

## PROPERTY LEASE

This PROPERTY LEASE (the “Lease”) is entered by and between **PACIFICORP, an Oregon Corporation** of 1407 West North Temple, Salt Lake City, Utah 84116 (“**Lessor**”) and **Cottonwood Creek Consolidated Irrigation Company**, a non-profit mutual irrigation company organized under the laws of the State of Utah, whose address is, PO Box 678, Orangeville, Utah 84537 (“**Lessee**”).

### RECITALS

A. Lessor owns certain parcels of real property located in section 24, Township 18 South, Range 7 East, SLM, Emery County, State of Utah (the “**Property**”).

B. Lessee desires to lease a portion of the Property consisting of approximately 5 acres (the “**Premises**”) for the purpose of storing pipe for the Adobe Wash Project.

C. Lessor has used and will continue to use the Premises for the construction, operation, maintenance, repair, and replacement of transmission and distribution lines and other facilities and equipment normally associated with the generation and distribution of power and/or the use or leased use of the Premises for communication structures, facilities, and equipment. Lessor also uses and will continue to use the Premises to access adjoining properties and facilities, including properties and facilities that may be used in the future.

### TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants and other consideration, the receipt and sufficiency of which is hereby acknowledged and received, Lessor and Lessee agree to the following terms and conditions:

1. **Leased Premises.** Lessor does hereby lease the Premises to Lessee for the limited purposes of storing pipe and directly related uses (the “**Activities**”), and for no other purpose without Lessor’s prior written consent. The Premises is more particularly described in Exhibit “A” which is attached hereto and by this reference made a part hereof.

2. **Term.**

2.1 **Lease Term.** The term of this Lease shall be one (1) year, commencing on the 1<sup>st</sup> day of October, 2011 and ending on the 30<sup>th</sup> day of September, 2012, unless earlier terminated as provided under this Lease.

2.2 **Option to Renew.** At the end of the Lease Term identified in section 2.1, if Lessee has complied with and is current in the substantial performance of all of the obligations required by this Lease as reasonably determined by Lessor, Lessee may renew and extend the term of this Lease for four (4) successive terms of (1) year each, each such renewal term to be upon the same terms and under the same conditions as provided for in this Lease. Such options shall be

exercised by giving Lessor advance written notice of its intent to do so (“Notice of Intent to Renew”) not less than sixty (60) days prior to the expiration of the initial Lease Term or the preceding renewal term, as the case may be.

3. **Rent Payment.** Lessee shall pay to Lessor an annual rent payment in the amount of seven hundred fifty dollars (\$750) for the original Lease Term and all Option Terms. The rent payment shall be due and payable upon the execution of this Lease. All rent payments shall be sent to the following address:

*PacifiCorp  
Property Management Department  
P.O. Box 5504  
Portland, OR 97228-5504*

4. **Acceptance of Premises.** Lessee has examined the Premises and accepts it in its present condition, AS-IS and with all faults. Lessor makes no representation or warranty as to the present or future condition of the Premises and shall not be required to perform, pay for, or be responsible for any work to ready the Premises for Lessee’s occupancy or any other work whatsoever throughout the term of this Lease to repair, maintain or improve the Premises.

5. **Improvements.**

5.1 **Written Consent.** Lessee may not make any improvements or changes to the Premises, including changing existing ground elevations, excavating, constructing any structure or lighting structure, or landscaping without Lessor’s prior written consent. If Lessee desires to make any material changes or improvements to the Premises, Lessee shall provide Lessor with detailed plans and specifications for the proposed material change or improvement at least thirty (30) days in advance. In the event Lessee deems the making of any material improvement or the changing of any improvement necessary to remove a hazardous condition, it shall notify Lessor and request that Lessor approve the improvement or change in improvement within a shorter time. Lessor shall have the right to conditionally approve, modify, or deny the requested change or improvement at its sole discretion.

5.2 **Workmanlike Manner.** All improvements shall be made in a good and workmanlike manner and shall comply with all building codes, laws, and ordinances. Any improvement that violates building codes, laws, or ordinances of any governing jurisdiction, or that Lessor reasonably determines may harm the Premises in any manner, shall be timely cured by Lessee at Lessee’s expense and in a manner satisfactory to Lessor.

5.3 **Removal of Improvements.** All improvements made by Lessee remaining on the Premises at the termination of this Lease shall become and shall remain the property of Lessor unless otherwise specified by Lessor. Notwithstanding the foregoing sentence, fences and those improvements which cannot be removed without causing damage to the Premises do not immediately become the property of Lessor but Lessee may remove them within 30 days after the termination of the Lease, after which, if they remain on the Premises, they shall become the

property of Lessor. Lessee shall not be entitled to any compensation or rent reduction for any improvements made to the Premises. Upon the termination or expiration of this Lease, if Lessor is required to dispose of improvements made by Lessee, Lessee agrees to reimburse Lessor for all of its associated reasonable costs and expenses.

6. **Restrictions on the Use of the Premises.** Lessee shall take reasonable steps to prevent fire and to promptly extinguish fire on the Premises. Lessee shall endeavor to use diesel powered vehicles whenever reasonably possible on the Premises to avoid fires resulting from catalytic converters. Lessee may not construct open fires on the Premises. No trash or timber slash will be burned by Lessee on the Premises. Lessee shall promptly and fully compensate Lessor for all damages caused by fire arising out of Lessee's operations on the Premises, including, without limitation, any charges incurred by Lessor for fire suppression.

Lessee shall not permit any of its employees or contractors operating hereunder to bring any firearm, explosive device, weapon, alcoholic beverage, or illegal drug on the Premises. Lessee's employees shall at all times carry identification. Lessee's employees will not bring dogs or other animals in vehicles or otherwise on to Lessor's lands. Lessee shall not place any trash, rubbish or debris on Lessor's land. No employee or contractor of Lessee shall hunt, prospect for antlers, fossils or antiquities, consume alcoholic beverages or carry on any illegal activities on the Premises. Lessee shall not establish living quarters for its employees and contractors on the Premises.

Absent Lessor's consent, Lessee's machinery, vehicles, or other equipment not required for daily operations shall not be stacked or stored on the Premises nor shall equipment be maintained on any of the Premises except where a containment area has been constructed to contain any potential fuel leaks from a designated fuel tank or vehicle.

6.1 **Storage.** Lessee shall not cause or permit any structure, building, automobile, or equipment to be placed, erected, or stored on the Premises except those allowed under this Lease without Lessor's prior written consent, nor shall Lessee, under any circumstances place any object or allow any person to come within twenty (20) feet of any power lines on the Premises. Lessee understands and acknowledges that electricity can arc between lines and persons or objects within twenty (20) feet of the lines.

6.2 **Noxious Weeds.** Lessee shall control the growth of any noxious weeds or other growth on the Premises in accordance with the requirements of any governmental agency having jurisdiction.

6.3 **Notice of Damages or Theft.** Lessee shall notify Lessor of any mortality, theft, vandalism, loss, or damage to the Premises, within twenty four (24) hours of the discovery of any such event.

6.4 **Condition of Premises.** Lessee shall keep and maintain the Premises in a reasonably clean, prudent, and husband-like manner at all times and in conformity with good conservation and business practices, considering the nature of the Activities.

6.5 **Damage to Lands Owned by Other Landowners.** Lessee shall be liable for any damage to other lands or the operations of other landowners, including but not limited to, roads, road crossings, bridges, fences, buildings and other improvements, livestock, crops, groundwater, forage, and hay meadows, caused by Lessee's activities on the Premises.

6.6 **Reclamation.** Lessee shall reasonably rehabilitate and restore to its original condition, as near as reasonable, all areas disturbed by Lessee's operations, unless otherwise agreed to by Lessor.

6.7 **Soil Erosion.** Lessee will control soil erosion as completely as practicable by filling in or otherwise controlling small washes or ditches that may form due to the Activities on the Premises. Lessee will keep in good repair all open ditches and natural washes on the Premises. Lessee shall preserve all established watercourses on the Premises including waterways and refrain from any operation or practice that will injure them .

7. **Environmental Regulations.** Lessee shall strictly comply in all material respects with all federal, state, and local environmental laws, regulations, and ordinances ("**Environmental Laws**") and shall not use or store on the Premises any hazardous or toxic materials without Lessor's prior written consent. In the event of any spill or release or any hazardous or toxic materials, Lessee shall immediately report, remedy, and shall immediately notify Lessor thereof. Upon termination of this Lease, Lessee shall deliver the Premises to Lessor free of any material contamination by hazardous or toxic materials. Lessee covenants and agrees to protect, indemnify, and hold Lessor harmless from any and all liability, loss, costs, damage, or expense, including attorneys' fees, resulting from Lessee's failure to comply with the provisions of this paragraph. The covenants contained within this paragraph shall survive the termination this Lease.

8. **Lessor's Use of the Premises.** It is understood and agreed upon that Lessor reserves the right to access the Premises at any time for the purpose of maintaining or repairing its existing power lines and associated equipment and facilities and to place additional poles, lines, and equipment upon the Premises. It is further understood and agreed upon that Lessor shall reserve the right to add to, change, or enlarge its power lines and associated facilities and structures on the Premises, including such equipment and facilities of others, including fiber optic and cable lines. If such changes require Lessee to make changes to any of Lessee's structures or improvements located upon the Premises, Lessor shall give Lessee at least thirty (30) days advance notice and Lessee agrees to make any such within a reasonable period of time as designated by Lessor. Lessee also recognizes and agrees that its use of the Premises shall be non-exclusive and subject to the right of Lessor to engage in, or to grant to others the rights to engage in, the following uses of the Premises: 1) the development, operation, maintenance, repair, upgrade and enlargement of existing and future power lines, roads, spring development, pipelines, oil & gas wells, fiber optic lines, cable lines, water wells, and all associated poles, equipment and facilities; and 2) the construction of roads and other uses on the Premises so that they might have adequate access necessary for the foregoing uses.

9. **Inspection.** Lessor shall have the right to enter into and upon the Premises at any time for the purpose of inspecting the Premises.

10. **No Sublet or Assignment.** Lessee may not sublet the Premises or any part thereof or assign any of its rights under this Lease without Lessor's prior written consent.

11. **Compliance with Law, Preventing Waste.** Lessee shall, at all times, comply with all laws, ordinances, and regulations affecting or pertaining to the use or occupation of the Premises, including environmental laws and regulations. Lessee shall indemnify, defend, and hold harmless Lessor from loss, cost, or damage by reason of any actual or alleged violation by Lessee thereof, and from any liability, including fines, penalties and other costs, caused by Lessee's failure to so comply. Lessee shall at all times keep the Premises in a safe, neat, and orderly manner reasonably satisfactory to Lessor considering the nature of the Activities. Lessee shall not commit or suffer to be committed any waste upon the Premises or any nuisance or other act or thing which may disturb adjoining land owners or which may violate the law.

12. **Indemnification.** Lessee shall use the Premises at its own risk and, except for the obligations of Lessor herein, hereby releases and forever discharges any claims, demands or causes of action it may have against Lessor, its officers, directors, employees, subsidiaries, affiliates and contractors arising out of Lessee's use of the Premises or conducting its Activities. In addition Lessee shall protect, indemnify and hold harmless Lessor, its officers, directors, employees, subsidiaries, affiliates and contractors (collectively, the "Indemnitees") from and against any losses, claims, liens, demands and cause of action of every kind, including the amount of any judgment, penalty, fine, interest, court cost or legal fee incurred by the Indemnitees or any of them in the defense of same, arising in favor of any party, including governmental agencies or bodies, on account of taxes, claims, liens, debts, personal injuries, death or damages to property, violations of Environmental Laws and Regulations, and all other claims or demands of every character caused by Lessee's use of the Premises or conduct of its activities. The terms of this Section 12 shall survive the termination of this Agreement. For purposes of this Agreement, "Environmental Laws and Regulations" shall mean all present and future federal, state and local laws and all rules and regulations promulgated thereunder, relating to pollution or protection of the environment applicable to the Premises.

Lessee shall promptly pay all wages due its workmen and employees and pay for all materials and supplies furnished for its operations hereunder and shall defend and protect Lessor from and against all claims and liabilities resulting in its failure to do so. Lessee shall not permit any mechanic's or materialman's lien to be filed against the Premises and in the event any such lien or claim is filed against the Premises as a result of any action or inaction by Lessee, Lessee shall immediately remove the lien through satisfaction of the claim, assertion of valid defenses or initiation and prosecution of an action requiring removal of the lien. Lessee shall indemnify and hold Lessor harmless from all mechanic's, materialmen's and laborer's liens against the Premises which may arise by reason of Lessee's operations hereunder, and in the event any such liens are filed against the Premises, Lessee will take such steps as may be necessary to obtain the discharge thereof. Lessee shall post and keep posted at the entrance to its operations on the

Premises notice to the public that said operations are being conducted by Lessee and that the interests of Lessor as landowner shall not be subject to any lien or claim arising therefrom.

13. **Insurance.** Without limiting any liabilities or any other obligations of Lessee, Lessee shall procure, or require that its contractors procure, and continuously maintain for the duration of this Agreement, 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 Agreement or Lessee's use or occupancy of the Premises as follows:

**Workers' Compensation.** Coverage as required by law. Lessee shall furnish proof thereof satisfactory to PacifiCorp within 14 days prior to commencing any work on the Premises. All Workers' Compensation policies shall 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 the PacifiCorp and Lessee that the insurance as effected shall protect all parties.

**Employers' Liability.** Insurance with a minimum single limit of \$1,000,000 each accident, \$1,000,000 disease each employee, and \$1,000,000 disease policy limit.

**Commercial General Liability.** The most recently approved ISO (Insurance Services Office) policy, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate (on a per location basis) to protect against and from any and all loss by reason of bodily injury or property damage on or about the Premises, including the following coverages:

- i. Bodily injury, property damage, and personal injury coverage, including damage to Lessor's Electric Facilities or Improvements as a result of Lessee's, its contractors', subcontractors' or agents' negligence.
- ii. Contractual liability
- iii. Premises and Products/Completed Operations
- iv. Independent Contractors

**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 Lessee's vehicles whether owned, hired or non-owned, assigned to or used in any way on the Premises.

**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 Automobile Liability insurance in above. Such insurance policies shall be maintained to cover any liability arising from Lessee's use of the Premises and indemnification identified in this Agreement.

a. Certificate of Insurance. Lessee shall annually provide to Lessor a certificate of insurance evidencing its insurance coverage. The policies required herein, except Workers' Compensation and Employers' Liability, shall include provisions or endorsements naming Lessor, its parent, affiliates, subsidiaries, its officers, directors, agents, employees or servants as additional insured.

b. Lessee's Insurance Primary. To the extent of Lessee's negligent acts or omissions, all policies required under this Agreement shall be primary with respect to the interest of Lessor and that any other insurance maintained by Lessor is excess and noncontributory insurance with the insurance required hereunder, and provisions that the policy contain a cross liability or severability of interest clause or endorsement.

c. 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 the Lessor, its parent, divisions, affiliates, subsidiaries companies, co-Operators, or co-venturers, agents, directors, officers, employees, servants, and insurers, it being the intention of the Lessor and Lessee that the insurance as affected shall protect all parties.

d. Notice Prior to Change or Cancellation. Lessee's insurance required under this Section 13 shall contain provisions that such policies cannot be cancelled or their limits of liability reduced without 1) ten (10) calendar days' prior written notice to Lessor if cancelled for nonpayment of premium, or 2) thirty (30) calendar days' prior written notice to Lessor if cancelled for any other reason.

14. **Taxes.** Taxes on the Premises are centrally assessed. Lessee shall pay to Lessor any increase in such taxes attributable to Lessee's use of the Premises or improvements made thereto.

15. **Termination.** This Lease may be terminated upon the happening of any of the following events:

15.1 **Breach.** If Lessee breaches any of the covenants or provisions herein provided, including the failure to pay any monetary sums required under this Lease, Lessor, at its option, and after providing written notice of the alleged breach and thirty (30) days to cure to Lessee, may terminate this Lease and immediately re-enter and repossess the Premises either with or without legal process and without giving notice to quit to Lessee, which notice is expressly waived by Lessee in case of such breach.

15.2 **Abandonment.** In the event Lessee abandons the Premises, Lessor may, in addition to all other remedies, immediately reenter the Premises and take full possession thereof and exclude Lessee from any attempted renewed use of the Premises.

15.3 **Frustration or Change of Condition.** If the enactment or adoption of any law, ordinance, regulation, order, condition, or other governmental requirement relating to Lessor's

operations on the Premises makes further performance impractical or frustrates the purpose of this Lease, Lessor shall have the right to terminate this Lease by giving Lessee ninety (90) days prior written notice.

15.4 **Termination by Notice.** Lessor may terminate or cancel this Lease at any time during the term hereof by giving ninety (90) days written notice to Lessee of its intention to do so. If said Lease is cancelled, Lessee shall not be entitled to damages of any kind, including lost profits, relocation costs, or expenses.

16. **Events Upon Expiration or Termination.** Upon the expiration of termination of this Lease, Lessee shall promptly remove all personal property and shall surrender the Premises in good condition satisfactory to Lessor, reasonable wear and depreciation due to use excepted.

17. **Holdover.** If Lessee retains possession of the Premises or any part thereof after the termination of this Lease, Lessee shall be deemed to have a month-to-month tenancy and Lessee shall pay to Lessor a monthly installment of rent, at double the rate due and payable for the month immediately preceding such holdover, computed on a per-month basis, for each month or part of a month (without reduction for any such partial month) that Lessee remains in possession of the Premises. In addition, Lessee shall pay to Lessor all direct and consequential damages sustained by reason of Lessee's retention of possession of the Premises. The provisions of this Section shall not be deemed to limit or exclude any of Lessor's rights of reentry or any other right granted to Lessor under this Lease or at law.

18. **Miscellaneous.**

18.1 **Notice.** Except when actual receipt is expressly required by the terms hereof, notice is considered given either: (i) when delivered in person to the recipient named below, (ii) after deposit in the United States mail in a sealed envelope or container, either registered or certified mail, return receipt requested, postage prepaid, addressed by name and address to the party or person intended, or (iii) after being transmitted by facsimile to the person and party intended and to the facsimile number indicated below, with machine confirmation of satisfactory transmittal. All notices shall be given to the following:

Lessor: PacifiCorp:  
P.O. Box 569  
Castle Dale, Utah 84513  
Attn: Laren Huntsman, Hunter Plant Manager

Lessee: Cottonwood Creek Consolidated Irrigation Company  
P.O. Box 678  
Orangeville, Utah 84537  
Attn: Stan Mathis, Secretary

Upon written notification, either party may designate a different individual or address for notices.



18.2. **Titles and Captions.** Section titles and captions to this Lease are for convenience only and shall not be deemed part of this Lease and in no way define, limit, augment, extend, or describe the scope, content, or intent of any part or subparts of this Lease.

18.3. **Applicable Law.** This Lease shall be construed in accordance with and governed by the laws of the state of Utah.

18.4. **Binding Effect Upon Successors.** This Lease shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, successors, legal representatives, and assigns; provided that this provision shall not be construed as permitting assignment, substitution, delegation, or other transfer of rights or obligations except strictly in accordance with the provisions of this Lease.

18.5. **Integration.** This Lease constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supercedes all prior agreements and understandings pertaining thereto. No covenant, representation, or condition not expressed in this Lease shall affect or be deemed to interpret, change, or restrict the express provisions hereof.

18.6. **Waiver.** No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such right or remedy or of any other covenant, agreement term, or condition. Any party may, by notice delivered in the manner provided in this Lease, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation, or covenant of any other party. No waiver shall affect or alter the remainder of this Lease but each and every other covenant, agreement, term, and condition hereof shall continue in full force and effect with respect to any other breach.

18.7. **Rights and Remedies.** The rights and remedies of any of the parties shall not be mutually exclusive, and the exercise of one or more of the provisions of this Lease shall not preclude the exercise of any other provisions. Each of the parties confirms that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained is intended to or shall limit or affect any rights at law or by statute or otherwise of any party aggrieved as against the other parties for a breach or threatened breach of any provision hereof, it being the intent of this paragraph to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

18.8. **Severability.** In the event any condition, covenant, or other provision herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Lease and shall in no way effect any other covenant or condition contained herein. If such condition, covenant, or other provisions shall be deemed

invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

18.9. **Enforceability and Litigation Expenses.** If any action, suit, or proceeding is brought by a party hereto with respect to a matter or matters covered by this Lease or if a party finds it necessary to retain an attorney to enforce its rights under this Lease, all costs and expenses of the prevailing party incident to such preceding or retention, including reasonable attorney’s fees, shall be paid by the non-prevailing party.

18.10 **Authorization.** Each individual executing this Lease represents and warrants that he or she has been duly authorized by appropriate action of the governing body of the party for which he signs to execute and deliver this Lease in the capacity and for the entity set forth where he signs and that as a result of his signature, this Lease shall be binding upon the party for which he signs.

18.11 **Recordation.** This Lease may not be recorded on behalf of either party, but in lieu thereof, Lessor and Lessee agree that each will, upon execution of this Lease, execute, in recordable form, a “short form” of the Lease, which shall contain a description of the Premises, the term of the Lease, and the parties to the Lease. The short form of the Lease shall not modify the terms of the Lease or be used in interpreting the Lease and in the event of any inconsistency between this Lease and the short form of the Lease, the terms and conditions of this Lease shall be controlling.

18.12 **Rights Reserved.** This Lease and all rights hereunder shall be held by the Lessee at all times subject to the rights of the Lessor. Jurisdiction and supervision of the Lessor over concerned lands are not surrendered or subordinated by issuance of this Lease. The Lessor reserves the right to issue to other additional licenses, rights-of-way or permits for compatible uses of the lands involved in this Lease. There is also reserved the right of the Lessor, its officers, agents, employees, licensees and permittees to have ingress to, passage over, and egress from all of said lands for the purpose of exercising, enforcing and protecting the rights reserved herein or for any other legitimate purpose.

**IN WITNESS WHEREOF**, the parties to this Lease Agreement have executed this Lease on the day and year first above written.

**LESSOR – PACIFICORP**

**LESSEE - CCCIC**

\_\_\_\_\_  
 Signature Title

\_\_\_\_\_  
 Signature Title

\_\_\_\_\_  
 Print Name

\_\_\_\_\_  
 Print Name

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Date

**EXHIBIT A**