

LEASE AGREEMENT

THIS LEASE AGREEMENT (“**Agreement**”), dated as of April____, 2020 (the “**Effective Date**”), is entered into by Elk Ridge City, a Utah political subdivision, having a mailing address of [_____] (“**Landlord**”) and South Utah Valley Electric Service District, a Utah political subdivision, having a mailing address of [_____] (“**Tenant**”).

BACKGROUND

Landlord owns that certain parcel of land, together with all rights and privileges arising in connection therewith, located in Elk Ridge City, Utah County, State of Utah, known as parcel no. 300780053 and depicted on **Exhibit A** attached hereto (the “**Property**”). Tenant desires to use the Property in connection with its utility services operations. Landlord desires to grant to Tenant the right to use the Property in accordance with this Agreement.

The parties agree as follows:

1. LEASE OF PREMISES. Landlord hereby leases to Tenant:

(i) approximately 1,000 square feet, including the air space above such area, for the placement of Tenant’s Wireless Communication Facility (defined later);

(ii) space for any poles, towers, structural steel or other improvements to support Tenant’s equipment (collectively, the space referenced in (i) and (ii) is the “**Equipment Space**”); and

(iii) those certain areas where Tenant’s cabinets, conduits, wires, cables, cable trays and other necessary connections are located between the Equipment Space and the electric power sources for the Property (hereinafter collectively referred to as the “**Connection Space**” and collectively with the Equipment Space, the “**Premises**”). Landlord agrees that Tenant shall have the right to install connections between Tenant’s equipment in the Equipment Space and the electric power sources for the Property, and any other related improvements. Landlord further agrees that Tenant shall have the right to install, replace and maintain utility lines, wires, poles, cables, conduits, pipes and other necessary connections over or along any right-of-way extending from the nearest public right-of-way to the Premises. Notwithstanding the foregoing, Tenant shall locate all lines, wires, conduits and cables on existing poles, or underground, if existing utilities are located underground, extending from the public right-of-way into the Property.

2. PERMITTED USE. Tenant may use the Premises for the transmission and reception of wireless communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of its wireless or broadband communications fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure or poles, associated antennas, and any other items necessary to the successful and secure use of the Premises (collectively, the “**Wireless Communication Facility**”), as well as the right, as reasonably necessary in connection with Tenant’s use of the Premises, to survey and review title on the Property; Tenant further has the right but not the obligation to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application at no additional cost to Tenant or Landlord (collectively, the “**Permitted Use**”) and for no other use without Landlord’s prior written consent.

(a) Tenant, at its sole cost and expense, agrees to comply with all applicable governmental laws, rules, statutes and regulations relating to the Permitted Use and its use of the Wireless Communication Facility on the Property. Tenant shall install and construct the Wireless Communication Facility or the Permitted Uses at Tenant’s sole cost. Tenant shall be solely liable for and will defend, indemnify and hold Landlord, its agents and employees harmless from and against any and all claims, costs and liabilities, including reasonable attorneys’ fees and costs arising out of or in connection with the Permitted Use and Wireless Communication Facility, and Tenant’s and its agents, employees, and contractors’ use of the Premises.

(b) Tenant has the right to modify, supplement, replace, upgrade, expand the equipment, increase the number of antennas or relocate the Wireless Communication Facility within the Premises at any time during the term of this Agreement (“**Tenant’s Changes**”), so long as such changes are consistent with the Permitted Use. Tenant will be allowed to make such alterations to the Property in order to accomplish Tenant’s Changes or to

ensure that Tenant's Wireless Communication Facility complies with all applicable federal, state or local laws, rules or regulations.

3. **ACCESS.** At all times throughout the Term of this Agreement, upon reasonable prior notice to Landlord, and at no additional charge to Tenant, Tenant and its employees, agents, and subcontractors, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access ("**Access**") to and over the Property, from an open and improved public road to the Premises, for the installation, maintenance and operation of the Wireless Communication Facility and any utilities serving the Premises. Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such access at no additional cost to Tenant.

4. **TERM.** The initial lease term will be three (3) years ("**Term**"), commencing on the Effective Date. The Term will terminate on the third (3rd) anniversary of the Effective Date. Landlord and Tenant will renegotiate the terms of this lease at or before the expiration of the Term.

5. **RENT.**

(a) Commencing in the month following the date that Tenant commences installation (the "**Rent Commencement Date**"), Tenant will pay Landlord on or before the fifth (5th) day of each calendar year in advance Ten and No/100 Dollars (\$10.00) ("**Rent**") at the address set forth above. In any partial month occurring after the Rent Commencement Date, Rent will be prorated. The initial Rent payment will be forwarded by Tenant to Landlord within forty-five (45) days after the Rent Commencement Date. The Rent amount is agreed upon and conditioned on the Permitted Use solely benefitting Landlord and Landlord's residents. In the event that Tenant intends for the Permitted Use to benefit other entities or individuals aside from Landlord or Landlord's residents, Tenant agrees to renegotiate the amount of rent due to Landlord under the terms of this lease.

(b) Any out-of-pocket cost that Landlord incurs as a result of Tenant's use of, or access to, the Premises, including maintenance or repair and the costs of replacement of equipment related to the use of, or resulting from the existence and attributable to the use by the Tenant, will be reimbursed to the Landlord by Tenant upon Tenant receiving invoice from the Landlord.

6. **TERMINATION.** This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days' prior written notice, if the other party remains in default under Section 12 of this Agreement after the applicable cure periods;

(b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the installation or operation of the Wireless Communication Facility as now or hereafter intended by Tenant; or if Tenant determines, in its sole discretion, that the cost of obtaining or retaining the same is commercially unreasonable;

(c) by Tenant, upon written notice to Landlord, if Tenant determines, in its sole discretion, that the condition of the Premises is unsatisfactory for its intended uses;

(d) by Tenant upon written notice to Landlord for any reason or no reason, at any time prior to commencement of construction by Tenant; or

(e) in the event Landlord breaches its obligations under Section 8 below, for the first such breach, Tenant shall provide Landlord sixty (60) days' written notice and a right to cure such breach within such sixty (60) days; but upon the second breach resulting from the same type of activity, Tenant may terminate this Agreement immediately, upon written notice to Landlord, and all rights and obligations of the parties hereunder shall then cease.

7. **INSURANCE.** During the Term, Tenant will carry, at its own cost and expense, the following insurance: (i) "All Risk" property insurance for its property's replacement cost; (ii) Workers' Compensation Insurance as required by law; and (iii) commercial general liability (CGL) insurance with respect to its activities on the Property, such insurance to afford minimum protection of One Million Dollars (\$1,000,000) combined single limit, per occurrence and in the aggregate, providing coverage for bodily injury and property damage. Tenant's CGL insurance shall contain a provision including Landlord as an additional insured to the extent of the indemnity provided by Tenant under this Agreement. Notwithstanding the foregoing, Tenant shall have the right to self-insure against the risks for which Tenant is required to insure against in this Section. In the event Tenant elects to self-insure its obligation to include Landlord as an additional insured as permitted by the previous sentence, the

following provisions shall apply: (1) Landlord shall promptly provide Tenant with written notice of any claim, demand, lawsuit or the like for which it seeks coverage pursuant to this Section and provide Tenant with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit or the like; (2) Landlord shall not settle any such claim, demand, lawsuit or the like without the prior written consent of Tenant; (3) Landlord shall fully cooperate with Tenant in the defense of the claim, demand, lawsuit or the like; and (4) such obligation shall not apply when the claim or liability arises from the negligent or intentional act or omission of Landlord, its employees, agents, or independent contractors.

8. INTERFERENCE.

(a) With the prior written consent of Tenant, such consent not be unreasonably withheld or delayed, Landlord shall have the right to connect to the Wireless Communication Facility and Tenant's equipment for the purposes of transmitting and receiving its wireless communications, including, without limitation, installation of wireless communications fixtures and related equipment, cables, accessories and improvements to the Wireless Communication Facility ("**Landlord's Equipment**"); provided, however, in no event shall Landlord's Equipment interfere with Tenant's transmission and reception of its wireless communications signals by means of the Wireless Communication Facility.

(b) Landlord shall not grant, after the date of this Agreement, a lease, license or any other right to any third party for the use of the Property, if such use may in any way materially adversely affect or interfere with the Wireless Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Furthermore, no third party shall connect to the Wireless Communications Facility or Tenant's equipment without the prior written consent of Tenant, which consent may be given or withheld in Tenant's sole and absolute discretion.

(c) Subject to the terms and provisions of this Agreement, Landlord warrants the use and quiet enjoyment of the Premises to Tenant. Landlord agrees that it shall not use, and shall make reasonable efforts to prevent its tenants, employees, invitees or agents from using, any portion of the Premises or the Property in any way which would interfere with Tenant's communications operations or the Wireless Communication Facility.

(d) For the purposes of this Agreement, "interference" may include, but is not limited to, any use on the Property that causes electronic or physical obstruction with, or degradation of, the existing communications signals on the Property or communication signals from the Wireless Communication Facility.

9. INDEMNIFICATION.

(a) Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from (i) the negligent acts of Tenant's or its agents, employees, or contractors, (ii) Tenant's or its agents', employees', or contractors' use of the Premises, (iii) the installation, use, maintenance, repair or removal of the Wireless Communication Facility, or (iv) Tenant's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Landlord, its employees, agents or independent contractors.

(b) Landlord agrees to indemnify, defend and hold Tenant harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the actions or failure to act of Landlord, its employees or agents, or Landlord's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Tenant, its employees, agents or independent contractors.

(c) The provisions of this Section 9 shall survive expiration or termination of this Agreement.

10. WARRANTIES. Landlord represents, warrants and agrees that: (i) Landlord solely owns the Property as a legal parcel in fee simple; (ii) as long as Tenant is not in default then Landlord grants to Tenant actual, quiet and peaceful use, enjoyment and possession of the Premises; (iii) Landlord's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on Landlord; and (iv) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, Landlord will use its best efforts provide promptly to Tenant a mutually agreeable subordination, non-disturbance and attornment agreement, at the option of Landlord or its lender.

11. REMOVAL/RESTORATION. All portions of the Wireless Communication Facility brought onto the Property by Tenant will be and remains Tenant's personal property and, at Tenant's option, may be removed by

Tenant at any time during the Term. Landlord covenants and agrees that no part of the Wireless Communication Facility constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of Tenant and may be removed by Tenant at any time during the Term. Upon expiration or termination of this Agreement, Tenant will remove all of Tenant's above-ground improvements and Tenant will, to the extent reasonable, restore the Premises to its condition at the commencement of this Agreement, reasonable wear and tear and loss by casualty or other causes beyond Tenant's control excepted.

12. DEFAULT AND RIGHT TO CURE.

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent, additional rent, or any other amount due to Landlord, if such Rent or other amount remains unpaid for more than thirty (30) days after receipt of written notice from Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after receipt of written notice from Landlord specifying the failure. No such non-monetary failure, however, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a non-monetary default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) failure to provide reasonable access to the Premises or to cure an interference problem within forty eight (48) hours after receipt of written notice of such failure; or (ii) Landlord's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within forty-five (45) days after receipt of written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have: (i) the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord from Tenant, and (ii) any and all other rights available to it under law and equity.

13. ASSIGNMENT. Tenant may sublet the Premises and assign this Agreement, or any portion thereof, and its other rights hereunder to any person or entity which is a parent, subsidiary or affiliate of Tenant, without Landlord's consent. Tenant may not sublet or assign this Agreement or any portion thereof, or any of its rights hereunder, to any other person or business entity without the express prior written consent of Landlord, which may be given or withheld by Landlord in Landlord's sole discretion. Upon notification to Landlord of any permitted assignment, Tenant shall not be relieved of all performances, liabilities and obligations under this Agreement.

14. NOTICES. All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties at the addresses set forth in the introductory paragraph above.

15. CONDEMNATION. In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will promptly provide notice of the proceeding to Tenant. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's sole determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its Wireless Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses; provided, however, any such award to Tenant shall not reduce Landlord's award. Rent for the month in which the condemnation occurs shall be prorated.

16. CASUALTY. Landlord will promptly provide notice to Tenant of any casualty or other harm affecting the Property. If any part of the Wireless Communication Facility or Property is damaged by casualty or other harm as to render the Premises unsuitable, in Tenant's sole determination, then Tenant may terminate this Agreement by providing written notice to Landlord, which termination will be effective as of the date of such casualty or other

harm. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a prorata basis. If Landlord or Tenant undertakes to rebuild or restore the Premises and/or the Wireless Communication Facility, as applicable, Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property at no additional Rent, but upon the same terms and conditions contained in this Agreement, until the reconstruction of the Premises and/or the Wireless Communication Facility is completed. If Landlord determines not to rebuild or restore the Premises, Landlord will notify Tenant of such determination within sixty (60) days after the casualty or other harm. Landlord agrees that the Rent shall be abated until the Premises are rebuilt or restored, unless Tenant places temporary transmission and reception facilities on the Property.

17. WAIVER OF LANDLORD'S LIENS. Landlord waives any and all lien rights it may have, statutory or otherwise, concerning the Wireless Communication Facility or any portion thereof. The Wireless Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law; Landlord consents to Tenant's right to remove all or any portion of the Wireless Communication Facility from time to time in Tenant's sole discretion and without Landlord's consent.

18. INTENTIONALLY OMITTED.

19. ENVIRONMENTAL MATTERS.

(a) Tenant shall not cause or permit any Hazardous Materials (defined below) to be brought upon, kept or used in or about the Premises or Landlord's Property by Tenant, its agents, employees, contractors or invitees without the prior written consent of Landlord. Tenant will be solely responsible for and will defend, indemnify and hold Landlord, its agents and employees harmless from and against any and all claims, costs and liabilities, including reasonable attorneys' fees and costs, arising out of or in connection with the removal, cleanup or restoration of the Premises or Landlord's Property associated with Tenant's or its agents, employees, or contractors' use of Hazardous Materials on, at or under the Premises or Landlord's Property.

(b) Landlord will be solely liable for and will defend, indemnify and hold Tenant, its agents and employees harmless from and against any and all claims, costs and liabilities, including reasonable attorneys' fees and costs, arising out of or in connection with the removal, cleanup or restoration of the Premises with respect to Hazardous Materials from any and all sources other than those Hazardous Materials introduced to the Premises by Tenant.

(c) "Hazardous Materials" means asbestos or any hazardous substance, waste or materials as defined in any federal, state or local environmental or safety law or regulation including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. §9601, et. seq.).

(d) The obligations of this Section 19 shall survive the expiration or other termination of this Agreement.

20. MISCELLANEOUS. The prevailing party shall be entitled to reasonable attorneys' fees and court costs, as determined by the court, in any action relating to this Agreement. The invalidity of any provision of this Agreement, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof. Neither this Agreement nor any memorandum of this Agreement shall be recorded or filed without Landlord's prior written consent. No remedy or election hereunder shall be deemed exclusive but shall be cumulative with all other remedies hereunder or at law or in equity. Headings are used only for convenience and shall not be deemed to affect the interpretation or construction of this Agreement. This Agreement shall not be construed for or against Landlord or Tenant. This Agreement and all provisions hereof shall be binding upon and inure to the benefit of the successors and assigns of Landlord and Tenant. This Agreement shall be governed, construed, and controlled according to the laws of the State of Utah. Time is of the essence of this Agreement and in the performance of all of the covenants and conditions hereof. No subsequent alteration, amendment, change, or addition to this Agreement shall be binding upon Landlord or Tenant unless in writing and signed by each of them. This Agreement set forth the entire agreement between Landlord and Tenant relative to the Premises, and there are no other agreements, conditions, or understandings, oral or written, express or implied, between the parties. This Agreement may be executed in one or more counterparts, each of which, when taken together, shall constitute the original. Electronic signatures shall be adequate to indicate original signatures.

IN WITNESS WHEREOF, the parties have caused this Agreement as of the Effective Date.

LANDLORD:

ELK RIDGE CITY, a Utah political subdivision

By: _____
_____, Mayor

Attest:

_____, City Recorder

TENANT:

SOUTH UTAH VALLEY ELECTRICAL
SERVICE DISTRICT, a Utah political
subdivision

By: _____
Name: _____
Its: _____

EXHIBIT A
DEPICTION OF PROPERTY

