

1 [Contract - Shell Energy for CleanPowerSF Program]

2

3 **Resolution approving a contract with Shell Energy North America for a term of four**
4 **years and six months for services required to launch the CleanPowerSF program and**
5 **authorizing the General Manager of the Public Utilities Commission to take additional**
6 **steps to launch the CleanPowerSF program, subject to conditions.**

7

8 I. History and Background

9

10 WHEREAS, Public Utilities Code Section 366.2 allows public agencies to aggregate
11 the electrical load of interested electricity consumers within their jurisdictional boundaries.
12 Pursuant to this law, the City has established a Community Choice Aggregation (CCA)
13 program known as CleanPowerSF to provide electric power to the residents and businesses
14 located within its jurisdiction. The San Francisco Board of Supervisors established the City's
15 CCA program in May 2004 (Ordinance 86-04). The Ordinance found that CCA would allow the
16 City to increase the scale and cost-effectiveness of renewable energy, conservation and
17 energy efficiency in San Francisco and to increase local control over electricity prices and
18 resources. To implement the program, Ordinance No. 86-04 directed the development of a
19 draft Implementation Plan (IP) and the preparation of a draft Request For Proposals (RFP) to
20 solicit an electricity supplier for the program. In December 2004, the Board of Supervisors
21 created a Citizens Advisory Task Force (Task Force) to advise the City regarding the draft
22 Implementation Plan and the draft RFP; and

23 WHEREAS, Mayor Gavin Newsom signed a Declaration of Mayor or Chief County
24 Administrator Regarding Investigation, Pursuit or Implementation of Community Choice
25 Aggregation on December 16, 2005; and

1 WHEREAS, After an extensive process that involved public meetings of the San
2 Francisco Local Agency Formation Commission (LAFCO), the Task Force, the San Francisco
3 Public Utilities Commission (SFPUC) and interested parties and advocacy groups, the Board
4 of Supervisors approved a Draft Implementation Plan (Draft IP) in June 2007 setting forth
5 goals and policies for the City’s CCA program (Ordinance 147-07). Ordinance No. 147-07
6 directed the issuance of a Request For Information (RFI) to solicit input from interested parties
7 regarding the development of the program. Ordinance No. 147-07 found that the RFI
8 responses and other information obtained in implementing the program would necessitate
9 changes to the Draft IP and, accordingly, directed SFPUC, in consultation with LAFCO, to
10 prepare a revised IP for review and approval by the Board of Supervisors. As required by
11 Ordinance No. 147-07, SFPUC issued an RFI in November 2007. In April 2009, SFPUC
12 issued a request for qualifications (“RFQ”) from potential electricity suppliers. SFPUC, in
13 consultation with LAFCO, used the information obtained from these solicitations to prepare an
14 RFP; and

15 WHEREAS, The Board of Supervisors approved the issuance of an RFP in October
16 2009 (Ordinance 232-09). In November 2009, SFPUC issued the RFP. The City received
17 five responses to its RFP and, in January 2010, identified Power Choice, LLC as the highest
18 ranked proposer. The City engaged in negotiations with Power Choice, LLC for electricity
19 supply and other services. In January 2010, SFPUC prepared a revised Implementation Plan
20 (IP) and Statement of Intent for approval by the Board of Supervisors to file with the CPUC in
21 accordance with Ordinance 147-07. The Implementation Plan was revised to allow more
22 flexibility in the resources that may be used to make up the CleanPowerSF supply portfolio,
23 and to notify the CPUC that the SFPUC may roll out the program in phases if phasing allows it
24 to maximize demand-side management programs and renewable energy impacts, synergies
25 with local ordinances and other customer programs, cost of service and customer load

1 characteristics, and other operational considerations. The Board of Supervisors held a hearing
2 on the IP in the Budget and Finance Committee on February 17, 2010, and forwarded the
3 Ordinance adopting the IP to the full Board of Supervisors with a recommendation for
4 approval. The Board of Supervisors considered and voted on the Ordinance adopting the
5 revised IP at its public meetings on February 23, 2010 and March 2, 2010. On March 2, 2010,
6 The Board of Supervisors finally approved the Ordinance and authorized the filing of the IP
7 with the CPUC (Ordinance 45-10). The IP was certified by the CPUC on May 18, 2010; and

8 WHEREAS, The SFPUC authorized the General Manager to execute a service
9 agreement with Pacific Gas and Electric Company (PG&E) on May 11, 2011. The General
10 Manager executed the Community Choice Aggregation Service Agreement (the Service
11 Agreement) with PG&E on May 27, 2010. The Service Agreement is a contract that governs
12 the business relationship between PG&E and the City with respect to CleanPowerSF. Among
13 other things, the Service Agreement includes provisions for audits, dispute resolution, events
14 of default, billing and payment terms and indemnity. The Service Agreement incorporates by
15 reference PG&E's CCA tariffs that set forth the operational and financial duties of aggregators
16 and PG&E in establishing and conducting CCA service; and

17 WHEREAS, Negotiations with Power Choice, LLC, were unsuccessful, and on August
18 5, 2010, the SFPUC issued a second RFP seeking an electricity supplier for the program. No
19 bidders met the minimum qualifications of that RFP, and on February 8, 2011, the SFPUC
20 authorized the General Manager to negotiate with one or more creditworthy firms to create a
21 program that most closely achieves the City's goals (Resolution 11-0027). Shortly thereafter,
22 SFPUC engaged in negotiations with Shell Energy North America (Shell) for electricity supply
23 and Noble Americas for customer care and billing services; and

1 WHEREAS, In Ordinance No. 232-09 the Board of Supervisors authorized approval by
2 resolution for future CleanPowerSF approvals; and

3 II. CleanPowerSF Next Steps

4 WHEREAS, The CleanPowerSF program will be launched in phases to groups of
5 customers in order to mitigate the risks inherent in purchasing power. Phase One will follow
6 the state-mandated opt-out process, enrolling sufficient customers to meet the volume of
7 electricity specified in the Shell agreement, not to exceed an average of approximately 30
8 MW, and any customer within San Francisco will be eligible to participate during Phase One;
9 and

10 WHEREAS, The CleanPowerSF program will offer customers a 100% renewable
11 product and will allow for development of new renewable resources to be added in to the
12 electricity portfolio as a customer revenue stream is established; and

13 WHEREAS, The SFPUC approved a draft contract with Shell and \$19.5 million in
14 funding on December 13, 2011, in Resolution No. _____, and authorized the General
15 Manager to execute the contract, subject to conditions; and

16 WHEREAS, The SFPUC has submitted to the Board of Supervisors an appropriation
17 request for \$19.5 million, including \$19 million required under the Shell agreement and an
18 additional \$500,000 for start-up costs and costs related to a contract for customer billing, data
19 management and other administrative services; and

20 WHEREAS, SFPUC staff, in concert with LAFCo staff, is negotiating an agreement with
21 Noble Americas for startup, data management, customer information, billing administration
22 and periodic reporting services, and intends to require Noble Americas to make commercially
23 reasonable efforts to locate a call center in San Francisco that will provide local jobs; and
24
25

1 WHEREAS, The SFPUC has indicated its commitment to pursuing a local build-out of
2 renewable energy facilities as a component of CleanPowerSF, and anticipates immediate
3 commencement of that component when (i) consultant studies that are underway have been
4 completed, (ii) sufficient revenues are generated or identified to fund the build-out, (iii) SFPUC
5 has completed environmental analysis of any physical impacts of a build-out program and
6 made appropriate findings, and (iv) the SFPUC approves a plan, budget, and timeline for the
7 local build-out; and

8 III. Rates for CleanPowerSF Customers

9 WHEREAS, CleanPowerSF rates will be approved by the SFPUC and Board of
10 Supervisors through the process established in section 8B.125 of the City's Charter, and the
11 SFPUC must determine that those rates are sufficient to cover the cost of power and services
12 provided by Shell as well as other costs required for the program prior to launching the
13 program; and

14 WHEREAS, The SFPUC staff will propose rates to the Rate Fairness Board that will
15 cover all costs to provide service to CleanPowerSF customers, including the cost of power it
16 expects Shell to provide, based on market information and consultation with Shell; the Rate
17 Fairness Board will consider the rate proposal, and may report to the SFPUC regarding its
18 analysis; the SFPUC will establish rates for CleanPowerSF and submit those rates to the
19 Board of Supervisors for its approval or rejection; and

20 WHEREAS, The SFPUC will review the power prices proposed by Shell before it
21 authorizes the General Manager to complete a power purchase transaction, in order to
22 determine that the rates established by the SFPUC and Board of Supervisors will be adequate
23 to recover all costs of providing service to customers; and
24
25

1 WHEREAS, If the SFPUC determines that the adopted CleanPowerSF rates are not
2 adequate to cover all costs of providing service to CleanPowerSF customers, it will not
3 authorize the General Manager to complete a power purchase transaction and launch the
4 program; and

5 IV. Contract with Shell

6 WHEREAS, The SFPUC, in consultation with LAFCO, has negotiated the key terms of
7 a contract with Shell for electricity necessary to serve Phase One of the CleanPowerSF
8 Program. The draft contract, which was approved by the SFPUC on December 13, 2011, is on
9 file with the Clerk of the Board of Supervisors in File No. 111340 and declared to be a part of
10 this resolution as if set forth fully herein, consists of three parts: (i) a Master Agreement
11 (setting forth general terms and conditions and providing that Shell and the City may enter into
12 transactions to buy particular amounts, quantities and types of electric products); (ii) a
13 Security Agreement (giving Shell control over the account that holds the receipts received
14 from CleanPowerSF customers and a first priority security interest in that account); and (iii) a
15 Confirmation (specifying the price, quantity and type of product for specific electricity purchase
16 transactions); and

17 WHEREAS, Shell will provide and the City will purchase the following for four and one
18 half-years: (i) electricity to serve CleanPowerSF customers; (ii) scheduling coordinator
19 services to go along with the power supplied; and

20 WHEREAS, The contract allows the City and Shell to enter into additional
21 Confirmations for procurement of additional electricity services; and

22 WHEREAS, The contract requires the City to provide \$19 million for startup costs and
23 program reserves, consisting of the following:
24
25

1 (i) \$15 million to be held in an escrow account subject to joint instructions by the
2 City and Shell, as partial collateral for a termination payment in the event the City defaults and
3 Shell Energy terminates the agreement. The termination payment is intended to cover
4 reasonable risk and costs that might be incurred by Shell should the program cease
5 operations during the contract period. This amount may be reduced in subsequent years of the
6 contract if market conditions support a reduction (see Sections 2.3(f) and 5.3);

7 (ii) \$2.5 million to fund a Program Reserve to be deposited into the customer
8 revenues secured account, controlled by Shell. The Program Reserve is intended to provide
9 security to Shell that there will be sufficient cash on hand in the customer revenues secured
10 account to cover Shell Energy's monthly bills. The City must restore the balance of the
11 Program Reserve to at least \$2.5 million within five Business Days of a notice by Shell that
12 the Program Reserve is below this amount (see Sections 2.3(d) and 5.2);

13 (iii) \$1.5 million to be held by the City in an Operating Reserve, to ensure short-
14 term unanticipated costs associated with startup and initial operations do not create long-term
15 program stability issues (for example, additional costs associated with bringing in additional
16 customers, or delays in receipt of revenues, in the event that opt-out rates are higher than
17 anticipated); and

18 WHEREAS, Shell will not have a right to collect the termination payment or the
19 Program Reserve unless and until the City executes a Confirmation and all other conditions
20 are satisfied. The \$19.5 million is in addition to a total of \$6 million that already has been
21 appropriated to CleanPowerSF through September 2011, including \$1 million in July 2011;
22 and

23 WHEREAS, The draft contract does not specify the amount or price of the electricity to
24 be provided by Shell. These will be determined before the program is launched, after Shell
25 has obtained prices for the electricity it will provide; and

1 WHEREAS, The contract includes terms that are non-standard for City contracts,
2 including a modification to the standard appropriation of funds language (see Section 8.2(c)):

3 (i) if Shell terminates the contract as a result of a City default while the
4 program is healthy (program unrestricted net assets are at least zero), and the termination
5 payment exceeds \$15 million, the General Manager must seek an appropriation or
6 supplemental appropriation to fund the difference, but approval of such appropriation is within
7 the sole discretion of the SFPUC and/or the Board of Supervisors;

8 (ii) a failure by the City to pay the full termination payment if the City
9 terminates CleanPowerSF while the program is healthy is an event of default under the
10 Agreement;

11 (iii) the contract does not include standard City language stating that the
12 contractor assumes the risk of a failure on the part of the City to appropriate additional funds;
13 and
14

15 WHEREAS, Consistent with standard energy industry practice, it is not an event of
16 default for Shell to fail to deliver a product it is required to sell under the agreement. If Shell
17 fails to deliver a product it contracted to provide:

18 (i) the City may purchase a replacement product and charge to Shell the
19 difference between the price of such purchase and the contract price (see Section 4.1);

20 (ii) in the case of renewable energy and resource adequacy capacity, if
21 penalties are imposed on the City as a result of Shell's failure to perform, Shell must
22 reimburse the City for the penalties (see Sections 4.2 (a) and 4.3);

23 (iii) in the case of bundled renewable energy, if on an annual basis Shell
24 fails to deliver at least 90% of the product it contracted to provide, in addition to any payments
25

1 made by Shell described in (i) and (ii) above, Shell must pay the City 25% of the contract price
2 for every MWh Shell failed to deliver (see Section 4.2(b)); and

3 WHEREAS, The contract imposes the following financial requirements on the City and
4 makes it an event of default if the City fails to meet them within the relevant cure periods:

5 (i) All receipts from CleanPowerSF customers served by Shell must be
6 deposited in an account controlled by Shell, but owned by the City (see Sections 2.3 (i) and
7 7.4);

8 (ii) Disbursements from the customer receipts account must be made by
9 Shell in accordance with a pre-established waterfall, pursuant to which on a monthly basis,
10 Shell gets paid first, the Program Reserve is retained, and any amount remaining is
11 transferred to the City (see Section 7.3);

12 (iii) the CleanPowerSF program must be financially healthy, but the City
13 has a sixty day cure period to restore financial health if end of the month financial reports
14 indicate there is a problem (see Section 5.1);

15 (iv) the termination payment is calculated as the difference between the
16 contract price and the market price of any product the City commits to buy pursuant to a
17 Confirmation. The termination payment is capped at \$15 million unless the City terminates
18 the CleanPowerSF program at a time when the program is healthy (see Sections 6.2, 6.3, 6.4,
19 6.5); and

20
21 V. Conditions for Contract Effectiveness and CleanPowerSF Program Launch

22 WHEREAS, Even after approval by the Board of Supervisors and execution by the
23 General Manager, the contract will not become effective until satisfaction of conditions
24
25

1 established by the contract as well as those established by the SFPUC and the Board of
2 Supervisors; and

3 WHEREAS, The contract establishes conditions that must be satisfied before it
4 becomes effective, including but not limited to the following: (i) the conditions placed by the
5 City on the launch of CleanPowerSF have been satisfied; (ii) the City has directed PG&E to
6 deposit the payments from CleanPowerSF customers for amounts due to the City for
7 CleanPowerSF services into a customer receipts account controlled by Shell; (iii) the City has
8 entered into an agreement that gives Shell control of the customer receipts account, has
9 granted Shell a first priority lien on the amounts in the account, and has appropriated and
10 deposited \$2.5 million in the account; (iv) the City has appropriated and placed \$15 million
11 dollars into an escrow account as collateral for a termination payment to Shell in the event of
12 a City default; (v) the CPUC has accepted an amendment to the City's implementation plan
13 and statement of intent filed with the CPUC pursuant to California Public Utilities Code
14 Section 366.3, that identifies Shell as the supplier of power for CleanPowerSF; and (vi) the
15 City has posted the CCA Bond and advised Shell of the amount thereof; and

16 WHEREAS, The SFPUC established the following conditions which must be satisfied
17 before the contract becomes effective: (i) CleanPowerSF rates are approved by the SFPUC
18 and Board of Supervisors through the process established in section 8B.125 of the City's
19 Charter, and the SFPUC has determined that those rates are sufficient to cover the cost of
20 power and services provided by Shell as well as other costs required for the program, (ii) the
21 California Public Utilities Commission (CPUC) has made its final determination of the CCA
22 bond amount required by Public Utilities Code Section 366.2 and the SFPUC has the
23 resources and all necessary authorizations to obtain the bond, (iii) all appropriations required
24 by the CCA supplier contracts have been authorized, and (iv) the SFPUC Power Enterprise
25

1 has rates in place to be financially stable and in compliance with its reserve policies, (v) a
2 contract for customer billing, data management and other administrative services with Noble
3 Americas or another entity has been approved; now, therefore, be it

4 RESOLVED, That the Board of Supervisors finds that this action is not subject to the
5 requirements of the California Environmental Quality Act because it can be seen with certainty
6 that this action will not result in any physical change to the environment; and be it

7 FURTHER RESOLVED, That any plan for local build-out of renewable energy facilities
8 that is approved by the SFPUC will be subject to Board of Supervisors review of
9 environmental impacts and compliance with the California Environmental Quality Act prior to
10 Board of Supervisors approval of appropriations or financing of such projects; and be it

11 FURTHER RESOLVED, That the Board of Supervisors, subject to all conditions set
12 forth in the contract and this resolution and all conditions adopted by the SFPUC, approves
13 the contract with Shell in substantially the form on file with the Clerk of the Board of
14 Supervisors, with such additions or modifications as may be acceptable to the General
15 Manager of the Public Utilities Commission and the City Attorney, and that do not materially
16 decrease the intended public benefits to the City; and, be it

17 FURTHER RESOLVED, That the Board of Supervisors authorizes the General
18 Manager, in consultation with the City Attorney, and on approval of the SFPUC, to amend or
19 modify the contract, including the Master Agreement, the Security Agreement, and any
20 Confirmations, to the extent that such amendment or modification does not materially change
21 the terms or decrease the intended public benefits to the City; and be it

22 FURTHER RESOLVED, That the Board of Supervisors authorizes the General
23 Manager to execute an initial Confirmation to purchase power from Shell provided that (1) the
24 amount of electricity procurement shall not exceed an average of 30 MWs, 2) the conditions
25 set forth in the Shell contract are satisfied, and 3) the conditions imposed by the SFPUC and

1 the Board of Supervisors on effectiveness of the contract and program launch are satisfied;
2 and, be it

3 FURTHER RESOLVED, That the Board of Supervisors authorizes the General
4 Manager to enter into additional Confirmations, on approval of the SFPUC, so long as the
5 Charter does not require approval by the Board of Supervisors and the SFPUC has
6 determined that CleanPowerSF rates approved by the SFPUC and Board of Supervisors
7 through the process established in section 8B.125 of the City's Charter, are sufficient to cover
8 the cost of additional power and services provided by Shell pursuant to the additional
9 Confirmation, as well as other costs required for the program.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25