for its removal and restoration costs, and its
22 unavoidable costs during the suspension period, including its debt service obligation and fixed
23 operation and maintenance costs and (b) extending the term of the PPA, at the option of
24 Recurrent, day for day for every day of suspension.
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1 (d) Key Lease Terms

2 (1) The Lease will be executed only if the City tenders the site to Recurrent
3 by May 31, 2009, and Recurrent does not reject it within 30 days.

4 (2) The Lease term will end 90 days after the end of the PPA, and the rent
5 will be one dollar (\$1) per year. The City will have co-tenancy rights and reserved rights that
6 permit it to continue to operate the site as a reservoir. The City has the right but not the
7 obligation to maintain the property.

8 (3) The usual waiver of remedies by a tenant are modified to reflect
9 Recurrent's rights under the PPA in the case of termination or suspension for public purpose.

10 (4) The City will reimburse Recurrent for any possessory interest tax
11 assessed on the Solar Project.

12 (5) If the City constructs or installs a facility or improvement within the Sunset
13 Reservoir that shades the Solar Project, the City will have to pay Recurrent for the full output
14 that would have occurred absent the shading if Recurrent notifies the City of the shading and
15 the City does not remove the cause.

16 Section 2. Waiver of City Administrative Code Provisions:

17 (a) For the PPA, the Board of Supervisors hereby waives the requirement of
18 Section 21.9(a) of the San Francisco Administrative Code that in the case of multi-year
19 contracts, payment and performance obligations after the first year be made subject to the
20 appropriation of funds for the contract. This waiver is reasonable because the PPA requires
21 the PUC to take all actions necessary to include all estimated annual payments under the
22 PPA in the PUC's budget for each fiscal year funded from PUC power revenues.

23 (b) For the PPA, the Board of Supervisors hereby waives the requirement of
24 Section 21.19 of the San Francisco Administrative Code that a contract must state that the
25 maximum amount of a City contract obligation shall be certified by the controller. This waiver

1 is reasonable because the City's liability for the payments under the PPA is limited by the
2 price and the annual expected output of the Solar Project. Further, under the PPA the City
3 pays only twenty-five percent of the contract price for any power produced above one hundred
4 and twenty percent of the annual expected output of the Solar Project.

5 Section 3. Authorizations: Section 9.118 of the San Francisco Charter requires
6 approval by the Board of Supervisors for leases with a term of ten years or more, and for
7 contracts in excess of ten years or requiring expenditures above ten million dollars.

8 (a) The Board of Supervisors authorizes the General Manager to execute the PPA
9 with Recurrent in substantially the form on file with the Clerk of the Board of Supervisors, in
10 File No. _____, with such changes or modifications, including without limitation
11 modifications to the exhibits, as may be acceptable to the General Manager and the City
12 Attorney, and which do not materially increase the obligations and liabilities of the City.

13 (b) The Board of Supervisors authorizes the General Manager, subject to
14 satisfaction of the conditions precedent to execution referenced above and in the PPA, to
15 execute the Lease, substantially in the form on file with the Clerk of the Board of Supervisors,
16 in File No. _____, with such changes or modifications, including without limitation
17 modifications to the exhibits, as may be acceptable to the General Manager and the City
18 Attorney and which do not materially increase the obligations and liabilities of the City.

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

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22 By: _____
Jeanne M. Solé
23 Deputy City Attorney