

## TEMPORARY LIMITED EASEMENT AGREEMENT

THIS TEMPORARY LIMITED EASEMENT AGREEMENT (this "Agreement") is dated \_\_\_ (the "Effective Date") and is made and entered into between San Juan County, Utah, hereinafter referred to as the "County" and the \_\_\_\_\_, hereinafter referred to as the "Landowner."

### WITNESSETH:

**WHEREAS**, Landowner owns a parcel of land (the "Property") located in San Juan County in the Pack Creek Community and more particularly San Juan County parcel Number 000690000070 referenced in Exhibit "A", attached hereto and by this reference made a part hereof; and

**WHEREAS**, in response to the 2021 Pack Creek Fire and to mitigate the dangers of flooding onto Landowner's Land and adjacent properties from burn scar areas, the County desires to enter onto the Property, for the benefit of public safety and to protect property, to minimize erosion of topsoil and flooding by adding or upgrading systems for mitigation efforts known here after as the Improvements ("Improvements") referenced as attached in Exhibit "B"; and

**WHEREAS**, the U.S. Department of Agriculture, Natural Resources Conservation Service ("NRCS"), has agreed to provide engineering and funding for 75 percent of the costs of the San Juan Pack Creek Emergency Watershed Protection 2021 and Improvements, which includes community infrastructure and culinary water source projects; and

**WHEREAS**, the U.S. Department of Agriculture, Natural Resources Conservation Service requires 25 percent of the costs for the Improvements as a "local match" in order to meet the grant funding obligation of which the Pack Creek Water Company has agreed to provide coverage for the local match for the improvements located on or within this parcel in behalf of the Community; and

**WHEREAS**, Landowner wishes to allow the County, County Contractor and Sub-Contractors permission to enter onto the Property to install the Improvements and maintain them for a limited time.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### TERMS AND CONDITIONS

1. **Grant of Temporary Limited Easement.** The Landowner hereby conveys to the County and County Contractor, Sub-Contractor, Engineers, Inspectors and approved parties, a temporary limited easement on, over, and across the Property under the temporary and limited terms expressed herein, including the right of ingress and egress, to install and maintain the Improvements (the "Purpose"). The County and its employees, officers, officials, agents, contractors, sub-contractors, invitees, and licensees (collectively, "County's Agents") will have the right to enter upon the Property under this Agreement only for this Purpose. The County Agents will enter upon the Property at their sole risk and hazard.

2. **Term.** This Agreement and the temporary limited easement it describes begin on the Effective Date and continue for one (1) year thereafter, unless terminated earlier as provided in this Agreement.

3. **Authorization to Encroach.** The Landowner hereby acknowledges and consents to the construction of the Improvements detailed as attached in Exhibit "B". County shall not construct any other improvements, whether above or below ground, other than the Improvements as attached herein.

The Landowner shall have the right to request that the County submit plans showing the location and specific details of the Improvements before construction begins. Landowner reserves the right to use the Property for any and all purposes that do not interfere with the Purpose and the Improvements, including their construction and maintenance.

4. **Condition of the Property.** Landowner issues this temporary limited easement without any representations or warranties with respect to the title or condition of the Property. The County Acknowledges that the Property may not be suitable for the Improvements or the Purpose of this Agreement and that County has had an opportunity to inspect the condition and title of the Property to its satisfaction.

5. **Repair of the Property.** In a reasonable manner, the County shall promptly repair any material damage caused by the County and/or County's Agents to the Property not designated for removal, relocation, or replacement as part of constructing and maintaining the Improvements.

6. **Access to Constructed Improvements.** Once constructed and for the duration of this Agreement, the County and the County's Agents shall have access to the Improvements as necessary for inspection and to perform maintenance.

7. **Warranty.** The County will warranty the Improvements for a maximum of one (1) year after project completion. The County will work with Contractor's or Sub-contractor in making those repairs. All other repairs beyond the warranty period will be at the requirement of the Land Owner and Land Owner's expense.

8. **Ownership of Improvements.** The County shall own the Improvements and maintain them in good repair for the duration of this Agreement after which the Landowner shall assume ownership and maintenance of and, except as otherwise expressed in this Agreement, all liabilities associated with the Improvements.

9. **Hazardous Substances.** The County Agents agree not to generate, dispose of, or intentionally release any Hazardous Substances on the Property. As used in this Agreement, the term "Hazardous Substances" means all hazardous and toxic substances, wastes, or materials, including without limitation, hydrocarbons (including naturally occurring or man-made petroleum and hydrocarbons), flammable materials, explosives, urea formaldehyde insulation, radioactive materials, biologically hazardous substances, PCBs, pesticides, herbicides, and any other kind and/or type of pollutants or contaminants (including, without limitation, asbestos and raw materials which include hazardous constituents), sewage sludge, industrial slag, solvents and/or any other similar substances or materials which, because of toxic, flammable, ignitable, explosive, corrosive, reactive, radioactive, or other properties may be hazardous to human health or the environment and/or are included under, subject to or regulated by any hazardous waste or substance laws. The County agrees to notify the Landowner immediately upon becoming aware of any detrimental leaking or spillage of Hazardous Substances on the Property caused by County Agents.

10. **Termination.** Either party may terminate this Agreement on 30 days' notice to the other for any reason whatsoever. Otherwise, this Agreement terminates without notice from either party at the end of the term. On termination, the Improvements or any partial construction thereof become the property of Landowner and the Landowner's responsibility to maintain. In the event of early termination, the County does not waive and may pursue claims against the Landowner for injuries sustained due to the early termination.

11. **Liens.** The County shall keep the Property free from any and all liens arising out of any work performed, materials furnished, or obligations incurred by, though, for, or under the County related

to the Improvements, and shall indemnify, hold harmless, and agree to defend Landowner from any liens that may be placed on the Property pertaining to any work performed, materials furnished, or obligations incurred by, though, for, or under The County or any of County's Agents related to the Improvements.

12. **Compliance with Laws.** The County will comply with all present or future laws, statutes, codes, acts, ordinances, rules, regulations, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions, and agreements including without limitation any building, zoning, land use, and hazardous waste laws.

13. **Indemnification.** The County agrees to indemnify, defend, and hold harmless the Landowner from any and all lawsuits, causes of action, damages, losses, liens, liabilities, expenses, or claims whatsoever arising out of the construction of the Improvements over, upon, and across the Property or the resulting encroachment or use by the County, County's Agents, and any trespassers on the Property for the period of six (1) year after the termination of this agreement. Except as provided herein, the County waives and releases all rights, causes of action, or claims against the Landowner based on the construction of the Improvements over, upon, and across the Property. The County and its successors and assigns, hereby releases the Landowner from any claims relating to the condition of the Property and the entry upon the Property by the County and County's Agents implementing those Improvement as indicated on Exhibit "B", except for claims caused solely by the Landowner's actions.

14. **Entire Contract; Amendment.** This contract, including all attachments, if any, constitutes the entire understanding between the parties with respect to the subject matter in this contract. Unless otherwise set forth in this contract, this contract supersedes all other agreements, whether written or oral, between the parties with respect to the subject matter in this contract. No amendment to this contract will be effective unless it is in writing and signed by both parties.

15. **Governing Law; Exclusive Jurisdiction.** Utah law governs any Proceeding brought by one party against the other party arising out of this contract. If either party brings any Proceedings against the other party arising out of this contract, that party may bring that Proceeding only in a state court located in San Juan County, Utah (for claims that may only be resolved through the federal courts, only in a federal court located in Salt Lake City, Utah), and each party hereby submits to the exclusive jurisdiction of such courts for purposes of any such proceeding.

16. **Miscellaneous.** No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver. The Recitals set forth above are incorporated into this Agreement by reference. If any provision of this Agreement or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement and such provisions as applied to other persons, places, and circumstances shall remain in full force and effect; provided, however, such unenforceable provision is not materially adverse to the County. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument. This Agreement is intended to benefit solely the parties hereto and is not intended to benefit any third party.

*signatures on next page*

IN WITNESS WHEREOF, the parties hereto have set their hands and seal this \_\_\_\_ day of \_\_\_\_\_, 202 \_\_\_\_

\_\_\_\_\_  
Bruce Adams, San Juan County Commission Chairman

Attest

\_\_\_\_\_  
Lyman Duncan, San Juan County Clerk

\_\_\_\_\_  
Land Owner

Exhibit "A"

Property and Parcel No.

000690000070

Exhibit "B"