

ORDINANCE NO. 4

SERIES 2007

AN ORDINANCE AUTHORIZING THE ACCEPTANCE OF THE AGREEMENT TO SHARE COSTS AND GRANT EASEMENTS FOR THE CRESTED BUTTE TO MT. CRESTED BUTTE OVERHEAD TO UNDERGROUND UTILITY CONVERSION PROJECT AND THE GRANT OF UNDERGROUND UTILITY RIGHT-OF-WAY EASEMENTS TO GUNNISON COUNTY ELECTRIC ASSOCIATION, INC. AND THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO

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

WHEREAS, the Town is the owner of certain real property (the "Property") located just outside the western fence line of that property being commonly known at the Crested Butte Cemetery (the "Cemetery");

WHEREAS, there exists certain overhead power lines that extend from the Town to the Town of Mt. Crested Butte through certain view corridors between the two Towns;

WHEREAS, the Town Council, the Mt. Crested Butte Town Council (the "Mt. CB Town Council"), the Board of County Commissioners of the County of Gunnison, Colorado (the "Board"); together, with the Town Council and the Mt. CB Town Council, the "Relocating Parties") and other third parties have determined that it is in the best interest of the residents of Town, the Town of Mt. Crested Butte and Gunnison County, respectively, that the said power lines be relocated to an underground location;

WHEREAS, the Relocating Parties and Gunnison County Electric Association, Inc. ("GCEA") have identified an alternate, underground route for the location of said power lines;

WHEREAS, the relocation of the power lines to the new underground route will require that GCEA install said power lines on the Property outside the western fence line of the Cemetery;

WHEREAS, such location of the power lines within the Property necessitates that the Town grant an underground easement to GCEA for the operation, installation, maintenance, repair and upgrade of said power lines under and through the Property;

WHEREAS, the relocation and installation of the power lines in the new underground route will cost approximately \$850,000.00, which costs will be shared by the Relocating Parties and certain other third parties;

WHEREAS, the Town's share of the costs of relocating the power lines to the new underground route location will be \$50,000.00;

WHEREAS, in addition to granting GCEA an easement to operate, install, maintain, repair and upgrade the power lines on the Property, Gunnison County has requested that the Town grant it an underground easement under and through the same location as the easement given to GCEA so that Gunnison County may locate, operate, install, maintain, repair and upgrade certain fiber optic communication lines and attendant equipment along the new alternate route;

WHEREAS, the Town Council finds that it is in the best interest of the health, safety and welfare of the citizens and visitors of the Town that (i) the power lines be relocated from their current location to the new underground route as identified by the Relocating Parties, (ii) that the Town grant to GCEA an underground easement to operate, install, maintain, repair and upgrade said power lines under and through the Property, (iii) that the Town grant to Gunnison County an underground easement to operate, install, maintain, repair and upgrade its fiber optic communication lines and attendant equipment under and through the Property, and (iv) that the Town pay its share of the costs set at \$50,000.00 to cover the cost and expense of relocating the power lines to the new underground location; and

WHEREAS, in order that the Town may consummate the transactions contemplated herein, the Town Staff has recommended that the Town enter into that certain (i) Agreement to Share Costs and Grant Easements for the Crested Butte to Mt. Crested Butte Overhead to Underground Utility Conversion Project (the "**Cost Sharing Agreement**"), (ii) Underground Utility Right-of-Way Easement with GCEA (the "**GCEA Easement**"), and (iii) Underground Utility Right-of-Way Easement with Gunnison County (the "**Gunnison County Easement Agreement**"); together with the GCEA Easement, the "**Easement Agreements**").

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

Section 1. Acceptance of Terms of the Cost Sharing Agreement and the Easement Agreements. The Town Council hereby (i) agrees to enter into the attached Cost Sharing Agreement and to pay its share of the costs for the relocation of the power lines set at \$50,000.00, subject to the terms and conditions contained in said Cost Sharing Agreement, and (ii) agrees to execute and deliver the attached Easement Agreements, granting the easements and rights or way in the location delineated in **Exhibit "A"** to the Easement Agreements and the other attendant rights thereto to GCEA and Gunnison County, subject to the terms and conditions contained in said Easement Agreements.

Section 2. Authorization for Execution. The Town Council hereby authorizes the Mayor, the Town Clerk and other appropriate Town officials to execute the Cost Sharing Agreement, the Easement Agreements and any and all documents, agreements, certificates or otherwise necessary and convenient for the purpose of consummating the transactions contemplated in the Cost Sharing Agreement and the Easement Agreements.

Section 3. Severability. If any section, sentence, clause, phrase, word or other provision of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this ordinance, or the validity of this Ordinance as an entirety, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

Section 4. Savings Clause. Except as hereby amended, the Code shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town which is in conflict with this Ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS _____ DAY OF _____, 2007.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS _____ DAY OF _____, 2007.

TOWN OF CRESTED BUTTE, COLORADO

By: _____
Alan Bernholtz, Mayor

ATTEST:

Eileen Hughes, Town Clerk

(SEAL)