

## **EASEMENT AND CONSTRUCTION AGREEMENT**

This EASEMENT AND CONSTRUCTION AGREEMENT ("Agreement") is entered into this \_\_\_ day of \_\_\_\_\_, 2013, between **PACIFICORP**, an Oregon corporation ("Grantor"), and **Cottonwood Creek Consolidated Irrigation Company**, a non-profit mutual irrigation company organized under the laws of the State of Utah ("Grantee"). Grantor and Grantee are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

### **RECITALS**

A. WHEREAS, Grantee wishes to locate, construct, operate, maintain and replace one eight (8) inch High-Density Polyethylene (HDPE) pipe underground water line and appurtenances related thereto ("Water Facilities") over, under, across and through a portion of Grantor's real property located in Emery County, State of Utah, known as Assessor Parcel Number: U5-0025-0002 (the "Property") for the purpose of providing water service to Grantee's customers in Utah, and

B. WHEREAS, Grantor is willing to grant a perpetual easement for the installation and maintenance of the Water Facilities ("Perpetual Easement"), along with a temporary construction easement for a limited duration to be used as a construction laydown area ("Temporary Easement") across a portion of the Property. Collectively the Perpetual Easement and Temporary Easement are sometime referred to herein as ("Easement Areas" and "Easements"); and

C. WHEREAS, this Agreement is written to set forth the Parties' agreement regarding the construction practices to be used by Grantee in constructing the Water Facilities on the Property;

D. WHEREAS, Grantor's property is currently being leased for the purpose of livestock grazing and Grantee is responsible to provide for the safety of the livestock during the period of Grantee's construction activities.

NOW THEREFORE, the Parties agree as follows:

1. Grant of Perpetual Easement and Temporary Construction Easement. Grantor will convey to Grantee, without warranty, the non-exclusive perpetual easement across the Property, a copy of which is attached as Exhibit "A" and Grantor will also convey to Grantee, without warranty, the non-exclusive temporary construction easement, attached as Exhibit "B".

2. Construction Activities: Grantee's activities during the construction and installation of the Water Facilities including but not limited to survey, planning, staging, construction and installation, until the point at which the project is deemed complete and the Water Facilities are operating shall be referred to as ("Construction Activities").

3. Construction Practices. In addition to the construction practices specified in the Easements, Grantor approves, and Grantee will adhere to, the following construction practices in

constructing the Water Facilities:

a. Grantee shall maintain a distance of twenty (20) feet away from aerial power lines and poles when operating or using a crane and derrick equipment. All other equipment must maintain a clearance of ten (10) feet away from aerial power lines and poles. Grantor reserves the right to approve such methods and equipment prior to commencement of Construction Activities.

b. Grantee shall contact the state's underground locate service at 811 to identify all underground utilities prior to commencing Construction Activities.

c. Grantee shall comply with all federal, state and local laws and ordinances, including all permit requirements implicated by Construction Activities and Grantee's use of the Easement Areas. Grantee shall provide written confirmation that consultation with federal, state and local agencies has occurred.

d. Grantee shall provide proof of approval of any and all required permits or regulatory reviews, if any, to Grantor upon receipt of approval.

e. Grantee shall be solely responsible for all construction best management practices (BMPs) related to the installation of the Water Facilities and post-construction reclamation work upon completion of the Water Facilities to a similar or like condition prior to use of the Easement Areas.

1. Construction BMPs

i. Minimization of construction traffic and laydown area disturbances, including Grantor approval of laydown/storage areas and any necessary ground disturbance deemed necessary with the laydown/storage areas, prior to commencement of Construction Activities.

ii. Usage of sediment/erosion mats and waddles where appropriate (slope dependent) to minimize sedimentation and erosion runoff.

iii. Spill Prevention, Control, and Countermeasure (SPCC) or Spill Prevention and Response Plan (SPAR) to address potential spills/leaks associated with heavy equipment/trucks performing activities on-site.

iv. Obtaining full payment and performance bonds for Construction Activities for the full amount of the work, including post-construction reclamation work, regardless of whether the Construction Activities and the reclamation work are performed by the same or different contractors, and providing copies of such payment and performance bonds to Grantor prior to the commencement of work.

2. Grantee shall perform Construction Activities and post-construction reclamation described below only through Grantee employees or by licensed, insured and bonded contractor(s).

3. Grantee agrees to conform with certain specific requirements by Grantor, including but not limited to:

i. Any material (gravel, rocks, rip-rap, other natural material necessary for construction) stored on the Easement Areas shall have a fabric material placed under the material to avoid any soil contamination.

ii. Any material or equipment placed directly under Grantor's power lines shall comply with Grantor's clearance requirements or Occupational Safety and Health Administration's clearance requirements, whichever is more stringent. Every precaution shall be taken by Grantee and Grantee's contractors, its subcontractors and all representatives to ensure safe practices, as defined in Section 3 (b) above, while working in the vicinity of said power lines.

iii. No vehicles shall be stored on the Easement Areas. If a washout/cleanout area is necessary on the Easement Areas, Grantee shall completely remove any and all material that results from said cleanout. The Easement Areas shall be restored to a condition satisfactory to Grantor.

iv. A silt fence shall be installed in accordance with state and/or federal standards and regulations. Grantor has the right to require Grantee to undertake additional measures that may exceed state/federal standards if it is determined necessary for protection of the Property.

v. During installation of the Water Facilities, Grantee shall provide signs/barriers as needed to preclude motorized or non-motorized access and or traffic to protect the public by precluding access to anyone to/through the construction areas.

vi. Protection and Repair of Existing Fences, Corrals, Gates, and Other Enclosures: Grantee agrees to repair any fences damaged as a result of Construction Activities and otherwise restore the fences to a condition equal to or better than their preconstruction condition, unless otherwise explicitly agreed by Grantee and Grantor.

f. In connection with all design and construction work concerning Water Facilities, Grantee shall retain only bonded, insured and licensed contractors and shall provide written proof to Grantor satisfying this provision prior to commencing work.

g. Grantee shall be solely responsible for being aware of and initiating, maintaining and supervising compliance with all applicable safety laws, regulations, precautions and programs in connection with the Construction Activities and any other of its activities pursuant to Easements. Prior to the start of any work under the Easements, Grantee shall ensure that each of its own employees, representatives, agents and contractors are fully informed concerning all safety, health and security regulations pertaining to their work. Grantee shall require its contractors to fully inform their subcontractors, of any tier, concerning all safety, health and security regulations pertaining to the work. Grantee shall conduct work under the Easements in such a manner as to avoid the risk of bodily harm to persons or risk of damage to any property. In the event that Grantee fails to promptly correct any violation of safety or health regulations, by written notice Grantor may choose to suspend all or any part of Grantee's work hereunder.

h. During Grantee's Construction Activities, Grantee shall install temporary fencing sufficient to prevent livestock owned by a lessee of Grantor's Property from escaping or becoming injured, harmed, or killed from the Construction Activities.

4. Term. Sections 3, above, shall be in effect until the completion of the Construction Activities. Any construction work performed on the Property under the Easement after the expiration of this term will require a new agreement specifying applicable construction practices.

5. Indemnification. Grantee agrees to indemnify, defend, and hold harmless Grantor and Grantor's affiliated companies, officers, directors, shareholders, agents, employees, successors, and assigns, from and against all liabilities, claims, damages, liens, fines and penalties (including court costs, attorneys' fees, and litigation expenses) directly or indirectly arising from or caused by (i) a breach by Grantee of any provision of this Agreement, (ii) Grantee's use and occupation of the Property, (iii) any act or omission of Grantee on the Property, or (iv) any act or omission of any contractor retained by Grantee, or anyone directly or indirectly employed by them, or anyone authorized by Grantee to control or exercise control over work on the Property. This indemnification provision shall apply to all theories of recovery, including breach of contract or warranty, negligence, and strict or statutory liability, except for negligence of the Grantor. In the event any indemnified claim is caused by the joint or concurrent negligence of the Grantor and Grantee, Grantee shall indemnify Grantor only in proportion to Grantee's own negligence or liability. The indemnity provisions herein shall survive termination of this Agreement.

6. Damages. In addition to the general indemnification provisions above, Grantee agrees that if Grantee or its activities under this Agreement cause any damage to Grantor's utility equipment or facilities, whether above or below ground, Grantee will reimburse Grantor for all costs incurred by Grantor to repair or replace such damaged equipment or facilities. As used in this Section, any reference to Grantor's equipment or facilities shall include any equipment or facilities owned by third parties that are lawfully located on the Grantor's Land, whether by easement, license, lease, or otherwise.

7. Notices. Notices to be given under this Agreement shall be delivered or mailed to the following:

PacifiCorp  
Attn: Property Management  
825 NE Multnomah Street, Suite 1700  
Portland, OR 97232

Cottonwood Creek Consolidated Irrigation Company  
Attn: Clyde Magnuson, President  
P.O. Box 1678  
Orangeville, UT 84537

8. Miscellaneous.

a. Any amendment to this Agreement must be in writing and executed by an authorized representative of each Party.

b. This Agreement may be executed in separate counterparts.

c. The individuals executing this Agreement represent and warrant that they have the power and authority to do so.

d. If a party brings an action to enforce this Agreement, the prevailing party in the action will be entitled to an award of reasonable attorney's fees, court costs and litigation expenses.

e. Time is of the essence in the performance of this Agreement.

f. This Agreement is binding upon and may be enforced by the Parties' successors and assigns.

g. This Agreement and the Easements constitute the entire agreement between the Parties relative to the subjects thereof. Any prior negotiations, correspondence, or understandings relative to such subjects shall be deemed to be merged into this Agreement and the Easements.

h. This Agreement does not confer any rights upon any third party.

i. This Agreement shall be interpreted pursuant to the laws of the State of Oregon.

j. The terms of this Agreement shall not merge with the Easements, and shall survive the execution and delivery of the Easements.

k. **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, 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.

{SIGNATURES ON FOLLOWING PAGE}

Signed and entered into as of the date written above.

GRANTOR:  
PACIFICORP, an Oregon corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

GRANTEE:  
Cottonwood Creek Consolidated Irrigation Company, a non-profit mutual irrigation company  
organized under the laws of the State of Utah

By: Sheld J. Magnus  
Its: President  
Date: 12/23/2013

**EXHIBIT "A"**  
**Perpetual Easement**

**When Recorded Return To:**

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**PERPETUAL NON-EXCLUSIVE EASEMENT  
(UNDERGROUND WATER LINE)**

**PACIFICORP**, an Oregon corporation (“**Grantor**”) hereby grants to **Cottonwood Creek Consolidated Irrigation Company**, a non-profit mutual irrigation company organized under the laws of the State of Utah (“**Grantee**”) and its successors and assigns, for value received, without warranty, a non-exclusive perpetual easement (“**Easement**”) over, under, across and through a portion of Grantor’s real property located in Emery County, State of Utah, known as Assessor Parcel Number: U5-0025-0002 (the “**Property**”) for the purpose of locating, constructing, operating, maintaining and replacing one eight (8) inch High-Density Polyethylene (HDPE) pipe underground water line and appurtenances related thereto (the “**Water Facilities**”) related thereto.

1. Grantee’s Use.

a. Grantee’s use of the Property is confined to the area illustrated and more particularly described and depicted in Exhibit “A” (the “**Easement Area**”).

b. Grantee may not make any use of the Easement Area that interferes with Grantor’s existing or future generation, transmission, distribution or other electric facilities on the Property, provided, however, that Grantor may not in the future construct facilities on, over or under the Easement Area that unreasonably interfere with Grantee’s use of the Easement Area under this Easement.

c. Grantee may not obstruct Grantor’s roads crossing the Easement Area or Grantor’s use of the Easement Area to obtain access to Grantor’s facilities or the Property without Grantor’s prior written approval.

d. Installation of the Water Facilities must be sufficient to support vehicles and other equipment weighing fifty (50) tons.

e. Grantee may not, without Grantor’s prior written approval, excavate within twenty (20) feet of Grantor’s distribution wires, structures and facilities.

f. Grantee may not store flammable or hazardous materials, or refuel vehicles or equipment within the Easement Area.

g. Firearms, tobacco and alcohol use, and hunting are not allowed on the Property.



h. Grantee shall not commence the construction, reconstruction or replacement of the Water Facilities on the Property without first obtaining Grantor's written approval of all construction practices to be employed in performing such work. Grantor's approval of the construction practices to be employed in the initial construction of the Water Facilities is set forth in an agreement entered into contemporaneously with this Easement. Similar written approvals shall be required for any future construction work on the Property, which approvals shall not be unreasonably withheld. In addition:

i. Grantee may not use construction cranes, diggers, track hoes or other equipment that violate National Electric Safety Code clearance standards, Occupational Safety and Health Administration clearance standards or more stringent standards as may be imposed on Grantor by law or regulation for the efficient and safe operations of Grantor's electric lines.

ii. Upon completion of any construction or maintenance activities, Grantee must return the Easement Area and all affected access roads to a condition the same as or better than their pre-construction condition.

2. Grantor's Use. Grantor reserves the right, at any time, to cross the Easement Area with equipment, personnel, overhead and underground power lines, and access roads. Grantor shall have no obligation to maintain the roads located on the Easement Area or to keep such roads in passable condition for the benefit of Grantee. Grantor further reserves the right to use the Easement Area for its existing electric utility operations, and for such future uses that Grantor deems necessary or desirable, so long as such uses or rights do not unreasonably interfere with Grantee's uses of Easement Area under this Easement. Grantor further reserves the right to grant similar uses or rights to others.

3. Abandonment/Termination. This Easement will terminate if Grantee ceases to maintain or use the Water Facilities for a period of twenty-four (24) consecutive months. Upon termination, Grantee, at its sole cost, must promptly take all actions necessary to remove the Water Facilities and clean up and restore the Easement Area in accordance with applicable laws and reasonable industry standards and customs observed at the time of abandonment or termination. At Grantor's option, underground facilities may be abandoned in place.

4. Successors and Assigns. All rights and obligations contained in this Easement or implied by law are intended to be covenants running with the land and shall attach, bind and inure to the benefit of Grantor and Grantee and their respective heirs, successors, and assigns.

5. Release, Assumption of Risk and Indemnification.

a. Grantor makes no representation or warranty concerning the suitability of the Property for Grantee's use. Grantee accepts the Property "AS IS" in its present condition, including the presence of hazardous substances, if any. Grantee forever releases and discharges Grantor from any claims arising from the condition of the Property.

b. Grantee assumes the risk of using the Property in its present condition and acknowledges the presence of electrical facilities on the Property, which are potentially dangerous to persons and property. Grantee agrees to employ all necessary care and precaution when using the Property.

Grantee agrees to indemnify, defend, and hold harmless Grantor and Grantor's affiliated companies, officers, directors, shareholders, agents, employees, successors, and assigns, from and against all liabilities, claims, damages, liens, fines and penalties (including court costs, attorneys' fees, and litigation expenses) directly or indirectly arising from or caused by (i) a breach by Grantee of any provision of this Easement, (ii) Grantee's use and occupation of the Property, (iii) any act or omission of Grantee on the Property, or (iv) any act or omission of any independent contractor retained by Grantee, or anyone directly or indirectly employed by them, or anyone authorized by Grantee to control or exercise control over work on the Property. This indemnification provision shall apply to all theories of recovery, including breach of contract or warranty, negligence, and strict or statutory liability, except for negligence of the Grantor. In the event any indemnified claim is caused by the joint or concurrent negligence of the Grantor and Grantee, Grantee shall indemnify Grantor only in proportion to Grantee's own negligence or liability. The indemnity provisions herein shall survive termination of this Easement.

6. Damages. In addition to the general indemnification provisions above, Grantee agrees that if Grantee or its activities under this Agreement cause any damage to Grantor's utility equipment or facilities, whether above or below ground, Grantee will reimburse Grantor for all costs incurred by Grantor to repair or replace such damaged equipment or facilities. As used in this Section, any reference to Grantor's equipment or facilities shall include any equipment or facilities owned by third parties that are lawfully located on the Grantor's Land, whether by easement, license, lease, or otherwise.

7. Miscellaneous Provisions.

a. Existing Encumbrances. This Easement is subject to all rights of way and encumbrances (whether or not recorded) of any kind existing at the time of the creation of this Easement.

b. Counterparts. This Easement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and all of which shall together constitute one and the same instrument.

c. No Public Dedication. The provisions of this Easement are not intended to and do not constitute a dedication for public use, and the rights created by this Easement are private and for the benefit only of the parties hereto, their successors and assigns.

d. Compliance with Laws; Liens. Grantee must secure all permits and comply with all applicable laws, rules and regulations of any public authority relating to Grantee's use of the Property. Grantee must keep the Property free from liens arising from Grantee's activities.

e. Time of Essence. Time is of the essence in the performance of the parties' obligations under this Easement.

f. Attorney's Fees. If a party brings an action to enforce this Easement, the prevailing party in the action will be entitled to an award of reasonable attorney's fees, court costs and litigation expenses.

g. Applicable Law. This Easement shall be governed by and construed in

accordance with the laws of the State of Utah.

h. 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 Easement. 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.

i. Notices. Notices to be given under this Easement shall be delivered or mailed to the following:

PacifiCorp  
Attn.: Property Management  
825 NE Multnomah Street, Suite 1700  
Portland, OR 97232

Cottonwood Creek Consolidated Irrigation Company, a non-profit mutual irrigation company organized under the laws of the State of Utah

Attn: Clyde Magnuson, President  
P.O. Box 678  
Orangeville Utah 84537

j. No Waiver. The failure to enforce or perform any provision set forth in this Easement shall not be deemed a waiver of any such right.

k. Authority. The individual(s) executing this document represents and warrants that he/she has the legal authority to convey the Easement described herein.

{SIGNATURES ON FOLLOWING PAGE}

IN WITNESS WHEREOF, the parties have executed this Easement and which is effective as of the last date signed herein.

GRANTOR:  
PACIFICORP, an Oregon corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

GRANTEE:  
Cottonwood Creek Consolidated Irrigation Company, a non-profit mutual irrigation company organized under the laws of the State of Utah

By: Lyndi J. Magnuson  
Its: President  
Date: 12/23/2013

STATE OF OREGON )  
 : ss.  
COUNTY OF MULTNOMAH )

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 201\_, before me, a Notary Public of the state and county of aforesaid, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, who acknowledged that s/he is the \_\_\_\_\_ of PACIFICORP, an Oregon corporation, that s/he has been duly authorized to execute, and has executed the same in my presence, the foregoing instrument on behalf of the said entity for the purposes therein set forth, and that the same is its act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.

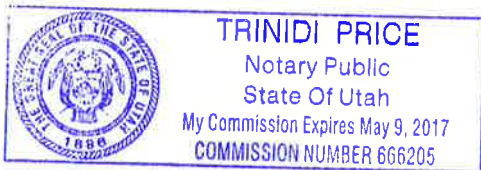
\_\_\_\_\_  
Notary Public

STATE OF Utah )  
 : ss.  
COUNTY OF Emery )

I hereby certify that on this 23 day of December, 2013, before me, a Notary Public of the state and county of aforesaid, personally appeared Clyde Magnuson, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, who acknowledged that s/he is the President of Cotton Wood Creek Consolidated Irrigation Co. that s/he has been duly authorized to execute, and has executed the same in my presence, the foregoing instrument on behalf of the said entity for the purposes therein set forth, and that the same is its act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.

Trinidi Price  
Notary Public



**EXHIBIT "A" – Page 1 of 2**

A 25 foot Easement, 10 feet on the East and North side and 15 feet on the West and South side of the following described centerline:

Beginning at a point on Grantor's north property line which is N88°28'39" E, 92.74 feet along the Section line from the Northwest corner of the Northeast quarter of the Northeast quarter of Section 9, Township 19 South, Range 8 East, SLB&M; thence S0°58'31" E, 30.59 feet; thence N 89°14'45" E, 1246.81 feet; thence S 00°46'01" E, 556.95 feet.

Containing 1.05 acres more or less

EXHIBIT "A" – Page 2 of 2



**EXHIBIT "B"**  
**Temporary Easement**



**When Recorded Return To:**

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**TEMPORARY EASEMENT**

**PACIFICORP**, an Oregon corporation (“**Grantor**”) hereby grants to **Cottonwood Creek Consolidated Irrigation Company**, a non-profit mutual irrigation company organized under the laws of the State of Utah (“**Grantee**”) and its successors and assigns, for value received, without warranty, a non-exclusive temporary construction easement (“**Easement**”) over, under, across and through a portion of Grantor’s real property located in Emery County, State of Utah, known as Assessor Parcel Number: U5-0025-0002 (the “**Property**”) for the purpose of locating, constructing, operating, maintaining and replacing one eight (8) inch High-Density Polyethylene (HDPE) pipe underground water line and appurtenances related thereto (the “**Water Facilities**”) related thereto.

1. Permitted Use

Grantee, its contractors and subcontractors of any tier, shall use the Easement as a temporary construction lay down area, for staging of Grantee’s vehicles and equipment, and for other construction activities necessary and incident to the Water Facilities within the Easement (“**Construction Activities**”). No other excavation or other earthwork shall be allowed in the Easement without prior written approval of Grantor.

2. Term

The Term of this Easement shall commence on the date of full execution by both parties and shall automatically expire upon the earlier of: (i) Grantee’s completion of the Project and reasonable restoration of the surface of the Property impacted by Construction Activities to a pre-construction condition; or (ii) two (2) years following the date this Easement commences.

3. Grantee’s Use of Easement

a. Grantee’s use of the Property is confined to the area illustrated and more particularly described and depicted in Exhibit “A” (the “**Easement Area.**”)

b. Grantee may not make any use of the Easement Area that interferes with Grantor’s existing or future generation, transmission, distribution or other electric facilities on the Property, provided, however, that Grantor may not in the future construct facilities on, over or under the Easement Area that unreasonably interfere with Grantee’s use of the Easement Area under this Easement.

c. Grantee may not obstruct Grantor’s roads crossing the Easement Area or Grantor’s use of the Easement Area to obtain access to Grantor’s facilities or the Property without Grantor’s prior written approval

d. Grantee may not, without Grantor’s prior written approval, excavate or remove trees within twenty (20) feet of Grantor’s distribution wires, structures and facilities.

e. Grantee may not store flammable or hazardous materials, or refuel vehicles or equipment within the Easement Area.

f. Firearms, tobacco and alcohol use, and hunting are not allowed on the Property.

g. Grantee shall not commence the construction, reconstruction or replacement of the Water Facilities on the Property without first obtaining Grantor's written approval of all construction practices to be employed in performing such work. Grantor's approval of the construction practices to be employed in the initial construction of the Water Facilities is set forth in an agreement entered into contemporaneously with this Easement. Similar written approvals shall be required for any future construction work on the Property, which approvals shall not be unreasonably withheld. In addition:

i. Grantee must provide a construction access and repair plan showing Grantee's proposal for maintenance of access by Grantor during construction and any maintenance activity in the Easement Area. Grantor reserves the right to approve such plan prior to the commencement of construction or maintenance activities, which approval shall not be unreasonably withheld.

ii. Grantee may not use construction cranes, diggers, track hoes or other equipment that violate National Electric Safety Code clearance standards, Occupational Safety and Health Administration clearance standards or more stringent standards as may be imposed on Grantor by law or regulation for the efficient and safe operations of Grantor's power lines.

iii. Upon completion of any construction or maintenance activities, Grantee must return the Easement Area and all affected access roads to a condition the same as or better than their pre-construction condition, with the exception of any trees that were removed as part of the installation of the Water Facilities.

4. Grantor's Use. Grantor reserves the right, at any time, to cross the Easement Area with equipment, personnel, overhead and underground power lines, and access roads. Grantor shall have no obligation to maintain the roads located on the Easement Area or to keep such roads in passable condition for the benefit of Grantee. Grantor further reserves the right to use the Easement Area for its existing electric utility operations, and for such future uses that Grantor deems necessary or desirable, so long as such uses or rights do not unreasonably interfere with Grantee's uses of Easement Area under this Easement. Grantor further reserves the right to grant similar uses or rights to others.

5. Release, Assumption of Risk and Indemnification.

a. Grantor makes no representation or warranty concerning the suitability of the Property for Grantee's use. Grantee accepts the Property "AS IS" in its present condition, including the presence of hazardous substances, if any. Grantee forever releases and discharges Grantor from any claims arising from the condition of the Property.

b. Grantee assumes the risk of using the Property in its present condition and acknowledges the presence of electrical facilities on the Property which are potentially

dangerous to persons and property. Grantee agrees to employ all necessary care and precaution when using the Property.

c. Grantee agrees to indemnify, defend, and hold harmless Grantor and Grantor's affiliated companies, officers, directors, shareholders, agents, employees, successors, and assigns, from and against all liabilities, claims, damages, liens, fines and penalties (including court costs, attorneys' fees, and litigation expenses) directly or indirectly arising from or caused by (i) a breach by Grantee of any provision of this Easement, (ii) Grantee's use and occupation of the Property, (iii) any act or omission of Grantee on the Property, or (iv) any act or omission of any independent contractor retained by Grantee, or anyone directly or indirectly employed by them, or anyone authorized by Grantee to control or exercise control over work on the Property. This indemnification provision shall apply to all theories of recovery, including breach of contract or warranty, negligence, and strict or statutory liability, except for negligence of the Grantor. In the event any indemnified claim is caused by the joint or concurrent negligence of the Grantor and Grantee, Grantee shall indemnify Grantor only in proportion to Grantee's own negligence or liability. The indemnity provisions herein shall survive termination of this Easement.

6. Damages. In addition to the general indemnification provisions above, Grantee agrees that if Grantee or its activities under this Agreement cause any damage to Grantor's utility equipment or facilities, whether above or below ground, Grantee will reimburse Grantor for all costs incurred by Grantor to repair or replace such damaged equipment or facilities. As used in this Section, any reference to Grantor's equipment or facilities shall include any equipment or facilities owned by third parties that are lawfully located on the Grantor's Land, whether by easement, license, lease, or otherwise.

#### 7. Miscellaneous Provisions.

a. Existing Encumbrances. This Easement is subject to all rights of way and encumbrances (whether or not recorded) of any kind existing at the time of the creation of this Easement.

b. Counterparts. This Easement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and all of which shall together constitute one and the same instrument.

c. No Public Dedication. The provisions of this Easement are not intended to and do not constitute a dedication for public use, and the rights created by this Easement are private and for the benefit only of the parties hereto, their successors and assigns.

d. Compliance with Laws; Liens. Grantee must secure all permits and comply with all applicable laws, rules and regulations of any public authority relating to Grantee's use of the Property. Grantee must keep the Property free from liens arising from Grantee's activities.

e. Time of Essence. Time is of the essence in the performance of the parties' obligations under this Easement.

f. Attorney's Fees. If a party brings an action to enforce this Easement, the prevailing party in the action will be entitled to an award of reasonable attorney's fees, court costs and litigation expenses.

g. Applicable Law. This Easement shall be governed by and construed in accordance with the laws of the State of Utah.

h. 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 Easement. 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.

i. Notices. Notices to be given under this Easement shall be delivered or mailed to the following:

Pacific Power  
Attn.: Property Management  
825 NE Multnomah Street, Suite 1700  
Portland, OR 97232

Cottonwood Creek Consolidated Irrigation Company, a non-profit mutual irrigation company organized under the laws of the State of Utah  
Attn: *Clyde Magnuson President*  
*P.O. Box 1678*  
*Orangewille, Utah 84537*

j. No Waiver. The failure to enforce or perform any provision set forth in this Easement shall not be deemed a waiver of any such right.

k. Authority. The individual(s) executing this document represents and warrants that he/she has the legal authority to convey the Easement described herein.

{SIGNATURES ON FOLLOWING PAGE}

IN WITNESS WHEREOF, the parties have executed this Easement and which is effective as of the last date signed herein.

GRANTOR:  
PACIFICORP, an Oregon corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

GRANTEE:  
Cottonwood Creek Consolidated Irrigation Company, a non-profit mutual irrigation company organized under the laws of the State of Utah

By: Shyde Magnus  
Its: President  
Date: 12/23/2013

STATE OF OREGON )  
 : ss.  
COUNTY OF MULTNOMAH )

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 201\_, before me, a Notary Public of the state and county of aforesaid, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, who acknowledged that he is the \_\_\_\_\_ of PACIFICORP, an Oregon corporation, that he has been duly authorized to execute, and has executed the same in my presence, the foregoing instrument on behalf of the said entity for the purposes therein set forth, and that the same is its act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.

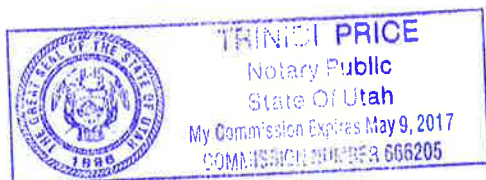
\_\_\_\_\_  
Notary Public

STATE OF Utah )  
 : ss.  
COUNTY OF Emery )

I hereby certify that on this 23 day of December, 2013 before me, a Notary Public of the state and county of aforesaid, personally appeared Clyde Magnuson, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, who acknowledged that s/he is the President of Cottonwood Creek Consolidated Irrigation Co., that s/he has been duly authorized to execute, and has executed the same in my presence, the foregoing instrument on behalf of the said entity for the purposes therein set forth, and that the same is its act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.

Trinidi Price  
\_\_\_\_\_  
Notary Public



**EXHIBIT A - Page 1 of 2**

Temporary Construction Easement 45 feet wide 20 feet on the North and East side and 25 feet on the West and South side of the following described centerline:

Beginning at a point on Grantor's north property line which is N88°28'39" E, 92.74 feet along the Section line from the Northwest corner of the Northeast quarter of the Northeast quarter of Section 9, Township 19 South, Range 8 East, SLB&M; thence S0°58'31" E, 30.59 feet; thence N 89°14'45" E, 1246.81 feet; thence S 00°46'01" E, 556.95 feet.

Containing 1.76 acres more or less

EXHIBIT A - Page 2 of 2

