

## 20-FOOT FIRE HYDRANT EXCLUSIVE EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (hereafter referred to as "Grantor"), having an address at \_\_\_\_\_ and THE PARKER WATER AND SANITATION DISTRICT (hereafter referred to as "Grantee"), a Colorado special district and political subdivision having an address at 18100 E. Woodman Drive, Parker, Colorado 80134 (each a "Party" and collectively the "Parties").

WHEREAS, Grantee desires to install one or more fire hydrants and related facilities and connecting lines (collectively, the "Improvements") in or upon certain real property owned by Grantor and situated in Douglas County, Colorado, which real property is more particularly described and depicted in **Exhibit A**, attached hereto and incorporated herein (the "Easement Property"); and

WHEREAS, Grantor is willing to grant an easement to Grantee in the Easement Property for the aforesaid purposes, subject to the terms and provisions hereof.

NOW THEREFORE, for the consideration of Ten Dollars (\$10.00) paid to Grantor by Grantee, and for the additional consideration of the performance by the parties of the terms and conditions hereof, the receipt and adequacy of which is hereby acknowledged, Grantor does hereby grant to Grantee, and Grantee accepts from Grantor, the following Easement as hereinbelow set forth:

1. Grant of Easement. Grantor does hereby grant and convey to Grantee, its successors, assigns, lessees, licensees and agents, an exclusive perpetual easement upon, over, under, across and through the Easement Property for the purpose of Grantee's construction, reconstruction, operation, maintenance, repair, removal, and abandonment in place, of the Improvements as required by Grantee from time to time. Grantee shall have the right of ingress and egress over and across the adjacent lands of Grantor to and from the Easement Property as may be necessary in connection with Grantee's exercise of Grantee's easement rights set forth herein, provided that Grantee shall use existing roadways to the extent available and shall clean, cure and correct, as may be reasonably necessary, any property located adjacent to the Easement Property owned or maintained by the Grantor that may be damaged by such ingress and egress activities in accordance with Section 2.A, *infra*.

2. Covenants of Grantee. Grantee hereby represents, covenants and warrants in favor of Grantor and its successors and assigns as follows:

A. Grantee shall protect the Easement Property and the adjacent lands of Grantor over which Grantee has rights of ingress and egress from damage caused in whole or in part by acts or omissions of Grantee, its employees, agents, contractors, subcontractors, assigns, lessees, licensees and agents. Grantee shall keep all of the Easement Property reasonably clean and clear of equipment, building materials, dirt, debris and similar materials resulting from Grantee's activities. Grantee shall clean, cure and correct any such damage to any elements of the

Easement Property or the above-referenced adjacent lands. Upon completion of any of its activities that disturb the surface of the Easement Property, Grantee shall, at its expense, restore the Easement Property to substantially the condition it was in immediately prior to the initiation of such activities or subsequent restoration, except as otherwise provided herein or as necessarily modified to accommodate the Improvements. If Grantee fails to clean, cure or correct such damage within fourteen (14) days after notice thereof from Grantor, then Grantor may do so, at Grantee's expense. Notwithstanding any provision herein, Grantee shall have no obligation to clean, cure, or correct any damage to any private improvements in or on the Easement Property, including but not limited to, all privately-owned pavement, curbs, gutters, walks, streets, other utilities, structures and other improvements. For purposes of this Agreement, "private improvements" shall mean or refer to improvements not owned by a county or municipality.

B. In all activities undertaken on property belonging to Grantor, Grantee or its employees, agents, contractors, subcontractors, successors, assigns, lessees or licensees shall conduct and construct all work in a good and workmanlike manner.

C. Grantee shall not cause or permit to be caused by any of its employees, agents, contractors, subcontractors, successors, assigns, lessees or licensees, any hazardous substances, as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA"), pollutants, or contaminants, as defined by CERCLA or hazardous waste as defined by the Resource Conservation and Recovery Act ("RCRA"), including but not limited to asbestos, and/or urea formaldehyde, or any pollutants or toxic pollutants as defined by the Clean Water Act, and any amendments thereto, to be dumped, spilled, released, permanently stored, or deposited on, over, or beneath the Easement Property. Any hazardous, toxic or flammable substances use by Grantee, its employees, agents, contractors, subcontractors, successors, assigns, lessees or licensees in the construction, reconstruction, operation, maintenance or removal of the Improvements shall be utilized in a lawful manner and in compliance with all federal, state and local requirements relating to protection of health or the environment.

### 3. Grantor's Covenants.

A. Grantor covenants and agrees that during the term of this Agreement that Grantee's rights to the Easement Property shall be exclusive, except as expressly allowed herein. Grantor shall not plant within or allow to grow into the Easement Property any trees, bushes or other planted material that would interfere with the Grantee's use of the Easement Property, and shall not construct any buildings or other improvements within, over or upon the Easement Property without the prior written permission of the Grantee, except that Grantor may install roadways, sidewalks, curbs, gutters, and trails on the Easement Property without written permission, provided Grantor shall be responsible for repairing or replacing any private improvements damaged by Grantee's permitted activities in or on the Easement Property, including payment of the costs thereof, and provided they do not interfere with the Improvements.

B. To the fullest extent permitted by applicable law:

- i. Grantor hereby warrants title to the easement herein granted and conveyed to Grantee;
- ii. Grantor warrants that that the Easement Property is free and clear of all liens and encumbrances; and
- iii. Grantor agrees to protect and defend the title of the Grantee to the Easement Property from and against all persons whomsoever.

C. Grantor warrants and guarantees that it has the power and authority to grant the easement created by this Agreement.

4. Retained Rights of Grantor.

A. Grantor reserves the right of ownership, use and occupancy of the Easement Property insofar as said ownership, use and occupancy do not impair the rights granted to Grantee pursuant to this Agreement. Except for the rights reserved by Grantor set forth in this Subsection A, Grantee's rights hereunder are exclusive. Grantor shall not grant other easements or rights to use the Easement Property.

B. In the event that the construction of any other utilities, roadways, or other improvements upon, over, under or across the Easement Property or the violation of any of the warranties made by Grantor herein necessitates the relocation and/or encasement of the Improvements, then Grantor shall, at its sole cost and expense, timely perform or cause the performance of such relocation and/or encasement of the Improvements and shall provide a replacement easement for the relocation, if necessary, subject to Grantee's specifications. In the event Grantor does not relocate, encase the Improvements, and/or provide a new easement as required by Subsection B within a reasonable period of time, not to exceed ninety (90) days after notice thereof from Grantee, then Grantee may do so, at Grantor's expense.

5. Indemnification of Grantee by Grantor. Grantor agrees, and hereby does, to the fullest extent permitted by law, indemnify and hold harmless Grantee, any directors, officers employees and agents of Grantee, and any successors or assigns of Grantee, from any costs, expenses, damages, claims or demands incurred or asserted against Grantee as a result of or arising out of Grantor's warranties or covenants set forth herein.

6. Miscellaneous.

A. Subjacent and Lateral Support. Grantor and Grantee shall each have the right of subjacent and lateral support for the Easement Property; neither Grantor nor Grantee shall take any action that would impair the lateral or subjacent support for the Easement Property.

B. Binding Effect - Runs With Land. This Agreement shall extend to and be binding upon the successors and assigns of the respective Parties hereto. The rights and responsibilities set forth in this Agreement are intended to be covenants upon the Easement Property and are to run with the land.

C. Governing Law. The terms, covenants and provisions hereof shall be governed by and construed under the applicable laws of the State of Colorado, and exclusive venue for any action relating to this Agreement shall be with the District Court of Douglas County, Colorado.

D. Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto relating to the Easement and sets forth the rights, duties and obligations of each to the other as of this date. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force and effect. This Agreement may not be modified, except by a writing executed by both Parties.

E. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver, unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

F. Assignment. Grantee may assign or license all or a portion of its rights hereunder to another political subdivision of the State of Colorado, provided any assignee shall be bound by all terms and conditions set forth herein.

G. Severability. The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision. If any provision of this Agreement or the application thereof to any person, entity or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Agreement that can be given effect without the invalid provision or application, and to this end, the provisions of this Agreement and each and every provision thereof, are declared to be severable.

H. Counterpart Execution. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

I. No Third Party Beneficiary. The Parties enter into this Agreement for the sole benefit of the Parties, to the exclusion of any third-party, and no third-party beneficiary is intended or created by the execution of this Agreement.

J. Recording. This Agreement shall be recorded in the official records of the Douglas County Clerk and Recorder upon full execution.

IN WITNESS WHEREOF, the Parties hereto have executed this Easement by their respective duly authorized officers as of the date and year first above set forth.

*[Remainder of Page Intentionally Blank - Signatures on Following Page]*



**EXHIBIT A**

The Easement Property