



SHORT FORM PURCHASE OF SERVICE CONTRACT

The parties to this Short Form Purchase of Services Contract (Contract) do mutually agree and promise as follows:

1. Parties. The parties to this Contract are the CITY OF MILPITAS, CALIFORNIA, a municipal corporation (City) and the following named Contractor:

- (Contact Name) US Power Inc
(Street Address) 905 Cotting Lane Suite 120
(City/State/Zip Code) Vacaville CA 95688
(Telephone) 866-224-5783
(Email Address) dpfahler@uspowerinc.com
(Fax Number) 650-897-9819
(Taxpayer ID #) 01-0554855
(Milpitas Business License #)

2. Term. The effective date of this contract is from March 16, 2011 and it terminates May 31, 2011 unless sooner terminated as provided herein.

3. Payment Limit. City's total payments to Contractor under this contract shall not exceed: \$ 35,605.63

4. Contractor's Obligations. (a) To the satisfaction of the City's Project Manager, Contractor shall provide the following services: Furnish & install 90 Enersys batteries with a three year manufacturer warranty and two year extended warranty per bid response dated 2-24-11 (b) Contractor shall perform the above-referenced services at the following specified location/s: Public Works Building 1265 N. Milpitas blvd. CA 95035

(c) Name or type of service: Battery Installation

5. City's Obligations. City shall pay Contractor as follows: Not-To-Exceed \$ 36,605.63 total payment for all services rendered. 2-24-11 bid response attached.

6. Supplemental Conditions. This Contract is subject to the Supplemental Conditions attached hereto, which are incorporated herein by reference.

7. Signatures. These signatures attest the parties' agreement hereto:

CONTRACTOR:

Name and Title

CITY OF MILPITAS, CALIFORNIA a municipal corporation:

By: City Manager

Approved as to form:

By: City Attorney

Approved as to content:

By: City Project Manager

Approved as to Insurance:

By: City Risk Manager

Prepared by City Purchasing Agent

## SUPPLEMENTAL CONDITIONS

1. Independent Contractor. It is expressly agreed that Contractor is to perform the services described herein as an independent contractor pursuant to California Labor Code Section 3353, under the control of the City as to the result of his work only but not as to the means by which such result is accomplished. Nothing contained herein shall in any way be construed to make Contractor or any of its agents or employees, an agent, employee or representative of the City. Contractor shall be entirely responsible for the compensation of any assistants used by Contractor in providing said services.
2. Termination. This Contract shall automatically terminate when the total accumulated compensation paid or due to Contractor under this Contract reaches \$ **35,605.13**. The City shall not be responsible for compensating Contractor for any amounts in excess of \$ **35,605.13**.
3. Cancellation. Either the City or Contractor may cancel this Contract at any time upon giving the other party five (5) days' written notice of such cancellation. In the event of cancellation, the City shall be liable only to pay to the Contractor compensation for services rendered up to the date of the Contract's cancellation.
4. Assignment. Contractor shall not assign this Contract, or any part thereof, or any right of the Contractor hereunder without the prior written consent of the City.
5. Indemnity. Contractor shall indemnify, defend and hold the City harmless from and against all claims, demands and causes of action for injury, death or damage to any person or property which may arise or result from the contractor's performance of this Contract or from acts or omissions of any person(s) employed by Contractor.
6. Anti-Discrimination. Contractor agrees to observe the provisions of the City of Milpitas Standard Operating Procedure 16.8 "Anti-Discrimination Policy" and Title VII of the Civil Rights Act of 1964, obligating every contractor or subcontractor under a contract or subcontract to the City of Milpitas for public works or for goods or service to refrain from discriminatory employment practices on the basis of the race, color, sex, sexual orientation, religious creed, national origin or ancestry of any employee of, or applicant for employment with, such contractor or subcontractor.
7. Business License. Pursuant to the City of Milpitas Municipal Code, Title III Business and Professions, Section 1-4.01 Requirement and Special Exemptions ... "it shall be unlawful for any person to transact and carry on any business, trade, profession, calling or occupation in the City of Milpitas without first having procured a license from said City ..."
8. Insurance. During the entire term of this Contract and any extension or modification thereof, the CONTRACTOR shall keep in effect insurance policies meeting the following insurance requirements: **See Exhibit A – Insurance Requirements General**

**REVISED BID FORM**  
**Battery Replacement**  
**Bid No. 1196**

To: City of Milpitas  
455 E. Calaveras Blvd.  
Milpitas, CA, 95035-5411

From: US Power, Inc.  
Name of Bidder

905 Cotting Lane Suite 120  
Mailing Address

Vacaville, CA 95688  
City, State & Zip

Responding to Invitation to Bid No. 1196 due by 2:00 pm February 24, 2011, the undersigned Bidder agrees to furnish and deliver Battery Replacement per the Scope of Work. I/We have stated hereon the price(s) at which we will furnish and deliver the specified item(s) and will accept as full payment therefore the amount shown below.

Bidder further agrees, in addition to the terms and conditions specified herein the following terms and conditions that are a part of this bid and any resulting contract:

F.O.B. Point. All shipments shall be made F.O.B. destination, Milpitas, California. F.O.B. destination indicates that the *seller* is responsible for shipment until it is tendered to the City of Milpitas, even if the City of Milpitas agrees to pay for shipping and handling. The City of Milpitas will allow freight charges, but only if they are indicated on this form. Freight shall be shown separately on the lines provided.

Award. Bid award will be based on the lowest responsible bid price including any transportation charges, as well as any other criteria indicated in these specifications.

Signatures. All information submitted by Bidder, including signatures, must be original. Copies will not be accepted.

Taxes. Bidders should not show California Sales Tax on their bids. The City of Milpitas will calculate the California Sales Tax at 9.25% and pay it to Successful Bidder(s) who are California suppliers or out-of-state suppliers who are registered with State of California and who have the appropriate California Seller's Permit. The City of Milpitas will pay the State Sales Tax directly to the State of California when the Successful Bidder(s) is not registered with the state to collect it. The City of Milpitas is exempt from Federal Excise Tax.

<u>Item</u>	<u>Qty</u>	<u>Unit</u>	<u>Description</u>	<u>Unit Price</u>	
<b><u>Total</u></b>					
1.	90	ea	Furnish 90 Enersys batteries 12HX505MR or equal with a manufacturer 3 year warranty	\$ <u>245.00</u>	\$ <u>22,050.00</u>
Alternate No. 1					
2.	90	ea	Furnish 90 Enersys batteries 12HX505MR or equal with a 3 year manufacturer warranty and a 2 year extended warranty	\$ <u>325.00</u>	\$ <u>29,250.00</u>
Alternate No. 2					
3.	90	ea	Furnish 90 Enersys batteries 12HX505MR or equal with a 3 year manufacturer warranty and a 2 year extended warranty including full replacement value, installation, removal and certified disposal	\$ <u>425.00</u>	\$ <u>38,250.00</u>
4.	lot		Labor to remove and install replacement batteries		\$ <u>3,250.00</u>
5.			Sales Tax 9.25%		Not added see paragraph <u>Taxes</u> on previous page
6.			Freight and Delivery		\$ <u>400.00</u>
7.			Total Bid Items # 1, # 4, # 6		\$ <u>25,700.00</u>
8.			Total Bid Items # 2, # 4, # 6		\$ <u>32,900.00</u>
9.			Total Bid Items # 3, # 4, # 6		\$ <u>41,900.00</u>

**Total Amount Bid Written in Words: Items # 1, # 4, # 6**  
 Twenty-five thousand, seven hundred dollars and zero cents

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**Total Amount Bid Written in Words: Items # 2, # 4, # 6**  
 Thirty-two thousand, nine hundred dollars and zero cents

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**Total Amount Bid Written in Words: Items # 3, # 4, # 6**  
 Forty-one thousand, nine hundred dollars and zero cents

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Amount Written in Words. This bid will be awarded based upon the total amount bid as **written in words.** Where there is a discrepancy between words and figures, **WORDS WILL GOVERN.** Where there is a discrepancy between item unit price and extended total, **UNIT PRICE WILL GOVERN.**

Please check your calculations before submitting your bid; the City of Milpitas will not be responsible for Bidder miscalculations.

Bidder shall complete the following required information:

1. **Delivery.** Delivery time after receipt of order: 30 days. Delivery will be made via (check applicable means of delivery):  
X Bidder's Truck,      Commercial Truck,      Train,      Sea,      Air  
**Note:** City will not accept batteries that are intended to be drop shipped prior to commence of work.
2. **Warranty Response Time.** Minimum acceptable response time is twenty four (24) hours from the time the City of Milpitas requests service. Indicate maximum response time after notification of warranty issue: 24 Hours.
3. **Service Facility.**
  - a. Indicate the distance in miles from the City of Milpitas where the service facility is located: 60.
  - b. Give the exact address of the service facility:  
905 Cotting Lane, Suite 120 Vacaville, CA 95688
4. **Recycled Product Procurement.** Be sure to add an attachment detailing the requirements of the Recycled Product Procurement section of the Terms and Conditions.

**Term Of Offer.** It is understood and agreed that this bid may not be withdrawn for a period of **ninety (90) days** from the Bid Submittal Deadline, and at no time in case of successful Bidder.

**Bidder's Acknowledgement Of His Understanding Of The Terms and Conditions.** Signature below verifies that Bidder has read, understands, and agrees to the conditions contained herein and on all of the attachments and agenda.

**Bidder acknowledges receipt of Addenda Number(s)     , 1, 2, and 3.**

**Representations Made Under Penalty Of Perjury.** The representations herein are made under penalty of perjury. We hereby offer to sell the City of Milpitas the above item(s) at the prices shown and under the terms and conditions herein, attached, or incorporated by reference.

US Power, Inc.  
Bidder Name  
(Person, Firm, Corp.)  
905 Cotting Lane, Suite 120  
Address  
  
Vacaville, CA 95688  
City, State, Zip Code  
  
866-224-5783  
Telephone Number

Daniel Pfahlert  
Signature of Authorized Representative  
  
Daniel Pfahlert  
Name of Authorized  
Representative  
Co-owner  
Title of Authorized Representative  
  
650-897-9819  
Facsimile Number