

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

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

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

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

18 **Section 1. Background.**

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

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

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

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

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

13 (f) Public and private utilities and energy suppliers use industry-standard pro forma
14 contracts to ensure the availability of essential services in a timely and cost-effective manner.
15 Using these agreements can help facilitate 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 contracts provide standard terms and conditions that address common
18 issues, but allow parties to determine which provisions to include in a particular contract.

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

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

2 State law requires cities that offer CCA service to offer service to all residential
3 customers; many CCA programs, including CleanPowerSF, have added customers in phases
4 to mitigate financial and operational risk. The CleanPowerSF Phasing Policy (adopted in the
5 CleanPowerSF Business Practice Policies on December 8, 2015, by PUC Resolution 15-
6 0267) provides that service will be offered to additional customers throughout San Francisco
7 in a manner that is financially prudent and operationally feasible. The PUC expects additional
8 phases of service to meet the following conditions: program rates are sufficient to cover
9 program costs and rates are projected to be at or below PG&E rates at the launch of each
10 phase; supply commitments are sufficient to meet new projected customer demand; staffing
11 and systems and/or qualified third party service providers can handle additional transactions
12 and customer account volumes; sufficient and reasonably priced credit, collateral and working
13 capital support is available; and required approvals have been obtained.

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

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

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

2 (a) The electricity supplies needed to expand CleanPowerSF service throughout the
3 City will be obtained through a mix of long-term (10 to 25 years) and shorter term contracts.
4 To acquire the electricity products necessary to supply this program expansion and meet the
5 program’s portfolio content goals and regulatory obligations, the PUC issued two Requests for
6 Offers (“RFO”), one in June 2017 (described in subsection (1) below) and one in September
7 2017 (described in subsection (2) below). To ensure it had adequate credit support for these
8 purchases and other program requirements, the PUC also issued an RFP for a bank credit
9 facility in July 2017 (described in subsection (3) below).

10 (1) On June 22, 2017, the PUC issued an RFO seeking bids for energy,
11 environmental attributes, and capacity from new or existing eligible renewable resources, for
12 contracts of up to 25 years in duration. A copy of the renewable energy RFO is on file with
13 the Clerk of the Board of Supervisors in File No. 171172, and is incorporated herein by
14 reference as though fully set forth. The PUC received more than 300 bids from 32 different
15 companies, for supplies from more than 70 different projects, 83% of which are located in
16 California. Over 90% of the bids offered energy from new renewable resources. After the
17 evaluation team reviewed the bids to determine compliance with minimum qualifications and
18 criteria specified in the RFO, the PUC shortlisted two subsets of bidders for further
19 consideration and possible negotiations. For projects with initial contract delivery dates in
20 2018 or 2019, the selected bidders are 8minutenergy Renewable LLC; Avangrid Renewables
21 LLC; Calpine Energy Services L.P.; E.ON Climate & Renewables North America LLC; First
22 Solar; Frontier Renewable; FTP Power LLC, dba Sustainable Power Group (sPower); Morgan
23 Stanley Capital Group Inc.; NextEra Energy Resources Acquisitions LLC; Shell Energy North
24 America (US) L.P.; SunPower Corporation Systems; Terra-Gen LLC; Wadham Energy L.P.;
25 and Wind Wall Development LLC. For projects with initial contract delivery dates in 2020 or

1 2021, the selected bidders are 8minutenergy Renewable LLC; E.ON Climate & Renewables
2 North America, LLC; EDF Renewable Development, LLC; EDP Renewables North America
3 LLC; First Solar; Lendlease Energy Development LLC; NextEra Energy Resources
4 Acquisitions, LLC; NRG Renew, LLC; Sempra Renewables, LLC; and SunPower Corporation,
5 Systems.

6 The RFO invited Respondents to submit proposals for community benefits to be
7 invested in San Francisco County and/or the county in which the renewable project is or will
8 be located. Community Benefits are firm commitments on the part of the bidder to be
9 delivered to the community during the term of the contract in accordance with the SFPUC's
10 2011 Community Benefits Policy and 2009 Environmental Justice Policy, which directs the
11 SFPUC and its partner firms to be a good neighbor to all who are directly impacted by its
12 activities and investments. Community benefits must support non-profit or charitable activities
13 and may not go to, nor benefit, any employee of the SFPUC. The contractor may provide
14 community benefits in the form of a direct financial contribution, volunteer hours, in-kind
15 contributions, or a combination thereof. Community benefits are a "zero-dollar task," meaning
16 no hours or dollars are allocated in the selected contractor's costs under the contract.

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

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

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

13 (b) Negotiation and Execution of Contracts. PUC expects to negotiate contracts
14 with one or more bidders for power and to make purchases under one or more of the
15 contracts after approvals and after final pricing. PUC anticipates that some purchases will be
16 made in early 2018, and additional purchases will be made over the next few years, through
17 2021. The PUC Commission in public meetings will consider authorizing one or more of these
18 contracts. PUC expects the Commission to review and consider approvals related to the
19 RFOs for power supply in its regular Commission meeting on November 14, 2017. PUC also
20 expects to successfully conclude negotiations with JPMorgan for the bank credit facility, which
21 will be considered by the PUC Commission in a public meeting in December 2017. The
22 General Manager will not execute any contracts unless conditions specified by the PUC
23 Commission have been satisfied, including requirements for program rates. Final program
24 rates will provide for program cost recovery including energy procurement and administrative
25 and financial costs of program implementation.

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

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

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

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

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

- 8 (1) Renewable Power Purchase Agreement (New Facility);
- 9 (2) Renewable Power Purchase Agreement (Existing Facility); and
- 10 (3) Power Purchase and Sale Agreement.

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

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

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

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

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

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

- 16 (1) Implementing the MacBride Principles (Admin. Code Chapter 12F);
- 17 (2) Increased participation by small and micro local businesses in City
18 contracts (Admin. Code Chapter 14B);
- 19 (3) The competitive bidding requirement (Admin. Code Section 21.1);
- 20 (4) First source hiring requirements (Admin. Code Chapter 83); and
- 21 (5) The tropical hardwood and virgin redwood ban (Environ. Code
22 Chapter 8).

23 (b) Where the General Manager finds and documents in writing both that the
24 agreement represents the best opportunity available to the City to obtain essential services
25 and products in a manner beneficial to the City, and that it is not feasible to add all standard

1 City contract provisions to the agreement, the Board of Supervisors waives the requirement to
2 include in the agreement references to the following City Code provisions to the extent found
3 necessary by the General Manager, and finds such waivers to be reasonable and in the public
4 interest:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 **Section 10. Effective Date.**

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

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

3 By: _____
4 THERESA L. MUELLER
5 Deputy City Attorney

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