

STAFF REPORT



TO: Summit County Council
FROM: Lisa Yoder, Sustainability Program Manager
DATE: March 14, 2018
SUBJECT: Continued discussion and possible approval of Engineering and Professional Services Agreement Between Rocky Mountain Power and Summit County

This staff report accompanies a revised Engineering and Professional Services Agreement between Rocky Mountain Power and Summit County for continued discussion and possible approval.

INTRODUCTION

During the February 21, 2018 County Council meeting, Council reviewed and discussed the terms of an Engineering and Professional Services Agreement (EPSA) Between Rocky Mountain Power and Summit County. At that time, Council expressed concerns with the EPSA that primarily centered on the exclusivity period that would prevent the County from pursuing renewable energy sources other than those provided by Rocky Mountain Power under the agreement.

Since then, Council provided staff with redline edits to the EPSA that addressed their concerns. The edited redline version was provided to Rocky Mountain Power for review and edits. All of the edits and comments have been considered and incorporated into the revised EPSA (attached) for your review and possible approval.

BACKGROUND

Because Council has authority to complete the transition to 100% renewable energy for county government operations, entering the EPSA with Rocky Mountain Power is the most expedient way to obtain 100% renewable electrical energy for county government operations by 2032.

As the first, concrete step toward achievement of the near term goal of 50% renewable electrical energy for County's government operations by 2025, the EPSA enables RMP to begin preliminary engineering and design work and procurement estimates to deliver expected future electricity needs for county operations with renewable energy. The deliverables described in the scope of work associated with the EPSA includes an assessment and determination of the optimal renewable energy resources to meet the County's requirements and the estimated costs to deliver that projected electrical supply. This information is essential to the Council's future decision to purchase renewable energy for county government operations through a Retail Services Agreement, if desired.

DISCUSSION

County's collaboration with Rocky Mountain Power, as described in EPSA advances the county goal to transition to net measured 50% renewable electrical energy by 2025; 100% by 2032.

Staff will continue to explore the pathway to 100% renewable electrical energy for the community while the County utilizes the EPSA to lead the transition to renewable electrical energy for County government operations.

RECOMMENDATIONS

Staff recommends approval of the EPSA to make progress toward the achievement of the County's renewable energy and emissions reduction goals for county government operations.

**ENGINEERING AND PROFESSIONAL SERVICES AGREEMENT
BETWEEN
ROCKY MOUNTAIN POWER
AND
SUMMIT COUNTY**

This ENGINEERING AND PROFESSIONAL SERVICES AGREEMENT (“EPSA” or “Agreement”), is entered into between Rocky Mountain Power, a division of PacifiCorp, an Oregon corporation (“Rocky Mountain Power” or the “Company”), and Summit County, a political subdivision of the State of Utah (“Customer”), for work to be performed to facilitate the acquisition of renewable energy for delivery to existing Customer-owned sites, located in or near Summit County, Utah (“Facilities”). Rocky Mountain Power and Customer are each sometimes referred to herein as “Party” or collectively as “Parties.” Unless otherwise defined herein, capitalized terms will have the meanings identified in Section 1 below.

WHEREAS, Customer and Rocky Mountain Power entered into a Joint Clean Energy Cooperation Statement dated _____ 2018, setting forth Customer’s government operations and community-wide renewable energy goals and outlining the process for preparing a plan to achieve such goals;

WHEREAS, Customer desires that Rocky Mountain Power deliver renewable power and energy to its Facilities to achieve its government operations goals;

WHEREAS, for Customer to achieve its government operations goals, Rocky Mountain Power must (a) enter into a Power Purchase Agreement with a Renewable Resource or acquire a Renewable Resource in accordance with Utah law¹ and (b) a Retail Service Agreement with Customer to enable renewable resources to be delivered to the Facilities;

WHEREAS, Rocky Mountain Power will incur costs in performing design, engineering, estimating, professional services and procurement work related to the acquisition and delivery of said renewable resources;

WHEREAS, the Parties intend that this EPSA more specifically addresses their responsibilities to one another in this regard.

THEREFORE, the Parties agree as follows:

¹ See Utah Code Ann. §§ 54-17-803, 54-17-806, and 54-17-807.

SECTION 1: DEFINITIONS

“Acquire” as specifically used in the third recital above means to purchase, construct, or purchase the output from a photovoltaic or thermal solar energy resource as defined and for the purposes described in Utah Code Ann. § 54-17-807.

“Commission” means the Public Service Commission of Utah.

“EPSA” means this Engineering and Professional Services Agreement.

“EPSA Completion Date” means the date upon which Rocky Mountain Power has fulfilled the obligations as mutually agreed upon in the Scope of Work, attached to this Agreement as Exhibit A, as may be amended under this Agreement.

“Electric Service Regulations” means Rocky Mountain Power's currently effective electric service regulations, on file with and approved by the Commission, as they may be amended or superseded from time to time with Commission approval.

“Effective Date” means the date when both this Agreement is signed by the Parties and any prepayment required under Section 3 has been received by Rocky Mountain Power.

“Exclusivity Period” is defined in Section 9 below.

“Facilities” means the physical locations owned or operated by the Customer to which the renewable energy will be delivered.

“PPA” or “Power Purchase Agreement” means the contract signed between Rocky Mountain Power and the owner of a Renewable Resource for renewable electricity to be dedicated to the Facilities as governed by the RSA.

“Project” means and includes all of the work to be performed to facilitate the delivery of renewable electric service from the Renewable Resource(s) to the Facilities.

“Renewable Resource(s)” means the resources from which Rocky Mountain Power will help facilitate renewable electric energy at a location to be determined at a later date by the Parties, located near the Summit County, Utah region.²

“RSA” means Retail Service Agreement that will set forth the contract terms between the Parties including, without limitation, pricing and delivery terms to purchase renewable energy at the Facilities.

² This could include southwestern Wyoming, Utah, or other sites agreed upon by the Parties.

“Scope of Work Costs” means all reasonable costs, charges, and expenses incurred by Rocky Mountain Power as described in Exhibit A.

SECTION 2: PURPOSE; COMPLETION; TERM

2.1 Scope of Work. Upon the Effective Date, Rocky Mountain Power will begin preliminary work to determine load projections, engineering and design work, professional services and procurement estimates for the improvements, transactions, contracts, and regulatory approvals necessary to enable delivery of renewable electric service to the Facilities (“Project”). Rocky Mountain Power shall not be obligated to perform construction work, or provide or enable electric service to the Facilities, until Customer has executed a Retail Service Agreement (“RSA”) governing those obligations. The preparatory activities encompassed within this Agreement will include, without limitation, those activities generally described in Exhibit A. The Parties may alter the Scope of Work to reflect the requirements of the Project through a written amendment signed by both Parties

2.2 Scope of Work - Request for Proposals Assurances. As part of the Scope of Work, the Parties will develop and execute a request for proposals (“RFP”) process. The Parties agree that if the RFP includes a Rocky Mountain Power benchmark option, the RFP will, at a minimum, provide assurances that resource evaluations will be conducted in a fair and non-preferential manner.

2.3 Contracting Phases.

a. EPSA. This EPSA governs the first contracting phase between Rocky Mountain Power and Customer, and sets forth (1) the rights and obligations of the Parties during the initial contracting phase, and (2) the services to be provided as set forth in the Scope of Work in Exhibit A. If Customer elects to move forward to the next phase of contracting, the Parties will evidence such election by executing a RSA as provided for herein below.

b. Notice to Proceed; Initial Commitment. If Customer elects to move forward with the next phase of contracting to secure renewable energy resources for the Facilities as identified by the results of this EPSA, Customer will provide written notice to Rocky Mountain Power of its intent to enter into the RSA (“Notice to Proceed”) as soon as practicable. Upon receipt of Customer’s Notice to Proceed, Rocky Mountain Power will commence negotiation of the (i) PPA with the Renewable Resource provider selected by Customer, unless Rocky Mountain Power is the Renewable Resource provider;³; and (ii)

³ If Rocky Mountain Power acquires the Renewable Resource (as allowed under Utah Code Ann. § 54-17-807) and is selected as the winning bid of the RFP issued for the Renewable Resource, it will not be necessary for Rocky Mountain Power to execute a PPA.

the associated RSA with Customer. The final RSA will reflect Rocky Mountain Power's obligation to seek to obtain approvals to secure renewable energy resources and provide electric service to the Facilities.

c. Failure to Provide Notice to Proceed. Customer's failure to timely provide its Notice to Proceed with the RSA will terminate Rocky Mountain Power's obligation to the Customer provided; however, Rocky Mountain Power will provide written notice of termination to Customer and allow Customer thirty (30) working days to provide Notice to Proceed after receipt of Rocky Mountain Power's notice to terminate.

d. Delay or Failure to Execute. If following submittal of a Notice to Proceed by Customer but before execution of the RSA, Customer elects not to execute an RSA as contemplated by this EPSA, this EPSA will terminate and Company will cease all work hereunder. All payments by Customer under the EPSA will be retained by Company to offset its costs incurred under this EPSA, subject to the terms in Section 3.2. Company will not execute a PPA or otherwise pursue a Renewable Resource as allowed under Utah law until such time as Customer has entered into an associated RSA.

2.4 Estimated Time of Completion. Provided that Customer executes the EPSA on or before March 14, 2018, Rocky Mountain Power will use commercially reasonable efforts to complete the activities described in Exhibit A, within five hundred and fifty days (550) of the Effective Date. Rocky Mountain Power will not be liable for delays in completing said activities, so long as such delays are not caused by Rocky Mountain Power and do not cause harm to the Customer.

2.5 Term of Agreement. This EPSA will be effective upon the Effective Date, and remain in effect through the EPSA Completion Date, unless terminated earlier pursuant to Section 2.3

SECTION 3: COST OF SERVICES

3.1 Estimated Costs. Rocky Mountain Power estimates total Scope of Work Costs of up to \$31,000 (the "Estimated Costs"). If Rocky Mountain Power determines it must perform work that is not described in Exhibit A, Rocky Mountain Power will request written approval from Customer to proceed with additional work, and Customer will be responsible for the costs of such additional work performed. If Customer requests additional work, Rocky Mountain Power will request written approval from Customer to proceed with additional work and Customer will be responsible for the cost of additional work performed. Customer agrees to accept any associated delay in completion. Customer will pay Rocky Mountain Power for all Scope of Work costs incurred, subject to the terms

of this EPSA, but not to exceed the Estimate Costs without the prior written approval of the Customer.

3.2 Prepayment, Allowance. Upon the full execution of this EPSA, Rocky Mountain Power will provide Customer with an invoice in the amount of \$23,400 for Exhibit A items 1A, 1B and 2. Rocky Mountain Power's obligation to proceed with the activities described in Exhibit A will be contingent upon receipt of such payment. The Customer will pay the remaining balance of \$7,600 once a regulatory filing has been prepared and is ready for submittal to the Commission, if Customer elects to proceed with the services. If Rocky Mountain Power determines that actual costs may exceed the Estimated Costs, Rocky Mountain Power may request an additional prepayment to cover the estimated cost of additional work. After the EPSA Completion Date, Rocky Mountain Power will apply the amount of any prepayments in excess of actual total costs towards the RSA, or refund the excess amounts if the Parties do not agree upon the final terms of the RSA or do not otherwise enter into the RSA.

3.3 Additional Work. If Rocky Mountain Power determines additional work is necessary, Rocky Mountain Power will agree in writing to proposed changes, including scope and cost. If Customer requests additional work, Customer will provide written authorization to proceed with additional work. Rocky Mountain Power may decline to perform additional work requested by Customer based on staffing and workload constraints if such work could be performed by Customer or its agents. Customer will be responsible for the cost of all additional work authorized and performed along with any associated delay in the estimated time of completion.

SECTION 4: FORCE MAJEURE

Neither Party will be subject to any liability or damages for delay or failure to perform its respective obligations hereunder to the extent that such failure was due to causes beyond the reasonable control of the Party relying thereon as justification for such delay or failure, including but not limited to the following: (a) the operation and effect of any rules, regulations and orders promulgated by any commission, municipality, or governmental agency of the United States, or subdivision thereof; (b) restraining order, injunction or similar decree of any court; (c) war; (d) flood; (e) earthquake; (f) act of God; (g) civil disturbance, sabotage, or terrorism; (h) strikes or boycotts; or (i) failure, breakdown of, or damage to Rocky Mountain Power or third party electric facilities. The Party claiming Force Majeure under this provision shall make every reasonable attempt to diligently remedy the cause thereof. Time periods for performance obligations of Parties herein shall be extended for the period during which Force Majeure was in effect.

SECTION 5: NOTICE

Any notice required to be given hereunder will be deemed to have been given when it is sent, with postage prepaid, by registered or certified mail, return receipt requested, to the Parties hereto at their respective addresses as follows:

To Customer:

Summit County
Attention: Lisa Yoder
Environmental Sustainability Manager
60 North Main St.
Coalville, Utah 84017

To Rocky Mountain Power:

Rocky Mountain Power
Attention: Chad Ambrose
Manager, Regional Business Management
P.O. Box 39
7657 Holden Street
Midvale, Utah 84047
Phone: 801-220-4437

SECTION 6: ASSIGNMENT

The Customer may not assign its rights nor delegate its obligations under this EPSA without the prior written consent of the Company. The Company may at any time assign its rights and delegate its obligations under this Agreement, in whole or in part, including, without limitation, transferring its rights and obligations under this Agreement to any: (i) affiliate; (ii) successor in interest, or (iii) corporation or any other business entity in conjunction with a merger, consolidation or other business reorganization to which Company is a party. This EPSA shall inure to the benefit of and be binding upon the Parties' successors and permitted assigns and Company shall provide notice of any such assignment within thirty (30) days.

SECTION 7: INTEGRATION

This EPSA replaces and supersedes in the entirety all prior agreements among the Parties related to the same subject matter.

SECTION 8: WAIVER OF JURY TRIAL

To the fullest extent permitted by law, each of the Parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this Agreement. Each Party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

SECTION 9: EXCLUSIVITY

For and in consideration of the EPSA and for other good and valuable consideration, until the earlier of (a) the date that Parties sign a RSA, or (b) five hundred and fifty (550) days following the Effective Date (the "Exclusivity Period"), Rocky Mountain Power will have the exclusive right to pursue the acquisition of renewable energy strictly related to this EPSA for the Facilities with Customer. During the Exclusivity Period, Customer shall not negotiate with, solicit bids, or accept any bids from any person or entity associated with the acquisition of renewable energy for its Facilities. This exclusivity condition does not preclude the Customer from pursuing new solar renewable energy systems or other forms of renewable energy for its facilities not directly duplicative of or tied to the renewable resources associated with this EPSA and its procurement activities.

IN WITNESS WHEREOF, the Parties hereto have caused this EPSA to be executed by their duly authorized officers as of the dates set forth below.

CUSTOMER:

SUMMIT COUNTY,
A political subdivision of the State of Utah

By: _____
Name: _____
Title: _____
Date: _____

Approved as to form
Summit County Attorney
By: DZ

ROCKY MOUNTAIN POWER

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

SCOPE OF WORK

1. (A) Determine the optimal renewable energy resource to meet the Customer's requirements through a request for proposals (RFP) process developed and executed by the Parties, such process resulting in Rocky Mountain Power presenting to the Customer, for consideration, the terms with the developer/owner of the chosen renewable resource.
\$5,700

(B) Develop a phased delivery schedule to meet Customer's renewable energy goals.
\$5,700

2. Provide the necessary design, engineering, and procurement, regulatory and financial analyses. \$12,000

3. Complete an interconnection agreement application. \$2,000

4. Complete and obtain all associated facility, system impact and feasibility studies. \$2,800

5. Obtain the necessary regulatory approval including pricing calculations. \$2,800

6. Deliver complete EPSA and draft RSA to Customer.