

**AGENDA ITEM SUMMARY**

**DATE:** 07/28/08 **DEPARTMENT:** Engr **DEPT. HEAD SIGNATURE:** \_\_\_\_\_

**SUBJECT:**

Motion to authorize Mayor to sign contract with Power Plus, Inc. for installing the Countryside Traffic Signal.

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

**BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:**

In the July 14, 2008 meeting council approved the bid by Power Plus, Inc. (the lowest bidder) to install the traffic signal at Countryside for \$107,390.00. Prior to signature, Article 5 – Contract Price must be completed. City Attorney Ned Williamson has a copy of this contract.

**FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS:** Caselle  
# \_\_\_\_\_  
Budget Line Item # \_\_\_\_\_ YTD Line Item Balance \$ \_\_\_\_\_  
Estimated Hours Spent to Date: \_\_\_\_\_ Estimated Completion Date: \_\_\_\_\_  
Staff Contact: Tom Hellen Phone # 788-9830 Ext 14  
Comments:

**ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS:** (IF APPLICABLE)  
\_\_\_\_ City Attorney      \_\_\_\_ Clerk / Finance Director      \_\_\_\_ Engineer      \_\_\_\_ Building  
\_\_\_\_ Library      \_\_\_\_ Planning      \_\_\_\_ Fire Dept.      \_\_\_\_  
\_\_\_\_ Safety Committee      \_\_\_\_ P & Z Commission      \_\_\_\_ Police      \_\_\_\_  
\_\_\_\_ Streets      \_\_\_\_ Public Works, Parks      \_\_\_\_ Mayor      \_\_\_\_

**RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:**

**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./Agmt./Order Originals: Record      \*Additional/Exceptional Originals to: \_\_\_\_\_  
Copies (all info.): \_\_\_\_\_ Copies (AIS only) \_\_\_\_\_  
Instrument # \_\_\_\_\_

# NOTICE OF AWARD

Dated \_\_\_\_\_

[Certified Mail -- Return Receipt Requested]

TO: Power Plus, Inc.  
(BIDDER)

ADDRESS: 25 N Hartman Street

Boise, ID 83704

Contract: Mark McKibben

(Insert name of Contract as it appears in the Bidding Documents)

Project: Countryside Traffic Signal

You are notified that your Bid dated July 8, 2008 for the above Contract has been considered. You are the apparent Successful Bidder and have been awarded a Contract for \_\_\_\_\_  
The installation of a Traffic Signal at the intersection of Countryside Blvd and State Highway 75

(Indicate total Work, alternates or sections or Work awarded)

The Contract Price of your Contract is One hundred seven thousand, three hundred ninety & 00/100  
Dollars (\$ 107,390.00).

2 copies of each of the proposed Contract Documents (except Drawings) accompany this Notice of Award. 3 sets of the Drawings will be delivered separately or otherwise made available to you immediately.

You must comply with the following conditions precedent within 15 days of the date you receive this Notice of Award.

1. Deliver to the OWNER 1 fully executed counterparts of the Contract Documents.
2. Deliver with the executed Contract Documents the Contract security (Bonds) as specified in the Instructions to Bidders (Article 20), [and] General Conditions (paragraph 5.01) [and Supplementary Conditions (paragraph SC-5.01).]

EJCDC No. 1910-22 (1996 Edition)

Prepared by the Engineers Joint Contract Documents Committee and endorsed by The Associated General Contractors of America and the Construction Specifications Institute.

3. (List other conditions precedent).

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Failure to comply with these conditions within the time specified will entitle OWNER to consider your Bid in default, to annul this Notice of Award and to declare your Bid security forfeited.

Within ten days after you comply with the above conditions, OWNER will return to you one fully executed counterpart of the Contract Documents.

\_\_\_\_\_  
(OWNER)

By: \_\_\_\_\_  
(AUTHORIZED SIGNATURE)

\_\_\_\_\_  
(TITLE)

Copy to ENGINEER  
(Use Certified Mail,  
Return Receipt Requested)

**ISPWC**  
**STANDARD FORM OF AGREEMENT**  
**BETWEEN OWNER AND CONTRACTOR**  
**ON THE BASIS OF A STIPULATED PRICE**

**THIS AGREEMENT** is by and between the City of Hailey (hereinafter called OWNER) and

---

(hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**ARTICLE 1 - WORK**

1.01 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

**The installation of a traffic control signal, video detection system, advanced warning beacons and other necessary equipment (portions supplied by the City of Hailey) at the intersection of State Highway 75 and Countryside Blvd.**

**ARTICLE 2 - THE PROJECT**

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

**City of Hailey  
Countryside Traffic Signal Installation  
Hailey, Idaho**

**ARTICLE 3 - ENGINEER**

3.01 The Project Engineer is the Hailey City Engineer who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities, and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

**ARTICLE 4 - CONTRACT TIMES**

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Dates for Substantial Completion and Final Payment*

A. The Work will be substantially completed on or before September 30, 2008, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions on or before October 31, 2008.

4.03 *Liquidated Damages*

A. CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER \$500.00 for each day that expires after the time specified in paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER \$500.00 for each day that expires after the time specified in paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

**ARTICLE 5 - CONTRACT PRICE**

5.01 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraph 5.01.A below:

A. For all Work other than Unit Price Work, a Lump Sum of:

\_\_\_\_\_ (\$ \_\_\_\_\_)  
 (use words) (figure)

TOTAL OF ALL PRICES \_\_\_\_\_ \$ \_\_\_\_\_ (dollars)

\_\_\_\_\_ (use words)

**ARTICLE 6 - PAYMENT PROCEDURES**

6.01 *Submittal and Processing of Payments*

A. CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

A. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment on or about the 1st day of each month during performance of the Work as provided in paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established in paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER may determine or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions:

a. 95% of Work completed (with the balance being retainage); and

b. 95% of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

2. Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95% of the Work completed, less such amounts as ENGINEER shall determine in accordance with Article 14 of the General Conditions and less 100% of ENGINEER's estimate of the value of

Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion. If, at Substantial Completion, the character and progress of the work has been satisfactory, the OWNER may, at the OWNER's sole discretion, reduce the amount of retainage being held.

### 6.03 *Final Payment*

A. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

## **ARTICLE 7 - INTEREST**

7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of 12% per annum.

## **ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS**

8.01 In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Contract Documents.

B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. CONTRACTOR has carefully studied all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site. Contractor acknowledges that Owner does not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site.

E. CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

F. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.

G. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

H. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

J. The CONTRACTOR is an appropriately licensed public works contractor per Section 54-1902 (Idaho Code).

K. The CONTRACTOR will submit within 30 days of the date of this agreement a Public Works Contract Report (Form WH-5) to the Idaho State Tax Commission in compliance with Section 54-1904A and 63-3624(f), Idaho Code.

## **ARTICLE 9 - CONTRACT DOCUMENTS**

### **9.01**    *Contents*

A. The Contract Documents consist of the following:

1. This Agreement (pages 1 to 6, inclusive);
2. Performance Bond;
3. Payment Bond;
4. General Conditions – Division 100 of the Idaho Standards for Public Works Construction (not attached)
5. Supplementary Conditions (pages 1 to 5, inclusive);
6. Standard Specifications and Standard Drawings – City of Hailey (not attached);
7. Addenda (numbers 1 to 1, inclusive);
8. Exhibits to this Agreement (enumerated as follows):
  - a. Notice to Proceed;
  - b. CONTRACTOR's Bid;

9. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

- a. Written Amendments;
- b. Work Change Directives;
- c. Change Order(s).

B. The documents listed in paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented as provided in paragraph 3.05 of the General Conditions.

## **ARTICLE 10 - MISCELLANEOUS**

### **10.01**    *Terms*

A. Terms used in this Agreement will have the meanings indicated in the General Conditions.

### **10.02**    *Assignment of Contract*

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation,

moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

A. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Other Provisions*



IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or on their behalf.

*NOTE TO USER*

1. See I-21 and correlate procedures for format and signing between the two documents.

This Agreement will be effective on \_\_\_\_\_, \_\_\_\_\_ (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest \_\_\_\_\_

Attest \_\_\_\_\_

Address for giving notices:

Address for giving notices:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

License No. \_\_\_\_\_  
(Where applicable)

Agent for service of process: \_\_\_\_\_

\_\_\_\_\_

(If CONTRACTOR is a corporation or a partnership, attach evidence of authority to sign.)

Designated Representative:

Designated Representative:

Name: Thomas Hellen

Name: \_\_\_\_\_

Title: Public Works Director/City Engineer

Title: \_\_\_\_\_

Address: 115 Main St S

Address: \_\_\_\_\_

Hailey, ID 83333

\_\_\_\_\_

Phone: 208-788-9830 Ext 14

Phone: \_\_\_\_\_

Facsimile: 208-788-2924

Facsimile: \_\_\_\_\_

## **SUPPLEMENTARY CONDITIONS**

These Supplementary Conditions amend or supplement the General Conditions of the Contract Documents. All provisions which are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions will have the meanings indicated in the General Conditions.

### **ARTICLE 1 – DEFINITIONS**

---

No Modifications

### **ARTICLE 2 – PRELIMINARY MATTERS**

---

SC-2.06.A Preconstruction Conference: Delete paragraph 2.06.A and substitute the following in lieu thereof:

- A. Before the Contract Times starts to run, but after Notice to Proceed is given, a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.05.B, processing Applications for Payment, and maintaining required records.

### **ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE**

---

SC-3.01.A Add the following sentence and subparagraphs to paragraph 3.01.A:

The Contract Document higher in precedence shall control and supersede the Contract Documents lower in precedence in accordance with the following listing arranged from the highest to the lowest in precedence:

1. Addenda, if any; Supplemental Agreements; and Change Orders; the one dated later having precedence over another dated earlier.
2. Agreement.
3. General Requirements.
4. Other Specifications.
5. Drawings.
6. Supplementary Conditions.
7. General Conditions.

### **ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS**

---

SC-4.05. Supplement paragraph 4.05 of the General Conditions as follows:

4.05.A.1. The OWNER shall provide engineering surveys to establish the following reference points for construction control:

A: As indicated in the Contract Documents

SC-4.06. Supplement paragraph 4.06 of the General Conditions as follows:

4.06.A.1. In preparing Drawings and Specifications, neither ENGINEER nor ENGINEER's Consultant utilized any report or drawing relating to a Hazardous Environmental Condition.

## **ARTICLE 5 – BONDS AND INSURANCE**

---

SC-5.04.C. Add the following paragraph(s) immediately following paragraph 5.04.B of the General Conditions:

5.04.C. The limits of liability for the insurance required by paragraph 5.04.B.2 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

5.04.C.1. Worker's compensation, disability benefits and other similar employee benefit acts, and damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees as provided in paragraphs 5.04.A.1 and 5.04.A.2 of the General Conditions:

5.04.C.1.a. State: Statutory.

5.04.C.1.b. Employer's Liability: **\$1,000,000**

5.04.C.2. CONTRACTOR's Liability Insurance under paragraphs 5.04.A.3 through 5.04.A.6 of the General Conditions shall provide the following minimum limits and conditions:

5.04.C.2.a. General Aggregate [\$ 1,000,000]

5.04.C.2.b. Products-Completed Operations Aggregate [\$ 1,000,000]

5.04.C.2.c. Personal and Advertising Injury (per person/organization with employment exclusion deleted) [\$ 1,000,000]

5.04.C.2.d. Each Occurrence (bodily injury and property damage) [\$ 1,000,000]

5.04.C.2.e. Fire Damage (any one fire) [\$ 1,000,000]

5.04.C.2.f. Medical Expenses (any one person) [\$ 1,000,000]

5.04.C.2.g. Property Damage liability insurance will remove the explosion, collapse, and underground exclusion and provide broad form property damage coverage.

5.04.C.3. Automobile Liability under paragraph 5.04.A.6 of the General Conditions, providing for Combined Single Limit (bodily injury and property damage) for owned, non-owned, rented, or hired vehicles [\$ 1,000,000]

5.04.C.4. Provide Excess Liability or Umbrella insurance providing protection for at least the hazards insured under the primary liability policies with the following limits:

5.04.C.4.a. General Aggregate [\$ 2,000,000]

5.04.C.4.b. Each Occurrence [\$ 1,000,000]

SC-5.06.A.1. Supplement paragraph 5.06.A.1 of the General Conditions as follows:

In addition to OWNER, CONTRACTOR, subcontractor, ENGINEER, ENGINEER'S Consultants, the OWNER shall provide a written list of names of all known entities to be named as additional insureds on the property insurance. Any change or addition to the list shall be given in writing to the CONTRACTOR at least 7 days prior to that entity performing Work at the site. Additional insureds shall at least include all those listed in paragraph 5.04.B.1 of the General Conditions and paragraph 5.04.B.1 of the Supplementary Conditions.

SC-5.06.D. Supplement paragraph 5.06.D of the General Conditions as follows:

Property insurance furnished under this contract shall have deductibles no greater than **\$1,000** for all sublimits except for earthquake, which shall have a maximum deductible of **\$5,000**.

## **ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES**

SC-6.04.A. Progress Schedule: Add the following subparagraph to paragraph 6.04.A.

3. If, in the opinion of the ENGINEER, CONTRACTOR falls behind the accepted Construction Schedule due to actions or neglect of CONTRACTOR or CONTRACTOR'S agents, servants, employees, officers, subcontractors, directors, or any party contracting to perform part or all of the Work or to supply any equipment or materials, CONTRACTOR shall take steps, including but not limited to, increasing the number of personnel, shifts, and/or overtime operations, days of work, and/or amount of construction equipment until such time as work is back on schedule. CONTRACTOR shall also submit for review not later than the time of submittal of the next request for partial payment, such supplementary schedule or schedules as may be necessary to demonstrate the manner in which

the acceptable rate of progress will be regained, all without additional cost to OWNER.

**ARTICLE 7 – OTHER WORK**

No modifications.

**ARTICLE 8 – OWNER’S RESPONSIBILITIES**

SC-8.12. Add a new paragraph immediately following paragraph 8.11 of the General Conditions as follows:

8.12. *OWNER As Resident Project Representative*

A: 8.12.A. OWNER will furnish Project representation during the construction period. The duties, responsibilities and limitations of authority specified for the ENGINEER in Article 9—ENGINEER'S STATUS DURING CONSTRUCTION, and elsewhere in the Contract Documents will be those of the OWNER.

**ARTICLE 9 – ENGINEER’S STATUS DURING CONSTRUCTION**

No modifications.

**ARTICLE 10 – CHANGES IN THE WORK**

No modifications.

**ARTICLE 11 – COST OF THE WORK**

No modifications.

**ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES**

No modifications.

**ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK**

No modifications.

**ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION**

No modifications.

**ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION**

No modifications.

**ARTICLE 16 – DISPUTE RESOLUTION**

No modifications.

**ARTICLE 17 – MISCELLANEOUS**

---

No modifications.

END OF SUPPLEMENTARY CONDITIONS