

RESOLUTION NO. 2018 - 2511

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA SELECTING AND AWARDING THE BID OF UNDER POWER CORP. FOR THE HARDING AVENUE TRAFFIC SIGNAL MODIFICATIONS PROJECT; AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside (the "Town") issued Invitation to Bid ("ITB") No. 2018-01 in order to solicit bids through a competitive procurement process for the Town of Surfside Harding Avenue Traffic Signal Modifications Project (the "Project"); and

WHEREAS, Under Power Corp. ("Contractor") submitted the lowest, responsive and responsible bid in response to the ITB, and after review of the bids submitted and recommendation of award, the Town wishes to select the bid of the Contractor and award the Project; and

WHEREAS, the Town Commission wishes to authorize the Town Manager to execute the Agreement with the Contractor for the Project, substantially in the form attached hereto as Exhibit "A" ("Agreement"); and

WHEREAS, the Town Commission finds that the award of the Project to Contractor and the Agreement are in the best interest and welfare of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. Each of the above stated recitals are hereby adopted, confirmed and incorporated herein.

Section 2. Selection of Contractor and Award of Agreement. The Town Commission hereby selects the Bid of the Contractor, Under Power Corp., and awards the Agreement to perform the Project, based on the contract price included in the Contractor's bid in the amount of \$109,045.23.

Section 3. Town Manager Authorized to Execute Agreement. The Town Manager is hereby authorized to execute the Agreement with the Contractor, substantially in the form attached hereto as Exhibit "A", together with such changes as may be acceptable to the Town Manager and approved as to form and legality by the Town Attorney.

Section 4. Implementation. That the Town Manager and Town Officials are hereby authorized to take any and all action which is necessary to implement the Project, the Agreement and the purposes of this Resolution.

Section 5. Effective Date. This Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this 12th day of June, 2018.

Motion By: Commissioner Cohen

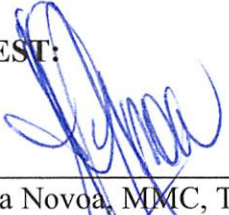
Second By: Vice Mayor Gielchinsky

Commissioner Barry Cohen
Commissioner Michael Karukin
Commissioner Tina Paul
Vice Mayor Daniel Gielchinsky
Mayor Daniel Dietch

yes
yes
yes
yes
yes




Daniel Dietch, Mayor

ATTEST:


Sandra Novoa, MMC, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE TOWN OF SURFSIDE ONLY:**



Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney



Building Code Services
Civil Engineering / Roadway & Highway Design
Coastal Engineering
Code Enforcement
Construction Engineering & Inspection (CEI)
Construction Services
Data Technologies & Development
Electrical Engineering
Engineering
Environmental Services
Facilities Management
Geographic Information Systems (GIS)
Governmental Services
Indoor Air Quality
Landscape Architecture
Planning
Project Management
Redevelopment & Urban Design
Surveying & Mapping
Traffic Engineering
Transportation Planning
Water / Utilities Engineering
Website Development

April 16, 2018

Duncan Tavares
Assistant Town Manager
Town of Surfside
9293 Harding Ave
Surfside, FL 33154

**RE: Town of Surfside
Traffic Signal Modifications
Invitation to Bid (ITB) No. 2018-01
CGA Project No. 15-8083**

Dear Mr. Tavares,

An Invitation to Bid was advertised for the above referenced project, resulting in two (2) bids received and opened on March 8th, 2018. This letter provides an analysis of the two bids received for the Surfside Traffic Signal Modifications Project and a recommendation for award of Contract. The two were reviewed for mathematical correctness, thoroughness of completion of forms, surety, insurance requirements, licenses and references. The two bidders for the project in order of lowest bid are:

Under Power Corp.
A.U.M. Construction, Inc.

	Engineer's Estimate	Under Power Corp.	A.U.M. Construction, Inc.
Base Bid Amt.	\$112,199.00	\$109,045.23	\$148,003.60
% Difference	\$109,045.23	-2.8%	+31.9%

Under Power Corp. was the apparent low bidder with a Base Bid of \$109,045.23. We have reviewed the bid and bid attachments provided by Under Power Corp. and communicated with their references. Upon review, we found that the bid is complete and appropriate for the proposed work.

Under Power Corp.'s three references were contacted. Although one reference was unresponsive, the other two references provided positive feedback for their past work and confirmed that Under Power Corp. had performed work for each reference.

1800 Eller Drive
Suite 600
Fort Lauderdale, FL
33316
954.921.7781 phone
954.921.8807 fax

www.cgasolutions.com

In addition to review of the references, we also verified the financial strength rating of the Bid Bond Company. We found that their bond company, International Fidelity Insurance Company, has a strong rating of 'A-' and are considered in excellent condition.

In keeping with the intent of the Town to award a Contract to the most responsible and responsive bidder whose bid is in conformance with the Bidding Documents and is in the best interest of the Town, we recommend that the Town of Surfside award the contract for the above referenced project to Under Power Corp.

If you have any questions or require additional information, please do not hesitate to contact me at (954) 921-7781 or by e-mail at bmcSweeney@cgasolutions.com.

Sincerely,

CALVIN, GIORDANO & ASSOCIATES, INC.



Robert McSweeney, P.E.
Director of Construction Engineering

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

TRAFFIC SIGNAL MODIFICATIONS FOR HARDING AVENUE

THIS AGREEMENT is dated as of the _____ day of _____ in the year 2018 by and between **TOWN OF SURFSIDE**, a Florida municipal corporation (hereinafter called "Owner") and **UNDER POWER CORP.**, a Florida corporation (hereinafter called "Contractor").

RECITALS:

WHEREAS, in response to the Owner's solicitation of bids ITB No. 2018-01 ("ITB") for traffic signal modifications to Harding Avenue ("Project"), Contractor submitted a bid for the Project, which ITB and bid are incorporated herein by reference and made a part hereof, and

WHEREAS, Contractor submitted the lowest, responsive and responsible bid in response to the solicitation, and was selected and awarded this Contract for performance of the Work (as hereinafter defined); and

WHEREAS, Contractor has represented to the Town that it possesses the necessary qualifications, experience and abilities to perform the Work or the Project, and has agreed to provide the Work on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the premises and the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, **Owner and Contractor** do hereby agree as follows:

Article 1. WORK.

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

Traffic signal modifications and loop for Harding Avenue.

Article 2. ENGINEER.

The Project has been designed by:

Calvin, Giordano & Associates, Inc.
1800 Eller Drive, Suite 600
Fort Lauderdale, FL 33316
(954) 921-7781

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 completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIMES.

3.1. The Work will be substantially completed within 90 calendar days after the date when the Contract Times commence to run completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within 120 calendar days after the date when the Contract Times commence to run.

3.2. **LIQUIDATED DAMAGES.** Owner and Contractor 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 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving 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 One Thousand and 00/100 dollars (\$1,000.00) for each day that expires after the time specified in paragraph 3.1 for each Substantial Completion date until the Work is substantially complete. If Contractor shall neglect, refuse or fail to complete the project by the project completion date within the time specified in paragraph 3.1 for completion and readiness for final payment or any proper extension thereof granted by Owner, Contractor shall pay Owner One Thousand dollars and 00/100 dollars (\$1,000.00) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

Article 4. CONTRACT PRICE.

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 paragraphs 4.1 below:

FOR A LUMP SUM CONTRACT OF:

TOTAL BASE BID (Lump sum, Unit prices, and contingency items)

One Hundred and Nine Thousand Forty Five and 23/100 Dollars	(\$109,045.23)
(use words)	figures

As provided in paragraph 11.03 of the General Conditions estimated quantities are not guaranteed, and determinations of actual quantities and classification are to be made by Engineer as provided in paragraph 9.08 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03.B of the General Conditions.

Article 5. PAYMENT PROCEDURES.

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.

5.1. **Progress Payments; Retainage.** Owner shall make progress payments on account of the contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer, on or about the last day of each month during construction as provided in paragraphs 5.1.1. and 5.1.2. below. All such payments will be measured by the schedule of values established in paragraph 2.07 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.

5.1.1. 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 shall determine, or Owner may withhold, in accordance with paragraph 14.02 of the General Conditions.

90% of Work completed (with the balance being retainage). If Work has been 50% completed as determined by **Engineer**, and if the character and progress of the Work have been satisfactory to **Owner** and **Engineer**, **Owner**, on recommendation of **Engineer**, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage on account of Work completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100% of the Work completed.

90% (with the balance being retainage) of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to **Owner** as provided in paragraph 14.02 of the General Conditions and within Section 9-6.5 partial payments as provided in FDOT Standard Specifications for Road and Bridge Construction.

5.1.2. When circumstances beyond the **Contractor's** control arise (as determined by the **Owner**) the **Owner** may allow the total payment to the **Contractor** to increase to **98%** of the contract price (with the balance being retainage), less such amounts as **Engineer** shall determine, only after receipt of the final as-builts and upon substantial completion of the project and in accordance with Paragraph 14.02 of the General Conditions.

5.2. **Final Payment.** 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 6. INTEREST. (Not Applicable)

Article 7. CONTRACTOR'S REPRESENTATIONS.

In order to induce **Owner** to enter into this Agreement **Contractor** makes the following representations:

7.1. **Contractor** has examined and carefully studied the Contract Documents (including the Addenda listed in paragraph 8) and the other related data identified in the Bidding Documents including "technical data."

7.2. **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, performance or furnishing of the Work.

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

7.4. **Contractor** has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.2.1. of the General Conditions. **Contractor** accepts the determination set forth in paragraph SC-4.2 of the Supplementary Conditions of the extend of the "technical data" contained in such reports and drawings upon which **Contractor** is entitled to rely as provided in paragraph 4.2 of the General Conditions. **Contractor** acknowledges that such reports and drawings are not Contract Documents and may not be complete for **Contractor's** purposes. **Contractor** acknowledges that **Owner** and **Engineer** do 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. **Contractor** has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods,

techniques, sequences and procedures of construction to be employed by **Contractor** and safety precautions and programs incident thereto. **Contractor** does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

7.5. 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.

7.6. 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.

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

Article 8. CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire agreement between **Owner** and **Contractor** concerning the Work consist of the following:

- 8.1.** This Agreement.
- 8.2.** Exhibits to this Agreement.
- 8.3.** Performance, Payment, and other Bonds, identified as exhibits 00600 and 00601 and consisting of 4 pages.
- 8.4.** Notice to Proceed.
- 8.5.** General Conditions (pages 1 to 44, inclusive).
- 8.6.** Supplementary Conditions (pages 800-1 to 800-A-FDEP-45, inclusive) and any amendments thereto.
- 8.7.** Specifications bearing the title Specifications and consisting of 16 divisions.
- 8.8.** Drawings consisting of a cover sheet and sheets numbered as specified in Section 00010 LIST OF DRAWINGS.
- 8.9.** Addenda Nos. 1 and 2, inclusive.
- 8.10.** Contractor's Bid.
- 8.11.** Documentation submitted by **Contractor** prior to Notice of Award.
- 8.12.** The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraph 3.04 of the General Conditions.
- 8.13.** Amendments and Additions to the Standard General Conditions of the Construction Contract and the Supplementary Conditions.

The documents listed in paragraphs 8.2 et seq. above are attached to this Agreement and incorporated herein (except as expressly noted otherwise above). In the event of any conflict among the foregoing, the documents shall govern in the order listed herein, state and local law. Any mandatory clauses which are required by applicable law shall be deemed to be incorporated herein.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.04 of the General Conditions.

Article 9. MISCELLANEOUS.

9.1. Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

9.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party thereto 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.

9.3. **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.

9.3. Any provisions 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 provisions or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.4. Independent Contractor. Contractor is an independent contractor under this Agreement. This Agreement does not create any partnership nor joint venture. Work provided by the Contractor shall be by employees of the Contractor and subject to supervision by the Contractor, and not as officers, employees, or agents of the Town. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures, applicable to services rendered under the Agreement shall be those of the Contractor.

9.5. Liens. Contractor shall not permit any mechanic's, laborer's or materialmen's lien to be filed against the Project site or any part thereof by reason of any Work, labor, services or materials supplied or claimed to have been supplied to the Project. In the event such a lien is found or claimed against the Project, Contractor shall within ten (10) days after notice of the lien discharge the lien or liens and cause a satisfaction of such lien to be recorded in the public records of Miami-Dade County, Florida, or cause such lien to be transferred to a bond, or post a bond sufficient to cause the Clerk of the Circuit Court of Miami-Dade County, Florida, to discharge such lien pursuant to Chapter 713.24, F.S. In the event Contractor fails to so discharge or bond the lien or liens within such period as required above, Town shall thereafter have the right, but not the obligation, to discharge or bond the lien or liens. Additionally, Town shall thereafter have the right, but not the obligation, to retain out of any payment then due or to become due Contractor, one hundred fifty percent (150%) of the amount of the lien and to pay Town's reasonable attorneys' fees and costs incurred in connection therewith.

9.6. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any litigation arising out of this Contract shall be proper exclusively in Miami- Dade County, Florida.

9.7. Waiver of Jury Trial. Town and Contractor knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in State and or Federal court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon the Contract for Construction, arising out of, under, or in connection with the Construction of the Work, or any course of conduct, course of dealing, statements or actions or inactions of any party.

9.8. Notices/Authorized Representatives. Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the Town:

Town of Surfside
Town Manager
9293 Harding Avenue
Surfside, Florida 33154

With a copy to:

Town Attorney
Weiss Serota Helfman Cole & Bierman, P.L.
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, Florida 33134

For the Contractor:

Under Power Corp.
7900 NW 60 Street
Miami, Florida 33166
Attention: Rafael Nin, President

9.9 Prevailing Party; Attorneys' Fees. In the event of any controversy, claim, dispute or litigation between the parties arising from or relating to this Agreement (including, but not limited to, the enforcement of any indemnity provisions), the prevailing party shall be entitled to recover reasonable costs, expenses and attorneys' fees including, but not limited to, court costs and other expenses through all appellate levels.

9.10 Compliance with Laws. Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out Work under this Agreement, and in particular shall obtain all required permits from all jurisdictional agencies to perform the Work under this Agreement.

9.11 Other Provisions.

9.12 Drawings. See Index Sheet on Drawings.

9.13. In accordance with the indemnification provision contained in the General Conditions, the Contractor agrees to indemnify and save harmless **the TOWN OF SURFSIDE, and their agents and employees**, from or on account of any injuries or damages received or sustained by any person or person during or on account of any operations connected with the construction of all Work; or by or in consequence of any negligence in connection with the same; or by use of any improper materials or by or on account of any act or omission of the said Contractor, subcontractor, agents, servants, or employees; and

9.14. In Accordance with the insurance provisions set forth in the Supplemental Conditions, **Contractor** agrees to at a minimum maintain in force at all times during the life of the construction, public liability insurance, by separate certificate, in an amount not less than \$1,000,000 for injuries, including willful death, to any one person and subject to those same limits for each person, in an amount not less than \$1,000,000 for damages as a result of each occurrence and property damage insurance and in an amount not less than \$1,000,000 for damages on any one occurrence and \$2,000,000 in the aggregate. Such policy shall specifically protect the **TOWN OF SURFSIDE, AND their agents and employees**, by making them an additional insured, and shall not be modified or canceled without thirty (30) days written notice to the **TOWN OF SURFSIDE**.

9.15 Should the final completion and acceptance of the work herein embraced together with any modification or additions be delayed beyond the time herein set because of lack of performance by the Contract, it is understood and agreed that aside from any other liquidated damage per day for such delay from such time until the work is completed and accepted as herein provided, all costs of engineering and inspection on behalf of the Owner will be charged to the contractor and deducted from any estimate or payment otherwise due and payable to him from time to time. The costs of engineering and inspection which may be charged to the Contractor by the Owner under this article shall be equal to the Engineer's charges to the Owner.

ARTICLE 10

CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

In order to induce the Town to enter into this Agreement, Contractor makes the following representations and warranties:

10.1 Contractor represents the following:

10.1.1 Contractor has examined and carefully studied the Contract Documents and the other data identified in the bidding documents, including, without limitation, the "technical data" and plans and specifications and the Plans.

10.1.2 Contractor has visited the Project site and become familiar with and is satisfied as to the general and local conditions and site conditions that may affect cost, progress, performance or furnishing of the Work.

10.1.3 Contractor is familiar with and is satisfied as to all federal, state and local laws, regulations and permits that may affect cost, progress, performance and furnishing of the Work. Contractor agrees that it will at all times comply with all requirements of the foregoing laws, regulations and permits.

10.1.4 Contractor has made, or caused to be made, examinations, investigations, tests and/or studies as necessary to determine surface and subsurface conditions at or on the site. Contractor acknowledges that the Town does not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to underground or ground facilities at, contiguous or near the site or for existing improvements at or near the site. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and underground facilities and improvements) at, contiguous or near to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Time

and in accordance with the other terms and conditions of the Contract Documents.

10.1.5 Contractor is aware of the general nature of Work to be performed by the Town and others at the site that relates to the Work as indicated in the Contract Documents.

10.1.6 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.

10.1.7 Contractor has given Town written notice of all conflicts, errors, ambiguities or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Town is acceptable to Contractor, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

10.1.8 The Contractor agrees and represents that it possesses the requisite qualifications and skills to perform the Work and that the Work shall be executed in a good and workmanlike manner, free from defects, and that all materials shall be new and approved by or acceptable to Town, except as otherwise expressly provided for in the Contract Documents. Contractor shall cause all materials and other parts of the Work to be readily available as and when required or needed for or in connection with the construction, furnishing and equipping of the Project.

10.2 Contractor warrants the following:

10.2.1 Anti-Discrimination: Contractor agrees that it will not discriminate against any employees or applicants for employment or against persons for any other benefit or service under this Agreement because of race, color, religion, sex, national origin, or physical or mental handicap where the handicap does not affect the ability of an individual to perform in a position of employment, and agrees to abide by all federal and state laws regarding non-discrimination.

10.2.2 Anti-Kickback: Contractor warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the Town has any interest, financially or otherwise, in the Project. For breach or violation of this warranty, the Town shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

10.2.3 Licensing and Permits: Contractor warrants that it shall have, prior to commencement of Work under this Agreement and at all times during said Work, all required licenses and permits whether federal, state, County or Town. Contractor acknowledges that it is the obligation of Contractor to obtain all licenses and permits required for this Project, including Town building permits.

11. OWNERSHIP AND ACCESS TO RECORDS; PUBLIC RECORDS

11.1 Contractor acknowledges and agrees that all data, information and materials prepared by Contractor and accepted and paid for by Town which relate to the Work which are conceived, developed or made by Contractor during the term of this Agreement ("Work Product") belong to the Town. Contractor shall promptly disclose such Work Product to the Town and perform all actions reasonably requested by the Town (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).

11.2 All records, books, documents, data, deliverables, papers and financial information (the "Records") that result from Contractor providing the Work to the Town under this Agreement shall be the property of the Town.

11.3 Contractor agrees to keep and maintain public records in Contractor's possession or control in connection with Contractor's performance under this Agreement. Contractor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Town.

11.4 Upon request from the Town custodian of public records, Contractor shall provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

11.5 Unless otherwise provided by law, any and all records, including but not limited to reports and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Town.

11.6 Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Contractor shall be delivered by the Contractor to the Town Manager and/or his designee, at no cost to the Town, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the Town in a format that is compatible with the Town's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

11.7 Any compensation due to Contractor shall be withheld until all records are received as provided herein.

11.8 Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Town.

Section 119.0701(2)(a), Florida Statutes

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS. CUSTODIAN OF RECORDS: SANDRA NOVOA
TOWN CLERK**

**Mailing address: 9293 Harding Avenue
Surfside, Florida 33154**

Telephone number: (305) 861-4863 Ext. 226

Email: snovoa@townofsurfside.fl.gov

[REMAINDER OF PAGE LEFT BLANK; SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in Five (5) parts. One counterpart each has been delivered to **Owner, Contractor and Engineer**. All portions of the Contract Documents have been signed, initialed or identified by **Owner and Contractor** or identified by **Engineer** on their behalf.

This Agreement will be effective on _____, 2018 (which is the Effective Date of the Agreement).

ATTEST: _____

[CORPORATE SEAL]

CONTRACTOR:

UNDER POWER CORP., a Florida corporation

By: _____
Name: _____
Title: _____

Date Executed: _____

[CORPORATE SEAL]

Address for giving notices

License No. _____

Agent for service of process

(If Contractor is a corporation, attached evidence of authority to sign).

**SIGNATURE PAGE FOR CONTRACTS/AGREEMENTS
TOWN EXECUTIONS**

IN WITNESS WHEREOF, the parties hereto have made and executed this (Agreement or Contract) on the respective dates under each signature: Town of Surfside through its Town Commission, signing by and through its Manager, authorized to execute same by Commission action on the ____ day of _____, 2018; and Contractor authorized to execute same.

OWNER:

TOWN OF SURFSIDE, a Florida municipal corporation

ATTEST:

By: _____
Guillermo Olmedillo, Town Manager

Town Clerk

_____ day of _____, 2018

Approved as to form and legality by:

Town Attorney

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____ of
UNDER POWER CORP., a Florida corporation, and that
_____, who signed the Bid with Town of Surfside,
Miami-Dade County Florida for UNDER POWER CORP., a Florida corporation, Town Bid No.
ITB No. 2018-01, is _____ of said Corporation with full authority to
sign said Bid on behalf of the Corporation.

Signed and sealed this ____ day of _____, 2018.

(SEAL)

Signature

Typed w/Title

STATE OF FLORIDA
COUNTY OF DADE

SWORN TO AND SUBSCRIBED before me this ____ day of _____, 2018.

My Commission Expires:

Notary Public

CERTIFICATE AS TO AUTHORIZED CORPORATE PERSONNEL

I, _____, certify that I am the _____ of
UNDER POWER CORP., a Florida corporation, who signed the Bid with Town of Surfside,
Miami-Dade County Florida for the project titled

_____, Consultant Project No. ITB No. 2018-01,
and that the following persons have the authority to sign payment requests on behalf of the
Corporation:

_____ (Signature)	_____ (Typed Name w/Title)
_____ (Signature)	_____ (Typed Name w/Title)
_____ (Signature)	_____ (Typed Name w/Title)

Signed and sealed this ____ day of _____, 2018.

(SEAL)

_____ Signature
_____ Typed w/Title

STATE OF FLORIDA
COUNTY OF DADE

SWORN TO AND SUBSCRIBED before me this ____ day of _____, 2018.

My Commission Expires:

Notary Public