

CAMERON PEAK WILDFIRE
PROJECT MANAGEMENT PROFESSIONAL SERVICES AGREEMENT

This CAMERON PEAK WILDFIRE PROJECT MANAGEMENT PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into this 18 day of August 2021 ("Effective Date"), by and between COALITION FOR THE POUDDRE RIVER WATERSHED, a Colorado nonprofit corporation ("CPRW") and THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation acting by and through its Water Enterprise ("City" or "Greeley").

Recitals

WHEREAS, 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; and

WHEREAS, Greeley and CPRW are actively working with other stakeholder partners throughout the affected region to coordinate efforts in response to the Cameron Peak Fire, in part to ensure that available grant funding obtained is used efficiently and effectively to mitigate and rehabilitate the impacts of the Fire; and

WHEREAS, to that end, Greeley entered into that certain Intergovernmental Agreement regarding Rehabilitation Work for the Cameron Peak Fire with the City of Fort Collins and Larimer County, dated April 29, 2021 and attached hereto as Exhibit A ("Cameron Peak Rehabilitation IGA"); and

WHEREAS, Greeley desires to retain CPRW to perform project management services associated with the coordinated mitigation and rehabilitation activities in response to the Cameron Peak Fire, as is contemplated by and more particularly described in paragraph 8 of the Cameron Peak Rehabilitation IGA;

WHEREAS, Greeley and CPRW have reached an understanding regarding the terms and conditions by which CPRW will provide such project management services, and desire to reduce that understanding to writing; and

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Greeley and CPRW agree as follows.

Agreement

1. **Term of Agreement.** The term of this Agreement commences upon its mutual execution by Greeley and CPRW, and expires after a period of five (5) years.

2. **CPRW Project Management Services.** CPRW hereby agrees to provide project management services for wildfire mitigation and rehabilitation activities to Greeley, as contemplated by paragraph 8 of the Cameron Peak Rehabilitation IGA, and in accordance with the scope of services attached hereto as Exhibit B ("Scope of Work"). The project management services provided by CPRW shall be under the direction of the individual (or individuals) designated by the Director of Water and Sewer to act as the City's representative during the performance of this Agreement ("Greeley Representative"). The Greeley Representative will be the primary point of contact for CPRW for purposes of this Agreement, and will provide CPRW all necessary technical information related to the project management services required by this Agreement. The Greeley Representative will remain available to CPRW as necessary and appropriate, and to refine strategy as circumstances require.

2.1 Payment for Project Management Services. The City shall pay CPRW for services satisfactorily performed, based on sum not to exceed one hundred and fifteen thousand dollars (\$115,000.00). CPRW will bill the City on an annual basis for services to be rendered in the following year and allowable costs and expenses incurred in the prior year toward the completion of the Scope of Work described on Exhibit B. The amounts billed shall include an annual amount of twenty-three thousand dollars (\$23,000.00) for services to be rendered in the following calendar year. CPRW shall submit a Request for Payment for allowable costs and expenses for services rendered in the prior calendar year. CPRW shall track expenditures and inform the City of any reasonably anticipated cost overrun prior to completing work that would exceed the maximum Agreement sum. The City may choose to increase the budget for the work using a mutually acceptable amendment to this Agreement or it may choose not to increase the budget and terminate the work accordingly. Invoices received from CPRW pursuant to this Agreement will be reviewed by the Greeley Representative for conformity with the Agreement and, if approved, sent to the Finance Department for payment. Payment by the City for services performed by CPRW under this Agreement from resources attributable to grant funding, including, without limitation, from the NRCS Emergency Watershed Protection Program, is subject to the terms and conditions of the grant award.

3. Truth in Negotiation Certificate. Signature of this Agreement by CPRW shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the date of this Agreement. The said rates and costs shall be adjusted to exclude any significant sums should the City determine that the rates and costs were increased due to inaccurate, incomplete, or non-current wage rates or due to inaccurate representations of fees paid to outside consultants. The City shall exercise its rights under this "Certificate" within one (1) year following final payment.

4. Termination. This Agreement may be terminated by CPRW upon 10 days' prior written notice to the City in the event of substantial failure by the City to perform in accordance with the terms of this Agreement through no fault of CPRW. It may also be terminated by the City, with or without cause, immediately upon written notice to CPRW. Unless CPRW is in substantial breach of this Agreement, CPRW shall be paid for services rendered to the satisfaction of the City through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the City, CPRW shall (a) stop work on the date and to the extent specified, (b) terminate and settle all orders and subcontracts relating to the performance of the terminated work, (c) transfer all work in process, completed work, and other material related to the terminated work to the City, and (d) continue and complete all parts of the work that have not been terminated. CPRW shall be paid for services actually rendered to the date of termination.

5. Personnel. CPRW represents that it has, or will, secure at its own expense all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City. All of the services required herein under shall be performed by CPRW or under its supervision, and all personnel engaged in performing the services shall be fully qualified and if required, authorized or permitted under state and local law to perform such services. Any changes or substitutions in CPRW's key personnel, as described on Exhibit B, must be made known to the Greeley Representative and written approval granted by the City before said changes or substitutions can become effective. Such approval by the City shall not be unreasonably withheld. CPRW declares that all services shall be performed by skilled and competent personnel to the level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.

6. Sub-Consultant. The City reserves the right to accept the use of a sub-consultant or to reject the selection of a particular sub-consultant and to inspect all facilities of any sub-consultants in order

to make a determination as to the capability of the sub-consultant to perform properly under this Agreement. CPRW is encouraged to seek minority and women business enterprises for participation in sub-contracting opportunities. If a sub-consultant fails to perform or make progress, as required by this Agreement, and it is necessary to replace the sub-consultant to complete the work in a timely fashion, CPRW shall promptly do so, subject to acceptance of the new sub-consultant by the City.

7. Federal and State Tax. The City is exempt from payment of Colorado State Sales and Use Taxes. The City will sign an exemption certificate submitted by CPRW. CPRW shall not be exempted from paying sales tax to their suppliers for materials used to fulfill contractual obligations with the City, nor is CPRW authorized to use the City's tax exemption number in securing such materials. CPRW shall be responsible for payment of its own FICA and Social Security benefits with respect to this Agreement.

8. Availability of Funds. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the Agreement may be cancelled and the City shall reimburse CPRW for work performed and expenses incurred during the Agreement period.

9. Insurance.

9.1 CPRW shall not commence work under this Agreement until they have obtained all insurance required under this paragraph and such insurance has been approved by the City.

9.2 All insurance policies shall be issued by companies authorized to do business under the laws of the State of Colorado. CPRW shall furnish Certificates of Insurance to the City prior to the commencement of operations. The Certificates shall clearly indicate that CPRW has obtained insurance of the type, amount, and classification as required for strict compliance with this paragraph and that no material change or cancellation of the insurance shall be effective without ten (10) days prior written notice to the City. Compliance with the foregoing requirements shall not relieve CPRW of its liability and obligations under this Agreement.

9.3 CPRW shall maintain, during the life of this Agreement, professional liability insurance (errors and omissions) in the amount of \$1,000,000 per occurrence to protect CPRW of claims for damages for negligent acts, errors or omissions in the performance of professional services under this Agreement, whether such acts, errors or omissions be by CPRW or by anyone directly employed by or contracting with CPRW.

9.4 CPRW shall maintain, during the life of this Agreement, comprehensive automobile liability insurance in the amounts of \$1,000,000 combined single limit bodily injury and \$50,000 property damage to protect CPRW from claims for damages for bodily injury, including wrongful death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations by CPRW or by any directly or indirectly employed by CPRW.

9.5 CPRW shall maintain, during the life of this Agreement, adequate Workmen's Compensation Insurance and Employer's Liability Insurance in at least such amounts as are required by law for all of its employees performing work for the City pursuant to this Agreement.

9.6 All insurance, other than Workmen's Compensation and Professional Liability, is to be maintained by CPRW shall specifically include the City as an "Additional Insured".

10. Indemnification. CPRW shall indemnify and save harmless the City, its agents, servants, and employees from and against any and all claims, liability, demands, losses, and/or expenses resulting from any negligent act or omission of CPRW, its agents, servants, subcontractors, suppliers or employees in the performance of services under this Agreement. Such duty to indemnify and save harmless the City shall be for an amount represented by the degree or percentage of negligence or fault attributable to CPRW, its agents, servants, subcontractors, suppliers or employees. If CPRW is providing architectural, engineering, design, or surveying services, the obligation to indemnify and pay costs, expenses, and attorneys' fees, is limited to the amount represented by the degree or percentage of negligence or fault attributable to CPRW, or CPRW's agents, representatives, employees, servants, subcontractors, or suppliers as determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between the contractor and the City. CPRW's indemnification obligation shall not be construed to extend to any injury, loss, or damage caused by the City's own negligence.

11. Successors and Assigns. The City and CPRW each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither the City nor CPRW shall assign, sublet, convey, or transfer its interest on this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the City or CPRW which may be party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the City and CPRW.

12. Waiver and Remedies. The City's approval of studies, drawings, designs, plans, specifications, reports, computer programs and other work or materials produced pursuant to this Agreement shall not in any way relieve CPRW of its responsibility for the technical accuracy of the services. The City's approval or acceptance of, or the City's payment for, any service pursuant to this Agreement shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

13. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado. Venue for any and all legal action necessary to enforce the Agreement shall be proper in Larimer County.

14. Conflict of Interest.

14.1 CPRW represents and agrees that it will not engage in any transaction, activity or conduct which would, directly or indirectly, result in a conflict of interest under this Agreement. CPRW represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include, but is not limited to, transactions, activities or conduct that would affect the judgment, actions or work of CPRW by placing CPRW's own interests, or the interest of any other party with whom CPRW has a contractual arrangement, in actual current or potential future conflict with the City's interests.

14.2 During the effective period of this Agreement, CPRW shall promptly notify the City in writing of all potential conflicts of interest for any proposed prospective work, business association, interest or any other circumstance which may influence or appear to influence CPRW's judgment or quality of services being provided hereunder. Such written notification shall: (a) identify the entity and the nature of the prospective work, business association, interest or circumstance that CPRW may undertake, (b) request an opinion of the City as to whether the work,

association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by CPRW, and (c) if the City determines that a conflict or potential conflict exists, request whether the City waives such conflict and consents to such work, association, interest or circumstance. The City, in its sole discretion, shall determine the existence or nonexistence of a conflict of interest and, if a conflict is determined to exist, shall elect whether to waive the conflict, and shall notify CPRW of its decision in writing within thirty (30) days of the City's receipt of notification from CPRW. CPRW shall not conduct any work or proceed with any association, interest or circumstance covered by this provision or enter into any Agreement to conduct such work or proceed with such association, interest or circumstance unless and until it has received the City's decision authorizing such work under this Article 14.

14.3 In the event the City has given CPRW its written decision that a conflict of interest exists and the City does not waive the conflict, but CPRW proceeds to undertake or indicates it will undertake the work creating the disputed conflict, the City may notify CPRW of breach of this Article 14 and after thirty (30) days may terminate this Agreement pursuant to Article 4 above, except that breaches under this Article 14 CPRW shall have thirty (30) days after the notice of such breach is received to eliminate or cure the conflict of interest in a manner acceptable to the City.

15. Excusable Delays. CPRW shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond CPRW's control and without its fault or negligence. Such causes may include, but are not limited to: acts of God; the City's omissive and commissive failures; natural or public health emergencies; labor disputes; freight embargoes; and severe weather conditions. If failure to perform is caused by the failure of CPRW's sub-consultant(s) to perform or make progress, and if such failure arises out of causes reasonably beyond the control of CPRW and its sub-consultant(s) and is without the fault or negligence of either of them, CPRW shall not be deemed to be in default. Upon CPRW's request, the City shall consider the facts and extent of any failure to perform the work and, if CPRW's failure to perform was without its fault or negligence, the Agreement Schedule and/or any other affected provision of this Agreement shall be revised accordingly; subject to the City's rights to change, terminate, or stop any or all of the work at any time.

16. Arrears. CPRW shall not pledge the City's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. CPRW further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

17. Disclosure and Ownership of Documents. CPRW shall deliver to the City for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the City under this Agreement. From time to time, the City will provide CPRW printed and electronic data, analyses, comments, reports, studies and/or similar materials (together with supporting work and other substantiating documents) for use in the preparation of the work ("City's Work Product"). Some of the City's Work Product may include materials that consist of privileged or proprietary confidential business information. Except as provided in this paragraph, CPRW shall keep the City's Work Product confidential, shall not use the City's Work Product for any other purpose other than the preparation of the work contemplated herein, and shall not disseminate or disclose the City's Work Product, or the information contained therein, directly or indirectly, to any other party without the prior written consent of the City. The City's Work Product shall be the sole property of the City and shall be returned to the City upon completion of the work. CPRW's obligation to keep the City's Work Product confidential under this paragraph shall not apply to information that CPRW can document: (a) is or has become (through no action or inaction by CPRW or any affiliate, agent, consultant or employee) generally available to the public; (b) was in CPRW's possession prior to receipt from City, except to the extent that such information was unlawfully appropriated; (c) was independently developed by CPRW without use of any of City's Work Product; or

(d) was disclosed pursuant to the requirements of law. Nothing herein shall affect the obligations of CPRW to either make disclosures or preserve the confidentiality of City's Work Product to the extent required by law or court order, including, but not limited to, requirements under applicable Colorado and federal statutes, court rules, and administrative rules and regulations. The obligations of CPRW pursuant to this paragraph shall survive expiration or termination of this Agreement.

18. Independent Consultant Relationship. CPRW is, and shall be, in the performance of all work services and activities under this Agreement, an independent consultant, and not an employee, agent, or servant of the City. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to CPRW's sole direction, supervision, and control. CPRW shall exercise control over the means and manner in which it and its employees perform the work, and in all respects CPRW's relationship and the relationship of its employees to the City shall be that of an independent consultant and not as employees or agents of the City. CPRW does not have the power or authority to bind the City in any promise, contract, or representation other than specifically provided for in this Agreement.

19. Contingent Fees. CPRW warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CPRW to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for CPRW, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

20. Access and Audits. CPRW shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the work for at least three (3) years after completion of this Agreement. The City shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the City's cost, upon five (5) days' written notice.

21. Nondiscrimination. CPRW declares and represents that all of its employees are treated equally during employment without regard to race, color, religion, physical handicap, sex, age, or national origin.

22. Entirety of Contractual Agreement. The City and CPRW agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms, and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

23. Enforcement Costs. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs, and all expenses (including taxes) incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

24. Authority to Practice. CPRW hereby represents and declares that it has and will continue to maintain all licenses and approvals required to perform the work under this Agreement, and that it will at all times conduct its business activities in a reputable manner.

25. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision, to person or circumstances other than those as to

which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

26. Amendments and Modification. No amendment and/or modification of this Agreement shall be valid unless in writing and signed by each of the parties. The City reserves the right to make changes in the work, including alterations, reductions therein or additions thereto. Upon receipt by CPRW of the City's notification of a contemplated change, CPRW shall (a) if requested by the City, provide an estimate for the increase or decrease in cost due to the contemplated change, (b) notify the City of any estimated change in the completion date, and (c) advise the City in writing if the contemplated change will affect the CPRW's ability to meet the completion dates or schedules of this Agreement. If the City so instructs in writing, CPRW shall suspend work on that portion of the Work affected by a contemplated change, pending the City's decision to proceed with the change. If the City elects to make the change, the City shall issue an amendment to this Agreement or Change Order and CPRW shall not commence work on any such change until such written amendment or change order has been issued and signed by each of the parties.

27. Compliance with C.R.S. § 8-17.5-101, Et seq. By signing this Agreement, CPRW certifies that at the time of the Certification, it does not knowingly employ or contract with any illegal alien who will perform work under this Agreement.

27.1 By signing this Agreement, CPRW certifies that it shall not knowingly employ or contract with any illegal aliens to perform work under this Agreement; nor enter into a contract with any sub-consultant that knowingly employs or contracts with an illegal alien to perform work under this Agreement.

27.2 CPRW has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this public contract for services through participation in either the E-Verify program or the Colorado Department of Labor and Employment Program.

27.3 CPRW is prohibited from using the E-Verify program or the Department of Labor and Employment Program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.

27.4 By signing this Agreement, CPRW affirmatively acknowledges that if CPRW obtains actual knowledge that a sub-consultant performing work under the public contract for services knowingly employs or contracts with an illegal alien, CPRW shall be required to (a) notify the sub-consultant and the contracting state agency or political subdivision within three days that CPRW has actual knowledge that the sub-consultant is employing or contracting with an illegal alien; and (b) terminate the subcontract with the sub-consultant if within three days of receiving the notice required pursuant to sub-subparagraph (a) of this subparagraph the sub-consultant does not stop employing or contracting with the illegal alien; except that CPRW shall not terminate the Agreement with the sub-consultant if during such three days the sub-consultant provides information to establish that the sub-consultant has not knowingly employed or contracted with an illegal alien.

27.5 CPRW shall comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment.

27.6 CPRW shall, within twenty days after hiring an employee who is newly hired for employment to perform work under this Agreement, affirm that CPRW has examined the legal work status of such employee, retained file copies of the Documents required by 8 U.S.C. § 1324(a), and not altered or falsified the identification documents for such employees. CPRW shall provide

a written notarized copy of the affirmation to the City.

27.7 If CPRW violates any provision of this Agreement pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the City may terminate this Agreement. If this Agreement is so terminated, CPRW shall be liable for actual and consequential damages to the City arising out of CPRW’s violation of Subsection 8-17.5-102, C.R.S.

27.8 By signing this Agreement, CPRW certifies that it shall in all respects comply with the provisions of C.R.S. § 8-17.5-101, et seq.

28. Electronic Signatures. The Agreement documents may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document. The Agreement documents, including all component parts set forth above, may be executed and delivered by electronic signature by any of the parties and all parties consent to the use of electronic signatures.

29. Notice. All notices required in this Agreement shall be sufficient if sent by certified mail, return receipt requested, or by email if receipt is acknowledged or no notice of delivery failure is received after a period of three days.

If to the City: City of Greeley Water and Sewer Department
Attn: Director of Water and Sewer
1001 11th Avenue, 2nd Floor
Greeley, Colorado 80631
Phone: (970) 350-9811
Email: sean.chambers@greeleygov.com
jennifer.petrzelka@greeleygov.com

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

IN WITNESS WHEREOF, the City of Greeley and Coalition for the Poudre River Watershed have executed this Cameron Peak Wildfire Project Management Professional Services Agreement as of the date first set forth above.

COALITION FOR THE POUUDRE RIVER WATERSHED,
a Colorado nonprofit corporation

DocuSigned by:
By: Hally Strevey
CD00011792D94AD...
Name: Hally Strevey

Date: 9/8/2021

Title: Interim Executive Director

THE CITY OF GREELEY, COLORADO,
a Colorado home rule municipal corporation
acting by and through its Water Enterprise

DocuSigned by:
By: Raymond Lee
City Manager

Date: 8/25/2021

AS TO LEGAL FORM:

DocuSigned by:
By: Doug Marek
City Attorney

AS TO AVAILABILITY OF FUNDS:

DocuSigned by:
By: John Kerner
Director of Finance