

**COMMUNICATION FACILITY LEASE
PACIFICORP**

LEASE AGREEMENT dated this 01 day of November 2022, by and between Tooele County, a political subdivision of the State of Utah, Tooele County, and Pacificorp.

1. PURPOSE. County hereby leases space to Tenant at the following county communication facilities: South Mountain, Tooele County, pursuant to the terms and conditions contained in this Agreement.
2. INITIAL TERM AND RENEWALS. The initial lease term shall be for a period of five years commencing November 1, 2022 and ending October, 31 2027. This Agreement shall be automatically extended for three (3) additional five (5) year terms, each being a renewal term ("Renewal Term"), unless Tenant provides written notice of its intention not to renew the Agreement no later than three (3) months prior to the expiration of the Initial Term or of the then current Renewal Term, as the case may be.
3. LEASE PAYMENTS. Tenant shall pay to County the amount of \$24,000.00 upon execution of this Agreement and again on each anniversary date of this Agreement throughout the term.
4. LEASE PAYMENTS FOR SUBSEQUENT TERMS. County may modify lease payments at the beginning of each term.
5. INCREASE OF LEASE PAYMENTS ARISING FROM INCREASED ELECTRICAL POWER RATES. If electrical power rates increase by more than 3% during any term year, County may increase Tenant's subsequent annual payments for the remainder of that term as follows:

$$\frac{\text{Percent rate increase} - 3\%}{\text{Number of tenants at location}} = \text{Percentage of Tenant's Increase}$$

For example, if County elects to pass on a power rate increase of 18%, and if the location has five tenants, Tenant's lease payment would increase by 3% $((18\% - 3\%) / 5 = 3\%)$.

In such event, County shall submit an invoice to Tenant for the entire balance of the increased lease payment for the current term, and Tenant shall pay that amount in full within 60 days.

6. OTHER PAYMENT PROVISIONS. All late payments shall be subject to a late fee equal to 5% of the balance due. NSF checks shall be subject to a \$35 fee. If Tenant fails to pay all amounts due (including late fees and NSF fees) within 90 days, County may disconnect Tenant's equipment and/or circuits. Reconnection shall not occur until Tenant has paid all amounts due plus a \$500 non-refundable reconnection fee.
7. COUNTY'S OBLIGATIONS. County shall provide the following equipment and services at the location: HVAC conditioned space, rack space, preexisting cable trays, electric power, and

an antenna mast for installation of required base station antennas. County may provide additional equipment and services if available at the location. County shall, at all times and at its sole expense, maintain the HVAC equipment in good condition and repair, maintain its equipment shelter free from leaks and in good condition and repair, and maintain its tower and other communication facilities at the location in good condition and repair.

8. TENANT'S OBLIGATIONS.

- (a) Tenant shall provide all equipment, including racks, radio receiving and transmitting equipment, and other equipment necessary to connect its equipment to the antenna mast and power supply.
- (b) Tenant shall be solely responsible for all common carrier charges for interconnect services.
- (c) Tenant shall be solely responsible for all costs of installation, maintenance, and modification of its equipment.
- (d) Tenant shall be solely responsible for the cost of modifications at the location to accommodate Tenant's equipment, including, but not limited to, the running of cabling to antenna masts and the running of cabling from the building power terminus to Tenant's equipment. Tenant shall not initiate or make any such modifications without County's prior consent.
- (e) Tenant shall, at its sole expense, keep and maintain its equipment and all appurtenances thereto and the aisle spaces surrounding it in clean and orderly condition and repair.
- (f) Tenant shall not commit or suffer to be committed any waste or nuisance at the location.
- (g) Tenant shall remove from the location any refuse incident to the installation and operation of its equipment, appurtenances and/or antenna.
- (h) Tenant, at its sole expense, shall obtain and maintain all licenses or permits required for the conduct of its business at the location.
- (i) Tenant, at its sole expense, shall comply with all laws, orders and regulations of federal, state and municipal authorities, and with all directions of public officers with respect to the location.
- (j) Tenant shall be solely responsible for all costs, coordination and acquisition of transmitting frequency licenses regulated by the Federal Communications Commission (FCC) and shall furnish to County frequency coordination information and copies of all its FCC licenses supporting operations at the location.

(k) Tenant shall comply with the guidelines specified in the FCC's Office of Engineering and Technology (OET) Bulletin 65 Edition 97-01 and all applicable superseding or subsequent amendments relating to human exposure to radio-frequency electromagnetic fields. Tenant shall determine the radio-frequency exposure (RFE) limits with regard to the operation of its equipment, identify and document the maximum permissible exposure (MPE) levels, train its employees and agents of such levels, and share this information with County to facilitate the establishment of appropriate guidelines governing location access control measures for both the general population and occupational personnel in both uncontrolled and controlled working areas. Tenant shall furnish County with all necessary information incident to the operation of its business that may affect MPE levels. Tenant shall comply with the posted signs giving notice, caution and/or warning that a person may be or is entering an area that may exceed MPE limits. Tenant shall, as it makes changes to its radio equipment, antenna and/or site facilities, coordinate with County at least 30 days in advance of implementation so that updates to the RFE site plan and signs may be made and posted. Tenant shall achieve full compliance with these requirements prior to operating its business.

(l) Tenant may use the location for the installation and operation of a communication facility. If any interference develops from the operation of Tenant's equipment which affects County microwave, land mobile or other equipment, or the existing equipment of other tenants or other properly FCC licensed users in the area who began operations on or adjacent to the location prior to Tenant's operation at the location, which interference cannot be promptly corrected by Tenant at its sole expense, then Tenant shall immediately cease operation of its equipment. Thereafter, County and Tenant shall cooperate to remove such interference. If removal of such interference is, in the sole opinion of County, impractical, either party shall have the right to terminate this Agreement upon 30 days' written notice to the other party.

(m) Tenant is strongly encouraged to obtain and maintain insurance coverage for its equipment. County has no obligation to insure Tenant's equipment and is not responsible for damage to or loss of Tenant's equipment.

Tenant waives the right of subrogation, and shall cause its insurer to waive the right of subrogation, against County in the event of damage to Tenant's equipment or property however caused.

Tenant shall obtain and maintain, and shall require its contractors and subcontractors to obtain and maintain, general liability insurance issued by a company or companies authorized to do business in the State of Utah which carry a Moody's rating of not less than A. The insurance coverage limits shall be at least \$1,000,000. Tenant shall provide a Certificate of Insurance to County upon execution of this Agreement and each time Tenant's insurance coverage is modified during the term(s) of this Agreement. If Tenant fails to require its contractors and subcontractors to obtain and maintain insurance pursuant to this paragraph, Tenant shall be liable for all damages caused by its contractors and subcontractors.

(n) Tenant shall promptly notify County of any death, serious bodily injury, substantial property damage, or interruption in service arising from Tenant's operations or obligations under this Agreement.

(o) Tenant shall pay all taxes assessed against Tenant's equipment and shall pay all sales, use or other taxes assessed on Tenant's leased circuits or rack space.

(p) Tenant shall not sublease its equipment, circuits, rack space, floor space, excess capacity or any other related facilities or space at the location.

9. ACCESS. Tenant may use, on a non-exclusive basis, any right-of-way or permit possessed by County to traverse public land or land owned by County or a third party to access the location. County does not warrant the current existence or future continuation of any such permission or right-of-way. Tenant may access the location 24 hours per day, seven days per week, for the purpose of installing, operating, maintaining, repairing, and replacing its equipment, and to connect its equipment to necessary utility services. Tenant shall not permit access to the location by anyone other than Tenant's employees without County's prior written consent. For planned construction or installation of new equipment, other than the replacement of existing malfunctioning equipment, Tenant shall provide at least 30-days' advance notice and a construction schedule to County and shall not perform such work without County's prior written consent, except in emergency situations, which shall not be unreasonably withheld, conditioned, or delayed.

10. FIXTURES. Tenant-installed cable trays, related inside/outside plant facilities and terminations, and power panels incorporated into the location become fixtures upon installation and immediately become County's property without remuneration.

11. TERMINATION DURING LEASE TERM. Tenant may immediately terminate this Agreement if County is unable to provide access or services contemplated by this Agreement for a period greater than 72 continuous hours. Either party may immediately terminate this Agreement if the location is damaged by fire, snow, wind, act of God, or any other cause such that the location becomes unsuitable for occupancy. Either party may immediately terminate this Agreement if, due to the actions of another governmental entity or agency, either party becomes unable to perform its obligations or realize the benefits anticipated under this Agreement. County may immediately terminate this Agreement if Tenant is in default of any provision of this Agreement and fails to cure the default within 30 days after having been notified in writing of the default.

12. TERMINATION AT END OF LEASE TERM. This Agreement may be terminated by either party at the end of any term by providing written notice to the other party at least 180 days prior to the end of that term.

All non-fixture communications equipment, racks, battery packs, generators and similar Tenant-installed equipment at the location is and remains Tenant's property. Tenant shall remove all

such equipment within 90 days after termination and shall leave the location in the condition as it existed prior to the installation of such equipment, normal wear and tear excepted. All equipment not removed by Tenant within 90 days after termination shall be deemed abandoned and shall immediately and without further notice become County's property.

13. INDEMNIFICATION. Tenant shall indemnify and defend County and other tenants against Tenant's acts or omissions and/or the acts or omissions of its agents, employees, contractors, subcontractors and other persons or entities having access to the location by or through Tenant.

14. LIMITATION OF COUNTY'S LIABILITY. If County is unable to fulfill its obligations under this Agreement for any reason, County's liability to Tenant is limited to the return of pre-paid lease payments.

15. MODIFICATIONS. This Agreement may only be amended, modified, or supplemented by written amendment signed by the parties.

16. ENTIRE AGREEMENT. This document, including any attached exhibits, constitutes the entire agreement between the parties. All other agreements, promises and representations with respect to the subjects of this agreement, other than those contained herein, are expressly revoked, as it has been the intention of the parties to provide for a complete integration within the provisions of this document.

17. SEVERABILITY. The unenforceability, invalidity or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

18. FORCE MAJEURE. Neither party to this Agreement shall be held responsible for delay or default caused by fire, riot, acts of God, war or pandemic beyond that party's reasonable control.

19. SUCCESSORS AND ASSIGNS. Tenant may assign this Agreement without County's consent to Tenant's principal, Tenant's affiliates, Tenant's subsidiaries, or any entity that acquires all or substantially all of Tenant's assets or communication operations in the market defined by the FCC in which the location is located. Tenant shall not otherwise assign this Agreement to any other person or entity without first obtaining written consent from County, which consent shall not be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns, and their respective legal representatives.

20. NOTICES. Notices required by this Agreement shall be deemed delivered when delivered to:

For County:
Bucky Whitehouse

bucky.whitehouse@tcem.org
435-833-8121

For Tenant:

PacifiCorp
Attn: Chris Jorgensen, Sr. Property Agent
1407 W North Temple Ste 110
Salt Lake City, Utah 84116

21. COST OF DEFAULT. In the event of default by either party hereto, the defaulting party shall pay all costs and expenses of the non-defaulting party, including a reasonable attorney's fee, that may be incurred by the non-defaulting party in enforcing its rights and remedies resulting from such default.

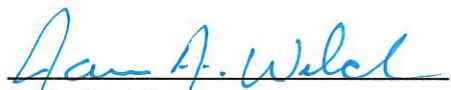
22. CHOICE OF LAW AND VENUE. All disputes with respect to this Agreement shall be interpreted according to the laws of the State of Utah with venue in Tooele County, Utah.

23. AUTHORIZATION OF SIGNATORIES: The signatories affirm that they have been duly authorized to sign this Agreement and bind their respective entities to the terms and provisions of this Agreement.

24. JURY TRIAL WAIVER. 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.

25. COUNTERPARTS. This Lease may be executed in counterparts, each of which shall be an original and all of which counterparts taken together shall constitute one and the same agreement. Signatures transmitted in PDF format by electronic mail shall be binding upon the Parties hereto with the same force and effect as original signatures.

TOOELE COUNTY:



Andy Welch
Tooele County Manager

PacifiCorp

PacifiCorp
Property Management

APPROVED AS TO FORM:

ATTEST:

 12/01/2022

Colin Winchester
Deputy County Attorney

Tracy Shaw
County Clerk



Tooele County Council Agenda Item Summary

Department Making Request:

Emergency Services

Meeting Date:

November 22, 2022

*Contract***Mark Options That Apply:** **Grant**
1 time **Contract**
1 yr. or less **Purchase**

Exp date: _____

 Grant
With County Match **Contract**
*More than 1 yr.*Exp date: 3 years renewing**Budget Impact:** **In Budget** **Over Budget****Amount of Contract, Service, Grant:** \$ 24,000.00**Item Title:** Contract/Payment by PacificCorps for spaced leased in South Mountain Tower*Please answer the who? what? when? why?*

PacificCorp currently has a lease agreement with Tooele County to allow them to locate equipment in the building and antennaes on the tower at our South Mountain Tower location. This agreement is a renewal agreement with a rotating 5 year terms. The payments have been increased by Tooele County to reflect our current costs to allow outside organizations to be located in our sites.

PacificCorp will pay Tooele County approximately \$24,000.00 annually to use space in our tower. Emergency Services Communications Staff will act as project coordinators with the PacificCorp group to ensure services are provided.

List who needs copies when approved: Beckie Boekweg, Colin Winchester, Clerks Office