



**Staff Report**

For City Council Meeting - 05/03//2017

***Subject - New Business - Pacific Corp Lease***

**Synopsis:** Attached is a lease agreement between PacificCorp and the City of Gearhart. The property is located adjacent to city hall next to the Pacific Crest Cottage variety store. The yearly cost for the lease is \$250 and includes an option to purchase the property no later than June 30, 2019.

**Recommendation:** Staff recommends signing the lease. The option to purchase the property in the future will give the city options for the future.

**Legal Analysis:** The city attorney has received the lease and will comment at the meeting.

**Financial Analysis:** \$250 per year. \$850 for the term plus cost for insurance which will be minimal.

Respectfully submitted,

Chad

## LEASE AGREEMENT

This Lease Agreement (the "Lease") is made and executed by and between PacifiCorp, an Oregon corporation ("PacifiCorp"), and City of Gearhart, an Oregon municipality ("City").

In consideration of the rent and respective covenants herein contained, PacifiCorp and City agree as follows:

1. Demise, Description and Location of Property. PacifiCorp leases to City and City leases from PacifiCorp that certain parcel of real property along Pacific Way, in Gearhart, Oregon, known as Clatsop County Tax Lot 61010BB04600 located in Township 6 North, Range 10 West, Section 3, W.M., comprised of approximately 0.09 acres as depicted on **Exhibit A** (the "Property").

2. Use of Property. City may use the Property for any lawful purpose.

3. Base Rent. Beginning on June 1, 2017, and for each subsequent year of the lease term, City agrees to make payments in advance for the following year, payable no later than each June 1, in the amount of \$250.00. All payments should be sent to:

*PacifiCorp  
Attn: Central Cashier's Office  
P.O. Box 5504  
Portland, OR 97228*

4. Term and Possession. The term of this Lease shall be for a period of three (3) years commencing on June 1, 2017, and ending on June 30, 2020, unless sooner terminated in accordance with the terms of this Lease.

5. City's Acceptance of Property. City accepts the Property in its present condition, AS-IS, WHERE-IS and with all faults. PacifiCorp makes no representation or warranty as to the condition of the Property and will not be required to perform, pay for, or be responsible for any work to ready the Property for City's occupancy or any other work whatsoever throughout the term of this Lease.

6. Option to Purchase. City will have the option to purchase the Property by providing written notice to PacifiCorp, no later than June 30, 2019, of its intent to purchase the Property. In the event the City does not notify PacifiCorp of its intent to purchase in accordance with this Section 6, the City shall no longer have the option to purchase the Property.

a. Should the City elect to purchase the Property in accordance with this Section 6, then the parties will work together in good faith on the terms of a purchase and sale agreement, which agreement shall include, without limitation the terms set forth in Section 6(c) below.

b. The City and PacifiCorp will mutually agree on a third party to appraise the Property to establish the purchase price. The parties will evenly split the cost of the appraisal.

c. Should a sale of Property occur between City and PacifiCorp, the parties agree the sale will be subject to the following terms:

i. The sale and terms of sale will be conditioned upon PacifiCorp's receipt of approval from any regulatory agencies, including but not limited to the public utility commissions of multiple states, as may be required in order for PacifiCorp to convey the Property, and PacifiCorp's acceptance in its sole discretion of any conditions or requirements of such agencies in connection with such approvals.

ii. The City must perform any due diligence activities that it desires at its own cost. Such due diligence period will be further defined in the purchase and sale agreement.

iii. PacifiCorp will convey the Property AS-IS, WHERE-IS and without warranty.

d. In the event that, notwithstanding the parties' good faith efforts to agree upon terms and conditions in a purchase and sale agreement, the parties are unwilling or unable to agree upon a definitive document on or before March 31, 2020, unless otherwise agreed in writing between the parties, PacifiCorp's obligation to sell the Property to the City hereunder shall become null and void.

7. Utilities and Services. City shall be responsible for all charges for utilities and services incurred in the use, occupation and operation of the Property including water, gas, electricity, and other utilities and services.

8. Repairs. City shall be responsible for any damage caused by the acts of City, its employees, invitees and guests.

9. Insurance. Without limiting any liabilities or any other obligations of City, City must procure and continuously carry, with insurers having an A.M. Best's rating of A-VII or better, insurance against claims for injury to persons or damage to property which may arise from or in connection with this Lease or City's use or occupancy of the Property as follows:

9.1 Workers' Compensation. City must comply with all applicable Workers' Compensation laws and furnish proof thereof satisfactory to PacifiCorp prior to commencing any work on the Property. 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 City that the insurance as effected protects all parties.

9.2 Employers' Liability. Insurance with a minimum single limit of \$500,000 each

accident, \$500,000 disease each employee, and \$500,000 disease policy limit.

9.3 Commercial General Liability. The most recently approved Insurance Services Office (ISO) 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 Property, including the following coverages:

- a. Property 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

9.4 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 City's vehicles whether owned, hired or non-owned, assigned to or used in any way on the Property.

9.5 Umbrella Liability. Insurance with a minimum limit of \$5,000,000 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 City's use of the Property and indemnification as identified in this Lease.

9.6 Certificate of Insurance. City must provide to PacifiCorp a certificate of insurance evidencing its insurance coverage. The policies required herein, except Workers' Compensation and Employers' Liability, must include provisions or endorsements naming PacifiCorp, its parent, affiliates, subsidiaries, its officers, directors, agents, employees or servants as additional insured. Commercial General Liability coverage written on a "claims-made" basis, if any, must be specifically identified on the certificate.

9.7 Claims Made Basis. Commercial General Liability insurance coverage provided on a "claims-made" basis shall be maintained by City for a minimum period of two (2) years after the completion of this Lease and for such other length of time necessary to cover liabilities arising out of the Use.

9.8 City's Insurance Primary. To the extent of City's negligent acts or omissions, all policies required under this Lease must include provisions that such insurance is primary with respect to the interest of PacifiCorp and that any other insurance or self-insurance maintained by PacifiCorp is excess and not contributory insurance with the insurance required

hereunder, and provisions that the policy contain a cross liability or severability of interest clause or endorsement.

9.9 Adequate Coverage. PacifiCorp does not represent that the insurance coverage specified herein (whether in scope of coverage or amounts of coverage) is adequate to protect the obligations of City, and City is solely responsible for any deficiencies thereof.

9.10 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 City that the insurance as affected shall protect all Parties.

9.11 Notice Prior to Change or Cancellation. City shall notify PacifiCorp as soon as possible in the event that any policies become subject to cancellation and must provide to PacifiCorp proof of replacement coverage prior to the cancelation effective date.

10. Compliance with Laws. PacifiCorp and City agree to comply with all the applicable ordinances and regulations of governmental authorities pertaining to the use of the Property. City agrees that it will be responsible to make any modifications or repairs to comply with rules, regulations or ordinance if said action is necessitated by City's specific use or need.

11. Environmental Liability. City shall not cause or permit any hazardous substances to be used, stored, generated or disposed of on the Property. If City does use, store, generate or dispose of hazardous substances on the Property, City hereby agrees to indemnify, defend and hold harmless PacifiCorp, its successors and assigns from and against any and all liability, loss or expense, including attorneys' fees, whether now existing or arising in connection with any federal or state statute, law, ordinance, regulation or judgment related to the existence, disposal or release of contaminants or pollutants brought onto the Property by City, its agents, employees, independent contractors or invitees. This covenant shall survive termination of this Lease.

12. Indemnification. City agrees to indemnify, defend, and hold PacifiCorp harmless from and against all claims, liability, or expense for injury to any person or loss of or damage to property in or about the Property, (including the person and property of PacifiCorp, its employees, agents, or contractors) where such claims, liability or expense are the direct result of City's negligence or willful misconduct. PacifiCorp agrees to indemnify, defend and hold City, its employees, representatives, directors and agents harmless from and against any and all loss, liability, and expense by any person arising out of PacifiCorp's default in its obligations under this Lease or arising out of PacifiCorp's negligent acts or willful misconduct or that of PacifiCorp's agents, employees, or contractors which result in injury or damage within the Property.

13. Right to Sublease and Assign. City shall not assign this Lease or sublet the

whole or any part of the Property without PacifiCorp's prior written consent.

14. Default and Remedies.

14.1 Default by City. The occurrence of any one or more of the following events constitutes a Default by City:

a. City fails to pay rent or any amount due under this Lease within ten (10) days after receipt of written notice from PacifiCorp that such payment is past due;

b. City fails to perform or observe any other term or condition of this Lease and such failure continues for thirty (30) days after written notice from PacifiCorp; or if such failure is not curable within thirty (30) days, if City fails to commence such cure within thirty (30) days or fails thereafter diligently to prosecute such cure to completion.

14.2 Default by PacifiCorp. The failure of PacifiCorp to perform or observe any term or condition of this Lease and such failure continues for thirty (30) days after written notice from City; or, if such failure is not curable within thirty (30) days, if PacifiCorp fails to commence such cure within thirty (30) days or fails thereafter diligently to prosecute such cure to completion.

15. Termination Prior to Expiration.

15.1 By PacifiCorp. PacifiCorp may terminate this Lease upon a Default by City as defined and set forth in Section 14 which is not cured within the applicable time period. PacifiCorp may terminate this Lease by written notice if PacifiCorp does not receive approval from any regulatory entity having jurisdiction.

15.2 By City. City may terminate this Lease upon a Default by PacifiCorp as defined and set forth in Section 14 which is not cured within the applicable time period.

15.3 Events Upon Expiration or Termination. Upon the expiration or termination of this Lease, City shall promptly remove all personal property and shall surrender the Property in good condition, normal wear and tear excepted.

16. Liens.

16.1 City to Keep Property Free from Lien. City shall pay as due all claims for work done on and for services rendered or material furnished to the Property, and shall keep the Property free from any liens. If City fails to pay any such claims or to discharge any lien, PacifiCorp may do so and City agrees to reimburse PacifiCorp for such costs within thirty (30) days of receipt of PacifiCorp's request to so reimburse.

16.2 Dispute or Bond. City may withhold payment of any lien claim in

connection with a good-faith dispute over the obligation to pay, as long as PacifiCorp's property interests are not jeopardized. If a lien is filed as a result of nonpayment, City shall, within ten (10) days after knowledge of the filing, secure the discharge of the lien or deposit with PacifiCorp cash or sufficient corporate surety bond or other surety satisfactory to PacifiCorp in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

17. Holdover. If City does not vacate the Property at the time required, PacifiCorp shall have the option to treat City as a City from month to month, subject to all of the provisions of this Lease except the provisions for term and renewal and at a rate of the rent last paid by City during the original term, or to eject City from the Property and recover damages caused by wrongful holdover.

18. Eminent Domain.

Partial Taking. If a portion of the Property is condemned and Section 18.2 does not apply, PacifiCorp shall be entitled to all of the proceeds of condemnation, and City shall have no claim against PacifiCorp as a result of the condemnation; however, City shall have the right to terminate the lease upon thirty (30) days' advance written notice. If City does not so terminate, the Lease shall continue. City may pursue its own award against the condemning authority.

18.2 Total Taking. If a condemning authority takes all of the Property or a portion sufficient to render the remaining Property reasonably unsuitable for the use that City was then making of the Property, the Lease shall terminate as of the date the title vests in the condemning authority. PacifiCorp shall be entitled to all of the proceeds of condemnation, and City shall have no claim against PacifiCorp as a result of the condemnation; however, City may pursue its own award against the condemning authority.

19. Miscellaneous.

19.1 Nonwaiver. Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

19.2 Succession. Subject to the above-stated limitations on transfer of City's interest, this Lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

19.3 Recordation. This Lease shall not be recorded by either party.

19.4 PacifiCorp Entry. PacifiCorp shall have the right to enter upon the Property at any time.

19.5 Pro-ration of Rent. In the event this Lease commences or terminates at a

time other than the first day or last day of a month, then the Base Rent shall be prorated as of the date of commencement or termination and in the event of termination for reasons other than default, all prepaid rent shall be refunded to City.

19.6 Time is of Essence. Time is of the essence of the performance of each of party's obligations under this Lease.

19.7 Force Majeure. Neither party shall be subject to any liability or damages for delay or failure to perform its respective obligations under this Lease to the extent that such failure was due to causes beyond the reasonable control of the party relying thereon as justification for such delay or failure, including, but not limited to the following: (a) war; (b) flood; (c) earthquake; (d) act of God; (e) civil disturbance, sabotage, or terrorism; or (f) strikes or boycotts. The party claiming "force majeure" shall make reasonable attempt to diligently remedy the cause thereof. Time periods for performance obligations of parties herein shall be extended for the period during which force majeure was in effect.

19.8 Notices. All notices and demands to City and PacifiCorp shall be in writing and mailed by certified or registered mail, postage prepaid, return receipt requested or by private express service with verification, City at the following addresses or at such other address as City or PacifiCorp may hereafter specify in writing:

PacifiCorp	City
Property Management	City of Gearhart
825 NE Multnomah Street, Suite 1700	Attn: City Administrator
Portland, OR 97232	PO Box 2510
	Gearhart, OR 97138

19.9 Parties Bound. Each and every provision of this Lease shall bind the parties hereto and their legal representatives and successors in interest.

19.10 Amendments. This Lease constitutes the entire Agreement between the parties and may be modified or amended only in writing and duly authorized and executed by both PacifiCorp and City.

19.11 PacifiCorp Assignment. PacifiCorp shall have the right to transfer, assign and convey, in whole or in part, any or all of the right, title and interest to the Property, and PacifiCorp shall be released from all further obligations and liabilities accruing after the effective assignment date provided such transferee or assignee shall be bound by the terms, covenants and agreements herein contained, and expressly assumes and agrees in writing to perform the covenants and agreements of PacifiCorp herein contained.

19.12 Governing Law and Disputes. This Lease shall be governed by the laws of the State of Oregon, without regard to its choice of law provisions.



19.13 Interpretation. Each Party hereto has had the opportunity to have this Lease reviewed and revised by legal counsel and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Lease.

19.14 Jury 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 Lease. Each party further waives any right to consolidate, or to request the consolidation of, 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. This section shall survive the termination of this Lease.

{SIGNATURES ON FOLLOWING PAGE}

IN WITNESS WHEREOF the parties have executed this Lease in duplicate to be effective on the date last written below.

**CITY**  
CITY OF GEARHART, an Oregon municipality

**PACIFICORP**  
PACIFICORP, an Oregon corporation

By: \_\_\_\_\_

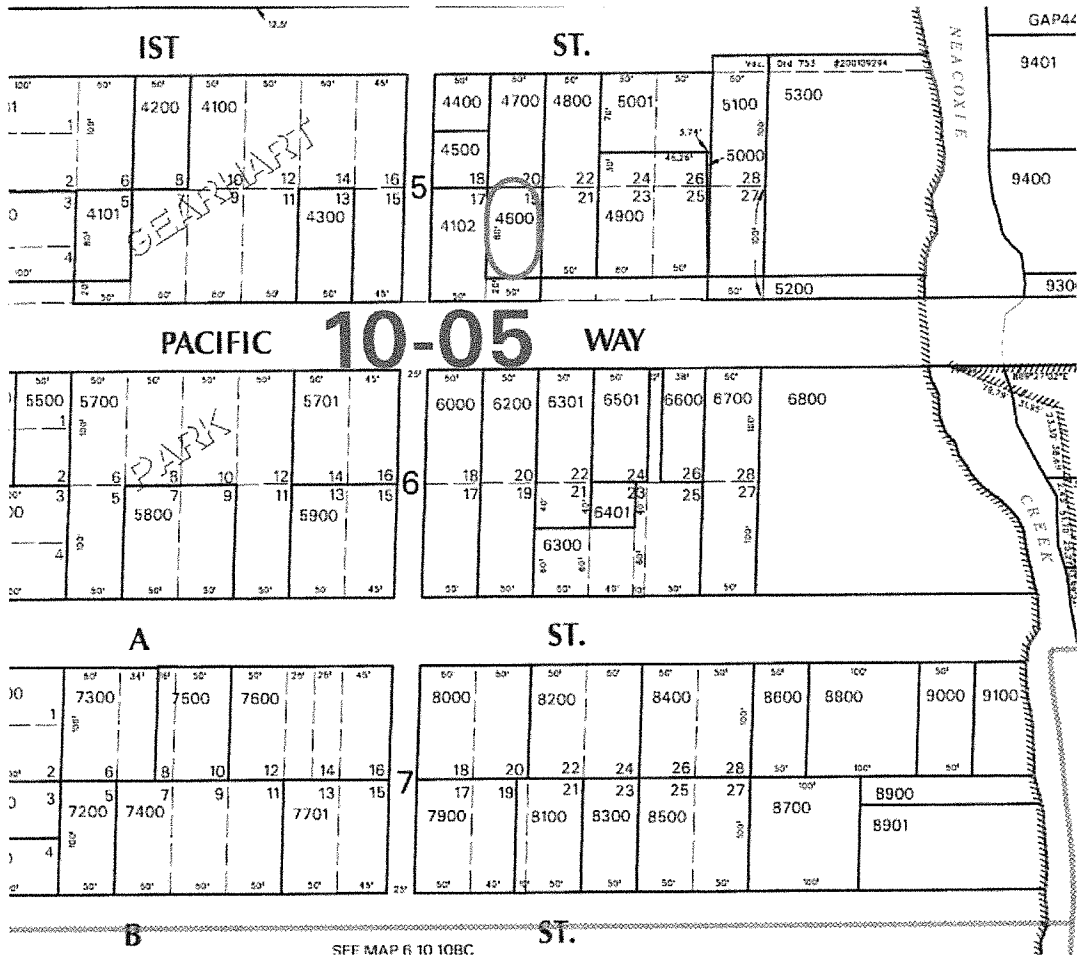
\_\_\_\_\_  
Curtis Mansfield  
Vice President, Transmission and  
Distribution Operations

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit A**  
**The Property**  
 (Circled in green)



The above-described Property has not been surveyed and all distances shown are approximate. In the event of any errors or ambiguity in the description, or misunderstanding with respect to the location or extent of the Property, PacifiCorp reserves the right to resolve the dispute or ambiguity and to designate the configuration and area in dispute on the ground. In case of disagreement, PacifiCorp's designated representative's decision will be final. PacifiCorp reserves the right at any time to redefine or mark the Property and to substitute or replace the legal description in this **Exhibit A**.

# Lot 4600 Pacific Corp

MOOSE MAPPING

