

## **RESEARCH AGREEMENT**

This Research Agreement (“Agreement”) is entered into by and between The Board of Governors of The Colorado State University System, acting by and through Colorado State University, an institution of higher education of the State of Colorado, located at Fort Collins, Colorado, 80523-2002 (“University”), and the Sponsor, The City of Greeley a Colorado home rule municipal corporation acting by and through its Water Enterprise (“Sponsor”), whose address is 1001 11<sup>th</sup> Avenue, 2<sup>nd</sup> Floor, Greeley, Colorado 80631, collectively referred to as “Parties,” and is effective upon the date of final signature by both Parties below (“Effective Date”).

### **PARTIES**

#### **UNIVERSITY:**

The Board of Governors of the Colorado State University System, acting by and through Colorado State University, an institution of higher education of the State of Colorado, located at Fort Collins, Colorado, 80523-2002  
Office of Sponsored Programs  
601 Howes Street, Ste 500  
Fort Collins, CO 80525-2002

#### **SPONSOR:**

The City of Greeley, a Colorado home rule municipal corporation, acting by and through its Water Enterprise  
Attn: Water and Sewer, Water Resources Division  
1001 11<sup>th</sup> Avenue, 2<sup>nd</sup> Floor  
Greeley, Colorado 80631

### **RECITALS**

1. University is a comprehensive, land-grant University with experience and resources in a field of mutual interest between University and Sponsor.
2. Sponsor is a home rule municipal corporation in Colorado, acting by and through its Water Enterprise.
3. On August 13, 2020, the Cameron Peak Fire ignited in the Cache la Poudre basin. It burned for over 100 days and eventually became Colorado’s largest recorded wildfire. Since the beginning of the Cameron Peak Fire, Sponsor has been coordinating partners, stakeholders, and experts to facilitate restoration opportunities to protect water quality, water supply, and river health.
4. The City of Greeley entered an agreement with the Colorado Department of Natural Resources (“DNR Agreement”) that awarded Sponsor money to facilitate landscape scale post-fire mitigation to protect critical watershed values, including mitigation by aerial application of wood mulch. A component of this work involves quantifying how wood mulch application affects the watershed.
5. Sponsor desires research to be performed in accordance with the Scope of Work described in Exhibit A, and with the terms outlined in this Agreement (the “Project”).
6. Performance of such research is consistent, compatible, and beneficial to the academic role and mission of the University as an institution of higher education.

### **AGREEMENT**

1. **Independent Contractors.** It is understood and agreed by the Parties that the University is an independent contractor with respect to the Sponsor and that this Agreement is not intended and shall not

be construed to create an employer/employee relationship or a joint venture relationship between the University and the Sponsor. The University shall be free from the direction and control of the Sponsor in the performance of the University's obligations under this Agreement, except that the Sponsor may indicate specifications, standards requirements and deliverables for satisfaction of the University's obligations under this Agreement.

2. **Term.** This Agreement shall begin on the Effective Date and shall terminate on August 27, 2025 unless sooner terminated as provided herein. The Term of this Agreement may be extended by mutual written agreement of the Parties.

3. **Scope of Work.** The University agrees to perform the research activities described in the Scope of Work, a copy of which is attached hereto as Exhibit A, under the direction and supervision of the University Principal Investigator and in accordance with any milestones or periodic deliverables specified in Exhibit A. The University Principal Investigator is Peter Nelson of the Department of Civil Engineering, who will be responsible for the technical direction of the Project.

4. **Payment.** The Sponsor agrees to pay the University for the Project performed under this Agreement in an amount not to exceed Two Hundred Three Thousand One Hundred Forty-Five Dollars (\$203,145.00) on a cost reimbursement basis. University will invoice not more than monthly based on actual expenditures. At the conclusion of the Project, the University will submit an invoice marked "Final". Sponsor shall pay invoices within 60 days of receipt from University.

If the Sponsor uses a purchase order or some other source document as a Sponsor method for paying invoices from the University and the purchase order or source document contains terms and conditions, those terms and conditions will be null and void and not applicable to this Agreement. The purchase order or source document is solely an internal Sponsor payment document.

In addition to the funds provided by Sponsor, the University will provide Two Hundred Three Thousand One Hundred Forty-Five (\$203,145.00) in cost share which it will document on its invoices as spent toward the Project.

5. **Source of Funds for Payment.** Sponsor has been awarded grant funds by the Colorado Department of Natural Resources that may be used for the research activities contemplated by this Agreement, as is more particularly described in the DNR Agreement, a copy of which is attached hereto as Exhibit B. Of the grant funds available pursuant to the DNR Agreement, and subject to the terms and conditions therein and in this Agreement, Sponsor will make available to the University for reimbursement the amounts described in Section 4 above and any such additional amounts properly invoiced under mutual extensions of this Agreement. Nothing in this Agreement is intended to obligate the Sponsor to commit the full entitlement of its grant funding under the DNR Agreement to the Project, or to reimburse the University for expenditures deemed ineligible under the DNR Agreement by the Colorado Department of Natural Resources.

6. **Reporting Requirements.** The University will provide reports on the progress of the research as required in the Scope of Work attached hereto as Exhibit A.

7. **Confidentiality.**

(a) Parties may have certain documents, data, information, and methodologies that are confidential and proprietary to that Party ("Confidential Information"). During the term of this Agreement, either Party may, as the "Disclosing Party," disclose its Confidential Information to the other Party (the "Recipient"), in writing, visually, or orally. If submitted other than in writing, the

Confidential Information shall be reduced to writing within 30 working days. Recipient shall receive and use the Confidential Information for the sole purpose of the performance of this Agreement, and for no other purpose (except as may be specifically authorized by the Disclosing Party, in writing). Recipient agrees not to make use of the Confidential Information except for research conducted under this Agreement and agrees not to disclose the Confidential Information to any third party or parties for a period of three (3) years after the end of this Agreement without the prior written consent of the Disclosing Party

(b) Recipient shall use reasonable efforts to preserve the confidentiality of the Confidential Information (using the same or similar protections as it would as if the Confidential Information were Recipient's own, and in any event, not less than reasonable care). Recipient shall obligate its affiliates with access to any portion of the Confidential Information to protect the proprietary nature of the Confidential Information at least to the extent set forth in this Section 7.

(c) "Confidential Information" shall not include, and Recipient shall have no obligation to refrain from disclosing or using, information which: is generally available to the public at the time of this Agreement; becomes part of the public domain or publicly known or available by publication or otherwise, not through any unauthorized act or omission of Recipient; is lawfully disclosed to the Recipient by third parties without breaching any obligation of non-use or confidentiality; or has been independently developed by persons in Recipient's employ, as proven with written records, or otherwise who have no contact with Confidential Information.

(d) In the event that Recipient is required by law to disclose Confidential Information, Recipient will promptly notify the Disclosing Party, and the Disclosing Party may, at its sole discretion and expense, initiate legal action to prevent, limit or condition such disclosure.

(e) Notwithstanding any other provision of this Agreement, a Party may retain one copy of the other Party's Confidential Information in its confidential files, for the sole purpose of establishing compliance with the terms hereof.

(f) To the extent the "Confidential Information" referenced in this Section 7 constitutes "State Confidential Information" as defined in the DNR Agreement, the Parties must maintain such information in accordance with Section 8 of the DNR Agreement.

8. **Publication.** The University, as a state institution of higher education, engages only in research that is compatible, consistent, and beneficial to its academic role and mission. Therefore, significant results of research activities must be reasonably available for publication. The Parties acknowledge that the University shall have the right to publish results including student theses and dissertations. The University agrees, however, that during the term of this Agreement and for six (6) months thereafter, the Sponsor shall have forty-five (45) days to review and comment on any proposed publication. Should Sponsor believe that any part of such publication would constitute the disclosure of Confidential Information as defined in Section 6 above or contain information that might be patentable as a result of this research, Sponsor will notify University in writing within such forty-five (45) day period, of the relevant material, and University shall delay publication of such article for up to an additional ninety (90) days in order to allow Sponsor to diligently pursue the filing of a patent application. University agrees that any Confidential Information supplied to it by the Sponsor will not be included in any published material without prior written approval by the Sponsor.

9. **Intellectual Property.** "Intellectual Property" as used herein shall mean all discoveries, inventions, methodologies, improvements, software (but not copyrightable works) conceived, made, discovered, and first reduced to practice in performance of the research under this Agreement ("IP"). IP

shall also mean any and all data, publications, and computer software and algorithms generated in performance of the research under this Agreement.

(a) Each Party shall require its employees to promptly disclose to its respective technology transfer office any IP. Each Party agrees to provide the other Party with a copy of each IP disclosure within thirty (30) days after the disclosure is made, and in addition, will provide the other Party with a written listing of all IP created pursuant to this Agreement within sixty (60) days from the expiration or termination of this Agreement. For all such IP identified, University, through its Technology Transfer Agent, Colorado State University Research Foundation (CSURF) will provide, upon agreement by Sponsor to its payment of patent costs to CSURF, via separate written agreement(s), licenses to UNIVERSITY IP and JOINT IP according to the provisions of Section 8(a)(i) and 8(a)(iii) above. Each Party will consult with the other Party at least thirty (30) days prior to filing any patent or copyright application for IP and shall promptly notify the other of any patents or copyright registrations issued.

(b) Intellectual property created external to the Project (“EXTERNAL IP”) will be owned by the originating Party. Nothing in this Agreement will be construed as any conferral of rights to any of the Parties regarding such EXTERNAL IP. Nothing contained herein is to be construed as permission, a recommendation or an inducement to use or practice any product, process, equipment or formulation that may infringe upon any other intellectual property rights without the prior written permission of the intellectual property owner.

(c) University does not make any representation or warranty, express or implied, that the use of UNIVERSITY IP and/or JOINT IP will not infringe any patent or other intellectual property rights.

(d) All rights and claims by either Party under this Section 8 are subject to the rights and claims of the State of Colorado under the DNR Agreement, provided however, that DNR and Sponsor provide Colorado State University with a non-exclusive, royalty-free, perpetual license to any and all IP developed in performance of University’s research under this Agreement for research and educational purposes.

10. **Equipment.** Unless otherwise provided in the Scope of Work or in a writing signed by the Parties, all equipment purchased with funds provided under this Agreement for use in connection with this Agreement shall be the property of the University, and shall be dedicated to providing services under this Agreement while this Agreement is in effect.

11. **Grant Funding and Revenues.** University and Sponsor acknowledge that the Project and associated activities undertaken pursuant to this Agreement constitute one aspect of a larger regional and national policy objective, that is, to mitigate and rehabilitate the impacts of the Cameron Peak Fire, and that Sponsor is facilitating the Project and associated activities for the benefit of all water users and other parties with an interest in the Cache la Poudre basin. Any grant funding received, passed through, or otherwise managed by Sponsor pursuant to this Agreement is for the purposes of the greater policy objective and the common benefit of the parties described, and will not result in a revenue subsidy or production of a capital asset for the Water Enterprise of the City of Greeley.

12. **Liability; Insurance.** Each Party hereto agrees to be responsible for its own wrongful or negligent acts or omissions, or those of its officers, agents, or employees to the full extent allowed by law. Liability of the University and of the Sponsor is at all times herein strictly limited and controlled by the provisions of the Colorado government Immunity Act, C.R.S. §§ 24-10-101, *et seq.* as now or hereafter amended. Nothing in this Agreement shall be construed as a waiver of the protections of said Act by

either Party. Each Party represents and warrants that it maintains comprehensive general liability insurance and all coverages required by law sufficient for the purpose of carrying out the duties and obligations arising under this Agreement. A Party will furnish the other Party a certificate evidencing such insurance upon written request.

13. **Exclusive Warranty; Disclaimer.** University warrants that all deliverables provided under this Agreement will be provided substantially in accordance with the Scope of Work and/or written protocol provided by Sponsor. Research results, deliverables, reports, IP disclosures and IP provided by University are provided strictly “as-is” without any other warranty or guaranty of any kind. All other warranties, express and implied, are hereby expressly disclaimed **INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE**. University does not perform any services under this Agreement that may be subject to FDA Regulations, e.g. GMP, cGMP, GLP, GCP work/services. University shall not be liable for any indirect, special, incidental, consequential or punitive loss or damage of any kind, including but not limited to lost profits (regardless of whether or not University knows or should know of the possibility of such loss or damages). The liability of either Party under this Agreement shall not exceed the amount paid or payable to the University under this Agreement.

14. **Use of Tradenames and Service Marks.** Neither Party obtains by this Agreement any right, title, or interest in, or any right to reproduce or to use for any purpose, the name, tradenames, trade- or service marks, or logos (the “Marks”), or the copyrights of the other Party. Neither Party will include the name of the other Party or of any employee of that Party in any advertising, sales promotion, or other publicity matter without the prior written approval of that other Party. In the case of the University, prior written approval is required from the University Vice President for Research. In the case of the Sponsor, prior written approval is required from an authorized representative of the Sponsor.

15. **Termination.** Either Party may terminate this Agreement, without cause, upon not less than sixty (60) days' written notice, given in accordance with the Notice provisions of this Agreement. Termination of this Agreement shall not relieve a Party from its obligations incurred prior to the termination date. Upon termination of this Agreement by Sponsor, except in the case of a material breach by University, Sponsor shall pay all costs accrued by University as of the date of termination including non-cancelable obligations for the term of this Agreement, which shall include all appointments of staff incurred prior to the effective date of the termination. University shall take steps to limit or terminate any outstanding financial commitments for which Sponsor is to be liable. University shall furnish, within ninety (90) days of the effective termination date, a final report of all costs incurred and all funds received and shall reimburse Sponsor for payments which may have been advanced in excess of total costs incurred with no further obligations to Sponsor.

16. **Default.** A Party will be considered in default of its obligations under this Agreement if such Party should fail to observe, to comply with, or to perform any term, condition, or covenant contained in this Agreement and such failure continues for thirty (30) days after the non-defaulting Party gives the defaulting Party written notice thereof. In the event of default, the non-defaulting Party, upon written notice to the defaulting Party, may terminate this Agreement as of the date specified in the notice, and may seek such other and further relief as may be provided by law. Notwithstanding the foregoing, in the event of a breach or threatened breach of Section 7 of this Agreement, the non-defaulting Party may terminate the Agreement immediately without affording the defaulting Party the opportunity to cure, and may seek an injunction or restraining order as required to prevent unauthorized disclosures of Confidential Information or unauthorized use of its Marks or copyrights.

17. **Notices.** All notices and other correspondence related to this Agreement shall be in writing and shall be effective when delivered by: (i) certified mail with return receipt, (ii) hand delivery with

signature or delivery receipt provided by a third Party courier service (such as FedEx, UPS, etc.), or (iii) email with return receipt, to the designated representative of the Party as indicated below. A Party may change its designated representative for notice purposes at any time by written notice to the other Party. The initial representatives of the Parties are as follows:

**University:**

Director  
Office of Sponsored Programs  
500 University Services Center  
601 So. Howes Street  
Colorado State University  
Fort Collins, CO 80523-2002  
Telephone: (970) 491-1541  
E-mail: sp@research@colostate.edu and  
Bill.Moseley@colostate.edu

**Sponsor:**

City of Greeley Water and Sewer Department  
Attn: Water Resources Division  
1001 11<sup>th</sup> Avenue, 2<sup>nd</sup> Floor  
Greeley, CO 80631  
Telephone: (970) 350-9811  
E-mail: water@greeleygov.com and  
jennifer.petrzelka@greeleygov.com

18. **Legal Authority.** Each Party to this Agreement warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, bylaws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind it to its terms. The person(s) executing this agreement on behalf of a Party warrant(s) that such person(s) have full authorization to execute this Agreement. This Agreement shall not be binding upon Colorado State University, its governing board or the State of Colorado unless signed by the University Vice-President for Research or his/her authorized delegate.

19. **Entire Agreement; Changes and Amendments.** This Agreement constitutes the entire agreement between the Parties, and supersedes any previous contracts, understandings, or agreements of the Parties, whether verbal or written, concerning the subject matter of this Agreement. No amendment to this Agreement shall be valid unless it is made in a writing signed by the authorized representatives of the Parties.

20. **Governing Law, Jurisdiction and Venue.** Each Party agrees to comply with all applicable federal, state and local laws, codes, regulations, rules, and orders in the performance of this Agreement. This Agreement shall be governed by and construed under the laws of the State of Colorado. Any claim arising under this Agreement shall be filed and tried in a court of competent jurisdiction in the City and County of Denver, State of Colorado.

21. **Assignment.** This Agreement shall not be assigned without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, provided however, such consent shall not be required in the case of a sale or transfer to a third Party of all or substantially all of a Party's business. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding on the successors and permitted assigns of the Parties.

22. **Export of Technology.** It is understood that University and Sponsor are subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities, and that obligations hereunder are contingent on compliance with applicable U.S. export laws and regulations (including the Arms Export Control Act, as amended, and the Export Administration Act of 1979). The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States Government and/or written assurances that such data or commodities will not be exported to certain foreign countries without prior approval of the cognizant government agency. Sponsor and University agree to cooperate in securing any license which the

cognizant agency deems necessary in connection with this Agreement. Sponsor shall notify University if any data or materials to be supplied to University by Sponsor are subject to export control license requirements or are listed under export control regulations.

23. **Waiver and Severability.** No waiver of any breach of any provision of this Agreement shall operate as a waiver of any other or subsequent breach thereof or of the provision itself, or of any other provision. No provision of this Agreement shall be deemed to have been waived unless such waiver is in writing and signed by the Party waiving the same, with the signature on behalf of University being that of a vice president of University and the signature on behalf of Sponsor being that of the Director of Water and Sewer. If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect.

24. **Conflict of Interest.** Except as set forth herein, Sponsor certifies that no officer, employee, student or agent of University has been employed, retained, or paid a fee, or has otherwise received or will receive during the term of this Agreement any personal compensation or consideration by or from Sponsor or any of Sponsor's directors, officers, employees, or agents in connection with the obtaining, arranging, negotiation or conducting of this Agreement without advance, written notification to the University.

25. **Headings.** Section headings are for reference and convenience only and shall not be determinative of the meaning or the interpretation of the language of this Agreement.

26. **Force Majeure.** Neither party shall be liable for any failure or delay in performance under this Agreement for causes beyond that party's reasonable control and occurring without that party's fault or negligence, including, but not limited to, acts of God, disease, epidemic, acts of government, flood, fire, civil unrest, acts of terror, strikes or other labor problems (other than those involving that party's employees, respectively). Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

27. **Survival.** The respective rights and obligations of University and Sponsor under Sections 7, 8, 9, 13, 14 and 20 shall survive the expiration or earlier termination of this Agreement.

28. **Compliance with DNR Agreement.** The DNR Agreement attached as Exhibit B may create obligations for University. University is solely responsible for its own review and understanding of the terms and requirements of the DNR Agreement and shall ensure that it complies fully with such requirements in performing under this Agreement.

29. **Compliance with Law.** This Agreement is funded through a grant from DNR. University shall comply with all applicable laws and regulations and restrictions associated with this grant and any other requirements that the State may prescribe. In performing under this Agreement, University shall further comply with all applicable federal, State, and local laws and implementing regulations, currently in existence and as hereafter amended.

30. **Permits, Licenses, and Other Authorizations.** University shall, at its sole expense, secure and maintain at all times during the term of this Agreement, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement.

31. **Public Contracts for Services. §§8-17.5-101, et seq., C.R.S.** University and Sponsor certify that they shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year written below.

**The Board of Governors of the Colorado State University  
System, acting by and through Colorado State University:**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**The City of Greeley, a Colorado home rule municipal corporation,  
acting by and through its Water Enterprise**

By: \_\_\_\_\_  
City Manager

Date: \_\_\_\_\_

As to Legal Form:

By: \_\_\_\_\_  
City Attorney

As to Availability of Funds:

By: \_\_\_\_\_  
Director of Finance



**EXHIBIT A TO RESEARCH AGREEMENT**

**Scope of Work**

**EXHIBIT B TO RESEARCH AGREEMENT**

**DNR Agreement**