

UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
SIERRA NEVADA REGION

CUSTOM PRODUCT CONTRACT
FOR
FULL LOAD SERVICE
WITH

CITY & COUNTY OF SAN FRANCISCO
HETCH HETCHY WATER & POWER

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1. PREAMBLE:

This Contract is made this 13th day of August, 2004, pursuant to the Acts of Congress approved June 17, 1902 (32 Stat. 388); August 26, 1937 (50 Stat. 844); August 4, 1939 (53 Stat. 1187); and August 4, 1977 (91 Stat. 565); and Acts amendatory or supplementary to the foregoing Acts; between the UNITED STATES OF AMERICA, acting by and through the Administrator, WESTERN AREA POWER ADMINISTRATION, DEPARTMENT OF ENERGY, represented by the officer executing this Contract, or a duly appointed successor, hereinafter called Western or Contracting Officer; and the CITY & COUNTY OF SAN FRANCISCO, HETCH HETCHY WATER & POWER, a Municipal Corporation, hereinafter referred to as CCSF or Contractor, its successors or assigns; both also hereinafter referred to individually as Party and together as Parties.

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1 **2. EXPLANATORY RECITALS:**

2 2.1 The Parties entered into Base Resource Contract 00-SNR-00347 on
3 December 29, 2000. The Base Resource Contract provides the terms and
4 conditions whereby Western will provide Base Resource Electric Service to CCSF.
5

6 2.2 Western is currently revising Exhibit D to the Base Resource Contract.
7 Western will offer the revised Exhibit D to all customers prior to beginning service
8 under the Base Resource Contract. If CCSF rejects the provisions of Exhibit D,
9 Revision 1, its Base Resource Contract with Western will terminate.
10

11 2.3 At times, power provided under the Base Resource Contract will not be
12 sufficient to meet the electrical needs of CCSF at the delivery point(s) specified
13 herein.
14

15 2.4 Western's final 2004 Power Marketing Plan, published in the Federal
16 Register on June 25, 1999 (64 FRN 34417), provides for Western to develop
17 Custom Products for customers who request them. Section 8.7 of the Base
18 Resource Contract allows for Western to develop a Custom Product for CCSF.
19

20 2.5 CCSF has requested a Custom Product in the form of Supplemental Power
21 to meet the load at a specific delivery point(s).
22

23 2.6 CCSF has also requested Western to provide Portfolio Management
24 Services.
25

26 2.7 Western and CCSF recognize that, due to load diversity, there may be
27 benefits to aggregating some Full Load Service Customers' Base Resource
28 Percentages and Supplemental Power requirements for power purchases; and

additional business efficiencies may be realized through consolidation of power scheduling and related activities.

2.8 Western is willing to provide the services requested by CCSF once CCSF has accepted Exhibit D, Revision 1 to its Base Resource Contract with Western.

3. AGREEMENT:

The Parties agree to the terms and conditions set forth herein.

4. EFFECTIVE DATE AND TERM OF CONTRACT:

4.1 This Contract shall become effective upon execution by the Parties and shall remain in effect through September 30, 2010; except as otherwise provided for herein.

4.2 In the event that CCSF provides notice of termination of its Base Resource Contract 00-SNR-00347 pursuant to Exhibit D, Revision 1 of said Contract, this Contract shall immediately become null and void and no service shall be provided under this Contract.

4.3 Except as provided for in Section 4.2 above, service under this Contract shall begin January 1, 2005.

4.4 Western may suspend or terminate service under this Contract pursuant to Section 16.

4.5 All obligations incurred under this Contract shall be preserved until satisfied.

///

1 **5. DEFINITION OF TERMS:**

2 As used herein, the following terms whether singular or plural, or used with or without
3 initial capitalization, shall have the following meanings:

4 5.1 "Base Resource" means CVP and Washoe Project power output, as
5 determined by Western to be available for marketing, after (1) meeting the
6 requirements of Project Use and First Preference Customers, and (2) any other
7 adjustments required for maintenance, regulation, reserves, transformation
8 losses, and ancillary services.

9
10 5.2 "Custom Product" means a combination of products and services,
11 excluding provisions for load growth, which may be made available by Western
12 per customer request, using the customer's Base Resource and supplemental
13 purchases made by Western.

14
15 5.3 "Full Load Service Customer" means a Base Resource customer that will
16 have its entire load at the delivery point(s) specified in Exhibit A met with Western
17 power, and whose Portfolio Management functions for said delivery point(s) will be
18 performed by Western.

19
20 5.4 "Portfolio Management Services" means determining balanced hourly load
21 and resource schedules for a customer.

22
23 5.5 "Regional Transmission Organization" or "RTO" means an organization that
24 meets the minimum characteristics and performs the minimum functions specified
25 in Federal Energy Regulatory Commission Order 2000, as that order may be
26 amended or superseded.

27 ///

28 ///

1 5.6 "Supplemental Power" means firm capacity and energy, provided by
2 Western, that a customer(s) needs in addition to its Base Resource for use in
3 meeting that customer's load.
4

5 **6. SUPPLEMENTAL POWER FURNISHED BY WESTERN:**

6 6.1 Western will provide additional power to those Full Load Service Customers
7 whose loads exceed their Base Resource. Western may aggregate the needs of
8 Full Load Service Customers to determine Supplemental Power requirements.
9

10 6.2 Supplemental Power provided by Western may include long-term, short-
11 term, day-ahead, and hour-ahead purchases, and/or other arrangements.
12

13 6.3 Western will provide Supplemental Power to CCSF to serve the load unmet
14 by the power provided under CCSF's Base Resource Contract. CCSF's expected
15 monthly peak capacity and energy are specified in Section 2 of Exhibit A attached
16 hereto. CCSF shall provide written notification to Western as soon as practicable,
17 and not less than ninety (90) days prior to, any expected increase or decrease in
18 the capacity and energy amounts specified in Exhibit A.
19

20 **7. DELIVERY ARRANGEMENTS:**

21 7.1 Western will use best efforts to contract with the appropriate parties for the
22 transmission and distribution service necessary to make CCSF's Supplemental
23 Power available at the point(s) of delivery specified in Section 4 of Exhibit A. If
24 Western is successful in contracting for transmission and distribution on behalf of
25 CCSF, CCSF will be required to execute a third-party transmission contract with
26 Western to receive such service.
27

28 ///

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1 7.2 In the event that Western is unable to secure transmission and distribution
2 service on behalf of CCSF, Western will make CCSF's Supplemental Power
3 available at the point(s) of delivery specified in Exhibit A of CCSF's Base
4 Resource Contract. CCSF shall ultimately be responsible for arranging for the
5 transmission and distribution necessary to receive Supplemental Power provided
6 under this Contract to the delivery point specified in Section 4 of Exhibit A. By
7 November 1, 2004, CCSF shall provide written notification demonstrating that it
8 has arranged for delivery of its Supplemental Power. Said arrangements must
9 allow for Western to schedule transmission and distribution on behalf of CCSF.

10
11 **8. PORTFOLIO MANAGEMENT SERVICES:**

12 8.1 Western will need load data and other information to determine the power
13 necessary to meet CCSF's load. If Western does not have access to the
14 information it needs, Western will request it from CCSF. CCSF shall provide the
15 information within thirty (30) days of a request from Western. Said data may
16 include, but is not limited to, the following:

17 8.1.1 Historical hourly load data at the delivery point(s) specified in
18 Section 4 of Exhibit A; and

19 8.1.2 Expected future loads at the delivery point(s) specified in Section 4
20 of Exhibit A during the term of this Contract.

21
22 8.2 By October 1 of each year, CCSF will submit to Western its annual planned
23 power usage for the upcoming calendar year. CCSF shall provide this information
24 to Western in a format agreed to between the Parties. CCSF must provide any
25 planned significant changes in its power usage to Western in writing not less than
26 ninety (90) days prior to the planned change. Western will revise Exhibit A to this
27 Contract to reflect such changes in power usage. The information provided by
28 CCSF will be used by Western in determining daily power schedules for CCSF.

1 8.3 On a daily basis, using the information provided in Sections 8.1 and 8.2,
2 Western will determine hourly schedules of the power necessary to fully serve
3 CCSF's load at the delivery point(s) specified in Exhibit A, as follows:

4 8.3.1 Using the information as provided in Section 8 of CCSF's Base
5 Resource Contract, Western will determine the hourly use of CCSF's Base
6 Resource for the day.

7 8.3.2 If CCSF's Base Resource does not fully meet CCSF's forecasted
8 load, Western will schedule CCSF's share of exchange program energy, if
9 any, to serve CCSF's load.

10 8.3.3 Once all Base Resource and exchange program energy has been
11 distributed, Western will meet CCSF's unmet forecasted load with
12 Supplemental Power.

13 8.3.4 Any Base Resource in excess of CCSF's forecasted load will be
14 retained by Western for distribution under the exchange program in
15 accordance with Exhibit B to CCSF's Base Resource Contract.

16 8.3.5 After Western has balanced the hourly load and resource schedules
17 for CCSF, Western will provide the schedules to CCSF's scheduling entity
18 in accordance with control area operator protocols.
19

20 8.4 During the active day, Western will use best efforts to take the appropriate
21 actions necessary to balance loads and resources.
22

23 8.5 Western shall not be liable in the event that power and/or transmission is
24 scheduled either in excess of or below that necessary to serve CCSF's hourly
25 load.

26 ///

27 ///

28 ///

1 **9. ADDITIONAL SERVICES NECESSARY TO PROVIDE CUSTOM PRODUCT(S):**

2 CCSF understands that additional services, including but not limited to, scheduling the
3 resource and control area services may be necessary to provide the Custom Product(s)
4 requested under this Contract. CCSF shall be responsible for all costs incurred by
5 Western to provide Full Load Service as specified in this Contract.

6
7 **10. SCHEDULING AND METERING:**

8 10.1 All services provided by Western to CCSF under this Contract will be
9 subject to the same scheduling and metering terms and conditions as provided
10 under CCSF's Base Resource Contract the same as if they had been expressly
11 set forth herein.

12
13 10.2 CCSF shall provide the name and other pertinent information regarding its
14 scheduling entity to Western no less than sixty (60) days prior to receiving service
15 under this Contract. Western shall have no obligation to provide any service to
16 CCSF if said information has not been provided to Western. However, CCSF
17 shall not be relieved of its payment obligations hereunder.

18
19 **11. REGIONAL TRANSMISSION ORGANIZATION OR CONTROL AREA:**

20 Western currently operates within the California Independent System Operator's control
21 area. The Parties understand that Western may join an RTO or become a part of a
22 different control area. In the event Western either joins or is required to conform to the
23 protocols of an RTO or a different control area, the Parties shall mutually agree to make
24 any protocol changes to this Contract to conform to the terms and conditions required
25 by such organization. In the event that: 1) Western incurs costs from an RTO or a
26 different control area for serving CCSF's load; or 2) CCSF does not abide by the
27 protocols applicable to Western and Western incurs costs as a result, CCSF agrees to
28 pay all such costs attributable to CCSF.

12. CREDITWORTHINESS:

For the purpose of determining the ability of CCSF to meet its obligations related to service hereunder, Western may require reasonable credit review procedures. In addition, Western may require CCSF to:

12.1 Provide and keep in effect during the term of this Contract, an unconditional and irrevocable letter of credit as security to meet its responsibilities and obligations under this Contract; or

12.2 Provide an alternate form of security acceptable to Western.

13. BILLING AND PAYMENT FOR PORTFOLIO MANAGEMENT SERVICES:

13.1 The costs associated with providing Portfolio Management Services to CCSF are specified in Exhibit B attached hereto. By August 1st of each year during the term of this Contract, Western will review the charges for Portfolio Management Services and, if necessary, will revise Exhibit B to reflect the updated costs for this service.

13.2 Western will bill and CCSF shall pay for Portfolio Management Services in accordance with the procedures established under either Section 13.2.1 or Section 13.2.2, as solely determined by Western. If determined necessary by Western, Western may change the section under which Western is billing and CCSF is paying upon sixty (60) days notice to CCSF.

13.2.1 After-The-Fact Billing:

CCSF shall pay Western for Portfolio Management Services provided in the previous month as directed on the monthly electric service bill; or

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///

1 13.2.2 Advance Funding:

2 13.2.2.1 Western will estimate the initial amount of funds required.

3 The estimate shall be based on three (3) months of Western's
4 charges for Portfolio Management Services.

5 13.2.2.2 The initial advance funding amount shall be due on the
6 date specified on the bill for collection. The initial bill for collection
7 will be issued in September 2004.

8 13.2.2.3 On a monthly basis, Western will estimate its charges
9 associated with providing Portfolio Management Services to CCSF
10 for the following month. CCSF shall advance this amount to
11 Western as specified on its electric service bill.

12 13.2.2.4 Western shall use funds from CCSF's trust account on a
13 monthly basis for Western's charges associated with providing
14 Portfolio Management Services to CCSF in the previous month.

15 13.2.2.5 Any alternative method of advance funding shall be set
16 forth in a separate contractual agreement.

17
18 14. BILLING AND PAYMENT FOR SUPPLEMENTAL POWER:

19 14.1 CCSF shall pay for Supplemental Power furnished hereunder in
20 accordance with the rates, charges, and conditions set forth in the CVP Schedule
21 of Rates for Custom Product Power, effective January 1, 2005, or any
22 superseding rate schedules.

23
24 14.2 Western will bill and CCSF shall pay for Supplemental Power in
25 accordance with the procedures established under either Section 14.2.1 or
26 Section 14.2.2, as solely determined by Western. If determined necessary by
27 Western, Western may change the section under which Western is billing and
28 CCSF is paying upon sixty (60) days notice to CCSF.

1 14.2.1 After-The-Fact Billing:

2 CCSF shall pay Western for Supplemental Power provided in the previous
3 month as directed on the monthly electric service bill; or

4 14.2.2 Advance Funding:

5 14.2.2.1 Western will estimate the initial amount of funds required.

6 The estimate shall be based on three or more months of
7 Western's costs attributable to CCSF for Supplemental Power.

8 14.2.2.2 The initial advance funding amount shall be due on the
9 date specified on the bill for collection. The initial bill for collection
10 will be issued in September 2004.

11 14.2.2.3 On a monthly basis, Western will estimate its costs
12 associated with providing Supplemental Power to CCSF for the
13 following month. CCSF shall advance this amount to Western as
14 specified on its electric service bill.

15 14.2.2.4 Advance funding for Supplemental Power costs may be
16 collected for a period extending beyond the following month if the
17 Parties agree.

18 14.2.2.5 Western shall use funds from CCSF's trust account on a
19 monthly basis for Western's costs associated with providing
20 Supplemental Power to CCSF in the previous month.

21 14.2.2.6 Any alternative method of advance funding shall be set
22 forth in a separate contractual agreement.

23
24 **15. TRUST ACCOUNTS FOR ADVANCED FUNDS:**

25 CCSF understands that it may be required to advance funds to Western for one or
26 more trust accounts pursuant to Sections 13.2.2 and 14.2.2 and this section for the
27 services provided under this Contract. This Section 15 provides for establishing and

28 ///

1 maintaining the trust account(s) required if Section 13.2.2 and/or Section 14.2.2 are in
2 effect.

3
4 15.1 Funds that CCSF advances to Western shall be sent in accordance with
5 the information included on the bill(s) for collection and electric service bills, or as
6 otherwise directed.

7
8 15.2 CCSF shall be required to maintain a balance of at least three (3) months
9 of estimated Portfolio Management Services and/or Supplemental Power costs in
10 the trust account(s) at all times. Western shall monitor the account(s); and, if
11 Western determines that:

12 15.2.1 There are not sufficient funds in one or more of the accounts,
13 Western shall notify CCSF of the shortage and CCSF shall advance the
14 requested amount of funds to Western within ten (10) days; or

15 15.2.2 There are excessive funds in one or more of the accounts,
16 Western, at its sole discretion, will either: 1) decrease subsequent amounts
17 required by the amount in excess of the estimate, or 2) return any excess
18 funds to CCSF.

19
20 15.3 Western will provide CCSF with:

21 15.3.1 A monthly statement of the transactions that were posted to the
22 trust account(s), and the end-of-month balance in the account(s); and

23 15.3.2 An electric service bill that will reflect the previous month's
24 Supplemental Power and Portfolio Management Services costs and the
25 amount of advance funding required from CCSF for the costs that Western
26 anticipates it will incur while providing Supplemental Power and/or Portfolio
27 Management Services to CCSF for the following month(s).

28 ///

1 15.4 Western shall be under no obligation to provide service under this Contract
2 without CCSF advancing sufficient funds and said funds being available in the
3 trust account(s) as described herein.

4
5 15.5 Within sixty (60) days after termination of this Contract, and after Western
6 has determined that all obligations incurred under this Contract have been
7 satisfied, Western shall return any funds remaining in the trust account(s) to
8 CCSF without interest.

9
10 **16. DEFAULT PROVISIONS:**

11 16.1 The failure of CCSF to perform any of its payment obligations under this
12 Contract shall constitute a default. If Western determines CCSF to be in default,
13 Western shall promptly notify CCSF in writing. If CCSF has not cured the default
14 within seven (7) days, Western may suspend service under this Contract.

15
16 16.2 If CCSF is determined to be in default and does not cure such default in a
17 manner and within the timeframe established by Western, Western shall have the
18 right to terminate this Contract, and assess damages, as follows:

19 16.2.1 If Western's aggregate gains exceed its aggregate losses and
20 costs, including obligations incurred on behalf of CCSF that extend past the
21 current month, Western, after any set-off, shall make no payment to CCSF
22 and, notwithstanding anything in this Contract to the contrary, the amount
23 by which such gain exceeds the losses and costs for the purposes of this
24 Contract shall be zero (0); or

25 16.2.2 If Western's aggregate gains do not exceed its aggregate losses,
26 including obligations incurred on behalf of CCSF that extend past the
27 current month, Western will promptly calculate the damages associated
28 with the default. As soon as practical, Western will provide notice to CCSF

1 of the amount of the damages. Payment for the damages shall be made
2 by CCSF to Western within ten (10) business days after such notice is
3 received.
4

5 **17. GENERAL POWER CONTRACT PROVISIONS:**

6 The GPCP, effective July 10, 1998, attached hereto, are hereby made a part of this
7 Contract, the same as if they had been expressly set forth herein; Provided, That, for
8 the term of this Contract, CCSF hereby agrees to waive its rights under this Contract to
9 Article 11 of the GPCP.
10

11 **18. ENFORCEABILITY:**

12 It is not the intent of the Parties that this Contract confer any rights on third parties to
13 enforce the provisions of this Contract except as required by law or express provision in
14 this Contract. Except as provided in this section, this Contract may be enforced, or
15 caused to be enforced, only by Western or CCSF, or their successors or assigns.
16

17 **19. EXHIBITS MADE PART OF CONTRACT:**

18 Exhibit A, Full Load Service, and Exhibit B, Charges for Portfolio Management
19 Services, attached to and existing under this Contract may vary during the term hereof.
20 Said Exhibits shall become a part of this Contract during the term fixed by their
21 provisions. Exhibits A and B are attached hereto, and shall be in force and effect in
22 accordance with their terms until superseded by a subsequent Exhibit, as allowed by
23 the terms of the Exhibits, or terminated.
24

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25 ///

26 ///

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28 ///

1 **IN WITNESS WHEREOF**, the Parties have caused this Contract to be executed
2 the day and year first above written.

3
4 CITY & COUNTY OF SAN FRANCISCO
5 HETCH HETCHY WATER & POWER

6
7 By: Cheryl K Davis

8 Title: Acting General Manager

9 Address: 1155 Market Street

10 San Francisco, CA 94103

11
12 Attest:

13 By: Joseph A. Carr

14 Title: Deputy City Attorney

15 WESTERN AREA POWER ADMINISTRATION

16 By: [Signature]

17 Title: Power Marketing Manager

18 Address: 114 Parkshore Drive

19 Folsom, California 95630