

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 _____, 2023, 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**").

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. The only culinary water supply within the area, together with culinary water lines and hydrants, is owned by the Water Company.
- D. Both parties to this Agreement desire to make all reasonable effort to furnish adequate fire protection for residents and property within the area served by both parties.
- E. Both Parties recognize that the Water Company can provide certain maintenance and repair services for all fire hydrants in the water system in connection with maintenance of its water distribution facilities, that the Water Company's knowledge and expertise in performance of such responsibilities will be mutually beneficial to the Parties, and that the Water Company will benefit from the direct control of hydrant flow testing, main flushing, and valve maintenance.
- F.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenant 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 the Water Company or Boulder Town may terminate this Agreement without cause at the end of a five (5) year term upon six (6) months prior written notice to the other party. Either the Water Company or the Town shall have the right to terminate this Agreement for cause if the other party commits a material breach of this Agreement and fails to cure the material breach within **30** days after receipt of notice from the non-breaching party. The Town's failure to make any payment due 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 meeting 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 of any planned activity that involves the use of hydrants at least twenty-four (24) hours prior 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 of any emergency requiring the use of hydrants as soon as practicable during the emergency..

~~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 the responsibility for maintenance, repair, and testing on all fire hydrants in the water system which are now installed or may hereafter be installed.

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

4.3 The Water Company has no responsibility to install additional fire hydrants or enlarge lines or make other alterations to assist the Town in furnishing fire protection to residents. In the event such additions or alterations are deemed advisable by the Town, the modifications shall be made only with the express written consent of the Water Company, at the expense of the Town, and all such modifications or alterations will be constructed under the direction and control of the Water Company.

5. Fees

5.1 The Town shall pay to the Water Company an annual hydrant maintenance fee as provided herein. Such fee shall be fixed for the duration of each five-year agreement period, and shall not be subject to increase or decrease by either party based upon the actual cost of services provided 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 prior written notice, increase the fee to be charged to the Town for the next five-year term. The Water Company will not increase the fee by more than fifteen percent (15%) over the then-existing fee.

5.3 Water Company will invoice Town at the beginning of each year of this Agreement. Payments are due within thirty (30) calendar days of mailing. Payments made after the due date will be 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

As additional consideration for this agreement and the authorization for access to the Water Company's equipment, water lines, and resources, the Town agrees to indemnify the Water Company from any damages or claims of liability which may result from the Town's use of the fire hydrants and other water facilities.

7. 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 notice of which is given:

If to Town:

PO Box 1329
Boulder, UT 84716

If to Water Company:

PO Box 1356
Boulder, UT 84716 Copy

Copy to:

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

8. *Miscellaneous Provisions*

8.1 **Authorization to Contract.** Each party represents and warrants that it has full power and authority to enter into this Agreement and perform its obligations under this Agreement and has taken all required acts or actions necessary to authorize the same.

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

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

8.4 **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.

8.5 **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 except by written consent of both parties, nor may any of the terms, covenants, representations, warranties or conditions hereof be waived, except by a written instrument executed by the party against which such amendment is to be charged.

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

8.7 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.

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

8.9 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.

8.10 Legal Relations. No liability shall attach to the parties by reason of entering into this Agreement except as expressly provided herein.

8.11 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.

8.12 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: _____
Camille Hall
Title: President

Date: _____

Boulder Town:

By: _____
Judy Drain

Date: _____

Title: Mayor

By: _____

Jessica LeFevre

Title: Town Clerk

Date: _____