

RESOLUTION NO. 27

SERIES NO. 2017

RESOLUTIONS OF THE CRESTED BUTTE TOWN
APPROVING THE LICENSE AGREEMENT WITH
CYPRESS FOOTHILLS, LP FOR ACCESSING AND
AFFECTING CERTAIN REMEDIATION WORK ON THE
OLD TOWN LANDFILL LOCATED ON TOWN
PROPERTY IN THE LOCATION OF THE EIGHTH
STREET RIGHT OF WAY ADJACENT TO THE TOWN
PUBLIC WORKS YARD

WHEREAS, the Town of Crested Butte, Colorado (the "Town") is a home rule municipality duly and regularly organized and now validly existing as a body corporate and politic under and by virtue of the Constitution and laws of the State of Colorado;

WHEREAS, the Town and Cypress Foothills, LP ("Cypress") have entered into a certain Pre-Annexation Agreement dated February 16, 2017 and recorded in the official real property records of the Office of the Clerk and Recorder of Gunnison County, Colorado on March 14, 2016 at Reception No. 638399, as amended by that certain Amendment to Pre-Annexation Agreement dated December 7, 2017 and recorded in the official real property records of the Office of the Clerk and Recorder of Gunnison County, Colorado on December 13, 2016 at Reception No. 638399 (collectively, the "Pre-Annexation Agreement") whereby Cypress and the Town agreed to certain development terms, requirements and conditions applicable to the real property north of Town and as further delineated in the Pre-Annexation Agreement;

WHEREAS, the Pre-Annexation Agreement contemplates, among other things, that the Town and Cypress would, if agreed to by the parties, coordinate in the installation of Eighth Street located on Town property and as further described in the Pre-Annexation Agreement;

WHEREAS, such coordination for the installation of Eighth Street on Town property as currently proposed by the parties will involve, among other things, Cypress, upon receipt of the Town's consent, pursuing a Colorado Voluntary Cleanup Program (the "VCUP") application with the Colorado Department of Health and Environment (CDPHE) for the remediation and clean-up of a portion of the old Town landfill located under yet to be constructed Eighth Street on Town property (the "Subject Clean-up Lands");

WHEREAS, in order to facilitate Cypress including the Subject Clean-up Lands in Cypress' VCUP application with CDPHE, Cypress must first gain access to the Subject Clean-up Lands for purposes of performing, without limitation, certain response actions and construction activities on the Subject Clean-up Lands (collectively, the "Remediation Activities");

WHEREAS, in order to facilitate the Remediation Activities, Cypress has requested and the Town Staff has recommended to the Town Council that the Town enter into a license agreement contemplating such activities;

WHEREAS, at the Town Council's May 2, 2017 regular Town Council meeting, the Town Staff recommended to the Town Council that the Town enter into a license agreement with Cypress granting Cypress access to the Subject Clean-up Lands and allowing Cypress to perform the Remediation Activities thereon;

WHEREAS, following receipt of the Town Staff's recommendation on May 2, the Town Council directed Town Staff to prepare resolutions of the Town Council approving the proposed license agreement;

WHEREAS, the Town Staff has provided a Staff Report to the Town Council in support of these resolutions recommending that the Town Council approve the license agreement for the reasons stated in such Staff Report; and

WHEREAS, the Town Council hereby finds that following receipt of the recommendation of Town Staff during the May 2, 2017 Town Council meeting and receipt and consideration of the Town Staff report delivered to the Town Council along with these resolutions, it is in the best interest of the health, safety and welfare of the Town, resident and visitors alike that it adopt these resolutions and in conjunction therewith the license agreement attached hereto.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT:

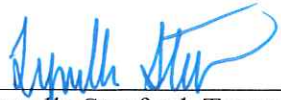
1. **Section 1. Recitals and Findings.** The Recitals set forth above are incorporated as if fully set forth herein. The findings set forth in such Recitals are hereby deemed findings of fact material to these resolutions.
2. **Approval of License Agreement.** The Town Council hereby approves the license agreement in the form attached hereto as **Exhibit "A"** (the "**Agreement**"), the Town entering into such Agreement being in the best interest of the health, safety and welfare of the Town, its residents and visitors alike.
3. **Authorization of Mayor to Execute License Agreement.** The Town Council hereby authorizes the Mayor to execute the Agreement in the form attached hereto.

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE THIS 15th DAY OF May, 2017.

TOWN OF CRESTED BUTTE, COLORADO

By: Glenn Michel
Glenn Michel, Mayor

ATTEST



Lynelle Stanford, Town Clerk



EXHIBIT "A"
(License Agreement)

[attach form here]

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“Agreement”) is made effective as of May 1, 2017 (“Effective Date”) by and between Cypress Foothills, LP, a Texas limited partnership (“Cypress” or “Grantee”), and the Town of Crested Butte, Colorado (the “Town” or “Owner”), a Colorado home rule municipality. Owner and Grantee may be called collectively “Parties” or individually “Party.”

RECITALS

- A. Cypress owns a parcel of real property (the “Cypress Property”) in Gunnison County, Colorado, adjacent to the Town, and immediately north of, the Town’s public works yard (“Town Property”).

- B. Cypress intends to develop the Cypress Property. In contemplation of such development, Cypress and the Town entered into a Pre-Annexation Agreement dated February 16th, 2016, and recorded in the Office of the Gunnison County Clerk and Recorder at reception number 638399, as amended by that certain Amendment to Pre-Annexation Agreement, dated December 7th, 2016, and recorded in the office of the Gunnison County Clerk and Recorder at reception number 643828 (the “Annexation Agreement”). (Capitalized terms used herein and not otherwise defined shall have the same meaning as set forth in the Annexation Agreement.)

- C. The Annexation Agreement contemplates the possible extension of Eighth Street north from Butte Avenue to Pyramid Avenue (the “Eight Street ROW”), which would cross the Town Property and a portion of the Cypress Property identified as the West Parcel. Cypress has already designed and engineered the Eighth Street extension along the Eighth Street ROW.

- D. The Old Town Landfill is located partly on the West Parcel and partly on the Town Property. In order for the public uses contemplated by the Annexation Agreement to be made of the West Parcel, portions of the Old Town Landfill must be cleaned up.

- E. Cypress is in the process of entering portions of the Old Town Landfill located on the West Parcel into the Colorado Voluntary Cleanup Program (“VCUP”) administered by Colorado Department of Public Health and Environment (“CDPHE”).

- F. Part of the Old Town Landfill may also be within the Eighth Street ROW and, Cypress’s VCUP application includes the Eight Street ROW on the West Parcel.

- G. Cypress and the Town desire to expand Cypress’s VCUP application to include that portion of the Town Property necessary to allow pre-construction response

actions for, and construction of, Eighth Street. Specifically, Cypress will need access to, and the right to perform response actions and construction activities, within 25 feet on either side of the Eighth Street ROW or that width sufficient to comply with OSHA trenching and excavation requirements and other safety and construction obligations under applicable law (“the Eighth Street ROW Area”), so that any portion of the Eighth Street ROW Area determined to include a portion of the Old Town Landfill can be addressed by Cypress under the VCUP. Extension of the area covered by this License beyond 25 feet on either side of the ROW shall be subject to the approval of the City, which shall not be unreasonably withheld.

- H. To allow inclusion of the Eighth Street ROW Area in Cypress’s VCUP Application (which shall be defined in this License to include any related application, such as a no action determination (NAD) application, and any amendments to or modifications of the VCUP Application) and to allow Cypress to perform response actions, as necessary, in the Eighth Street ROW Area, at Cypress’s sole cost and expense, if and when CDPHE approves Cypress’s VCUP application, the Parties desire to agree on terms and conditions pursuant to which Cypress will access the Eighth Street ROW Area in order to perform certain work.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby agreed and acknowledged, the Parties agree as follows:

1. License. Owner hereby grants to Grantee, subject to the terms of this License Agreement, a license (“License”) for access to the Eighth Street ROW Area by Grantee and its contractors, along with the subcontractors, employees and agents of the foregoing (such persons are referred to herein individually as a “Contractor”, and, collectively, as “Contractors”) to perform Work as that term is defined below. Work, as defined in Section 2 below, will only be performed within the Eighth Street ROW Area. The License expressly does not confer any interest in real property. The License shall continue until the Work contemplated in this Agreement has been completed, at which time the License shall expire by its terms.

2. VCUP Application

a. Grantee shall include the Eighth Street ROW Area in an amendment to the VCUP Application that Grantee is filing with respect to response actions proposed for the Old Town Landfill located on the West Parcel. Grantee shall provide Owner with a copy of the VCUP Application Grantee files with CDPHE for the Old Town Landfill located on the West Parcel, at the time Grantee submits the Application. Grantee shall provide Owner with a copy of the draft VCUP Application amendment prior to submission to CDPHE. Grantee shall allow the Owner no less than 10 business days to review and provide comments on the draft VCUP application amendment. After that 10 day review

and comment period, Grantee shall also provide Owner a 15 day period to meet in person with Grantee or to join in a teleconference with Grantee to discuss Owner's comments. If the Parties are unable to agree on any language in the VCUP Application amendment as it relates to the Eighth Street ROW Area, Owner shall have the right to revoke its authorization for Grantee to include any portion of the Town Property in the VCUP Application, and in such event this License Agreement shall terminate on the date that Grantee provides such revocation in writing.

b. A designated representative of Owner shall be a "carbon copy" or "cc" on all communications between Grantee and CDPHE relating to the VCUP Application, including electronic communications, data, reports and any other information. Grantee shall provide the Town with reasonable advance notice of all meetings with CDPHE regarding the VCUP Application, and shall provide the Town with an opportunity to participate in all such meetings. The Town's participation shall be limited to the VCUP Application as it relates to the Eighth Street ROW Area. The Town acknowledges and agrees that Grantee has agreed under this License to take the lead on negotiating the VCUP with CDPHE. Accordingly, the Town agrees that it will not meet with or otherwise contact CDPHE regarding the VCUP Application without the joint participation of the Grantee, except as provided in paragraph (c) below.

c. During CDPHE's review and approval process regarding the VCUP Application, Owner shall have the right to revoke its authorization for Grantee to include any portion of the Town Property in the VCUP Application, and in such event this License Agreement shall terminate on the date that Grantee provides such revocation in

writing. In this event, Owner may unilaterally notify CDPHE that it is withdrawing the VCUP Application as it relates to the Town's portion of the Eighth Street ROW Area.

Subparagraphs (a)-(c) above shall apply to any related application, such as a no action determination (NAD) application, and any amendments to or modifications of the VCUP Application.

3. Work.

a. During the term of the License, Grantee and its Contractors shall have the right to enter the Eighth Street ROW Area for the purpose of performing work activities necessary for implementation of the approved VCUP activities, including, without limitation, performing site investigation activities; operating and maintaining, and then promptly removing, monitoring wells and all other equipment necessary to conduct soil and groundwater sampling; performing groundwater monitoring, and treatment, remedial or removal activities; and performing all other activities related to response actions in preparation for construction of Eighth Street and associated utility infrastructure in the Eighth Street ROW ("Construction Project"). The activities noted above, and all activities related thereto and to the Construction Project shall be deemed "Work" for purposes of this Agreement.

b. Following the Work in the Eighth Street ROW Area as described in paragraph 2(a) above, Cypress shall continue to have access to the Eighth Street ROW Area under this Agreement as necessary for all purposes related to the Construction Project. Prior to the commencement of the Construction Project, Cypress shall enter into

a standard development improvements agreement with the Town that is (i) substantially similar to the development improvement agreements the Town has previously used, and (b) not inconsistent with the Annexation Agreement. All infrastructure constructed pursuant to such development improvements agreement shall be constructed in accordance with the Town Specifications, dedicated to the Town, and maintained by the Town following acceptance thereof, subject to a two-year warranty by Cypress.

4. Performance of Work. The Parties agree to the following with respect to Work:

a. All Work will be performed at Grantee's sole expense by one or more Contractors selected and engaged by Grantee. Grantee shall be responsible for any oversight or other costs incurred by CDPHE and billed to Grantee or Owner in processing the VCUP Application and performing related Work to issue a NAD.

b. A designated representative of Owner shall be a "carbon copy" or "cc" on all communications between Grantee and CDPHE relating to the Work, including electronic communications, data, reports and any other information. Grantee shall provide the Town with reasonable advance notice of all meetings with CDPHE regarding the Work, and shall provide the Town with an opportunity to participate in all such meetings. The Town's participation shall be limited to the Work as it relates to the Eighth Street ROW Area.

c. Grantee shall promptly deliver to Owner, without charge, copies of all reports, tests, assessments, and results of sampling related to the Work.

d. Grantee will cause all Work to be conducted in a good and workmanlike manner and in accordance with applicable governmental laws, rules and regulations.

e. No less than twenty-four (24) hours prior to first entering the Eighth Street ROW Area to perform Work, Grantee's Contractors will notify and coordinate their Work with the person designated by Owner as its Work representative.

f. Grantee will cooperate with Owner so that Work is performed in a manner that will reasonably minimize interference with the existing use of, or activities at, the Town Property within and adjacent to the Eighth Street ROW Area. Specifically, Grantee agrees to take reasonable measures to minimize interference with any of the Owner's existing buildings, improvements, landscaping, and infrastructure within the Eighth Street ROW Area.

g. Grantee will cause all Work-derived waste to be disposed of promptly. Such wastes may be temporarily staged, subject to compliance with applicable law, within the Eighth Street ROW Area pending disposal or removal for proper disposal.

h. To the extent that Grantee's Contractors cause physical damage to the Town Property within the Eighth Street ROW Area during performance of the Work, Grantee shall, at its own expense, cause its Contractors to repair such damage and restore the Town Property as nearly as practicable to its condition immediately preceding such damage.

i. Within forty-five (45) days following completion of the Construction Project, Grantee shall cause its Contractors to remove any and all material and equipment related to Work.

5. Cooperation

a. Grantee shall be responsible for the timely and proper management, transportation and off-site disposal of all waste generated by Grantee or its Contractors in performing Work. Grantee shall bear sole responsibility for compliance with federal, state, and local requirements with respect to the generation, management, and ultimate disposition of such waste. Owner shall not be identified as an owner or a generator of any waste removed from the Cypress Property, or be required to execute manifests, bills of lading or similar documents (“Waste Documentation”), for transport and disposal off-site of wastes generated in connection with the Cypress Property. Owner shall be identified as an owner and a generator, if such identification is necessary for completion of the Waste Documentation, of waste removed from the Town Property, and in arranging for the execution of the Waste Documentation shall cooperate in executing such Waste Documents when requested by Grantee. Any identification of Owner or Cypress as an owner or generator is not an admission of fact or liability by Owner or Cypress.

b. Owner shall identify in writing to Grantee any utilities or other subsurface structures that could be impacted by Work in the Eighth Street ROW Area. Neither Grantee nor its Contractors shall be responsible for any damage resulting from the Work

to utilities or other surface structures that were not identified in writing by Owner to Grantee.

c. Owner agrees to abide by, and cooperate with Grantee in connection with, the controls or restrictions on the Town Property that are required in connection with requirements of the VCUP.

d. Grantee shall perform or shall cause its Contractors to perform any reporting obligations that arises out of Work.

6. Laws and Regulations. Grantee shall direct its Contractors (including, without limitation, all of their respective employees and agents) to (a) obtain all necessary permits or approvals (if any) with respect to the Work, and (b) at all times comply with all applicable local, state, and federal laws, ordinances, codes, rules, and regulations, including, without limitation, those relating to environmental, health and safety matters. Should a release of hazardous substances, wastes or materials as defined under federal or state environmental law occur in connection with the Work, Grantee shall promptly notify Owner, comply with applicable federal, state, and local reporting requirements, and take necessary steps to contain, abate, decontaminate and remove the released material and remediate the impacted media to standards allowable under the VCUP. All documents submitted to or received from regulatory agencies in connection with such a release shall be provided by Grantee to Owner upon Owner's request.

7. Risk of Liability. Grantee shall cause its Contractors to agree that Contractors shall be solely responsible for securing and protecting equipment, materials, and other property against theft, vandalism, damage and loss. Owner shall not be responsible or liable for any loss

or damage to such equipment and materials, unless such loss or damage is caused solely by Owner's intentional act or negligence.

8. Insurance. Grantee will require each Contractor (unless covered by another Contractor's insurance) to carry the following insurance coverage, in amounts no less than those shown, throughout the duration of the Work, with carriers rated AVII or better by AM Best: (i) commercial general liability (\$2,000,000 per occurrence); (ii) automobile liability (\$1,000,000 each incident); (iii) worker's compensation (in the statutorily required minimum amount) and employer's liability insurance (\$1,000,000 per accident); and (iv) pollution liability coverage for operations and professional services (\$2,000,000 per occurrence). The requirements of commercial general liability and pollution liability coverage for operations and professional services may be satisfied with an umbrella policy that satisfies the requirements regarding the dollar limits and the umbrella must follow the form of coverage set forth in this paragraph for commercial general liability and pollution liability coverage. Each insured party shall cause its insurers to waive rights of subrogation against Owner. Contractors will request that the commercial general liability, automobile and pollution liability policies include Owner as an additional insured. Certificates confirming coverage and the provisions contemplated herein shall be delivered to Owner prior to Grantee's Contractors first entry onto the Eighth Street ROW Area, and copies of policies shall be delivered to Owner upon request. Such certificates shall state that the insurance agent shall give Owner thirty (30) days prior written notice of any cancellation or any material changes in such policies. All such insurance policies shall be written on an "occurrence" basis, to the extent commercially available.

9. Performance Guarantee and Indemnification. Cypress's environmental engineers have estimated the total cost of response actions for the Eighth Street ROW to be between \$13,661 and \$27,322. In order to secure all obligations of Cypress herein, Cypress and the Town agree that Cypress shall, at Cypress's sole cost, and before accessing the Eighth Street ROW Area or performing any Work hereunder, obtain and provide to the Town, either cash, a bond, an irrevocable letter of credit or other performance guarantee in a form and content satisfactory to the Town to the benefit of the Town in the amount of at least \$81,966, which is three times the maximum estimated cost of response actions for the Eighth Street ROW (the "Security"). Further, Cypress hereby indemnifies the Town and its officials and employees from and against all losses, damages, and liabilities from claims by third parties arising from or related to the Work, including exacerbation of existing contamination caused by or related to the Work up to the amount of the Security. This indemnification shall survive the termination of this agreement up to the amount of the Security, and provided however, that upon receipt of a No Action Determination from CDPHE which includes the Eighth Street ROW or Owner's termination of this Agreement, whichever occurs first, the Security shall be released to Cypress.

10. Release. Subject to the indemnification above, and upon the earlier to occur of (i) Owner's termination of this Agreement, or (ii) receipt of a No Action Determination from CDPHE which includes the Eighth Street ROW, the Town shall release all claims against Cypress, and Cypress shall release all claims against the Town, arising out of or related to Work or in any way arising out of or related to the environmental conditions of the Eighth Street ROW Area before, during, or subsequent to performance of Work and further, the Town and Cypress covenant not to sue each other with respect to any site conditions and any responsibilities or

liabilities, including without limitation any environmental liabilities, arising out of or related to the Eighth Street ROW Area, performance of Work, or the construction of Eighth Street and any associated utility infrastructure work. Neither the Town nor Cypress releases the other for any liability arising out of intentional acts or negligence by the Town or Cypress, respectively. Further, this Release does not extend to any portion of the Old Town Landfill or any other property, other than the Eighth Street ROW Area.

11. Additional Provisions.

a. This Agreement constitutes the entire agreement and understanding between the Parties hereby concerning the matters expressed herein and may not be amended or modified otherwise than in writing signed by the Parties hereto.

b. Any and all notices, approvals and the like required or permitted to be sent in accordance with this Agreement must be in writing and will be deemed to be given when received, when mailed by overnight mail or by certified mail, return receipt requested, postage prepaid, addressed to the party for whom it is intended, or sent via an electronic communication method provided the sender obtains confirmation of receipt of the communication.

c. This Agreement shall run with the land and shall be binding on subsequent Owners or tenants, and a copy of this executed Agreement may, at Grantee's discretion, be filed in the deed records by Grantee. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

d. This Agreement shall be construed, governed and enforced in accordance with the laws of the State of Colorado without regard to its choice of law rules.

e. The person or persons executing this Agreement on behalf of each of the parties hereto represents and warrants to the other parties that he or she has full and unconditional authority to bind the entity on whose behalf this Agreement is executed to all covenants, conditions and provisions contained herein.

f. This Agreement is not for the benefit of and shall not create any rights in any other person not a Party hereto or otherwise specifically identified herein.

g. All words used herein in the singular number shall include the plural and the plural shall include the singular. The present tense herein shall include the future. The masculine gender shall include the feminine and neuter.

h. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

i. The recitals set forth in this Agreement are intended solely to describe the background of this Agreement and, other than the terms defined therein, form no part of this Agreement.

j. Grantee's obligations under this Agreement shall be deemed to have terminated effective as of the date ("Termination Date") Grantee has notified Owner in writing that the Work has been completed.

k. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be excised from the Agreement. The remainder of the terms of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such excision and this Agreement shall be reformed by such court or by agreement of the Parties to add, in lieu of the excised provision, a provision as similar in terms to the excised provision as may be possible and be legal, valid and enforceable.

l. The Parties agree to attempt to resolve amicably any dispute arising hereunder before proceeding with litigation. The prevailing Party in any litigation shall be entitled to its reasonable costs and expenses, including, but not limited to, reasonable attorney's fees and disbursements.

m. This Agreement may be executed in counterparts, all of which shall constitute a single agreement. The Parties may execute more than one copy of this Agreement, in which case each executed copy shall constitute an original. Faxed or other electronic facsimiles of signature pages will be deemed acceptable in lieu of executed original signature pages.

n. In the event of a conflict between the terms of this Agreement and the Annexation Agreement, the terms of this Agreement shall control.

o. Grantee is not an agent, employee or contractor of the Town.

p. Neither Party admits to, and the Parties expressly deny, any liability associated with the condition of the Town Property or the Cypress Property. This

License Agreement shall not be used in any proceeding, except a proceeding to enforce the terms of this License Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate originals effective as of the Effective Date.

OWNER

GRANTEE

TOWN OF CRESTED BUTTE

CYPRESS FOOTHILLS, LP

**By: Cypress Foothills GP, LLC
Its General Partner**

By: John Mehl

By: Brian Parro
Brian Parro – CFO & VP
Date: 18 May 2017

Date: June 6, 2017