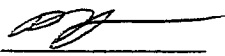


AGENDA ITEM SUMMARY

DATE: 3/12/12 DEPARTMENT: PW Sustainability DEPT. HEAD SIGNATURE: 

SUBJECT: Purchase of the LED Street Lights

AUTHORITY:  ID Code \_\_\_\_\_  IAR \_\_\_\_\_  City Ordinance/Code \_\_\_\_\_  
(IF APPLICABLE)

**BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:**

At the February 6, 2012 city council meeting the purchase of 18 LED fixture inserts from Site Based Energy, LLC and 34 LED fixture inserts from D&S Electrical Supply Co. was approved. Attached are the Contracts for Sale of Goods for each of these vendors. The City Attorney has reviewed and approved these contracts.

**FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS:** Caselle # \_\_\_\_\_

Budget Line Item # \_\_\_\_\_ YTD Line Item Balance \$ \_\_\_\_\_

Estimated Hours Spent to Date: \_\_\_\_\_ Estimated Completion Date: \_\_\_\_\_

Staff Contact: \_\_\_\_\_ Phone # \_\_\_\_\_

Comments: \_\_\_\_\_

**ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS:** (IF APPLICABLE)

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> City Administrator | <input type="checkbox"/> Library             | <input type="checkbox"/> Benefits Committee |
| <input type="checkbox"/> City Attorney      | <input type="checkbox"/> Mayor               | <input type="checkbox"/> Streets            |
| <input type="checkbox"/> City Clerk         | <input type="checkbox"/> Planning            | <input type="checkbox"/> Treasurer          |
| <input type="checkbox"/> Building           | <input type="checkbox"/> Police              | _____                                       |
| <input type="checkbox"/> Engineer           | <input type="checkbox"/> Public Works, Parks | _____                                       |
| <input type="checkbox"/> Fire Dept.         | <input type="checkbox"/> P & Z Commission    | _____                                       |

**RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:**

Motion to approve the Contracts for Sale of Goods with Site Based Energy, LLC and D&S Electrical Supply Co. for LED fixture inserts for the City of Hailey street lights.

**ADMINISTRATIVE COMMENTS/APPROVAL:**

City Administrator \_\_\_\_\_ Dept. Head Attend Meeting (circle one) Yes No

**ACTION OF THE CITY COUNCIL:**

Date \_\_\_\_\_

City Clerk \_\_\_\_\_

**FOLLOW-UP:**

\*Ord./Res./Agrmt./Order Originals: Record

\*Additional/Exceptional Originals to: \_\_\_\_\_

Copies (all info.): \_\_\_\_\_

Copies (AIS only) \_\_\_\_\_

Instrument # \_\_\_\_\_

**CITY OF HAILEY**  
**RESOLUTION NO. 2012-04**

WHEREAS, the CITY OF HAILEY is approving the purchase of LED Street Lights under EPA Community Climate Showcase Grant.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HAILEY, IDAHO, is approving the purchase of 34 LED light fixture inserts at \$745 each from D& S Electric for a total purchase price of \$25,330 and 18 LED light fixture inserts from Site Based Energy at \$535 each for a total purchase price of \$9,630.

Passed this 6th day of February 6, 2012.

City of Hailey

\_\_\_\_\_  
Fritz Haemmerle, Mayor

ATTEST:

\_\_\_\_\_  
Mary Cone, City Clerk

(Seal)



Dealer No.:

30676

**CONTRACT FOR SALE OF GOODS**

This Contract for Sale of Goods ("Contract") is made and entered into by and between **Site Based Energy, LLC**, an Idaho company ("Seller"), as seller, and the undersigned buyer City of Hailey, Idaho (hereinafter "Buyer") effective as of the date all the parties have signed below (the "Effective Date").

1. **Sale of Goods.** Buyer agrees to buy from Seller, and Seller agrees to sell to Buyer, the following goods (the "Goods"), in accordance with the terms hereinafter set forth:

Qty	Product Description	Unit Price	Extended Price
18	Piazza Luminaires	\$535.00	\$9,630.00

Total Price of Goods:	<u>\$9,630.00</u>
Total Shipping Charges:	<u>0.00</u>
<b>Total:</b>	<b><u>\$9,630.00</u></b>

2. **Payment Terms.**

- A. **Non-refundable Deposit:** Fifty percent (50%) of the Total Price of Goods, along with all Shipping Charges (collectively, the "Deposit"), shall be due and payable on the Effective Date hereof. In the absence of a breach by Seller in the performance of its obligations hereunder, this Deposit shall be non-refundable to Buyer.
- B. **Payment on Delivery:** The remaining fifty percent (50%) of the purchase price owed on each unit of Goods shall be due and payable, Cash on Delivery, upon the delivery of each respective unit. In the absence of Buyer's payment of such remaining balance on or before the scheduled date of delivery, the subject units shall be held by Seller until such payment is made.

3. **Delivery.** Seller agrees to deliver the Goods to Buyer, using a carrier chosen by Seller, at the address specified in Paragraph 11 below, unless another address is specified by the Buyer, in writing, at least seven (7) days prior to the scheduled delivery date. Seller shall deliver the Goods in accordance with the following delivery schedule:

Within 4 weeks from receipt of this agreement

---

4. **Risk of Loss.** The risk of loss from any casualty to the Goods shall be the responsibility of the Seller until the Goods (or any lot shipment thereof) have been received by the Buyer.
5. **Acceptance.** Buyer will have the right to inspect the Goods upon receipt and, within Five (5) business days after delivery, Buyer must give notice to Seller of any claim for damages on account of condition, quality or grade of the Goods (or any unit or lot shipment thereof). Such notice must be in writing and specify the basis of such claim in detail. Failure to provide any such notice shall constitute irrevocable acceptance of the Goods (or unit or lot shipment thereof) by the Buyer.
6. **Warranties.** Warranty is provided by the manufacturer of each product. The warranty contains all terms and conditions.
7. **Carbon Credits.** Except as otherwise limited by law, Buyer retains exclusive right to the use, benefit and enjoyment of all carbon credits arising from this transaction.
8. **Taxes.** All sales taxes, tariffs and other governmental charges shall be paid by Buyer and are Buyer's responsibility except as limited by law.
9. **Force Majeure.** Seller may, without liability, delay performance or cancel this Contract on account of force majeure events or other circumstances beyond its control, including, but not limited to, strikes, acts of God, political unrest, embargo, failure of source of supply or casualty.
10. **Corporate Authority.** Each party to this Contract represents and warrants to the other that: (a) all necessary corporate or company action on the part of each party to be taken in connection with the execution, delivery, and performance of this Contract has been duly and effectively taken; and (b) the execution, delivery and performance by each party of this Contract does not constitute a violation or breach of such party's articles of organization, bylaws, operating agreement or any other agreement or law by which such party is bound.
11. **Notices.** Any notice, payment, demand, or communication required or permitted to be given by any provision of this Contract will be deemed to have been given when delivered personally to the party designated to receive such notice or, on the third (3<sup>rd</sup>) business day after the same is sent by certified mail, postage and charges prepaid, directed to the following addresses or to such other or additional addresses as any party might designate by written notice to the other parties:

To the Seller:

Site Based Energy  
Po Box 3432  
21 Comet Lane  
Hailey, ID 83333

To the Buyer:

City of Hailey  
Attn: Tom Hellen  
115 Main St S.  
Hailey, ID 83333

12. **Entire Contract.** This Contract constitutes the entire and final agreement among the parties and there are no agreements, understandings, warranties, or representations

among the parties except as set forth herein. The terms of this Contract shall not be modified except by a writing signed by both parties.

13. **Severability.** If any clause or provision of this Contract is determined to be illegal, invalid, or unenforceable under any present or future law by the final judgment of a court of competent jurisdiction, the remainder of this Contract will not be affected thereby. It is the intention of the parties that if any such provision is held to be illegal, invalid, or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is possible and be legal, valid, and enforceable.
14. **Governing Law.** This Contract will be interpreted and construed under the laws of the State of Idaho. All claims, disputes, and other matters in question arising out of or relating to this agreement, or the breach thereof, will be decided by proceedings instituted and litigated in a court of competent jurisdiction sitting in Blaine County, Idaho.

This Contract is executed on the dates hereafter specified, effective as of the date upon which both parties have signed below.

**BUYER:** \_\_\_\_\_

\_\_\_\_\_  
(signature)  
By: \_\_\_\_\_ (Name)  
Its: \_\_\_\_\_ (Title)

\_\_\_\_\_  
Date

**SELLER:** Site Based Energy, LLC

\_\_\_\_\_  
(signature)  
By: \_\_\_\_\_ (Name)  
Its: \_\_\_\_\_ (Title)

\_\_\_\_\_  
Date

## CONTRACT FOR SALE OF GOODS

This Contract for Sale of Goods ("Contract") is made and entered into by and between **D&S Electrical Supply Co.**, an Idaho company ("Seller"), as seller, and the undersigned buyer City of Hailey, Idaho (hereinafter "Buyer") effective as of the date all the parties have signed below (the "Effective Date").

1. **Sale of Goods.** Buyer agrees to buy from Seller, and Seller agrees to sell to Buyer, the following goods (the "Goods"), in accordance with the terms hereinafter set forth:

Qty	Product Description	Unit Price	Extended Price
34	ANP Retrofit Kit for Existing PH20 Fixtures	\$745.00	\$25,330.00

Total Price of Goods:	\$25,330.00
Total Shipping Charges:	\$0.00
<b>Total:</b>	<b><u>\$25,330.00</u></b>

2. **Payment Terms.**

- A. **Non-refundable Deposit:** Fifty percent (50%) of the Total Price of Goods, along with all Shipping Charges (collectively, the "Deposit"), shall be due and payable on the Effective Date hereof. In the absence of a breach by Seller in the performance of its obligations hereunder, this Deposit shall be non-refundable to Buyer.
- B. **Payment on Delivery:** The remaining fifty percent (50%) of the purchase price owed on each unit of Goods shall be due and payable, Cash on Delivery, upon the delivery of each respective unit. In the absence of Buyer's payment of such remaining balance on or before the scheduled date of delivery, the subject units shall be held by Seller until such payment is made.

3. **Delivery.** Seller agrees to deliver the Goods to Buyer, using a carrier chosen by Seller, at the address specified in Paragraph 11 below, unless another address is specified by the Buyer, in writing, at least seven (7) days prior to the scheduled delivery date. Seller shall deliver the Goods in accordance with the following delivery schedule:

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Delivery with 4 weeks from receipt of Agreement

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4. **Risk of Loss.** The risk of loss from any casualty to the Goods shall be the responsibility of the Seller until the Goods (or any lot shipment thereof) have been received by the

Buyer.

5. **Acceptance.** Buyer will have the right to inspect the Goods upon receipt and, within Five (5) business days after delivery, Buyer must give notice to Seller of any claim for damages on account of condition, quality or grade of the Goods (or any unit or lot shipment thereof). Such notice must be in writing and specify the basis of such claim in detail. Failure to provide any such notice shall constitute irrevocable acceptance of the Goods (or unit or lot shipment thereof) by the Buyer.
6. **Warranties.** Warranty is provided by the manufacturer of each product. The warranty contains all terms and conditions.
7. **Carbon Credits.** Except as otherwise limited by law, Buyer retains exclusive right to the use, benefit and enjoyment of all carbon credits arising from this transaction.
8. **Taxes.** All sales taxes, tariffs and other governmental charges shall be paid by Buyer and are Buyer's responsibility except as limited by law.
9. **Force Majeure.** Seller may, without liability, delay performance or cancel this Contract on account of force majeure events or other circumstances beyond its control, including, but not limited to, strikes, acts of God, political unrest, embargo, failure of source of supply or casualty.
10. **Corporate Authority.** Each party to this Contract represents and warrants to the other that: (a) all necessary corporate or company action on the part of each party to be taken in connection with the execution, delivery, and performance of this Contract has been duly and effectively taken; and (b) the execution, delivery and performance by each party of this Contract does not constitute a violation or breach of such party's articles of organization, bylaws, operating agreement or any other agreement or law by which such party is bound.
11. **Notices.** Any notice, payment, demand, or communication required or permitted to be given by any provision of this Contract will be deemed to have been given when delivered personally to the party designated to receive such notice or, on the third (3<sup>rd</sup>) business day after the same is sent by certified mail, postage and charges prepaid, directed to the following addresses or to such other or additional addresses as any party might designate by written notice to the other parties:

To the Seller:

D&S Electrical Supply Co.  
Attn: Andy Akers  
363 W. Chubbuck Road  
Pocatello, ID 83202

To the Buyer:

City of Hailey  
Attn: Tom Hellen  
115 Main St S  
Hailey, ID 83333

12. **Entire Contract.** This Contract constitutes the entire and final agreement among the parties and there are no agreements, understandings, warranties, or representations among the parties except as set forth herein. The terms of this Contract shall not be modified except by a writing signed by both parties.
13. **Severability.** If any clause or provision of this Contract is determined to be illegal, invalid, or unenforceable under any present or future law by the final judgment of a court

of competent jurisdiction, the remainder of this Contract will not be affected thereby. It is the intention of the parties that if any such provision is held to be illegal, invalid, or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is possible and be legal, valid, and enforceable.

14. **Governing Law.** This Contract will be interpreted and construed under the laws of the State of Idaho. All claims, disputes, and other matters in question arising out of or relating to this agreement, or the breach thereof, will be decided by proceedings instituted and litigated in a court of competent jurisdiction sitting in Blaine County, Idaho.

This Contract is executed on the dates hereafter specified, effective as of the date upon which both parties have signed below.

**BUYER:** \_\_\_\_\_

\_\_\_\_\_  
(signature)  
By: \_\_\_\_\_ (Name)  
Its: \_\_\_\_\_ (Title)

\_\_\_\_\_  
Date

**SELLER:** D&S Electrical Supply Co.

\_\_\_\_\_  
(signature)  
By: \_\_\_\_\_ (Name)  
Its: \_\_\_\_\_ (Title)

\_\_\_\_\_  
Date