

1 **File No. 090093** **Amendment of the Whole** **Ordinance No.**
2 **In Board**
3 **5/5/09**
4 **[Solar Energy Agreements with Recurrent Energy.]**

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

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

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

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

19 (a) Background

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

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

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

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. 09-0093.

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

16 (c) Key PPA Terms

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

23 (2) The PPA provides that the City will purchase the power produced by the
24 Solar Project at the contract price of \$235.00 /MWh, escalated at 3% per year. The estimated
25 cost of electricity from the projects at Sunset Reservoir project and Pier 96 will be

1 approximately ~~\$2,000,000~~ \$1,869,920 a year, escalated at 3% per year. The PPA is for a
2 term of 25 years. The guaranteed maximum PPA cost is \$60,218,619. The PUC shall not
3 less than annually provide to the Board of Supervisors a report on the administration of the
4 PPA and the lease. The report shall include, without limitation, the following information:

5 (i) the progress of construction of the solar facility;

6 (ii) the amount of energy produced by the facility;

7 (iii) funds expended under the lease and PPA;

8 (iv) material disputes under the lease and/or PPA;

9 (v) Other matters deemed relevant by PUC.

10 (3) The PPA requires that the PUC take all action necessary to include all
11 estimated annual payments under the PPA in the PUC's budget for each fiscal year funded
12 from PUC power revenues. The PUC covenants to make the necessary annual
13 appropriations to cover the maximum annual payment due under the 25-year Power Purchase
14 Agreement, to include these payments as an operating expense of the Electric System in
15 accordance with San Francisco Charter Section 16.103(a)(1) and to establish budgeted
16 revenues, including Power rates and charges, to ensure sufficient sources are available to
17 timely meet this commitment. In addition, as an internal budgetary matter, the PUC will hold
18 \$1.8 M in fund balance reserve during each year of the term of the PPA.

19 (4) The City does not ~~pays only 25% of the contract price~~ for any power
20 produced above 120% of the annual expected output of the Solar Project.

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

23 (6) Seven years after the effective date, the City may ~~has a one-time~~
24 ~~opportunity to~~ buy the Solar Project at the higher of fair market value or
25 ~~\$33,000,000~~ \$32,412,352. Fifteen years after the effective date, the City may buy the Solar

1 Project at the higher of fair market value or the net present value of the remaining projected
2 payments due plus the reasonable residual value ~~removal cost~~ of the generating facility.

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

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

11 (9) The City may suspend the PPA for a public purpose for up to two years,
12 subject to (a) compensating Recurrent for its removal and restoration costs, and its
13 unavoidable costs during the suspension period, including its debt service obligation and fixed
14 operation and maintenance costs and (b) extending the term of the PPA, at the option of
15 Recurrent, day for day for every day of suspension.

16 (10) The City may deduct any liquidated damages amount under the Solar
17 Project First Source Hiring Agreement from other payments due under the PPA to the extent
18 such liquidated damages are due and payable by Recurrent but have not yet been paid to
19 City.

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21 (d) Key Lease Terms

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

24 (2) The Lease term will end 90 days after the end of the PPA, and the rent
25 will be one dollar (\$1) per year. The City will have co-tenancy rights and reserved rights that

1 permit it to continue to operate the site as a reservoir. The City has the right but not the
2 obligation to maintain the property.

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

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

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

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12 Section 2. Waiver of City Administrative Code Provisions:

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

19 ~~(b) For the PPA, the Board of Supervisors hereby waives the requirement of~~
20 ~~Section 21.19 of the San Francisco Administrative Code that a contract must state that the~~
21 ~~maximum amount of a City contract obligation shall be certified by the controller. This waiver~~
22 ~~is reasonable because the City's liability for the payments under the PPA is limited by the~~
23 ~~price and the annual expected output of the Solar Project. Further, under the PPA the City~~
24 ~~pays only twenty-five percent of the contract price for any power produced above one hundred~~
25 ~~and twenty percent of the annual expected output of the Solar Project.~~

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

4 (a) The Board of Supervisors authorizes the General Manager to execute the PPA
5 with Recurrent in substantially the form on file with the Clerk of the Board of Supervisors, in
6 File No. 09-0093 , with such changes or modifications, including without limitation
7 modifications to the exhibits, as may be acceptable to the General Manager and the City
8 Attorney, and which do not materially increase the obligations and liabilities of the City.

9 (b) The Board of Supervisors authorizes the General Manager, subject to
10 satisfaction of the conditions precedent to execution referenced above and in the PPA, to
11 execute the Lease, substantially in the form on file with the Clerk of the Board of Supervisors,
12 in File No. 09-0093, with such changes or modifications, including without limitation
13 modifications to the exhibits, as may be acceptable to the General Manager and the City
14 Attorney and which do not materially increase the obligations and liabilities of the City.

15 (c) In connection with the authorizations described above the Board of Supervisors
16 directs that no payments shall be made under this contract without written approval by the
17 Controller as to (A) the sufficiency of SFPUC Power Revenues included as an operating
18 expense in the PUC's budget under Charter Section 16.103(a)(1) to make such payment and
19 (B) overall compliance with the PPA.

20 (d) In connection with the authorizations described above the Board of Supervisors
21 directs the PUC to collaborate with the First Source Hiring Administration in the
22 implementation of the First Source Hiring Program in connection with the Solar Project. To
23 that end, each PUC budget submission during the term of the PPA until the fiscal year
24 following the completion of construction of the Solar Project shall include a summary of
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1 compliance with the First Source Hiring Agreement, including but not limited to a statement as
2 to whether any notice of default has been issued and whether any liquidated damages
3 payment is then due and owing under Section 83.12 of the San Francisco Administrative
4 Code but not yet paid.

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

9 By: _____
10 Margarita Gutierrez
11 Deputy City Attorney