

Exh. JB-5

Docket UE-230172

Witness: Jayson Branch

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PACIFICORP dba
PACIFIC POWER & LIGHT COMPANY

Respondent.

Docket UE-230172

PACIFICORP

EXHIBIT OF JAYSON BRANCH

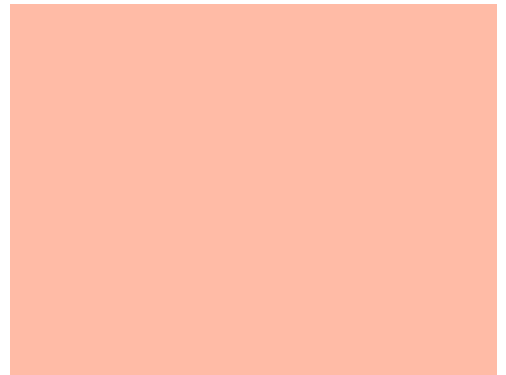
eAuction Development Opportunity

March 2023 (REFILED April 19, 2023)



eAuction Criteria

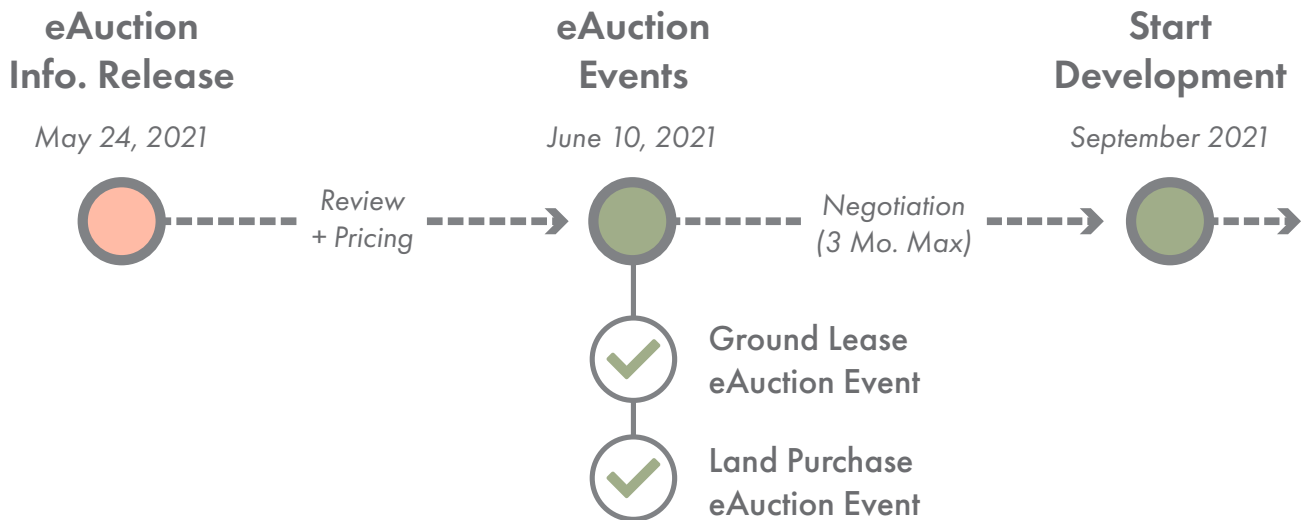
*Rocky Mountain Power
Power District Campus Redevelopment
Released May 24, 2021*



INTRODUCTION

Rocky Mountain Power (RMP) invites your team to an eAuction event to bid on approximately 8.4 acres (Available Property) located within the Power District Campus on June 10, 2021. By participating in this eAuction event, each team agrees to design, build, and oversee the development of RMP’s new headquarters (HQ) per the terms outlined on page 6 of this document.

The eAuction event will consist of 2 separate bidding lots. The first eAuction event will be for the rights to lease the Available Property with starting bids at \$85,000 per acre annually, minimum term of 50 years (longer term available with mutually agreeable terms) with escalations tied to the Consumer Price Index (CPI). Upon conclusion of the ground lease eAuction event, a separate eAuction will occur for the purchase of the same Available Property with starting bids at \$1,750,000 per acre. Each team is encouraged to participate in both bidding lots but may opt for participation in only the ground lease or purchase eAuction event. **No later than one week after both eAuction events, RMP will analyze the winning auction results from each and determine the Overall Winning Bidder (OWB).** The environmental and construction regulations detailed in Appendix A and Appendix B apply to both ground lease and land purchase options.



May 24, 2021

DEVELOPMENT VISION, SITE SELECTION, & PHASING

RMP envisions a phased development approach for the Power District. Each phase's location is identified in the map included in this section. The site master planning services that RMP will award through the eAuction will generally conform to these phases and descriptions.

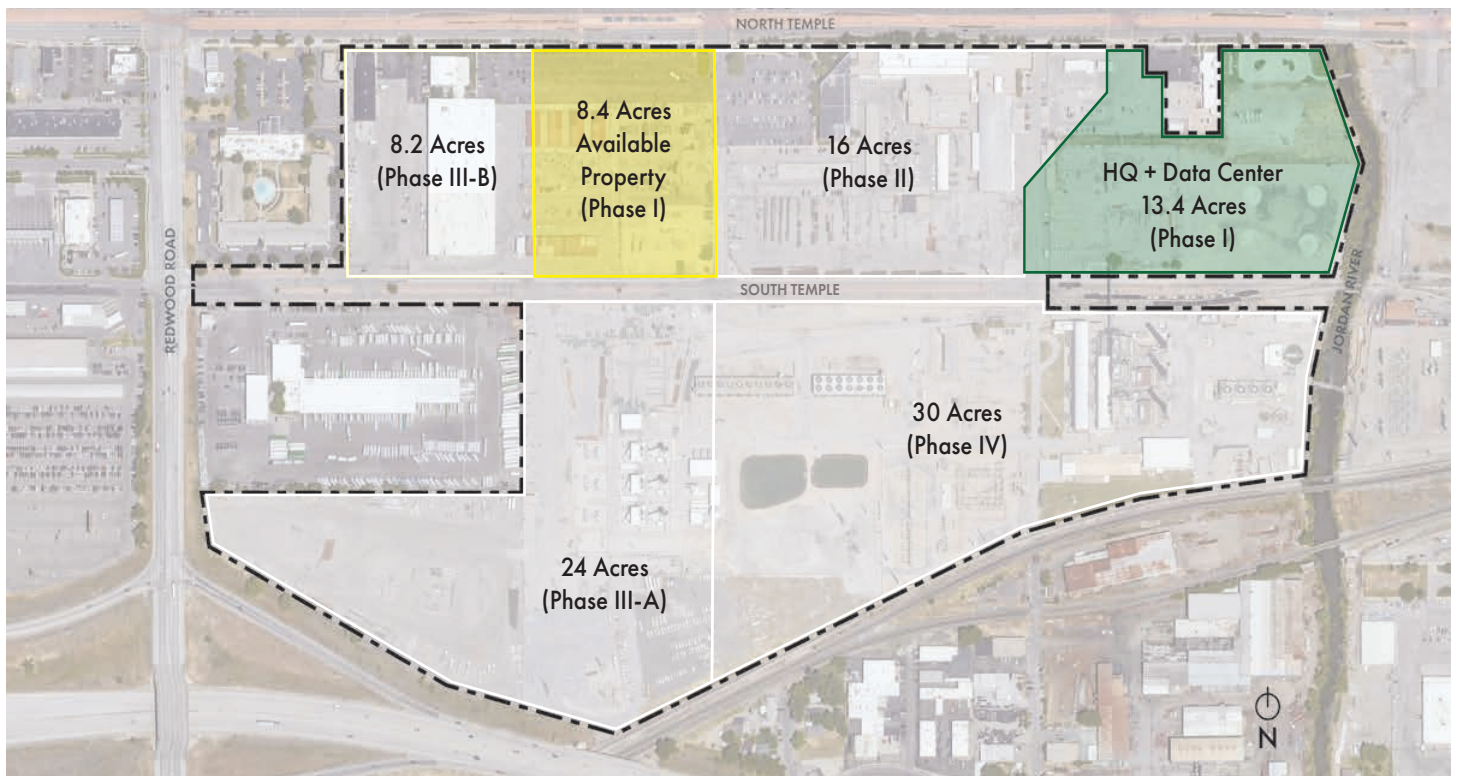
Phase I

As outlined in the RFQ and RFP materials, RMP desires to construct a new HQ building that will include its corporate office, grid operations, data center and security center. The location of the HQ is anticipated near the Jordan River and set back from North Temple. RMP will maintain ownership of this property and complete any required environmental remediation prior to construction of the HQ. A parking structure is not anticipated for RMP employees under Phase I development.

Additionally, Phase I will include approximately 8.4 acres (Available Property) for ground lease or sale through the eAuction process. This acreage is located on RMP's campus between the North Temple and South Temple streets and between 1460 West and 100 feet from RMP's Salt Lake Service Center. RMP anticipates that development on this acreage will be mixed use conforming with the code outlined in Appendix A.

Phase I eAuction

The eAuction event is scheduled for June 8-10, 2021. Practice simulation rounds will occur on June 8, 2021 with the live rounds being held June 10, 2021. Prior to the event, the Berkshire Hathaway Center of Excellence will provide additional information regarding the operation of the eAuction (login, practice round instructions to ensure each participant can access and submit bids, etc). Additional criteria for the eAuction is outlined in the Phase I Land Summary and General Terms for Developer/Architectural Services Agreement sections of this document.



DEVELOPMENT VISION, SITE SELECTION, & PHASING

Phase II

Upon completion and transition of RMP operations to the HQ, acreage listed in Phase II is planned to be made available for development through a ground lease or sale. Similar to development in the 8.4 acres for ground lease or sale in Phase I, Phase II should conform to the code outlined in Appendix A. As part of the Phase II development, RMP anticipates that a shared parking structure may be required for commercial/residential tenants as well as parking for RMP employees.

Phase III

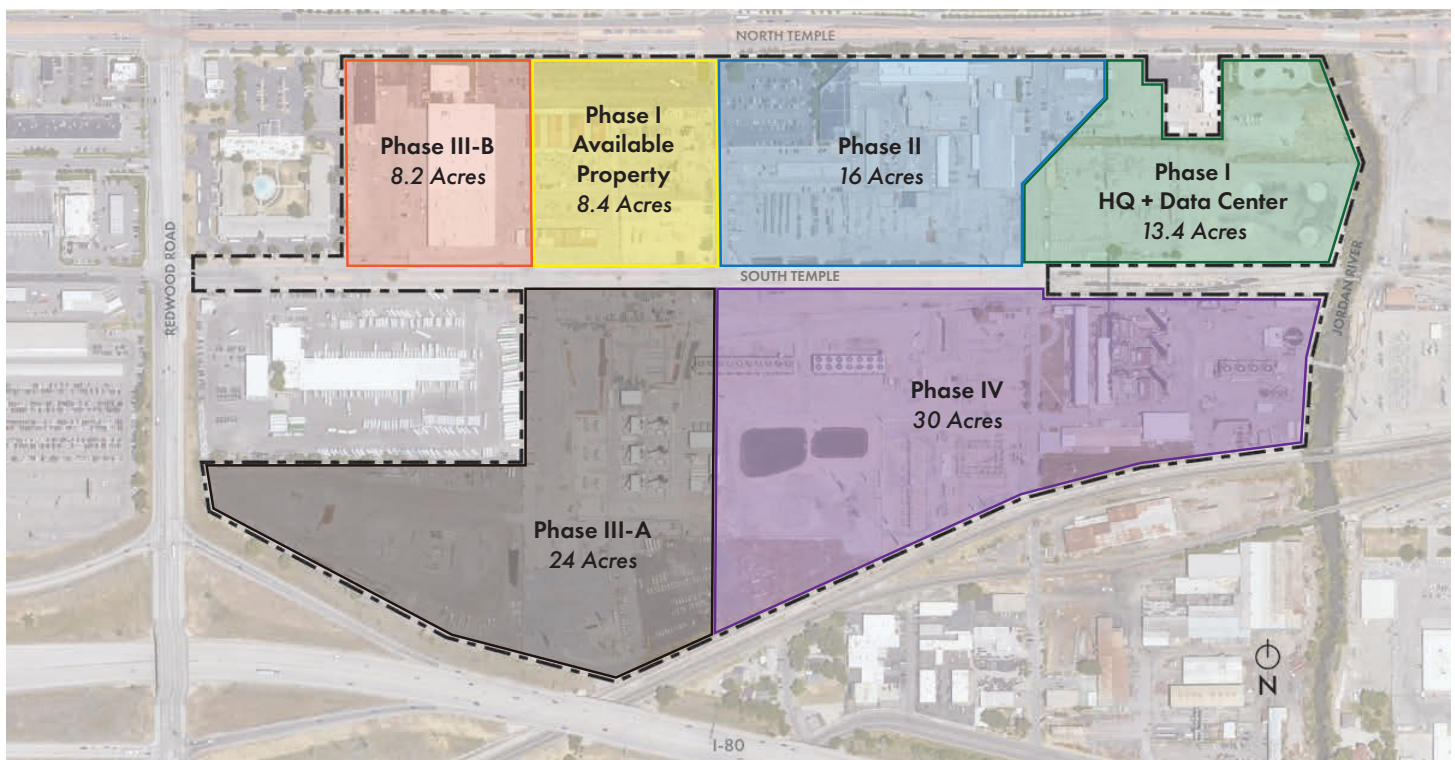
This development phase envisions the relocation of RMP’s existing Salt Lake Service Center. RMP elected not to build a new Service Center as part of Phase I. The new Service Center is contemplated to be constructed in the southwest corner of the Power District campus or to an offsite location. The new Service Center may include warehousing activities inside and outside.

Upon completion and transition of RMP operations to the new service center, acreage in area Phase III-B, and possibly Phase III-A, may be made available for development through a ground lease or sale. Development in this area will incorporate the appropriate development mix according to the site master plan.

Phase IV

After operations have concluded at the Gadsby power plant, the remaining acreage of the Power District is contemplated to be made available for development through a ground lease or sale. Development in this area is anticipated to incorporate the appropriate development mix according to the site master plan.

Information regarding Phase II – IV is hypothetical for illustrative purposes only in conjunction with the master planning process.

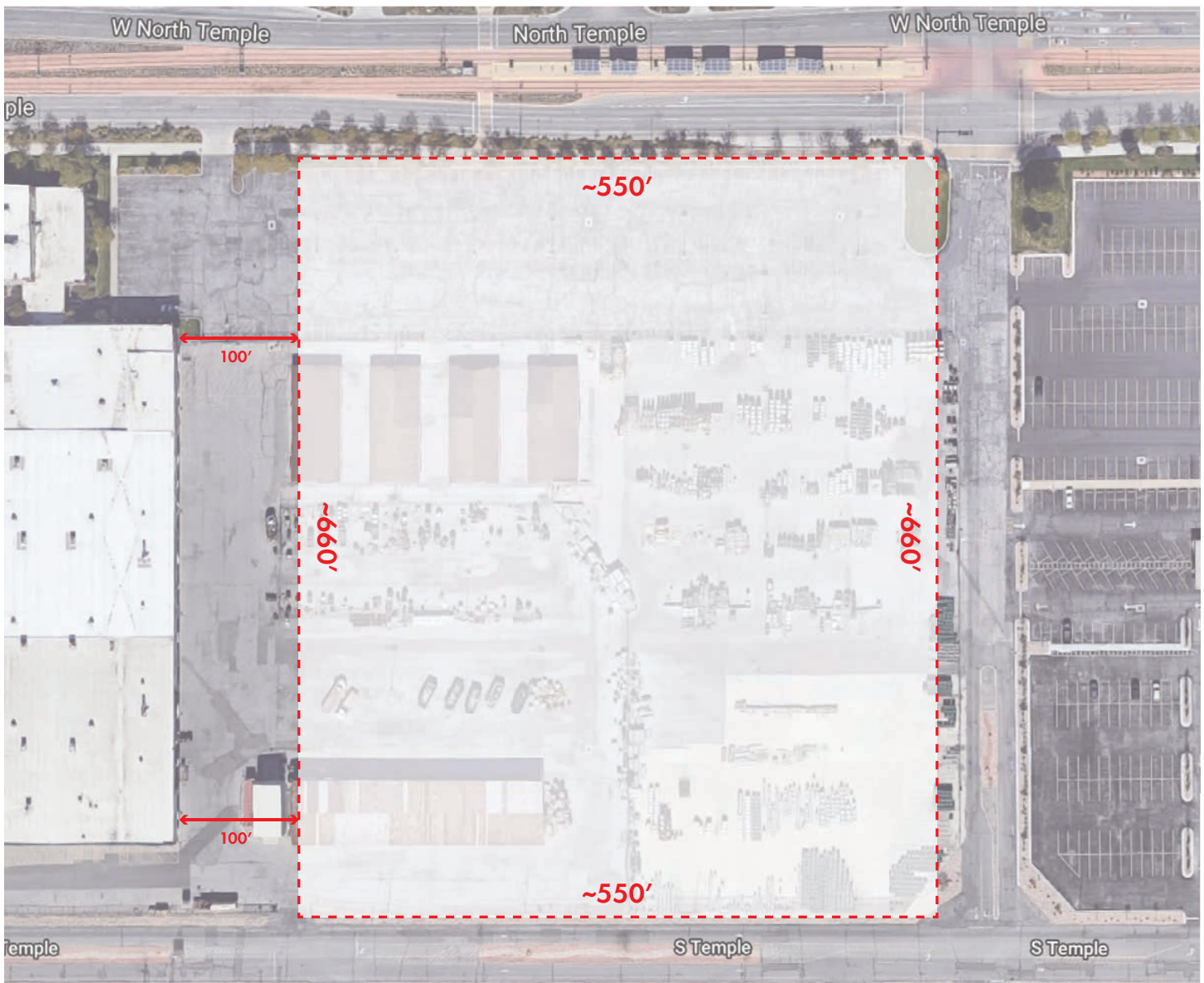


PHASE I LAND SUMMARY

RMP is offering 8.4 acres for Phase I development. This acreage is located on RMP's campus between the North Temple and South Temple streets and between 1460 West and 100 feet from RMP's Salt Lake Service Center.

Acres available

- Up to 8.4 acres
 - » Northern border - North Temple
 - » Southern border - South Temple
 - » Eastern border - 1460 West
 - » Western border - 100 feet from Rocky Mountain Power Salt Lake Service Center
 - » RMP is willing to consider cost-effective options to screen the Salt Lake Service Center in a manner suitable to adjacent development.

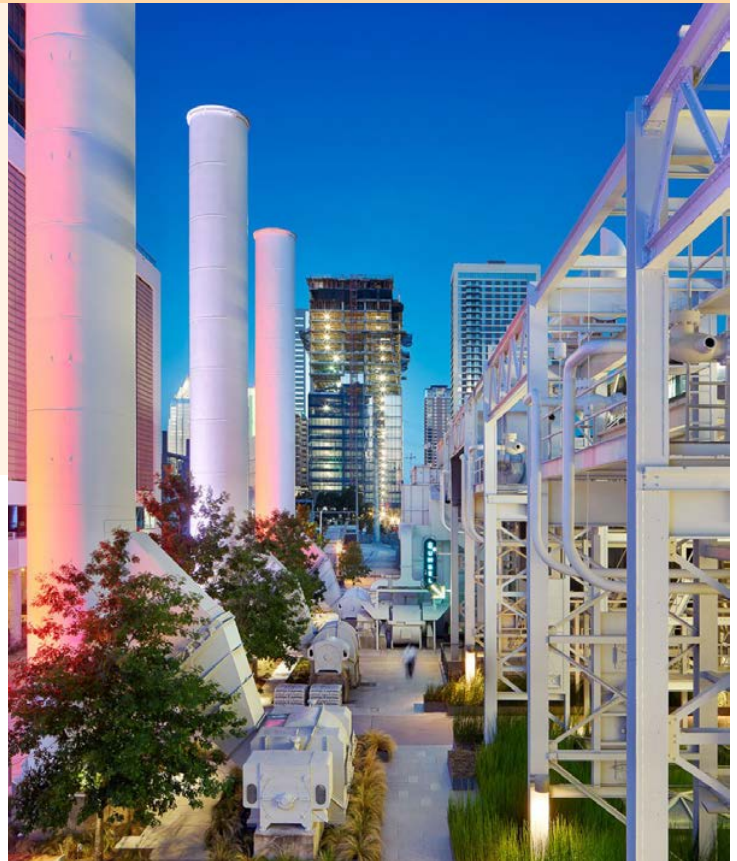


eAUCTION PROCESS AND TIMELINES

Rocky Mountain Power seeks to offer respondents the ability to bid on the Power District's first phase in the manner that best meets their site control needs. As such, applicants may bid to lease or purchase this initial phase via two separate eAuctions. Respondents may, and are encouraged to, participate in both auctions if they are interested in the parcel under both scenarios. At the conclusion of both eAuctions, RMP will analyze the financial results and impact of both scenarios to determine its Overall Winning Bidder (OWB).

Auction Details:

- Bidders may participate in one or both eAuctions.
- To submit a successful bid in the eAuction(s), bidders must input a bid at or above the minimum price per acre.
- Only the highest bid for each eAuction will be compared in RMP's final economic analysis and selection of the OWB.
- In the event the OWB and RMP are unable to agree on terms for the lease or purchase of the first phase, RMP may select the next highest bidder that was not originally selected.
- The eAuction initial ground lease bid price per acre is \$85,000.
 - » Incremental bids for the ground lease will be set at \$1,000 per acre.
- The eAuction minimum purchase bid price per acre is \$1,750,000.
 - » Incremental bids for the purchase will be set at \$25,000 per acre.
- See Appendix B for General and Environmental considerations of the sale/lease.
- Regulatory Approvals – The Lease Agreement or Purchase and Sales Agreement (PSA) will be conditioned on, and subject to regulatory approval of the HQ project by RMP's public utility commissions in its six-state service territory.



GENERAL TERMS FOR DEVELOPER/ARCH. SERVICES AGREEMENT

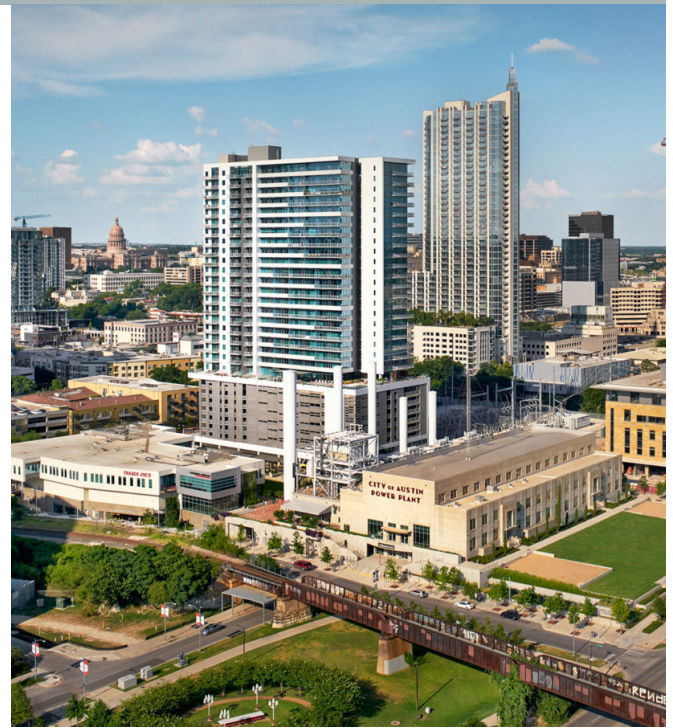
As a condition to purchasing/leasing the selected property, OWB agrees to provide RMP certain Development, Design, and Construction services on and for RMP's new HQ building subject to the terms set forth below:

- Architectural, Engineering, and Planning Services:
 - » Design services shall include all architectural, engineering, entitlement, planning, etc. services needed to construct RMP's HQ and related infrastructure.
 - i. Any and all contracted designers, engineers, and specialized consultants shall be under the direction, liability, and pay cap of the lead architecture firm.
 - ii. Design services shall include an updated Master Plan for the Power District.
 - » The fee for these services shall not exceed 5.5% of RMP's HQ project cost.
 - » General Architectural Services terms shall be generally based on the AIA B101 contract.
- Development Services:
 - » Development Services shall include all budgeting, project management, entitlement, financial consulting, planning, (re)zoning, and project execution services needed to construct RMP's HQ and related infrastructure.
 - » The fee for these services shall not exceed 2.5% of RMP's HQ project cost.
- General Contracting Services:
 - » General Contracting Services shall include all preconstruction design, estimation, consulting, budgeting, construction oversight, contracting, and project management needed to build RMP's HQ and related infrastructure.
 - i. These services shall include regular preconstruction estimating and consultation as deemed helpful by the contracted Development and Design service providers.
 - » General Contracting Profit and Overhead shall not exceed 3.5% of the construction contract combined.
 - » General Conditions for the project will be capped at 5% of the construction contract. Any amount over this will be taken from the General Contractor's Profit and Overhead.
 - » The project shall be built under a Guaranteed Maximum Price contract.
 - » RMP shall have the right to competitively bid the construction of the HQ building based on Bidder's Complete Design, Engineering and Construction Documents.
 - i. In this event, a reasonable pre-construction design fee may be paid.
- Other Considerations:
 - » Contract finalization date for each service type should be complete on or before 9/30/2021.
 - » The aggregate of all Design, Development and General Contracting fees shall not exceed \$8,000,000.
 - » Environmental Terms and Conditions – HQ building design and construction must comply with the terms and conditions set forth in Appendix B provided in the bid documents and this eAuction criteria.
 - » Other Requirements – See Appendix C: Developer and Architectural Services Agreement Special Conditions.

APPENDIX A - LEASED/PURCHASED LAND RESTRICTIONS

Phase I Materiality, Design, and Activation Guidelines

- Ground floor designs should:
 - » Create a pedestrian-scale public realm, regardless of the overall scale, mass, and location of buildings.
 - » Use awnings, balconies, and/or architectural articulation to create visual interest.
 - » Ground floor building faces visible from the Utah Transit Authority Power Station location should have retail uses.
 - » Buildings faces along North Temple shall have active ground floor uses. (i.e. commercial, retail, gym, live/work, etc).
- At least 10% of occupiable, non-parking footage is dedicated to non-residential uses, of which:
 - » At least 5% of the total built square footage is dedicated to community use or experiential retail, including food and beverage.



APPENDIX A - PURCHASED LAND RESTRICTIONS

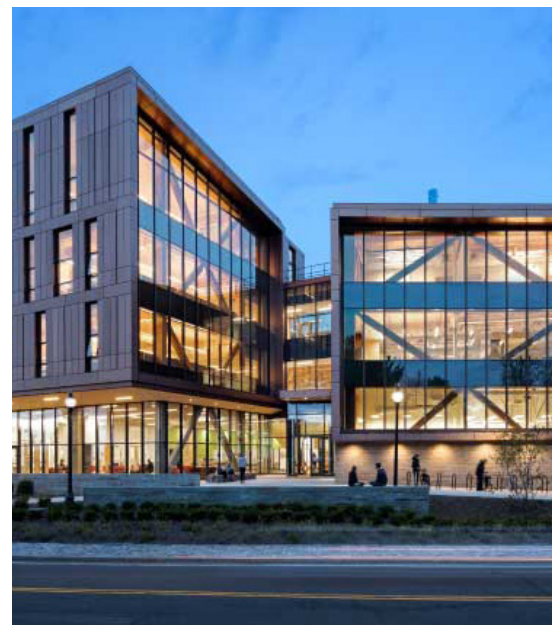
- Streetscapes should be planted, pedestrian-oriented, and inviting with particular focus toward major streets and locations that have the highest amount of pedestrian activity. They should include:
 - » Street trees
 - » Streetlights
 - » Street furniture
 - » Uniform wayfinding
 - » Landscaped open space
 - » Public art
 - » Sidewalks that are at least 6' wide
- All Buildings shall be clad in durable, quality material (brick, GFRC, architectural metal, steel, concrete, etc.). Deviation are subject to approval by RMP.
- Materials such as mirrored or reflective glass, textured paint, cinder block, unfinished concrete, dryvit, or plastic are prohibited as exterior cladding.
- At least thirty percent (30%) of the front or corner side yard facing major streets shall be occupied by outdoor dining areas, patios, or outdoor public space.
- All non-residential buildings shall be constructed using mass timber, steel, and/or concrete.
- Buyer/Lessee shall not develop any single-family residences, and all residential development shall be above-grade only.
- No wood stick construction for office and commercial spaces. Commercial space construction shall be of a similar caliber to RMP's new HQ building.



APPENDIX A - PURCHASED LAND RESTRICTIONS

Environmental Considerations

- [For bidders seeking to purchase] All construction is anticipated to be restricted to slab on grade unless the Utah Department of Environmental Quality (DEQ) reasonably determines in an approved "enforceable written assurance" (EWA) obtained by Buyer it is not necessary to do so. [for bidders seeking to lease] All construction is anticipated to be restricted to slab on grade unless the DEQ reasonably determines, after consultation with Lessee and PacifiCorp, it is not necessary to do so.
- Any legacy ash encountered, during excavation or otherwise, shall be disposed of in a lined landfill or other more protective certified disposal site.
- All excavated materials shall be segregated, characterized and disposed of in accordance with applicable local, state and federal environmental regulations.
- No groundwater from the property shall be used for any residential or commercial purposes.
- [For bidders seeking to purchase] Buyer shall obtain an EWA from the Utah Division of Environmental Response and Remediation (UDERR) for the Property prior to the Closing Date, and shall abide by all terms and conditions imposed by UDERR related to that EWA and the use and development of the Property; [For bidders seeking to lease] Lessee and PacifiCorp shall consult with the UDERR regarding the development of the property, obtain any required approvals, and Lessee and PacifiCorp shall abide by all terms and conditions imposed by UDERR on the use and development of the Property.
- All subgrade demolition and construction work shall be conducted in accordance with proper Occupational Safety and Health Administration (OSHA) regulations and any other applicable worker safety protections and regulations, as well as any conditions or requirements imposed by the DEQ through regulation, agreement, or otherwise. All demolition and construction workers shall receive the necessary training to work in the conditions and situations found on the Property.



APPENDIX A - PURCHASED LAND RESTRICTIONS

Buyer Due Diligence Period

- Beginning from the date of the execution of the Lease Agreement or PSA, Buyer/Lessee shall have until 5:00 PM, Utah Mountain Daylight Time, on the date which is ninety (90) days after the execution date of the Lease Agreement or PSA to inspect the Available Property and perform all due diligence (the "Due Diligence Period"). Buyer/Lessee or its employees or agents may enter the Available Property upon twenty-four (24) hour notice to RMP to inspect the Property and perform surveys or tests as Buyer/Lessee may elect; provided, however, that such entry shall not unreasonably interfere with the activities of RMP on the Available Property and shall be done according to all health, safety, and security requirements of RMP. Buyer/Lessee shall, within a reasonable period of time after due diligence activities have been completed, restore the Property to its condition and shall indemnify RMP for any damages, losses, or expenses caused by Buyer's/Lessee's due diligence-related actions.
 - » Additional environmental information can be found in Appendix B.
 - » All environmental audits, studies, reports, summaries, government documents, and plans ("Environmental Information") delivered by one party to another shall be held in strict confidence by the parties, any partners, employees, officers, directors, agents, and contractors of the parties, and shall not be disclosed to any third party unless such disclosure is compelled by order of a court or is otherwise legally required to be produced by a government entity or is consented to by the other party, consent not to be unreasonably withheld. If any party receives a subpoena or other formal information request for Environmental Information, that party shall give notice to the party that provided the Environmental Information as soon as possible and shall cooperate in any challenge to the subpoena or information request made by the providing party. The parties shall inform their respective agents and contractors of this requirement of confidentiality and shall require their respective agents and contractors to execute a confidentiality agreement regarding such reports and information.
- Prior to the expiration of the Due Diligence Period, Buyer/Lessee shall have the right to terminate the Lease Agreement or PSA by written notice to RMP and the title company in the event Buyer, in its reasonable judgment, determines it is commercially impractical to develop the Property due to conditions discovered during the due diligence period, and the Title Company shall return the Earnest Money Deposit to the Buyer. In the event Buyer/Lessee does not timely terminate the Lease Agreement or PSA, as set forth above, on or before the expiration of the Due Diligence Period, the Earnest Money Deposit of \$50,000 shall become non-refundable to Buyer/Lessee, and fully earned by RMP, except as set forth herein:
 - » Exceptions to Non-Refundable Earnest Money Provision. In addition to the provisions of due diligence, Buyer's earnest money will be refunded and the Lease Agreement or PSA terminated only if:
 - i. RMP cannot complete the transaction within a year of the date of the Lease Agreement or PSA due to the failure by RMP to obtain the required regulatory approvals of the ground lease or sale from the applicable state agencies that regulate RMP's utility business; or
 - ii. The State of Utah, as part of the process of the Buyer obtaining the required EWA (or for Lessee, after consultation with DEQ and abiding by any regulatory requirements or approvals) imposes restrictions and conditions on Buyer regarding the use and development of the Property that makes it commercially impractical for Buyer/Lessee to use or develop the Property.
 - iii. If both or either (i) and/or (ii) occurs, then the parties to the Lease Agreement or PSA may renegotiate the terms of this Agreement, including extending the deadlines herein, rather than terminate.

APPENDIX A - PURCHASED LAND RESTRICTIONS

Additional Restrictions

- Closing date for land lease or sale:
 - » The Closing Date of the transaction contemplated by this Agreement shall be the later of 12/31/2021, or 30 days after the last regulatory approval is obtained for the sale of the Property.
- Developer/Architectural Services Agreement must be finalized prior to sale:
 - » Contract finalized date for services – on or before 9/30/2021.
- Land lease or sale contingencies:
 - » The land lease or sale agreement can be voided or renegotiated by RMP prior to final execution if RMP's phase II environmental test results for the proposed location of the HQ and data center on the eastern part of the Power District site indicate it is not a suitable location for the HQ and RMP needs to determine a new location for the HQ.
 - » RMP to obtain regulatory commission approval for the lease or sale of the Property.

APPENDIX B - ENVIRONMENTAL

Power District Site History and Environmental Conditions

RMP's Power District consists of approximately 100 acres and is the location for the corporate office of RMP, RMP's Salt Lake Metro Service Center and the Gadsby Power Plant.

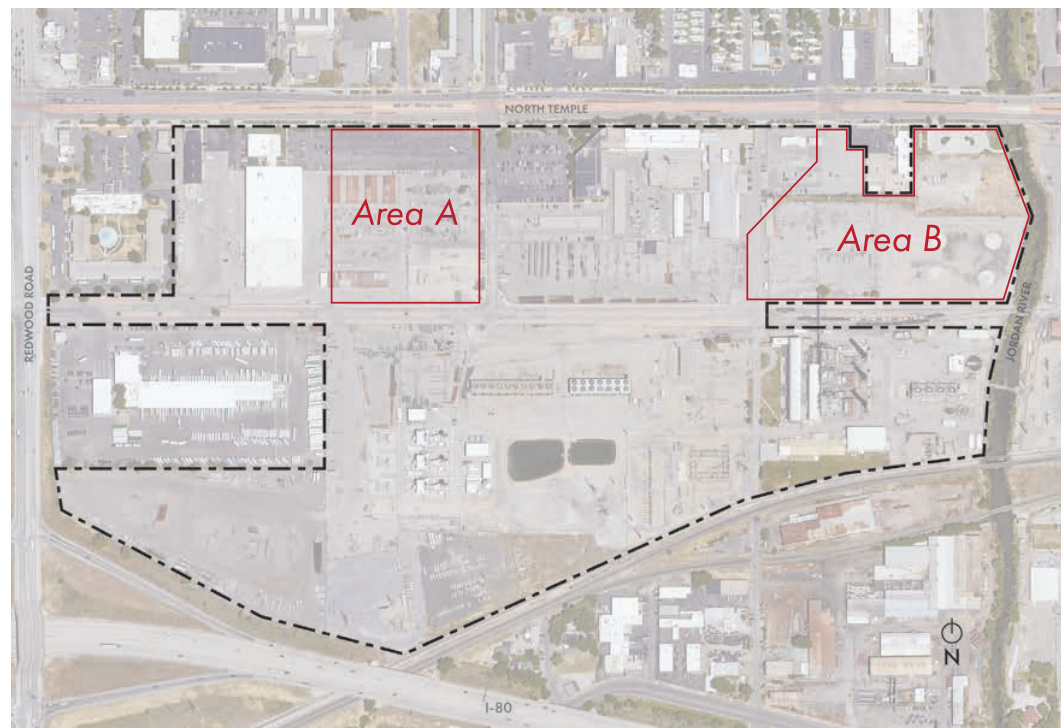
RMP acquired the current parcels and acreage of the Power District from approximately 1949 – 1954. Prior to RMP's use, low areas of the Power District Site were filled with household, commercial and industrial waste from approximately 1894 through the 1930s. It is believed that the historic wastes placed in the low areas were from residential, commercial and industrial sources, including metals mining, milling, smelting (both production waste from the smelters and the smelter components, once they were dismantled), and energy production. The entire area is now covered and contained by pavement, lawn, landscaping and buildings with concrete foundations. There are no current state or federal enforcement or remedial actions at the site; the known releases have been reported; and there are no known releases to surface water. In the past, RMP has worked with the DEQ and the federal Environmental Protection Agency (EPA) at different times when steps have been required to control impacts from the landfilling of the low areas and other industrial uses that have been discovered through land disturbance or other activities.

EPA and DEQ are aware of the fact that part of the Property was previously used as a landfill and have general knowledge of the possible contaminants associated with that use. DEQ has listed the site on the State CERCLIS site. The site is technically awaiting scoring to determine if the site meets the criteria to be placed on the National Priorities List, although it has been waiting for scoring for a long time and does not appear to be a priority. Any development will require full compliance with all local, state, and federal regulations and close coordination with regulatory agencies.

This document provides additional detailed information about the following parts of the Power District that are included in the eAuction:

- A. Available Property
- B. RMP HQ Area

These areas are identified on the adjacent map.



APPENDIX B - ENVIRONMENTAL

A. Available Property

RMP or its predecessors have owned and controlled the portion of the Available Property offered for lease or sale since approximately 1949-54. No major environmental impacts have been found in the Available Property to date, and the existing information does not demonstrate any major impacts in the Available Property from the historic landfill. However, based on historical data, it is likely that the following environmental conditions may exist in the Available Property: (1) "legacy coal ash" within utility corridors, since the ash was used historically as bedding material for underground piping and infrastructure; and (2) limited and scattered asbestos-containing bricks.

To further identify potential impacts in the Available Property, RMP conducted a subsurface investigation in December 2020 that covered the Available Property and nearby acreage (see Attachment 1). Metals that were identified in the soil and groundwater were similar to those found in a 2000 EPA investigation. As part of the report, cross sections of the depth of fill were developed and show only a thin layer of fill in the area.

Based on the environmental data and site history available to RMP, the Available Property appears to have no known or suspected major environmental impacts requiring remedial efforts before the Available Property is developed. However, development with minimal soil disturbance and minimal handling of groundwater is prudent. Preliminary discussions with DEQ indicate a buyer could obtain an EWA, or similar document, prior to final execution of the purchase to limit environmental risk. In the lease scenario, PacifiCorp intends to consult with DEQ and Lessee to determine the applicable regulatory requirements, and the proper restrictions, if any, on the use and development of the Available Property. The Buyer's EWA (or Lessee's DEQ-related requirements) would be expected to contain the following reasonable steps:

- a. No use of groundwater for drinking water, irrigation or bathing purposes.
- b. If contamination or potential contamination in soils or groundwater is discovered during demolition, construction, utility installation and maintenance, de-watering, general maintenance activities, and/or general use the applicant shall:
 - i. Cease the activities and perform sampling as necessary to properly characterize the contamination or potential contamination to evaluate possible impacts.
 - ii. Notify UDERR of the sample results if contamination is identified that exceeds the EPA Regional Screening Levels ("RSLs"), Initial Screening Levels or Maximum Contaminant Levels.
 - iii. Manage and/or dispose of contaminated material that is excavated or removed in a lawful and protective manner and otherwise exercise appropriate care with respect to contaminated material.
- c. Other requirements DEQ may impose in an EWA or through other regulatory requirements/programs include:
 - i. Soil vapor intrusion study prior to construction. If risks found during study, mitigate risk in design and construction of buildings.
 - ii. An environmental covenant be placed on the property to memorialize the reasonable steps.
 - iii. Developer to ensure fill material does not exceed RSLs.

APPENDIX B - NTO SITE HISTORY AND ENV. CONDITIONS

Prior to finalizing a Sale Area purchase, RMP will require the buyer to obtain an EWA or similar document from UDERR. RMP will cooperate with buyer to obtain the EWA. Prior to finalizing a Lease, Lessee and PacifiCorp shall consult with the UDERR regarding the development of the Available Property, obtain any required approvals, and Lessee and PacifiCorp shall abide by all terms and conditions imposed by UDERR on the use and development of the Available Property.

In addition to the EWA and/or other DEQ regulatory requirements, the Available Property will be sold with the following generally described deed restrictions:

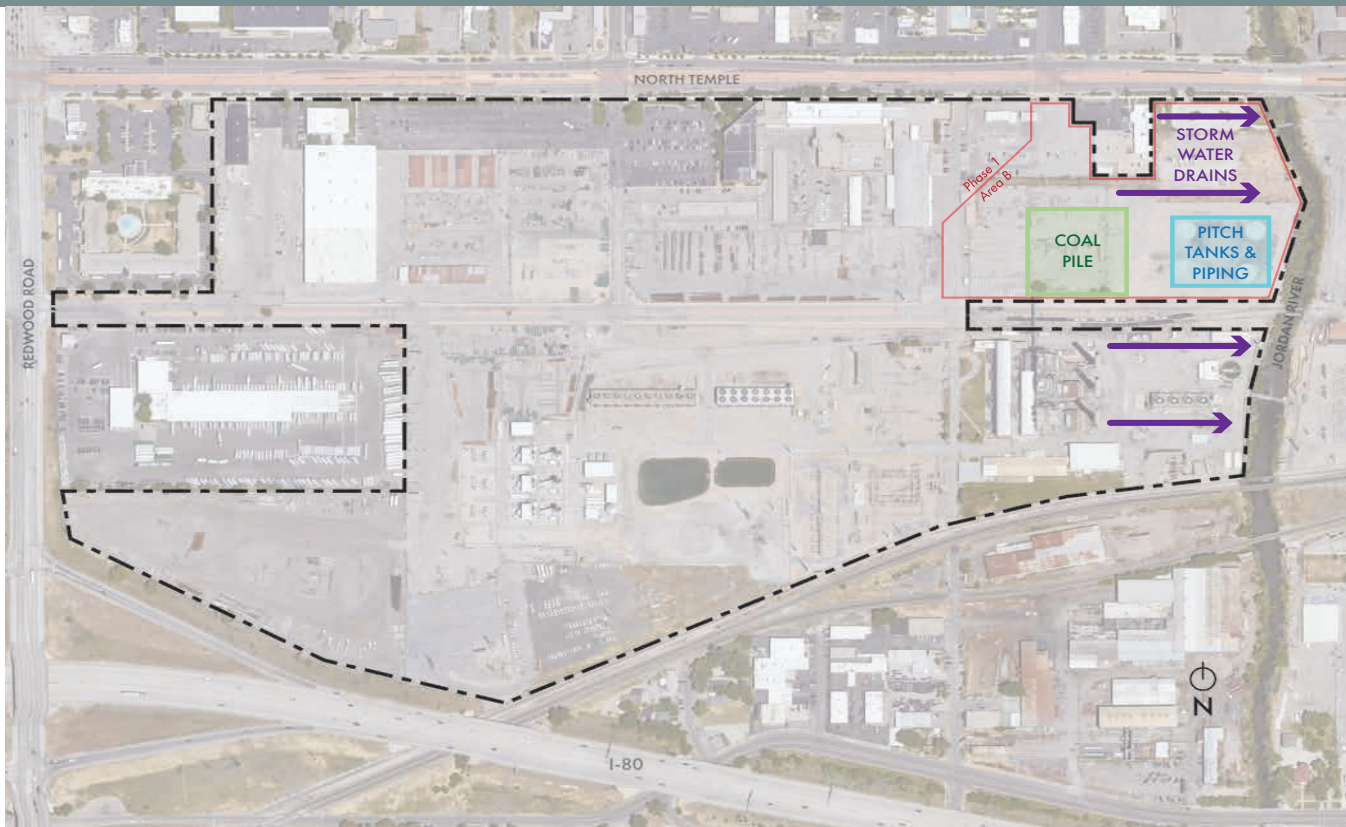
- i. Buyer shall not develop any single-family residences, and all residential development shall be above-grade only.
- ii. All construction shall be restricted to slab on grade unless DEQ determines it is not necessary.
- iii. All excavated materials shall be segregated, characterized and disposed of in accordance with applicable local, state and federal environmental regulations; all legacy ash encountered, during excavation or otherwise, shall be disposed of in a lined landfill or other more protective certified disposal site.

APPENDIX B - NTO SITE HISTORY AND ENV. CONDITIONS

Insurance requirements for Lessee:

- i. **Workers' Compensation.** Lessee must comply with all applicable Workers' Compensation laws and furnish proof thereof satisfactory to PacifiCorp prior to commencing any work on the Premises.
- ii. **All Workers' Compensation policies** must contain provisions that the insurance companies will have no right of recovery or subrogation against PacifiCorp, its parent, divisions, affiliates, subsidiary companies, co-lessees, co-venturers, agents, directors, officers, employees, servants, and insurers, it being the intention of PacifiCorp and Permittee that the insurance as effected protects all Parties.
- iii. **Employers' Liability.** Insurance with a minimum single limit of \$1,000,000 each accident, \$1,000,000 disease each employee, and \$1,000,000 disease policy limit.
- iv. **Commercial General Liability.** The most recently approved ISO (Insurance Services Office) policy, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate (on a per location and/or per job basis) to protect against and from any and all loss by reason of bodily injury or property damage on or about the Premises, including the following coverages:
 - a. Premises and operations coverage
 - b. Independent contractors' coverage
 - c. Contractual liability
 - d. Products and completed operations coverage
 - e. Coverage for explosion, collapse and underground property damage
 - f. Broad form property damage liability
 - g. Personal injury liability, with contractual exclusion removed
 - h. Sudden and accidental pollution liability
- v. **Business Automobile Liability.** The most recently approved ISO policy, or its equivalent, with a minimum single limit of \$1,000,000 for bodily injury and property damage including sudden and accidental pollution liability, with respect to Permittee's vehicles whether owned, hired or non-owned, assigned to or used in any way on the Premises.
- vi. **Lessee's Pollution Liability.** If the Work or Services can cause pollution, Lessee shall maintain contractor's pollution liability insurance on the most recently approved ISO policy form, or its functional equivalent, with a minimum limit of \$3,000,000 per occurrence and \$6,000,000 annual aggregate.
- vii. **Umbrella Liability.** Insurance with a minimum limit of \$10,000,000 each occurrence/aggregate where applicable to the excess of the coverages and limits required in Employers' Liability, Commercial General Liability, and Business Automobile Liability insurance referenced above. Such insurance policies shall be maintained to cover any liability arising from Lessee's use of the Property and indemnification as identified in this Permit.
- viii. **Claims Made Basis.** Commercial General Liability insurance coverage provided on a "claims-made" basis shall be maintained by Permittee for a minimum period of five (5) years after the completion of this Lease and for such other length of time necessary to cover liabilities arising out of the Use.
- ix. **No Right of Recovery or Subrogation.** Unless prohibited by applicable law, all required insurance policies shall contain provisions that the insurer will have no right of recovery or subrogation against PacifiCorp, its parent, divisions, affiliates, subsidiaries companies, co-lessees, or co-venturers, agents, directors, officers, employees, servants, and insurers, it being the intention of the PacifiCorp and Lessee that the insurance as affected shall protect all Parties.

APPENDIX B - NTO SITE HISTORY AND ENV. CONDITIONS



B. Proposed Headquarters Area

The proposed HQ Area is shown on the map above. RMP will first conduct a Phase II environmental site assessment ("ESA") for the entire HQ area. This Phase II ESA will be initiated in May of 2021 and is expected to take approximately two to three months. Based on the findings from this Phase II ESA, RMP will consult with UDERR to conduct the appropriate remediation so that the HQ and parking areas meet standards for commercial construction. RMP anticipates such remediation would take from 6-8 months, depending upon the time necessary for approvals from DEQ and UDERR.

The specific descriptions of the environmental conditions and possible remediation plans below are based on historic knowledge and a conservative estimate of anticipated findings from the Phase II ESA. These plans may be altered based on the actual Phase II ESA findings. Depending upon the Phase II ESA findings and remediation costs, additional design and construction options besides slab-on-grade may be available.

Pitch Tanks

RMP is aware of the existence of remnants of three storage tanks which stored pitch from oil refineries, i.e., hydrocarbons that were not refined. It is possible that there were releases from these pitch tanks and that the contamination from the releases remains on the Power District Site. The results of the Phase II ESA will inform the need, (and if needed, the scope) of remediation for the Pitch Tanks area. If remediation is needed for this area, RMP will remediate the Pitch Tanks area (shown in the map above) to industrial commercial levels at a minimum, and potentially to residential levels. Depending upon the level of remediation, design and construction options beyond slab-on-grade may be available. The expected time for remediation is 4-6 months after completion of the Phase II study.

APPENDIX B - NTO SITE HISTORY AND ENV. CONDITIONS

Coal Asphalt

Directly west of the Pitch Tank area, an area of approximately 4.5 acres contains sub-surface coal from historic use and storage for the Gadsby power plant up until 1986 (shown in the map above). This area is capped with asphalt made with coal tar and has disposal restrictions for removal. RMP will remove and remediate this area in conjunction with the Pitch Tank area to industrial commercial levels at a minimum, and potentially to residential levels. Depending upon the level of remediation, design and construction options beyond slab-on-grade may be available. The expected time for remediation is 4-6 months after completion of the Phase II study.

Underground Concrete Structures

There are known, large buried concrete structures below ground surface in the Coal Asphalt area. This area may also contain impacts from smelter waste containing heavy metals below 6 feet. Depending upon the results of the Phase II ESA, the projected development design, and costs, RMP will either remove these structures, or perform some type of remediation with these structures remaining in place.

Additional potential environmental conditions

A number of stormwater drains running west-to-east were constructed on the eastern portion of the site, which originally emptied into the Jordan River. All of these stormwater pipes are now plugged but remain buried on the Property. Discharge permits allow stormwater to be discharged into an abatement canal, which runs south-to-north through the middle of the current HQ site. If these drains or pipes are included in areas to be developed, additional remediation may be required and will be completed by RMP. Asbestos has been encountered throughout the site. Regulators are aware of and have approved RMP's handling of this asbestos. RMP will provide certified oversight of all ground disturbance for the HQ Area but also expects contractors will have experience identifying and managing asbestos that may be encountered. Contractors will conduct handling and remediate any asbestos encountered during construction of the HQ with RMP plan approval.

APPENDIX C - DEVELOPER AND ARCHITECTURAL SERVICES AGREEMENT SPECIAL CONDITIONS

ARTICLE 1. DEFINITIONS

Bulk Electric System (BES) Cyber System Information (BCSI) shall mean information concerning CIPS Covered Assets that: (i) relates to the production, generation or transmission of energy; (ii) could be useful to a person planning an attack on critical infrastructure; and (iii) provides strategic information beyond the geographic location of the critical asset, and which is identified as BCSI by Company.

Critical Infrastructure Protection Standard (CIPS) Covered Assets shall mean any assets identified by Company as "BES assets," "BES cyber assets," "BES cyber systems," "protected cyber assets," "electronic access control or monitoring systems," "electronic access points," or "physical access control systems," as those terms are defined in the North American Electric Reliability Corporation (NERC) Glossary of Terms. "BES" refers to the "Bulk Electric System" as defined by NERC.

Company shall mean Rocky Mountain Power (RMP).

Company's Facilities shall mean any facilities owned, operated or otherwise controlled by Company which require Company authorization to obtain access.

Confidential Information shall mean: (i) proprietary information of Company; (ii) information marked or designated by Company as confidential; (iii) BES Cyber System Information of Company; (iv) information, whether or not in written form and whether or not designated as confidential, which is known to Consultant as being treated by Company as confidential; (v) information provided to Company that Company is obligated to keep confidential (including but not limited to information that identifies an individual or customer of Company, such as customer account numbers, customer addresses, customer energy usage information, credit or bank account numbers, social security numbers, passport or driver's license numbers, whether or not such information is publicly available); and (vi) information developed by Consultant in connection with the performance of this Contract.

Cyber Assets shall mean programmable electronic devices, including the hardware, software, and data in those devices.

Data shall mean any and all data, information, formulae, algorithms, or other content that Company or its Personnel create, generate or modify (i) using the Software, (ii) that is hosted by Contractor or (iii) that is stored on Company's systems and that is accessible by Contractor. Data also includes user identification information and metadata which may contain the foregoing data or from which the foregoing data may be ascertainable.

Security Incident shall mean any circumstance when (i) Consultant knows or reasonably believes that the confidentiality, integrity, or availability of any Company Data has been adversely impacted, including but not limited to, incidents where Company Data has been damaged, lost, corrupted, destroyed, or accessed, acquired, modified, used, or obtained by any unauthorized person, by any person in an unauthorized manner, or for an unauthorized purpose; (ii) Consultant knows or reasonably believes that an act or omission has adversely impacted the cybersecurity of the products or services provided to Company by Consultant or the physical, technical, administrative, or organizational safeguards protecting Consultant's systems or Company's systems holding Company Data; or (iii) Consultant receives any complaint, notice, or communication which relates directly or indirectly to (A) Consultant's handling of Company Data or Consultant's compliance with the data safeguards in this Agreement or applicable law in connection with Company Data or (B) the cybersecurity of the products or services provided to Company by Consultant.

Sensitive Personnel shall mean all Personnel with authorized unescorted physical access or cyber access to Company's CIPS Covered Assets.

APPENDIX C - DEVELOPER AND ARCHITECTURAL SERVICES AGREEMENT SPECIAL CONDITIONS

ARTICLE 2. INSURANCE

Without limiting any liabilities or any other obligations of Consultant, Consultant shall, prior to commencing Work, secure and continuously carry with insurers having an A.M. Best Insurance Reports rating of A-:VII or better such insurance as will protect Consultant from liability and claims for injuries and damages which may arise out of or result from Consultant's performance and operations under the Contract and for which Consultant may be legally liable, whether such performance and operations are by Consultant or a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Consultant shall insure the risks associated with the Work and this Contract with at least the minimum coverage and limits as set forth below:

Workers' Compensation. Consultant shall comply with all applicable workers' compensation laws and shall furnish proof thereof satisfactory to Company prior to commencing Work. Consultant also shall include the alternate employer endorsement with Company listed as alternate employer.

Employers' Liability. Consultant shall maintain employers' liability insurance with a minimum single limit of \$1,000,000 each accident, \$1,000,000 disease each employee, and \$1,000,000 disease policy limit, and covering locations of all workplaces involved in this Contract.

Commercial General Liability. Consultant shall maintain commercial general liability insurance on the most recently approved ISO policy form, or its functional equivalent, written on an occurrence basis, with limits not less than \$2,000,000 per occurrence/\$4,000,000 general aggregate (on a per location and/or per job basis) and shall include, without sublimit, the following coverage:

- a. Premises and operations coverage
- b. No independent contractor's exclusion
- c. Blanket contractual liability
- d. Products and completed operations coverage through the statute of limitations or statute of repose, whichever is longer, and including any tolling extension of each state
- e. No exclusion for explosion, collapse, and underground property damage
- f. Broad form property damage liability
- g. Personal and advertising injury liability, with the contractual exclusion removed
- h. Sudden and accidental pollution liability, if actions under the scope of the work can result in a pollution event
- i. No subsidence or earth movement exclusion
- j. Liability arising from wildfire
- k. Operations on or adjacent to a railroad or railroad right of way, as applicable

APPENDIX C - DEVELOPER AND ARCHITECTURAL SERVICES AGREEMENT SPECIAL CONDITIONS

Business Automobile Liability. Consultant shall maintain business automobile liability insurance on the most recently approved ISO policy form, or its functional equivalent, with a minimum single limit of \$1,000,000 each accident for bodily injury and property damage including pollution liability resulting from an accident, with respect to Consultant's vehicles whether owned, leased, hired or non-owned, assigned to or used in the performance of the Work. If the scope of work includes the transport of pollutants or can result in an environmental restitution obligation, the automobile liability policy will include pollution liability coverage equivalent to that provided under the ISO Pollution Liability Broadened Coverage for Covered Autos endorsement (CA9948) and Motor Carrier Act endorsement (MCS90) shall be attached.

Umbrella or Excess Liability. Consultant shall maintain umbrella or excess liability insurance with a minimum limit of \$10,000,000 each occurrence/aggregate on a following form basis and include drop-down coverage in the event the underlying limits are eroded, to be excess of the insurance coverage and limits required in employers' liability insurance, commercial general liability insurance and business automobile liability insurance above. Consultant shall provide Notice to Company, if at any time the full umbrella limit required under this Contract is not available, and will purchase additional limits, if requested by Company.

Network Security & Privacy Liability. If the Work or Services under the Contract involves the rendering of information technology services including, but not limited to: software, software or hardware or systems development or consulting services; internet/application services (e.g., web hosting); providing content; connections to systems, technology or network(s); or if Consultant in any way collects, obtains, maintains or in any way accesses or uses Confidential Information or Data, then Consultant, and its Subcontractors of any tier shall maintain Network Security & Privacy Liability coverage, including Professional Errors & Omissions, throughout the term of this Contract and for a period of two (2) years thereafter, with a minimum required limit of \$5,000,000 each claim.

Transit and Installation. If the Consultant will engage in air, land and water shipments or installation of plant, equipment, machinery, components, supplies and materials, Consultant shall maintain transit and installation insurance covering all worldwide air, land and water shipments, and installation of plant, equipment, machinery, components, supplies and materials, and shall include loading and unloading and offsite storage if the Consultant or Subcontractor will perform. Coverage shall attach at Consultant's point of shipment and continue until installed, constructed or rigged by Consultant or its Subcontractors in conjunction with this Work. Consultant shall have obtained such transit or installation coverage on or prior to the date on which the exposure to the risk arises. Company will be named loss payee or additional named insured for its interest in the covered property.

Consultant's Pollution Liability. If the Work or Services can cause pollution, Consultant shall maintain contractor's pollution liability insurance on the most recently approved ISO policy form, or its functional equivalent, with a minimum limit of \$3,000,000 per occurrence and \$6,000,000 annual aggregate.

Consultant's Professional and Protective Indemnity Liability. If the Consultant provides professional services such as advisory, architectural, engineering, environmental, design and survey services, Consultant shall maintain contractor's professional and protective indemnity liability insurance with a minimum limit of \$5,000,000 per claim and \$5,000,000 project aggregate. Coverage shall include all claims associated with professional services rendered by or on behalf of lead contractor.

APPENDIX C - DEVELOPER AND ARCHITECTURAL SERVICES AGREEMENT SPECIAL CONDITIONS

Company does not represent that the insurance coverage specified herein (whether in scope of coverage or amounts of coverage) are adequate to protect the obligations of Consultant, and Consultant shall be solely responsible for any deficiencies thereof.

Except for workers' compensation and professional liability, the policies required herein shall include provisions or endorsements naming Company, its affiliates, parent organization, divisions, subsidiary companies, co-lessees, co-venturers, and the officers, directors, agents, employees, servants and insurers of the same as additional insured. The commercial general liability additional insured endorsement shall be ISO Form CG 20 10 and CG 20 37 or their factual equivalent, including additional insured coverage for both on-going and completed operations, and containing no language limiting the coverage to the minimum amount required by a written agreement.

All policies required by this Contract shall include: (i) provisions that such insurance is primary insurance with respect to the interests of Company and that any other insurance maintained by Company is excess and not contributory insurance with the insurance required hereunder, (ii) provisions that the policy contain a cross liability or severability of interest clause or endorsement in the commercial general liability, automobile liability and umbrella or excess liability coverage; and (iii) provisions that such policies not be canceled or their limits of liability reduced without: (a) ten (10) days prior written Notice to Company if canceled for nonpayment of premium; or (b) thirty (30) days prior written Notice to Company if canceled for any other reason. Unless prohibited by applicable law, all required insurance policies shall contain provisions that the insurer will have no right of recovery or subrogation against Company, its parent, divisions, affiliates, subsidiary companies, co-lessees or co-venturers, agents, directors, officers, employees, servants, and insurers, it being the intention of the Parties that the insurance as effected shall protect all of the above-referenced entities evidenced by waiver of subrogation wording.

Consultant is solely responsible for any deductibles or self-insured retentions associated with all policies required by this Contract. Deductibles or self-insured retentions shall not exceed One Hundred Thousand Dollars (\$100,000) without prior written approval of Company.

A certificate of insurance shall be furnished to Company confirming the issuance of such insurance prior to commencement of Work by Consultant and prior to the renewal or replacement of any required policy. Copies of additional insured, waiver of subrogation, and primary/non-contributory endorsements or excerpts of applicable policy provisions shall also be provided. Should a loss arise during the term of the Contract that may give rise to a claim against Consultant and/or Company as an additional insured, Consultant shall deliver to Company (or cause to be delivered to Company) certified copies of such insurance policies.

Consultant shall require Subcontractors who perform Work at the Work Site to carry liability insurance (auto, commercial general liability and excess), contractor's pollution liability, contractor's professional and protective indemnity liability, and workers' compensation/employer's liability insurance commensurate with their respective scopes of work. Subcontractors shall be contractually required to include Company as an additional insured for ongoing and completed operations with regards to liability insurance (auto, commercial general liability and excess), and shall provide waivers of subrogation with regards to all policies required herein. Consultant shall remain responsible for any claims, lawsuits, losses and expenses, including defense costs that exceed any of its Subcontractors' insurance limits or for uninsured claims or losses.

Should Consultant or its Subcontractors fail to provide or maintain any of the insurance coverage referred to in this Contract, Company shall have the right, but not the obligation, to provide or maintain such coverage, or coverage affording equivalent protection, at Consultant's sole expense, either by direct charge or set-off.

APPENDIX C - DEVELOPER AND ARCHITECTURAL SERVICES AGREEMENT SPECIAL CONDITIONS

ARTICLE 3. ACCESS TO COMPANY'S FACILITIES

3.1 Requirements for Access

Access to Company controlled areas is granted on an as-needed basis only in accordance with Company's internal badge and access policies. Company shall specify in the Release or Scope of Work whether or not the Work under this Contract requires either: (i) unescorted physical access to Company's Facilities; or (ii) local or remote access to Company's Cyber Assets. For all Personnel who require either such access, Consultant shall:

- a. Conduct, at Consultant's cost and expense, a Personnel risk assessment to include at a minimum an identity verification, E-Verify and seven-year criminal background check for the current residence and past locations of residence of all Personnel requiring access. All background checks will be conducted in accordance with federal, state, provincial and local laws, and subject to existing collective bargaining unit agreements or other agreements, if any. A background check completed within two (2) years prior to the date the Consultant signed a Contractor/Vendor Information Form for each such person will be considered valid. Following the initial background check, updates shall be performed no less frequently than every seven (7) years or upon request by Company. In the event Company notifies Consultant of impending expiration of a background check, Consultant shall provide an updated Contractor/Vendor Information Form reflecting a refreshed background check within twenty (20) days of receipt of the Notice in order to avoid revocation of such person's access. An appropriate authorization form must be signed by each of the Personnel prior to a background check being conducted, acknowledging that the background check is being conducted and authorizing the information obtained to be provided to Company;
- b. Ensure that Personnel have passed the background checks outlined in subsection 19.1 (a) prior to requesting access to Company's Facilities and/or Cyber Assets. In the event any such person: (i) is currently under indictment for a crime punishable by imprisonment for a term exceeding one year; (ii) has been convicted (within the past seven years) in any court of a crime punishable by imprisonment for a term exceeding one year; (iii) is currently a fugitive of justice; or (iv) is an alien illegally or unlawfully in the United States, such person shall be considered a "restricted person" and may not be granted access without prior written consent from Company. In the event any such person's background check reveals any residency gap of six (6) consecutive months or more, Consultant shall review, evaluate, and document any such residency gap to ensure that it does not pose a risk to Company's Facilities or Cyber Assets, prior to making a determination that Personnel have passed the background check;
- c. Ensure that Personnel complete Company provided or approved training prior to requesting access;
- d. Ensure that Personnel have passed Consultant's drug and alcohol exam and are in compliance with Consultant's substance abuse/drug and alcohol policy as outlined in the SUBSTANCE ABUSE; DRUG AND ALCOHOL POLICY article; and
- e. Keep accurate and detailed documentation to confirm completion dates for background checks and all required training (initial and annual training, to the extent applicable), and certify to Company such documentation by completing a Contractor/Vendor Information Form (see Attachment 2), hereto, for each person who will have access. Company has the right to audit Consultant's records supporting each Contractor/Vendor Information Form submitted to Company and to verify that the requisite background checks and training were performed. Consultant shall provide Company with all requested records supporting Contractor/Vendor Information forms within a reasonable time after receiving such a request, and in the form requested by Company, but not longer than three (3) business days following the date of such request.

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- f. Notify the Company in a timely manner of termination or change in status removing the need for access. In the case of Sensitive Personnel and/or involuntary termination, notification must be immediate. In all other cases, notification must be within one business day. The Enterprise Service Desk is available 24 hours a day by calling either (503) 813-5555 or (801) 220-5555.

Consultant shall not allow any person who has not met the foregoing requirements of this subsection 20.1 to perform Work, unless Consultant has received prior written consent from Company.

3.2 Additional Access Requirements Specific to Sensitive Personnel

In addition to the access requirements outlined in subsection 20.1, with respect to all Sensitive Personnel, Consultant also shall:

- a. Ensure that Sensitive Personnel (and any Personnel with access to BCSI) are informed of and comply with Company's BCSI requirements contained in any confidentiality agreement previously executed by Consultant as well as the BCSI requirements set forth herein in the CONFIDENTIAL INFORMATION; NONDISCLOSURE article; and
- b. In addition to the initial training requirement outlined in subsection 3.1 (c), ensure that Sensitive Personnel complete annual Company provided or approved CIPS compliance training within Company's prescribed training window.

Consultant shall not allow any person who has not met the foregoing requirements of this subsection 3.2 to perform Work, unless Consultant has received prior written consent from Company.

APPENDIX C - DEVELOPER AND ARCHITECTURAL SERVICES AGREEMENT SPECIAL CONDITIONS

ARTICLE 4. SUBSTANCE ABUSE; DRUG AND ALCOHOL POLICY

- a. Consultant shall have and ensure compliance with a substance abuse/drug and alcohol policy that complies with all applicable federal, state and/or local statutes or regulations. Consultant shall subject each of the Personnel to a drug test at Consultant's sole cost and expense. Such drug test shall, at a minimum, be a five (5) Panel Drug Test, which should be recognizable at testing labs as a "SamHSA5 panel at 50NG – THC cut-off".
- b. For any Personnel who have had a recent drug test, such recent drug test shall be documented pursuant to the previous Article. Consultant warrants that Consultant and the Personnel are in compliance with Consultant's substance abuse/drug and alcohol policy.
- c. During the course of Work performed under this Contract, Consultant shall keep accurate and detailed documentation of its drug policy and Personnel drug tests.
- d. Consultant shall designate one person to be responsible for compliance with the requirements of this Article and all reporting and inquiries shall be made to a duly authorized representative of Company in a timely manner.

APPENDIX C - DEVELOPER AND ARCHITECTURAL SERVICES AGREEMENT SPECIAL CONDITIONS

ARTICLE 5. BUSINESS ETHICS

Consultant, its employees, officers, agents, representatives and Subcontractors shall at all times maintain the highest ethical standards and avoid conflicts of interest in the performance of Consultant's obligations under this Contract. In conjunction with its performance of the Work, Consultant and its employees, officers, agents and representatives shall comply with, and cause its Subcontractors and their respective employees, officers, agents and representatives to comply with, all applicable laws, statutes, regulations and other requirements prohibiting bribery, corruption, kick-backs or similar unethical practices including, without limitation, the United States Foreign Corrupt Practices Act, the United Kingdom Bribery Act 2010, and the Company Code of Business Conduct. Without limiting the generality of the foregoing, Consultant specifically represents and warrants that neither Consultant nor any Subcontractor employees, officers, representatives or other agents of Consultant have made or will make any payment, or have given or will give anything of value, in either case to any government official (including any officer or employee of any governmental authority) to influence his, her, or its decision or to gain any other advantage for Company or Consultant in connection with the Work to be performed hereunder. Consultant shall maintain and cause to be maintained effective accounting procedures and internal controls necessary to record all expenditures in connection with this Contract and to verify Consultant's compliance with this Article. Company shall be permitted to audit such records as reasonably necessary to confirm Consultant's compliance with this Article. Consultant shall immediately provide notice to Company of any facts, circumstances or allegations that constitute or might constitute a breach of this Article and shall cooperate with Company's subsequent investigation of such matters. Consultant shall indemnify and hold Company harmless from all fines, penalties, expenses or other losses sustained by Company as a result of Consultant's breach of this provision. The Parties specifically acknowledge that Consultant's failure to comply with the requirements of this Article shall constitute a condition of default under this Contract.

APPENDIX C - DEVELOPER AND ARCHITECTURAL SERVICES AGREEMENT SPECIAL CONDITIONS

ARTICLE 6. COMPLIANCE WITH LAWS

Consultant shall at all times comply with all laws, statutes, regulations, rules, executive orders, ordinances, codes, and standards applicable to Consultant's performance of the Work including, without limitation, those governing health and safety, wages, hours, employment of minors, desegregation and employment discrimination, as each may be applicable to the Work performed hereunder, and based on total anticipated dollar value of this Contract. Consultant further confirms that its employees and the employees of all Subcontractors employed under the Contract may legally work in the United States.

Without limiting the generality of the foregoing, Consultant and any Subcontractors shall abide by the requirements of 41 CFR §§60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin or discussion of compensation. Moreover, these regulations require that covered prime contractors and Subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. Consultant and any Subcontractors shall also abide by the requirements of Executive Order 11246, as amended, to develop and maintain a written affirmative action program (AAP) and Executive Orders 11625 and 13170 (utilization of disadvantaged business enterprises) and the Small Business Act. To the extent applicable, the employee notice requirements set forth in 29 CFR Part 471, Appendix A to Subpart A, are hereby incorporated by reference into this Contract.

Consultant shall indemnify, defend and hold harmless Company, its directors, officers, employees and agents from all losses, costs and damages by reason of any violation thereof and from any liability, including without limitation fines, penalties and other costs arising out of Consultant's failure to so comply.

APPENDIX C - DEVELOPER AND ARCHITECTURAL SERVICES AGREEMENT SPECIAL CONDITIONS

ARTICLE 7. CONFIDENTIAL INFORMATION; NONDISCLOSURE

BES Cyber System Information. Confidential Information of Company labeled as BCSI shall be protected consistent with the following requirements: (a) BCSI shall be protected at all times, either by appropriate storage or having it under the personal observation and control of a person authorized to receive it; (b) each person who works with protected BCSI is personally responsible for taking proper precautions to ensure that unauthorized persons do not gain access to it; (c) reasonable steps shall be taken to minimize the risks of access to BCSI by unauthorized personnel (when not in use, BCSI shall be secured in a secure container, such as a locked desk, file cabinet or facility where security is provided); (d) documents or material containing BCSI may be reproduced to the minimum extent necessary, consistent with the need to carry out the Work, provided that the reproduced material is marked and protected in the same manner as the original material; (e) material containing BCSI should be disposed of through secured shredding receptacles or other secured document destruction methods; (f) BCSI shall be transmitted only by the following means: (i) hand delivery; (ii) United States first class, express, certified or registered mail, bonded courier; (iii) secure electronic means with NIST- or ISO-compliant encryption; and (g) documents or material containing BCSI shall be returned to Company or certified destroyed upon completion of the Work.

Nondisclosure. Consultant agrees that it will not disclose Confidential Information, directly or indirectly, under any circumstances or by any means, to any third person without the express written consent of Company.

Nonuse. Consultant further agrees that it will not use Confidential Information except as may be necessary to perform the Work called for by this Contract.

Protection. Confidential Information will be made available by Consultant to its employees only on a "need to know" basis and only after notifying such employees of the confidential nature of the information and after having obligated them to the nonuse and nondisclosure obligations of this Contract. Consultant agrees to take all reasonable precautions to protect the confidentiality of Confidential Information and, upon request by Company, to return to Company any documents which contain or reflect such Confidential Information.

Federal Defend Trade Secrets Act. The Federal Defend Trade Secrets Act of 2016 provides immunity from civil or criminal liability for any employee or contractor who discloses a trade secret "in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney" where the disclosure by the employee or contractor is "solely for the purpose of reporting or investigating a suspected violation of law" or "is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal." 18 U.S.C. § 1833(b). Nothing in this Contract is intended to conflict with 18 U.S.C. § 1833(b) or create liability for disclosures of trade secrets that are expressly allowed by 18 U.S.C. § 1833(b).

Unless waived by Company, Consultant shall require its employees and Subcontractors of any tier to adhere to these confidential information and nondisclosure terms.

APPENDIX C - DEVELOPER AND ARCHITECTURAL SERVICES AGREEMENT SPECIAL CONDITIONS

ARTICLE 8. CYBER SECURITY

8.1 SCOPE OF THIS ARTICLE

This Article applies to Consultant and its Personnel and Subcontractors that provide hardware, software, or services to the Company that may impact the confidentiality, integrity, or availability of the Company's networks, systems, software, Data, or Confidential Information for the term of the Contract.

8.2 CYBER SECURITY CONTROLS

- a. Consultant shall have and maintain security controls to protect the Company's networks, systems, software, Confidential Information, and Data that are no less rigorous than the latest published version of ISO/IEC 27001 – Information Security Management Systems–Requirements, and ISO/IEC 27002 – Code of Practice for International Security Management
- b. Consultant agrees to disclose to the Company known security vulnerabilities in hardware, software, and services provided under the Contract in a timely manner.
- c. Consultant warrants that the hardware, software, and patches provided under the Contract, will not contain malicious code or any unwanted or unexpected features. Consultant agrees to provide a method to verify the integrity and authenticity of all software and patches provided by the Consultant.
- d. If Consultant will have remote access to Company systems or networks, Consultant shall follow all applicable Company requirements for Consultant-initiated interactive remote access and system-to-system remote access with Consultant. To the extent Consultant's Personnel will have interactive remote access to Company's networks, systems or applications, Consultant's Personnel will use multi-factor authentication provided by the Company. Authentication tokens and passwords must not be shared. Upon either (i) Personnel termination actions or (ii) changes in the status of Personnel which removes their need for remote access, Consultant shall report such termination or change in status to the Company's Service Desk by telephone and email as soon as practicable and no later than close of the same business day. In the case of Sensitive Personnel and/or involuntary termination, notification must be immediate. In all other cases, notification must be within one business day.

8.3 OVERSIGHT OF COMPLIANCE

If the contract includes hosted or cloud services, Consultant shall provide annually to the Company a Statement on Standards for Attestation Engagements (SSAE) Service Organization Control (SOC) 2 Type II audit covering the scope of the contract and pertaining directly to the Consultant.

If the contract does not include hosted or cloud services, Consultant shall either:

- a. Annually provide a copy of ISO 27001 certification covering the scope of the contract and pertaining directly to the Consultant; or,
- b. Annually provide a copy of a third-party audit covering the security controls relevant to hardware, software, or services provided under this contract and pertaining directly to the Consultant. Audit results and Consultant's plan to correct any negative findings must also be made available to the Company; or,
- c. Allow Company to conduct an assessment, audit, examination, or review of Consultant's security controls to confirm Consultant's adherence to the terms of this Article, as well as any applicable laws, regulations, and industry standards, not more than once per year or upon notification of any Security Incident or

APPENDIX C - DEVELOPER AND ARCHITECTURAL SERVICES AGREEMENT SPECIAL CONDITIONS

complaint regarding Consultant's privacy and security practices. Company may elect to obtain the services of a mutually agreeable third party to conduct this assessment, audit, examination, or review on behalf of Company. Company shall give Consultant no less than thirty (30) calendar days' notice of its intent to conduct such assessment, audit, examination, or review. As part of this assessment, audit, examination, or review, Company may review all controls in Consultant's physical and/or technical environment in relation to all Confidential Information being handled and/or hardware, software, or services being provided pursuant to this Contract. Consultant shall fully cooperate with such assessment by providing access to knowledgeable personnel, physical premises, documentation, infrastructure, application software, and systems relevant to the provision of hardware, software, or services under the Contract.

8.4 SECURITY BREACH PROCEDURES; EQUITABLE RELIEF

In the event of a Consultant, or Subcontractor Security Incident affecting the Company, the Company's networks, systems, software, Data, or the Company's Confidential Information,

- a. Consultant shall:
 - ii. Notify the Company of the Security Incident as soon as practicable, but no later than 48 hours after Consultant becomes aware of it, by telephone and email; and
 - iii. Provide the Company with the name and contact information for any Personnel who shall serve as Consultant's primary security contact and shall be available to assist the Company with Security Incident management, response, and recovery associated with the Security Incident.
- b. Immediately following Consultant's notification to the Company of a Security Incident, the Parties shall coordinate with each other to investigate such Security Incident. Consultant agrees to coordinate with Company in Company's handling of the matter, including: (i) assisting with any investigation and (ii) making available all relevant records and other materials required to comply with applicable law, regulation, industry standards, or otherwise reasonably required by Company.
- c. Consultant shall use best efforts to immediately remedy any Security Incident and prevent any further or recurrent Security Incident at Consultant's expense in accordance with applicable privacy laws, regulations, and standards. Consultant shall reimburse Company for actual reasonable costs incurred by Company in responding to, and mitigating damages caused by, any Security Incident, including all costs of notice and/or remediation pursuant to this section.
- d. Consultant shall fully cooperate at its own expense with Company in any litigation or other formal action deemed reasonably necessary by Company to protect its rights relating to the use, disclosure, protection, and maintenance of its Confidential Information and Data.
- e. Consultant acknowledges that any breach of Consultant's obligations set forth in this Article may cause Company substantial irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such a breach or threatened breach, Company is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which Company may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other available remedies at law or in equity, subject to any express exclusions or limitations in the Contract to the contrary.

APPENDIX C - DEVELOPER AND ARCHITECTURAL SERVICES AGREEMENT SPECIAL CONDITIONS

8.5 PROHIBITED VENDORS

Consultant may not use in the provision of Work or Services to Company, directly or indirectly using subcontractors, the services, products, component pieces or sub-assemblies of any company identified by Company or by the U.S. Government and/or regulatory authorities as a security threat (collectively, the "Prohibited Vendors"), including without limitation the companies identified by Company in Attachment 3 and by the U.S. Department of Commerce (which are currently posted on the internet at <https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear> and as published in 15 CFR, Subchapter C, part 744, Supplement No. 4). Consultant is responsible for being familiar with the Prohibited Vendors, including additional Prohibited Vendors that Company may identify by Notice to Consultant and that the U.S. Government may identify from time to time during the term of this Contract. If Consultant fails to abide by the requirements of this Section, Company will provide Consultant with Notice and a 30-day opportunity to cure. Continued failure to abide by this requirement will be considered a material breach of this Contract.

APPENDIX C - DEVELOPER AND ARCHITECTURAL SERVICES AGREEMENT SPECIAL CONDITIONS

ARTICLE 9. OFFICE OF FOREIGN ASSETS CONTROL SANCTIONS LISTS; STATE OR GOVERNMENT OWNED ENTERPRISES OR CORPORATIONS CYBER SECURITY

9.1 Consultant warrants that neither Consultant nor a) any parent, affiliate, or subsidiary to Consultant, or b) any officer, director, employee, agent, lobbyist, or representative of Consultant is on any sanction list maintained and published by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), including but not limited to the Specially Designated Nationals and Blocked Persons List and Consolidated Sanctions List maintained and published by OFAC and available at <https://www.treasury.gov/resource-center/sanctions/Pages/default.aspx> (collectively the "OFAC sanctions lists"). Consultant further warrants, acknowledges, and agrees that:

- a. Neither Consultant nor any a) any parent, affiliate, or subsidiary to Consultant, or b) any officer, director, employee, agent, lobbyist, or representative of Consultant is operating or acting under any alias or pseudonym to avoid detection as a person or entity on any of OFAC sanctions lists;
- b. Consultant is prohibited from and shall not, either directly or indirectly, involve or engage in any manner any person or entity that is on any of the OFAC sanctions lists in the performance of this Contract, whether as an officer, director, employee, agent, lobbyist, representative, contractor, subcontractor, vendor, consultant, supplier, materialman, or any other role or relationship of any kind; and
- c. Consultant's obligations under this Article are ongoing, and Consultant shall remain up-to-date with recent actions and updates by OFAC and shall immediately notify Company at any time it learns that a representation made in this Article is no longer accurate or that Consultant otherwise has been or is in violation of this Article.
- d. The warranties, representations, and obligations of this Article are material to Company's decision to enter into this Contract, and any failure or violation of same is grounds for termination for cause by Company as a material breach of a provision of the Contract.

Consultant further agrees that it will fully comply and cooperate with Company in any inquiry, request, or investigation initiated by OFAC arising from or related to Consultant's performance under this Contract and will defend, indemnify, and hold harmless Company, its agents, representatives, and employees of and from all fines, fees, penalties, or other liabilities or damages of any kind arising from or related to any failure or violation of Consultant's warranties, representations, and obligations under this Article. This obligation is in addition to and not in derogation of any other obligation Consultant may have to defend, indemnify, or hold harmless Company, its agents, representatives, and employees under this Contract.

9.2 Consultant warrants that neither Consultant nor any parent, affiliate, or subsidiary to Consultant has fifty-percent (50%) or more equity ownership by a state-owned enterprise or government owned-corporation acting on behalf of the following foreign countries (the "prohibited countries"):

<i>Afghanistan</i>	<i>Crimea Region of Ukraine</i>	<i>Russia</i>	<i>Venezuela</i>	<i>Angola</i>
<i>Iran</i>	<i>Somalia</i>		<i>Yemen</i>	<i>Chad</i>
<i>Iraq</i>	<i>Sudan</i>		<i>China</i>	<i>Libya</i>
<i>Syria</i>	<i>Congo</i>		<i>North Korea</i>	<i>Uganda</i>

9.3 Consultant acknowledges and agrees that the warranties, representations, and obligations of this Article are material to Company's decision to enter into this Contract, and any failure or violation of same is grounds for termination for cause by Company as a material breach of a provision of the Contract.