

## **FIRE PROTECTION AND FIRE HYDRANT AGREEMENT**

***Between***

***BOULDER FARMSTEAD WATER COMPANY,***

***And***

***BOULDER TOWN***

This Fire Protection and Fire Hydrant Agreement {"Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024, between the Boulder Farmstead Water Company, a Utah non-profit corporation, of Boulder, Garfield County, State of Utah ("**Water Company**"), and Boulder Town, a municipal corporation, of Garfield County, State of Utah ("**Town**"). This Agreement supersedes all prior Agreements between the Water Company and Town.

### ***RECITALS***

- A. The Water Company is a non-profit company organized for the purpose of collecting and distributing culinary water to its patrons who are primarily residents of Boulder, Garfield County, State of Utah.
- B. The Town is a Municipal corporation organized for the purpose of providing various services to the persons and property within its boundaries, including fire protection.
- C. Town is authorized to enter into such agreements pursuant to Chapter 13, Title 11 of the Utah Code Annotated 1953, as amended, governmental entities can enter into agreements, Utah Code Section 10-1-202; and
- D. The culinary water supply within the area, including the water lines and hydrants, is owned by the Water Company.
- E. Parties desire to make reasonable efforts to provide fire protection for residents and their property for the area in which both parties operate.
- F. The Water Company shall provide maintenance and repair for the fire hydrants within the water system as part of its maintenance of its water distribution facilities. The Water Company's knowledge and expertise in performance of such responsibilities will prove mutually beneficial. Additionally, the Water Company shall benefit from direct control of hydrant flow testing, main flushing, and valve maintenance.

G. In consideration of this Agreement, the Town forgoes, and the Water Company acknowledges, any proceeds typically resulting from the Water Company's use of and benefit of Town's easements.

### ***AGREEMENT***

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

#### ***1. Duration of Agreement.***

This Agreement shall become effective upon execution by the parties. Subject to early termination as provided below, this Agreement shall be for a term of five (5) years from the date of this Agreement and thereafter shall automatically renew for additional **5-year** periods.

#### ***2. Termination of Agreement***

Either Party to this Agreement may terminate without cause at the end of the current five (5) year term by providing written notice six (6) months in advance of its intended termination date.

However, either Party shall maintain the absolute right to terminate this Agreement for acts constituting material breach of this Agreement and subsequently fails to cure the material breach within thirty (**30**) days after receipt of notice from the non-breaching party.

Parties expressly agree that the Town's failure to make any payment due to the Water Company under this Agreement shall constitute a material breach.

#### ***3. Use of Fire Hydrants***

3.1 The Water Company agrees to make available its water resources, pipelines, and hydrants to the Town for use in fire suppression training and in responding to fire emergencies at no charge by the Water Company to the Town.

3.2 Except in times of emergency, the Town agrees to provide notice to the Water Company operator(s) of any planned activity that involves the use of hydrants at least seventy-two (72) hours in advance to such activity and agrees to reschedule such activity upon the Water Company's reasonable request.

3.3 Except in times of emergency, the Town agrees that the Water Company will be given the opportunity to manage the use of hydrants for nonemergency activities such as training exercises to prevent harm to the water system.

3.4 The Town agrees to notify the Water Company operator(s) of any emergency requiring the use of hydrants as soon as practicable during the emergency or immediately

thereafter.

~~3.5 When the Town uses a hydrant for any purpose, the Town will connect to the hydrant using a double check backflow device and a gate valve.~~

#### ***4. Maintenance of Fire Hydrants***

4.1 The Water Company agrees to assume, maintain, repair, and test all fire hydrants in the water system according to standard AWWA M17.

4.2 The Town agrees to pay the cost for repair or replacement of any hydrant, equipment, or pipeline damaged through the use of the water system by the Town.

4.3 The Water Company is not financially responsible for the installation of additional fire hydrants, enlarging lines, or making other alterations. All such modifications or alterations will be constructed under the direction and control of the Water Company. The location of fire hydrants shall be consistent with the requirements of the Town's adopted fire code and as determined by the local fire code official and shall not be unreasonably denied (see UTAH ADMIN CODE R309-550-5).

4.4 Water Company shall provide snow removal around each hydrant in a timely manner in accordance with clearance requirements in NFPA 1.

4.5 Water Company shall immediately notify Town Fire Chief if a fire hydrant becomes non-serviceable for any reason and shall make reasonable efforts to return the hydrant to service as quickly as possible.

#### ***5. Fees***

5.1 The Town shall pay the Water Company an annual hydrant maintenance fee. Such fee shall be fixed for the duration of each five-year agreement period and shall not be subject to change during the applicable five-year term. For each year during the term of this Agreement, the fixed fee shall be an amount equal to (i) the number of existing fire hydrants within the water system at the beginning of each year, multiplied by (ii) the dollar amount set by the Water Company for the cost of maintaining each hydrant.

5.2 The fee charged to the Town by the Water Company for hydrant maintenance will begin upon execution of this Agreement at \$ \_\_\_\_\_ per hydrant per year.

5.3 Prior to the end of a five-year term, the Water Company may, with nine (9) months written notice, increase the fee to be charged to the Town for the next five-year term. However, the Water Company shall not be allowed to increase the fee by more than fifteen percent {15%} over the then-existing fee.

5.3 Water Company agrees to provide the Town an invoice at the beginning of each year of this Agreement. Payments are due within thirty (30) calendar days of receipt of such invoice.

Payments made after the due date are subject to a penalty of five percent (5%) of the amount due, plus interest at the rate of one percent {1%} per month from the time due until paid.

#### ***6. Indemnification***

The Town agrees to indemnify or hold harmless the Water Company from any and all damages, claims, or liability resulting from the Town's use of the fire hydrants and other water facilities.

Additionally, the Water Company agrees to indemnify or hold harmless the Town resulting from its providing this service. Should a fire hydrant fail, parties agree the Town is not liable for resulting damage.

#### ***7. Insurance requirements***

Water Company agrees to obtain and maintain liability coverage in minimum liability limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for its conduct creating liability exposures regarding this agreement. The insurance policy or policies shall provide coverage for those events that occur during the term of the policy, despite when the claim is made.

Water Company will furnish to Town certificates of insurance setting forth the amount of coverage, policy number and date(s) of expiration and shall provide at least sixty (60) days' prior written notice to Town of cancellation or material alteration of insurance.

#### ***8. Notices***

Unless otherwise specified in this Agreement, any notice or other communication required in writing shall be sent to the address given below for the party to be notified, or to such other address as may be provided:

If to Town:

PO Box 1329  
Boulder, UT 84716

If to Water Company:

PO Box 1356  
Boulder, UT 84716

Copy to:

J. Craig Smith

Smith Hartvigsen  
257 East 200 South, Suite 500  
Salt Lake City, UT 84111

## ***9. Miscellaneous Provisions***

9.1 Authorization to Contract. Each party represents and warrants that it has authorization to enter into this Agreement and therefore bind its agency in performance of its respective obligations.

9.2 Further Assurances. The parties shall execute and deliver such documents, agreements, instruments, and notices and shall take other such actions as may be necessary or appropriate to effectuate the intent and purpose of this Agreement.

9.3 Assignment: Binding Effect. This Agreement shall not be assigned without the written prior approval of the governing boards of the Parties.

9.4 Waiver. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any party of any condition, or of any breach of any term, covenant, representation, or warranty contained herein, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or waiver of any other condition or of any breach of any other term, covenant, representation or warranty.

9.5 Entire Agreement: Modification. This Agreement contains the entire agreement of the parties with respect to the matters addressed herein. This Agreement may not be amended without written consent of both parties.

9.6 Governing Law. This Agreement shall be governed by ,construed, and enforced in accordance with the laws of the State of Utah.

9.7 Headings. The headings which appear at the commencement of each section are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between any heading and the section itself, the section itself and not the heading shall control as to construction.

9.8 Time of the Essence. Time is of the essence in this Agreement.

9.9 No Third-Party Rights. Except for the parties indemnified pursuant to this Agreement, the parties expressly disclaim the creation of any right in any third party whatsoever under this Agreement. There are no third-party beneficiaries. The only parties who may enforce this Agreement and any of the rights under this Agreement are the parties here to.

9.10 Legal Relations. No liability shall attach to the parties by reason of entering into this

Agreement except as expressly provided herein.

9.11 Severability. If any section, paragraph, sentence or clause of this Agreement or any work order executed pursuant hereto is declared by a court of competent jurisdiction to be unenforceable or void by reason of public policy or otherwise, then the remaining provisions of such agreement shall nonetheless remain in force to the fullest extent permitted by law.

9.12 Litigation and Attorney Fees. In the event any action at law or in equity is instituted between the parties in connection with this Agreement, the prevailing party in the action will be entitled to its costs, including reasonable attorney fees and court costs, from the non-prevailing party.

IN WITNESS WHEREFORE, the parties have caused this Agreement to be executed as of the day and year written above.

***BOULDER FARMSTEAD WATER COMPANY:***

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Camille Hall  
Title: President

**Boulder Town:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Judy Drain  
Title: Mayor

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Jessica LeFevre  
Title: Town Clerk