

## **SECOND REIMBURSEMENT AGREEMENT FOR WILDFIRE MITIGATION AND REHABILITATION SERVICES**

This SECOND REIMBURSEMENT AGREEMENT FOR WILDFIRE MITIGATION AND REHABILITATION SERVICES (“Agreement”) is entered into this 11<sup>th</sup> day of February, 2022, by and between THE CITY OF GREELEY, a Colorado home rule municipal corporation acting by and through its Water Enterprise (“Greeley”) and the COALITION FOR THE Poudre RIVER WATERSHED, a Colorado non-profit corporation (“CPRW”) (collectively, the “Parties”).

### **Recitals**

- A. CPRW is a Colorado registered non-profit corporation organized to promote the ecological health of the Cache la Poudre River through collaboration with a broad range of stakeholders. CPRW has been designated a Section 501(c)(3) charitable organization by the Internal Revenue Service.
- B. Greeley is a municipal water provider who utilizes source water from the Cache la Poudre River.
- C. The 2020 Cameron Peak Fire burned over 200,000 acres in the watersheds of the Cache la Poudre and Big Thompson Rivers, including acreage upon both public and private properties, and caused severe impacts to public infrastructure serving properties throughout Larimer and Weld Counties, including, without limitation, water supply infrastructure.
- D. Greeley and CPRW previously entered into that certain Reimbursement Agreement for Wildfire Mitigation and Rehabilitation Services dated August 18, 2021, which allows for the reimbursement of Greeley by CPRW for certain wildfire mitigation and rehabilitation work with grant funding obtained by CPRW.
- E. The Colorado Water Conservation Board (“CWCB”) has since awarded Greeley two phases of grant funding that it can use for Cameron Peak Fire mitigation and rehabilitation measures and to pay CPRW for staff time used to manage post-fire projects (“Greeley Grants”).
- F. In accordance with the terms and conditions of the Greeley Grants, such measures may include, without limitation, mitigating hillslope erosion and sediment delivery in the watershed via landscape-scale mulching, monitoring post-fire water supply infrastructure and water quality impacts, addressing unanticipated needs in the burn area, and educating and engaging affected landowners and stakeholders concerning post-fire land stewardship.
- G. Greeley and CPRW have a strong common interest in protecting the upper Cache la Poudre River watershed, and desire to continue their coordination on the recovery measures and mitigation efforts employed in response to the Cameron Peak Fire.

- G. Coordination by Greeley and CPRW, including on the engagement of one or more contractors to undertake recovery measures and mitigation efforts in the upper Cache la Poudre River watershed, will increase the efficiency of such efforts and significantly reduce the likelihood of duplicative and counterproductive efforts in response to the Cameron Peak Fire.
- H. Greeley and CPRW have reached an understanding regarding their continued coordination on recovery measures and mitigation efforts in response to the Cameron Peak Fire, and desire to reduce their understanding to writing.

### Agreement

Therefore, in consideration of the above-recited premises and the promises set forth below, the Parties agree as follows:

1. Term of Reimbursement Agreement. The term of this Agreement commences on the date it is mutually executed and expires after one year (“Initial Term”). Upon expiration of the Initial Term, this Agreement will automatically renew for successive terms of one year each, unless and until terminated by either Greeley or CPRW in accordance with Paragraphs 5 and 6 below. Additionally, Greeley may terminate this Agreement with immediate effect at any point that reimbursement funds to which Greeley may be entitled under the Greeley Grants are fully expended or otherwise no longer available.
2. Sources of Funding; General Compliance with Greeley Grants. As of the execution of this Agreement, Greeley has been awarded \$3,000,000 in grant funding by CWCB from its Watershed Restoration Program (Phase 2). Of this amount, and subject to the terms of this Agreement, Greeley will make \$245,550 available for reimbursement to CPRW. Greeley has also been awarded \$6,307,336.60 in grant funding by CWCB from its Watershed Restoration Program (Phase 3). Of this amount, and subject to the terms of this Agreement, Greeley will make \$1,567,680 available for reimbursement to CPRW. Greeley and CPRW agree that any coordinated and collaborative activities undertaken pursuant to this Agreement, and any potential reimbursement to CPRW for such activities, are expressly subject to compliance with the terms and conditions of the Greeley Grants. CPRW acknowledges that Greeley is engaged in multiple watershed protection projects in response to the Cameron Peak Fire, and that accordingly, nothing in this Agreement obligates Greeley to commit the full entitlement of its grant awards related to the Cameron Peak Fire to mitigation efforts undertaken by CPRW pursuant to this Agreement. Nothing in this Agreement shall prevent either CPRW or Greeley from seeking additional grant funding for the recovery measures and mitigation efforts contemplated herein.
3. Coordination on Mitigation Efforts; Apportionment of Costs and Duties. CPRW will select one or more contractors to perform services necessary to mitigate existing and future damage to the upper Cache la Poudre River watershed caused by the Cameron Peak Fire (“Mitigation Tasks”), and remit payment for such services directly to the selected contractor(s). Greeley will then reimburse CPRW for such funds paid to the selected contractor(s) for Mitigation Tasks, subject to the terms and conditions in this Agreement and the Greeley Grants.

3.1 CPRW shall coordinate with Greeley, and CWCB as necessary or appropriate, in selecting the contractor(s) to perform the Mitigation Tasks to ensure that such selection is consistent with the terms and conditions of the Greeley Grants.

3.2 CPRW shall provide Greeley, and CWCB as necessary or appropriate, with an opportunity to review in advance any designs, plans, scopes and schedules of work, and any other materials associated with the Mitigation Tasks to be performed by the selected contractor(s), to ensure that such designs, plans, scopes and schedules of work, and any other materials comply with the terms and conditions of the Greeley Grants.

3.3 CPRW shall provide Greeley, and CWCB as necessary or appropriate, with an opportunity to inspect the Mitigation Tasks performed by the selected contractor(s), to ensure compliance with the terms and conditions of the Greeley Grants.

3.4 Promptly after remitting payment to the selected contractor(s) for Mitigation Tasks, CPRW shall provide to Greeley a copy of any invoice for which it seeks reimbursement pursuant to this Agreement, along with any necessary supporting documentation. Greeley shall then promptly forward the invoice and supporting documentation to CWCB as necessary or appropriate for reimbursement consideration, in accordance with the terms and conditions of the Greeley Grants. Subject to and upon confirmation from CWCB that any invoice forwarded as described herein contains eligible reimbursement costs pursuant to the Greeley Grants, Greeley shall reimburse CPRW within 30 days of such confirmation.

3.5 Greeley shall not be obligated under any circumstances to reimburse CPRW for costs determined by CWCB to be ineligible under the Greeley Grants, or costs for which Greeley itself will not ultimately be reimbursed by CWCB. Reimbursements made by Greeley to CPRW shall not under any circumstances exceed the total amount of grant funding to which Greeley is entitled pursuant to the Greeley Grants.

3.6 CPRW shall use reasonable efforts to complete any other task required of it by CWCB to ensure compliance with the Greeley Grants, provided that CPRW shall not be required to incur any material expense in the course of such efforts.

3.7 Notwithstanding any other provision of this Agreement, Greeley's sole responsibility regarding the Mitigation Tasks and associated activities is to reimburse CPRW for those Mitigation Tasks and associated activities that are eligible for reimbursement under the terms of the Greeley Grants and this Agreement. Greeley shall have no input on, and does not warrant, the suitability, safety, effectiveness, appropriateness, or integrity of such Mitigation Tasks and associated activities for their intended purpose, which is strictly the responsibility of CPRW and its contractors.

4. Restriction on Assignment. Neither Greeley nor CPRW may assign this Agreement without prior written consent from the other party. Such consent may be given or withheld in the sole discretion of the other party.

5. Notice. Greeley and CPRW shall give any notice required under this Agreement using the contact information listed below. Such notice is adequate if (a) hand-delivered, (b) provided by certified or registered mail, return receipt requested, or (c) sent via email, if receipt is acknowledged or no bounce back or other notice of delivery disruption is received by the sender within three days after transmittal. Greeley and CPRW shall promptly notify the other party if the appropriate contact information for notice changes.

If to Greeley: Greeley Water and Sewer Department  
Attention: Water Resources Division  
1001 11th Avenue, 2nd Floor  
Greeley, Colorado 80631  
Telephone: (970) 350-9811  
Email: jennifer.petrzelka@greeleygov.com  
adam.jokerst@greeleygov.com

With a copy to: Greeley City Attorney's Office  
Attention: Environmental and Water Resources Counsel  
1100 10th Street, Suite 401  
Greeley, Colorado 80631  
Telephone: (970) 381-7408  
Email: daniel.biwer@greeleygov.com

If to CPRW: Coalition for the Poudre River Watershed  
Attn: Hally Strevey, Executive Director  
320 East Vine Drive, Suite 317  
Fort Collins, Colorado 80524  
Telephone: (970) 222-5754  
Email: hallys@poudrewatershed.org

6. Default and Termination; Waiver. In the event either Greeley or CPRW fails to comply with the terms and conditions of this Agreement, such failure constitutes a default, and the non-defaulting party may give notice of the perceived default in accordance with Paragraph 5 above. The defaulting party is then entitled to a period of 30 days from receipt of the notice within which to cure the default. Upon the cure of any such default during this period, this Agreement will remain in full force and effect.

6.1 If any declared default remains uncured after the 30-day cure period described above, or after any extension of the cure period mutually agreed to by the Parties, the non-defaulting party may immediately terminate this Agreement with written notice to the defaulting party. Nothing in this Agreement should be construed to limit either party from seeking damages or pursuing available remedies upon termination of this Agreement for default, including the recovery of reasonable costs and attorneys' fees.

6.2 The failure of either Greeley or CPRW to declare a default shall not establish a precedent or otherwise waive any subsequent breach of the terms and conditions in this Agreement. Any such waiver of breach must be made explicitly in writing.

7. Governmental Immunity and Liability. Greeley is a public entity, as that term is defined pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as it exists now or is amended in the future (“CGIA”). Nothing in this Agreement limits or alters the benefits and responsibilities conferred to Greeley under the CGIA. Greeley and CPRW shall defend, in accordance with the requirements and limitations of the CGIA, all claims for injuries or damages resulting from the acts or omissions of their respective officers, employees, or agents. Greeley and CPRW shall be responsible for all liability for injuries or damages to the extent caused by the acts or omissions of their respective officers, employees, or agents performing under this Agreement.

8. Appropriation of Funds Contingency. Any expenditure of City funds by Greeley associated with this Agreement is expressly subject to the appropriation of funds sufficient and intended for this purpose by its City Council during the fiscal year in which any such obligation is incurred.

9. Grant Funding and Revenues. CPRW and Greeley acknowledge that the Mitigation Tasks facilitated 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 Greeley’s role in facilitating the Mitigation Tasks is for the benefit of all water users and other parties with an interest in the Cache la Poudre River watershed. Any grant funding received, passed through, or otherwise managed by Greeley 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.

10. Jurisdiction and Venue. This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. Proper venue for any dispute between Greeley and CPRW arising out of this Agreement is the Weld County District Court.

11. No Third-Party Beneficiaries. The terms and conditions of this Agreement, and all rights of action related thereto, are strictly reserved to Greeley and CPRW. Nothing in this Agreement should be construed to allow any claim, right, or cause of action by any person or entity not a party to this Agreement. Any person or entity other than Greeley or CPRW that realizes a service or benefit under this Agreement is an incidental beneficiary only.

12. Integration and Amendment. This Agreement constitutes a complete integration of the understanding and agreement between Greeley and CPRW with respect to the subject matter herein. No representation, negotiation, or warranty, express or implied, exists between Greeley and CPRW except as explicitly set forth in this Agreement. This Agreement may only be amended in a writing duly authorized and executed by Greeley and CPRW.

13. Severability. If any provision in this Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement will nevertheless be valid and binding upon Greeley and CPRW, unless the absence of such provision would destroy the intent and purpose of this Agreement.

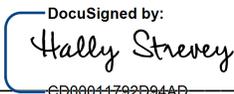
14. Review by Legal Counsel. Greeley and CPRW acknowledge that each party had the opportunity to review this Agreement with its respective legal counsel, and that this Agreement should not be construed nor interpreted against a drafting party.

15. Authority to Contract. This Agreement has been duly authorized by Greeley and CPRW and the undersigned representatives are empowered to execute this Agreement on behalf of their respective organizations.

16. Counterparts. The Parties may execute this Agreement in counterparts, each of which and the combination of which when signed by both Greeley and CPRW may be deemed original and together constitute a single contract.

IN WITNESS WHEREOF, the City of Greeley and Coalition for the Poudre River Watershed have executed this Agreement on the date first set forth above.

COALITION FOR THE POUDBRE RIVER WATERSHED  
a Colorado Non-profit Corporation

By:   
Hally Strevey, Executive Director

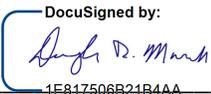
Date: 2/11/2022

THE CITY OF GREELEY, COLORADO  
a Colorado Home Rule Municipal Corporation  
acting by and through its Water Enterprise

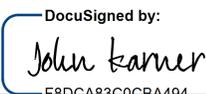
By:   
Raymond Lee, City Manager

Date: 2/11/2022

Approved as to Legal Form:

By:   
Douglas Marek, City Attorney

As to Availability of Funds:

By:   
John Karner, Director of Finance