ORDINANCE 2005-15

AN ORDINANCE OF IVINS CITY, UTAH, GRANTING AN ELECTRICAL UTILITY FRANCHISE AND GENERAL UTILITY EASEMENT TO PACIFICORP

WHEREAS, PacifiCorp, an Oregon corporation, d.b.a. Utah Power ("PacifiCorp") is a regulated public utility that provides electric power and energy to the citizens of Ivins City, Utah (the "City") and other surrounding areas; and

WHEREAS, providing electrical power and energy requires the installation, operation and maintenance of power poles and other related facilities to be located within the public ways of the City; and

WHEREAS, the City, pursuant to the provisions of Utah Code Ann. § 10-8-21, has the authority to regulate power line facilities within public ways and to grant to PacifiCorp a general utility easement for the use thereof; and

WHEREAS, the City desires to set forth the terms and conditions by which PacifiCorp shall use the public ways of the City;

NOW, THEREFORE, BE IT ORDAINED BY THE IVINS CITY COUNCIL:

SECTION 1. Grant of Franchise and General Utility Easement. The City hereby grants to PacifiCorp the right, privilege and authority to construct, maintain, operate, upgrade, and relocate its electrical distribution and transmission lines and related appurtenances, including underground conduits and structures, poles, towers, wires, guy anchors, vaults, transformers, transmission lines, and communication lines (collectively referred to herein as "Electric Facilities") in, under, along, over and across the present and future streets, alleys, public ways and public places (collectively referred to herein as "Public Ways") within the City, for the purpose of supplying and transmitting electric power and energy to the inhabitants of the City and persons and corporations beyond the limits thereof.

SECTION 2. Term. The term of this Franchise and General Utility Easement is for ten (10) years commencing on the date of acceptance by the Company as set forth in Section 3 below.

SECTION 3. Acceptance By Company. Within sixty (60) days after the date this Ordinance is executed by the City, PacifiCorp shall execute its acceptance thereof and file the fully executed original with the City Recorder, otherwise the ordinance and the rights granted herein shall be null and void.

SECTION 4. Non-Exclusive Franchise. The right to use and occupy the Public Ways of the City shall be non-exclusive and the City reserves the right to use the Public Ways for itself or any other entity that provides utility service to City residences; provided, however, that such use shall not unreasonably interfere with PacifCorp's Electric Facilities or PacifCorp's rights as granted herein.

SECTION 5. City Regulatory Authority. In addition to the provision herein contained, the City reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties or exercise any other rights, powers, or duties required or authorized, under the Constitution of the State of Utah, the laws of Utah or City ordinance.

SECTION 6. Indemnification. The City shall in no way be liable or responsible for any loss or damage to property or any injury to any person that may occur in the construction, operation or maintenance by PacifiCorp of its Electric Facilities. PacifiCorp shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of PacifiCorp's use of the Public Ways within the City, and shall pay the costs of defense plus reasonable attorneys' fees for any claim, demand or lien brought thereunder. The City shall: (a) give prompt written notice to PacifiCorp of any claim demand or lien with respect to which the City seeks indemnification hereunder; and (b) unless in the City's judgment a conflict of interest exists between the City and PacifiCorp with respect to such claim, demand or lien, permit PacifiCorp to assume the defense of such claim, demand, or lien with counsel satisfactory to the City. If the City unreasonably refuses to allow PacifiCorp to assume the defense, PacifiCorp shall not be subject to liability for any settlement made without its consent. Notwithstanding any provision hereof to the contrary, PacifiCorp shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or willful act or failure to act of the City or any of its officers or employees.

SECTION 7. Annexation.

7.1 Extension of City Limits. Upon the annexation of any territory to the City, the rights granted herein shall extend to the annexed territory to the extent the City has such authority. All Electrical Facilities owned, maintained, or operated by PacifiCorp located within any Public Ways of the annexed territory shall thereafter be subject to all of the terms hereof.

7.2 Notice of Annexation. When any territory is approved for annexation to the City, the City shall, not later than ten (10) working days after passage of an ordinance approving the proposed annexation, provide by certified mail to PacifiCorp: (a) each site address to be annexed as recorded on county assessment and tax rolls; (b) a legal description of the proposed boundary change; and (c) a copy of the City's ordinance approving the proposed annexation. The notice shall be mailed to:

PacifiCorp Customer Contact Center
P.O. Box 400
Portland, Oregon 97202-0400

With a copy to:

PacifiCorp
Attn: Office of the General Counsel
201 South Main Street, Suite 2200

Salt Lake City, UT 84111

SECTION 8. Plan, Design, Construction and Installation of Company Facilities.

8.1 All Electric Facilities installed or used under authority of this Franchise shall be used, constructed and maintained in accordance with applicable federal, state and city laws, codes and regulations.

8.2 Except in the case of an emergency, PacifiCorp shall, prior to commencing new construction or major reconstruction work in the Public Way or street or other public places, apply for a permit from the City which permit shall not be unreasonably withheld, conditioned, or delayed. PacifiCorp will abide by all applicable ordinances and all reasonable rules, regulations and requirements of the City, and the City may inspect the manner of such work and require remedies as may be necessary to assure compliance. Notwithstanding the foregoing, PacifiCorp shall not be obligated to obtain a permit to perform emergency repairs.

8.3 All Electric Facilities shall be located so as to cause minimum interference with the Public Ways of the City and shall be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with applicable rules, ordinances and regulations of the City.

8.4 If, during the course of work on its Electrical Facilities, PacifiCorp causes damage to or alters the Public Way or public property, PacifiCorp shall (at its own cost and expense and in a manner approved by the City) replace and restore it in as good a condition as existed before the work commenced.

8.5 In addition to the installation of underground electric distribution lines as provided by applicable state law and regulations, PacifiCorp shall, upon payment of all charges provided in its tariffs or their equivalent, place newly constructed electric distribution lines underground as may be required by City ordinance.

8.6 The City shall have the right without cost to use all poles and suitable overhead structures owned by PacifiCorp within Public Ways for City wires used in connection with its fire alarms, police signal systems, or other communications lines used for governmental purposes; provided, however, any such uses shall be for activities owned, operated or used by the City for a public purpose and shall not include the provision of CATV, internet, or similar services to the public. Provided further, that PacifiCorp shall assume no liability nor shall it incur, directly or indirectly, any additional expense in connection therewith, and the use of said poles and structures by the City shall be in such a manner as to prevent safety hazards or interferences, with PacifiCorp's use of same. Nothing herein shall be construed to require PacifiCorp to increase pole size, or alter the manner in which PacifiCorp attaches its equipment to poles, or alter the manner in which it operates and maintains its Electric Facilities. City attachments shall be installed and maintained in accordance with the reasonable requirements of PacifiCorp and the current edition of the National Electrical Safety Code pertaining to such construction. Further, City attachments shall be attached or installed only after written approval by PacifiCorp which approval shall not be unreasonably withheld, conditioned, or delayed.

8.7 PacifiCorp shall have the right to excavate the Public Ways subject to reasonable conditions and requirements of the City. Before installing new underground conduits or replacing existing underground conduits, PacifiCorp shall first notify the City of such work and shall allow the City, at its own expense, to share the trench of PacifiCorp to lay its own conduit therein, provided that such action by the City will not unreasonably interfere with PacifiCorp's Electric Facilities or delay project completion.

8.8 Before commencing any street improvements or other work within a Public Way that may affect PacifiCorp's Electric Facilities, the City shall notify PacifiCorp.

SECTION 9. Relocation of Electric Facilities.

9.1 The City reserves the right to require PacifiCorp to relocate its Electric Facilities within the Public Ways in the interest of public convenience, necessity, health, safety or welfare at no cost to the City. PacifiCorp shall promptly commence the relocation of its Electrical Facilities within a reasonable period of time after written notice to do so from the City. Before requiring a relocation of Electric Facilities, the City shall, with the assistance and consent of PacifiCorp, which consent shall not be unreasonably withheld, conditioned or delayed, identify a reasonable alignment for the relocated Electric Facilities within the Public Ways of the City. The City shall assign or otherwise transfer to PacifiCorp all right it may have to recover the cost for the relocation work and shall support the efforts of PacifiCorp to obtain reimbursement.

9.2 PacifiCorp shall not be obligated to pay the cost of any relocation that is required or made a condition of a private development. If the removal or relocation of facilities is caused directly or otherwise by an identifiable development of property in the area, or is made for the convenience of a customer, PacifiCorp may charge the expense of removal or relocation to the developer or customer. For example, PacifiCorp shall not be required to pay relocation costs in connections with a road widening or realignment where the road project is made a condition of or caused by a private development.

SECTION 10. Subdivision Plat Notification. Before the City approves any new subdivision, the City shall submit the plat for review to PacifiCorp. Upon approval of the plat, the City shall mail notification of such approval and a copy of the plat to PacifiCorp:

Utah Power
455 N Old Highway 91
Hurricane, UT 84737

SECTION 11. Trees and Vegetation Management. PacifiCorp or its contractor may prune all trees and vegetation which overhang the Public Ways to prevent the branches or limbs or other parts of such trees or vegetation from interfering with PacifiCorp's Electrical Facilities. Such pruning shall comply with the American National Standard for Tree Care Operation (ANSI A300) and be conducted under the direction of an arborist certified with the International Society of Arboriculture. A growth inhibitor treatment may be used for trees and vegetation species that are fast-growing and problematic. Nothing contained in this Section shall prevent PacifiCorp, when necessary and with the approval of the owner of

the property on which they may be located, from cutting down and removing any trees which overhang streets.

SECTION 12. Renewal. This Franchise shall automatically be renewed for another ten (10) year period unless either party, at least 120 days prior to the expiration of this Franchise, gives the other party: (a) notice of its desire to renegotiate the terms of this Franchise; or (b) notice of termination of this Franchise. During any such renegotiation period, the parties shall use best faith efforts to renegotiate a replacement Franchise and PacifiCorp shall have the continued right to use the Public Ways of the City as set forth herein.

SECTION 13. No Waiver. Neither the City nor PacifiCorp shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

SECTION 14. Transfer of Franchise. PacifiCorp shall not transfer or assign any rights under this Franchise to another entity, except transfers and assignments by operation of law, unless the City shall first give its approval in writing, which approval shall not be unreasonably withheld; provided, however, inclusion of this Franchise as property subject to the lien of PacifiCorp's mortgage(s) shall not constitute a transfer or assignment.

SECTION 15. Amendment. At any time during the term of this Franchise, the City, through its City Council, or PacifiCorp may propose amendments to this Franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired. Within a reasonable time thereafter, both parties, through their designated representatives, will negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). No amendment or amendments to this Franchise shall be effective until mutually agreed upon by the City and PacifiCorp and formally adopted as an ordinance amendment.

SECTION 16. Non-Contestability – Breach of Contract.

16.1 Neither the City nor PacifiCorp will take any action for the purpose of securing modification of this Franchise before either the Public Service Commission or any Court of competent jurisdiction; provided, however, that neither shall be precluded from taking any action it deems necessary to resolve difference in interpretation of the Franchise nor shall PacifiCorp be precluded from seeking relief from the Courts in the event Public Service Commission orders, rules or regulations conflict with or make performance under the Franchise illegal.

16.2 In the event PacifiCorp or the City fails to fulfill any of their respective obligations under this Franchise, the City or PacifiCorp, whichever the case may be, will have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided that no remedy which would have the effect of amending the specific provisions of this Franchise shall become effective without such action which would be necessary to formally amend the Franchise.

SECTION 17. Notices. Unless otherwise specified herein, all notices from PacifiCorp to the City pursuant to or concerning this Franchise shall be delivered to the City Recorder's Office. Unless otherwise specified herein, all notices from the City to PacifiCorp pursuant to or concerning this Franchise shall be delivered to the Executive Vice President of Utah Power & Light company at 201 South Main, 23rd Floor, Salt Lake City, Utah 84111 and such other office as PacifiCorp may advise the City of by written notice.

SECTION 18. Severability. If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority including any state or federal regulatory authority having jurisdiction thereof or unconstitutional, illegal or invalid by any court of common jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision thereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

Effective Date: This Ordinance shall become effective when executed by both the City and PacifiCorp.

PASSED AND ADOPTED BY THE IVINS CITY COUNCIL, STATE OF UTAH, ON THIS 21st DAY OF JULY, 2005 BY A UNANIMOUS VOTE.