RESOLUTION NO. 9

SERIES 2015

RESOLUTIONS OF THE CRESTED BUTTE TOWN COUNCIL APPROVING THE GRANT AGREEMENT WITH THE STATE OF COLORADO, DEPARTMENT OF LOCAL AFFAIRS FOR THE INSTALLATION OF SEWER AND WATER INFRASTRUCTURE IN BLOCKS 79 AND 80, TOWN OF CRESTED BUTTE

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, Colorado Revised Statutes §29-1-201 et seq. and other applicable law authorize local governments to cooperate and contract with other units of government to make the most efficient and effective use of their powers and responsibilities;

WHEREAS, the State of Colorado, Department of Local Affairs (DOLA) has grant funds available for the purpose of installing infrastructure in support of the construction of affordable housing pursuant to DOLA's Energy & Mineral Assistance Fund (the "**Fund**");

WHEREAS, DOLA is responsible for the disbursement of such grant funds from the Fund to successful applicants therefor;

WHEREAS, the Town applied with DOLA for such grant funds for the purpose of constructing infrastructure in Blocks 79 and 80, Town of Crested Butte to enable the development and construction of affordable housing and associated improvements;

WHEREAS, DOLA has informed the Town that the Town is a successful applicant for such funds and, as a pre-condition to receiving such funds, must first enter into a grant agreement with DOLA addressing the delivery of such funds;

WHEREAS, the Town staff has recommended to the Town Council that the Town enter into the grant agreement with DOLA in order to receive such grant funds; and

WHEREAS, the Town Council desires to receive the grant funds from DOLA so that it may construct infrastructure in Blocks 79 and 80, thus enabling the future construction of affordable housing in Blocks 79 and 80, and, for this reason, finds that entering into the grant agreement with DOLA is in the best interest of the health, safety and general welfare of the citizens and visitors of Crested Butte.

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

1. **Findings**. The Town Council hereby finds that is in the best interest of the Town, its residents and visitors to enter into the grant agreement with DOLA in substantially the same form as attached hereto as **Exhibit "A"** (the "**Grant Agreement**") so that the Town may construct infrastructure in Blocks 79 and 80.

2. **Approval; Authorization of Town Manager**. Based on the foregoing, the Town Council hereby approves the Grant Agreement and hereby authorizes the Town Manager to execute the same.

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL THIS 18th DAY OF May, 2015.

TOWN OF CRESTED BUTTE, COLORADO

By: _____
Aaron J. Huckstep, Mayor

ATTEST

_____
Lynelle Stanford, Town Clerk

(SEAL)

GRANT AGREEMENT

Between

STATE OF COLORADO
DEPARTMENT OF LOCAL AFFAIRS

And

TOWN OF CRESTED BUTTE

Summary

Award Amount: $150,000.00

Identification #s:

Encumbrance #:	F15S7697	*(DOLA's primary identification #)*
Contract Management System #:	79139	*(State of Colorado's tracking #)*

Project Information:

Project/Award Number:	EIAF 7697
Project Name:	Crested Butte Affordable Housing Infrastructure Phase II
Performance Period:	Start Date: _____ End Date: 07/31/16
Brief Description of Project / Assistance:	The Project consists of installing infrastructure to serve the next phase of affordable housing in Crested Butte.

Program & Funding Information:

Program Name	Energy & Mineral Impact Assistance Fund
Funding source:	State Funds

Catalog of Federal Domestic Assistance (CFDA) Number (if federal funds): N/A

Funding Account Codes: _____

_____

EXHIBIT "A"

Funding Agreement

[attach form here]

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1. PARTIES

This Agreement (hereinafter called "Grant") is entered into by and between the **TOWN OF CRESTED BUTTE** (hereinafter called "Grantee"), and the STATE OF COLORADO acting by and through the Department of Local Affairs for the benefit of the Division of Local Government (hereinafter called the "State" or "DOLA").

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.

This Grant shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date"). The State shall not be liable to pay or reimburse Grantee for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to *(see checked option(s) below)*:

A. ☒ The Effective Date.

B. ☐ The Effective Date; provided, however, that all Project costs, if specifically authorized by the federal funding authority, incurred on or after March 1, 20XX, may be submitted for reimbursement as if incurred after the Effective Date.

C. ☐ insert date for authorized Pre-agreement Costs (as such term is defined in **§4**) , if specifically authorized by the funding authority . Such costs may be submitted for reimbursement as if incurred after the Effective Date.

3. RECITALS

A. Authority, Appropriation, and Approval

Authority to enter into this Grant exists in C.R.S. 24-32-106 and 29-3.5-101 and funds have been budgeted, appropriated and otherwise made available pursuant to C.R.S. 39-29-110 (Local Government Severance Tax Fund) and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Grant.

C. Purpose

The purpose of this Grant is described in **Exhibit B**.

D. References

All references in this Grant to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. Budget

"Budget" means the budget for the Project and/or Work described in **Exhibit B**.

B. Closeout Certification

"Closeout Certification" means the Grantee's certification of completion of Work submitted on a form provided by the State.

C. Evaluation

"Evaluation" means the process of examining Grantee's Work and rating it based on criteria established in **§6** and **Exhibit B.**

D. Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein:

i. Exhibit A (Applicable Laws)
ii. Exhibit B (Scope of Project)
iii. Exhibit E (Project Performance Plan)
iv. Exhibit G (Form of Option Letter)

E. Goods

"Goods" means tangible material acquired, produced, or delivered by Grantee either separately or in conjunction with the Services Grantee renders hereunder.

F. Grant

"Grant" means this agreement, its terms and conditions, attached exhibits, documents incorporated by reference pursuant to the terms of this Grant, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

G. Grant Funds

"Grant Funds" means available funds payable by the State to Grantee pursuant to this Grant.

H. Party or Parties

"Party" means the State or Grantee and "Parties" means both the State and Grantee.

I. Pay Request(s)

"Pay Request(s)" means the Grantee's reimbursement request(s) submitted on form(s) provided by the State.

J. Pre-agreement costs

"Pre-agreement costs," when applicable, means the costs incurred on or after the date as specified in **§2** above, and prior to the Effective Date of this Grant. Such costs shall have been detailed in Grantee's grant application and specifically authorized by the State and incorporated herein pursuant to **Exhibit B**.

K. Project
"Project" means the overall project described in **Exhibit B**, which includes the Work.

L. Project Closeout
"Project Closeout" means the submission by the Grantee to the State of an actual final Pay Request, a final Status Report and a Closeout Certification.

M. Program
"Program" means the grant program specified on the first page of this Grant that provides the funding for this Grant.

N. Review
"Review" means examining Grantee's Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in **§6** and **Exhibit B.**

O. Services
"Services" means the required services to be performed by Grantee pursuant to this Grant.

P. Status Report(s)
"Status Report(s)" means the Grantee's status report(s) on the Work/Project submitted on form(s) provided by the State.

Q. Subcontractor
"Subcontractor" means third-parties, if any, engaged by Grantee to carry out specific vendor related services.

R. Subgrantee
"Subgrantee" means third-parties, if any, engaged by Grantee to aid in performance of its obligations. Subgrantee is bound by the same overall programmatic and grant requirements as Grantee.

S. Subject Property
"Subject Property" means the real property, if any, for which Grant Funds are used to acquire, construct, or rehabilitate.

T. Substantial Progress in the Work
"Substantial Progress in the Work" means Grantee meets all deliverables and performance measures within the time frames specified in **Exhibit E**.

U. Work
"Work" means the tasks and activities Grantee is required to perform to fulfill its obligations under this Grant and **Exhibit B**, including the performance of the Services and delivery of the Goods.

V. Work Product
"Work Product" means the tangible or intangible results of Grantee's Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

5. TERM

A. Initial Term-Work Commencement
Unless otherwise permitted in **§2** above, the Parties' respective performances under this Grant shall commence on the Effective Date. This Grant shall terminate on **July 31, 2016** unless sooner terminated or further extended as specified elsewhere herein.

B. Two Month Extension
The State, at its sole discretion upon written notice to Grantee as provided in **§16,** may unilaterally extend the term of this Grant for a period not to exceed two months if the Parties are negotiating a replacement Grant (and not merely seeking a term extension) at or near the end of any initial term or any extension thereof. The provisions of this Grant in effect when such notice is given, including, but not limited to prices, rates, and delivery requirements, shall remain in effect during the two month extension. The two-month extension shall immediately terminate when and if a replacement Grant is approved and signed by the Colorado State Controller.

6. STATEMENT OF WORK

A. Completion

Grantee shall complete the Work and its other obligations as described herein and in **Exhibit B**. Except as specified in §2 above, the State shall not be liable to compensate Grantee for any Work performed prior to the Effective Date or after the termination of this Grant.

B. Goods and Services

Grantee shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Grant Funds and shall not increase the maximum amount payable hereunder by the State.

C. Employees

All persons employed by Grantee or Subgrantees shall be considered Grantee's or Subgrantees' employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Grant.

7. PAYMENTS TO GRANTEE

The State shall, in accordance with the provisions of this §7, pay Grantee in the following amounts and using the methods set forth below:

A. Maximum Amount

The maximum amount payable under this Grant to Grantee by the State is **$150,000.00 (ONE HUNDRED FIFTY THOUSAND and XX/100 DOLLARS)**, as determined by the State from available funds. Grantee agrees to provide any additional funds required for the successful completion of the Work. Payments to Grantee are limited to the unpaid obligated balance of the Grant as set forth in **Exhibit B**.

B. Payment

i. Advance, Interim and Final Payments

Any payment allowed under this Grant or in **Exhibit B** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Grant or such Exhibit. Grantee shall initiate any payment requests by submitting invoices to the State in the form and manner set forth and approved by the State.

ii. Interest

The State shall not pay interest on Grantee invoices. The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by Grantee previously accepted by the State.

iii. Available Funds-Contingency-Termination

The State is prohibited by law from making fiscal commitments beyond the term of the State's current fiscal year. Therefore, Grantee's compensation is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions, set forth below. If federal funds are used with this Grant in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Grant shall be made only from available funds encumbered for this Grant and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not fully appropriated, or otherwise become unavailable for this Grant, the State may immediately terminate this Grant in whole or in part to the extent of funding reduction without further liability in accordance with the provisions herein.

iv. Erroneous Payments

At the State's sole discretion, payments made to Grantee in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Grantee, may be recovered from Grantee by deduction from subsequent payments under this Grant or other grants or agreements between the State and Grantee or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any person or entity other than the State.

C. Use of Funds

Grant Funds shall be used only for eligible costs identified herein and/or in **Exhibit B**.

i. **Budget Line Item Adjustments.**
Modifications to uses of such Grant Funds shall be made in accordance with **§4.4** of **Exhibit B**. For line item adjustments over 10% but less than 24.99% (a "**Minor Line Item Adjustment**") which are approved, the State shall provide written notice to Grantee in a form substantially equivalent to **Exhibit G** (each an "**Option Letter**"). If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Grant.

ii. **Overall Budget Adjustments.**
Modifications to the overall Budget shall be made in accordance with **§4.5** of **Exhibit B**. For overall Budget adjustments less than 24.99% (a "**Minor Budget Adjustment**") which are approved, the State shall provide written notice to Grantee in an Option Letter. If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Grant.

iii. **Setting Final Initial Budget.**
All requests by the Grantee to align the initial overall Budget with current market conditions shall be made in accordance with **§4.5.1.1** of **Exhibit B**. If such True-up Budget Proposal (as such term is defined in **§4.5.1.1** of **Exhibit B**) is approved, the State shall provide written notice to Grantee in an Option Letter. If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Grant.

D. Matching/Leveraged Funds
Grantee shall provide matching and/or leveraged funds in accordance with **Exhibit B**.

8. REPORTING - NOTIFICATION
Reports, Evaluations, and Reviews required under this **§8** shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with **§19**, if applicable.

A. Performance, Progress, Personnel, and Funds
State shall submit a report to the Grantee upon expiration or sooner termination of this Grant, containing an Evaluation and Review of Grantee's performance and the final status of Grantee's obligations hereunder. In addition, Grantee shall comply with all reporting requirements, if any, set forth in **Exhibit B.**

B. Litigation Reporting
Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Grant or which may affect Grantee's ability to perform its obligations hereunder, Grantee shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of DOLA.

C. Performance Outside the State of Colorado and/or the United States
[Not applicable if Grant Funds include any federal funds] Following the Effective Date, Grantee shall provide written notice to the State, in accordance with **§16 (Notices and Representatives)**, within 20 days of the earlier to occur of Grantee's decision to perform, or its execution of an agreement with a Subgrantee to perform, Services outside the State of Colorado and/or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado and/or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations. All notices received by the State pursuant to this **§8.C** shall be posted on the Colorado Department of Personnel & Administration's website. Knowing failure by Grantee to provide notice to the State under this **§8.C** shall constitute a material breach of this Grant.

D. Noncompliance
Grantee's failure to provide reports and notify the State in a timely manner in accordance with this **§8** may result in the delay of payment of funds and/or termination as provided under this Grant.

E. Subgrants/Subcontracts
Copies of any and all subgrants and subcontracts entered into by Grantee to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subgrants and subcontracts entered into by Grantee related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subgrants be governed by the laws of the State of Colorado.

9. GRANTEE RECORDS

Grantee shall make, keep, maintain and allow inspection and monitoring of the following records:

A. Maintenance

Grantee shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Grantee shall maintain such records (the "Record Retention Period") until the last to occur of the following:

(i) a period of five years after the date this Grant is completed or terminated, or final payment is made hereunder, whichever is later, or

(ii) for such further period as may be necessary to resolve any pending matters, or

(iii) if an audit is occurring, or Grantee has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved.

B. Inspection

Grantee shall permit the State, the federal government (if Grant Funds include federal funds) and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Grantee's records related to this Grant during the Record Retention Period for a period of five years following termination of this Grant or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Grantee's performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Grant, including any extension. If the Work fails to conform to the requirements of this Grant, the State may require Grantee promptly to bring the Work into conformity with Grant requirements, at Grantee's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Grantee to take necessary action to ensure that future performance conforms to Grant requirements and exercise the remedies available under this Grant, at law or in equity in lieu of or in conjunction with such corrective measures.

C. Monitoring

Grantee shall permit the State, the federal government (if Grant Funds include federal funds), and other governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Grantee pursuant to the terms of this Grant using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Grantee's performance hereunder.

D. Final Audit Report

Grantee shall provide a copy of its audit report(s) to DOLA as specified in **Exhibit B.**

10. CONFIDENTIAL INFORMATION-STATE RECORDS

Grantee shall comply with the provisions of this **§10** if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, state records, personnel records, and information concerning individuals.

A. Confidentiality

Grantee shall keep all State records and information confidential at all times and comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of Grantee shall be immediately forwarded to the State's principal representative.

B. Notification

Grantee shall notify its agent, employees, Subgrantees, and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by Grantee or its agents in any way, except as authorized by this Grant or approved in writing by the State. Grantee shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Grantee or its agents, except as permitted in this Grant or approved in writing by the State.

D. Disclosure-Liability

Disclosure of State records or other confidential information by Grantee for any reason may be cause for legal action by third parties against Grantee, the State or their respective agents. Grantee shall, to the extent permitted by law, indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Subgrantees, or assignees pursuant to this **§10.**

11. CONFLICTS OF INTEREST

Grantee shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Grantee's obligations hereunder. Grantee acknowledges that with respect to this Grant, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations to the State hereunder. If a conflict or appearance exists, or if Grantee is uncertain whether a conflict or the appearance of a conflict of interest exists, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Grant.

12. REPRESENTATIONS AND WARRANTIES

Grantee makes the following specific representations and warranties, each of which was relied on by the State in entering into this Grant.

A. Standard and Manner of Performance

Grantee shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in the industry, trades or profession and in the sequence and manner set forth in this Grant.

B. Legal Authority – Grantee and Grantee's Signatory

Grantee warrants that it possesses the legal authority to enter into this Grant and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Grant, or any part thereof, and to bind Grantee to its terms. If requested by the State, Grantee shall provide the State with proof of Grantee's authority to enter into this Grant within 15 days of receiving such request.

C. Licenses, Permits, Etc.

Grantee represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. Grantee warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Grant, without reimbursement by the State or other adjustment in Grant Funds. Additionally, all employees and agents of Grantee performing Services under this Grant shall hold all required licenses or certifications, if any, to perform their responsibilities. Grantee, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Grantee to properly perform the terms of this Grant shall be deemed to be a material breach by Grantee and constitute grounds for termination of this Grant.

13. INSURANCE

Grantee and its Subgrantees shall obtain and maintain insurance as specified in this section at all times during the term of this Grant: All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Grantee and the State.

A. Grantee

i. Public Entities

If Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Grantee shall show proof of such insurance satisfactory to the State, if requested by the State. Grantee shall require each subgrant with Subgrantees that are public entities, providing Goods or Services hereunder, to include the insurance requirements necessary to meet Subgrantee's liabilities under the GIA.

ii. Non-Public Entities

If Grantee is not a "public entity" within the meaning of the GIA, Grantee shall obtain and maintain during the term of this Grant insurance coverage and policies meeting the same requirements set forth in **§13(B)** with respect to Subgrantees that are not "public entities".

B. Grantees, Subgrantees and Subcontractors

Grantee shall require each subgrant with Subgrantees and each contract with Subcontractors, other than those that are public entities, providing Goods or Services in connection with this Grant, to include insurance requirements substantially similar to the following:

i. Workers' Compensation

Workers' Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of Grantee, Subgrantee and Subcontractor employees acting within the course and scope of their employment.

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: **(a)** $1,000,000 each occurrence; **(b)** $1,000,000 general aggregate; **(c)** $1,000,000 products and completed operations aggregate; and **(d)** $50,000 any one fire.

iii. Automobile Liability

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of $1,000,000 each accident combined single limit.

iv. Malpractice/Professional Liability Insurance

This section ☒ shall | ☐ shall not apply to this Grant.

Grantee, Subgrantees and Subcontractors shall maintain in full force and effect a Professional Liability Insurance Policy in the minimum amount of $1,000,000 per occurrence and $1,000,000 in the aggregate, written on an occurrence form, that provides coverage for its work undertaken pursuant to this Grant. If a policy written on an occurrence form is not commercially available, the claims-made policy shall remain in effect for the duration of this Grant and for at least two years beyond the completion and acceptance of the work under this Grant, or, alternatively, a two year extended reporting period must be purchased. The Grantee, Subgrantee or Subcontractor shall be responsible for all claims, damages, losses or expenses, including attorney's fees, arising out of or resulting from such party's performance of professional services under this Grant, a subcontract or subgrant.

v. Umbrella Liability Insurance

For construction projects exceeding $10,000,000, Grantee, Subgrantees and Subcontractors shall maintain umbrella/excess liability insurance on an occurrence basis in excess of the underlying insurance described in **§13B(i)-(iv)** above. Coverage shall follow the terms of the underlying insurance, included the additional insured and waiver of subrogation provisions. The amounts of insurance required in subsections above may be satisfied by the Grantee, Subgrantee and

Subcontractor purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the limits specified in each section previously mentioned. The insurance shall have a minimum amount of $5,000,000 per occurrence and $5,000,000 in the aggregate.

vi. Property Insurance

This subsection shall apply if Grant Funds are provided for the acquisition, construction, or rehabilitation of real property.

Insurance on the buildings and other improvements now existing or hereafter erected on the premises and on the fixtures and personal property included in the Subject Property against loss by fire, other hazards covered by the so called "all risk" form of policy and such other perils as State shall from time to time require with respect to properties of the nature and in the geographical area of the Subject Property, and to be in an amount at least equal to the replacement cost value of the Subject Property. Grantor will at its sole cost and expense, from time to time and at any time, at the request of State provide State with evidence satisfactory to State of the replacement cost of the Subject Property.

vii.Flood Insurance

If the Subject Property or any part thereof is at any time located in a designated official flood hazard area, flood insurance insuring the buildings and improvements now existing or hereafter erected on the Subject Property and the personal property used in the operation thereof in an amount equal to the lesser of the amount required for property insurance identified in **§vi** above or the maximum limit of coverage made available with respect to such buildings and improvements and personal property under applicable federal laws and the regulations issued thereunder.

viii. Builder's Risk Insurance

The subsection shall apply if Grant Funds are provided for construction or rehabilitation of real property.

Grantee, Subgrantee and/or Subcontractor shall purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial construction/rehabilitation costs, plus value of subsequent modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the property owner has an insurable interest in the property.

a) The insurance shall include interests of the property owner, Grantee, Subgrantee, Subcontractors in the Project as named insureds.

b) All associated deductibles shall be the responsibility of the Grantee, Subcontractor and Subgrantee. Such policy may have a deductible clause but not to exceed $10,000.

c) Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Grantee's, Subgrantee's and Subcontractor's services and expenses required as a result of such insured loss.

d) Builders Risk coverage shall include partial use by Grantee and/or property owner.

e) The amount of such insurance shall be increased to include the cost of any additional work to be done on the Project, or materials or equipment to be incorporated in the Project, under other independent contracts let or to be let. In such event, Subgrantee and Subcontractor shall be reimbursed for this cost as his or her share of the insurance in the same ratio as the ratio of the insurance represented by such independent contracts let or to be let to the total insurance carried.

ix. Pollution Liability Insurance

If Grantee and/or its Subgrantee or Subcontractor is providing directly or indirectly work with pollution/environmental hazards, they must provide or cause those conducting the work to provide Pollution Liability Insurance coverage. Pollution Liability policy must include contractual liability coverage. The policy limits shall be in the amount of $1,000,000 with maximum deductible of $25,000 to be paid by the Grantee's Subcontractor and/or Subgrantee.

C. Miscellaneous Insurance Provisions

Certificates of Insurance and/or insurance policies required under this Grant shall be subject to the following stipulations and additional requirements:

i. **Deductible.** Any and all deductibles or self-insured retentions contained in any Insurance policy shall be assumed by and at the sole risk of the Grantee, its Subgrantees or Subcontractors.

ii. **In Force.** If any of the said policies shall fail at any time to meet the requirements of the Grant as to form or substance, or if a company issuing any such policy shall be or at any time cease to be approved by the Division of Insurance of the State of Colorado, or be or cease to be in compliance with any stricter requirements of the Grant, the Grantee, its Subgrantee and its Subcontractor shall promptly obtain a new policy.

iii. **Insurer**. All requisite insurance shall be obtained from financially responsible insurance companies, authorized to do business in the State of Colorado and acceptable to Grantee.

iv. **Additional Insured**

Grantee and the State shall be named as additional insureds on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction Grants require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

v. **Primacy of Coverage**

Coverage required of Grantee, Subgrantees and Subcontractors shall be primary over any insurance or self-insurance program carried by Grantee or the State.

vi. **Cancellation**

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Grantee and Grantee shall forward such notice to the State in accordance with **§16** (Notices and Representatives) within seven days of Grantee's receipt of such notice.

vii. **Subrogation Waiver**

All insurance policies in any way related to this Grant and secured and maintained by Grantee or its Subgrantees and Subcontractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Grantee or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

D. Certificates

Grantee, Subgrantee and Subcontractor shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Grant or of their respective subcontract or subgrant. No later than 15 days prior to the expiration date of any such coverage, Grantee, Subgrantee and Subcontractor shall deliver to the State or Grantee certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Grant, subgrant or subcontract, Grantee, Subgrantee and Subcontractor shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this **§13**.

14. BREACH

A. Defined

In addition to any breaches specified in other sections of this Grant, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in **§16.** If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in **§15**. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Grant in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

15. REMEDIES

If Grantee is in breach under any provision of this Grant or if the State terminates this Grant pursuant to **§15(B)**, the State shall have the remedies listed in this **§15** in addition to all other remedies set forth in other sections of this Grant following the notice and cure period set forth in **§14(B)**, if applicable. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

If Grantee fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Grant and in a timely manner, the State may notify Grantee of such non-performance in accordance with the provisions herein. If Grantee thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Grant or such part of this Grant as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. Grantee shall continue performance of this Grant to the extent not terminated, if any.

i. Obligations and Rights

To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subgrants/subcontracts with third parties. However, Grantee shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Grant's terms. At the sole discretion of the State, Grantee shall assign to the State all of Grantee's right, title, and interest under such terminated orders or subgrants/subcontracts. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee in which the State has an interest. All materials owned by the State in the possession of Grantee shall be immediately returned to the State.

ii. Payments

The State shall reimburse Grantee only for accepted performance up to the date of termination. If, after termination by the State, it is determined that Grantee was not in breach or that Grantee's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Grant had been terminated in the public interest, as described herein.

iii. Damages and Withholding

Notwithstanding any other remedial action by the State, Grantee also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Grant by Grantee and the State may withhold any payment to Grantee for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due to Grantee as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services.

B. Early Termination in the Public Interest

The State is entering into this Grant for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Grant ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Grant in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This

subsection shall not apply to a termination of this Grant by the State for cause or breach by Grantee, which shall be governed by **§15(A)** or as otherwise specifically provided for herein.

i. Method and Content
The State shall notify Grantee of such termination in accordance with **§16**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Grant.

ii. Obligations and Rights
Upon receipt of a termination notice, Grantee shall be subject to and comply with the same obligations and rights set forth in **§15(A)(i)**.

iii. Payments
If this Grant is terminated by the State pursuant to this **§15(B)**, Grantee shall be paid an amount which bears the same ratio to the total reimbursement under this Grant as the Services satisfactorily performed bear to the total Services covered by this Grant, less payments previously made. Additionally, if this Grant is less than 60% completed, the State may reimburse Grantee for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Grant) incurred by Grantee which are directly attributable to the uncompleted portion of Grantee's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Grantee hereunder.

C. Termination for No Substantial Progress in the Work

The State may elect to terminate this Grant upon receipt and review of any Quarterly Progress Report, submitted per the time periods defined in **Exhibit E** – Project Performance Plan, if such Quarterly Progress Report fails to evidence Substantial Progress in the Work as directed, defined and expected under **Exhibit B**. Further, the State may elect to terminate this Grant if the Grantee fails to complete Project Closeout within **three months** of completion of the Work. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder.

i. Obligations and Rights
To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subgrants/subcontracts with third parties. However, Grantee shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Grant's terms. At the sole discretion of the State, Grantee shall assign to the State all of Grantee's right, title, and interest under such terminated orders or subgrants/subcontracts. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee in which the State has an interest. All materials owned by the State in the possession of Grantee shall be immediately returned to the State.

ii. Payments
The State shall reimburse Grantee only for accepted performance up to the date of termination.

iii. Damages and Withholding
Notwithstanding any other remedial action by the State, Grantee also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Grant by Grantee and the State may withhold any payment to Grantee for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due to Grantee as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services.

D. Remedies Not Involving Termination

The State, at its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Suspend Performance
Suspend Grantee's performance with respect to all or any portion of this Grant pending necessary corrective action as specified by the State without entitling Grantee to an adjustment in price/cost or

performance schedule. Grantee shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by Grantee after the suspension of performance under this provision.

ii. Withhold Payment
Withhold payment to Grantee until corrections in Grantee's performance are satisfactorily made and completed.

iii. Deny Payment
Deny payment for those obligations not performed, that due to Grantee's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

iv. Removal
Demand removal of any of Grantee's employees, agents, or Subgrantees whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Grant is deemed to be contrary to the public interest or not in the State's best interest.

v. Intellectual Property
If Grantee infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Grant, Grantee shall, at the State's option **(a)** obtain for the State or Grantee the right to use such products and services; **(b)** replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, **(c)** if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

16. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. State:

Chantal Unfug, Division Director
Division of Local Government
Colorado Department of Local Affairs
1313 Sherman Street, Room 521
Denver, Colorado 80203
Email: chantal.unfug@state.co.us

B. Grantee:

Aaron Huckstep, Mayor
Town of Crested Butte
P. O. Box 39
Crested Butte, Colorado 81224
Email: n/a

17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

This section ☐ shall | ☒ shall not apply to this Grant.

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Grantee in the performance of its obligations under this Grant shall be the exclusive property of the State and, all Work Product shall be delivered to the State by Grantee upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative

works. Grantee shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Grantee's obligations hereunder without the prior written consent of the State.

18. GOVERNMENTAL IMMUNITY

Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the GIA. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the GIA and the risk management statutes, CRS §24-30-1501, et seq., as amended.

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Grantee under this Grant is greater than $100,000 either on the Effective Date or at anytime thereafter, this **§19** applies.

Grantee agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state Grants and inclusion of Grant performance information in a statewide Contract Management System.

Grantee's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Grant, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Grantee's performance shall be part of the normal Grant administration process and Grantee's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Grantee's obligations under this Grant shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Grantee's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Grant term. Grantee shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Grantee demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Department of Local Affairs, and showing of good cause, may debar Grantee and prohibit Grantee from receiving future grants and bidding on future contracts. Grantee may contest the final Evaluation, Review and Rating by: **(a)** filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or **(b)** under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Grantee, by the Executive Director, upon a showing of good cause.

20. RESTRICTION ON PUBLIC BENEFITS

This section ☐ shall | ☒ shall not apply to this Grant.

Grantee must confirm that any individual natural person is lawfully present in the United States pursuant to CRS §24-76.5-101 et seq. when such individual applies for public benefits provided under this Grant by requiring the applicant to:

- **A.** Produce an identification document in accordance with §2.1.1 through §2.1.3 of Colorado Department of Revenue's Rule #1 CCR 201-17, Rule for Evidence of Lawful Presence, as amended.
- **B.** Execute an affidavit herein attached as **Form 1**, Residency Declaration, stating
  - **i.** That he or she is a United States citizen or legal permanent resident; or
  - **ii.** That he or she is otherwise lawfully present in the United States pursuant to federal law.

[The following applies if Grant is funded with federal funds].

Notwithstanding the foregoing, to the extent that there is any conflict with the provisions above or those set forth in the Residency Declaration attached hereto as **Form 1** and any provision of federal law, the provisions of federal law shall prevail.

21. GENERAL PROVISIONS

A. Assignment and Subgrants

Grantee's rights and obligations hereunder are personal and may not be transferred, assigned or subgranted without the prior, written consent of the State. Any attempt at assignment, transfer, or subgranting without such consent shall be void. All assignments, subgrants, or subcontracts approved by Grantee or the State are subject to all of the provisions hereof. Grantee shall be solely responsible for all aspects of subgranting and subcontracting arrangements and performance.

B. Binding Effect

Except as otherwise provided in **§21(A)**, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

The captions and headings in this Grant are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

D. Counterparts

This Grant may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

E. Entire Understanding

This Grant represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

F. Indemnification-General

Grantee shall, to the extent permitted by law, indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Subgrantees, or assignees pursuant to the terms of this Grant; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the GIA, or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

G. Jurisdiction and Venue

All suits, actions, or proceedings related to this Grant shall be held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

H. List of Selected Applicable Laws

At all times during the performance of this Grant, Grantee shall comply with all applicable Federal and State laws and their implementing regulations, currently in existence and as hereafter amended, including without limitation those set forth on **Exhibit A**, Applicable Laws. Grantee also shall require compliance with such laws and regulations by subgrantees under subgrants permitted by this Grant.

I. Use Covenants

This section ☐ shall | ☒ shall not apply to this Grant:

For Subject Property that is owned by Grantee upon execution of this Grant, Grantee shall record a Use Covenant substantially equivalent to **Exhibit F** with the county in which the property resides as soon as reasonably practicable after execution of this Grant. For Subject Property acquired by Grantee using Grant Funds, Grantee shall record a Use Covenant substantially equivalent to **Exhibit F** with the county in which the property resides as soon as reasonably practicable after acquisition of such property.

J. Modification

i. By the Parties

Except as specifically provided in this Grant, modifications of this Grant shall not be effective unless agreed to in writing by the Parties in an amendment hereto, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATION OF CONTRACTS -

TOOLS AND FORMS. Changes to the Grant shall be authorized to be approved by the following State or DOLA parties:

a) Approval by Division Director
The Division Director of DOLA or his delegee shall have authority to approve changes to the Responsible Administrator and Key Personnel specified in §5 of **Exhibit B** and the Principal Representative in §16.

b) Approval by DOLA Controller
The DOLA Controller shall have authority to approve all changes to the Grant which are not reserved to the Division Director above.

ii. By Operation of Law
This Grant is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Grant on the effective date of such change, as if fully set forth herein.

K. Order of Precedence
The provisions of this Grant shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Grant and its exhibits and attachments including, but not limited to, those provided by Grantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

i. Exhibit A (Applicable Laws)
ii. Colorado Special Provisions
iii. The provisions of the main body of this Grant (excluding the cover page)
iv. Any executed Option Letters
v. Exhibit B (Scope of Project)
vi. Exhibit E (Project Performance Plan)
vii.The cover page of this Grant

L. Severability
Provided this Grant can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

M. Survival of Certain Grant Terms
Notwithstanding anything herein to the contrary, provisions of this Grant requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Grantee fails to perform or comply as required.

N. Taxes
The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Grantee shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing Grantee for them.

O. Third Party Beneficiaries
Enforcement of this Grant and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

P. Waiver
Waiver of any breach of a term, provision, or requirement of this Grant, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Grant and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

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22. COLORADO SPECIAL PROVISIONS

A. The Special Provisions apply to all Grants except where noted in *italics*.

i. **CONTROLLER'S APPROVAL. CRS §24-30-202 (1).**
This Grant shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

ii. **FUND AVAILABILITY. CRS §24-30-202(5.5).**
Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

iii. **GOVERNMENTAL IMMUNITY.**
No term or condition of this Grant shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

iv. **INDEPENDENT CONTRACTOR**
Grantee shall perform its duties hereunder as an independent Grantee and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Grantee or any of its agents or employees. Unemployment insurance benefits shall be available to Grantee and its employees and agents only if such coverage is made available by Grantee or a third party. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Grant. Grantee shall not have authorization, express or implied, to bind the State to any Grant, liability or understanding, except as expressly set forth herein. Grantee shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

v. **COMPLIANCE WITH LAW.**
Grantee shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

vi. **CHOICE OF LAW.**
Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this grant. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Grant, to the extent capable of execution.

vii. **BINDING ARBITRATION PROHIBITED.**
The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Grant or incorporated herein by reference shall be null and void.

viii. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.**
State or other public funds payable under this Grant shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Grantee hereby certifies and warrants that, during the term of this Grant and any extensions, Grantee has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Grantee is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Grant, including, without

limitation, immediate termination of this Grant and any remedy consistent with federal copyright laws or applicable licensing restrictions.

ix. **EMPLOYEE FINANCIAL INTEREST. CRS §§24-18-201 and 24-50-507.**
The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Grant. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee's services and Grantee shall not employ any person having such known interests.

x. **VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.**
[*Not applicable to intergovernmental agreements*] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

xi. **PUBLIC GRANTS FOR SERVICES. CRS §8-17.5-101.**
[*Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental Agreements, or information technology* services *or products and services*] Grantee certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this Grant and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Grant, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), Grantee shall not knowingly employ or contract with an illegal alien to perform work under this Grant or enter into a grant with a Subgrantee that fails to certify to Grantee that the Subgrantee shall not knowingly employ or contract with an illegal alien to perform work under this Grant. Grantee (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Grant is being performed, (b) shall notify the Subgrantee and the granting State agency within three days if Grantee has actual knowledge that a Subgrantee is employing or contracting with an illegal alien for work under this Grant, (c) shall terminate the Subgrant if a Subgrantee does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Grantee participates in the State program, Grantee shall deliver to the granting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Grantee has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Grantee fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the granting State agency, institution of higher education or political subdivision may terminate this Grant for breach and, if so terminated, Grantee shall be liable for damages.

xii. **PUBLIC GRANTS WITH NATURAL PERSONS. CRS §24-76.5-101.**
Grantee, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the Effective Date of this Grant.

(Special Provisions - effective 1/1/09)

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS GRANT

*** Persons signing for Grantee hereby swear and affirm that they are authorized to act on Grantee's behalf and acknowledge that the State is relying on their representations to that effect.**

GRANTEE
TOWN OF CRESTED BUTTE

By: Aaron J. Huckstep
Name of Authorized Individual (print)

Title: Mayor
Official Title of Authorized Individual

*Signature

Date: 5/19/15

STATE OF COLORADO
John W. Hickenlooper, GOVERNOR
DEPARTMENT OF LOCAL AFFAIRS

By: _____
Irv Halter, Executive Director

Date: _____

PRE-APPROVED FORM CONTRACT REVIEWER

By: _____
Bret Hillberry, State Grants Program Manager

Date: _____

ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State grants. This Grant is not valid until signed and dated below by the State Controller or delegate. Grantee is not authorized to begin performance until such time. If Grantee begins performing prior thereto, the State of Colorado is not obligated to pay Grantee for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
Robert Jaros, CPA

By: _____
Janet Miks, CPA, Controller Delegate

Date: _____

GRANT AGREEMENT

Between

STATE OF COLORADO
DEPARTMENT OF LOCAL AFFAIRS

And

TOWN OF CRESTED BUTTE

Summary		
		Award Amount: $150,000.00
Identification #s:		
Encumbrance #:	F15S7697	*(DOLA's primary identification #)*
Contract Management System #:	79139	*(State of Colorado's tracking #)*
Project Information:		
Project/Award Number:	EIAF 7697	
Project Name:	Crested Butte Affordable Housing Infrastructure Phase II	
Performance Period:	Start Date: _____	End Date: 07/31/16
Brief Description of Project / Assistance:	The Project consists of installing infrastructure to serve the next phase of affordable housing in Crested Butte.	
Program & Funding Information:		
Program Name	Energy & Mineral Impact Assistance Fund	
Funding source:	State Funds	
Catalog of Federal Domestic Assistance (CFDA) Number (if federal funds):	N/A	
Funding Account Codes:	_____	
	_____	

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1. PARTIES

This Agreement (hereinafter called "Grant") is entered into by and between the **TOWN OF CRESTED BUTTE** (hereinafter called "Grantee"), and the STATE OF COLORADO acting by and through the Department of Local Affairs for the benefit of the Division of Local Government (hereinafter called the "State" or "DOLA").

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.

This Grant shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date"). The State shall not be liable to pay or reimburse Grantee for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to *(see checked option(s) below):*

A. ☒ The Effective Date.

B. ☐ The Effective Date; provided, however, that all Project costs, if specifically authorized by the federal funding authority, incurred on or after March 1, 20XX, may be submitted for reimbursement as if incurred after the Effective Date.

C. ☐ insert date for authorized Pre-agreement Costs (as such term is defined in **§4)** , if specifically authorized by the funding authority . Such costs may be submitted for reimbursement as if incurred after the Effective Date.

3. RECITALS

A. Authority, Appropriation, and Approval

Authority to enter into this Grant exists in C.R.S. 24-32-106 and 29-3.5-101 and funds have been budgeted, appropriated and otherwise made available pursuant to C.R.S. 39-29-110 (Local Government Severance Tax Fund) and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Grant.

C. Purpose

The purpose of this Grant is described in **Exhibit B.**

D. References

All references in this Grant to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. Budget

"Budget" means the budget for the Project and/or Work described in **Exhibit B.**

B. Closeout Certification

"Closeout Certification" means the Grantee's certification of completion of Work submitted on a form provided by the State.

C. Evaluation

"Evaluation" means the process of examining Grantee's Work and rating it based on criteria established in **§6** and **Exhibit B.**

D. Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein:

i. Exhibit A (Applicable Laws)
ii. Exhibit B (Scope of Project)
iii. Exhibit E (Project Performance Plan)
iv. Exhibit G (Form of Option Letter)

E. Goods

"Goods" means tangible material acquired, produced, or delivered by Grantee either separately or in conjunction with the Services Grantee renders hereunder.

F. Grant

"Grant" means this agreement, its terms and conditions, attached exhibits, documents incorporated by reference pursuant to the terms of this Grant, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

G. Grant Funds

"Grant Funds" means available funds payable by the State to Grantee pursuant to this Grant.

H. Party or Parties

"Party" means the State or Grantee and "Parties" means both the State and Grantee.

I. Pay Request(s)

"Pay Request(s)" means the Grantee's reimbursement request(s) submitted on form(s) provided by the State.

J. Pre-agreement costs

"Pre-agreement costs," when applicable, means the costs incurred on or after the date as specified in **§2** above, and prior to the Effective Date of this Grant. Such costs shall have been detailed in Grantee's grant application and specifically authorized by the State and incorporated herein pursuant to **Exhibit B.**

K. Project
"Project" means the overall project described in **Exhibit B**, which includes the Work.

L. Project Closeout
"Project Closeout" means the submission by the Grantee to the State of an actual final Pay Request, a final Status Report and a Closeout Certification.

M. Program
"Program" means the grant program specified on the first page of this Grant that provides the funding for this Grant.

N. Review
"Review" means examining Grantee's Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in **§6** and **Exhibit B.**

O. Services
"Services" means the required services to be performed by Grantee pursuant to this Grant.

P. Status Report(s)
"Status Report(s)" means the Grantee's status report(s) on the Work/Project submitted on form(s) provided by the State.

Q. Subcontractor
"Subcontractor" means third-parties, if any, engaged by Grantee to carry out specific vendor related services.

R. Subgrantee
"Subgrantee" means third-parties, if any, engaged by Grantee to aid in performance of its obligations. Subgrantee is bound by the same overall programmatic and grant requirements as Grantee.

S. Subject Property
"Subject Property" means the real property, if any, for which Grant Funds are used to acquire, construct, or rehabilitate.

T. Substantial Progress in the Work
"Substantial Progress in the Work" means Grantee meets all deliverables and performance measures within the time frames specified in **Exhibit E**.

U. Work
"Work" means the tasks and activities Grantee is required to perform to fulfill its obligations under this Grant and **Exhibit B**, including the performance of the Services and delivery of the Goods.

V. Work Product
"Work Product" means the tangible or intangible results of Grantee's Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

5. TERM

A. Initial Term-Work Commencement
Unless otherwise permitted in **§2** above, the Parties' respective performances under this Grant shall commence on the Effective Date. This Grant shall terminate on **July 31, 2016** unless sooner terminated or further extended as specified elsewhere herein.

B. Two Month Extension
The State, at its sole discretion upon written notice to Grantee as provided in **§16,** may unilaterally extend the term of this Grant for a period not to exceed two months if the Parties are negotiating a replacement Grant (and not merely seeking a term extension) at or near the end of any initial term or any extension thereof. The provisions of this Grant in effect when such notice is given, including, but not limited to prices, rates, and delivery requirements, shall remain in effect during the two month extension. The two-month extension shall immediately terminate when and if a replacement Grant is approved and signed by the Colorado State Controller.

6. STATEMENT OF WORK

A. Completion

Grantee shall complete the Work and its other obligations as described herein and in **Exhibit B**. Except as specified in §2 above, the State shall not be liable to compensate Grantee for any Work performed prior to the Effective Date or after the termination of this Grant.

B. Goods and Services

Grantee shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Grant Funds and shall not increase the maximum amount payable hereunder by the State.

C. Employees

All persons employed by Grantee or Subgrantees shall be considered Grantee's or Subgrantees' employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Grant.

7. PAYMENTS TO GRANTEE

The State shall, in accordance with the provisions of this §7, pay Grantee in the following amounts and using the methods set forth below:

A. Maximum Amount

The maximum amount payable under this Grant to Grantee by the State is **$150,000.00 (ONE HUNDRED FIFTY THOUSAND and XX/100 DOLLARS)**, as determined by the State from available funds. Grantee agrees to provide any additional funds required for the successful completion of the Work. Payments to Grantee are limited to the unpaid obligated balance of the Grant as set forth in **Exhibit B**.

B. Payment

i. Advance, Interim and Final Payments

Any payment allowed under this Grant or in **Exhibit B** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Grant or such Exhibit. Grantee shall initiate any payment requests by submitting invoices to the State in the form and manner set forth and approved by the State.

ii. Interest

The State shall not pay interest on Grantee invoices. The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by Grantee previously accepted by the State.

iii. Available Funds-Contingency-Termination

The State is prohibited by law from making fiscal commitments beyond the term of the State's current fiscal year. Therefore, Grantee's compensation is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions, set forth below. If federal funds are used with this Grant in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Grant shall be made only from available funds encumbered for this Grant and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not fully appropriated, or otherwise become unavailable for this Grant, the State may immediately terminate this Grant in whole or in part to the extent of funding reduction without further liability in accordance with the provisions herein.

iv. Erroneous Payments

At the State's sole discretion, payments made to Grantee in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Grantee, may be recovered from Grantee by deduction from subsequent payments under this Grant or other grants or agreements between the State and Grantee or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any person or entity other than the State.

C. Use of Funds

Grant Funds shall be used only for eligible costs identified herein and/or in **Exhibit B**.

i. **Budget Line Item Adjustments.**
Modifications to uses of such Grant Funds shall be made in accordance with **§4.4** of **Exhibit B**. For line item adjustments over 10% but less than 24.99% (a "**Minor Line Item Adjustment**") which are approved, the State shall provide written notice to Grantee in a form substantially equivalent to **Exhibit G** (each an "**Option Letter**"). If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Grant.

ii. **Overall Budget Adjustments.**
Modifications to the overall Budget shall be made in accordance with **§4.5** of **Exhibit B**. For overall Budget adjustments less than 24.99% (a "**Minor Budget Adjustment**") which are approved, the State shall provide written notice to Grantee in an Option Letter. If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Grant.

iii. **Setting Final Initial Budget.**
All requests by the Grantee to align the initial overall Budget with current market conditions shall be made in accordance with **§4.5.1.1** of **Exhibit B**. If such True-up Budget Proposal (as such term is defined in **§4.5.1.1** of **Exhibit B**) is approved, the State shall provide written notice to Grantee in an Option Letter. If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Grant.

D. Matching/Leveraged Funds
Grantee shall provide matching and/or leveraged funds in accordance with **Exhibit B**.

8. REPORTING - NOTIFICATION
Reports, Evaluations, and Reviews required under this **§8** shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with **§19**, if applicable.

A. Performance, Progress, Personnel, and Funds
State shall submit a report to the Grantee upon expiration or sooner termination of this Grant, containing an Evaluation and Review of Grantee's performance and the final status of Grantee's obligations hereunder. In addition, Grantee shall comply with all reporting requirements, if any, set forth in **Exhibit B.**

B. Litigation Reporting
Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Grant or which may affect Grantee's ability to perform its obligations hereunder, Grantee shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of DOLA.

C. Performance Outside the State of Colorado and/or the United States
[***Not applicable if Grant Funds include any federal funds]*** Following the Effective Date, Grantee shall provide written notice to the State, in accordance with **§16 (Notices and Representatives)**, within 20 days of the earlier to occur of Grantee's decision to perform, or its execution of an agreement with a Subgrantee to perform, Services outside the State of Colorado and/or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado and/or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations. All notices received by the State pursuant to this **§8.C** shall be posted on the Colorado Department of Personnel & Administration's website. Knowing failure by Grantee to provide notice to the State under this **§8.C** shall constitute a material breach of this Grant.

D. Noncompliance
Grantee's failure to provide reports and notify the State in a timely manner in accordance with this **§8** may result in the delay of payment of funds and/or termination as provided under this Grant.

E. Subgrants/Subcontracts
Copies of any and all subgrants and subcontracts entered into by Grantee to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subgrants and subcontracts entered into by Grantee related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subgrants be governed by the laws of the State of Colorado.

9. GRANTEE RECORDS

Grantee shall make, keep, maintain and allow inspection and monitoring of the following records:

A. Maintenance

Grantee shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Grantee shall maintain such records (the "Record Retention Period") until the last to occur of the following:

(i) a period of five years after the date this Grant is completed or terminated, or final payment is made hereunder, whichever is later, or

(ii) for such further period as may be necessary to resolve any pending matters, or

(iii) if an audit is occurring, or Grantee has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved.

B. Inspection

Grantee shall permit the State, the federal government (if Grant Funds include federal funds) and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Grantee's records related to this Grant during the Record Retention Period for a period of five years following termination of this Grant or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Grantee's performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Grant, including any extension. If the Work fails to conform to the requirements of this Grant, the State may require Grantee promptly to bring the Work into conformity with Grant requirements, at Grantee's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Grantee to take necessary action to ensure that future performance conforms to Grant requirements and exercise the remedies available under this Grant, at law or in equity in lieu of or in conjunction with such corrective measures.

C. Monitoring

Grantee shall permit the State, the federal government (if Grant Funds include federal funds), and other governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Grantee pursuant to the terms of this Grant using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Grantee's performance hereunder.

D. Final Audit Report

Grantee shall provide a copy of its audit report(s) to DOLA as specified in **Exhibit B.**

10. CONFIDENTIAL INFORMATION-STATE RECORDS

Grantee shall comply with the provisions of this **§10** if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, state records, personnel records, and information concerning individuals.

A. Confidentiality

Grantee shall keep all State records and information confidential at all times and comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of Grantee shall be immediately forwarded to the State's principal representative.

B. Notification

Grantee shall notify its agent, employees, Subgrantees, and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by Grantee or its agents in any way, except as authorized by this Grant or approved in writing by the State. Grantee shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Grantee or its agents, except as permitted in this Grant or approved in writing by the State.

D. Disclosure-Liability

Disclosure of State records or other confidential information by Grantee for any reason may be cause for legal action by third parties against Grantee, the State or their respective agents. Grantee shall, to the extent permitted by law, indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Subgrantees, or assignees pursuant to this **§10.**

11. CONFLICTS OF INTEREST

Grantee shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Grantee's obligations hereunder. Grantee acknowledges that with respect to this Grant, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations to the State hereunder. If a conflict or appearance exists, or if Grantee is uncertain whether a conflict or the appearance of a conflict of interest exists, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Grant.

12. REPRESENTATIONS AND WARRANTIES

Grantee makes the following specific representations and warranties, each of which was relied on by the State in entering into this Grant.

A. Standard and Manner of Performance

Grantee shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in the industry, trades or profession and in the sequence and manner set forth in this Grant.

B. Legal Authority – Grantee and Grantee's Signatory

Grantee warrants that it possesses the legal authority to enter into this Grant and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Grant, or any part thereof, and to bind Grantee to its terms. If requested by the State, Grantee shall provide the State with proof of Grantee's authority to enter into this Grant within 15 days of receiving such request.

C. Licenses, Permits, Etc.

Grantee represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. Grantee warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Grant, without reimbursement by the State or other adjustment in Grant Funds. Additionally, all employees and agents of Grantee performing Services under this Grant shall hold all required licenses or certifications, if any, to perform their responsibilities. Grantee, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Grantee to properly perform the terms of this Grant shall be deemed to be a material breach by Grantee and constitute grounds for termination of this Grant.

13. INSURANCE

Grantee and its Subgrantees shall obtain and maintain insurance as specified in this section at all times during the term of this Grant: All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Grantee and the State.

A. Grantee

i. Public Entities

If Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Grantee shall show proof of such insurance satisfactory to the State, if requested by the State. Grantee shall require each subgrant with Subgrantees that are public entities, providing Goods or Services hereunder, to include the insurance requirements necessary to meet Subgrantee's liabilities under the GIA.

ii. Non-Public Entities

If Grantee is not a "public entity" within the meaning of the GIA, Grantee shall obtain and maintain during the term of this Grant insurance coverage and policies meeting the same requirements set forth in **§13(B)** with respect to Subgrantees that are not "public entities".

B. Grantees, Subgrantees and Subcontractors

Grantee shall require each subgrant with Subgrantees and each contract with Subcontractors, other than those that are public entities, providing Goods or Services in connection with this Grant, to include insurance requirements substantially similar to the following:

i. Workers' Compensation

Workers' Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of Grantee, Subgrantee and Subcontractor employees acting within the course and scope of their employment.

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: **(a)** $1,000,000 each occurrence; **(b)** $1,000,000 general aggregate; **(c)** $1,000,000 products and completed operations aggregate; and **(d)** $50,000 any one fire.

iii. Automobile Liability

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of $1,000,000 each accident combined single limit.

iv. Malpractice/Professional Liability Insurance

This section ☒ shall | ☐ shall not apply to this Grant.

Grantee, Subgrantees and Subcontractors shall maintain in full force and effect a Professional Liability Insurance Policy in the minimum amount of $1,000,000 per occurrence and $1,000,000 in the aggregate, written on an occurrence form, that provides coverage for its work undertaken pursuant to this Grant. If a policy written on an occurrence form is not commercially available, the claims-made policy shall remain in effect for the duration of this Grant and for at least two years beyond the completion and acceptance of the work under this Grant, or, alternatively, a two year extended reporting period must be purchased. The Grantee, Subgrantee or Subcontractor shall be responsible for all claims, damages, losses or expenses, including attorney's fees, arising out of or resulting from such party's performance of professional services under this Grant, a subcontract or subgrant.

v. Umbrella Liability Insurance

For construction projects exceeding $10,000,000, Grantee, Subgrantees and Subcontractors shall maintain umbrella/excess liability insurance on an occurrence basis in excess of the underlying insurance described in **§13B(i)-(iv)** above. Coverage shall follow the terms of the underlying insurance, included the additional insured and waiver of subrogation provisions. The amounts of insurance required in subsections above may be satisfied by the Grantee, Subgrantee and

Subcontractor purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the limits specified in each section previously mentioned. The insurance shall have a minimum amount of $5,000,000 per occurrence and $5,000,000 in the aggregate.

vi. Property Insurance

This subsection shall apply if Grant Funds are provided for the acquisition, construction, or rehabilitation of real property.

Insurance on the buildings and other improvements now existing or hereafter erected on the premises and on the fixtures and personal property included in the Subject Property against loss by fire, other hazards covered by the so called "all risk" form of policy and such other perils as State shall from time to time require with respect to properties of the nature and in the geographical area of the Subject Property, and to be in an amount at least equal to the replacement cost value of the Subject Property. Grantor will at its sole cost and expense, from time to time and at any time, at the request of State provide State with evidence satisfactory to State of the replacement cost of the Subject Property.

vii.Flood Insurance

If the Subject Property or any part thereof is at any time located in a designated official flood hazard area, flood insurance insuring the buildings and improvements now existing or hereafter erected on the Subject Property and the personal property used in the operation thereof in an amount equal to the lesser of the amount required for property insurance identified in **§vi** above or the maximum limit of coverage made available with respect to such buildings and improvements and personal property under applicable federal laws and the regulations issued thereunder.

viii. Builder's Risk Insurance

The subsection shall apply if Grant Funds are provided for construction or rehabilitation of real property.

Grantee, Subgrantee and/or Subcontractor shall purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial construction/rehabilitation costs, plus value of subsequent modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the property owner has an insurable interest in the property.

a) The insurance shall include interests of the property owner, Grantee, Subgrantee, Subcontractors in the Project as named insureds.

b) All associated deductibles shall be the responsibility of the Grantee, Subcontractor and Subgrantee. Such policy may have a deductible clause but not to exceed $10,000.

c) Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Grantee's, Subgrantee's and Subcontractor's services and expenses required as a result of such insured loss.

d) Builders Risk coverage shall include partial use by Grantee and/or property owner.

e) The amount of such insurance shall be increased to include the cost of any additional work to be done on the Project, or materials or equipment to be incorporated in the Project, under other independent contracts let or to be let. In such event, Subgrantee and Subcontractor shall be reimbursed for this cost as his or her share of the insurance in the same ratio as the ratio of the insurance represented by such independent contracts let or to be let to the total insurance carried.

ix. Pollution Liability Insurance

If Grantee and/or its Subgrantee or Subcontractor is providing directly or indirectly work with pollution/environmental hazards, they must provide or cause those conducting the work to provide Pollution Liability Insurance coverage. Pollution Liability policy must include contractual liability coverage. The policy limits shall be in the amount of $1,000,000 with maximum deductible of $25,000 to be paid by the Grantee's Subcontractor and/or Subgrantee.

C. Miscellaneous Insurance Provisions

Certificates of Insurance and/or insurance policies required under this Grant shall be subject to the following stipulations and additional requirements:

i. **Deductible.** Any and all deductibles or self-insured retentions contained in any Insurance policy shall be assumed by and at the sole risk of the Grantee, its Subgrantees or Subcontractors.

ii. **In Force.** If any of the said policies shall fail at any time to meet the requirements of the Grant as to form or substance, or if a company issuing any such policy shall be or at any time cease to be approved by the Division of Insurance of the State of Colorado, or be or cease to be in compliance with any stricter requirements of the Grant, the Grantee, its Subgrantee and its Subcontractor shall promptly obtain a new policy.

iii. **Insurer**. All requisite insurance shall be obtained from financially responsible insurance companies, authorized to do business in the State of Colorado and acceptable to Grantee.

iv. **Additional Insured**

Grantee and the State shall be named as additional insureds on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction Grants require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

v. **Primacy of Coverage**

Coverage required of Grantee, Subgrantees and Subcontractors shall be primary over any insurance or self-insurance program carried by Grantee or the State.

vi. **Cancellation**

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Grantee and Grantee shall forward such notice to the State in accordance with **§16** (Notices and Representatives) within seven days of Grantee's receipt of such notice.

vii. **Subrogation Waiver**

All insurance policies in any way related to this Grant and secured and maintained by Grantee or its Subgrantees and Subcontractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Grantee or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

D. Certificates

Grantee, Subgrantee and Subcontractor shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Grant or of their respective subcontract or subgrant. No later than 15 days prior to the expiration date of any such coverage, Grantee, Subgrantee and Subcontractor shall deliver to the State or Grantee certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Grant, subgrant or subcontract, Grantee, Subgrantee and Subcontractor shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this **§13**.

14. BREACH

A. Defined

In addition to any breaches specified in other sections of this Grant, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in **§16**. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in **§15**. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Grant in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

15. REMEDIES

If Grantee is in breach under any provision of this Grant or if the State terminates this Grant pursuant to **§15(B)**, the State shall have the remedies listed in this **§15** in addition to all other remedies set forth in other sections of this Grant following the notice and cure period set forth in **§14(B)**, if applicable. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

If Grantee fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Grant and in a timely manner, the State may notify Grantee of such non-performance in accordance with the provisions herein. If Grantee thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Grant or such part of this Grant as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. Grantee shall continue performance of this Grant to the extent not terminated, if any.

i. **Obligations and Rights**

To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subgrants/subcontracts with third parties. However, Grantee shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Grant's terms. At the sole discretion of the State, Grantee shall assign to the State all of Grantee's right, title, and interest under such terminated orders or subgrants/subcontracts. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee in which the State has an interest. All materials owned by the State in the possession of Grantee shall be immediately returned to the State.

ii. **Payments**

The State shall reimburse Grantee only for accepted performance up to the date of termination. If, after termination by the State, it is determined that Grantee was not in breach or that Grantee's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Grant had been terminated in the public interest, as described herein.

iii. **Damages and Withholding**

Notwithstanding any other remedial action by the State, Grantee also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Grant by Grantee and the State may withhold any payment to Grantee for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due to Grantee as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services.

B. Early Termination in the Public Interest

The State is entering into this Grant for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Grant ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Grant in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This

subsection shall not apply to a termination of this Grant by the State for cause or breach by Grantee, which shall be governed by **§15(A)** or as otherwise specifically provided for herein.

i. **Method and Content**
The State shall notify Grantee of such termination in accordance with **§16**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Grant.

ii. **Obligations and Rights**
Upon receipt of a termination notice, Grantee shall be subject to and comply with the same obligations and rights set forth in **§15(A)(i)**.

iii. **Payments**
If this Grant is terminated by the State pursuant to this **§15(B)**, Grantee shall be paid an amount which bears the same ratio to the total reimbursement under this Grant as the Services satisfactorily performed bear to the total Services covered by this Grant, less payments previously made. Additionally, if this Grant is less than 60% completed, the State may reimburse Grantee for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Grant) incurred by Grantee which are directly attributable to the uncompleted portion of Grantee's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Grantee hereunder.

C. Termination for No Substantial Progress in the Work

The State may elect to terminate this Grant upon receipt and review of any Quarterly Progress Report, submitted per the time periods defined in **Exhibit E** – Project Performance Plan, if such Quarterly Progress Report fails to evidence Substantial Progress in the Work as directed, defined and expected under **Exhibit B**. Further, the State may elect to terminate this Grant if the Grantee fails to complete Project Closeout within **three months** of completion of the Work. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder.

i. **Obligations and Rights**
To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subgrants/subcontracts with third parties. However, Grantee shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Grant's terms. At the sole discretion of the State, Grantee shall assign to the State all of Grantee's right, title, and interest under such terminated orders or subgrants/subcontracts. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee in which the State has an interest. All materials owned by the State in the possession of Grantee shall be immediately returned to the State.

ii. **Payments**
The State shall reimburse Grantee only for accepted performance up to the date of termination.

iii. **Damages and Withholding**
Notwithstanding any other remedial action by the State, Grantee also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Grant by Grantee and the State may withhold any payment to Grantee for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due to Grantee as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services.

D. Remedies Not Involving Termination

The State, at its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. **Suspend Performance**
Suspend Grantee's performance with respect to all or any portion of this Grant pending necessary corrective action as specified by the State without entitling Grantee to an adjustment in price/cost or

performance schedule. Grantee shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by Grantee after the suspension of performance under this provision.

ii. **Withhold Payment**
Withhold payment to Grantee until corrections in Grantee's performance are satisfactorily made and completed.

iii. **Deny Payment**
Deny payment for those obligations not performed, that due to Grantee's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

iv. **Removal**
Demand removal of any of Grantee's employees, agents, or Subgrantees whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Grant is deemed to be contrary to the public interest or not in the State's best interest.

v. **Intellectual Property**
If Grantee infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Grant, Grantee shall, at the State's option **(a)** obtain for the State or Grantee the right to use such products and services; **(b)** replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, **(c)** if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

16. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. State:

Chantal Unfug, Division Director
Division of Local Government
Colorado Department of Local Affairs
1313 Sherman Street, Room 521
Denver, Colorado 80203
Email: chantal.unfug@state.co.us

B. Grantee:

Aaron Huckstep, Mayor
Town of Crested Butte
P. O. Box 39
Crested Butte, Colorado 81224
Email: n/a

17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

This section ☐ shall | ☒ shall not apply to this Grant.

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Grantee in the performance of its obligations under this Grant shall be the exclusive property of the State and, all Work Product shall be delivered to the State by Grantee upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative

works. Grantee shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Grantee's obligations hereunder without the prior written consent of the State.

18. GOVERNMENTAL IMMUNITY

Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the GIA. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the GIA and the risk management statutes, CRS §24-30-1501, et seq., as amended.

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Grantee under this Grant is greater than $100,000 either on the Effective Date or at anytime thereafter, this **§19** applies.

Grantee agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state Grants and inclusion of Grant performance information in a statewide Contract Management System.

Grantee's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Grant, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Grantee's performance shall be part of the normal Grant administration process and Grantee's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Grantee's obligations under this Grant shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Grantee's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Grant term. Grantee shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Grantee demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Department of Local Affairs, and showing of good cause, may debar Grantee and prohibit Grantee from receiving future grants and bidding on future contracts. Grantee may contest the final Evaluation, Review and Rating by: **(a)** filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or **(b)** under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Grantee, by the Executive Director, upon a showing of good cause.

20. RESTRICTION ON PUBLIC BENEFITS

This section ☐ shall | ☒ shall not apply to this Grant.

Grantee must confirm that any individual natural person is lawfully present in the United States pursuant to CRS §24-76.5-101 et seq. when such individual applies for public benefits provided under this Grant by requiring the applicant to:

- **A.** Produce an identification document in accordance with §2.1.1 through §2.1.3 of Colorado Department of Revenue's Rule #1 CCR 201-17, Rule for Evidence of Lawful Presence, as amended.
- **B.** Execute an affidavit herein attached as **Form 1**, Residency Declaration, stating
  - **i.** That he or she is a United States citizen or legal permanent resident; or
  - **ii.** That he or she is otherwise lawfully present in the United States pursuant to federal law.

[The following applies if Grant is funded with federal funds].

Notwithstanding the foregoing, to the extent that there is any conflict with the provisions above or those set forth in the Residency Declaration attached hereto as **Form 1** and any provision of federal law, the provisions of federal law shall prevail.

21. GENERAL PROVISIONS

A. Assignment and Subgrants

Grantee's rights and obligations hereunder are personal and may not be transferred, assigned or subgranted without the prior, written consent of the State. Any attempt at assignment, transfer, or subgranting without such consent shall be void. All assignments, subgrants, or subcontracts approved by Grantee or the State are subject to all of the provisions hereof. Grantee shall be solely responsible for all aspects of subgranting and subcontracting arrangements and performance.

B. Binding Effect

Except as otherwise provided in **§21(A)**, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

The captions and headings in this Grant are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

D. Counterparts

This Grant may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

E. Entire Understanding

This Grant represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

F. Indemnification-General

Grantee shall, to the extent permitted by law, indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Subgrantees, or assignees pursuant to the terms of this Grant; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the GIA, or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

G. Jurisdiction and Venue

All suits, actions, or proceedings related to this Grant shall be held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

H. List of Selected Applicable Laws

At all times during the performance of this Grant, Grantee shall comply with all applicable Federal and State laws and their implementing regulations, currently in existence and as hereafter amended, including without limitation those set forth on **Exhibit A**, Applicable Laws. Grantee also shall require compliance with such laws and regulations by subgrantees under subgrants permitted by this Grant.

I. Use Covenants

This section ☐ shall | ☒ shall not apply to this Grant:

For Subject Property that is owned by Grantee upon execution of this Grant, Grantee shall record a Use Covenant substantially equivalent to **Exhibit F** with the county in which the property resides as soon as reasonably practicable after execution of this Grant. For Subject Property acquired by Grantee using Grant Funds, Grantee shall record a Use Covenant substantially equivalent to **Exhibit F** with the county in which the property resides as soon as reasonably practicable after acquisition of such property.

J. Modification

i. **By the Parties**

Except as specifically provided in this Grant, modifications of this Grant shall not be effective unless agreed to in writing by the Parties in an amendment hereto, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATION OF CONTRACTS -

TOOLS AND FORMS. Changes to the Grant shall be authorized to be approved by the following State or DOLA parties:

a) Approval by Division Director
The Division Director of DOLA or his delegee shall have authority to approve changes to the Responsible Administrator and Key Personnel specified in **§5** of **Exhibit B** and the Principal Representative in **§16**.

b) Approval by DOLA Controller
The DOLA Controller shall have authority to approve all changes to the Grant which are not reserved to the Division Director above.

ii. By Operation of Law
This Grant is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Grant on the effective date of such change, as if fully set forth herein.

K. Order of Precedence
The provisions of this Grant shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Grant and its exhibits and attachments including, but not limited to, those provided by Grantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

i. Exhibit A (Applicable Laws)
ii. Colorado Special Provisions
iii. The provisions of the main body of this Grant (excluding the cover page)
iv. Any executed Option Letters
v. Exhibit B (Scope of Project)
vi. Exhibit E (Project Performance Plan)
vii. The cover page of this Grant

L. Severability
Provided this Grant can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

M. Survival of Certain Grant Terms
Notwithstanding anything herein to the contrary, provisions of this Grant requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Grantee fails to perform or comply as required.

N. Taxes
The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Grantee shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing Grantee for them.

O. Third Party Beneficiaries
Enforcement of this Grant and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

P. Waiver
Waiver of any breach of a term, provision, or requirement of this Grant, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Grant and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

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22. COLORADO SPECIAL PROVISIONS

A. The Special Provisions apply to all Grants except where noted in *italics*.

i. **CONTROLLER'S APPROVAL. CRS §24-30-202 (1).**
This Grant shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

ii. **FUND AVAILABILITY. CRS §24-30-202(5.5).**
Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

iii. **GOVERNMENTAL IMMUNITY.**
No term or condition of this Grant shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

iv. **INDEPENDENT CONTRACTOR**
Grantee shall perform its duties hereunder as an independent Grantee and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Grantee or any of its agents or employees. Unemployment insurance benefits shall be available to Grantee and its employees and agents only if such coverage is made available by Grantee or a third party. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Grant. Grantee shall not have authorization, express or implied, to bind the State to any Grant, liability or understanding, except as expressly set forth herein. Grantee shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

v. **COMPLIANCE WITH LAW.**
Grantee shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

vi. **CHOICE OF LAW.**
Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this grant. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Grant, to the extent capable of execution.

vii. **BINDING ARBITRATION PROHIBITED.**
The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Grant or incorporated herein by reference shall be null and void.

viii. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.**
State or other public funds payable under this Grant shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Grantee hereby certifies and warrants that, during the term of this Grant and any extensions, Grantee has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Grantee is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Grant, including, without

limitation, immediate termination of this Grant and any remedy consistent with federal copyright laws or applicable licensing restrictions.

ix. **EMPLOYEE FINANCIAL INTEREST. CRS §§24-18-201 and 24-50-507.**
The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Grant. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee's services and Grantee shall not employ any person having such known interests.

x. **VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.**
[*Not applicable to intergovernmental agreements*] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

xi. **PUBLIC GRANTS FOR SERVICES. CRS §8-17.5-101.**
[*Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental Agreements, or information technology* services *or products and services*] Grantee certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this Grant and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Grant, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), Grantee shall not knowingly employ or contract with an illegal alien to perform work under this Grant or enter into a grant with a Subgrantee that fails to certify to Grantee that the Subgrantee shall not knowingly employ or contract with an illegal alien to perform work under this Grant. Grantee (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Grant is being performed, (b) shall notify the Subgrantee and the granting State agency within three days if Grantee has actual knowledge that a Subgrantee is employing or contracting with an illegal alien for work under this Grant, (c) shall terminate the Subgrant if a Subgrantee does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Grantee participates in the State program, Grantee shall deliver to the granting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Grantee has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Grantee fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the granting State agency, institution of higher education or political subdivision may terminate this Grant for breach and, if so terminated, Grantee shall be liable for damages.

xii. **PUBLIC GRANTS WITH NATURAL PERSONS. CRS §24-76.5-101.**
Grantee, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the Effective Date of this Grant.

(Special Provisions - effective 1/1/09)

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS GRANT

*** Persons signing for Grantee hereby swear and affirm that they are authorized to act on Grantee's behalf and acknowledge that the State is relying on their representations to that effect.**

GRANTEE
TOWN OF CRESTED BUTTE

By: Aaron J. Huckstep
Name of Authorized Individual (print)

Title: Mayor
Official Title of Authorized Individual

*Signature

Date: 5/27/15

STATE OF COLORADO
John W. Hickenlooper, GOVERNOR
DEPARTMENT OF LOCAL AFFAIRS

By: fm
Iry Halter, Executive Director

Date: 6.25.15

PRE-APPROVED FORM CONTRACT REVIEWER

By:
Bret Hillberry, State Grants Program Manager

Date: 6/9/15

ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State grants. This Grant is not valid until signed and dated below by the State Controller or delegate. Grantee is not authorized to begin performance until such time. If Grantee begins performing prior thereto, the State of Colorado is not obligated to pay Grantee for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
Robert Jaros, CPA

By:
Janet Miks, CPA, Controller Delegate

Date: 6/26/15

EXHIBIT A – APPLICABLE LAWS

Laws, regulations, and authoritative guidance incorporated into this Grant include, without limitation:

1. Colorado Revised Statutes §29-1-601 et seq., as amended, Colorado Local Governments Audit Law.
2. 5 USC552a, as amended, Privacy Act of 1974.
3. 8 USC 1101, Immigration and Nationality Act.
4. 29 USC Chapter 8, §§201, 206, et seq., as amended, Labor.
5. 29 USC Chapter 14, §§621-634, et seq., as amended, Age Discrimination in Employment.
6. 40 USC Subtitle II, et seq., as amended, Public Buildings and Works.
7. 40 USC 327–330, Section 103 and 107, Contract Work Hours and Safety Standards Act, as amended.
8. 40 CFR 1500-1508, as amended, Council on Environmental Quality Regulations Implementing NEPA.
9. 41 CFR Chapter 60, as amended, Executive Order 11246.
10. 41 USC 701, et seq., Drug Free Workplace Act of 1988.
11. 42 USC Chapter 21, et seq., as amended, Civil Rights.
12. CRS §24-34-302, et seq., as amended, Civil Rights Division.
13. CRS §24-34-501 – 510, et seq., as amended, Colorado Housing Act of 1970.
14. CRS §24-75-601 et seq., as amended, Legal Investment of Public Funds.

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EXHIBIT B – SCOPE OF PROJECT (SOP)

1. PURPOSE

1.1. Energy Impact. The purpose of the Energy and Mineral Impact Assistance Program is to assist political subdivisions that are socially and/or economically impacted by the development, processing, or energy conversion of minerals and mineral fuels.

2. DESCRIPTION OF THE PROJECT(S) AND WORK.

2.1. Project Description. The Project consists of installing infrastructure to serve the next phase of affordable housing in Crested Butte.

2.2. Work Description. The Town of Crested Butte (Grantee) will contract for the installation of infrastructure for up to 61 deed restricted affordable housing units in the Town of Crested Butte. The Work will include installation of approximately 1,156 lineal feet of water line, 662 lineal feet of sewer line, 840 lineal feet of gas line, 316 lineal feet of electric, 655 lineal feet of phone/cable, and 2,966 lineal feet of curb/gutter/street/alley. Grantee will own all improvements and, in accordance with **§9** below, a contractor will be hired to complete the Work.

2.3. Responsibilities. Grantee shall be responsible for the completion of the Work and to provide required documentation to DOLA as specified herein.

2.3.1. Grantee shall notify DOLA at least 30 days in advance of Project Completion.

2.4. Recapture of Advanced Funds. To maximize the use of Grant Funds, the State shall evaluate Grantee's expenditure of the Grant Funds for timeliness and compliance with the terms of this Grant. DOLA reserves the right to recapture advanced Grant Funds when Grantee has not or is not complying with the terms of this Grant.

2.5. Eligible Expenses. Eligible expenses shall include: professional architectural/engineering fees, RFP/bid advertisements, survey work, water/sewer testing fees, labor and materials costs, bond and insurance costs, attorney's fees. labor and materials costs.

2.6. Cost Savings. Cost Savings derived while completing the Project shall be:

2.6.1. ☒ split on a pro-rata basis between the State and Grantee

2.6.2. ☐ returned to the State

3. DEFINITIONS

3.1. "Cost Savings" means the Project Budget amount less the amount expended to complete the Work. Cost Savings are determined at the time the Work is completed and the final payment request is submitted by the Grantee to the State. Cost Savings do not result in payment by the State to Grantee above actual expenditures beyond the required ratio, but deobligates unexpended Grant Funds and reduces Grantee's matching funds requirement. State shall provide written notice to Grantee verifying any Cost Savings.

3.2. "Cumulative Budgetary Line Item Changes" means a cumulative or increasing accumulation of additional expenses within a specific line item as listed in **§6.2** Budget within this **Exhibit B.**

3.3. Project Budget Line items.

3.3.1. "Architectural/Engineering Services" means professional architectural/engineering fees, RFP/bid advertisements, survey work, water/sewer testing fees, electrical inspection and testing fees, CDPHE permit fees, and attorney's fees.

3.3.2. "Construction/Improvement of Public Roadways" means labor and materials costs, bond and insurance costs, bid advertisements, attorney's fees, and right-of-way acquisition costs.

3.3.3. "Construction/Improvement of Public Utilities" means labor and materials costs, bond and insurance costs, bid advertisements, attorney's fees, and right-of-way acquisition costs.

3.4. "Substantial Completion" means the Work is sufficiently complete in accordance with the Grant so it can be utilized for its intended purpose without undue interference.

4. DELIVERABLES

4.1. Outcome. The final outcome of this Grant is the completion of Phase II infrastructure installation for up to 61 units of deed restricted affordable housing units in Crested Butte.

4.2. Service Area. The performance of the Work described within this Grant shall be located in Crested Butte, Colorado.

4.3. Performance Measures. Grantee shall comply with the performance measures detailed in **Exhibit E.**

4.4. Budget Line Item Adjustments. Line Item Adjustments shall not increase the Grant Funds or the total amount of the Budget.

4.4.1. Grantee shall have authority to adjust individual budget line amounts without approval of the State up to an aggregate of 10% of such line item from which the funds are moved. Such authority shall not allow Grantee to transfer to or between administration budget lines. Grantee's Responsible Administrator shall send written notification of allowed adjustments to the State within 30 days of such adjustment.

4.4.2. All changes to individual budget lines amounts which are in excess of 10% but less than 24.99% of such line item from which the funds are moved (each a "**Minor Line Item Adjustment**") shall require prior written approval of the DOLA Controller. Grantee's Responsible Administrator shall submit a written request for changes pursuant to this Section to the State. Such request shall include the amount of such request, the reason for the request and any necessary documentation. If the State approves such request, the State shall unilaterally execute an Option Letter accepting such request pursuant to **§7(C)(i)** of the Grant. Grantee is not authorized to perform until Grantee receives an executed Option Letter accepting such change.

4.4.3. All changes to individual budget lines amounts which are in excess of 24.99% of such line item from which the funds are moved shall require a prior written amendment executed by the Grantee and DOLA pursuant to **§21(J)** of the Grant. Grantee shall submit a written request for changes pursuant to this Section to the State. Such request shall include the amount of such request, the reason for the request and any necessary documentation. Grantee is not authorized to perform until a bi-lateral amendment is fully executed by the DOLA Controller accepting such change.

4.4.4. Signature Authority. All Grantee notices and requests submitted to DOLA pursuant to this **§4.4** (each a "**Line Item Proposal**"), must be signed and dated by a person authorized to bind the Grantee to such Line Item Proposal.

4.5. Overall Budget Adjustments.

4.5.1. All changes to the overall Budget which are less than 24.99% (each a "**Minor Budget Adjustment**") shall require prior written approval of the DOLA Controller. Grantee's Responsible Administrator shall submit a written request for changes pursuant to this Section to the State. Such request shall include the amount of such request, the reason for the request and any necessary documentation. If the State approves such request, the State shall unilaterally execute an Option Letter accepting such request pursuant to **§7(C)(ii)** of the Grant. Grantee is not authorized to perform until Grantee receives an executed Option Letter accepting such change. Minor Budget Adjustments shall not increase the Grant Funds.

4.5.1.1. Exception for Setting Final Initial Budget. Within 30 days of bid opening for its selection of its prime Subcontractor, Grantee shall submit a written request for changes to the overall Budget to revise the initial overall Budget estimate to align it with current market conditions (a "**True-up Budget Proposal**"). Grantee's Responsible Administrator shall submit a written request for changes pursuant to this Section to the State. Such request shall include the amount of such request, the reason for the request and any necessary documentation. If the State approves such request, the State shall unilaterally execute an Option Letter accepting such request pursuant to **§7(C)(iii)** of the Grant. Grantee is not authorized to perform until Grantee receives an executed Option Letter accepting such change. True-up

Budget Proposals shall not increase the Grant Funds. The overall Budget adjustment permitted by this **§4.5.1.1** is only permitted once under this Grant.

4.5.2. All changes to the overall Budget which are in excess of 24.99% shall require a prior written amendment executed by the Grantee and DOLA pursuant to **§21(J)** of the Grant. Grantee shall submit a written request for changes pursuant to this Section to the State. Such request shall include the amount of such request, the reason for the request and any necessary documentation. Grantee is not authorized to perform until a bi-lateral amendment is fully executed by the DOLA Controller accepting such change.

4.5.3. Signature Authority. All Grantee notices and requests submitted to DOLA pursuant to this **§4.5** (each a "**Budget Proposal**"), must be signed and dated by a person authorized to bind the Grantee to such Budget Proposal.

4.6. Quarterly Pay Request and Status Reports. Beginning 30 days after the end of the first quarter following execution of this Grant and for each quarter thereafter until termination of this Grant, Grantee shall submit Pay Requests and Status Reports using a form provided by the State. The State shall pay the Grantee for actual expenditures made in the performance of this Grant based on the submission of statements in the format prescribed by the State. The Grantee shall submit Pay Requests setting forth a detailed description and provide documentation of the amounts and types of reimbursable expenses. For quarters in which there are no expenditures to reimburse, Grantee shall indicate zero (0) in the request and specify status of the Work in the Status Report. The report will contain an update of expenditure of funds by line item as per **§6.2** of this **Exhibit B** Scope of Project as well as a projection of all Work expected to be accomplished in the following quarter, including an estimate of Grant Funds to be expended. This report is due within 30 days of the end of the quarter or more frequently at the discretion of the Grantee. See **Exhibit E** for specific submittal dates.

4.7. DOLA Acknowledgment. The Grantee agrees to acknowledge the Colorado Department of Local Affairs in any and all materials or events designed to promote or educate the public about the Work and the Project, including but not limited to: press releases, newspaper articles, op-ed pieces, press conferences, presentations and brochures/pamphlets.

5. PERSONNEL

5.1. Replacement. Grantee shall immediately notify the State if any key personnel specified in **§5** of this **Exhibit B** cease to serve. Provided there is a good-faith reason for the change, if Grantee wishes to replace its key personnel, it shall notify the State and seek its approval, which shall be at the State 's sole discretion, as the State executed this Grant in part reliance on Grantee's representations regarding key personnel. Such notice shall specify why the change is necessary, who the proposed replacement is, what their qualifications are, and when the change will take effect. Anytime key personnel cease to serve, the State, in its sole discretion, may direct Grantee to suspend Work until such time as replacements are approved. All notices sent under this subsection shall be sent in accordance with **§16** of the Grant.

5.2. Responsible Administrator. Grantee's performance hereunder shall be under the direct supervision of **Michael Yerman, Town Planner (myerman@crestedbutte-co.gov)**, an employee or agent of Grantee, who is hereby designated as the responsible administrator of this Project. Such administrator shall be updated through the approval process in **§5.1**. If this person is an agent of the Grantee, such person must have signature authority to bind the Grantee and must provide evidence of such authority.

5.3. Other Key Personnel: None. Such key personnel shall be updated through the approval process in **§5.1**.

6. FUNDING

The State provided funds shall be limited to the amount specified under the "Grant Funds" column of **§6.2**, Budget, below.

6.1. Matching Funds. Grantee shall provide the required (*see checked item*) ☒ Matching Funds, as listed in the "Matching Funds" column of **§6.2** below during the term of this Project. Funds used as match on previous grant(s) cannot be used as Matching Funds for this Grant.

6.2. Budget

Budget Line Item(s)	Total Cost	Grant Funds	Matching Funds	Matching Funds Source
Architectural/Engineering Services	$22,829	$0	$22,829	Grantee
Construction/Improvement of Public Roadways	$286,934	$0	$286,934	Grantee
Construction/Improvement of Public Utilities	$238,134	$150,000	$88,134	Grantee
Total	**$547,897**	**$150,000**	**$397,897**	

7. PAYMENT

Payments shall be made in accordance with this section and the provisions set forth in **§7** of the Grant.

7.1. Payment Schedule. If Work is subcontracted or subgranted and such Subcontractors and/or Subgrantees are not previously paid, Grantee shall disburse Grant Funds received from the State to such Subcontractor or Subgrantee within fifteen days of receipt. Excess funds shall be returned to DOLA.

Payment	Amount	
Interim Payment(s)	$142,500	Paid upon receipt of actual expense documentation and written Pay Requests from the Grantee for reimbursement of eligible approved expenses.
Final Payment	$7,500	Paid upon Substantial Completion of the Project (as determined by the State in its sole discretion), provided that the Grantee has submitted, and DOLA has accepted, all required reports.
Total	**$150,000**	

7.2. Remittance Address. If mailed, payments shall be remitted to the following address unless changed in accordance with **§16** of the Grant:

Town of Crested Butte
P. O. Box 39
Crested Butte, Colorado 81224

7.3. Interest. Grantee or Subgrantee may keep interest earned from Grant Funds up to $100 per year for administrative expenses.

8. ADMINISTRATIVE REQUIREMENTS

8.1. Reporting. Grantee shall submit the following reports to DOLA using the State-provided forms. DOLA may withhold payment(s) if such reports are not submitted timely.

8.1.1. Quarterly Pay Request and Status Reports. Quarterly Pay Requests shall be submitted to DOLA in accordance with **§4.6** of this **Exhibit B**.

8.1.2. Final Reports. Within 90 days after the completion of the Project, Grantee shall submit the final Pay Request and Status Report to DOLA.

8.2. Monitoring. DOLA shall monitor this Work on an as-needed basis. DOLA may choose to audit the records for activities performed under this Grant. Grantee shall maintain a complete file of all records, documents, communications, notes and other written materials or electronic media, files or communications, which pertain in any manner to the operation of activities undertaken pursuant to an

executed Grant. Such books and records shall contain documentation of the Grantee's pertinent activity under this Grant in accordance with Generally Accepted Accounting Principles.

8.2.1. Subgrantee/Subcontractor. Grantee shall monitor its Subgrantees and/or Subcontractors, if any, during the term of this Grant. Results of such monitoring shall be documented by Grantee and maintained on file.

8.3. Bonds. If Project includes construction or facility improvements, Grantee and/or its contractor (or subcontractors) performing such work shall secure the bonds here under from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR Part 223 and are authorized to do business in Colorado.

8.3.1. Bid Bond. A bid guarantee from each bidder equivalent to 5 percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

8.3.2. Performance Bond. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

8.3.3. Payment Bond. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

8.3.4. Substitution. The bonding requirements in this **§8.3** may be waived in lieu of an irrevocable letter of credit if the price is less than $50,000.

9. CONSTRUCTION/RENOVATION. The following subsections shall apply to construction and/or renovation related projects/activities:

9.1. Plans & Specifications. Construction plans and specifications shall be drawn up by a qualified engineer or architect licensed in the State of Colorado, or pre-engineered in accordance with Colorado law, and hired by the Grantee through a competitive selection process.

9.2. Procurement. A construction contract shall be awarded to a qualified construction firm through a formal selection process with the Grantee being obligated to award the construction contract to the lowest responsive, responsible bidder meeting the Grantee's specifications.

9.3. Subcontracts. Copies of any and all contracts entered into by the Grantee in order to accomplish this Project shall be submitted to DOLA upon request, and any and all contracts entered into by the Grantee or any of its Subcontractors shall comply with all applicable federal and state laws and shall be governed by the laws of the State of Colorado.

9.4. Standards. Grantee, Subgrantees and Subcontractors shall comply with all applicable statutory design and construction standards and procedures that may be required, including the standards required by Colorado Department of Public Health and Environment, and shall provide the State with documentation of such compliance.

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EXHIBIT E – PROJECT PERFORMANCE PLAN

Funding: EIAF **Project Number: 7697**	**Name of Grantee** **Town of Crested Butte** **Name of Project** **Affordable Housing Infrastructure Phase II**	
DESCRIPTION OF PROJECT:	The Project consists of installing infrastructure to serve the next phase of affordable housing in Crested Butte.	

DLG Staff: Elyse Ackerman - Regional Manager (970) 248-7333 EA Leslie Hentze - Regional Assistant (970) 248-7313 LH

MILESTONES – Grantee shall...	**By:**	**STATE ROLE-** DLG shall...	
Put Project out to bid.	Within 60 days of the Effective Date of this Grant Agreement.	Assist Grantee with bidding process, if necessary. Provide feedback to Grantee identifying issues or concerns, if any.	**ACHIEVED: MM/DD/20YY**
Provide DOLA with Project Timeline.	Within 30 days of the Effective Date of the subcontract(s).	Review timeline to ensure timely completion of Project. Provide feedback to Grantee identifying issues or concerns, if any.	**ACHIEVED: MM/DD/20YY**
Contractor mobilization.	Within 90 days of the Effective Date of this Grant Agreement.	Monitor progress reports from the Grantee. Help Grantee identify if/when a Grant Agreement amendment is needed. Provide feedback to Grantee identifying issues or concerns, if any.	**ACHIEVED: MM/DD/20YY**
Project Completion.	July 31, 2016	Review past quarterly reports, conduct on-site monitoring, and review final report.	**ACHIEVED: MM/DD/20YY**

Submit **quarterly progress reports**, which includes: Project Performance Plan accomplishments and a Financial Summary Report for: 2nd Quarter 2015 3rd Quarter 2015 4th Quarter 2015 1st Quarter 2016 2nd Quarter 2016 3rd Quarter 2016 Progress shall be evaluated by the Grantee and documented and included at least upon submittal of Quarterly Progress Reports. Such evaluation may consist of any/all of the following monitoring methods: a) on-site walk through inspections of infrastructure installation location(s) in order to determine if: i) the contractor has installed an acceptable percentage of the infrastructure elements as would be expected under this Grant and Exhibit B (including but not limited to water line, sewer line, gas line, electric, phone/cable, and curb/gutter/street/ alley); ii) the contractor is experiencing delays; iii) the infrastructure installation is progressing per agreed upon timeline/milestones and as would be expected under this Grant and Exhibit B (including but not limited to obtaining required approvals, use of approved materials, and testing of all elements); and b) question and answer sessions with the contractor to confirm understanding by all parties as to the nature of the Work and how far along it should be dependent upon the Quarter under review.	(30 calendar days after each quarter): July 30, 2015 October 30, 2015 January 30, 2016 April 30, 2016 July 30, 2016 October 29, 2016	Review documents and provide follow up technical assistance as necessary. If needed, respond to a request for training within 10 days.	**ACHIEVED: MM/DD/20YY** **ACHIEVED: MM/DD/20YY** **ACHIEVED: MM/DD/20YY** **ACHIEVED: MM/DD/20YY**

Submit, at a minimum **quarterly** basis, **pay requests** and supporting documentation of expenses.	July 30, 2015 October 30, 2015 January 30, 2016 April 30, 2016 July 30, 2016 October 29, 2016	Review backup documentation and proof of payment prior to approving pay request. Reimbursement should not exceed pro rata share.	**ACHIEVED: MM/DD/20YY**
Submit the **Project Final Report** to DLG within 90 days after the Project Completion or expiration of Grant Agreement.	October 29, 2016	Provide forms to Grantee within 30 days of completion of work or end of the Grant Agreement. Process the Final Report and deobligate any remaining grant funds within 30 days of receiving a complete Final report.	**ACHIEVED: MM/DD/20YY**

QUARTERLY QUESTIONS

List Reimbursement Requests for the three months being reported on: **Month** January **Amount** **Month** January **Amount** **Month** January **Amount**
Were any months "zero payment" (no costs incurred) during this quarter? If so, please provide an explanation.
What are the forecasted costs for the next quarter?
Are the budget lines still adequate? Is a contract amendment needed at this time? Are there any anticipated concerns or issues?
Do you foresee any potential problems meeting the Grant Agreement completion deadline?
Were previously identified problems (if any) corrected? Was a budget adjustment needed/done to address the problem(s)?

EXHIBIT G
Form of Option Letter

Date:	Original Grant CMS #:	Option Letter #	CMS Routing #

1) **OPTIONS:**
   - **a.** Option to issue a new Budget (**§6.2 of Exhibit B**) for a Minor Line Item Adjustment (as defined in **§4.4.2 of Exhibit B**).
   - **b.** Option to issue a new Budget (**§6.2 of Exhibit B**) for a Minor Budget Adjustment (as defined in **§4.5.1 of Exhibit B**).
   - **c.** Option to issue a new Budget (**§6.2 of Exhibit B**) for acceptance of a True-Up Budget Proposal (as defined in **§4.5.1.1 of Exhibit B**).

2) **REQUIRED PROVISIONS.** All Option Letters shall contain the appropriate provisions set forth below:
   - **a. For use with Option 1(a):** In accordance with **§7(C)(i)** of the Original Grant referenced above between the State of Colorado, acting by and through the Colorado Department of Local Affairs, and **Grantee's Name** (**"Grantee"**), the State hereby approves the Minor Line Item Adjustment listed on the attached revised Budget for **§6.2 of Exhibit B**. **Section 6.2** of **Exhibit B** of the Original Grant is hereby deleted and replaced with the attached **§6.2 of Exhibit B**. All references to **§6.2 of Exhibit B** in the Original Grant shall refer to the attached Exhibit. Minor Line Item Adjustments shall not increase the Grant Funds or the total amount of the Budget.
   - **b. For use with Option 1(b):** In accordance with **§7(C)(ii)** of the Original Grant referenced above between the State of Colorado, acting by and through the Colorado Department of Local Affairs, and **Grantee's Name** (**"Grantee"**), the State hereby approves the Minor Budget Adjustment listed on the attached revised Budget for **§6.2 of Exhibit B**. **Section 6.2** of **Exhibit B** of the Original Grant is hereby deleted and replaced with the attached **§6.2 of Exhibit B**. All references to **§6.2 of Exhibit B** in the Original Grant shall refer to the attached Exhibit. Minor Budget Adjustments shall not increase the Grant Funds.
   - **c. For use with Option 1(c):** In accordance with **§7(C)(iii)** of the Original Grant referenced above between the State of Colorado, acting by and through the Colorado Department of Local Affairs, and **Grantee's Name** (**"Grantee"**), the State hereby approves the True-Up Budget Proposal listed on the attached revised Budget for **§6.2 of Exhibit B**. **Section 6.2** of **Exhibit B** of the Original Grant is hereby deleted and replaced with the attached **§6.2 of Exhibit B**. All references to **§6.2 of Exhibit B** in the Original Grant shall refer to the attached Exhibit. True-Up Budget Proposals shall not increase the Grant Funds.

3) **Effective Date.** The effective date of this Option Letter is upon approval of the State Controller or Insert start date, whichever is later.

STATE OF COLORADO
John W. Hickenlooper GOVERNOR
Colorado Department of Local Affairs

_____
By: Executive Director

Date: _____

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State contracts. This Option Letter is not valid until signed and dated below by the State Controller or delegate. Grantee is not authorized to begin performance until such time. If Grantee begins performing prior thereto, the State of Colorado is not obligated to pay Grantee for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
Robert Jaros, CPA

By: _____
Janet Miks, CPA, Controller Delegate

Date: _____

EXAMPLE-DO NOT SIGN

CONTRACT AMENDMENT

Amendment #: 1	**Encumbrance #: F15S7697**
Original Contract CMS #: 79139	**Amendment CMS #: 82650**

1) PARTIES

This Amendment to the above-referenced Original Contract (hereinafter called the Contract) is entered into by and between the **TOWN OF CRESTED BUTTE** (hereinafter called "Grantee" or "Contractor"), and the STATE OF COLORADO (hereinafter called the "State") acting by and through the Colorado Department of Local Affairs (the "Department") for the benefit of the Division of Local Government ("DLG").

2) EFFECTIVE DATE AND ENFORCEABILITY

This Amendment shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date"). The State shall not be liable to pay or reimburse Contractor for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3) FACTUAL RECITALS

The Parties entered into the Contract for installing infrastructure to serve the next phase of affordable housing in Crested Butte. Grantee states that bids came in higher than anticipated. Grantee will increase its contribution $29,519 to cover the increased costs; no new Grant Funds are requested. This Amendment modifies the Project Budget to reflect the increase in costs and in Grantee's contribution as requested.

4) CONSIDERATION-COLORADO SPECIAL PROVISIONS

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Amendment. The Parties agree to replacing the Colorado Special Provisions with the most recent version (if such have been updated since the Contract and any modification thereto were effective) as part consideration for this amendment.

5) LIMITS OF EFFECT

This Amendment is incorporated by reference into the Contract, and the Contract and all prior amendments thereto, if any, remain in full force and effect except as specifically modified herein.

6) MODIFICATIONS

The Contract and all prior amendments thereto, if any, are modified as follows:

a. Exhibit B, Section 6, Funding
Subsection 6.2, Budget is modified by deleting the current subsection in its entirety:

"Budget Line Item(s)	Total Cost	Grant Funds	Matching Funds	Matching Funds Source
Architectural/Engineering Services	$22,829	$0	$22,829	Grantee
Construction/Improvement of Public Roadways	$286,934	$0	$286,934	Grantee
Construction/Improvement of Public Utilities	$238,134	$150,000	$88,134	Grantee
Total	**$547,897**	**$150,000**	**$397,897"**	

and inserting the following in lieu thereof:

"Budget Line Item(s)	Total Cost	Grant Funds	Matching Funds	Matching Funds Source
Architectural/Engineering Services	$22,829	$0	$22,829	Grantee
Construction/Improvement of Public Roadways	$366,970	$0	$366,970	Grantee
Construction/Improvement of Public Utilities	$187,617	$150,000	$37,617	Grantee
Total	**$577,416**	**$150,000**	**$427,416"**	

7) START DATE

This Amendment shall take effect on the later of its Effective Date or **August 1, 2015**.

8) ORDER OF PRECEDENCE

Except for the Special Provisions, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Contract, the provisions of this Amendment shall in all respects supersede, govern, and control. The most recent version of the Special Provisions incorporated into the Contract or any amendment shall always control other provisions in the Contract or any amendments.

9) AVAILABLE FUNDS

Financial obligations of the state payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, or otherwise made available.

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THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT

*** Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.**

CONTRACTOR
TOWN OF CRESTED BUTTE

By: _____
*Signature

Name: Aaron J. Huckstep
Printed

Title: Mayor
Printed

8/5/15
Date

STATE OF COLORADO
John W. Hickenlooper, GOVERNOR
Department of Local Affairs

By: _____
Irv Halter, Executive Director

8/12/15
Date

PRE-APPROVED FORM CONTRACT REVIEWER

By: _____
Bret Hillberry, State Grants Program Manager

8/12/15
Date

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
Robert Jaros, CPA

By: _____
Janet Miks, CPA, Controller Delegate

Date: 8/17/15