Critical to our success is an engaged community and knowledgeable and experienced staff.

Town Council Values

- *Preserve our high quality of Life*
- *Resource Efficiency/ Environmental Stewardship*
- *Support a sustainable and healthy business climate*
- *Maintain a "real" community*
- *Fiscally Responsible*
- *Historic Core*

AGENDA
Town of Crested Butte
Regular Town Council Meeting
Monday, May 1, 2017
Council Chambers, Crested Butte Town Hall

The times are approximate. The meeting may move faster or slower than expect

6:00 WORK SESSION

1) Presentation by Dara MacDonald on Upcoming Summer Projects.

6:40 2) Presentation by Mike Reily on the Use of Drone Aircraft in Town.

7:00 REGULAR COUNCIL MEETING CALLED TO ORDER BY MAYOR OR MAYOR PRO-TEM

7:02 APPROVAL OF AGENDA

7:04 CONSENT AGENDA

1) April 3, 2017 Regular Town Council Meeting Minutes.
2) April 10, 2017 Special Town Council Meeting Minutes.
3) Resolution No. 17, Series 2017 - Resolutions of the Crested Butte Town Council Certifying that the Final Plat for Gothic Paradise Subdivision, Lots 25, 26 and 27 and the West 50 Feet of Lots 28 Through 32, Block 9, Town of Crested Butte is in Compliance with Chapter 17, Article 4 of the Crested Butte Municipal Code.
4) Resolution No. 19, Series 2017 – Resolutions of the Crested Butte Town Council Approving a Professional Services Agreement with Ben White Architecture for Architectural and Related Services for the Big Mine Warming House Expansion Project.
5) Resolution No. 20, Series 2017 - Resolutions of the Crested Butte Town Council Approving the Grant Agreement with Great Outdoors Colorado for the Town Park Playground Renovation Project.
6) Resolution No. 21, Series 2017 - Resolutions of the Crested Butte Town Council Approving the Intergovernmental Agreement with Gunnison County Regarding Undesirable Plant Management.
7) Resolution No. 22, Series 2017 - Resolutions of the Crested Butte Town Council Approving the Snow Removal Reimbursement Covenant Affecting Lots 1, 4-7, 10, 11, 14-17 and 19, Block 79, Town of Crested Butte According to the Replat of Paradise Park Subdivision Recorded in the Official Real Property Records of the Clerk and Recorder of Gunnison County, Colorado on April 27, 2016 at Reception No. 639098.
8) Resolution No. 23, Series 2017 - Resolutions of the Crested Butte Town Council Approving the Vacation and Termination of the Big Mine Condominiums According to the Plat Thereof Recorded in the Official Real Property Records of the Clerk and Recorder of Gunnison County, Colorado on September 22, 1982 at Reception No. 369656.
9) Joint Letter with the Board of County Commissioners (BOCC) to Freeport-McMoRan.

The listing under Consent Agenda is a group of items to be acted on with a single motion. The Consent Agenda is designed to expedite Council business. The Mayor will ask if any citizen or council member wishes to have any specific item discussed. You may request that an item be removed from Consent Agenda at that time, prior to the Council's vote. Items removed from the Consent Agenda will be considered under New Business

7:07 PUBLIC COMMENT

Citizens may make comments on item not scheduled on the agenda. Those commenting should state their name and physical address for the record. Comments may be limited to five minutes.

7:12 **STAFF UPDATES**

7:25 **NEW BUSINESS**

1) Ordinance No. 11, Series 2017 - An Ordinance of the Crested Butte Town Council Adopting an Administrative Plan Presented by the Town Manager for the Departments of Town Administration Pursuant to C.R.S **§** 31-4-215 and Merging the Building and Planning Departments Pursuant to **§** 6.9 of the Crested Butte Home Rule Charter.

7:45 2) Ordinance No. 12, Series 2017 - An Ordinance of the Crested Butte Town Council Amending Chapter 2, Article 8 of the Crested Butte Municipal Code to Expand the Creative District Commission Membership and Include Requirements Related Thereto.

7:50 3) Ordinance No. 13, Series 2017 - An Ordinance of the Crested Butte Town Council Approving the Amendment to Lease Agreement with The Center for the Arts Related to Town-owned Property Located at Lots 1-16, Block 50, Town of Crested Butte, Colorado.

8:30 4) Ordinance No. 14, Series 2017 – An Ordinance of the Crested Butte Town Council Waiving the Requirements of Chapter 4, Article 6 of the Crested Butte Municipal Code with Respect to The Center for the Arts' Renovation and Expansion Project Located at Lots 1-16, Block 50, Town of Crested Butte, Colorado.

8:35 5) Discussion and Possible Action Regarding Kapushion Development Improvements Agreement and Ditch Relocation Agreement.

9:05 6) Discussion and Possible Action Regarding a License Agreement Between the Town of Crested Butte and Cypress Foothills, LP for the Remediation of Portions of the Landfill Located in the 8th Street Right of Way Under Cypress Foothill, LP Voluntary Clean Up Program Application Administered Through the Colorado Department of Public Health and Environment.

9:35 7) Discussion and Possible Direction to Staff to Draft an Ordinance Increasing the Compensation of the Council and Mayor.

9:50 **LEGAL MATTERS**

9:55 **COUNCIL REPORTS AND COMMITTEE UPDATES**

10:00 **OTHER BUSINESS TO COME BEFORE THE COUNCIL**

10:05 **DISCUSSION OF SCHEDULING FUTURE WORK SESSION TOPICS AND COUNCIL MEETING SCHEDULE**

- Monday, May 15, 2017 - 6:00PM Work Session - 7:00PM Regular Council
- Monday, June 5, 2017 - 6:00PM Work Session - 7:00PM Regular Council
- Monday, June 19, 2017 - 6:00PM Work Session - 7:00PM Regular Council

10:10 **ADJOURNMENT**

Memorandum

To: Mayor Michel and Town Council

From: Dara MacDonald, Town Manager

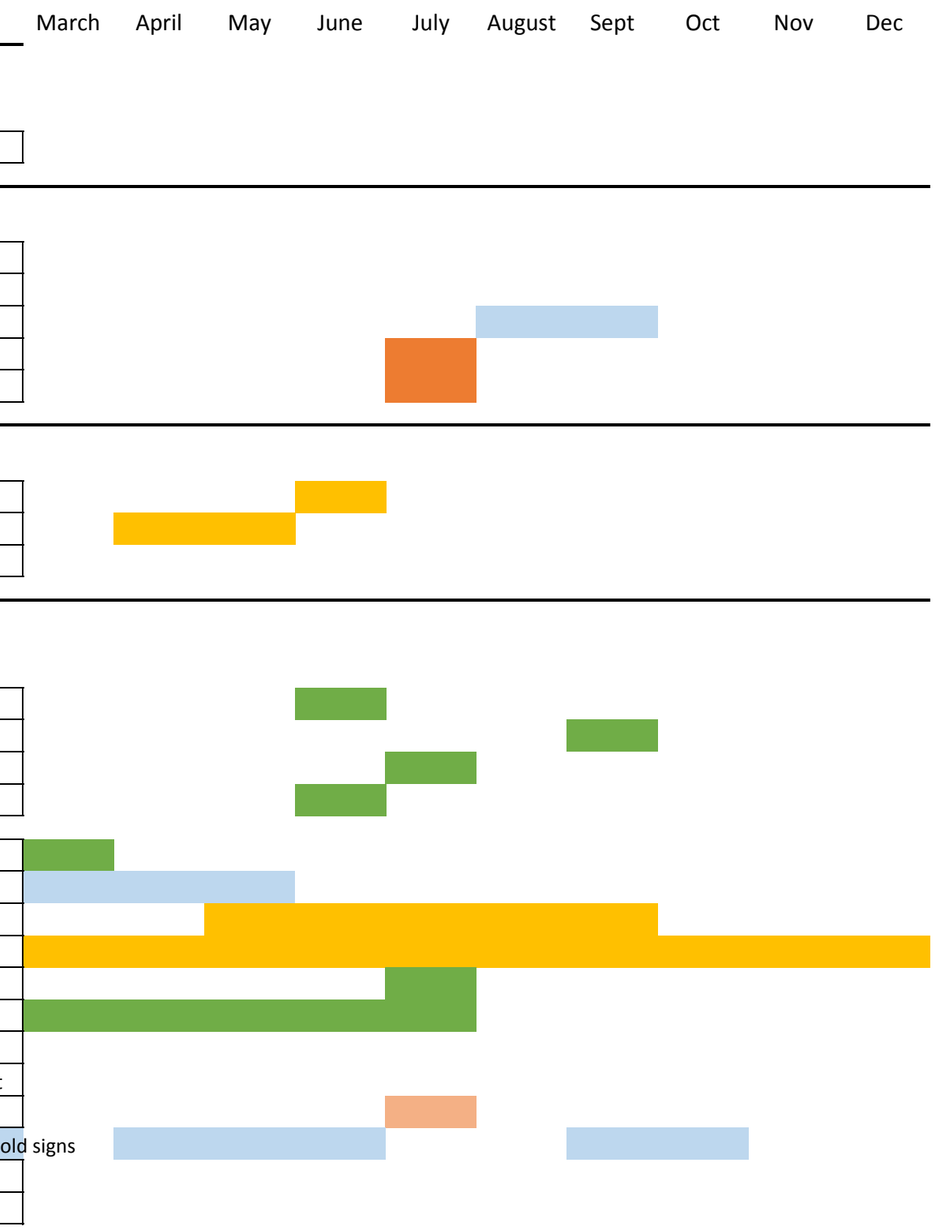
Subject: 2017 Project update

Date: May 1, 2017

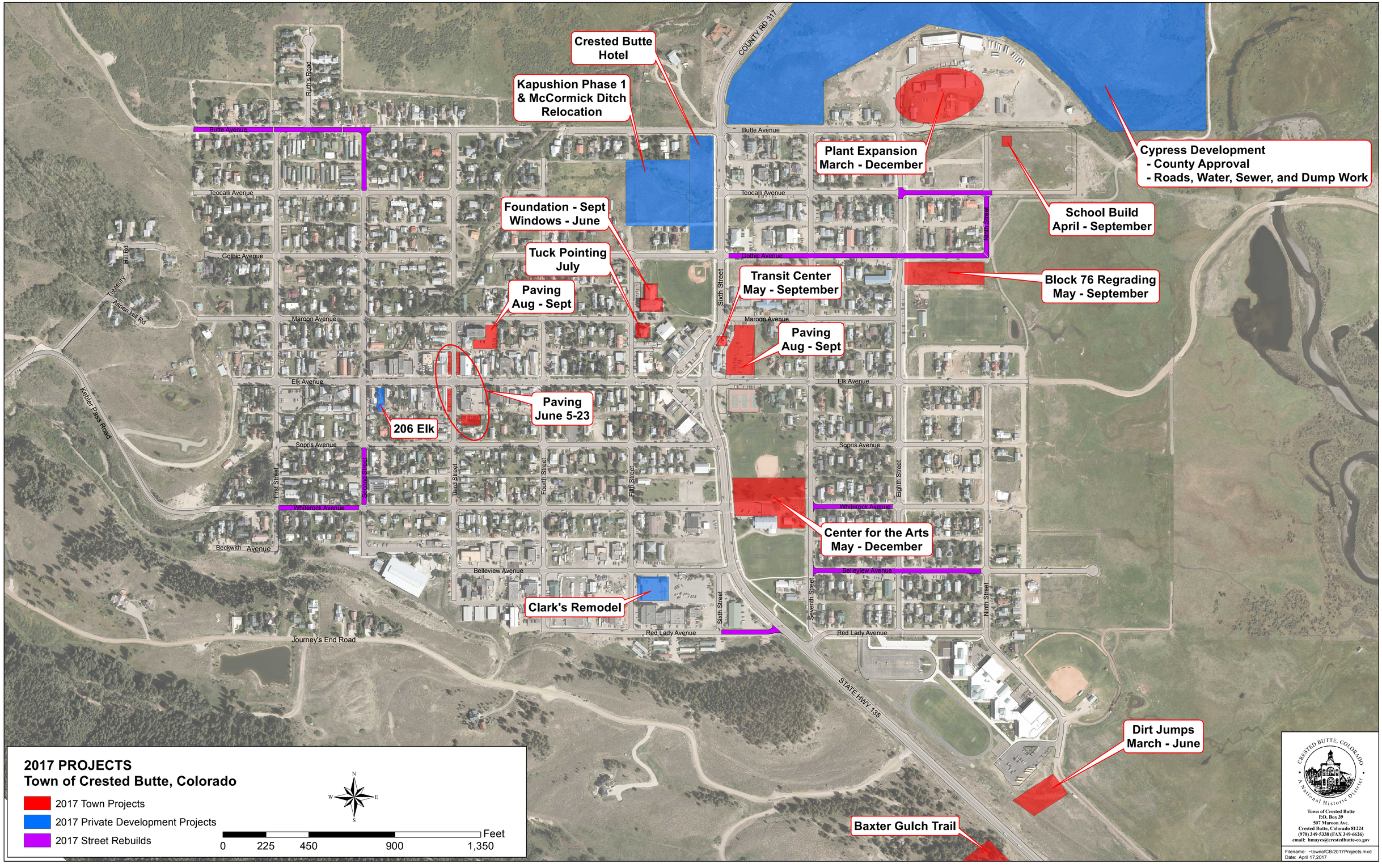
Attached are a spreadsheet showing the timelines for the various capital projects scheduled for 2017 as well as a map providing a visual representation of the projects. We will review both during the work session on May 1st.

Crested Butte 2017 Capital Project Schedule

PROJECT	PROJECT LEAD	NOTES
Equipment/Projects 2017		
Marshals Capital Equipment:		
Patrol Car 56,800	Mike & Kevin	completed
Capital Equipment:		
Administration Vehicle (hybrid) 36,000	Dara	on hold
Facilities Vehicle (electric vehicle) 27,000	Kevin	Completed
Fixed post speed alert signs (3) 9,000	Michael w/ PW assistance	
Service lift (town shop) 6,500	Kevin	
Air Compressor (town shop) 5,000	Kevin	
Park Capital Equipment:		
1 Ton Dump Truck 52,000	Janna w/ assistance from Kevin	
Bike Racks/Benches/Bleachers 5,000	Janna's crew	
Pickup Truck 40,000	Janna w/ assist from Kevin	completed
Capital Projects:		
Town Hall Upgrades:		
Windows 95,000	Dale	
Foundation Repair 90,000	Dale (coordinate with P&R)	
Roof -- snow fence 35,000	Dale	
Security 16,000	Dale	
Depot Renovations 24,000	Dale & Bob	
Trail Kiosks 10,000	Michael w/ help from P&R	
Bike Park/Dirt Jump Project 15,500	Janna	
Big Mine Park (architect/engineer) 43,000	Janna w/ help from Dara/Bob/Michael	
Old Rock Library Tuckpointing 50,000	Dale	
4-way transit stop/bathrooms 400,000	Bob/Dale coord irrigation w/ P&R	
Cypress -- land purchase 350,000	Michael	unknown
Public Works Retaining Wall 10,000	Rodney	fill in project
Cemetery -- Jokerville Mine Memorial 15,000	Rodney w/ Betty	
Wayfinding Signage 75,000	Michael w/ help from PW for removal of old signs	
Emergency Center Design 55,000	Mike R. & Dara	on hold
Avalanche Park Planning	Michael	
Water/Wastewater:		
Capital Equipment:		
Pickup - Wastewater 40,000	Kevin	completed



PROJECT	PROJECT LEAD	NOTES
Water Plant:		
Design/Engineering of Chemical Treatment of Water System 15,0	David	
Upgrade Chlorination System 20,000	David	
Wastewater Plant:		
Surge Supression System (Lift station) 7,500	Shea	
Man Hole Rehab 8,000	Shea	
WWTP Upgrade - Construction 3,306,000	Shea	
RAS VFD Replacement 7,000	Shea	
Millings Placement	Rodney	
ATAD - Solids Handling		
Solids Handling - Engineering 10,000	Rodney	
Biofilter Replacement 7,500	Shea	
Streets/Paving Projects:		
Full Depth Recycle - streets marked in purple on map $455,000	Rodney	
Pave & increase size of 4-way lot $225,000	Rodney coordinate w/Michael & Lynelle for design	
Pave parking lot - fire hall $45,000	Rodney	
Other Parking paving (412 3rd St & 3rd Street right of ways): $46,	Rodney	
Affordable Housing:		
Space to Create	Michael	unknown
GVRHA Duplex Builds	Michael	
Paradise Park lot owner builds	Michael	
CBCS build project	Michael w/PW assistance	
Center for the Arts Expansion:		
Design process oversight	Michael/Bob	
Various agreements	Dara	
Funding oversight	Dara and Lois	
demo of playground	Rodney & Janna	
installation of new pump	Janna	2018
tree removal	Rodney	
playground grading	Rodney & Janna	2018
bathroom demolition	Rodney & Janna	2019
prep work along 7th Street	Rodney	2018
grading & prep for walkways	Rodney	2018 & 2019
removal of sand surface	Rodney & Janna	
Hauling of existing dirt	Janna & Rodney	
Groundbreaking - coordinate irrigation	Janna	


Crested Butte Hotel
Kapushion Phase 1 & McCormick Ditch Relocation
Plant Expansion March - December
Cypress Development - County Approval - Roads, Water, Sewer, and Dump Work
School Build April - September
Foundation - Sept Windows - June
Tuck Pointing July
Paving Aug - Sept
Transit Center May - September
Block 76 Regrading May - September
Paving Aug - Sept
Paving June 5-23
206 Elk
Center for the Arts May - December
Clark's Remodel
Dirt Jumps March - June
Baxter Gulch Trail
COUNTY RD 317
STATE HWY 135
Butte Avenue
Teocalli Avenue
Gothic Avenue
Maroon Avenue
Elk Avenue
Sopris Avenue
Whiterock Avenue
Belleview Avenue
Red Lady Avenue
Beckwith Avenue
Ruth's Road
Treasury Hill Rd
Aspen Hill Rd
Kebler Pass Road
Journey's End Road
First Street
Second Street
Third Street
Fourth Street
Fifth Street
Sixth Street
Seventh Street
Eighth Street
Ninth Street
2017 PROJECTS
Town of Crested Butte, Colorado
2017 Town Projects
2017 Private Development Projects
2017 Street Rebuilds
N
W
E
S
0
225
450
900
1,350
Feet
CRESTED BUTTE, COLORADO
A National Historic District
Town of Crested Butte
P.O. Box 39
507 Maroon Ave.
Crested Butte, Colorado 81224
(970) 349-5338 (FAX 349-6626)
email: hmayes@crestedbutte-co.gov
Filename: ~townofCB/2017Projects.mxd
Date: April 17,2017

Staff Report
April 18, 2017

To: Mayor and Town Council

Thru: Dara MacDonald, Town Manager

From: Michael Reily, Chief Marshal

Subject: Drones

Summary:

Crested Butte has not experienced any serious incidents involving the use of drone aircraft in Town. However, their use in and around crowded venues and the potential for their use to invade peoples' privacy by essentially flying a camera to gain view to otherwise inaccessible spaces is concerning.

Nationally there is evidence of a considerable increase in the unauthorized use of small, inexpensive, Unmanned Aircraft Systems (UAS) by individuals and organizations, including companies. While the FAA retains the responsibility for enforcing Federal Aviation Regulations, including those applicable to the use of UAS, the FAA recognizes that state and local law enforcement are often in the best position to deter, detect, immediately investigate, and, as appropriate, pursue enforcement actions to stop unauthorized or unsafe UAS operations.[1]

Previous Council Action:

The Council has expressed that they, and the public, have had periodic concerns about the use of drones in Town.

Background:

At the end of December 2015 the Federal Aviation Administration (FAA) required all UAS owners register each drone weighing over .55lbs. Unregistered drone users may be subject to the legal consequences defined in the U.S. Government drone regulation terms.[2]

Legal Implications:

Below are the listed "Small UAS" rules which were put in effect August 29, 2016.[3] Drone pilots are required to:

- Fly at or below 400 feet
- Keep the UAS within sight
- Not fly near other aircraft, especially near airports
- Not fly over groups of people
- Not fly over stadiums or sports events
- Not fly near emergency response efforts such as fires
- Not fly while under the influence

- Be aware of restricted airspace requirements

Commercial UAS users flying under the small UAS rule must also meet these pilot Requirements[2]:

- Must be at least 16 years old
- Must pass an initial aeronautical knowledge test at an FAA-approved knowledge testing center
- Must be vetted by the Transportation Safety Administration (TSA)

And meet these aircraft requirements[2]:

- Less than 55 lbs.
- Must be registered

And operate by these rules (subject to waiver)[2]:

- Class G airspace
- Must keep the aircraft in sight (visual line-of-sight)
- Must fly under 400 feet
- Must fly during the day
- Must fly at or below 100 mph
- Must yield right of way to manned aircraft
- Must NOT fly over people
- Must NOT fly from a moving vehicle

The above requirements are federal regulations and anyone not meeting the regulations is open to sanctions of severe civil and criminal penalties. In addition, there are state and local laws which could be violated where local law enforcement can take action. Examples of potential violations of Colorado Revised Statutes would be:
18-3-208 Reckless Endangerment
18-4-501 Criminal Mischief
18-4-503 Second Degree Criminal Trespass
18-4-504 Third Degree Criminal Trespass
18-7-801 Criminal Invasion of Privacy
18-9-106(1)(c) Disorderly Conduct
18-9-111(1)(c) Harassment

Potential local ordinance violations might include:
10-4-10 Criminal Mischief
10-4-20 Damaging or Destroying Public Property
10-4-30 Damaging or Destroying Private Property
10-5-10(2) Disorderly Conduct
10-5-30(a)(3) Harassment
10-9-90 Regulation of Noise

Recommendation:

The Marshal's Office recommends that people who feel the above rules are not being followed by a drone operator should call the Marshal's Office so our officers can investigate the potential incident. Callers should be prepared to supply as much information as possible to include the:

- Event location and type of illegal activity (date, time and place)
- Identity of the operator or other witnesses (name, location and description)
- Type of UAS operation (hobby, commercial, public user)
- Description of the device or registration information (ID number)
- Be prepared to provide evidence of the unauthorized use such as photos, video or the actual device itself

Summary:

The FAA has primary jurisdiction for the regulation of UAS however, incidents involving drones where local public safety issues arise can be handled by local law enforcement and we request citizens' assistance in that regard.

Resources

1. https://www.faa.gov/uas/resources/law_enforcement/
2. http://federaldroneregistration.com/know-before-you-fly
3. https://www.faa.gov/uas/getting_started/fly_for_fun/

L/E resource card: https://www.faa.gov/uas/resources/law_enforcement/media/FAA-UAS-DRONE-LE-ReferenceCard.pdf

MINUTES
Town of Crested Butte
Regular Town Council Meeting
Monday, April 3, 2017
Council Chambers, Crested Butte Town Hall

Mayor Michel called the meeting to order at 7:05PM.

Council Members Present: Jim Schmidt, Jackson Petito, Chris Ladoulis, Roland Mason, Laura Mitchell, and Paul Merck

Staff Present: Acting Town Manager Bob Gillie, Acting Town Attorney Mary Elizabeth Geiger, and Town Clerk Lynelle Stanford

Finance Director Lois Rozman, Planning Director Michael Yerman, and Public Works Director Rodney Due (for part of the meeting)

APPROVAL OF THE AGENDA

Michel added, first under New Business, a brief discussion on scheduling a special meeting instead of the regular meeting on April 17th.

Schmidt moved and Mason seconded a motion to approve the agenda with the addition of item #1 under New Business. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

CONSENT AGENDA

1) March 20, 2017 Regular Town Council Meeting Minutes.

2) March 23, 2017 Emergency Town Council Meeting Minutes.

3) Letter of Support to Senators Michael Bennet and Cory Gardner and Representative Scott Tipton on the Thompson Divide Withdrawal and Protection Act of 2017.

4) Resolution No. 14, Series 2017 - Resolutions of the Crested Butte Town Council Appointing Creative District Commissioner Jeff Taylor to a 3 Year Term to Expire January 1, 2020.

5) Resolution No. 15, Series 2017 - Resolutions of the Crested Butte Town Council Approving the Award of a Contract for the 3rd Street Pavement Project and Authorizing the Town Mayor to Enter Into a Construction Contract Between the Town of Crested Butte and Old Castle SW Group DBA United Companies.

Mason moved and Merck seconded a motion to approve the Consent Agenda. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

PUBLIC COMMENT

Trent Sanderson - Reported that he ran and operated Team Prep USA

- Clients of Team Prep came to Crested Butte to live, and they impacted the economy.
- Team Prep was a life program based in Mt. Crested Butte.
- He was aware of their footprint, and they did a good job with it.
- They filled up planes and were considering chartering their own planes.
- Mitchell brought up effects Team Prep had on Butte Avenue.
- Schmidt questioned the numbers of kids and parents that came to Town.

STAFF UPDATES

Lois Rozman

- February sales tax numbers were provided at the meeting, and February was up 1.8%. They were missing a couple of lodging properties, so she expected numbers would change.
- Ladoulis asked if there were insights found in the numbers. Rozman thought Town was seeing impacts from the great snow and the drive market. She elaborated that sales tax on marijuana was still down.

Lynelle Stanford

- Received applications for food cart vending from Hogwood BBQ and Waffle Cabin of Colorado.
- The Vinotok work session would be on May 15th.
- Mentioned the staff report in the packet in response to the request for the start of earlier sidewalk seating.

Bob Gillie

- They were supposed to open bids on the Nordic Center design on the 27th. They did not receive any bids, so the deadline was extended 20 days.
- They were continuing with the PUD general plan review with CB Hotel on the 12th and would head into PUD concept review with Clark's in April as well.
- The Four Way Transit Center was out to bid.
- Town received financial information from the Center for the Arts and would continue to look at their numbers.

PUBLIC HEARING

1) Ordinance No. 5, Series 2017 - An Ordinance of the Crested Butte Town Council Amending Chapter 16, Article 12 of the Crested Butte Municipal Code to Include Regulations for the Consolidation of Residential Properties Subdivided Into Condominiums or Townhouses.

Michel confirmed proper public notice had been given. Gillie explained the change from the last meeting was that the provision to allow consolidation if the proponent provided like-sized deed restricted housing unit was removed. BOZAR considered the ordinance last week, and they didn't reach consensus.

The public hearing was opened for public comment. There was no public comment, and the public hearing was closed. The meeting was opened to Council discussion. Schmidt thought it was a good idea. Ladoulis wanted to confirm there didn't seem to be objection from affected parties, such as HOAs. Geiger stated that covenants might have already addressed the issue.

Petito moved and Mason seconded a motion to approve Ordinance No. 5, Series 2017. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

2) Ordinance No. 7, Series 2017 - An Emergency Ordinance of the Crested Butte Town Council Authorizing Redemption of 721 Butte Avenue, Unit 1, Town of Crested Butte Pursuant to § 38-38-302, Et Seq. of the Colorado Revised Statutes in an Amount Not to Exceed $125,000.00.

Schmidt recused himself, and he left the room.

Michel confirmed proper public notice had been given. Yerman provided background on the agenda item. He explained the costs associated and that the redemption period went until tomorrow at Noon. Council needed to set a date for the next hearing when the ordinance would be ratified. The meeting was opened to public comment. There were no comments from the public, and the public hearing was closed. There was no Council discussion on the ordinance.

There was discussion on the special meeting in which to ratify the ordinance. It was decided to hold a special meeting on Monday, April 10th at 5PM, instead of the regular meeting on April 17th.

Merck moved and Petito seconded a motion to approve Ordinance No. 7, Series 2017, and the Crested Butte Town Council will be cancelling the April 17th regularly scheduled Town Council and will be holding a special meeting on Monday, April 10th, 2017 at 5PM to conclude this business. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

NEW BUSINESS

1) Discussion and Possible Action Regarding the Budget for the Employee Rental School Build on Lot 3, Block 79.

Yerman informed the Council that they determined they would recommend a budget of $185,000 instead of $170,000. Mason was concerned about the labor and the fact there

was only $10K included in the budget. Yerman explained they would not start the project this year if they didn't have the enrollment. Ladoulis thought the contingency percentage seemed small. Yerman hoped they would spend less than $185,000, and they were comfortable. Rozman was questioned about procedure if the budget increased beyond $185,000. She explained there would be a budget amendment through ordinance later in the year.

Schmidt moved and Merck seconded a motion to increase the employee rental school build on Lot 3, Block 79 to $185,000 total. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

2) Resolution No. 16, Series 2017 - Resolutions of the Crested Butte Town Council Approving the Award of a Contract for the Construction of the Wastewater Treatment Plant Upgrades 2017 and Authorizing the Town Mayor to Enter Into a Construction Contract Between the Town of Crested Butte and Integrated Water Services, Inc (IWS).

Due referred to his staff report. He clarified base bid and the bid alternate. The bid alternate excluded the head works portion of the project. He outlined opportunities he recognized for saving. He explained the contingencies, primarily grant funding, that were addressed in the staff report. Michel asked Rozman to confirm it was a good decision, and she agreed it was. Schmidt asked how long the project would cover. Due estimated a solid 20 years, but he added that regulations and processes were always changing. Petito noticed a handwritten list of sub-contractors. He identified that most were not local. Due acknowledged that not all needed resources were available locally.

Schmidt moved and Mason seconded a motion to approve Resolution No. 16, Series 2017 as amended to include the additional $89,000 from reserves and authorizing the Public Works Director to utilize up to $200,000 in contingency for the project. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

3) Ordinance No. 8, Series 2017 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned Property Legally Described As Lot 1, Block 79, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Michael and Angela Horn for the Sale Price of $65,000.00.

Schmidt moved and Merck seconded a motion to set Ordinance No. 8, Series 2017 to public hearing on April 10th, 2017. **Motion passed.**

4) Ordinance No. 9, Series 2017 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned Property Legally Described As Lot 7, Block 79, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Andrew Allen for the Sale Price of $55,000.00.

Mason moved and Mitchell seconded a motion to set Ordinance No. 9, Series 2017 for public hearing on April 10th. **Motion passed.**

5) Ordinance No. 10, Series 2017 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned Property Legally Described As Lot 9, Block 79, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Kevin and Susan Emery for the Sale Price of $25,000.00.

Petito moved and Merck seconded a motion to set Ordinance No. 10, Series 2017 for public hearing on April 10th, 2017. **Motion passed.**

LEGAL MATTERS

None

COUNCIL REPORTS UPDATES AND COMMITTEE UPDATES

Jim Schmidt

- His main report was on housing. They held three Skype interviews and decided to invite two candidates for in-person interviews (for the Director of the Gunnison Valley Regional Housing Authority). There would be an open house next Tuesday.
- The regular housing board would meet in the morning, and interviews would be conducted in the Al Johnson Boardroom in Mt. Crested Butte. They hoped to make an offer by the next morning. Both candidates indicated they could hit the ground in three weeks.
- The meeting of the Cemetery Committee would be on Friday.

Roland Mason

- They picked the artist to paint the new, small Mountain Express bus. The theme would be bubbles.
- Ridership was up 22% in March. February was up 5%.
- The spring schedule would start on April 10th and run through June 9th.
- They bought a new shop truck for Mountain Express.
- They were looking at a shop expansion and working with Town and other entities to build a duplex.
- Revenue was looking good.
- Invited everyone to a presentation by a Google executive on Wednesday at 12:30PM at the ICElab at Western.
- Schmidt asked about Gothic Service. It would start June 12th, and there would be four trips a day.
- Petito asked if they had considered different time increments for bus service, other than 15 minutes or 40 minutes. Mason explained the reasoning behind the increments.

Laura Mitchell

- Informed the Council she had numbers from the Chamber on Crafted and Fat Bike Worlds. Financially they were doing well.

- She would attend a Chamber meeting tomorrow.
- Mason asked how they were doing on their line of credit. Mitchell stated they were doing well with not using it, and the numbers were pretty solid. Mason stated the Council would like an update.

OTHER BUSINESS TO COME BEFORE THE COUNCIL

Schmidt read a letter regarding the County Clerk's office closing in Crested Butte and the joint meeting with the County Commissioners. He expressed disappointment in the closing of the Clerk's Office. He noticed there were people being served by the office. The closure was a disservice to the Crested Butte community. He brought up the rent increases to Town properties. He hoped they could build bridges called for at the joint meeting. Ladoulis wanted to communicate that they understood and appreciated non-profits, but Town was conveying value in lease abatement. It was not the mission to generate revenue from non-profits. Michel stated it was good to re-articulate the policy. Petito reiterated it was not an issue of creating revenue.

Mitchell told the Council that drones had fallen off the radar. She wanted to look to the future. Michel specified they wanted to identify when drones were harassing and when they were a public nuisance. Michel suggested they direct Staff to learn what the current laws were and what other places were doing. Merck added that there were licensed operators, and there were FAA regulations. Council directed Staff and suggested a work session to bring back the information. No one on the Council objected.

Merck brought up the Center for the Arts. He thought the Council needed to know it was a huge thing they were going to do and that Staff should look into it. They needed to create goals and objectives regarding what Town was responsible for and identify at what point they had special meetings to keep it rolling at a good pace. He thought finances needed to be looked at. Merck said plans were to break ground right away, and it would be nice to have more information sooner rather than later. They had to work positively and together.

DISCUSSION OF SCHEDULING FUTURE WORK SESSION TOPICS AND COUNCIL MEETING SCHEDULE

- Monday, April 17, 2017 - 7:00PM Regular Council - Council will discuss scheduling a special meeting to replace.
- Monday, May 1, 2017 - 6:00PM Work Session - 7:00PM Regular Council
- Monday, May 15, 2017 - 6:00PM Work Session - 7:00PM Regular Council

The discussion occurred previously in the meeting. It was re-affirmed that the special meeting would be on Monday, April 10th at 5PM, and there would not be the meeting on April 17th.

ADJOURNMENT

Mayor Michel adjourned the meeting at 8:17PM.

_____

Glenn Michel, Mayor

_____

Lynelle Stanford, Town Clerk (SEAL)

MINUTES
Town of Crested Butte
Special Town Council Meeting
Monday, April 10, 2017
Council Chambers, Crested Butte Town Hall

Mayor Michel called the meeting to order at 5PM.

Council Members Present: Jim Schmidt, Jackson Petito, Roland Mason, Laura Mitchell, and Paul Merck

Staff Present: Acting Town Manager Bob Gillie, Town Attorney John Belkin, Finance Director Lois Rozman, Planning Director Michael Yerman, and Town Clerk Lynelle Stanford

APPROVAL OF THE AGENDA

Michel read the agenda title for an item that Staff requested be added under New Business: Discussion and Possible Approval of the Amended and Restated Resident-Occupied (ROAH) Affordable Housing Deed Restriction for Unit 2 Paradise Divide Condominiums Located at 602 Butte Avenue.

Merck moved and Schmidt seconded a motion to approve the agenda. A roll call vote was taken with all voting, "Yes," except for Mason, who was not yet present to vote. **Motion passed unanimously.**

PUBLIC HEARING

1) Ordinance No. 8, Series 2017 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned Property Legally Described As Lot 1, Block 79, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Michael and Lori Horn for the Sale Price of $65,000.00.

Michel confirmed proper public notice had been given. Yerman explained the background on this ordinance and the following two ordinances. The public hearing was opened. There was no public comment. The public hearing was closed. There was no Council discussion.

Schmidt moved and Merck seconded a motion to approve Ordinance No. 8, Series 2017. A roll call vote was taken with all voting, "Yes," except for Mason, who was not yet present to vote. **Motion passed unanimously.**

2) Ordinance No. 9, Series 2017 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned Property Legally Described As Lot 7, Block 79, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Andrew Allen for the Sale Price of $55,000.00.

Michel confirmed proper public notice had been given. The public hearing was opened. There was no one present from the public to comment. The public hearing was closed. There was no Council discussion.

Schmidt moved and Merck seconded a motion to approve Ordinance No. 9, Series 2017. A roll call vote was taken with all voting, "Yes," except for Mason, who was not yet present to vote. **Motion passed unanimously.**

3) Ordinance No. 10, Series 2017 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned Property Legally Described As Lot 9, Block 79, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Kevin and Susan Emery for the Sale Price of $25,000.00.

Michel confirmed proper public notice had been given. The public hearing was opened. There was no one present from the public to comment. The public hearing was closed. There was no Council discussion.

Roland Mason arrived at the meeting.

Mitchell moved and Merck seconded a motion to approve Ordinance No. 10, Series 2017. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

4) Ratification of Ordinance No. 7, Series 2017 - An Emergency Ordinance of the Crested Butte Town Council Authorizing the Redemption of 721 Butte Avenue, Unit 1, Town of Crested Butte Pursuant to § 38-38-302, Et Seq. of the Colorado Revised Statutes in an Amount Not to Exceed $125,000.00.

Schmidt recused himself and left the room.

Michel confirmed proper public notice had been given. Yerman explained the ordinance was being ratified as part of the process for an emergency ordinance. The meeting was opened to public comment. There was no public comment. The public hearing was closed. There was no Council discussion

Petito moved and Merck seconded a motion to ratify Ordinance No. 7, Series 2017. A roll call vote was taken with all voting, "Yes," except for Schmidt, who had recused himself. **Motion passed unanimously.**

Schmidt returned to the meeting.

<u>NEW BUSINESS</u>

1) Approval of the Substance Abuse Prevention Community Grant Award to Gunnison County Substance Abuse Prevention Project in an Amount up to $10,000.

Rozman explained there was an additional grant cycle that the Council put into the 2017 budget, specifically for substance abuse. There was only one application turned in, by GCSAPP. $10,000 was available to grant.

Schmidt moved and Merck seconded a motion to approve the Substance Abuse Prevention Community Grant award to Gunnison County Substance Abuse Prevention Project be approved up to $10,000. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

2) Discussion and Possible Approval of the Amended and Restated Resident-Occupied (ROAH) Affordable Housing Deed Restriction for Unit 2 Paradise Divide Condominiums Located at 602 Butte Avenue.

Yerman told the Council that the agenda item was needed to clean up a deed restriction, in which the ownership provision was not included. He described ownership requirements and that the maximum sales price was also included. Schmidt questioned the price, and Yerman stated what it was calculated to be. Schmidt confirmed the unit was located above the Gas Café. There was a discussion on its rental status and ownership status currently and going forward.

Mason moved and Merck seconded a motion to authorize the Mayor to execute the Amended Deed Restriction for Unit 2 located at 602 Butte Avenue with Charles Schiavo and be recorded against the property. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

Schmidt informed the Council there was an open house for meeting the candidates for the Housing Director tomorrow. Secondly, he requested that Staff include the discussion of a pay increase for the Council and Mayor on the next agenda. Michel recognized CAST could be a resource for information. The Council indicated agreement with a thumbs-up, and no one voiced disagreement.

ADJOURNMENT

Mayor Michel adjourned the meeting at 5:11PM.

_____

Glenn Michel, Mayor

_____

Lynelle Stanford, Town Clerk (SEAL)

Staff Report
May 1, 2017

To: Mayor and Town Council

Thru: Dara MacDonald

From: Bob Gillie, Building and Zoning Director

Subject: **Gothic Paradise Subdivision Plat Approval – Resolution 17, Series 2017**

Date: April 21, 2017

Summary: Scott Truex, Lucille Beckman, and Lisa D'Arrigo applied to the Town to re-configure two adjacent properties that they owned in the 200 Block of Gothic Avenue. The objective being to add more lot area to the west most parcel to allow a larger FAR on this parcel where their primary dwelling currently exists.

The Staff and Board of Zoning and Architectural Review confirmed that the subdivision was in compliance with the Town's regulations for minor subdivisions in Chapter 17 of the Municipal Code. A public hearing was held on March 28, 2017 and the Board approved the subdivision.

Section 17-4-40 of the Municipal Code requires that the Town Council certify that the final plat is in compliance with the regulations in Chapter 17. This resolution satisfies that requirement.

Recommendation: The staff recommends that the Town Council approve Resolution 17, Series 2017 as part of the Consent Agenda.

Proposed Motion for resolution #17, Series 2017: I move to approve the consent agenda.

RESOLUTION NO. 17

SERIES 2017

RESOLUTIONS OF THE CRESTED BUTTE TOWN COUNCIL CERTIFYING THAT THE FINAL PLAT FOR THE GOTHIC PARADISE SUBDIVISION IS IN COMPLIANCE WITH ARTICLE 4 OF CHAPTER 17 OF THE TOWN CODE

WHEREAS, the Town of Crested Butte, Colorado (**"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, Section 17-4-40 of the Crested Butte Municipal Code requires that the Crested Butte Board of Zoning and Architectural Review and the Town Council certify that the final plat of Minor Subdivisions are in compliance with the requirements of Article 4, Chapter 17; and

WHEREAS, The Town Staff reviewed the Gothic Paradise Subdivision and found it to be compliant with the regulations for Minor Subdivisions in Chapter 17; and.

WHEREAS, The Board of Zoning and Architectural Review held a public hearing on March 28, 2017 and approved the Gothic Paradise Subdivision and certified that the Final Plat was in compliance with Article 4, Chapter 17 of the Crested Butte Municipal Code; and

WHEREAS, based on the Town Staff and Crested Butte Board of Zoning and Architectural Review recommendation, the Town Council hereby finds that it is in the best interest of the Town and general welfare of the public that the Gothic Paradise Subdivision be approved.

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

1. **Approval of Plat: Approval of Mayor to Execute Resolution No.17, Series 2017**. The Town Council certifies that the Final Plat of the Gothic Paradise Subdivision, Lots 25, 26, 27 and the west 50.00 feet of Lots 28 through 32, Block 9, TOWN OF CRESTED BUTTE, County of Gunnison, State of Colorado in the form attached hereto as **Exhibit "A"** is in compliance with the Town regulations and authorizes the Chair of the Board of Zoning and Architectural Review to sign the plat.

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL THIS 1st DAY OF May, 2017.

TOWN OF CRESTED BUTTE, COLORADO

By: _____
Glenn Michel, Mayor

ATTEST

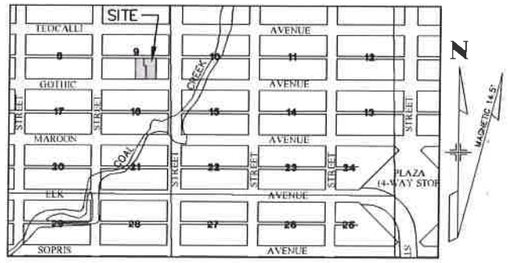
_____
Lynelle Stanford, Town Clerk

(SEAL)

EXHIBIT "A"

(Gothic Paradise Subdivision Plat)

(attach Plat here)

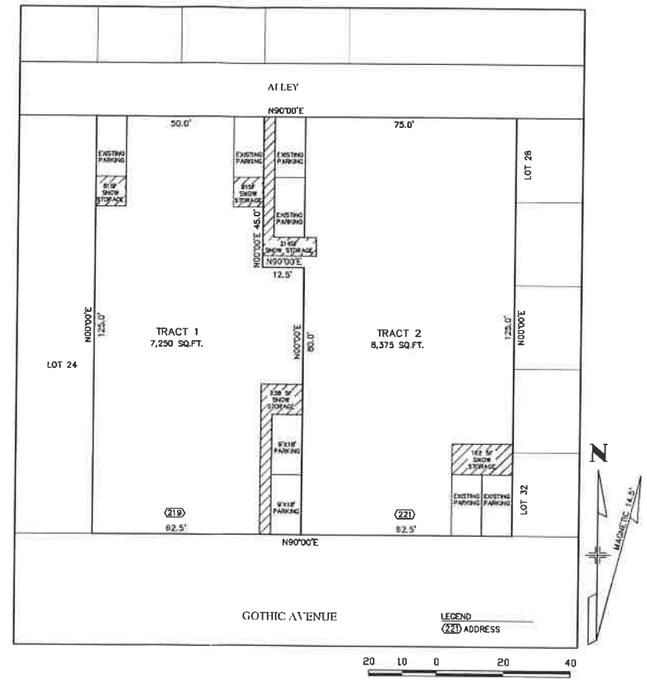


VICINITY MAP
SCALE: 1" = 400'±

FINAL PLAT OF
GOTHIC PARADISE SUBDIVISION

LOCATED WITHIN
THE NW ¼ NE ¼ SECTION 3
TOWNSHIP 14 SOUTH, RANGE 86 WEST, OF THE 6TH PRINCIPAL MERIDIAN
TOWN OF CRESTED BUTTE, GUNNISON COUNTY, COLORADO

Approximately 0.36 Acres



TITLE COMPANY CERTIFICATE

Alpine Title Company, does hereby certify that it has examined the title to all lands as shown hereon and title to such lands is in the dedicators free and clear of all liens, taxes, and encumbrances, except as follows:

1. Rights or claims of parties in possession not shown by the Public Records.
2. Easements or claims of easements not shown in the Public Records.
3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any facts which a correct survey and inspection of the land would disclose, and which are not shown by the public record.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
6. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof.
7. Any water rights or claims or title to water, in or under the land, whether or not shown by the public records.
8. Taxes due and payable; and any tax, special assessments, charge or lien imposed for water or sewer service, or for any other special taxing district. Note: Upon verification of payment of all taxes the above exception will be amended to read, "Taxes and assessments for the current year, and subsequent years, a lien not yet due and payable."
9. The following reservations as contained in the United States Patent recorded June 23, 1980 in Book 29 at Page 106:
   a) The right of the proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises hereby granted, as provided by law.
10. Any taxes, fees, assessments, charges and/or obligations as imposed by Notice of Ordinances in the Town of Crested Butte recorded December 1, 1986 in Book 636 at Page 145, recorded August 23, 1995 in Book 759 at Page 94, recorded May 2, 1996 in Book 782 at Page 272 and recorded May 24, 1996 in Book 783 at Page 548; as follows:
    a) Ordinance No. 15, Series 1979, as amended, providing for an excise tax upon the transfer of interests in real property.
    b) Ordinance No. 7, Series 1986, requiring the replacement of non-approved solid fuel burning devices with "Approved Solid Fuel Burning Devices" upon the transfer of interests in real property.
    c) Chapter 15 of the Crested Butte Municipal Code, the "Zoning and Land Use Ordinance".
    d) Ordinance No. 12, Series 1991, regarding provisions for a 3 per cent transfer tax.
    e) Notice regarding Town of Crested Butte 1996 Land Use Plan, filed in accordance with the provisions of C.R.S. Section 31-23-208, and Crested Butte Land Use Plan, adopted by Resolution No. 4, Series 1996.
11. The effect of Certificate of Compliance by the Town of Crested Butte recorded October 15, 1993 in Book 733 at Page 302, and also recorded October 29, 1993 in Book 734 at Page 199.
12. Terms, conditions, and restrictions as contained in Notice of Agreement for Land Use Conditions and Restrictive Covenants recorded May 6, 2004 at Reception No. 541751 as corrected by Notice of Rescission of Zoning Conditions and Restrictive Covenants recorded on May 20, 2004 at Reception No. 542217 (pertains to Tract 1 only).
13. Terms, conditions, and restrictions as contained in Notice of Agreement for Land Use Conditions and Restrictive Covenants recorded June 17, 2004 at Reception No. 543187 (pertains to Tract 1 only).
14. Terms and conditions as contained in Notice of Agreement for Land Use Conditions and Restrictive Covenants recorded September 23, 2004 at Reception No. 546487 (pertains to Tract 2 only).
15. Terms, conditions, and restrictions as contained in Notice of Agreement for Land Use Conditions and Restrictive Covenants recorded August 27, 2009 at Reception No. 593253 (pertains to Tract 1 only).
16. Deed of Trust from Lucille J. Beckman as to an undivided 60% interest and Scott A. Truex and Lisa A. D'Arrigo as to an undivided 40% interest to the Public Trustee of the County of Gunnison for the use of The Gunnison Bank and Trust Company to secure $315,000.00, dated May 28, 2013 and recorded June 3, 2013 at Reception No. 620474 (pertains to Tract 1 only).

Dated this _____ day of _____, 2017.

Agent: _____

LAND SURVEYOR'S CERTIFICATE

I, Norman C. Whitehead, being a registered land surveyor in the State of Colorado, do hereby certify that this plat and survey of GOTHIC PARADISE SUBDIVISION were made by me and under my supervision and both are accurate to the best of my knowledge. Steel pins with permanent cap monuments were set as required at all boundary corners.

Dated this ___ day of _____, 2017.

_____
Norman C. Whitehead, Colorado L.S. #27739
P.O. Box 3688
Crested Butte, CO 81224

NOTE:

1. Bearings and distances are as shown on the Town Plat.

2. Location based on Town Plat and Control monuments located at 3rd Street and Elk Avenue and 7th Street and Elk Avenue.

3. Basis of Bearing: N90°00'00"E between control monuments located at 3rd Street and Elk Avenue and 7th Street and Elk Avenue.

4. According to Colorado law you must commence legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based on any defect in this survey be commenced more than ten years from the date of the surveyor's certificate shown hereon.

MAR 2017
RECEIVED
Building Department

DEDICATION

KNOW ALL PEOPLE BY THESE PRESENTS: That Lucille J. Beckman, Scott A. Truex, and Lisa A. D'Arrigo, being the owners of Lots 25, 26 and 27 and the west 50.00 feet of Lots 28 through 32, all in Block 9, TOWN OF CRESTED BUTTE, County of Gunnison, State of Colorado, collectively described as follows:

Lots 25, 26 and 27 and the west 50.00 feet of Lots 28 through 32, Block 9, TOWN OF CRESTED BUTTE, County of Gunnison, State of Colorado, under the name and style of Gothic Paradise Subdivision,

have laid out, platted and subdivided the same as shown on this Final Plat and described as:

Tract 1 – Lots 25 and 26 and the West 12.50' of the South 80.00' of Lot 27, Block 9, containing 0.17 acres, more or less,

and

Tract 2 – The North 45.00' feet and the East 12.50' of the South 80.00' of Lot 27 and the West 50.00' of Lots 28 through 32, Block 9, containing 0.19 acres, more or less,

and by these presents do hereby dedicate to the perpetual use of the Town of Crested Butte, State of Colorado, the streets, alleys, roads, easements and other public portions of land labeled as such.

IN WITNESS WHEREOF, the said Lucille J. Beckman, Scott A. Truex, and Lisa A. D'Arrigo, have caused their names to be hereunder subscribed this _____ day of _____, 2017.

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing Dedication was acknowledged before me this _____ day of _____, 2017, by Lucille J. Beckman.

Witness my hand and official seal.
My commission expires:

_____
Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing Dedication was acknowledged before me this _____ day of _____, 2017, by Scott A. Truex.

Witness my hand and official seal.
My commission expires:

_____
Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing Dedication was acknowledged before me this _____ day of _____, 2017, by Lisa A. D'Arrigo.

Witness my hand and official seal.
My commission expires:

_____
Notary Public

BOZAR 3-28-2017
APPROVED

Board of Zoning and Architectural Review Approval

The Board of Zoning and Architectural Review of the Town of Crested Butte, Colorado, does hereby authorize and approve the Final Plat for the above subdivision at a meeting of the Board of Zoning and Architectural Review held on the _____ day of _____, 2017. This written plat of GOTHIC PARADISE SUBDIVISION is approved for filing.

TOWN OF CRESTED BUTTE

By: _____
Chairman

ATTEST:

_____
Town Clerk

GUNNISON COUNTY CLERK AND RECORDER'S ACCEPTANCE

This Final Plat for GOTHIC PARADISE SUBDIVISION was accepted for filing in the office of the Clerk and Recorder of Gunnison County on this _____ day of _____, 20117.

Reception number: _____ Time: _____

Date: _____

_____
County Clerk

FINAL PLAT OF
GOTHIC PARADISE SUBDIVISION

TOWN OF CRESTED BUTTE
GUNNISON, COUNTY COLORADO

Prepared By:
NCW & Associates, Inc.
P.O. Box 3688 Crested Butte
(970) 349-6384 Colorado 81224

PROJECT: 17054.00	DWG.: PLAT
DATE: 3/28/17	SHEET 1 OF 1

Staff Report
May 1, 2017

To: Mayor and Town Council

Thru: Dara MacDonald, Town Manager

From: Janna Hansen, Parks and Recreation Director

Subject: Resolution No. 19, Series 2017 - Resolutions of the Crested Butte Town Council Approving a Professional Services Agreement with Ben White Architecture for Architectural and Related Services for the Big Mine Warming House Expansion Project.

Background: On September 8, 2015 Town Council adopted the Big Mine Park Master Plan which recommends renovating and or expanding the Big Mine Warming House to accommodate Nordic, Hockey, sledding, and Trailhead uses (Phase II). Phase I of the Master Plan recommends upgrades to utilities within Big Mine Park to accommodate this expansion. The upgrades were completed in 2016 and Phase II is scheduled for 2017-2018. Council allocated $43,000.00 in the Town's 2017 Capital Fund budget for architectural and design services for this project.

Summary: On March 7, 2017 a Request for Proposals was posted soliciting submittals for architectural services for the completion of design and construction documents for the Big Mine Warming House Expansion Project. The Town received two submittals which were reviewed by the project steering committee. The committee found Ben White Architecture to be the most desirable firm to complete this project based upon the following qualifications and expertise:

- Experience with hockey warming house design
- Experience with public projects
- Previous work on projects with historic preservation components
- Attention to detail exhibited in the submittal
- Compilation of the design team including structural, mechanical, and electrical engineers
- Use of Revit computer drafting software
- Good working relationship with BOZAR

Recommendation: Staff recommends approving Resolution No. 19, Series 2017 to award a Professional Services Agreement to Ben White Architecture in an amount not to exceed $43,000.00 for architectural services for the Big Mine Warming House Expansion Project.

RESOLUTION NO. 19

SERIES 2017

RESOLUTIONS OF THE CRESTED BUTTE TOWN COUNCIL APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH BEN WHITE ARCHITECTURE FOR ARCHITECTURAL AND RELATED SERVICES FOR THE BIG MINE WARMING HOUSE EXPANSION PROJECT

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

WHEREAS, the Town staff recommends that the Town enter into a professional services agreement with Ben White Architecture (the "**Consultant**") for the Consultant's performance of design and architectural services related to the Big Mine Warming House Expansion Project (the "**Project**") in an amount not to exceed $43,000.00;

WHEREAS, following the Town staff's recommendation, the Town Council desires to enter into a professional services agreement with the Consultant for the Consultant's performance of consulting services for the Town in connection with the Project and pursuant to the terms and conditions for performance of the Project set forth in the contract attached to these Resolutions; and

WHEREAS, the Town Council hereby finds that it is in the best interest of the health, safety and general welfare of the citizens and visitors of the Crested Butte to enter into a professional services agreement with the Consultant for the above-stated purposes, and in connection therewith, adopt and execute the professional services agreement referenced herein.

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 entering into the professional services agreement with the Consultant for the Consultant's performance of certain professional services for the Town in connection with Project in an amount not to exceed $43,000.00 is in the best interest of the Town, its residents and visitors.

2. **Approval; Authorization of Town Manager**. Based on the foregoing, the Town Council hereby approves the professional services agreement with the Contractor in substantially the same form as attached hereto as **Exhibit "A**" (the "**Agreement**"). The Town Manager is hereby authorized to execute the Agreement and any associated documentation in connection therewith.

3. **Funding.** Funding for the Project has been approved for by way of the Town Capital Fund.

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL THIS ___ DAY OF _____, 2017.

TOWN OF CRESTED BUTTE, COLORADO

By: _____
Glenn Michel, Mayor

ATTEST

_____
Lynelle Stanford, Town Clerk (SEAL)

EXHIBIT "A"

Professional Services Agreement

[attach form here]

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("**Agreement**") is made this ____ day of _____, 20__ by and between the **TOWN OF CRESTED BUTTE**, a Colorado home rule municipality ("**Town**") with an address of 507 Maroon Avenue, P.O. Box 39, Crested Butte, CO 81224 and **BEN WHITE ARCHITECTURE,** a Colorado Limited Liability Company ("**Consultants**") with an address of 148 Elcho Ave. #3, Crested Butte, CO 81224.

RECITALS:

A. The Town desires to obtain architectural and related services from the Consultants in connection with the **Big Mine Warming House Expansion Project** (the "**Project**").

B. The Consultants provide professional services to the public and are fully qualified to perform the services needed by the Town in connection with the Project.

AGREEMENT:

NOW, THEREFORE, in consideration of the promises and obligations set forth below, the Town and the Consultants agree as follows:

I. SCOPE OF SERVICES

A. General.

The Consultants shall serve as the Town's professional, consultants, advisors and representatives in connection with the Project and shall consult with and advise the Town as it reasonably requires during the term of this Agreement.

B. Specific Duties and Responsibilities.

In connection with the Project, the Consultants shall undertake the duties and responsibilities and provide the services described in Appendix "A" captioned "Scope of Work" which is attached hereto and made a part hereof.

C. Extra Services.

Upon the express written request of the Town, the Consultants shall perform services beyond the scope of the duties and responsibilities described in Appendix "A." The Consultants shall charge the Town for such extra services, if any, in accordance with the provisions of Subsection IV.B.

D. Documents.

All work notes, reports, documents, computer programs (non-proprietary), computer input and output, analyses, tests, maps, surveys or any other materials developed specifically for the Project are and shall remain the sole and exclusive property of the Town. The Consultants, upon request by the Town, agree to provide documents or any other materials developed specifically for the Project in an electronically editable format (for example, Auto CAD or Revit). The Consultants shall not provide copies of any material prepared under this Agreement to any other party without the prior written consent of the Town.

II. COOPERATION BY THE TOWN

The Town will thoroughly and as expeditiously as reasonably possible consider all reports, sketches, drawings, specifications, proposals and other documents prepared by the Consultants, and it shall inform the Consultants of all decisions that it has made which would affect the Consultants' work under this Agreement as soon as reasonably feasible. The Town will inform the Consultants of any pending change or revision to the Project as soon as reasonably feasible. The Town will provide the Consultants with current updated plans, if any, for the Project as soon as reasonably feasible after they are produced.

III. SCHEDULE

The Town shall advise the Consultants in writing of the schedule required for Consultants' performance of the Services as soon as feasible, and the Consultants shall thereafter work in good faith to accommodate the Town's schedule. The Consultants shall provide their services at such times as are necessary in order to promote the smooth progress of the Project.

IV. AMOUNT OF PAYMENTS TO CONSULTANTS

A. Aggregate Limits.

Unless services in addition to those specified in Section I are subsequently agreed upon in writing, the total amount paid by the Town to the Consultants pursuant to this Agreement shall not exceed the sums set forth in Appendix "A."

B. Specific Charges.

The Consultant's primary employees who will work on the Project and their billing rates are set forth Appendix "A," which is attached hereto and made a part hereof. Except where a lump sum is otherwise contemplated in Appendix "A," the Town will pay the Consultants on the basis of their time and direct expenses incurred in order to provide the services required by this Agreement, including where additional or extra services are required.

l. The charge for time shall consist of the hourly rates for the Consultants' employees multiplied by the number of hours and parts of hours each such employee works directly on the Project. The time each such employee must spend traveling in

order to provide the services required by this Agreement will be charged in the same way as his or her other time spent working on the Project. It is understood by the parties that the rates include a surcharge intended to cover profit and overhead, including, but not limited to, taxes, employee benefits, administrative support staff and supplies, office rent and utilities, and insurance.

2. Direct expenses incurred by the Consultants in connection with the Project shall be charged to the Town on the basis of the expenses actually incurred by the Consultants, without any additional surcharge added by the Consultants. Such direct expenses shall include printing costs and long-distance telephone charges. Any direct or indirect expenses incurred by the Consultants while working on the Project that are in common with work on other projects for other clients shall be prorated among all those clients according to the benefit derived by each client. The Town shall not pay for the expense of the Consultants' owned or hired automobiles used in the connection with the Project, which shall be considered a part of the Consultants' hourly rates.

C. Inspection of Records.

Upon reasonable, advance request, the Town may inspect and copy any or all records of the Consultants which would bear on any amounts charged to the Town pursuant to this Agreement.

V. TIME OF PAYMENTS TO CONSULTANTS

The Consultants shall bill their charges to the Town periodically, but no more frequently than once a month. Each bill shall contain a statement of the time that the primary employees spent on the Project since the previous bill, a brief description of the services provided by each such employee and an itemization of direct expenses for each task.

VI. QUALIFICATIONS ON OBLIGATIONS TO PAY

Notwithstanding any other terms of this Agreement, the Town may withhold any payment (whether a progress payment or final payment) to the Consultants if any one or more of the following conditions exists:

A. The Consultants are in default of any of their obligations under this Agreement.

B. Any part of such payment is attributable to services that are not performed according to this Agreement (the Town will pay for any part thereof attributable to services performed according to this Agreement).

C. The Consultants have failed to make payments promptly to any third parties used in the services, if any, for which the Town has made payment to the Consultants.

D. The Town, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the Project or any task according to this Agreement. In such case, no additional payments will be due to the Consultants until the Consultants, at their sole cost, perform a sufficient portion of the Project or task so that the Town determines that the compensation then remaining unpaid is sufficient to complete the Project or task.

E. No partial payment shall be final acceptance or approval of that part of the Project or task paid for, or shall relieve the Consultants of any of their obligations under this Agreement.

VII. CONSULTANTS' DUTIES

A. Abilities, Qualifications, Experience and Best Efforts.

Notwithstanding anything to the contrary contained in this Agreement, the Town and the Consultants agree and acknowledge that the Town enters into this Agreement relying on the special and unique professional abilities of the Consultants to accomplish the Project. The Consultants accept the relationship of trust and confidence established between them and the Town by this Agreement. The Consultants covenant with the Town to use their best efforts. The Consultants shall further the interests of the Town according to the Town's requirements and procedures, according to the highest professional standards and in compliance with all applicable national, federal, state, municipal laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction.

B. No Conflicts.

The Consultants represent, covenant, and agree that they have and will undertake no obligations, commitments or impediments of any kind that will limit or prevent them from the timely completion of the Project, loyally and strictly according to the best interests of the Town. In case of any conflict between interests of the Town and any other entity, the Consultant shall fully and immediately disclose the issue to the Town and shall take no action contrary to the Town's interests.

C. Limitation on Public Statements and Lobbying Activity.

Consultants are retained to provide information and advice to the Town that includes confidential data, work product and other privileged or confidential information that is protected under pertinent laws and Town policies. In order to maintain the fact and appearance of absolute objectivity, loyalty and professionalism, Consultants shall not, without the prior written consent of the Town, do any of the following:

1. Disclose at any time information obtained as a result of this contractual relationship to any third party;
2. Lobby any Town agency on any pending matter while they are under contract to the Town;

3. Make any public statements or appear at any time to give testimony at any public meeting on the subject matters with regard to which Consultant is or was retained by the Town.

To the extent that the Town provides written consent for the disclosure of information or authorizes the making of public statements, the Town may impose such conditions upon such disclosure or communications as it thinks appropriate, and Consultants agree to comply with those conditions. This provision shall not preclude Consultants from providing information to law enforcement officials in connection with any criminal justice investigation.

D. Quality of Services.

The Consultants represent, covenant and agree that all of the services that they will furnish under this Agreement shall be of at least the standard and quality prevailing among highly competent professionals who perform work of a similar nature to the work described in this Agreement.

E. Accuracy of Work.

The Consultants represent, covenant, and agree that its work will be accurate and free from any material errors. The Consultants additionally represent, covenant, and agree that the planning for the Project will conform to all foreseeable uses thereof. Town approval shall not diminish or release the Consultants' duties, since the Town is ultimately relying upon the Consultants' skill and knowledge.

F. Duty to Warn.

The Consultants agree to call to the Town's attention errors in any drawings, plans, sketches, instructions, information, requirements, procedures and other data supplied to the Consultants (by the Town or any other party) that it becomes aware of and believes may be unsuitable, improper, or inaccurate in a material way. However, Consultants shall not independently verify the validity, completeness or accuracy of such information unless otherwise expressly engaged to do so by the Town. Nothing shall detract from this obligation unless the Consultants advise the Town in writing that such data may be unsuitable, improper or inaccurate and the Town nevertheless confirms in writing that it wishes the Consultants to proceed according to the data as originally given.

G. Attendance at Meetings.

The Consultants shall attend such meetings on the work required by this Agreement as the Town requires. The Town will give reasonable notice of any such requirement so that the Consultants may schedule and attend.

H. Efficiency.

The Consultants represent, covenant and agree to furnish efficient business administration and superintendence and perform the services required by this Agreement in the best, most expeditious and most economical manner consistent with the interests of the Town.

I. Books and Records.

The Consultants shall keep their books and records for the Project and reimbursable expenses according to recognized accounting principles and practices, consistently applied. The Consultants shall make them available for the Town's inspection at all reasonable times. The Consultants shall retain such books and records for at least three years after completion of the Project.

J. Payment of Bills.

The Consultants shall promptly pay all bills for labor and material performed and furnished by others in performance of the Project.

VIII. TERMINATION

A. Termination for Breach.

This Agreement may be terminated by either party for a material breach of this Agreement by the other party not caused by any action or omission of the terminating party by giving the other party written notice at least three days in advance of the termination date. The termination notice shall specify in reasonable detail each such material breach. In the event of such termination by either party, the Consultants shall promptly deliver to the Town all drawings, computer programs, computer input and output, analysis, plans, photographic images, tests, maps, surveys, and written materials of any kind generated in the performance of services under this Agreement up to and including the date of termination. If this Agreement is so terminated by the Consultants, they will be paid for all services rendered up to the date of termination, except as set forth in Section VI above. If this Agreement is so terminated by the Town, the Consultants will be paid for all services rendered to the date of termination, except those services which, in the Town's judgment, constituted the grounds, in whole or in part, of the notice of termination, and except as set forth in Section VI, above. Upon such payment, all obligations of the Town to the Consultants under this Agreement shall cease.

B. Termination for Convenience.

In addition to the foregoing, this Agreement may be terminated by the Town for its convenience and without cause of any nature by giving the Consultants written notice at least seven days in advance of the termination date. In the event of such termination, the Consultants will be paid for all services rendered to the date of termination, except as set forth in Section VI, above, and upon such payment, all obligations of the Town to the Consultants under this Agreement shall cease. Furthermore, in the event of such termination, the Consultants shall

promptly deliver to the Town all drawings, computer programs, computer input and output, plans, photographic images, analyses, test, maps, surveys, and written materials of any kind generated in the performance of their services under this Agreement up to and including the date of termination.

IX. SUSPENSION

Without terminating this Agreement or breaching its obligations hereunder, the Town may, at its pleasure, suspend the services of the Consultants hereunder. Such suspension may be accomplished by giving the Consultants written notice one day in advance of the suspension date. Upon receipt of such notice, the Consultants shall cease their work in as efficient a manner as possible so as to keep their total charges to the Town for services under this Agreement to the minimum. No work shall be performed during such suspension except with specific prior authorization by the Project Manager. The Town recognizes that suspension and subsequent reactivation may inconvenience the Consultants and will endeavor to provide advance notice and minimize its use. After a suspension has been in effect for thirty days, the Consultants may terminate this Agreement at will.

X. LAWS TO BE OBSERVED

The Consultants shall be cognizant of all federal and state laws and local ordinances and regulations which in any manner affect those engaged or employed in the work or which in any manner affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction over the same, and shall defend, at all times observe and comply with all such existing laws, ordinances, regulations and decrees, and shall defend, protect and indemnify the Town against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by itself, its subcontractors, agents, or employees.

XI. PERMITS AND LICENSES

The Consultants shall procure all permits and licenses, pay all charges, fees, and taxes and give all notices necessary and incidental to the due and lawful prosecution of their services under this Agreement.

XII. PATENTED DEVICES, MATERIALS AND PROCESSES

The Consultants shall hold and save harmless the Town from any and all claims for infringement, by reason of the use of any patented design, device, material, process, or trademark or copyright and shall indemnify the Town for any costs, expenses, and damages, including court costs and attorneys' fees, which it might be obligated to pay by reason of infringement at any time during the prosecution or after completion of their services under this Agreement.

XIII. TABOR; COLORADO CONSTITUTION, ARTICLE X, SECTION 20

Notwithstanding other provisions in this Agreement to the contrary, the Parties

understand and acknowledge that the Town is subject to Article X, § 20 of the Colorado Constitution ("TABOR").

A. The parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement.

B. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the parties are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the parties' current fiscal period ending upon the next succeeding December 31.

C. Financial obligations of the parties payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with ordinances and resolutions of the responsible party and other applicable law.

XIV. INDEPENDENT CONTRACTOR

The relationship between the Consultants and the Town is that of an independent contractor. The Consultants shall supply all personnel, equipment, materials and supplies at their own expense, except as specifically set forth herein. The Consultants shall not be deemed to be, nor shall they represent themselves as, employees, partners, or joint venturers of the Town. No employee or officer of the Town shall supervise the Consultants. The Consultants are not entitled to workers' compensation benefits and are obligated to directly pay federal and state income tax on money earned under this Agreement.

XV. INDEMNIFICATION

The Consultants shall be responsible for all damages to persons or property caused by them, their agents, subcontractors, employees or representatives which may arise from their negligent or wrongful performance of this Agreement, and shall indemnify, hold harmless, and defend the Town and its officers, agents and employees from any claim or action brought by reason thereof. As part of this obligation, the Consultants shall compensate the Town for the time, if any, spent by its counsel in connection with such claims or actions at the rates generally prevailing among private practitioners in the Town of Crested Butte for similar services. The Consultants' obligation to indemnify the Town as set forth in this Agreement shall survive the termination or expiration of this Agreement. In addition, the Parties acknowledge that all such liabilities, claims and demands made by third parties shall be subject to any notice requirements, defenses, immunities, and limitations of liability that the Town and its officers, directors and employees may have under the Colorado Governmental Immunity Act and under any other law.

XVI. INSURANCE

A. The Consultants agree to procure and maintain in force during the terms of this Agreement, at its own cost, the following minimum coverages:

1. Workers' Compensation and Employers' Liability
   a) State of Colorado: Statutory
   b) Applicable Federal: Statutory
   c) Employer's Liability: $100,000 Each Accident
      $500,000 Disease-Policy Limit
      $100,000 Disease-Each Employee
   d) Waiver of Subrogation

2. Commercial General Liability
   a) Bodily Injury & Property Damage General Aggregate Limit $2,000,000
   b) Personal & Advertising Injury Limit $1,000,000
   c) Each Occurrence Limit $1,000,000

The policy shall be on an Occurrence Form and include the following coverages: Premises Operations; Personal and Advertising Injury; Medical Payments; Liability assumed under an Insured Contract; Independent Contractors; and Broad Form Property Damage. Coverage provided should be at least as broad as found in Insurance Services Office (ISO) form CG0001.

3. Professional Liability (errors and omissions)
   a) Each Claim/Loss: $1,000,000
   b) Aggregate: $1,000,000

The Town of Crested Butte may require that this coverage remain in place for one year after the project is complete.

4. Commercial Automobile Liability Limits
   a) Bodily Injury & Property Damage Combined Single Limit $1,000,000
   b) Medical Payments per person $ 5,000
   c) Uninsured/Underinsured Motorist $ 100,000

Coverage is to be provided on Business Auto, Garage, or Truckers form. Coverage provided should be at least as broad as found in ISO form CA0001 (BAP), CA0005 (Garage) or CA0012 (Trucker) including coverage for owned, non-owned, & hired autos.

B. <u>Coverage</u>.

Insurance required by this Agreement shall be primary coverage, unless otherwise specified, and shall specify that in the event of payment for any loss under the coverage provided, the insurance company shall have no right of recovery against the Town or its insurers. All policies of insurance under this Agreement shall be provided by a reputable insurance company or companies qualified to conduct business in Colorado. The Town reserves the right, but shall not have the duty, to reject any insurer which it finds to be unsatisfactory and insist that the Consultants substitute another insurer that is reasonably satisfactory to the Town. Property

and Liability Insurance Companies shall be licensed to do business in Colorado and shall have an AM Best rating of not less than A- VI. This insurance shall be maintained in full force and effect during the term of this Agreement and for the additional periods set forth herein and shall protect the Consultants, its agents, employees and representatives, from claims for damages for personal injury and wrongful death and for damages to property arising in any manner from negligent or wrongful acts or omissions of the Consultants, their agents, employees, and representatives in the performance of the services covered herein.

C. Additional Insureds.

All Insurance policies (except Workers Compensation and Professional Liability) shall include Town of the Town of Crested Butte and its elected officials and employees as additional insureds as their interests may appear. The additional insured endorsement should be at least as broad as ISO form CG2010 for General Liability coverage and similar forms for Commercial Auto and Umbrella Liability.

D. Automobile Coverage.

Automobile insurance shall, without limitation, cover all automobiles used in performing any services under this Agreement.

E. Claims-Made Policies.

If coverage is to be provided on Claims Made forms, Consultants must refer policy to the Town Attorney's Office for approval and additional requirements. In the case of any claims-made insurance policies, the Consultants shall procure necessary retroactive dates, "tail" coverage and extended reporting periods to cover a period at least two years beyond the expiration date of this Agreement. This obligation shall survive the termination or expiration of this Agreement.

F. The Consultants shall not cancel, materially change, or fail to renew required insurance coverages. The Consultants shall notify the Project Manager of any material reduction or exhaustion of aggregate limits. Should the Consultants fail to immediately procure other insurance, as specified, to substitute for any policy canceled before final payment to the Consultants, the Town may procure such insurance and deduct its cost from any sum due to the Consultants under this Agreement.

G. Certificates.

Certificates showing that the Consultants are carrying the above-described insurance, and the status of the additional insureds, shall be furnished to the Town prior to the execution of this Agreement by the Town. Consultant, or Consultant's insurance broker, shall notify the Town of any cancellation or reduction in coverage or limits of any insurance within seven (7) days of receipt of insurer's notification to that effect. The Consultants shall forthwith

obtain and submit proof of substitute insurance in the event of expiration or cancellation of coverage.

H. Non-Waiver.

The parties understand and agree that the parties are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (currently $350,000 per person and $990,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as from time to time amended, or otherwise available to the parties, their officers, or their employees.

XVII. PROHIBITIONS ON PUBLIC CONTRACTS FOR SERVICES

The Consultants certify that it shall comply with the provisions of section 8-17.5-101 *et seq*., C.R.S. The Consultants shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a subcontractor that fails to certify to the Consultants that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

The Consultants represent, warrant, and agree (i) that it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify or the Department Program; (ii) that the Consultants are prohibited from using either the E-Verify Program or the Department Program procedures to undertake preemployment screening of job applicants while services under this Agreement are being performed; and (iii) if the Consultants obtain actual knowledge that a subcontractor performing work under this Agreement for services knowingly employs or contracts with an illegal alien, the Consultants shall be required to:

a) Notify the subcontractor and the Town within three days that the Consultants has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

b) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to 8-17.5-102(2)(b)(III)(A) the subcontractor does not stop employing or contracting with the illegal alien; except that the Consultants shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

The Consultants further agree that it shall comply with all reasonable requests made in the course of an investigation under section 8-17.5-102(5), C.R.S. by the Colorado Department of Labor and Employment. If the Consultants fail to comply with any requirement of this provision or section 8-17.5-101 et seq., C.R.S. the Town may terminate this Agreement for breach and the Consultants shall be liable for actual and consequential damages to the Town.

XVIII. INTEGRATION

This document constitutes the entire agreement between the Town and the Consultants and incorporates all prior verbal and written communications between the parties concerning the subject matter included herein.

XIX. NO ASSIGNMENT

Neither party shall assign, sublet, or transfer any interest in this Agreement without the written consent of the other.

XX. AMENDMENT IN WRITING

No amendment or modification shall be made to this Agreement unless it is in writing and signed by both parties.

XXI. GOVERNING LAW AND VENUE

This Agreement is governed by the laws of the State of Colorado. Any suit between the parties arising under this Agreement shall be brought only in a court of competent jurisdiction for the County of Gunnison, State of Colorado.

XXII. NO THIRD PARTY BENEFICIARIES

The parties intend no third party beneficiaries under this Agreement. Any person other than the Town or the Consultants receiving services or benefits under this Agreement is an incidental beneficiary only.

XXIII. NO WAIVER

No waiver of any breach or default under this Agreement shall be a waiver of any other or later breach of default.

XXIV. AUTHORITY

Consultants warrant that the individual executing this Agreement is properly authorized to bind the Consultants to this Agreement.

[Remainder of Page Intentionally Left Blank; Signature Page(s) to Follow]

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement effective as of the date first above written.

CONSULTANTS:

BEN WHITE ARCHITECTURE

By: _____
Name: Benjamin White
Title: Owner/Architect

TOWN:

TOWN OF CRESTED BUTTE

_____
Dara MacDonald, Town Manager

ATTEST:

_____ [SEAL]
Lynelle Stanford, Town Clerk

APPENDIX "A"

Scope of Work

[attach AHA Scope of Work / Services here]

BEN WHITE
ARCHITECTURE

PROPOSAL FOR SERVICES 01

Appendix "A" to the Professional Services Agreement

April 25, 2017

Janna Hansen
Parks and Recreation Director
507 Maroon Avenue
Crested Butte, CO 81224

Re: Architectural & Engineering Services for the Big Mine Warming House Expansion Project

Dear Janna,

Thank you for the opportunity to assist with the Warming House Expansion Project. I am delighted to partner with Colorado Structural for structural engineering and Bighorn Consulting Engineers for mechanical, electrical, lighting, and plumbing engineering.
I understand that the Town will enlist an engineer under a separate contract for any civil engineering work.

This *Proposal for Services* shall serve as Appendix "A" to our Professional Services Agreement. In the event of any discrepancies between this Proposal and the Professional Services Agreement, the Professional Services Agreement shall govern.

Scope of Work. Here are the specific services Ben White Architecture, LLC, hereafter referenced as "I" or "Architect" agrees to provide to the Town of Crested Butte, hereafter referenced as "You" or "Town":

Phase 1 – Schematic Design

Part 1 will entail independent meetings with user groups to determine current deficiencies, space needs, and analyze potential growth. Based on this information, a *Plan Diagram* will be drafted. This diagram will be used to 1.) determine the overall program needs for the facility, 2.) arrange necessary adjacencies, 3.) identify program overlaps and efficiencies, 4.) be the focal point of group discussions to keep the focus on the macro level.

Part 2 will be the determination of a *Preliminary Project Budget*. This budget number can be derived from current construction costs in the valley coupled with solicitations to local general contractors. This task is critical to determine the optimum size and construction type for the building along with material selections, mechanical equipment, and an equitable use of project funds. The budget will also include a *Survey* of the existing building and corresponding valuation of the current space.

Part 3 will be an overlay of the *Plan Diagram, Preliminary Project Budget, and Existing Building Valuation*. This will allow the Design Team to analyze the program, rank both value and space use, and propose design solutions. The Design Team will produce two alternative designs evaluating both utilizing the existing Warming House and new construction.

Part 4 will consist of two *Design Charrettes* with the user groups. The first charrette will be a presentation of the *Preliminary Budget* and *Plan Diagram* along with proposed design solutions. Based on the facts gathered in the charrette, the Design Team will present a *Value Solution* in a second design charrette for review and approval by the user groups.

Part 5 will be the presentation of the approved design to the Town Council and general public. I will be responsible for leading the presentation with input from representatives of the specific user groups.

Phase 2 – Construction Documents

The Design Team will provide *Design Development Documents* to the Parks and Recreation Department including a *Construction Cost Opinion* for review and approval. These documents will then be submitted to the Board of Zoning and Architectural Review to begin the review process. Once the design has been approved by the Town, the Design Team will provide *Construction Documents* necessary to bid, permit, and construct the building.

Fee Structure

I will offer to perform the Scope of Work for a **Not-To-Exceed Fee of $43,000.** (Forty-Three Thousand Dollars). I estimate the reimbursable printing expenses for this project will be $1,200. (One Thousand Two Hundred Dollars.) Reimbursable expenses will be billed at the direct cost.

Exclusions & Additional Services

This Scope of Work does not include a soils investigation and assumes that the site conditions are typical and suitable for construction. Expansive or unsuitable soils may require a specialized foundation design outside the scope of this Proposal. This Proposal assumes that there will not be any extensive variance requests during the BOZAR review process. The Scope of Work does not include structural avalanche mitigation, extensive landscape design or interior design. The Scope of Work does not include assistance with Bidding & Contract Negotiation or Construction Administration Services. I would be delighted to provide a separate proposal for any additional work or specialized consultant services.

Should you request changes to the design after the Construction Drawings are stamped or request additional services beyond the tasks outlined in this Proposal, I will provide an estimate of the hours, associated fee, and gain your approval prior to proceeding.

Time Schedule

I have reviewed the *Project Timeline* and am confident that Phase 1 and Phase 2 deadlines can be meet. The intent of the schedule is to produce documents necessary for BOZAR review by September 1st, provide drawings and an opinion of the construction cost by October 1st, and produce Construction Drawings to bid and permit the project by December 1st, 2017. All services for this *Scope of Work* shall be completed within 12 months of the date of the *Professional Service Agreement*. Through no fault of the Architect, an extension of services beyond that time shall be compensated as an *Additional Service* per the attached *Rate Schedule*.

Additional Information

Ben White Architecture, LLC will provide and maintain General and Professional Liability Insurance. A bill for my services and expenses will be sent monthly via email. All balances due in excess of forty-five days will incur interest at the rate of 1.5% per month. The Architect and Consultants shall be deemed the authors and owners of either respective design documents. Use of the drawings for construction is granted only when full payment for services rendered is received.

Again, thank you very much for the opportunity to be of service.

Sincerely,

Benjamin White, AIA
Ben White Architecture, LLC

RATE SCHEDULE

The Rate Schedule shall remain valid through the duration of the Scope of Work.

Professional Services

A.) Architectural Services	$115.00 per hour
B.) Senior Engineering Services	$125.00 per hour
C.) Engineering Services	$100.00 per hour
D.) Project Coordination	$85.00 per hour
E.) Drafting	$85.00 per hour
F.) Clerical	$75.00 per hour
G.) Additional Services	$115.00 per hour

Reimbursable Expenses

Mileage (or current IRS rate)	$0.57 per mile
Mileage to Site	No Cost
8.5” x 11” Black & White	$0.15 per sheet
8.5” x 11” Color	$0.25 per sheet
11” x 17” Black & White	$0.25 per sheet
11” x 17” Color	$0.75 per sheet
24” x 36” Black & White Copies	$3.50 per sheet
24” x 36” Color Prints	$9.50 per sheet

WHITE-4 OP ID: CK

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 10/27/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
PUI Agency of Colorado, Inc
PO Box 3412
Littleton, CO 80161-3412
Cindy L. King

CONTACT NAME: Cindy L. King
PHONE (A/C, No, Ext): 720-465-9116 FAX (A/C, No): 248-553-8305
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Sentinel Insurance Co., Ltd.	11000
INSURER B : RLI Insurance Co.	13056
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Ben White Architecture, LLC
148 Elcho Avenue Unit #3
Crested Butte, CO 81224

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$ 1,000,000
	CLAIMS-MADE / X OCCUR			35SBANO6608	11/04/2016	11/04/2017	DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 1,000,000
							MED EXP (Any one person)	$ 10,000
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	POLICY / PRO-JECT / LOC						PRODUCTS - COMP/OP AGG	$ 2,000,000
	OTHER:							$
A	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	ANY AUTO			35SBANO6608	11/04/2016	11/04/2017	BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS / X NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB / OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB / CLAIMS-MADE						AGGREGATE	$
	DED / RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y / N	N / A					E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
B	Professional Liab			RDP0026751	11/11/2016	11/11/2017	Ea Claim	1,000,000
							Aggregate	2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

Town of Crested Butte
507 Maroon Avenue
Crested Butte, CO 81224

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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Staff Report
May 1, 2017

To: Mayor Michel and Town Council

Thru: Dara MacDonald, Town Manager

From: Janna Hansen, Parks and Recreation Director

Subject: Resolution No. 20, Series 2017 – Resolutions of the Crested Butte Town Council Approving the Grant Agreement with Great Outdoors Colorado for the Town Park Playground Renovation Project.

BACKGROUND: In 2016 the Town Council adopted Resolution No. 36 in support of the grant application and allocation of $100,000.00 in matching funds for a Local Parks and Outdoor Recreation Grant from the State Board of the Great Outdoors Colorado Trust Fund (GOCO) for the completion of the Crested Butte Town Park Playground Renovation Project (Project). On March 23, 2017 the Town was awarded a grant in the amount of $349,241.00 from GOCO for the Project. The Town has until March 23, 2019 to complete the Project. This grant is a reimbursement grant and the funds for the Project have been allocated as part of the $1,000,000.00 in matching funds toward the Center for the Arts Expansion Project approved via Resolution No. 15, Series 2015.

RECOMMENDATION: Staff recommends approving Resolution No. 20 Series 2017 in support of a grant agreement for a Local Parks and Outdoor Recreation grant in the amount of $349,241.00 from the State Board of the Great Outdoors Colorado trust fund for the completion of the Crested Butte Town Park Playground Renovation Project.

RESOLUTION NO. 20

SERIES 2017

RESOLUTIONS OF THE CRESTED BUTTE TOWN COUNCIL AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT ON BEHALF OF THE TOWN WITH GREAT OUTDOORS COLORADO ACCEPTING THE TERMS OF A GRANT FOR THE TOWN PARK PLAYGROUND RENOVATION PROJECT

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

WHEREAS, the Town of Crested Butte Town Park is a public park; and

WHEREAS, the Town Park Playground is in need of renovation including: ADA compliance and National Playground Safety Act approved apparatus; and

WHEREAS, the Town contracted with Mundus Bishop Design, Inc. to conduct public meetings and solicited design input from the community at large and community youth from the Crested Butte Community School on September 12 and 29, 2016 to incorporate the community's desires into the proposed playground renovation;

WHEREAS, the Town has been offered a grant in the amount of $349,241.00 by Great Outdoors Colorado (GOCO) for the Town Park Playground Renovation Project; and

WHEREAS, to secure the GOCO grant, the Town has committed to matching funds for the project in the amount of $100,000.00 from the Sales Tax Fund; and

WHEREAS, matching funds were also secured from the Center for the Arts and Gunnison County Metropolitan Recreation District; and

WHEREAS, the renovation will bring Town Park Playground into compliance with current regulations; and

WHEREAS, the Town Council recognizes the value of providing a safe, entertaining, and ADA compliant facility for community use.

WHEREAS, in accordance with Resolution 4, Series 2015, the proposed renovation replaces all playground spaces with the proposed Center for the Arts expansion and meets the Town's requirements with the proposed design for the playground; and

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

1. **Findings; Application; Direction**. In addition to the findings set forth in the recitals above, which such findings shall be deemed material terms hereof and are hereby

incorporated herein, the Town Council hereby directs the Town staff to enter into a grant agreement with GOCO for the Local Parks and Outdoor Recreation grant funds and hereby all of such actions being in the best interest of the health and welfare of the Town of Crested Butte, its residents, and visitors.

2. **Authorization of Town Manager**. The Town Council hereby authorizes the Town Manager to enter into the Grant Agreement with Great Outdoors Colorado attached hereto as **Exhibit A** as shall be approved by the Town Attorney to accomplish such transactions.

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL THIS ___ DAY OF _____, 2017.

TOWN OF CRESTED BUTTE, COLORADO

By: _____
Glenn Michel, Mayor

ATTEST

_____ (SEAL)
Lynelle Stanford, Town Clerk

DocuSign Envelope ID: C83D2E7C-D382-4A07-9CF6-F458A9D3CBCF

GRANT AGREEMENT

PROJECT:

Project Title: **Town Park Playground Renovation Project**
Contract Number: **17038**
Completion Date: **March 23, 2019**

PARTIES TO AGREEMENT:

Board: **The State Board of the Great Outdoors Colorado Trust Fund**
303 East 17th Avenue, Suite 1060
Denver, CO 80203

Grantee: **Town of Crested Butte**

RECITALS

A. The State Board of the Great Outdoors Colorado Trust Fund (referred to herein as "GOCO" or the "Board") is a political subdivision of the State of Colorado, created by Article XXVII of the Colorado Constitution, adopted at the November 1992 General Election, which article appropriates a portion of the net proceeds of the Colorado Lottery to the Board and directs the Board to invest those proceeds in the State's parks, wildlife, open space and recreational resources.

B. In 1994, the Board created a statewide grant program, pursuant to which eligible entities could apply for grants for local government parks and outdoor recreation projects to which Grantee responded with a detailed application (the "Project Application").

C. Grantee submitted a Project Application to the Board which contemplates the execution of the project entitled and described above (the "Project"). The Project is briefly described in the Project Summary attached hereto as Exhibit A. The parties acknowledge that they have on file a complete copy of the Project Application, which is incorporated herein.

D. The Board approved Grantee's Project Application on March 23, 2017, subject to the execution of a detailed grant agreement, and subject to the terms and conditions set forth herein. The parties intend this agreement to be the detailed final grant agreement required by the Board (the "Agreement").

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AGREEMENT

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

1. **Incorporation of Recitals**. The Recitals set forth above are hereby incorporated into the terms of this Agreement.

2. **Representations and Warranties of Grantee**.

a. Grantee is a Municipality, duly organized in accordance with the laws of Colorado and has full and lawful authority to enter into, and comply with the terms of, this Agreement.

b. Grantee's governing body has authorized entering into this Agreement as evidenced by the resolution attached hereto as Exhibit B.

c. Grantee warrants that it has good and sufficient title to the property or properties on which the Project is to be located (the "Property"). GOCO may require Grantee to provide evidence of its ownership of the Property and encumbrances against the Property satisfactory to GOCO in GOCO's discretion prior to funding..

3. **Grant and Project**. Subject to the terms and conditions set forth in this Agreement, the Board hereby awards to Grantee a sum not to exceed $349,241.00 (the "Grant"). The Grant shall be used by Grantee solely to complete the Project, in substantial conformity with the final plans, specifications, designs and uses approved by the Board.

4. **Project Scope**. Grantee shall not materially modify the Project or the Project budget (attached hereto as Exhibit C, the "Budget") without the prior written approval of the Executive Director of GOCO ("Executive Director") or the Executive Director's designee, such approval to be in GOCO's sole discretion. Any material modification to the Project undertaken without GOCO's prior written consent may be deemed a breach of this Agreement by GOCO, entitling GOCO to all remedies available under this Agreement. If Grantee determines with reasonable probability that the Project will not or cannot be completed as reflected in the Project Application, Grantee will promptly so advise the Board, and cooperate in good faith to seek a resolution before any further funds are advanced.

5. **Grantee Efforts**. Grantee shall complete the Project in a timely fashion, in a good and workmanlike manner, and consistent with this Agreement and GOCO's approvals related to the Project.

6. **Completion Date.** Grantee shall complete the Project and submit its Final Report no later than March 23, 2019 (the "Completion Date") which is 24 months after the Board's approval of the Project. Grantee may request an extension of the Completion Date in compliance with GOCO's Overdue Grants Policy, a summary of which is attached as Exhibit D ("Overdue Grants Policy"). If Grantee determines with reasonable probability that the Project

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will not or cannot be completed by the Completion Date or any extended completion date, Grantee will promptly so advise the Board, and cooperate in good faith to seek a resolution before any further funds are advanced.

7. **Matching Funds**. Grantee shall obtain the matching cash and in-kind contributions for the Project as reflected in the Budget and as required by GOCO policy, and shall provide such evidence of the same as GOCO may require in its reasonable discretion.

8. **Disbursement of Funds.**

a. Progress Payment: Grantee may opt to receive a portion of the Grant funds after starting but prior to completing work on the Project (a "Progress Payment"). Grantee shall provide GOCO with a progress report detailing expenditures and progress made to date ("Progress Report"). The Progress Report must be submitted using GOCO's Progress Report form (available at www.goco.org or by contacting GOCO). GOCO may, in its discretion, request additional documentation to support making a Progress Payment. A Progress Payment shall not exceed GOCO's percentage of expected overall costs (as determined by the GOCO-approved budget) applied to the value of documented eligible expenses or 50% of the Grant, whichever is less. A Progress Payment shall be considered a loan until the Project is complete and Final Payment (as defined below) has been made.

b. Final Payment: Once the Project is complete, Grantee shall submit a final report to GOCO detailing the accomplishments of and expenditures related to the Project (the "Final Report"). The Project is "complete" when all facilities, trails or other improvements included in the Project have been built and are ready for their intended use. The Final Report must be submitted using GOCO's Final Report form (available at www.goco.org or by contacting GOCO). GOCO may, in its discretion, request additional documentation before its approval of the contents of the Final Report. Upon GOCO's review and approval of the Final Report, GOCO shall pay the outstanding balance on the Grant (the "Final Payment"), subject to any reductions contemplated by any provision of this Agreement.

9. **Conditions for Disbursement of Funds.** Except as provided in Paragraph 10 below, the Grant is subject to the following requirements and conditions.

a. The Grant and all matching funds shall be used only for the cost of fixed assets, including construction of new facilities, and enlargement or renovation of existing facilities. The Grant and all matching funds may not be used to pay for maintenance costs, administrative costs (such as salaries associated with administering the Grant, office supplies, telephone, or travel expenses), non-fixed assets (such as athletic or maintenance equipment), or any other costs deemed to be ineligible by the Board, at the Board's sole discretion.

b. Disbursement of Grant funds shall be made on the basis of costs actually incurred by Grantee and supported by written documentation (receipts, bills, etc.). GOCO may, in its discretion, depending on the nature of the Project, require documentation of mechanics lien waivers or waivers of claims to public project performance bonds as a precondition to any disbursement under this Agreement.

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c. Except as otherwise agreed to in advance by GOCO in accordance with the terms of this Agreement, no material modifications may be made to the Project. Material modifications to the Project to which GOCO has not agreed may result in a reduction in the Grant. "Material modifications" may include, but are not necessarily limited to, a reduction in the total cost of the Project, a reduction in the size or number of recreational development components to be constructed, changes to the nature of the recreational development components to be constructed, or any other variance from the Project as presented in the Project Application. It is the sole responsibility of Grantee to inform GOCO of any such modifications to the Project. GOCO strongly encourages Grantee to contact GOCO in writing when it becomes aware of or wishes to make any such modifications, however seemingly minor, to the Project.

10. **Waiver**. The Executive Director or the Executive Director's designee may in such person's discretion, waive or agree to modify one or more of the obligations in sections 8, 9, and 16 of the Agreement, or may permit performance of one or more of such obligations subsequent to disbursement.

11. **Payment of Grant Subject to Sufficient Net Lottery Proceeds**. Payment of the Grant is subject to GOCO's determination in its sole discretion that it has received and has available sufficient net lottery proceeds to fund the Grant. In determining the sufficiency of net lottery proceeds, GOCO may consider all facts and circumstances as it deems necessary or desirable in its discretion, including, but not limited to, adequate reserves, funding requirements and/or commitments for other past, current and future grants, and past, current and future GOCO operating expenses and budgetary needs.

12. **Project Operation and Maintenance.**

a. Subject to annual appropriations, Grantee shall operate, manage, and maintain the Project in a reasonable state of repair for the purposes specified and for the useful life of the Project in the Project Application, in accordance with product warranties and/or the generally accepted standards in the parks/recreation community, and provide and maintain access to the Project and to the Property, regardless of the Property's ownership. The Grantee has estimated a useful life of 20 years in the project application.

b. Failure to comply with the provisions of Paragraph 12.a. may be deemed a breach by Grantee under Paragraph 21, below.

c. GOCO shall not be liable for any cost of maintenance, management or operation of the Project.

d. Within 60 days of a reasonable request by the Board, Grantee will provide the Board with adequate records reflecting the operating and maintenance costs of the Project and provide the Board with such other information concerning the use of the Project by the public and the impact of the Project.

e. The Grantee's administrative staff shall present to the Grantee during the Grantee's annual budget process a request for an appropriation sufficient to meet the financial obligations of the Grantee presented by this Agreement. The Grantee will use its best efforts to fully

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consider such appropriation and the Parties understand that Board is relying upon fair and full consideration of annual appropriation in its decision to extend its resources and the grant hereunder, and enter into this Agreement. In the event that the Grantee fails to appropriate sufficient funds to meet the obligations of this Agreement, the Grantee shall provide notice to the Board of the specific reason(s) for any decision not to appropriate funding. Grantee's administrative staff shall notify the Board of any recommendation not to fund or to partially fund the annual appropriation necessary to fulfill Grantee's obligations hereunder.

13. **Public Access**. Grantee agrees, for itself and its successors in interest, to allow reasonable public access to the Project for the term specified in Section 12. Grantee may temporarily close such public access for construction, maintenance, emergency situations, or other reasonable purposes.

14. **Compliance with Regulatory Requirements and Federal and State Mandates**. Grantee hereby assumes responsibility for compliance with all regulatory requirements in all applicable areas, including but not limited to nondiscrimination, worker safety, local labor preferences, preferred vendor programs, equal employment opportunity, use of competitive bidding, permits, approvals, and other similar requirements. To the extent permitted by law, Grantee will indemnify and hold the Board harmless from any liability for any failure to comply with any such applicable requirements.

15. **Nondiscrimination**. During the performance of this Agreement, Grantee and its contractors, subcontractors and agents shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age or sex, or any other basis prohibited by local, state or federal law. Grantee and its contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Further, during the performance of this Agreement, Grantee and anyone acting on behalf of Grantee shall not engage in any unlawful discrimination in permitting access and use of the Project.

16. **Publicity and Project Information.**

a. Grantee shall erect and maintain a sign at a prominent location on the Project site acknowledging the assistance of Great Outdoors Colorado and the Colorado Lottery. GOCO will provide such signs at no cost to Grantee. Alternatively, GOCO will provide reproducible samples of its logo to Grantee for custom signs.

i. GOCO shall approve in advance the design of any permanent sign materially varying from the signs provided by GOCO. To obtain such approval, Grantee shall submit to GOCO plans describing the number, design, placement, and wording of signs and placards. Plans shall be submitted to the Board for review and approval prior to completion of the Project.

ii. The Board may withhold Final Payment pending evidence of placement of permanent signage.

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b. Grantee shall acknowledge Board funding in all publicity issued by it concerning the Project.

c. Grantee shall cooperate with the Board or the Board's designee in advance in preparing public information pieces related to the Project.

d. Grantee shall give the Board the right and opportunity to use information gained from the Project.

e. Grantee shall give the Board a minimum 30 days' notice of Project grand openings, dedications, or other events.

f. Grantee shall give timely notice of the Project, its inauguration, significance, and completion to the local members of the Colorado General Assembly, members of the board of county commissioners of the county or counties in which the Project is located, as well as to other appropriate public officials.

g. Grantee shall provide quality digital photographs or printed photographs, if unable to provide digital photographs (collectively, "Photographs") of the completed Project with the Final Report. For the avoidance of doubt, all Photographs taken by Grantee of the Project constitutes a "work made for hire" pursuant to the U.S. copyright law (17 U.S.C. Section 201(b)) Grantee agrees that all copyrights and other property rights, in the Photographs developed by Grantee in conjunction with the Project are further owned by GOCO and Grantee hereby forever and irrevocably assigns to GOCO, without further consideration, all right, title and interest in such copyrights and other proprietary rights. Grantee agrees that GOCO, its successors and assigns, shall have the exclusive right to file copyright applications in the United States and throughout the world to the Photographs, or any portion thereof, in the name of GOCO. Grantee hereby agrees that GOCO, its successors and assigns may act as attorney-in-fact to execute any documents that GOCO deems necessary to record this grant with the United States Copyright Office or elsewhere. Grantee agrees to execute any and all documents reasonably requested by GOCO to enforce its rights under this provision.

h. At no time shall Grantee represent in any manner to the public or to any party that it is affiliated with GOCO or acting on behalf of GOCO.

17. **Liability**.

a. Grantee shall be responsible for, and to the extent permitted by law (including any constitutional or statutory limitations on the ability of a governmental entity to provide indemnification), indemnify, defend and hold harmless the Board, its officers, agents and employees from any and all liabilities, claims, demands, damages or costs (including reasonable legal fees) resulting from, growing out of, or in any way connected with or incident to Grantee's performance of this Agreement. Grantee hereby waives any and all rights to any type of express or implied indemnity or right of contribution from the State of Colorado, the Board, its members, officers, agents or employees, for any liability resulting from, growing out of, or in any way connected with or incident to this Agreement. Grantee acknowledges that Grantee is the owner

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of the Project and the Property upon which it is located, or has control of the Project and the Property, and that GOCO neither possesses nor controls the Project, the Property, nor the operations of the Project.

b. Anything else in this Agreement to the contrary notwithstanding, no term or condition of this Agreement shall be construed or interpreted as a waiver, either express or implied, of any of the immunities, rights, benefits or protection provided to the Board under the Colorado Governmental Immunity Act ("CGIA") as amended or as may be amended in the future (including, without limitation, any amendments to such statute, or under any similar statute which is subsequently enacted). This provision may apply to Grantee if Grantee qualifies for protection under the Colorado Governmental Immunity Act, C.R.S. §24-10-101 *et seq*. The Board and Grantee understand and agree that liability for claims for injuries to persons or property arising out of the negligence of the Board, its members, officials, agents and employees may be controlled and/or limited by the provisions of the CGIA. The parties agree that no provision of this Agreement shall be construed in such a manner as to reduce the extent to which the CGIA limits the liability of the Board, its members, officers, agents and employees.

18. **Audits and Accounting**. Grantee shall maintain standard financial accounts, documents, and records relating to the use, management, and operation of the Project. The accounts, documents, and records related to the Project shall be retained by Grantee for not less than five (5) years following the date of disbursement of funds under this Agreement. The Board, or its designated agent, shall have the right, upon reasonable notice to Grantee, to audit the books and records of Grantee which pertain to the Project and to the use and disposition of the Grant. While Grantee is not required to use GAAP (Generally Accepted Accounting Principles), Grantee shall use reasonable and appropriate accounting systems in maintaining the required records hereunder.

19. **Inspection**. Throughout the term of this Agreement, GOCO shall have the right to inspect the Project to ascertain compliance with this Agreement.

20. **Withdrawal of Board Funding; Termination of Agreement**. Anything else in this Agreement or otherwise to the contrary notwithstanding, the Board may withdraw, in whole or in part, the Grant and/or terminate this Agreement, and/or seek a refund of payments already made if the Board determines in its discretion that:

a. facts have arisen or situations have occurred that fundamentally alter the expectations of the parties or make the purposes for the Grant as contemplated infeasible or impractical;

b. any material modifications in the scope or nature of the Project have occurred from that which was presented in the Project Application and such material modifications have not received the prior written approval of GOCO;

c. any statement or representation made by Grantee in the Project Application, this Agreement, the Progress Report, the Final Report, or otherwise is untrue, inaccurate or incomplete in any material respect;

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d. the results of GOCO's review of the Progress Report, or the Final Report are not acceptable to GOCO;

e. the Project will not or cannot be completed by the Completion Date or any extensions granted thereto or delays in the implementation of the Project have occurred which, in the Board's judgment, make the Project impracticable;

f. the Project will not or cannot be completed within the Budget or any approved modifications, or the total Project cost and/or Grantee's matching funding are reduced;

g. title to or encumbrances against the Property are or become such that Grantee is unable to complete the Project, or the Project and/or the Property are or become unavailable for public use.

21. **Breach**.

a. In the event that Grantee breaches any of the terms, covenants, representations, or conditions of this Agreement, the Board may elect to enforce any and all remedies available at law or in equity, including without limitation, any of the following:

i. Prior to payment of Grant:

A. Withdraw the Grant and terminate this Agreement; and,

B. Deny Grantee eligibility for participation in future Board grants, loans or projects.

ii. After payment (partial or full) of Grant:

A. Deny Grantee eligibility for participation in future Board grants, loans or projects;

B. Seek specific performance of Grantee's obligations under this Agreement;

C. Receive reimbursement in full of disbursement made under the Grant.

b. The foregoing remedies are cumulative and may be exercised independently or in combination and are not exclusive to one another or to any other remedies available at law or in equity. In the event GOCO must pursue any remedy hereunder and is the substantially prevailing party, GOCO shall be awarded its costs and reasonable legal fees, including costs of collection.

22. **Good Faith**. There is an obligation of good faith on the part of both parties, including the obligation to make timely communication of information which may reasonably be believed to be material to the other party.

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23. **Assignment**. Grantee may not assign its rights under this Agreement without the consent of the Board, which consent shall be in the discretion of the Board. Any assignment shall require that, at a minimum, the assignee is eligible to receive grants from the Board and assumes Grantee's ongoing obligations under this Agreement.

24. **Applicable Law**. This Agreement shall be governed by the laws of the State of Colorado and venue for any dispute hereunder shall lie exclusively in the State Courts of the City and County of Denver.

25. **No Joint Venture.** Nothing in this Agreement shall be construed to create a joint venture, partnership, employer/employee or other relationship between the parties hereto other than independent contracting parties. Except as permitted under the remedies provisions hereunder, neither party shall have the express or implied right to act for, on behalf of, or in the name of the other party.

26. **Severability**. If any provision of this Agreement, or the application thereof, is found to be invalid, the remainder of the provisions of this Agreement, or the application of such provision, other than those as to which it is found to be invalid, shall remain in full force and effect.

27. **Time is of the Essence**. Time is of the essence in this Agreement.

28. **Survival**. The terms and provisions of this Agreement and the parties' covenants hereunder shall survive the funding of the Grant and the completion of the Project.

29. **Fax and Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which when taken together shall constitute one Agreement. In addition, the parties agree to recognize signatures of this Agreement transmitted by telecopy or e-mail as if they were original signatures.

30. **Third Party Beneficiary**. The Board and Grantee hereby acknowledge and agree that this Agreement is intended only to cover the relative rights and obligations between the Board and Grantee, and that no third party beneficiaries are intended.

31. **Construction**. Each party hereto has reviewed and revised (or requested revisions of) this Agreement, and therefore, any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Agreement.

32. **Waiver**. The failure of either party to enforce a term hereof shall not be deemed a waiver of such term or right of enforcement as to that breach or any subsequent breach of the same, similar or different nature. No waiver shall be enforceable hereunder unless signed by the party against whom the waiver is sought to be enforced.

33. **Entire Agreement**. Except as expressly provided herein, this Agreement constitutes the entire agreement of the parties. No oral understanding or agreement not incorporated in this Agreement shall be binding upon the parties. No changes to this Agreement shall be valid

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unless made as an amendment to this contract, approved by the Board, and signed by the parties.

IN WITNESS WHEREOF, the parties by signature below of their authorized representatives execute this Agreement effective as of .

STATE BOARD OF THE GREAT	GRANTEE:
OUTDOORS COLORADO TRUST FUND	Town of Crested Butte
By:	By:
Chris Castilian Executive Director	Title:
GOCO Program Staff: Route Grant Agreement to Executive Director for signature:	*NOTE* Signee should be same individual authorized to sign grant agreement in attached resolution (EXHIBIT B)

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EXHIBIT A

Project Summary

Rank: 16	**Overall Score:** 86.67	**GOCO Staff Score:** 83	**Reviewer Average:** 90.33

Applicant: Town of Crested Butte
Project Title: Town Park Playground Renovation Project
County: Gunnison
Log #: 17038

Funding Summary:

Applicant Funding	$137,250
Partner(s) Funding	$65,817
GOCO Grant Amount	$349,241
Total Project Cost	$552,308

Project Description:

The Town of Crested Butte, in partnership with the Center for the Arts and the Center for Historic Shipwreck Preservation, proposes to renovate the Mary Yelenick Playground in Town Park and create an authentic pirate themed playground. The playground design is based upon the "Whydah", a real pirate ship that sank in 1717. A crew of Crested Butte residents conducted an expedition to locate and excavate the Whydah and will bring authenticity and scientific discovery to the features of the new playground.

Staff and Peer Reviewer Comments:

The Town Park playground is one of the most heavily used in Crested Butte and is clear in need of replacement. The project presents an exciting opportunity to bring an engaging, unique play feature to this highly visited park.

The park is within walking distance of all 1500 residents living in town giving confidence that the playground will be easily accessible to youth and families.

The letters of support are excellent and demonstrate the excitement of the local community.

The partnerships established as part of this project are impressive.

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EXHIBIT B
RESOLUTION (REQUIRED)

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EXHIBIT C
BUDGET

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EXHIBIT D
OVERDUE GRANTS POLICY

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GOCO understands that there are unforeseen circumstances that may interfere with a grantee's ability to complete a project by the project completion date set forth in the grant agreement. This procedure outlines the options available to grantees to extend a grant deadline.

A) Staff Extensions: Staff can grant an extension for at least 90 days and up to the date of the next scheduled GOCO Board meeting beyond that 90 days. A grantee may only request one staff extension per project.

   a. The grantee must submit a request for a staff extension prior to the original project completion date via email or postal mail to the appropriate GOCO program staff.
   b. Requests must include the following: a) grantee name; b) project title; c) contract number from the grant agreement; d) original project completion date; e) percent of project completed to date or due diligence items completed to date for land acquisitions; f) reason for delay; g) estimated date of project completion or closing; and h) estimated date of final report submission to GOCO, if applicable.
   c. Staff will notify the grantee via email of the decision to grant or deny the request for a staff extension.

B) Board Extensions: If the grantee needs more time than a staff extension would provide, the grantee must request a board extension. A grantee can request a second board extension if needed, although this is not a favorable action.

   a. The grantee must submit a request for a board extension prior to the original or staff-extended project completion date via email or postal mail. Requests must be sent to the appropriate GOCO program staff.
   b. Requests must include the following: a) grantee name; b) project title; c) contract number from the grant agreement; d) original project completion date and, if applicable, staff-extended project completion date; e) percent of project completed to date or due diligence items completed to date for land acquisitions; f) reason for delay; g) estimated date of project completion or closing; and h) estimated date of final report submission to GOCO, if applicable.

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c. The board will consider the request for board extension at its next scheduled meeting. Staff will notify the grantee via email of the board's decision to grant or deny the request for a board extension.
d. Requests for a second board extension must follow all of the procedures listed above.

C) To request a staff or board extension, use the *Project Extension Request* form.

D) GOCO expects the grantee to request the appropriate amount of time needed to complete the project. Failure to complete a project by the original due date, or by any extended due dates authorized by staff or the board, may result in the de-authorization of the grant and a suspension from applying in future grant cycles.

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EXHIBIT E
INTERGOVERNMENTAL (or other) AGREEMENT
(If applicable)

Staff Report
May 1, 2017

To: Mayor Michel and Town Council

Thru: Dara MacDonald, Town Manager

From: Janna Hansen, Parks and Recreation Director

Subject: Approval to Authorize the Town Manager to Sign an Intergovernmental Agreement with the Gunnison County Weed District Regarding Undesirable Plant Management

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Background:
Since 1999 the Town of Crested Butte has entered into an Intergovernmental Agreement (IGA) for the purpose of undesirable plant management with Gunnison County, Hinsdale County, Saguache County, the Town of Mt. Crested Butte, the City of Gunnison, and the Town of Pitkin. It is to the mutual advantage of each of these entities to cooperate with one another to meet the obligations imposed by the Colorado Noxious Weed Act CRS 35-5.5-101 *et seq*. (the Act*)*. This IGA appoints the Gunnison Watershed Weed Commission to be the local authority as required by the Act for the Gunnison River Basin Watershed. This IGA promotes the Town of Crested Butte Noxious Weed Management Plan and allows for the management of undesirable plants within the municipality as required by Crested Butte Town Code Section 7-3-110 et seq.

Summary:
Gunnison County will charge a rate of $100/hour for noxious weed management, including all associated labor, equipment, materials, and administration. Gunnison County spends 18 hours annually managing weeds in the Town of Crested Butte for a total of $1,800.00. This is split between the Open Space Fund and the Street and Alley Fund.

Recommendation:
Staff recommends the Town Council authorize the Town Manager to sign the Intergovernmental Agreement with the Gunnison County Weed District Regarding Undesirable Plant Management.

RESOLUTION NO. 21

SERIES 2017

RESOLUTIONS OF THE CRESTED BUTTE TOWN COUNCIL APPROVING THE INTERGOVERNMENTAL AGREEMENT REGARDING UNDESIRABLE PLANT MANAGEMENT WITH THE GUNNISON COUNTY WEED DISTRCICT

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, C.R.S. Section 29-1-201, et seq., authorizes governments to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each, and to establish a separate legal entity to do so;

WHEREAS, C.R.S Section 35-5.5-101, et seq. requires that local governments manage noxious weeds within their jurisdictions;

WHEREAS, Crested Butte Town Code Section 7-3-110 et seq. requires that undesirable plants be managed within the municipality, and adopts and gives authority to the Town of Crested Butte Noxious Weed Management Plan (the "**Plan**");

WHEREAS, entering into the Agreement supports the weed management goals as defined in the Plan;

WHEREAS, the Town has entered into agreements with Gunnison County for the purpose of managing undesirable plants since 1999;

WHEREAS, the parties to the Agreement are governing bodies or officials having charge of undesirable plant management within their jurisdictions;

WHEREAS, the Town Council hereby finds that the Agreement is in the best interest of the Town and the health, safety and general welfare of the residents and visitors of Crested Butte.

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

1. The Town Council incorporates the foregoing recitals as its conclusions, facts, determinations, and findings.

2. The Town Council hereby authorizes the Town Manager to enter into the Intergovernmental Agreement with the Gunnison County Weed District for the purpose of undesirable plant management attached hereto as **Exhibit A** as shall be approved by the Town Attorney to accomplish such transactions.

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL THIS _____ DAY OF _____, 2017.

TOWN OF CRESTED BUTTE

By: _____
Glenn Michel, Mayor

ATTEST

_____
Lynelle Stanford, Town Clerk (SEAL)

INTERGOVERNMENTAL AGREEMENT
REGARDING UNDESIRABLE PLANT MANAGEMENT
2017

THIS AGREEMENT, made and entered this ____ day of _____, 2017, by and among the Board of County Commissioners of Gunnison County ("Gunnison County"), the Board of County Commissioners of Saguache County ("Saguache County"), the Board of County Commissioners of Hinsdale County ("Hinsdale County"), the Town of Crested Butte, the Town of Mt. Crested Butte, City of Gunnison, and the Town of Pitkin all of which are either a County, or a statutory or home rule city, or a statutory town or home rule town, or a territorial charter municipality, and all of which are organized under and by virtue of the laws of the State of Colorado,

WITNESSETH:

WHEREAS, each of the party counties is obligated pursuant to C.R.S. 35-5.5-101 *et seq.* (hereinafter referred to as the "Act") to adopt no later than January 1, 1992, an undesirable plant management plan for all of the unincorporated lands within the respective counties; and

WHEREAS, each of the party cities and towns is obligated pursuant to the Act to adopt no later than January 1, 1992, an undesirable plant management plan for all lands within the territorial limits of the respective municipalities; and

WHEREAS, each of the parties has other specified powers, authorities and obligations pursuant to the Act including but not limited to formation of undesirable plant management advisory commissions; and

WHEREAS, pursuant to C.R.S. 29-1-201 *et seq.*, and C.R.S. 29-20-101 *et seq.*, C.R.S. 35-5.5-105(3) and C.R.S. 35-5.5-106(3), each of the parties herein may cooperate with another party herein or other parties herein for the exercise or satisfaction of any or all of the powers, authorities and obligations granted or imposed by C.R.S. 35-5.5-101 *et seq.*; and

WHEREAS, it is to the mutual advantage and benefit of the parties hereto that the parties agree to cooperate among themselves for the exercise or satisfaction of any or all of the powers, authorities and obligations imposed by the Act;

NOW, THEREFORE, in consideration of their mutual covenants, the parties agree as follows:

1. This Intergovernmental Agreement shall be applied by the parties to and shall be used by the parties for the management of undesirable plants within the entirety of the Gunnison River Basin Watershed as follows:

2. a. Each of the parties hereby jointly and severally appoints the Gunnison Watershed Weed Commission, aka Gunnison Basin Weed Commission (hereinafter referred to as the "Commission") as the Commission required by the Act for the Gunnison River Basin Watershed.

b. Each of the parties hereby jointly and severally appoints the Board of County Commissioners of Gunnison County as the local authority required by the Act for the Gunnison River Basin Watershed.

c. The membership of the Commission shall be:

(i) Lorraine Rup (Gunnison County Representative);
(ii) _____(Gunnison County Representative);
(iii) Tom Walker (Appointed by Gunnison County);
(iv) _____(Vacancy, appointed by Gunnison County);
(v) _____(Vacancy, Hinsdale County Representative);
(vi) Randy Arredondo (Saguache County Representative);
(vii) Ex-officio Representatives from:
Bureau of Land Management, US Forest Service, Natural Resource Conservation Service, National Park Service, City of Gunnison, Town of Mt. Crested Butte, Town of Crested Butte, CSU Extension, CB Land Trust, Rocky Mountain Biological Lab, Gunnison Conservation District, and Colorado Department of Transportation.

Each Gunnison County representative may be succeeded by a Gunnison County representative; the Saguache County representative and the Hinsdale County representative may be succeeded by a representative from their respective county.

In the case of a tie vote, the issue shall be decided by the Board of County Commissioners of Gunnison County.

d. The Commission shall elect a Chairman and Secretary. A majority of the members of the Commission shall constitute a quorum for the conduct of business.

e. The Commission shall have all of the powers and duties specified in C.R.S. 35-5.5-107(4)(a), (b) and (c).

f. The Commission shall consult with and report to each of the parties regarding the annual budget required to perform this Intergovernmental Agreement, the management plan, management criteria, management practice and any other major decision or recommendation of the Commission. Such consultation and reporting shall not necessarily be in person but may be in writing or by telephone.

3. The parties hereto authorize Gunnison County to be the sole and final authority to approve, modify and supervise the day-to-day conduct and provision of services required by this Intergovernmental Agreement including, but not limited to, the authority to select, contract with, and compensate the personnel, including administrative personnel, public or private, who shall perform the work necessary to accomplish the ends of the Act. Each of the parties expressly authorizes Gunnison County to enter into such contracts and provide such compensation on behalf of that respective party providing that such actions do not require expenditures exceeding the annual budget.

4. Gunnison County will furnish to each of the parties an annual report of activities, costs and expenses of personnel, including administrative personnel, who perform the work necessary to accomplish the ends of the Act.

5. Gunnison County will charge a rate of $100/hour for noxious weed management, including all associated labor, equipment, materials, and administration. Each of the parties agrees to pay or to reimburse Gunnison County, no later than December 31, 2017, for a share of such activities, costs and expenses as follows:

Hinsdale County -	$ 1,600.00 (16 hours)
Saguache County -	$ 2,000.00 (20 hours)
Town of Crested Butte -	$ 1,800.00 (18 hours)
Town of Mt. Crested Butte -	$ 2,400.00 (24 hours)
City of Gunnison -	$ 1,200.00 (12 hours)
Town of Pitkin -	$ 300.00 (3 hours)

Each party shall be solely responsible for all additional costs required for control of undesirable plants pursuant to C.R.S. 35-5.5-109 within the jurisdiction of that party. If scheduling allows, Gunnison County may be available for weed management work, in addition to the hours listed above, at the same hourly rate.

Payments to Gunnison County shall be in the form acceptable to Gunnison County.

6. No provision of this Agreement is or shall be construed to be a waiver of sovereign immunity pursuant to C.R.S. 24-10-104. Each party hereto shall be responsible to defend itself, at its sole cost, in any action or claim arising from or under any activity pursuant to this Agreement. Neither Gunnison County nor any of its officers, employees or agents shall have any liability whatsoever under this Agreement different in any kind or nature whatsoever than any other party or officer, employee or agent of any other party.

7. The term of this Agreement shall be from January 1, 2017 through December 31, 2017, with work performed during May 1 through September 30, 2017. Any party may terminate its participation in this Agreement upon ninety (90) days written notice, by certified mail, to each of the other participating parties. Such termination shall require a cessation of activity under this Agreement within the jurisdiction of the terminating party but shall not require, in any circumstance, a return or reimbursement to the terminating party of moneys already paid pursuant to paragraph 5 above.

8. This Agreement may be signed in a series of originals; that is, not all of the parties are required to sign a single original. This Agreement becomes effective to a particular party upon its signature to an original.

BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY

Phil Chamberlard

Chairperson

ATTEST:

Deputy Clerk

Date: 3/7/17

GUNNISON COUNTY SEAL COLORADO

BOARD OF COUNTY COMMISSIONERS OF HINSDALE COUNTY

Chairperson

ATTEST:

Deputy Clerk

Date: _____

BOARD OF COUNTY COMMISSIONERS OF SAGUACHE COUNTY

Chairperson

ATTEST:

Deputy Clerk

Date: _____

TOWN OF CRESTED BUTTE

Chairperson

ATTEST:

Deputy Clerk

Date: _____

TOWN OF MT. CRESTED BUTTE

Chairperson

ATTEST:

Deputy Clerk

Date: _____

CITY OF GUNNISON

Chairperson

ATTEST:

Deputy Clerk

Date: _____

TOWN OF PITKIN

Chairperson

ATTEST:

Deputy Clerk

Date: _____

Staff Report

To: **Mayor Michel and Town Council**

From: Michael Yerman, Director of Planning

Subject: Resolution 22, Series 2017- Snowplowing Covenant Block 79

Date: May 1, 2017

Background:

Throughout the BOZAR review process for the owner lot builds have been planning garages along the alley for parking and access. The Town does not plow alleys in residential zones. However, it became apparent that the alleys would need to be plowed to allow for required parking and access for the new dwelling units in Block 79. Many of the lots that have frontage along the alley will also have duplex and triplexes that will need to use the alley to fulfill the eventual parking requirements.

The Town will record a covenant across all the lots that have frontage along the alley of Block 79 proportionally dividing the expense to each lot based on the intended density of the lot. There are potentially 19 dwelling units. For the foreseeable future, the Town will pay a majority of the plowing costs since many of the lots remain under the Town's ownership for the next couple years. The Town will bill and collect payments from the lot owners into the future after each month plowing occurs.

Recommendation:

A Council person make a motion followed by a second to approve Resolution 22, Series 2017 to approve the plowing covenant for Block 79 and having it recorded against Block 79.

RESOLUTION NO. 22

SERIES 2017

RESOLUTIONS OF THE CRESTED BUTTE TOWN COUNCIL APPROVING THE SNOW REMOVAL REIMBURSEMENT COVENANT AFFECTING LOTS 1, 4-7, 10, 11, 14-17 AND 19, BLOCK 79, TOWN OF CRESTED BUTTE ACCORDING TO THE REPLAT OF PARADISE PARK SUBDIVISION RECORDED IN THE OFFICIAL REAL PROPERTY RECORDS OF THE CLERK AND RECORDER OF GUNNISON COUNTY, COLORADO ON APRIL 29, 2016 AT RECEPTION NO. 639098

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, Section 4.7 of the Crested Butte Town Charter provides that the Council may act, other than legislatively, by resolution;

WHEREAS, the Town has created affordable housing in Block 79 for ownership by persons who qualify pursuant to the Town's affordable housing guidelines for Paradise Park Subdivision;

WHEREAS, the Town Staff has recommended to the Town Council that for the alley located in Block 79, the owners of such affordable housing properties pay their aliquot share of the Town's costs of performing snow removal services in the alley adjacent to such properties; and

WHEREAS, based on the Town Staff's recommendation, the Town Council finds that it is appropriate that the owners of the properties in Block 79 adjacent to the alley pay their aliquot share of the Town's costs of performing snow removal services in the alley to such properties, and, according, the owners of such properties in Block 79 entering into a covenant obligating such owners to pay the Town's costs of performing snow removal services is in the best interest of the health, safety and welfare of the Town, its residents and visitors.

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

Section 1. **Recitals and Findings**. The Recitals set forth above are hereby incorporated as if fully set forth herein. The findings set forth in such Recitals are hereby deemed findings of fact material to these resolutions.

Section 2. **Approval of Snow Removal Reimbursement Covenant**. The Town Council approves the "Snow Removal Reimbursement Covenant" attached hereto as **Exhibit**

"A," the same being in the best interest of the health, safety and welfare of the Town, its residents and visitors. The Town Manager is hereby authorized to execute the Snow Removal Reimbursement Covenant on behalf of the Town. Once fully executed and notarized, the Town Clerk shall cause the Snow Removal Reimbursement Covenant to be recorded in the official real property records of the Clerk and Recorder of Gunnison County, Colorado.

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO THIS __ DAY OF _____ 2015.

TOWN OF CRESTED BUTTE, COLORADO

By: _____
Glen Michel, Mayor

ATTEST:

_____
Lynelle Stanford, Town Clerk (SEAL)

EXHIBIT "A"
(Snow Removal Reimbursement Covenant)

[attach form here]

RECORDING REQUESTED BY:
WHEN RECORDED RETURN TO:
Town of Crested Butte
Attn: Town Clerk
P.O. Box 39
Crested Butte, CO 81224

SNOW REMOVAL REIMBURSEMENT COVENANT

THIS SNOW REMOVAL REIMBURSEMENT COVENANT (this "**Covenant**") is made effective this ___ day of _____, 20__ by and between the TOWN OF CRESTED BUTTE, COLORADO (the "**Town**"), Colorado home rule municipal corporation with an address of 507 Maroon Avenue, P.O. Box 39, Crested Butte, CO 81224 and the fee title owners (each an "**Owner**"; collectively the "**Owners**") of Lots 1, 4-7, 10, 11, 14-17 and 19, Block 79, Town of Crested Butte according to the Replat of Paradise Park Subdivision Recorded in the Official Real Property Records of the Clerk and Recorder of Gunnison County, Colorado on _____, 20__ at Reception No. _____ (the "**Subject Property**").

RECITALS:

A. The Owners that have executed this Covenant represent the fee title owners collectively of the Subject Property, and individually of the lots contained therein.

B. The Subject Property and the individual lots contained therein have certain alleys adjacent and appurtenant thereto.

C. Each of the Owners desire to have such alleys snow-plowed by the Town as and when necessary.

D. The Town has agreed to plow such alleys as and when necessary provided that each of the Owners reimburses the Town its aliquot share of the costs of such snow plowing services.

NOW, THEREFORE, in consideration of the agreements, covenant and conditions set forth herein, the Town and the Owners agree as follows:

AGREEMENT:

1. **Removal of Snow**. The Town hereby agrees to plow the alleys adjacent and appurtenant to the Subject Property as and when the Town determines the same is appropriate, consistent with the Town's other Town-wide plowing and snow removal programs (the "**Alley Plowing Services**"). The Town may contract for the performance of such Alley Plowing Services on behalf of the Town.

2. **Reimbursement**. In exchange for the Town providing the Owners the Alley Plowing Services, the Owners agree to reimburse the Town the costs and expenses thereof. The Owners sharing ratios by lot in the Subject Property for purposes of determining each lot's proportionate share of the total costs and expenses of the Alley Plowing Services and reimbursing the Town therefor are as follows:

Lot 1:	1/19
Lot 4:	2/19
Lot 5:	1/19
Lot 6:	2/19
Lot 7:	1/19
Lot 10:	3/19
Lot 11:	2/19
Lot 14:	2/19
Lot 15:	1/15
Lot 16:	2/19
Lot 17:	1/19
Lot 19:	1/19

3. **Duration; Obligations**. The rights, obligations and restrictions contained in this Covenant shall run with the land and title to the Subject Property and the individual lots contained therein and shall forever bind all persons and entities having any right, title or interest in and to such property.

4. **Payment**. Each Owner shall pay the Town such lot Owner's proportionate share of the costs and expenses of the Alley Plowing Services in a timely manner, not to exceed 30 days from receipt of an invoice therefor. Any amounts not timely paid shall accrue interest at a rate of 3% per annum, commencing as of the date such sum is due until paid.

5. **Default; Remedies**.

5.1 The following conditions, occurrences or actions shall constitute a default by an Owner under this Agreement: (a) an Owner's failure to pay to Town upon demand any amounts due and owing the Town under this Covenant; and (b) an Owner's violation of any provision of this Covenant.

5.2 Upon the occurrence of a default of an Owner, the Town shall have the right to pursue all remedies at law and in equity.

5.3 All remedies may be applied concurrently and not to the exclusion of any other remedy. In the event of any legal action or advice necessary to execute such remedies and/or interpret this Covenant, the applicable Owner shall pay to the Town all reasonable costs and expenses in connection therewith, including, without limitation, reasonable attorneys' fees.

6. **Lien Created**. Each Owner represents and warrants that the obligations contained in this Covenant shall be a lien against the Owner's property, collectible pursuant to pursuant to Section 4-8-10 of the Crested Butte Municipal Code, as amended.

7. **Representations and Warranties**. Each Owner represents that it shall be subject to all laws, ordinances and regulations of the Town, as amended and modified from time to time.

8. **Miscellaneous**.

8.1 **Recitals**. The Recitals set forth hereinabove are deemed to be material terms of this Covenant.

8.2 **Construction**. None of the provisions of this Covenant shall be construed against or interpreted to the disadvantage of either party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured or dictated such provisions.

8.3 **Enforcement**. A failure to comply with this Covenant shall be grounds for an action to recover damages, for injunctive relief, for specific performance and/or any other remedy available at law and in equity.

8.4 **Notices**. All notices required pursuant to this Covenant shall be deemed served upon depositing a certified letter, return receipt requested, in the United States mail, addressed to the party being served with such notice at the addresses set forth above as to the Town and in the Town's official records as respects each Owner.

8.5 **Severability**. If any provision of this Covenant is determined to be invalid, unenforceable of prohibited by any court, the same shall not affect any other provision or section hereof and all other provisions and sections shall remain in full force and effect.

8.6 **Attorneys' Fees; Costs**. If any dispute arises in connection with this Covenant or any document provided for herein or related hereto, the substantially prevailing party shall be entitled to reasonable attorneys' fees together with all reasonable costs and expenses incurred in connection with such dispute.

8.8 **Entire Agreement**. This Covenant represents the entire agreement of the parties respecting the subject matters addressed herein. This Covenant may be amended only in writing by properly executed agreement.

8.9 **Governing Law; Venue**. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. Venue is any action in connection with this Agreement shall be the District Court of Gunnison County, Colorado.

8.10 **Waiver**. No breach by Owner, or his heirs, successors, and assigns, of any term or covenant of this Covenant, shall create a waiver by, or estoppel against the Town, as to

future or continuing breaches it being the express understanding of the parties that breaches of this Covenant may be waived only by written consent of the Town.

8.11 **Amendment**. No term or provision of this Covenant may be amended, except in writing signed and duly acknowledged by the parties, and in the Town's case, duly adopted by the Town Council, as applicable. No such amendment shall be effective until recorded in the official real property records of the Clerk and Recorder of Gunnison County, Colorado.

8.12 **Counterparts; Telecopy**. This Covenant may be executed in multiple counterparts, each of when, when taken together, shall constitute one and the same instrument. For purpose of enforcement, facsimile, E-mail and telecopy reproductions of this Covenant shall be deemed to be originals.

[Remainder of Page Intentionally Left Blank;
Signature Page(s) to Follow]

IN WITNESS WHEREOF, the Owners and the Town have caused this Covenant to be executed effective as of the date first written above.

<u>As to Lots 1, 4-7, 10, 11, 14, 16, 17 and 19</u>:

TOWN:

TOWN OF CRESTED BUTTE,
a Colorado home rule municipal corporation

By: _____
Glenn Michel, Mayor

Attest: _____ [SEAL]
Lynelle Stanford, Town Clerk

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

The foregoing Snow Removal Reimbursement Covenant was acknowledged before me this _____ day of _____, 20__ by Glenn Michel, Mayor of the Town of Crested Butte, a Colorado home rule municipal corporation on behalf of said entity.

Witness my hand and official seal.
My commission expires:

_____
Notary Public

<u>As to Lot 15</u>:

_____
Heather Goldstone

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

The foregoing Snow Removal Reimbursement Covenant was acknowledged before me this _____ day of _____, 20__ by Heather Goldstone.

Witness my hand and official seal.
My commission expires:

_____
Notary Public

Staff Report

To: **Mayor Michel and Town Council**

From: Michael Yerman, Director of Planning

Subject: Resolution 23, Series 2017- Vacation and Termination of the Big Mine Condominiums

Date: May 1, 2017

Background:

The Town Council recently passed Ordinance 10, Series 2017 prohibiting the consolidation of residential condominiums. However, prior to the passage of Ordinance 10, Series 2017 the Town received an application for a remodel of 723 Maroon Avenue. The unit today is a single-family residence. In reviewing the title work in association with the remodel application, a condominium plat was filled in 1982 to create the unit as a duplex. In 1991, the applicant file a revocation Reception # 424968 of the condominium plat to return the unit to a single-family residence. Unfortunately, no town signoff was included on the revocation of the condo.

On June 27, 2013 Building and Zoning Director Bob Gillie prepared a letter acknowledging the revocation filed in 1992. However, this letter was not recorded against the property. The Town staff has verified the change from a duplex to a single-family dwelling unit does not create any nonconforming aspects in the underlying zone district. The Resolution 23, Series 2017 will provide the vacation and termination of the condominium plat with a Town signoff and will clean up the title work for this unit. Since the application was received prior to the adoption of Ordinance 10, Series 2017, this Resolution will be consistent with the rules in place at the time the application was received.

Recommendation:

A Council person make a motion followed by a second to approve Resolution 23, Series 2017 to approve the vacation and termination of the big Mine Condominiums Reception No. 369656.

RESOLUTION NO. 23

SERIES 2017

RESOLUTIONS OF THE CRESTED BUTTE TOWN COUNCIL APPROVING THE VACATION AND TERMINATION OF THE BIG MINE CONDOMINIUMS ACCORDING TO THE PLAT THEREOF RECORDED IN THE OFFICIAL REAL PROPERTY RECORDS OF THE CLERK AND RECORDER OF GUNNISON COUNTY, COLORADO ON SEPTEMBER 22, 1982 AT RECEPTION NO. 369656

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, Section 4.7 of the Crested Butte Town Charter provides that the Council may act, other than legislatively, by resolution;

WHEREAS, the fee title owner of 100% of the ownership of the Big Mine Condominiums revoked the condominium regime for Big Mine pursuant to the instrument therefor recorded in the official real property records of the Clerk and Recorder of Gunnison County, Colorado on January 21, 1991 at Reception No. 424968;

WHEREAS, such ownership of Big Mine Condominiums has requested that the Town Council approve the termination and vacation of the condominium regime for the Big Mine;

WHEREAS, the Town Staff has recommended to the Town Council that it approve the termination and vacation of the condominium regime for the Big Mine Condominiums as requested by the sole fee title owner thereof; and

WHEREAS, based on the Town Staff's recommendation, the Town Council finds that it is in the best interest of the Town and the general welfare of the public that the Town Council approve the termination and vacation of the Big Mine Condominium regime as proposed by the sole owner thereof.

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

The Town Council hereby approves the termination and vacation of the condominium regime for the Big Mine Condominiums according to the plat thereof recorded in the Official Real Property Records of the Clerk and Recorder of Gunnison County Colorado on September 22, 1982 at Reception No. 36956, such termination and vacation being in the best interest of the health, safety and welfare of the Town, its residents and visitors.

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO THIS __ DAY OF _____ 2017.

TOWN OF CRESTED BUTTE, COLORADO

By: _____
Glenn Michel, Mayor

ATTEST:

_____ (SEAL)
Lynelle Stanford, Town Clerk

May 2, 2017

Freeport McMoRan
Bill Cobb, Vice President
Environmental and Sustainable Development
333 N. Central Ave.
Phoenix, AZ 85004

Dear Mr. Cobb:

The Crested Butte Town Council and the Gunnison County Board of County Commissioners held a joint public meeting on March 28, 2017. One of the topics on the agenda was the status of discussions with Mountain Emmons Mining Corporation (MEMC) and the other MOU parties regarding the Keystone Mine Property. At that meeting, the Council and the Commissioners directed our respective staffs to continue to work cooperatively with MEMC to achieve the goals of the MOU.

We welcome the opportunity to work with you as you undertake efforts to resolve long-standing issues at the old Keystone Mine and its surrounds. We would like to thank MEMC for the commitment it has shown in resolving these difficult issues. The Town Council and County Commissioners are confident that with continuing cooperation and growing trust, we can achieve our objectives in a manner that satisfies the goals of the community and MEMC in due time.

Sincerely,

Phil Chamberlin
Chairperson, Gunnison Board of County Commissioners

Glenn Michel
Mayor, Town of Crested Butte

cc: Sheila Deeley, Esq.
David Gosen, P.E.
James Sanderson, Esq.

Staff Report
May 1, 2017

To: Mayor and Town Council

From: Dara MacDonald, Town Manager

Subject: Administrative Plan and Restructuring of Planning and Building Departments

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Summary: C.R.S. § 31-4-215 requires that the manager propose a plan of administrative organization to the Town Council which, if approved by the council, shall be adopted by ordinance. Section 6.3(f) of the Home Rule Charter of the Town of Crested Butte states: the town manager shall "exercise supervision and control over all executive and administrative departments, and recommend to the Council any proposal he thinks advisable to establish, consolidate or abolish departments". Further, § 6.9 of the Home Rule Charter states: "The administrative functions of the Town shall be performed by the departments existing at the time this Charter is adopted and such other departments as may be hereafter established by ordinance. Upon recommendation of the Town Manager, the Council may, by ordinance, consolidate or merge any of the said departments, whether set forth in this Charter or created by ordinance."

With the resignation of the Building and Zoning Director, and reevaluation of the departmental structure, I am recommending adoption of the attached plan of administrative organization with the consolidation of the Planning and Building Departments into a Community Development Department. The structure of other departments of the town would remain unchanged.

Previous Council Action: The Council has not taken any recent action on the administrative organization of the town. It is unclear when the last time adoption of a plan of administrative organization has been reviewed or adopted by the Town Council or the last time the council approved an ordinance impacting the departmental structure.

Council was informed of this recommendation for restructuring during their retreat on March 8, 2017. The plan to advertise for a planner position was presented to the council during the regular meeting on March 20, 2017 with the actual hiring subject to approval of the reorganization by the Town Council.

Background and Discussion: The Administrative Plan required by statute must provide for the establishment of the office of town clerk, chief of police and other such officers as are deemed necessary for the efficient administration of the town

It seems that the current departmental structure involving building and planning evolved around the unique skills of long-time senior staff including John Hess and Bob Gillie. In particular the

expertise in both construction and historic preservation led to the evolution of the Building and Zoning Department headed by Bob Gillie. While this structure has served Crested Butte well, there has sometimes been a disconnect between current planning and long-range planning, some of which has fallen under the purview of the town planner.

Consolidation of the related services of building, zoning, historic preservation and long-range planning under one department will ensure that all facets of decisions involving the built environment of the community are considered during relevant decision making. It will also result in the elimination of one department head position in the organization.

In practical terms, I intend to shift the existing Planning Director, Michael Yerman, to the newly created position of Community Development Director. The position of Planning Director would be eliminated. The remainder of the positions within the department will remain largely the same with slight modification to some job descriptions to reflect actual duties performed. In order to backfill some of the day to day planning duties that have previously been performed by the town planner or planning director positions, we are currently hiring for a mid-level planner position.

There is one new position shown on the detailed chart for the Community Development Department; the Short Term Rental/Residential Inspector position. This position has been discussed with the Council previously. This position would fill two primary roles – managing the licensing and inspections of vacation rentals and also conducting building inspections for residential properties. Bob Gillie is a qualified building inspector and with his departure the current building official will need assistance with covering inspections during the busy construction season. We have made arrangements with Mt. Crested Butte to assist in the near term until we have authorization from the council to fill this new position. A significant portion of the cost of this position will be covered through licensing fees for vacation rentals beginning in late 2017 in advance of the licensing requirement becoming effective on January 1, 2018.

Overall the proposed reorganization will result in more efficient delivery of services for the community.

Legal Implications: Action on any reorganization or consolidation of departments is required to be approved by ordinance of the Town Council under Sections 6.3 and 6.9 of the Home Rule Charter for Crested Butte.

Financial Implications: There is no increase in budget under the proposed reorganization. Staff will be coming back to council in the near future to discuss hiring of the Short term rental/Residential Inspector position which is not funding in the adopted 2017 budget.

Recommendation:
A Council person make a motion followed by a second to set Ordinance 11, Series 2017 to a public hearing on May 15, 2017.

ORDINANCE NO. 11

SERIES 2017

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL ADOPTING AN ADMINISTRATIVE PLAN PRESENTED BY THE TOWN MANAGER FOR THE DEPARTMENTS OF TOWN ADMINISTRATION PURSUANT TO C.R.S. § 31-4-215 AND MERGING THE BUILDING AND PLANNING DEPARTMENTS PURSUANT TO § 6.9 OF THE CRESTED BUTTE HOME RULE CHARTER

WHEREAS, the Town of Crested Butte, Colorado (the "**Town**") is a home rule municipal corporation 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;

WHERAS, pursuant to C.R.S. § 31-4-215, the Town Council, upon the report and recommendation of the Town Manager, to create and establish by ordinance administrative departments of Town administration based on a plan of administrative organization presented to the Town Council by the Town Manager;

WHEREAS, Section 6.9 of the Crested Butte Home Rule Charter (the "**Town Charter**") requires that the administrative functions of the Town shall be performed by the departments existing at the time the Charter was adopted and such other departments as may be hereafter established by ordinance; provided that upon recommendation of the Town Manager, the Town Council may, by ordinance, consolidate or merge any of the departments, whether set forth in the Charter or created by ordinance;

WHEREAS, the Town Manager has presented a plan of administrative organization to the Town Council recommending the administrative departments of Town administration; and

WHEREAS, the Town Council hereby finds that that the plan of administrative organization presented to the Town Council by the Town Manager and attached to this ordinance is in the best interest of the health, safety and general welfare of residents and visitors of Crested Butte.

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

Section 1. **Recitals and Findings**. The Recitals set forth above are incorporated as if fully set forth herein. The findings set forth in such recitals are hereby deemed findings of fact material to this ordinance.

Section 2. **Plan of Administrative Organization**. Pursuant to C.R.S. § 31-4-215, the Town Manager recommends the plan of administrative organization (the "**Plan**") attached hereto as **Exhibit "A**." The Town Council hereby adopts the Plan.

Section 3. **Merger of Departments**. Pursuant to Section 6.9 of the Charter, the Town Manager recommends the merger of the Building and Planning Departments. The Town Council hereby approves the merger of the Building and Planning Departments pursuant to the Plan. References in the Crested Butte Municipal Code to the Planning Department, the Town Planner and Building and Zoning Director shall, for purposes thereof mean the Town Manager and her designees.

Section 4. **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 5. **Savings Clause**. Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision thereof that 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 _____, 2017.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS _____ DAY OF _____, 2017.

TOWN OF CRESTED BUTTE, COLORADO

By: _____
Glenn Michel, Mayor

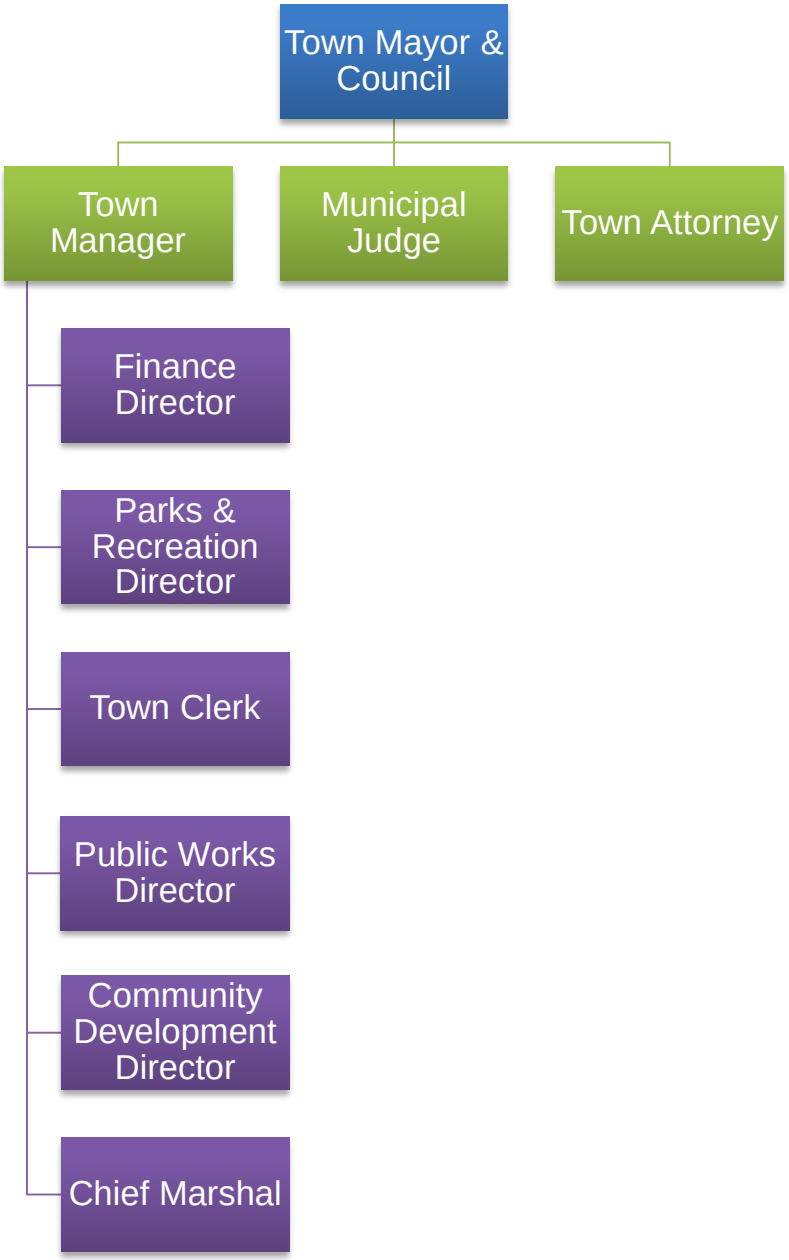
ATTEST:

_____ (SEAL)
Lynelle Stanford, Town Clerk

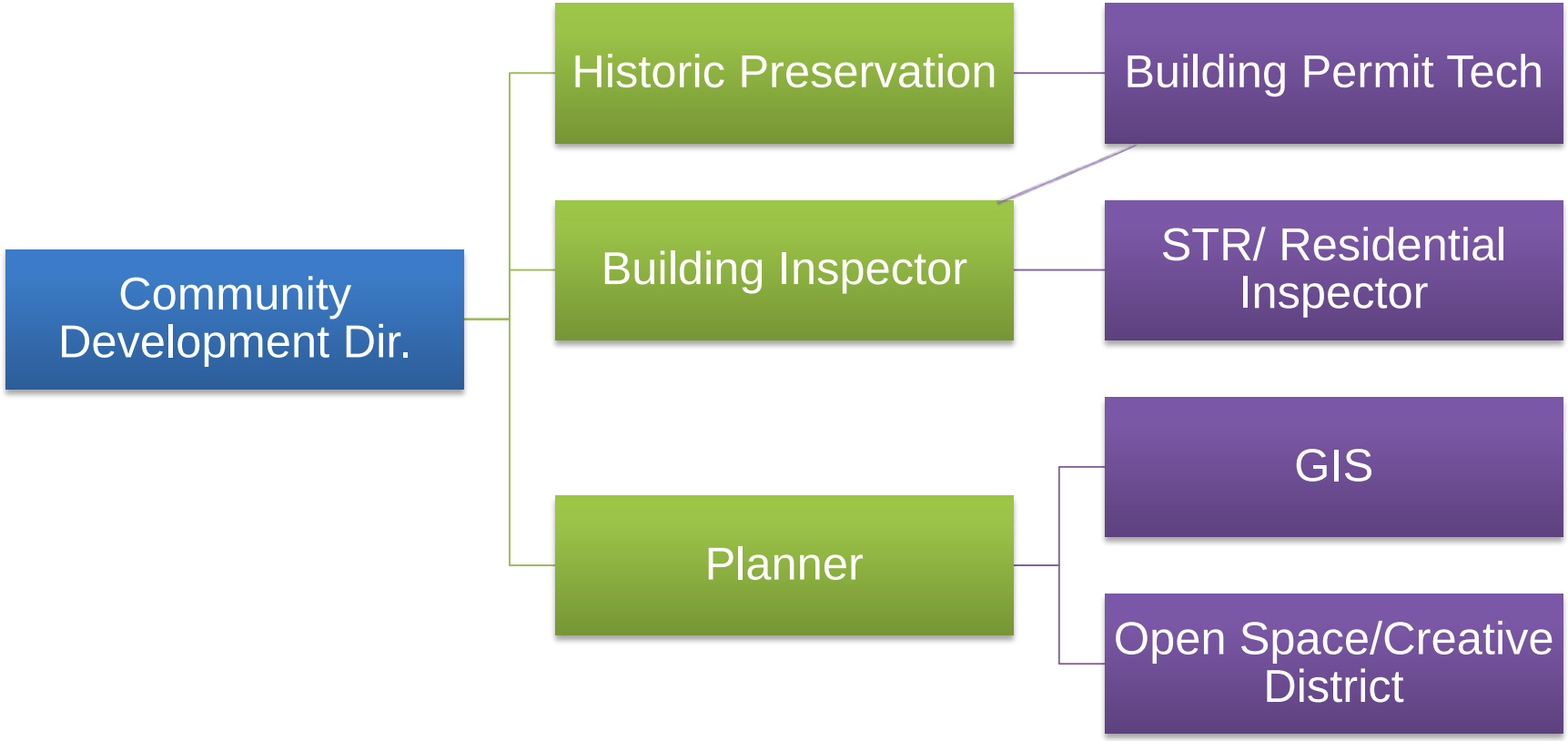
EXHIBIT "A"
(Plan)

[attach Plan here]

Exhibit A
Administrative Plan

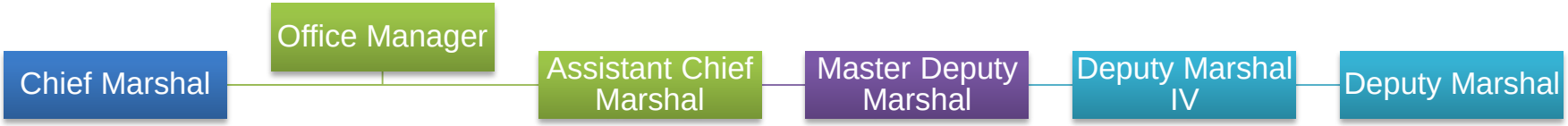


Community Development Department



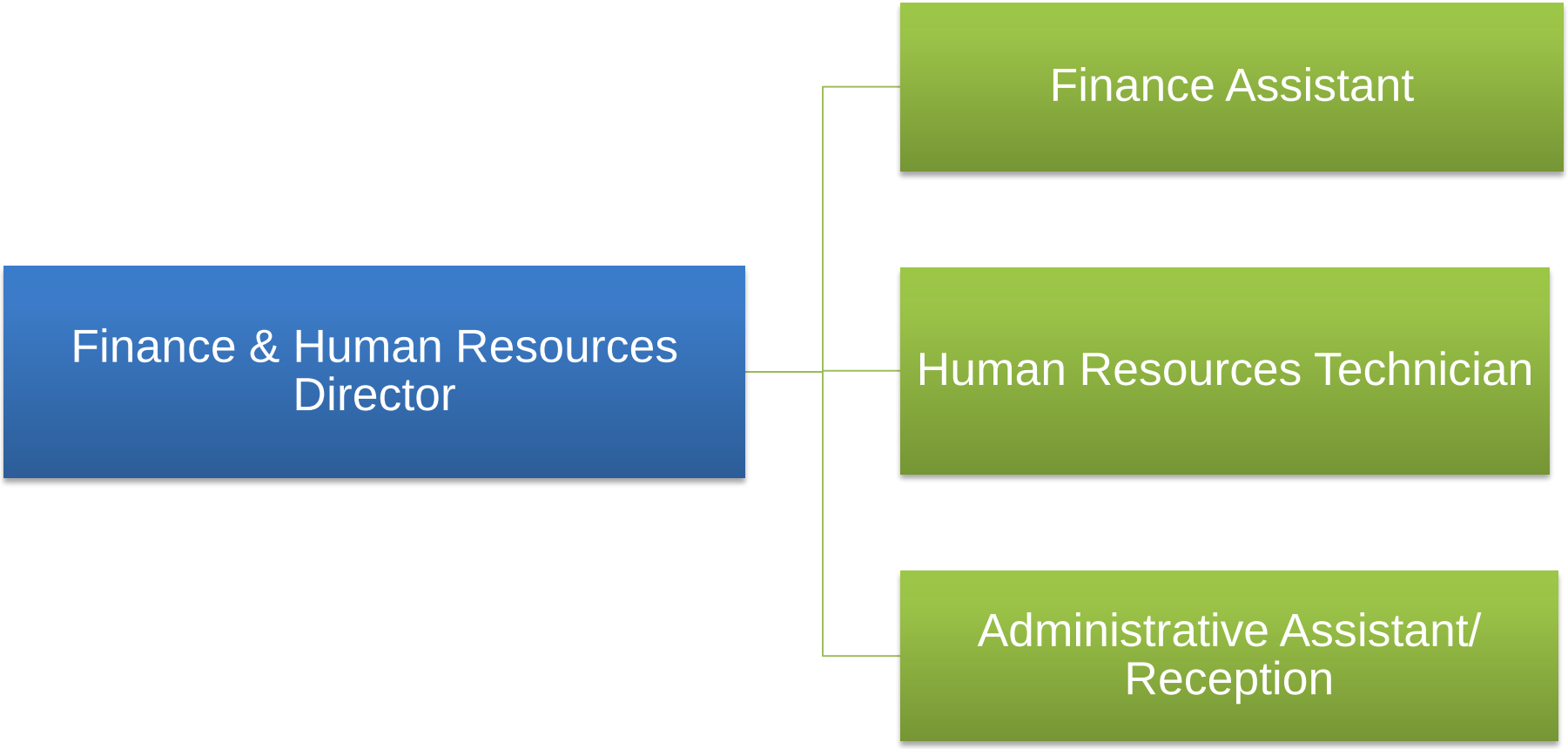
Supplemental pages of Administrative Plan

Marshals Department



Supplemental pages of Administrative Plan

Finance



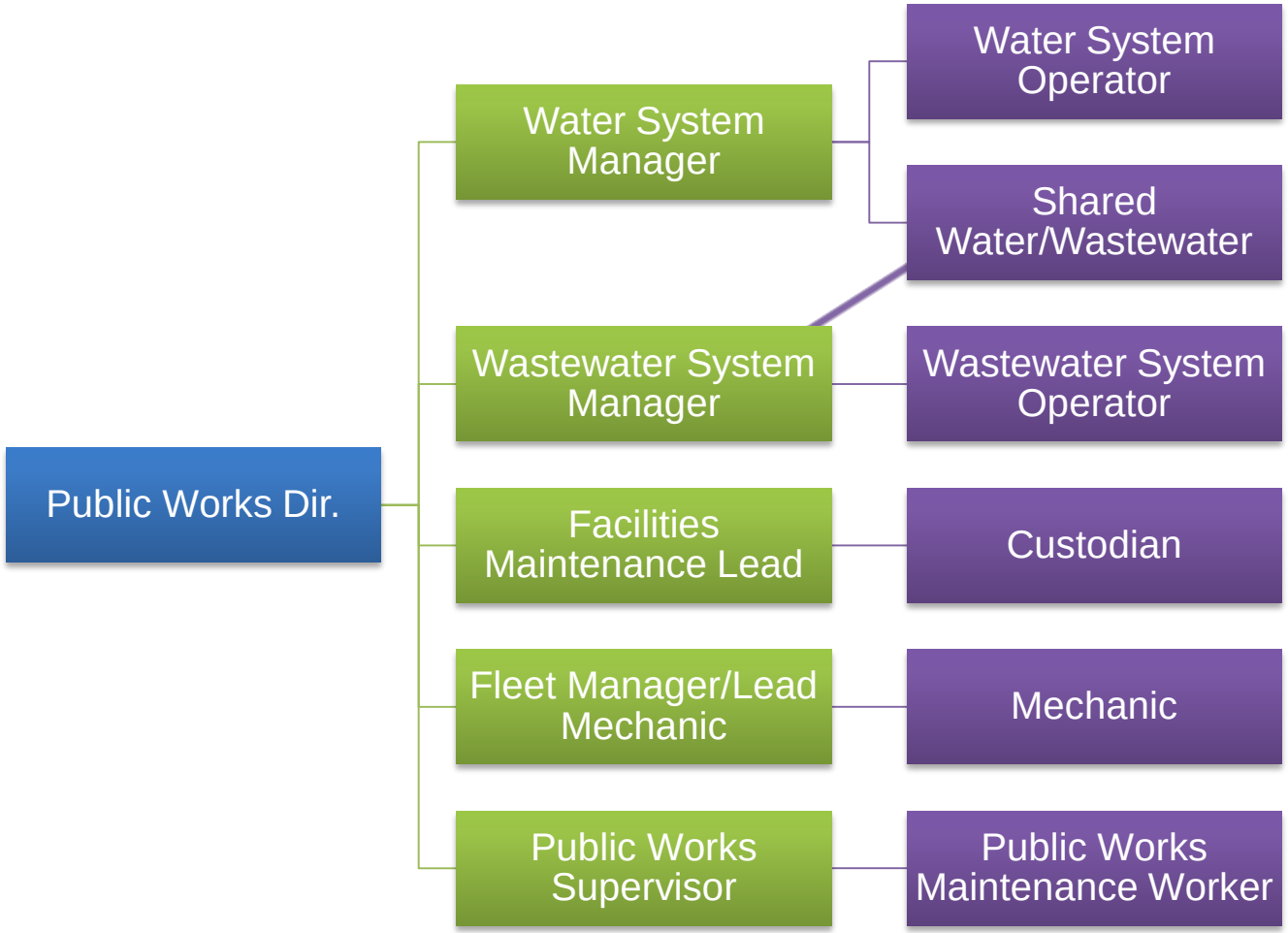
Supplemental pages of Administrative Plan

Clerk

Parks & Recreation

Supplemental pages of Administrative Plan

Public Works



Supplemental pages of Administrative Plan

Staff Report

May 1, 2017

To: Mayor and Town Council

Thru: Dara MacDonald, Town Manager

From: Hilary Henry, Open Space/Creative District Coordinator

Subject: Expansion of the Creative District Commission

Background:
The Town Council passed Ordinance 14, Series 2015 establishing the Creative District Commission. The Ordinance states that the Commission shall be comprised of seven (7) voting members, appointed by the Town Council. The Commission also includes a Town Staff member and a Town Council liaison.

During the Work Session with the Town Council on March 20, 2017, the Creative District Commission requested that the Council consider expanding the Commission to nine (9) voting members. Like current Commissioners, the Town Council will appoint the two new voting members to three-year terms.

The current Commissioners have been working 10+ hours/week over the past year, as volunteers, to establish the Creative District. As the Creative District continues to grow, they believe that additional Commissioners will help keep their workload manageable and will diversify the perspectives represented on the Commission.

Ordinance 12, Series 2017 expands the Creative District Commission to nine (9) voting members appointed to 3 year terms.

Recommendation: Staff recommends that the Council sets a public hearing for Ordinance 12, Series 2017 for May 15, 2017.

ORDINANCE NO.

SERIES 2017

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AMENDING CHAPTER 2, ARTICLE 8 OF THE CRESTED BUTTE MUNICIPAL CODE TO EXPAND THE CREATIVE DISTRICT COMMISSION MEMBERSHIP AND INCLUDING REQUIREMENTS RELATED THERETO

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, Chapter 2, Article 8 of the Crested Butte Municipal Code (the "**Code**") contains membership requirements for the Crested Butte Creative District Commission (the "**Commission**");

WHEREAS, on March 19, 2017, the Town Council received a request from the members of the Commission to expand its membership to include two additional at-large members each with three-year appointed terms; and

WHEREAS, the Town Council finds that the expansion of the Commission's membership will, in addition to providing additional input for appropriate guidelines for the placement of works of art within Crested Butte, lead to the further development of public arts and culture in Crested Butte that will mutually benefit the business and cultural environment of Crested Butte and the surrounding communities, and expanding the membership of the Commission is therefore in the best interest of the environment and the health, safety and general welfare of the residents and visitors of Crested Butte, thus necessitating the adoption of this ordinance.

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

Section 1. **Amending Section 2-8-40 of the Code**. Section 2-8-40 of the Code is hereby deleted in its entirety and replaced with the following new Section that shall read as follows:

"**Sec. 2-8-40. Members; Term.**

(1) The Town Council shall appoint the voting members of the CBCD Commission. The CBCD Commission shall be comprised of nine voting members. The Commission shall be comprised of four members that represent the arts and creative sector, and five members that represent the community at large.

(2) In addition to the nine voting members, the CBCD Commission shall include two ex-officio members. The Town Council shall appoint one of the Council Members as an ex-officio member and liaison to the CBCD Commission. The Town Council member shall only vote in the event of a tie vote of the other CBCD Commission members. The other ex-officio member shall be the Town Manager or her designee. The Town Manager or her designee shall not have voting power.

(3) Members shall serve without compensation, except for those expenses incurred in connection with the work of the CBCD Commission as approved by the Town Manager or his designee.

(4) Terms of the members shall be three years and shall be staggered so that one third (1/3) of the members shall be appointed each year, provided that the initial appointments in 2016 (1st year of operation) shall be two members for a one-year term, two members for a two-year term and three members for a three-year term. New additional members appointed as of June 1, 2017 shall have three-year terms commencing on the date of appointment by the Town Council. In the event of death, resignation or removal of any member, his or her successor shall be appointed for the duration of the unexpired term."

Section 2. **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 3. **Savings Clause**. Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision thereof that 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 _____, 2017.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS _____ DAY OF _____, 2017.

TOWN OF CRESTED BUTTE, COLORADO

By: _____
Glenn Michel, Mayor

ATTEST:

_____ (SEAL)
Lynelle Stanford, Town Clerk

Staff Report
May 1, 2017

To: Mayor and Town Council

From: Dara MacDonald, Town Manager

Subject: Ordinances 2017-13 and 2017-14 regarding the Center for the Arts renovation and expansion project.

Summary: The Center for the Arts has been working for a number of years to fund and construct the expansion and remodel of the Town-owned Center for the Arts facility at 606 6th Street. The two ordinances attached are intended to provide the mechanism by which the Council may formally allow the project to proceed on public property and to provide for a tenant allowance of up to $750,000, if needed, to complete Phase 1 of the project.

Previous Council Action:
The most recent direction from the Town Council was provided on February 21, 2017 when the Council directed staff to work with the Center to develop a funding assistance program not to exceed $750,000. The following is a list of the most recent actions by the Town regarding this project:

February 21, 2016 – Council meeting, Presentation by the Center and further discussion about possible financing assistance

January 17, 2017 – Work session with the Center and Town Council to initiate discussion about possible gap financing

August 31, 2016 – BOZAR conditional approval

July 6, 2015 - Resolution 2015-15 – Acknowledging the Town Council's Pledge to the Center for the Arts in Connection with the Center's Expansion of its Facilities on Town Property

April 20, 2015 - Resolution 2015-04 – Expressing Support for the Use of Public Property for the Purpose of Expanding the Center for the Arts Facilities

Background:
Town staff has continued meeting with representatives from the Center to discuss the best way to structure the $750,000 in temporary funding assistance as well as the outstanding requirements from previous Council and BOZAR actions. The Center has submitted civil engineering plans for the site and is finalizing construction documents and planning a public groundbreaking event for early June. Per the earlier Resolutions, further action is required by the Town Council prior to the groundbreaking as discussed below:

I. Council Resolutions

A. Resolution 2015-15, acknowledging the Town Council's pledge to the Center for the Arts in connection with the Center's expansion of its facilities on Town property. Outstanding requirements within this resolution include:

1. **Town Council's satisfaction that the Center's expansion and replacement of the existing Center arts facilities is prepared to break ground, with funding sufficient to complete the project as approved by the Town.**

   The Center provided requested documentation in mid-March to allow staff to review the funding available for construction of the expansion. Staff provided a detailed list of questions to the Center on April 17th and followed that up with further discussion on April 26th. Following our review and discussions staff has the following comments regarding funding sufficient to complete Phase 1 of the project:

   The development budget for Phase 1 of the project is currently estimated at $13.3M. Approximately $750,000 has already been spent on design and associated expenses, leaving $12.52M of costs to complete Phase 1. Some of this cost could be deferred or removed by reducing the amount of FF&E and reusing some existing equipment. The budget includes a contingency of 7.2% of construction hard costs.

   The Center has raised approximately $9.1M in cash and pledges since 2014 which is an impressive feat. Some of the pledges are made over five years with the money coming in until 2022. With funds already collected, pledges due in 2017 and pledges for funding at groundbreaking the Center will have $4.4M in 2017 with an estimated development expense of $4.5M in 2017. The estimated development expenses in 2018 are $8.02M to complete Phase 1. Committed pledges to be collected in 2018 are $2.2M. This results in a funding gap of approximately $5.82M in 2018 if no additional funds are raised.

   The Center is planning to raise an additional $4M in 2017 (although it is not known if these funds will be collected immediately or pledged over a number of years). See the attached letter from Executive Director Jenny Birnie regarding fundraising plans. The additional $1.31M of already pledged funds will be collected in 2019 – 2022.

   As of the writing of this memo staff has been unable to find any information on best practices or industry standards on when a nonprofit can feel comfortable breaking ground during a capital campaign in terms of what % of funds have been committed.

2. **The Center shall enter into construction and facilities lease agreements with the Town Council before commencing construction, such arrangements contemplating, without limitation, sureties, insurance, 99-year lease term, minimum operating reserves and audit.**

   Staff and the Center have discussed that an amendment to the current lease would be appropriate in advance of construction with a new lease planned at the end of construction to address ongoing maintenance responsibilities. This is what is proposed with Ordinance 2017-13 addresses. The lease amendment addresses the tenant improvement allowance of up to $750,000 that has been requested by the Center.

   The Center has been working directly with the Town Attorney regarding sureties for the project and an update will be provided during the Council meeting.

   Insurance requirements are addressed in the Tenant Improvement Agreement included in Ordinance 2017-14 and have been worked out between the Town Attorney and the Center.

   A 99-year lease term is not an option for municipal property in Colorado. Following completion of construction we propose the Town and Center enter into a new lease with a 30-year lease term with

3 subsequent automatic 10-year renewals. This intention is captured in the lease amendment proposed with Ordinance 2017-13.

Regarding minimum operating reserves, the Center does not currently hold any operating reserves. They have put aside approximately $30,000 each of the past three years which has been utilized during the slower times of each subsequent year. They have provided staff with a copy of the current Operating Reserve Policy which calls for the Center to have 3 months of average operating costs held in reserve. Please see the attached letter from Executive Director Jenny Birnie regarding the plan for funding an operating reserve within the next year.

Financial statements and audits provided by the Center are currently being reviewed by Chadwick, Steinkirchner, Davis & Co. (third party reviewer). Additional questions may arise following their review.

3. Town to review the facility operation pro forma data.

The pro-forma was submitted by the Center and reviewed by staff and Orville Peterson of Chadwick, Steinkirchner, Davis & Co. (third party reviewer) and several items were questioned. The Center responded to the questions and updated the pro-forma accordingly. The main area of concern for Mr. Peterson still remains the profitability of the Center once the new building is completed and the need for an operating reserve.

There are three primary areas of concern for staff regarding the pro forma:

a) Show breakeven in year 1 and profit in year 2 and on – not reasonable; makes the operating reserve more important
b) Large increase in "Contributed Income" with the new facility – is this reasonable taking into account donor fatigue?
c) Rental rate per square foot still up in the air for "anchor" tenants

A detailed memo has been prepared by Finance Director Lois Rozman and is attached for Council's consideration.

4. Prior to the Center conducting any activities on Town property in connection with the expanding and replacing the Center's existing arts facilities (i.e. boring, testing, etc.), the Center shall enter into a license agreement with the Town permitting such activities. Such license agreement shall be approved by the Town Council pursuant to Section 31-15-713, C.R.S.

a. This requirement was specific to pre-construction activities and is unnecessary should Council approve the attached ordinances.

B. <u>Resolution 2015-04</u>, expressing support for the use of public property for the purpose of expanding the Center for the Arts facilities. Outstanding requirements within this resolution include:

1. The Center for the Arts shall submit a business plan, reviewed by an independent entity showing that any expansion will be feasible and financially sound so as not to become a financial burden to the Town and its citizens.

a. This requirement is addressed in the above item I.A.3 referring to the pro-forma and in the attached memo from Finance Director Lois Rozman.

2. **An adequate endowment shall be in place to assure the ongoing financial operating viability of the facilities.**

    a. This requirement is addressed in above item I.A.2 referring to the operating reserves.

II. BOZAR Approval

There are several items in the final BOZAR approval motion that are specific to architectural or site changes that we assume will be incorporated into the construction plan submittals. The Center will need to appear before BOZAR again to review several outstanding items. We anticipate this would be done at approximately the same time as building permit review – estimating a June 27th appearance before BOZAR. Items relevant to this discussion are listed below:

1. **The Center shall enter into a management agreement with the Town of Crested Butte to address the responsibilities for maintenance of the building and site which shall include the plowing and removal of snow in line with the submittal.**

    a. This item is addressed in the addendum to the current lease (Ordinance 2017-13) and will be finalized in a new lease following completion of construction.

2. **The Center shall enter into a management agreement with the Town of Crested Butte to define the responsibilities and coordination of the development activities related to the construction of the Center and site amenities.**

    a. This item is addressed with the tenant improvement agreement proposed with Ordinance 2017-14.

3. **The Center will enter into a funding agreement with the Town of Crested Butte to define the financing and fiscal responsibilities for the construction and on-going maintenance of the facilities.**

    a. Responsibility for construction is addressed with the tenant improvement agreement included with Ordinance 2017-14. Responsibilities for ongoing maintenance have been discussed at length with staff and as part of the BOZAR submittal and review. Financial and physical responsibilities for the on-going maintenance should be affirmed or finalized in a new lease following completion of construction.

4. **The Center will coordinate with the Town of Crested Butte with regard to the planning and implementation of the Town Park playground and confirmation by the staff that all community facilities displaced by the expansion have been appropriately replaced.**

    a. The on-going discussions with relevant staff relating to this item are appreciated. Continued coordination with Janna Hansen and Michael Yerman throughout construction will ensure that the playground and other community facilities are appropriately replaced.

III. Request for Funding Assistance

The Town Council has committed to provide $1,000,000 to the expansion of the Center (of which no more than $500,000 will be cash contribution). This funding has been appropriated in the 2017 budget and will be provided once the conditions of Resolutions 2015-04 and 2015-15 have been satisfied.

The Center has requested that the Town provide up to $750,000 in the form of a tenant allowance to be repaid through the lease. The Town Council has indicated they are comfortable with this amount pending staff review and recommendation. Assuming the construction funding meets the

satisfaction of the Town Council, the amendment to the lease included with Ordinance 2017-13 incorporates the tenant allowance agreement under the following general terms:

a. Up to $750,000 for tenant allowance would be made available to the Center for the purpose of accelerating and completing the construction in a timely and satisfactory manner.

b. Funds would be made available as a construction allowance and may be used exclusively to cover the hard costs of construction. No portion of the allowance may be used to cover operating expenses. Reimbursement of the advanced allowance would be made within one calendar year of the advance of funds and no portion of the allowance shall be left unpaid after eighteen (18) months has passed from the first advance.

c. Construction contributions shall accrue interest from the date of advance at the prime interest rate as published in the Wall Street Journal. Interest shall not be assessed unless there is an unpaid balance after eighteen (18) months has passed from the first advance.

d. Repayment terms shall be accomplished as lease payments described in the addendum to the existing lease.

e. The Center will not embark on subsequent phases of the expansion until such time as the tenant allowance has been repaid in full.

IV. Waiving the Requirements of Chapter 4, Article 6

The Town Code requires that town projects in excess of $25,000 be put out to bid. Ordinance 2017-14 explains that the expansion and renovation of the Center for the Arts is a unique situation due to the lease and the Center's desire to perform the project. The Ordinance includes the Town's willingness to waive the bidding requirement for this particular project given the unique circumstances involved.

Discussion: Staff has worked in good faith with the Center to understand the various issues raised by the Council and BOZAR in their various review processes and funding commitments. Some items we would raise for Council consideration are the following:

1) Understandably there will almost always be a funding gap when a nonprofit embarks on construction during a capital campaign and it is typically necessary that the groundbreaking occur before all funding is committed. In this case the Center currently has a $5.9M gap between funds committed and development costs to complete Phase 1 of the project. Is the Council comfortable with allowing construction to proceed with this amount of gap?

2) Likewise, projections of operating pro formas for a new facility are always somewhat uncertain. Staff has raised a number of concerns with the assumptions presented in the pro forma. Is the Council comfortable accepting the pro forma presented by the Center?

3) The Council required surety be provided for the completion of construction of the Center. The Town Attorney will provide an update on the discussions with the Center during the meeting.

Legal Implications: The Town Attorney has been involved in the ongoing discussions with the Center. He has worked with them on details of the tenant improvement agreement as well as surety. If the Center fails to perform and complete the development the project will fall back to the Town as the property owner. The Council should feel comfortable that adequate funds and surety are in place to see the project through to completion.

Proposed Motion(s):

A Council person make a motion followed by a second to set Ordinance 13, Series 2017 to a public hearing on May 15, 2017.

A Council person make a motion followed by a second to set Ordinance 14, Series 2017 to a public hearing on May 15, 2017.

Encl: 04/28/17 letter from Jenny Birnie
Memo from Lois Rozman

CENTER FOR THE ARTS
CRESTED BUTTE

April 28, 2017

Town of Crested Butte
Dara MacDonald, Town Manager
Mayor Glenn Michel, Council Chair
P.O. Box 39
Crested Butte, Colorado 81224

Dear Glenn and Dara,

As you are aware, the Center for the Arts has been working diligently with Town staff to resolve outstanding issues needing to be addressed in order to move forward with ground breaking for the new Center. We look forward to meeting with Town Council on Monday, May 1, 2017 to provide an update on this progress and respond to any questions and concerns that remain. Specifically, I would like to address the Center's fundraising plans for the project and our approach to generating the appropriate operating reserve as required in Resolution No. 4 passed on April 20, 2015.

Last summer the Center for the Arts successfully raised $3 million through a matching campaign. To date, we have received $9.1 million in pledges and cash payments. This summer, we have the goal of raising $4 million. Our projections are based on the assumption that we will generally do as well this summer as we did last summer. Additionally, we are optimistic that our fundraising efforts will exceed expectations because of ground breaking based on conversations with donors and our consultants. We have several open naming opportunities remaining for the new building including the theater at $3M, dance studios at $1M and visual arts spaces at $500,000. Major donations (gifts over $100,000) will comprise the majority of our effort, foundation support in the amount of $775,000 is expected and a final community campaign (with gifts under $50K) will be initiated toward the end of the campaign to raise the last $500,000.

The Center has rehired the Suddes Group on a 4 month contract to work with our capital campaign committee to ensure a successful campaign this summer. In 30+ years, The Suddes Group has raised over $2Billion for and with organizations throughout the world and has managed over 500 successful fundraising campaigns. The Center also has a contract with BLAZE Associates for all marketing efforts related to the campaign (they were retained last May). Blaze is a consulting agency that specializes in marketing and public relations campaigns and their local team has over 25 years of multidisciplinary expertise.

Goals of our capital campaign this summer include securing a $3 million naming donor for the theater, leveraging the excitement of the Center breaking ground this Spring, broadening the network of connectors geographically to make the final push towards our fundraising goal and securing several top commitments to close out the campaign.

In an effort to develop an adequate operational reserve to assure the ongoing financial operating viability of the new facility, the Center is planning a three month reserve fund in the amount of $350,000. This summer, we will be soliciting specific donors through a separate effort to raise assets for the reserve funds. The Center also offers the option for planned giving to ensure the success of the Center long term and we currently have several individuals that have included the Center as a benefactor in their will/trust. This year, the Center initiated a new cost accounting system and hired a part time accountant to closely monitor the financial success of every program. The Center has successful operated as a private non profit organization for the past 30 years and our financial practices are carefully managed.

We look forward to our meeting on Monday and have appreciated our partnership with the Town to help us keep construction on track-the support has been truly appreciated.

Sincerely,

Jenny Birnie
Executive Director

MEMORANDUM
January 10, 2017
Updated April 27, 2017

To: Dara MacDonald, Town Manager

From: Lois Rozman, Finance Director

Subject: Review of Center for the Arts Pro-Forma

Dara,

I engaged Orville Peterson, CPA, from Chadwick, Steinkirchner, Davis & Co., P.C. to review the pro-forma supplied by the Center for the Arts in November of 2016. Following is a listing of items/questions that need additional information or explanation on from the Center.

REVENUE:

- Is it appropriate to expect 100% occupancy in the "permanent renters" category? The pro-forma does show 9 months of rent for the School of Dance and 3 for CB Dance Collective. Is this assured?

CENTER RESPONSE: The Crested Butte School of Dance will be permanent renters for nine months out of the year (September through May) and the Crested Butte Dance Collective will utilize the aerial dance studio (Studio A) year round. These "performance studios" are multi-purpose spaces that will be utilized for a variety of other uses throughout the year including after school music classes for kids, private lessons, yoga and pilates classes and Trailhead Childrens museum art classes in the summer months.

- On the tab Other Earned Income, the pro-forma notes "Art Studio/Dance Collective/Film Festival Rent" is a line item to offset the rent charged to these groups against the program income that is brought in. Éffectively these groups will need to program additional revenue to cover the rent." Is this realistic?

CENTER RESPONSE: The Art Studio (visual arts) is the fastest growing program of the Center and they currently utilize a 700 square foot space for programs and shared artist spaces. The new building provides four times the size of the current space and we will be able to offer a wider variety of visual arts programs and more rentable spaces for artists. The Crested Butte Dance Collective has grown their programs by 30% over the past 5 years and the current limitation to any future growth is no suitable spaces for aerial dance. This space will be provided in the new Center. The Crested Butte Film Festival is also limited in their growth because of the inadequate digital film technology in the current center theater and we believe this upgrade will allow the festival to show a wider range of appealing films that will draw larger national audiences.

EXPENSES:

- Maintenance wages only go up $5,000 when going from an 11,000 sq. ft. building to a 31,000 sq. ft. building (total gross sq.ft)

CENTER RESPONSE: We did assume that during the first years of a brand new facility that repairs and maintenance wages would not be a significant item. The general contractor will provide a standard one year warranty for all parts and labor from date of occupancy. There will also be manufacturers' warranties on items such as the roof (20 years) and the mechanical/machinery (5 years). An adjustment has been made to the maintenance wages.

- Do wages accurately reflect new Colorado minimum wage law and Dept. of Labor new OT rules?

CENTER RESPONSE: No, we did not figure the new laws into this proforma and adjustments have now been made.

- Employee Costs line held at 16.7% of wages – is this reasonable with the number of positions moving to full-time and the additional new positions (insurance coverage under the affordable care act?).

CENTER RESPONSE: After consultation with Gary Shondeck, the Center's insurance provider, this number has now been increased to 21.5% to account for anticipated increased insurance costs.

- Supplies and R&M lines are not increasing much (3%, but equates to minimum $) over the first 3 years – probably not realistic with the increase in building size and programming. 4th year does show significant increase for R&M which is appropriate.

CENTER RESPONSE: As with the maintenance wages, we did assume that early (first 3 years) supplies and R&M would not significantly increase because of the brand new facility. We have adjusted these numbers given the overall increased usage of the building to account for general supplies.

- New Programming expenses – what would this include?

CENTER RESPONSE: The new Center for the Arts will give us the ability to launch new programs in the performing, visual and culinary arts as shown in the activity projections of the proforma. The corresponding expenses are represented under "new programming expenses"

- Where are utilities expenses? Are they included in the General & Admin line? If utilities are in that line item, is the increase appropriate for the increase in the size of the building and usage of the building?

CENTER RESPONSE: Utilities are included in the supplies line item and this number has been adjusted to reflect the increase of building size and inflation based increases in consultation with our Construction Manager, Crockett Farnell.

- For the Film Festival and CB Dance Collective, for which the Center is the fiscal sponsor, it shows revenue, expenses, rent offset to revenue which equal a net revenue and then there is another revenue line for the "Fiscal Sponsorships" – is the net revenue essentially being double booked?

CENTER RESPONSE: All duplication involving the Crested Butte Dance Collective and the Crested Butte Film Festival has been removed from the proforma. Effective January 1, 2017, the Center for the Arts is no longer the fiscal sponsor of the Crested Butte Dance Collective but they remain renters of our space.

- Under the "Cost Per Square Foot" tab there is a column for "Tenant Improvement" – what is this?

CENTER RESPONSE: Tenant improvements is a generic term for interior hard costs of construction for occupied spaces. Equipment costs are located in the FF&E (furniture, fixtures and equipment) budget in the overall construction budget.

Bottom line, it appears the Center anticipates operating profits from the very first year of expansion. This is a very rare occurrence in reality, why does the Center feel this will happen? What about the operational endowment fund?

CENTER RESPONSE: The Center for the Arts programs and offerings have grown dramatically over the past seven years. In 2016, the Center experienced a 17.5% growth in patron attendance in one year. We are continuing to grow these programs as we prepare for the new building and are able to do this since we will remain operational during construction. We are raising funds for an operational endowment fund and anticipate having to launch a big annual fundraising event such as a gala or wine auction to support the operations of the new center. This year, we hired a full time Special Events Director in anticipation of needing to focus more time and effort on special events.

ORDINANCE NO. 13

SERIES NO. 2017

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL APPROVING THE AMENDMENT TO LEASE AGREEMENT WITH THE CENTER FOR THE ARTS RELATED TO TOWN-OWNED PROPERTY LOCATED AT LOTS 1-16, BLOCK 50, TOWN OF CRESTED BUTTE, COLORADO

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

WHEREAS, the Town leases Town-owned property located at Lots 1-16, Block 50, Town of Crested, Colorado (the "**Premises**") to The Center for the Arts (the "**Center**") pursuant to a Lease Agreement (the "**Lease**") between the parties dated December 23, 2010;

WHEREAS, pursuant to Ordinance No. 14, 2017, the Town has entered in a Tenant Improvement Agreement with Center for the Center's performance of certain construction and improvements respecting the Premises (the "**Project**");

WHEREAS, on account of the Project, the Town Staff has recommended that the Center amend the Lease to contemplate, among other things, the Project;

WHEREAS, pursuant to Section 31-15-713 (c), C.R.S., the Town Council may lease any real estate, together with any facilities thereon, owned by the Town when deemed by the Town Council to be in the best interest of the Town;

WHEREAS, pursuant to Section 713(c), when the term of such any such lease is one year or greater, the Town Council must approve such lease by an ordinance of the Town Council; and

WHEREAS, the Town Council hereby finds that approving an amendment to the Lease for the Center's use of the Premises in its business, and for such other purposes as set forth in such amendment, is in the best interest of the general health safety and welfare of the Town, its residents and visitors alike.

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

Section 1. **Recitals and Findings**. The Recitals set forth above are incorporated as if fully set forth herein. The findings set forth in such Recitals are hereby deemed findings of fact material to this ordinance:

Section 2. **Findings**. The Town Council hereby finds that entering into an amendment to the Lease for the Center's use of the Premises in its business, to accommodate the Project and for such other purposes as are set forth in such amendment is in the best interest of the health safety and welfare of the Town, its residents and visitors alike.

Section 3. **Approval of Amendment to Lease Agreement**. The Town Council approves the Amendment to Lease Agreement (the "**Amendment**") attached hereto as **Exhibit "A"**, the same being in the best interest of the health safety and welfare of the Town, its residents and visitors alike. The Mayor is hereby authorized to execute the Amendment on behalf of the Town.

Section 4. **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 5. **Savings Clause**. Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision thereof that 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 _____, 2017.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS _____ DAY OF _____, 2017.

TOWN OF CRESTED BUTTE, COLORADO

By: _____
Glenn Michel, Mayor

ATTEST:

_____ (SEAL)
Lynelle Stanford, Town Clerk

EXHIBIT "A"

Amendment to Lease Agreement

[attach form here]

AMENDMENT TO LEASE AGREEMENT

THIS AMENDEMENT TO LEASE AGREEMENT (this "Amendment") is made and entered into this __ day of _____, 2017, by and between the Town of Crested Butte, Colorado, a Colorado home-rule municipal corporation (hereinafter referred to as "Town") and The Center for the Arts, a Colorado non-profit corporation (hereafter referred to as "Center") and is upon the following terms and conditions:

WITNESSETH:

WHEREAS, the Town is the owner of Lots One through Sixteen, inclusive (1 – 16), Block 50, Town of Crested Butte, County of Gunnison, and State of Colorado, together with certain buildings and improvements located thereon (the "Premises"), and

WHEREAS, the Center has incorporated for the purpose of constructing and operating a public arts facility within the Town of Crested Butte, and

WHEREAS, the Town and the Center have entered into a certain Lease Agreement (the "Lease") dated December 23, 2010 for the Center's lease of the Premises, and

WHEREAS, the Center and the Town wish to amend the Lease to account for improvements that the Center will be performing on the Premises, and

WHEREAS, the Town, by and through its Town Council finds that such amendments to the Lease contemplated herein will promote the general welfare of the citizens of the Town of Crested Butte.

NOW, THEREFORE, IN CONSIDERATION of the mutual preambles, covenants, conditions, and promises set forth herein, the Town and Center agree as follows:

1. Amendment to the Lease. This Amendment amends the Lease only in the limited respects set forth herein. In the event of any inconsistency or conflict between this Amendment and the Lease, this Amendment shall in all cases govern and control.

2. Construction Agreement. The Town and the Center have entered into a certain construction agreement (the "Construction Agreement") of even date herewith whereby the Center will make certain improvements to the Premises.

3. Tenant Allowance. The Town shall provide the Center up to $750,000.00 to be used by the Center to cover the hard costs of construction (the "Tenant Improvement Funds"). No amount of Tenant Improvement Funds may be used to cover the Center's operating expenses. The Center may receive such funds, or any amount thereof, during the 12 months immediately following the Town's issuance of the Notice to Proceed. Requests for funds shall be made no more frequently than monthly.

4. Lease Payments. The Center shall make monthly lease payments (the "Lease Payments") on the first day of the succeeding month commencing on the first month that the Center receives any Tenant Improvements Funds. Lease Payments shall be in equal amounts over 12 months based on a schedule of payments that the Town will provide the Center monthly. All Lease Payments shall be made within 12 months of the Center's first receipt of any Tenant Improvement Funds. After 18 months, interest on any unpaid Lease Payments shall accrue at an annual rate that is equal to the Prime Rate as published in the Wall Street Journal (WSJ). Notwithstanding the foregoing, the Center may not continue construction pursuant to the Construction Agreement beyond Phase 1 of its Town-approved construction schedule where any Lease Payments remain past due more than 30 days.

5. New Lease. Upon the completion of construction of Phase 1 pursuant to the Construction Agreement, the Town and the Center shall enter into a new lease (the "New Lease") addressing the Center's going forward tenancy of the Premises following construction. The New Lease shall include, along with other customary terms and conditions, a tenancy for 30 year with three automatic consecutive 10-year renewals. Other terms that shall be included in the New Lease shall be, without limitation, (a) facility management terms addressing the Center's ongoing maintenance and management responsibilities of the Premises; (b) funding terms addressing the Center's financing and fiscal responsibilities for the ongoing maintenance and operation of the Premises.

7. Execution and Ratification. This Amendment shall be ratified by resolution of the Board of Directors of the Center and subscribed and sealed by the President and Secretary of the Center prior to the Town's issuance of a Notice to Proceed under the Construction Agreement.

8. Applicable Law. This Amendment is entered into in the Town of Crested Butte, Gunnison County, Colorado; and it is agreed that the proper jurisdiction and venue of any legal action regarding the interpretation and/or enforcement of this lease, or any document related hereto, shall be the County or District Court of the County of Gunnison and State of Colorado.

9. Attorney's Fees. It is agreed that if any action is brought in a court of law by either party as to the interpretation, enforcement, or construction of this Amendment, or any document related hereto, the prevailing party in such action shall be entitled to judgment for reasonable attorney's fees, as well as all costs incurred in the prosecution or defense of such action.

10. Waiver. The failure of either party to insist in any one or more instances upon compliance with any of the terms, conditions, covenants, or agreements herein contained, or the failure of either party to exercise any option, privilege, or right here in contained shall not be construed as constituting a waiver of such right, option or the right to demand compliance with such term, condition, covenant or agreement.

11. Captions. Captions herein set forth are for convenience only, and in no way define, limit, or modify the intent or language of this Amendment.

12. Severability. If any provision of this Amendment, or the application thereof shall be found invalid, such invalidity shall not affect the validity of the remaining provisions or this Amendment as a whole.

13. Entire Agreement, Amendment, Benefit. This Amendment, as it amends the Lease, represents the entire agreement between the parties, and any amendment or modification hereto shall be in writing, executed by the parties. Upon execution hereof, this Agreement shall become a contract that shall benefit and bind the parties, as well as their successors, assigns and representatives.

IN WITNESS WHEREOF, the parties hereby execute this Amendment effective as of the day and year first set forth above.

TOWN OF CRESTED BUTTE, COLORADO

By _____
Glenn Michel, Mayor

(SEAL)

ATTEST:

_____
Lynelle Stanford, Town Clerk

THE CENTER FOR THE ARTS

By _____
Name: _____
Title: _____

(SEAL)

ATTEST:

_____
Secretary

ORDINANCE NO. 14

SERIES 2017

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL WAIVING THE REQUIREMENTS OF CHAPTER 4, ARTICLE 6 OF THE CRESTED BUTTE MUNICIPAL CODE WITH RESPECT TO THE CENTER FOR THE ARTS' RENOVATION AND EXPANSION PROJECT LOCATED AT LOTS 1-16, BLOCK 50, TOWN OF CRESTED BUTTE

WHEREAS, the Town of Crested Butte, Colorado (the "**Town**") is a home rule municipal corporation 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, pursuant to Section 4-6-10 of the Crested Butte Municipal Code (the "**Code**"), any public improvement project undertaken by the Town, where the contract amount of such project is estimated to be in excess of $25,000.00, shall be put up for bid under the procedures specified in Section 4-6-20 of the Code;

WHEREAS, the Town Council has leased to the Center for the Arts (the "**Center**") certain Town-owned property located at Lots 1-6, Block 50, Town of Crested Butte (the "**Property**") pursuant to a certain Lease Agreement dated December 23, 2010, as amended;

WHEREAS, the Center desires to improve the Property by performing and causing to be performed certain tenant improvement construction services and providing and causing to be provided certain materials in connection with the Property (the "**Project**") pursuant to the terms of a tenant improvements agreement to be entered into with the Town;

WHEREAS, the Town Council desires permit the Center to improve the Property by performing the Project pursuant to the terms of a tenant improvements agreement to be entered into with the Center;

WHEREAS, as the Project is budgeted at or around $_____, in order to enter into a tenant improvements with the Center to improve the Property by performing the Project, the Town Council must first waive the requirements of Chapter 4, Article 6 of the Code; and

WHEREAS, the Town Council hereby finds that the Center improving the Property by performing the Project is the best interest of the Town and the health, safety and general welfare of the residents and visitors of Crested Butte, thus necessitating the adoption of this ordinance waiving the Town's compliance with Chapter 4, Article 6 of the Code.

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

Section 1. **Recitals and Findings**. The Recitals set forth above are incorporated as if fully set forth herein. The findings set forth in such Recitals are hereby deemed findings of fact material to this ordinance.

Section 2. **Waiver of the Requirements Chapter 4, Article 6 of the Code**. The requirements of Chapter 4, Article 6 of the Code are hereby waived.

Section 3. **Construction Agreement**. As a condition to the Town Council's waiver of Chapter 4, Article 6 of the Code, the Town and the Center shall enter into a tenant improvements agreement (the "**Tenant Improvements Agreement**") in substantially the same form as **Exhibit "A**" attached hereto.

Section 4. **Approval of Tenant Improvements Agreement**. The Town Council approves the Tenant Improvements Agreement, the same being in the best interest of the health, safety and welfare of the Town, its residents and visitors. The Mayor is hereby authorized to execute the Tenant Improvements Agreement on behalf of the Town. The Town Manager is hereby authorized to execute one or more Scopes of Work required thereby.

Section 5. **Other Conditions**. The Center may not commence tenant improvement and construction activities on the Property until the Tenant Improvements Agreement and applicable Scope of Work thereunder are executed and all preconditions to the commencement of tenant improvements and construction are satisfied.

Section 6. **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 7. **Savings Clause**. Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision thereof that 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 _____, 2017.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS _____ DAY OF _____, 2017.

TOWN OF CRESTED BUTTE, COLORADO

By: _____
Glenn Michel, Mayor

ATTEST:

_____ (SEAL)

Lynelle Stanford, Town Clerk

EXHIBIT "A"

Tenant Improvements Agreement

[attach form Construction Agreement here]

TENANT IMPROVEMENTS AGREEMENT

THIS TENANT IMPROVEMENTS AGREEMENT (this "**Agreement**") is made and entered into effective this ___ day of _____, 20__ (the "**Effective Date**"), by and between the **TOWN OF CRESTED BUTTE, COLORADO** (the "**Town**"), a Colorado home rule municipal corporation with an address of 507 Maroon Avenue P.O. Box 39, Crested Butte, Colorado 81224 and **THE CENTER FOR THE ARTS** (the "**Center**"; together with the Town, collectively sometimes the "**parties**", individually each a "**party**"), a Colorado non-profit corporation with an address of P.O. Box 1819, Crested Butte, Colorado 81224.

RECITALS:

A. The Town has leased to the Center certain Town-owned property (the "**Property**") pursuant to a Lease Agreement dated December 23, 2010, as amended.

B. The Center desires to improve the Property by performing (or causing to be performed) certain tenant improvements and construction services and providing (or causing to be provided) certain materials in connection with the Property pursuant to this Agreement (the "**Project**").

C. The Town agrees to allow the Center to improve the Property by performing (or causing to be performed) certain tenant improvements and construction services and providing (or causing to be provided) certain materials in connection with the Property pursuant to this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT:

ARTICLE 1
CONTRACT DOCUMENTS

The contract documents (the "**Contract Documents**") consist of the following:

1. This Agreement.

2. One or more scopes of work (each a "**Scope of Work**") defining the Project or a portion thereof. The format of each Scope of Work is attached hereto as **Exhibit "A"**.

3. Any Change Orders (as defined below).

ARTICLE 2
WORK

2.1 Upon receipt of written notice from the Town to proceed (the "**Notice to Proceed**"), the Center shall, on its own or by or through its general contractor, forthwith construct, equip, provide, purchase, pay for, coordinate, manage and furnish on the Project location (the "**Project Site**") the work and materials described in a Scope of Work (the "**Work**").

2.2 Once commenced, the Work shall be performed until completion, without interruption or delay, based on the Project schedule set and milestone forth in the Scope of Work.

2.3 The Center shall, on its own or by or through its general contractor, furnish all labor, supervision, tools, equipment, materials, management and supplies necessary for the performance of the Work described in the Scope of Work.

2.4 The Work shall be performed in a professional and competent manner, consistent with the terms of the Contract Documents. The Center shall, on its own or by or through its general contractor, provide the Town and the Town's representatives and agents access to the Work in progress wherever located.

2.5 The Center, on its own or by or through its general contractor, shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work to the extent that the Contract Documents do not otherwise provide instructions and other requirements concerning such matters. If the Contract Documents give instructions and requirements concerning construction means, methods, techniques, sequences or procedures, the Center shall, on its own or by or through its general contractor, be fully and solely responsible for complying with such instructions.

2.6 The Center, on its own or by or through its general contractor, shall be responsible to the Town for acts and omissions of the Center and its general contractor's employees, subcontractors, agents and representatives, and other persons or entities performing portions of the Work for, on behalf of or through the Center and its general contractor or any of such persons.

2.7 The Center, on its own or by or through its general contractor, shall furnish professional and competent staff and representatives at all times during the performance of the Work. The Center, on its own or by or through its general contractor, shall designate a person who shall be the Center's authorized representative. The Center or its general contractor's authorized representative for a Project shall be as set forth in a Scope of Work.

2.8 Notwithstanding anything in the Agreement to the contrary, those portions of the Work that the Center or its general contractor does not customarily perform with the Center or its general contractor's own personnel may be performed under subcontracts or by other appropriate agreements between the Center or its general contractor's and such subcontractors, representatives or agents; provided that, any such subcontractor performance shall be contemplated in the Scope of Work or a Change Order. The contract for general contractor services between the Center and its general contactor shall be appended to the Scope of Work.

2.9 "**Work Product**" shall mean all deliverables and all intermediate and partial versions thereof, regardless of medium, and all documentation and other materials generated by the Center, is general contractor or its subcontractors in the performance of the Work. The Center and its general contractor acknowledge and agree that all Work Product is work made for hire and is the sole and exclusive property of the Town.

2.10 The Town shall be reimbursed by the Center for costs incurred by the Town because of delays, improperly timed activities or defective construction caused by or on behalf of the Center.

2.11 As components of the Project are completed, such components shall become appurtenances to the Property upon installation.

2.12 Acceptance of the Project or any component thereof as contemplated in the Scope of Work by the Town shall occur following a final inspection. The Town shall not be required to accept any of the Project until the Town determines that: (a) the Project and all components thereof are constructed in accordance with the Town approved plans and specifications; (b) the Center, on its own or by or through its general contractor, has delivered as-built drawings to the Town respecting the Project or any component thereof; and (c) all Project components are free and clear of all liens, encumbrances or other restrictions. Acceptance of the Project or any component thereof shall not constitute a waiver by the Town of the right to draw upon the Surety (as defined below) to remedy any defect nor shall acceptance operate to release the Center from its warranty obligations described herein.

2.13 A certificate of occupancy shall not be issued for the Property or any component thereof until the Town has finally inspected and accepted the Project and all components thereof.

2.14 The Center and its general contractor shall keep their books and records for the Project according to recognized accounting principles and practices, consistently applied. The Center and its general contractor shall make such books and records available for the Town's inspection at all reasonable times. The Center and its general contractor shall retain such books and records for at least five (5) years after completion of the Project.

2.15 The Center and its general contractor shall promptly pay all bills for labor, suppliers and material performed and furnished in connection with the Project.

ARTICLE 3
SUBSTANTIAL COMPLETION

3.1 The Center, on its own or by or through its general contractor, shall achieve substantial completion ("**Substantial Completion**") of the Work as delineated in the Scope of Work (the "**Time of Substantial Completion**"). Substantial Completion is defined as when the Work is sufficiently complete to be issued a certificate of occupancy. This includes the accepted final inspections by the applicable building authorities and the receipt of all lien releases. The Time of Substantial Completion shall be set forth in the Scope of Work, as may be amended and

modified from time to time by Change Order. Any time limits set forth in this Agreement or a Scope of Work are of the essence. By executing this Agreement and the Scope of Work, the Center confirms that the Time of Substantial Completion is reasonable for performance of the Work.

3.2 Within ten (10) business days after Substantial Completion of the Work as described in a written notice from the Center, on its own or by or through its general contractor, to the Town, the Town may provide the Center or its general contractor with an itemized list of items which, in the Town's opinion, do not conform to the Scope of Work (the "**Punch List**"). One or more Punch Lists may be provided to the Center or its general contractor in connection with the Work as contemplated in the Scope of Work. All Punch List items shall be remedied promptly by the Center, on its own or by or through its general contractor, at its sole cost and expense.

ARTICLE 4
COST OF THE WORK

The term "**Cost of the Work**" shall mean any and all costs whatsoever necessarily incurred by the Center in the performance of the Work. The Cost of the Work, including any increase affected by Change Order, shall be the sole and absolute responsibility of the Center.

ARTICLE 5
CHANGES IN THE WORK

5.1 The Center, on its own or by or through its general contractor, without nullifying any portion of the Contract Documents, may make changes in the Work, either to decrease, increase, modify or otherwise change the Work, by giving the Town a written change order request (each a "**Change Order Request**") setting forth in detail the nature of the change. Upon receipt of a Change Order Request, the Town shall furnish to the Center or its general contractor a proposal setting forth in reasonable detail the Town's agreed-to changes, the adjustment to the Time of Substantial Completion attributable to the changes set forth in such Change Order Request and any other matters that affect the performance of the Center or its general contractor under the Scope of Work. If the Town approves in writing such proposal by the Center or its general contractor, such Change Order Request and such proposal shall constitute a change order (each a "**Change Order**") and the Time of Substantial Completion and any other Center or general contractor performance obligations under the Scope of Work shall be amended accordingly. All costs associated with implementing any Change Order Request from the Center or its general contractor shall be included within the Cost of the Work.

5.2 The format of a Change Order shall be the same general format of a Scope of Work and is attached hereto also as **Exhibit "A"**.

ARTICLE 6
TAXES

6.1 Unless otherwise provided in a Scope of Work, the Center shall pay or cause to be paid all sales, consumer, use and other similar taxes respecting the Work.

6.2 The Center shall pay or cause to be paid all taxes and all contributions imposed or required by any law for any employment insurance, pensions, old-age retirement funds or similar purposes.

6.3 The Center and its general contractor accept liability for all taxes and contributions required of it by any Federal or state requirement.

6.4 The obligations set forth in this Article 6 shall survive the expiration or earlier termination of the Contract Documents.

ARTICLE 7
NO LIENS

7.1 The Center, on its own or by or through its general contractor, shall cause the property that is the subject of the Work to remain free from any and all liens and claims arising out of the Work performed and materials supplied for a Project. The Center, on its own or by or through its general contractor, shall obtain lien releases from all contractors, suppliers and materialman at each phase and of each component of the Project.

7.2 The Center, on its own or by or through its general contractor, shall be responsible for the satisfaction or payment of any liens filed or placed of record against the property that is the subject of the Work that arise from the performance of the Work and the provision of materials by any contractor, supplier or materialman.

7.3 Should any such lien or claim of lien be filed against the property that is the subject of the Work, the Center, on its own or by or through its general contractor, shall cause the same to cancelled and discharged of record by bond or otherwise within ten (10) days after notice of the filing thereof. Should the Center or its general contractor fail to discharge such lien within such ten (10)-day period, then the Town may discharge the same, in which event, the Center or its general contractor shall pay the Town, on demand, the amount of the lien or the amount of the bond, plus all costs and expenses incurred by the Town in connection therewith, inclusive of reasonable attorneys' fees and costs.

ARTICLE 8
SAFETY; DAMAGE TO PROPERTY

8.1 The Center, on its own or by or through its general contractor, shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work. The Center, on its own or by or through its general contractor, shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (i) employees, subcontractors and other persons on the Project Site who may be affected thereby; (ii) the Work, materials and equipment to be

incorporated therein provided by or through the Center or its general contractor; and (iii) other property at the site or adjacent thereto.

8.2 The Center, on its own or by or through its general contractor, shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities required of it bearing on safety of persons and property and their protection from damage, injury or loss. The Center or its general contractor shall promptly remedy damage and loss to property caused in whole or in part by the Center, its general contractor or anyone directly or indirectly employed by or through the Center or its general contractor, or by anyone for whose acts the same may be liable and for which the Center or its general contractor is responsible.

ARTICLE 9
COMPLIANCE WITH LAWS

The Center, on its own or by or through its general contractor, shall be responsible for compliance with any building or other applicable laws attributable to the Project and the manner in which the Work is performed by the Center, its general contractor or any of its subcontractors. Notwithstanding the foregoing, the Center, on its own or by or through its general contractor, shall promptly notify the Town of any violations of laws that Center or its general contractor becomes aware of relative to the Project.

ARTICLE 10
CENTER REPRESENTATIONS AND WARRANTIES

10.1 The Center and its general contractor represent and warrant that it is duly qualified to do business and is in good standing in the locations in which the Work is performed.

10.2 The Center and its general contractor represent that it has the full power and authority to execute, deliver and perform its obligations under the Contract Documents.

10.3 The Center, on its own or by or through its general contractor represents that it will comply with applicable laws, ordinances, rules, regulations or orders issued by any public or governmental agency, body or authority, whether Federal, state, local or otherwise, and has obtained all applicable permits and licenses required of such party in connection with its obligations under the Contract Documents.

10.4 The representations and warranties set forth in this Article 10 shall survive the expiration or earlier termination of the Contract Documents.

ARTICLE 11
INDEMNIFICATION

11.1 To the fullest extent permitted by law, the Center and its general contractor shall indemnify, defend and hold harmless (i) the Town, (ii) the Town's electeds, officers, consultants, agents, employees, contractors, insurers and attorneys (iii) all parties listed as additional insureds, their officers, directors, members, managers, agents, employees, partners, subsidiaries

and affiliates (items (i), (ii) and (iii) are hereinafter collectively the "**Town Indemnitees**") from any and all claims, suits, damages, liabilities, reasonable professional fees, including reasonable attorneys' fees, costs, court costs, expenses and disbursements (collectively, "**Claims**") related to death, personal injuries or property damage (including loss of use thereof), alleged or actual infringement or violation of any intellectual or proprietary rights brought or assumed against any of the Town Indemnitees by any person or firm, arising out of or in connection with or as a result of or consequence of the performance of the Work of the Center, on its own or by or through its general contractor, as well as any additional work, extra work or add-on work, whether caused in whole or in part by the Center, its general contractor or any person or entity employed thereby, either directly or indirectly, including any subcontractors thereof and their employees. The parties expressly agree that this indemnification covenant contemplates (x) full indemnity in the event of liability imposed against the Town Indemnitees without negligence thereby and solely by reason of statute, operation of law or otherwise, and (y) partial indemnity in the event of any actual negligence on the part of the Town Indemnitees either causing or contributing to the underlying claim in which case indemnification will be limited to any liability imposed over and above that percentage attributable to actual fault thereby whether by statute, by operation of law or otherwise.

11.2 Where partial indemnity is provided under this Agreement, costs, professional fees, attorneys' fees, expenses, disbursements, etc. shall be indemnified on a pro rata basis. Indemnification under this Agreement shall operate whether or not the Center and its general contractor has placed and maintained insurance. Attorneys' fees, court costs, expenses and disbursements shall be defined, without limitation, to include those fees, costs, etc., incurred in defending the underlying claim and those fees, costs, etc., incurred in connection with the enforcement of this Agreement by way of, without limitation, cross-claim, third-party claim, declaratory action or otherwise.

11.3 The rights and obligations set forth in this Article 11 shall survive the expiration or earlier termination of the Contract Documents.

ARTICLE 12
IMMUNITY

The Center and its general contractor acknowledge and agree that the Town is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations (currently $350,000 per person and $990,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as from time to time amended, or otherwise available to the Town, its elected and appointed officials, employees, insurers, insurance pools, attorneys, agents, contractors and representatives.

ARTICLE 13
SURETY

13.1 The estimated cost (the "**Project Estimate**") of constructing the Project is set forth in the Scope of Work attached hereto. Prior to issuance of a Notice to Proceed, the Center, on its

own or by or through its general contractor, shall post irrevocable standby letters of credit issued by a qualified Colorado lending institution on terms acceptable to the Town in the amount of (a) $ _____ as a guarantee of the Center and its general contracator's performance under this Agreement, and (b) $ _____ as a guarantee the Center, on its own or by or through its general contractor's, warranty obligations under this Agreement (each a "**Surety**"). Each Surety shall remain in effect and shall be renewed by the Center or its general contractor as necessary until released by the Town. The Town shall use each Surety or any funds realized from such Surety for the purposes of completing the Project, correcting defects in or associated therewith, curing any Event of Default or addressing any warranty issue during the Warranty Period (as defined below).

13.2 Each Surety shall be released and returned to the Center or the general contractor without interest thereon at such time as, as applicable, the Town has accepted the Project or component thereof, and the Warranty Period has run with no outstanding claims. The Town may, in its sole discretion issue partial releases of each Surety provided that at all times such Surety exceeds 120% of the estimated cost to complete the Project. The Surety for the warranty shall not be released until the Warranty Period has expired. There shall be no reduction in the amount of the Surety if the Center, on its own or by or through its general contractor, is in default. All requests for partial releases shall be in writing to the Town Manager and shall be for a reduction of at least 10% of the initial Surety.

ARTICLE 14
INSURANCE

The Center, on its own or by or through its general contractor, shall obtain and maintain insurance coverage that meets the requirements of **Exhibit "B"** (the "**Insurance Requirements**") attached hereto. Such insurance shall be kept in full force and effect as provided in the Insurance Requirements. Before proceeding with any Work, the Center or its general contactor shall furnish to the Town certificates of insurance executed by its insurance provider evidencing the insurance coverage contained in the Insurance Requirements.

ARTICLE 15
TERMINATION

15.1 The Town reserves the right to terminate all or any part of the Contract Documents on written notice to the Center if the Center, on its own or by or through its general contractor: (i) fails to prosecute the Work to completion thereof in a diligent, efficient, workmanlike, skillful and careful manner and in accordance with the Contract Documents; (ii) any breach of the requirements of Article 14; or (iii) breach of any term or provision of the Contract Documents and does not correct such breach within thirty (30) days of receipt of written notice from the Town specifying such breach, except that if such breach is not capable of being cured within thirty (30) days, the Center, on its own or by or through its general contractor, shall have such reasonable additional amount of time as may be reasonably required as long as the Center is promptly and diligently attempting to correct the same (each an "**Event of Default**").

15.2 In the event of termination by the Town, the Center and the general contractor shall transfer the Project and all components of the Work and all contracts and funds held by the Center to be used in connection therewith to the Town, by instrument required by the Town. The foregoing requirements is in consideration for the Town allowing the Center, on its own or by or through its general contractor to perform the Project. The rights and obligations set forth in this Article 15 shall survive the expiration or earlier termination of the Contract Documents.

ARTICLE 16
REMEDIES

16.1 Upon the occurrence of Event of Default, the Town shall have one or more of the following remedies: (i) recover any and all damages due to the Event of Default plus expenses, reasonable attorneys' fees and costs; (ii) terminate any of the Contract Documents; (iii) require specific performance of the Center and its general contractor; (iv) pursue any and all claims at law and in equity; (v) pursue self help and cure of all Events of Default; and/or (vi) require the Center and its general contactor to transfer to the Town all funds on hand to be used for the Costs of the Work.

16.2 If the Center, on its own or by or through its general contractor, fails to promptly correct Work which is not in accordance with the requirements of the Contract Documents, or fails to carry out the Work or its other obligations in accordance with the terms of the Contract Documents, the Town may issue a written order to the Center and its general contractor to immediately suspend performance of the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Town to suspend the Work shall not, in and of itself, give rise to a duty on the part of the Town to exercise this right for the benefit of the Center or its general contractor or any other person or entity.

16.3 If the Center, on its own or by or through its general contractor, fails to carry out the Work in accordance with the terms of the Contract Documents, or fails to perform a provision of the Contract Documents, the Town, after prior written notice to the Center or its general contractor and a reasonable opportunity under the circumstances for the Center, on its own or by or through its general contractor, to correct such deficiencies, and without prejudice to any other remedy the Town may have, may make good and correct such deficiencies by award of separate contracts in connection with such portions of the Project, and the Center, on its own or by or through its general contractor, shall pay the Town on demand such cost and expenses incurred by the Town, including reasonable attorneys' fees and associated costs incurred in connection therewith.

16.4 The rights and remedies reserved to the Town in this Agreement shall be cumulative and in addition to all other or further remedies provided at law or equity. All remedies afforded may be enforced cumulatively and concurrently.

16.5 The rights and obligations set forth in this Article 16 shall survive the expiration or earlier termination of the Contract Documents.

ARTICLE 17
WARRANTY

17.1 The Center, on its own or by or through its general contractor, represents and warrants to the Town that all materials included in the Work under this Agreement will be new and of good quality unless otherwise identified in a Scope of Work.

17.2 All Work shall be performed in a good and workmanlike manner consistent with the highest industry standards.

17.3 The Center, on its own or by or through its general contractor, represents and warrants that the Project shall remain free from defects in materials and workmanship for a period of two (2) years from the date that a certificate of occupancy is issued for the Project (the "**Warranty Period**"). During such two-year Warranty Period, any defect with respect to the Project shall be repaired, or the defective component replaced, at the Town's option, at the Center or its general contractor's sole cost and expense.

17.4 On receiving notification from the Town, the Center, on its own or by or through its general contractor, agrees to remedy, repair or replace forthwith, without cost to the Town and to the Town's reasonable satisfaction, all defects, damages or material imperfections appearing in the Work within a period of two (2) years after issuance of the certificate of occupancy for the Project.

17.5 The Center, on its own or by or through its general contractor, shall obtain from all its subcontractors warranties of no less than two years on all materials and workmanship relating to the Work.

17.6 The Center, on its own or by or through its general contractor, shall assign to the Town on a pass-through basis any warranty or guaranty of materials or workmanship relating to the Work from any supplier, contractor, materialmen or other third parties.

17.7 The rights and obligations set forth in this Article 17 shall survive the expiration or earlier termination of the Contract Documents.

ARTICLE 18
ASSIGNMENT

Except as otherwise provided herein, the Center may not assign or otherwise transfer any of its obligations or rights hereunder, any such transfer being void ab initio

ARTICLE 19
TABOR; COLORADO CONSTITUTION, ARTICLE X, SECTION 20

Notwithstanding other provisions in this Agreement to the contrary, the parties understand and acknowledge that the Town is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The parties do not intend to violate the terms and requirements of

TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the parties are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the parties' current fiscal period ending upon the next succeeding December 31. Financial obligations of the parties payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with ordinances and resolutions of the responsible party and other applicable law.

ARTICLE 20
PROHIBITIONS ON PUBLIC CONTRACTS FOR SERVICES

20.1 The Center certifies that it shall comply with the provisions of section 8-17.5-101 *et seq*., C.R.S. The Center shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a subcontractor that fails to certify to the Center that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

20.2 The Center represents, warrants, and agrees (i) that it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify or the Department Program; (ii) that the Center is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while services under this Agreement are being performed; and (iii) if the Center obtains actual knowledge that a subcontractor performing work under this Agreement for services knowingly employs or contracts with an illegal alien, the Center shall be required to: (a) notify the subcontractor and the Town within three days that the Cenetr has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and (b) terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to 8-17.5-102(2)(b)(III)(A) the subcontractor does not stop employing or contracting with the illegal alien; except that the Center shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

20.3 The Center further agrees that it shall comply with all reasonable requests made in the course of an investigation under section 8-17.5-102(5), C.R.S. by the Colorado Department of Labor and Employment. If the Center fails to comply with any requirement of this provision or section 8-17.5-101 et seq., C.R.S. the Town may terminate this Agreement for breach and the Center shall be liable for actual and consequential damages to the Town.

ARTICLE 21
RELATIONSHIP

21.1 The Center and its general contractor shall be independent contractors. The Town shall have the right to insist that the Center, on its own or by or through its general contractor,

carry out all the provisions and requirements of the Contract Documents; however, the Center, on its own or by or through its general contractor, shall have the complete and exclusive control and direction over the method and manner of obtaining results.

21.2 The Center, its general contractor and the Town are independent contracting parties and nothing in the Contract Documents shall make either party the agent or legal representative of the other for any purpose whatsoever, nor do the Contract Documents grant either party any authority to assume or create any obligation on behalf of or in the name of the other party.

ARTICLE 22
SIGNAGE

Neither the Center, on its own or by or through its general contractor, nor any person acting by or through the Center or its general contrcator hereunder shall be permitted to place signage at the Project Site except upon prior written approval of the Town.

ARTICLE 23
WAIVER

No consent or waiver, express or implied, by either party to this Agreement of any breach or default by the other in the performance of any obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default by such party hereunder. Unless the Contract Documents specify a time period for notice of a particular claim, failure on the part of any party hereto to complain of any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute waiver of the rights of such party hereunder. Inspection or failure of the Town to perform any inspection hereunder, shall not release the Center, on its own or by or through its general contractor, of any of its obligations hereunder unless the Town accepts such portion of the Work in writing.

ARTICLE 24
CONFLICTS

In case of conflict between any provision of this Agreement and any provision in any other Contract Document, the provisions of this Agreement shall in cases control and prevail.

ARTICLE 25
ENTIRE AGREEMENT; AMENDMENT

All of the Contract Documents form the entire agreement of the parties with respect to the subject matters and transactions contemplated therein and are as fully a part of the agreement of the parties as if attached to this Agreement or repeated herein. All prior negotiations, representations and agreements, whether written or oral, with respect to the transactions contemplated herein not incorporated herein are hereby cancelled and superseded hereby. The

Contract Documents may be modified or amended only by a document duly executed on behalf of the parties hereto.

ARTICLE 26
SURVIVAL

All terms, conditions and agreements contained in the Contract Documents of an ongoing nature shall survive the expiration or earlier termination of the Contract Documents. Any provisions that are expressly stated to survive the expiration or earlier termination of the Contract Documents shall be enforced accordingly

ARTICLE 27
NOTICES

27.1 All notices, demands and requests required to be given by either party to the other shall be in writing, and with a copy given to counsel for each such party as provided below. All notices, demands, and requests shall be delivered personally or sent by electronic mail (e-mail), nationally recognized overnight courier, certified or registered mail, return receipt requested, postage prepaid, or via facsimile, addressed to the parties at the addresses set forth below or at such other addresses as the parties may designate in writing delivered pursuant to the provisions hereof. Any notice when given as provided herein shall be deemed to have been delivered on the day of delivery if delivered personally, on the first business day following the confirmation of sending of an e-mail when sent by electronic mail, on the first business day following deposit with the courier service when delivered by overnight courier, three business (3) days subsequent to the date that said notice was deposited with the United States Postal Service, or on the first business day following the date of confirmation of receipt when delivered by facsimile.

27.2 To the Town:

Town of Crested Butte
507 Maroon Avenue
P.O. Box 39
Crested Butte, CO 81224
Attn: Town Manager

with a copy in case of a dispute to:

Town of Crested Butte
507 Maroon Avenue
P.O. Box 39
Crested Butte, CO 81224
Attn: Town Attorney

To the Center:

To the Center's general contractor:

27.3 By giving the other party at least five (5) days written notice thereof, the parties shall have the right to change their respective addresses or to whom notices are to be sent.

ARTICLE 28
SEVERABILITY

If any term of the Contract Documents is determined to be invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule and the remaining provisions of the Contract Documents shall remain in full force and effect.

ARTICLE 29
PREVAILING PARTY

In the event of any dispute between the Center, on its own or by or through its general contractor, and the Town in connection with the Contract Documents, the non prevailing party shall pay to the prevailing party all costs and expenses, including, without limitation, reasonable attorneys' fees, costs and expenses, incurred in such dispute. This Article 29 is intended to be severable from the other provisions of this Agreement, and the prevailing party's rights under this Article shall not merge into any judgment and any judgment shall survive until all such fees and costs have been paid.

ARTICLE 30
GOVERNING LAW; VENUE

The Contract Documents shall be construed, performed and enforced in accordance with, and governed by, the laws of the State of Colorado (without giving effect to the principles of conflicts of laws thereof). Any legal action or proceeding with respect to the Contract Documents or the transactions contemplated hereby and thereby may be brought in the courts of the State Colorado sitting in Gunnison, Colorado, and by execution and delivery of this Agreement, each of the parties consents to the jurisdiction of those courts. Each of the parties irrevocably waives any objection, including any objection to the laying of venue or based on the grounds of *forum non conveniens*, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of the Contract Documents or the transactions contemplated hereby and thereby.

ARTICLE 31
HEADINGS; COUNTERPARTS; TELECOPY

The headings of all sections and subsections herein are included solely for convenience of reference and shall not control the meaning or interpretation of any of the provisions of the Contract Documents. Each of the Contract Documents may be executed in one or more counterparts, each of which, when taken together, shall constitute one and the same instrument. For purposes of enforcement of the terms of the Contract Documents, photocopy and facsimile reproduced signatures shall be deemed to be originals.

ARTICLE 32
CONSTRUCTION

Each of the parties hereto agrees that the Contract Documents represents an arms' length transaction and are the product of negotiations between sophisticated parties and individuals, all of whom were represented by legal counsel, and each of whom had an opportunity to participate in, and did participate in, the drafting of each provision hereof and thereof. Accordingly, ambiguities in the Contract Documents, if any, shall not be construed strictly in favor of or against any party, hereto, but rather shall be given a fair and reasonable construction without regard to the rule of *contra proferentum*.

ARTICLE 33
NO THIRD PARTY RIGHTS

Except as expressly provided herein, the Contract Documents are for the benefit of the parties hereto and are not entered into for the benefit of, and shall not be construed to confer any benefit upon, any other party or entity.

ARTICLE 34
BINDING AGREEMENT

The Contract Documents and the rights, benefits and obligations contained herein and therein shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

ARTICLE 35
PRONOUNS

References to any term hereof including by use of a pronoun shall be deemed to include the masculine, feminine, singular, plural, individuals, etc.

ARTICLE 36
INCORPORATION

All exhibits attached hereto are by reference hereby incorporated herein and made a part hereof.

IN WITNESS WHEREOF, this Agreement is entered into by the parties' authorized representatives as of the Effective Date.

TOWN:

TOWN OF CRESTED BUTTE, COLORADO,
a Colorado home rule municipal corporation

By: _____
Name: _____
Title: _____

By: _____
_____, Town Clerk

(ATTEST)

CENTER:

THE CENTER FOR THE ARTS,
a Colorado non-profit corporation

By: _____
Name: _____
Title: _____

EXHIBIT "A"

Scope of Work/Change Order
(Format only)

THIS SCOPE OF WORK/CHANGE ORDER is made and entered into this ___ day of _____, 20__, with an effective date of _____, 20__ (the "**Effective Date**"), by and between the **TOWN OF CRESTED BUTTE, COLORADO** (the "**Town**"), a Colorado home rule municipal corporation with an address of 507 Maroon Avenue P.O. Box 39, Crested Butte, Colorado 81224 and **THE CENTER FOR THE ARTS** (the "**Center**"; together with the Town, collectively sometimes the "**parties**", individually each a "**party**"), a Colorado non-profit corporation with an address of P.O. Box 1819, Crested Butte, Colorado 81224.

This Scope of Work/Change Order is incorporated into that certain Construction Agreement entered into by and between the Center and the Town and dated _____, 20__.

1. Project Description.

2. Scope of Work.

   (i) Plans and Specifications.

   (ii) Project Estimate.

   (iii) Project Schedule.

   - Time of Substantial Completion
   - Other Milestones

   (iv) Materials.

   (v) Permits.

   - Approval Conditions

   (vi) Assumptions.

   (vii) Other.

3. Authorized Representative(s).

4. General Contractor.

5. Center Responsibilities.

6. Assumptions.

7. Inspection Plan.

8. Acceptance Plan.

9. Approved General Contractor Agreement.

IN WITNESS WHEREOF, this Scope of Work/Change Order is entered into by the parties' authorized representatives as of the Effective Date.

TOWN:

TOWN OF CRESTED BUTTE, COLORADO,
a Colorado home rule municipal corporation

By: _____
Name: _____
Title: _____

By: _____
_____, Town Clerk

(ATTEST)

CENTER:

THE CENTER FOR THE ARTS,
a Colorado non-profit corporation

By: _____
Name: _____
Title: _____

EXHIBIT "B"

Insurance Requirements

1. **General Insurance Provisions**.

During the term of the Agreement, without interruption, and for products and completed operations coverage notwithstanding final acceptance of the Work by the Town, the Center shall provide, pay for, and maintain in full force and effect the insurance outlined herein for coverages at not less than the prescribed minimum limits of liability, covering the Center's activities, those of any and all sub-subcontractors, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. If the Work involves or is anticipated to involve hazardous operations including, but not limited to lead, pollution or asbestos liability, special insurance must be implemented for same, and the Center will be responsible for the premium. All insurance shall be provided by financially responsible insurance carriers authorized to do business in the State of Colorado and rated by A.M. Best Rating Service as A-, IX or better. Before starting the Work, the Center shall furnish the Town (1) ISO ACORD binders and a certificate of insurance from the Center's insurance carriers certified by a duly authorized representative of its insurer that at least the minimum coverages required herein are in effect and specifying that the liability coverages are written on an occurrence form and that the coverages shall not be canceled, non-renewed, or materially changed by endorsement or through issuance of another policy or policies of insurance without thirty (30) days prior written notice to the Town, (2) evidence which has been directly provided by the insurers, setting forth the policy limits, the date of inception, and information concerning the Additional Insureds concerning the coverages listed below. The Town has the right, but not the duty to receive copies of all insurance policies upon request. Failure of the Town to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the Town to identify a deficiency from evidence provided shall not be construed as a waiver of the Center's obligation to maintain such insurance. The acceptance of delivery by the Town of any certificate of insurance delivered by the Center evidencing the required coverages and limits does not constitute approval or agreement by the Town that the insurance requirements have been met or that the insurance policies shown in the certificates of insurance are in compliance with the requirements of this Agreement. The Town must be provided updated renewal certificates and required endorsements as appropriate. Failure of the Town to request renewal certificates or endorsements does not relieve the Center from the obligation to maintain such insurances as required herein. The Town shall have the right, but not the obligation, to prohibit the Center or any sub-subcontractor from entering the Property until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the Town. Any failure by the Center or its agent to procure the coverages required herein shall be considered a material breach of the Center's obligations under this Agreement, and the Town expressly reserves the right to seek remedy against the Center and its agent for all costs and expenses incurred as a result of the breach. If upon presentation of a claim against the Town, the the Town or the Town Indemnitees, the Center fails to abide by the indemnification requirements set forth herein and/or the Center's insurers fail or refuse to provide a defense and full, unconditional indemnity in accordance with the terms and conditions as provided herein, the Town shall have all remedies available herein. In addition, the Center's failure to maintain the

required insurance may result in termination of this Agreement at the Town's sole and absolute option. If any of the coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted to the town on issuance of a certificate of occupancy. All coverages required of the Center shall be primary and non-contributory over any insurance or self-insurance program carried by the Town. By requiring insurance, the Town does not represent that coverage and limits shall necessarily be adequate to protect the Center or the Town. Insurance affected or procured by the Center shall not reduce or limit the Center's contractual obligation to indemnify and defend Town for claims or suits which result from or are connected with the Center's performance of this Agreement. The Center and the Town agree to fully cooperate, participate and comply with all reasonable requirements and recommendations of the insurers and insurance brokers issuing or arranging for issuance of the policies required herein, in all areas of safety, insurance program administration, claim reporting and investigating and audit procedures. If the Center has any deductibles or self-insured retentions under any of the following required coverages (which deductibles and/or self-insured retentions exceed any specific deductible or self-insured retention maximum set forth herein, such deductibles and/or self-insured retentions shall subject to the prior written approval of the Town), the Center must identify on the certificate of insurance the nature and amount of such deductibles or self-insured retentions and provide satisfactory evidence of financial responsibility for such obligations. All deductibles or self-insured retentions shall be the Center's sole responsibility. The Center shall cause all sub-subcontract agreements to include the indemnification and insurance procurement obligation set forth herein (excepting umbrella, builder's risk and pollution liability coverages) so as to ensure that the Town and the Town Indemnitees shall have the same protection from sub-subcontractors of any tier as is afforded by the Center. The Center shall promptly notify the Town of any and all accidents, occurrences or incidents resulting in injury to the Center's employees, employees of any sub-subcontractor, to any third parties or the property of another. The Center shall submit to the Town a written report of such accidents, occurrences or incidents and shall likewise submit to the Town all reports furnished to the Center's insurance company, including but not limited to the C-2 or similar Report of Employer Accident and Injury. The Center hereby expressly agrees to comply with all applicable Federal and State rules, laws and regulations including but not limited to OSHA and the Industrial Code of the State in which the Property is located. Certificates, notices of cancellation, or changes, etc. are to be sent by the Center directly to the Town as follows:

Town of Crested Butte
507 Maroon Avenue
P.O. Box 39
Crested Butte, CO 81224
Attn: Town Manager

2. **Liability Insurance**.

The Center shall maintain commercial general liability insurance covering all operations by or on behalf of the Center on an occurrence basis against claims for personal injury (including bodily injury and death) and property damage (including loss of use). Such insurance shall have the following minimum limits (and apply on a per Project basis) and coverages:

Minimum limits:

(a) combined limit for bodily injury, personal injury and property damage of at least $1,000.00 per occurrence;

(b) combined limit for bodily injury, personal injury and property damage of at least $2,000,000 general aggregate with dedicated limits per property or Project Site, which dedicated limits per Property or Project site must be evidenced on the certificate; and

(c) products and completed operations aggregate.

Coverages:

(a) Commercial general liability form (occurrence form)

(b) Products and completed operations coverage notwithstanding final acceptance of the Work by the Town

(c) Blanket contractual liability

(d) Broad form property damage

(e) Severability of interest

(f) Underground explosion and collapse coverage

(g) Completed operations

(h) Personal injury

(i) Incidental medical malpractice

(j) Specific waiver of subrogation

(k) Joint venture as named insured (where applicable)

(l) Additional insured endorsement

(m) A cross liability endorsement.

No portion of these limits may be satisfied through any form of self-insurance or self-insured retentions. Any deductibles greater than $5,000.00 must be pre-approved. The Center agrees that the above limits, if required by the Town, will be revised to coincide with the Town's requirements. Coverage is to be issued on a form at least as broad as ISO Form CG0001 (2001) and must include the following terms and conditions:

- Comprehensive Form
- Premises/Operations Hazard- must cover all work to be performed by the Center and their subcontractors
- Contractual Liability written specifically for this contract
- Products/Completed Operations
- Broad Form Property Damage including completed operations
- Independent Owners
- Blanket Explosion, Collapse & Underground Property Damage Liability
- Employees as additional insureds
- Supplementary payments in addition to limit of liability
- Blanket Additional Insured Endorsement providing coverage for the Town and its electeds, officers, consultants, agents, employees, contractors, insurers and attorneys on a primary non-contributory basis.
- Additional Insured Endorsement CG 2010 11/85 or CG2010 10/01 in conjunction with CG2037 10/01. Coverage to include completed operations arising out of "your work"

- Any deductible clauses, exclusions or special endorsements must be approved by the Town prior to inclusion
- Insuring agreement to read "to pay on behalf of"
- Waiver of subrogation for the Town, its Town's electeds, officers, consultants, agents, employees, contractors, insurers and attorneys
- Severability of interests (cross liability)
- Coverage shall not include any exclusions unacceptable to the Town.

3. **Umbrella Excess Liability Insurance**.

The Center shall maintain umbrella/excess liability insurance on an occurrence basis in excess of the underlying insurance described herein which is at least as broad as each and every one of the underlying policies. The amounts of insurance required herein may be satisfied by the Center 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 each of the limits specified herein when added to the limit specified herein. Such insurance shall have the following minimum limits and coverages:

Minimum limits: $2,000,000 combined single limit and aggregate limit

Coverages:
(a) Additional insured endorsement
(b) Pay on behalf of wording
(c) Concurrency of effective dates with primary
(d) Blanket contractual liability
(e) Punitive damages coverages (where not prohibited by law)
(f) Aggregates apply where applicable in Primary
(g) Care, custody, and control-follow form primary
(h) Drop down feature
(i) Include Follow Form Waiver of Subrogation
(j) Include Follow Form Additional Insured Primary/Non-Contributory basis
(k) Follow Form Per Project Aggregate

4. **Center's Builder's Risk Insurance/Installation Floater**.

The Center shall furnish to The Town certificates of insurance and other required documentation evidencing the following coverage which shall provide for the interests of the Town to be named as loss payees and shall contain a provision requiring the insurance carriers to waive their rights of subrogation against all the Town Indemnities named in this Agreement.

Named Insured:	Town and Center	
Limits of Liability:	Cost of the Work	
Deductible:	$5,000 per occurrence	
Coverage Including:	i.	Sixty (60) days' notice of cancellation, non-renewal or material policy change

ii. "All Risk" of loss including flood, earthquake, and earth movement
iii. Replacement cost valuation
iv. Transit limit to off-site storage limit equal to $250,000
v. Agreed amount clause
vi. Property in the insured's care, custody and control covered
vii. Testing/processing shall be a covered peril
viii. Electrical Injury/damage shall be covered peril
ix. Waive rights of subrogation against the Town
x. Coverage to apply until machinery/equipment, etc., has been installed and been accepted as satisfactory, coverage to apply after materials have become a physical part of realty
xi. Errors, omissions or deficiency in design, workmanship or materials shall be considered a covered peril
xii. Exclusion pertaining to property while it is on premises, owned, leased or operated by the insured shall be deleted
xiii. Full theft coverage without exception
xiv. Permission granted to complete and occupy
xv. Eliminate underground exclusion
xvi. Standard city wording or special cancellation clauses, when mandated

5. **Workers Compensation Insurance**.

The Center shall maintain workers' compensation and employer's liability insurance. Such insurance shall provide limits in accordance with the laws in the state in which the Property is located, but in no event less than $500,000 on an occurrence basis with the following minimum limits and coverages:

Minimum limits:
(a) Workers' compensation - statutory limit
(b) Employer's liability:
(i) $500,000 bodily injury for each accident
(ii) $500,000 bodily injury by disease for each employee
(iii) $500,000 bodily injury disease aggregate.

6. **Automobile Liability Insurance**.

The Center shall maintain business auto liability insurance covering liability arising out of any auto (including owned, hired and non-owned autos) used in the performance of the Work. Such insurance shall have the following minimum limits and coverages:

Minimum limits: $1,000,000.00 combined single limit each accident on an occurrence basis.

Coverages:

(a) Additional insured endorsement or the Town, its electeds, officers, directors, consultants, agents, employees, contractors, insurers and attorneys

(b) Specific waiver of subrogation

(c) Contractual liability

(d) Contractual exclusion pertaining to operations performed within 50' of railroad must be eliminated

(e) Additional Insured coverage for the Town, its electeds, officers, consultants, agents, employees, contractors, insurers and attorneys

(f) All insurers must agree to waive their rights of subrogation against the Town, its elected, officers, consultants, agents, employees, contractors, insurers and attorneys.

7. **Pollution Liability Insurance**.

When remediation or abatement, or lead is included in the Work, the Center shall furnish evidence that it has provided pollution liability insurance covering all lead and pollution operations with limits each occurrence combined single limit for bodily injury, property damage and clean-up costs including completed operations, broad form contractual (including coverage for third party over claims), and independent contractors coverage, as provided for below. Completed operations coverage shall remain in effect for no less than five (5) years after completion of the Work. All insurers agree to waive their rights of subrogation against the Additional Insureds, the Town, its electeds, officers, consultants, agents, employees, contractors, insurers and attorneys.

The Town and the Additional Insureds shall be named as an additional insured and the policy shall have a retroactive date before the start of the Work. Such insurance shall have the following minimum limits of coverage, and include the following terms and conditions:

The limits of coverage shall not be less than $1,000,000 per occurrence and $2,000,000 in the aggregate.

- Defense costs must be payable in addition to limit of liability
- Any deductibles, clauses, exclusions or special endorsements must be approved by The Town prior to inclusion.
- Coverage must include on-site, off-site and in-transit exposures.
- Policy to read “to pay on behalf of” (in lieu of indemnify).
- Must include loading and unloading coverages.
- Must be written on occurrence form.
- Policy to be submitted to the Town for review and approval.
- Additional Insured coverage for the Town, its electeds, officers, consultants, agents, employees, contractors, insurers and attorneys on a primary non-contributory basis.

8. **Waivers of Subrogation**.

The Town and the Center waive all rights against each other and any of their electeds, subcontractors, sub-subcontractors, their directors, officers, members, managers, employees,

agents, subsidiaries, affiliates, insurers and attorneys for damages caused by fire or other causes of loss to the extent covered by property insurance, or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Town as fiduciary. The Center, as appropriate, shall require all sub-subcontractors to provide similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

A loss insured under the Town's property insurance shall be adjusted by the Town as fiduciary and made payable to the Town as fiduciary for the insureds, as their interests may appear.

9. **Risk of Loss.**

The Center shall bear all risks of any loss or destruction of or damage to (1) the Work, (2) any materials or supplies incorporated or to be incorporated therein, and (3) any equipment, tools, or other property, until the final completion of the Work and its final acceptance by the Town. The Center assumes and shall ensure that all the Centers and all employees of the Center and all subcontractors assume the risk of loss or destruction of or damage to any property of such parties (including personal property, construction machinery, equipment, scaffolding, or temporary or portable buildings) whether owned, hired, rented, borrowed, or otherwise, used at any time in the connection with the performance of the Work. The Center waives and shall ensure that all subcontractors waive all rights of recovery against the Town for any such loss, disappearance, destruction of or damage to any property of such parties. The Center and any subcontractors shall cause their respective property insurers to waive all rights of subrogation against the Town.

9. **Insurance Policy Requirements**.

Policies written on a surplus lines or non-admitted basis are not acceptable. The Town shall have the right to reject any proposed carrier and to insist that the policy(ies) at issue be written by another/other carrier(s). Each insurance policy required hereunder shall provide that it may not be cancelled or substantially modified without thirty (30) days prior written notice to the Town. The Center shall require all insurance policies in any way related to the Work and secured and maintained by the Center to include clauses stating that each underwriter shall waive all rights of recovery, under subrogation or otherwise, against the Town, and all tiers of the Centers, engaged by any of them. To the extent applicable, the amounts and types of insurance shall conform to the terms, conditions and coverages of Insurance Service Office (ISO) policies, forms and endorsements. The Center shall, by specific endorsement to its commercial general liability policies, umbrella/excess liability policies, and automobile liability policies (as applicable), (1) provide that defense costs are not to be considered as damages so as to erode the policy limits required herein, (2) cause the coverage afforded thereunder to include blanket written contractual liability covering all indemnity agreements set forth in this Agreement, and

(3) cause the coverage afforded to the Additional Insureds thereunder to be primary to and not contribute with any other valid and collectible insurance available to the Additional Insureds. The Center shall, by specific endorsement to its umbrella/excess liability policy, cause the coverage afforded to the Additional Insureds thereunder to be the first tier umbrella/excess coverage above the primary coverage afforded to the Additional Insureds under the commercial general liability insurance required hereunder and not contribute with or excess to any other valid and collectible insurance available to the Additional Insureds whether provided on a primary or excess basis. Further evidence is required that such policies include follow form "per project" aggregate.

10. **Additional Insureds**.

The policy or policies providing insurance as required, with the exception of professional liability (if applicable) and workers' compensation, shall defend and include the Town and its electeds, officers, directors, consultants, agents, employees, contractors, insurers and attorneys, on a primary, and non-contributory basis for work performed under or incidental to this Agreement. The form of the additional insured endorsements shall be on a form at least as broad as ISO Form CG2010 11/85 or a combination of CG2010 10/01 and CG2037 10/01 and shall not include any exclusions that limit the scope of coverage beyond that provided to the named insured. This requirement applies to all policies under which the above parties are required to be named as additional insureds. The additional insured coverages shall include completed operations coverage for the Additional Insureds for a period of not less than twenty-four (24) months after completion of the applicable Project. If the Additional Insured has other insurance applicable to the loss, it shall be on an excess or contingent basis. The amount of the Center's insurance shall not be reduced by the existence of such other insurance. If any insurance required here is to be issued or renewed on a claims-made form (which requires prior written approval by the Town) as opposed to the occurrence form, the retroactive date for coverage shall be no later than the commencement date of the Work and shall state that in the event of cancellation or non-renewal, the discovery period for insurance claims (tail coverage) shall be at least thirty-six (36) months.

10. **Adjustment of Losses**.

Any loss insured under the policies required herein shall be adjusted by the Center and the Town, as their interests may appear, and made payable to the Town as trustee for the insureds as their interests may appear, subject to the requirements of any applicable mortgagee clause. The Town, as trustee, shall have the power to adjust and settle any loss with the insurers unless one of the parties in interest objects in writing within five (5) days after the loss to the Town's exercise of this power. If such objection is made, an arbitrator mutually acceptable to the parties in interest and the Town shall be chosen promptly. The Town, as trustee, shall in such case make settlement with the insurers in accordance with the directions of such arbitrator. If distribution of the insurance proceeds by arbitration is required, the arbitrators shall direct such distribution.

Staff Report

To: **Mayor Michel and Town Council**

From: Michael Yerman, Director of Planning

Thru: Dara MacDonald, Town Manager

Subject: Kapushion DIA and McCormick Ditch Relocation Agreement

Date: May 1, 2017

Background:

The Kapushions and Town entered into an Improvement Agreement, Reception No. 397358 (Agreement) in 1986 outlining their development obligations for Blocks 1, 2, 3, 10, 11, and 12. This agreement was established prior to the adoption of the Town's subdivision code provisions and other construction standards. Throughout the history of the agreement, the Kapushions have developed property along Gothic Avenue, Butte Avenue, and Fourth Street.

Since the execution of the agreement in 1986, the Town construction specifications have been updated to include paving, gutters, and other improvements such as drainage that do not coincide with the 1986 agreement. The 1986 agreement does not cover the relocation of the McCormick Ditch or the extension of the sewer main in Teocalli Avenue. However, there is a reference in the agreement that the Town and Kapushions would enter into negotiations regarding the installation of this sewer main.

The Kapushions approached the Town to update the Agreement as it relates the extension of the sewer main in Teocalli Avenue and the relocation of the McCormick Ditch through Blocks 1, 2, 11, and 12. The Kapushions agreed to provide the Town with engineered plans for the Town's review of the infrastructure and to meet the current Town standards for the construction of Teocalli Avenue, the sewer main extension, meet current drainage standards, and pipe the McCormick Ditch. The Kapushions have proposed two phases for the construction. The first phase includes the relocation of the McCormick Ditch, the extension of the sewer main in eastern portion of Teocalli Avenue, the installation of Fifth Street, and the installation of Teocalli Avenue between 5th and 6th Streets. Phase two will complete Teocalli Avenue between 4th and 5th Streets and the remaining sewer main extension.

During the review of the engineered plans supplied by the Kapushions, a new Development Improvement Agreement (DIA) was drafted by the Town's legal counsel. This new DIA meets the current standards including a proper surety for the construction work as well as a two year warranty period.

A Ditch relocation agreement was also prepared for the relocation of the McCormick Ditch. This agreement requires the three ownership partners in McCormick Ditch to sign off on the engineering and the relocation. The McCormick Ditch will be relocated to the Teocalli Avenue right of way and an easement to ensure proper maintenance clearances will be recorded against the property located next to the ditch. At this time, the Town has circulated the Ditch Agreement to the two other ditch owners. The Town has received comments from Verzuh Ranch, Inc. The Town is still awaiting comment from Sheep Mountain Partners, LLC. The Ditch agreement will be updated prior to next Council meeting to reflect the comments from the other ditch owners.

Action Requested at this Time:

Town Staff has conducted a review of the engineered plans for the proposed infrastructure and has substantially determined these plans meet the Town's construction standards. The new DIA ensures the proper protections such as a letter of credit for the work and a two year warranty period. Finally, the Ditch agreement ensures proper easements for future maintenance. Upgrades to the actual ditch to enhance water delivery to the ditch owners while decreasing long term maintenance with the proper piping have also been proposed.

The staff is requesting Council direction to try to finalize the ditch agreement with the remaining ditch owner, Sheep Mountain Partners, LLC. Also the staff is requesting permission to prepare a Resolution to approve the DIA and McCormick Ditch relocation agreement to be presented to the Council on May 15th. The ditch agreement will be updated prior to this meeting to reflect any comments from the other ditch owners.

Recommendation:

Town staff recommends that the Council make a motion to have the Town staff prepare a Resolution approving the Kapushion Development Improvement Agreement and McCormick Ditch Relocation Agreement to be presented to the Town Council for consideration for approval on May 15, 2017.

RECORDING REQUESTED BY:
WHEN RECORDED RETURN TO:
Town of Crested Butte
Attn: Town Clerk
P.O. Box 39
Crested Butte, CO 81224

DEVELOPMENT IMPROVEMENTS AGREEMENT

THIS DEVELOPMENT IMPROVEMENTS AGREEMENT (this "**Agreement**") is made and entered into this ____ day of _____, 2015 (the "**Effective Date**") by and between the **TOWN OF CRESTED BUTTE, COLORADO** (the "**Town**"), a Colorado home rule municipality and **RUTH M. KAPUSHION FAMILY PARTNERSHIP, LLLP** ("**Owner**"), a Colorado limited liability limited partnership.

WITNESSETH:

WHEREAS, Owner is the fee title owner of the real property (the "**Development Property**") described in **Exhibit "A"** attached hereto;

WHEREAS, Owner desires to develop (the "**Project**") the Development Property by subdividing multiple platted and zoned lots, tracts or parcels pursuant to the Town's Subdivision Regulations contained in Chapter 17 of the Crested Municipal Code (the "**Code**");

WHEREAS, Owner has applied for an exemption from the application of the Subdivision Regulations to the Project pursuant to Section 17-3-40 of the Code; and

WHEREAS, the Town desires to grant Owner an exemption to the Subdivision Regulations pursuant to Section 17-3-40 subject to the terms, conditions and requirements contained in this Agreement.

NOW, THEREFORE, in consideration of the preambles, covenants, conditions and agreements set forth in this Agreement, the Town and Owner hereby agree to the following with respect to the Project.

AGREEMENT:

1. **Initial Street and Utility Improvements Agreement**. The Street and Utility Improvements Agreement (the "**Initial Improvements Agreement**") entered into by and between the Town and Ruth J. Kapushion also known as Ruth M. Kapushion dated October 6, 1986 and recorded in the official real property records of the Office of the Clerk and Recorder of Gunnison County, Colorado on October 28, 1986 at Book 635, Page 136, as it applies to streets and utilities in Phase 1 (as delineated in **Exhibit "B"** attached hereto) is hereby terminated and

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replaced with this Agreement.

2. **Title**. Owner covenants, represents and warrants that Owner and its affiliates as described in **Exhibit "C"** are the indefeasible fee title holders of the Development Property. Owner has provided the Town with the title commitment (the "**Title Commitment**") attached hereto as **Exhibit "D"** that represents the title to the Development Property as of the date first written above. Owner acknowledges that the Town is relying upon the Title Commitment in granting the rights to Owner set forth in this Agreement.

3. **Improvements**.

3.1 ***Plans and Specifications***. Owner covenants and agrees to plan, design, engineer and construct the improvements (the "**Improvements**") for the Project as described on **Exhibit "E"** attached hereto at its sole cost expense. The Improvements shall be constructed in strict accordance with Town-approved plans and specifications (the "**Plans and Specifications**").

3.2 ***Ditch Relocation Agreement***. The Improvements shall include the relocation of the McCormick Ditch which shall be relocated in accordance with the terms, conditions and requirements set forth in ditch relocation agreement (the "**Ditch Relocation Agreement**") attached hereto as **Exhibit "F**." The Ditch Relocation Agreement maybe amended by a third party ditch owner, but the agreement shall be in substantially similar to **Exhibit "F"** and executed by all required parties prior to the commencement of work as outlined in the Improvements. The Town shall use reasonable efforts to cause all owners in the McCormick Ditch to enter into the Ditch Relocation Agreement before Owner commences construction of the Improvements; provided that, such efforts shall not include commencing proceedings against such ditch owners; and further provided that, in the event that the owners of the McCormick Ditch do not enter into the Ditch Relocation Agreement, for any reason, the Town shall have no obligation or liability to Owner in connection therewith. Owner shall not be obligated to start work on relocating the Ditch until two years following the execution of the Ditch Relocation Agreement by all parties.

3.3 ***Availability Service Fees***. Owner shall pay deferred water availability of service fees (the "**Availability Fees**") for Phase 1 as contemplated in the Restrictive Covenant Agreement dated July 16, 1991 and recorded at Reception No. 427792 as of the date first written above in the amount of $16,935.00. Any subsequent owner shall commence the payment of Availability Fees upon such owner's purchase of a lot in Phase 1. Notwithstanding the foregoing, availability fees shall be paid for Block 11 prior to the commencement of Phase 2. Owner shall not be obligated to pay Availability Fees on any improvements constructed at Owner's expense.

3.4 ***No Interruption; Phasing***. Owner shall perform the construction of the

Improvements by phase (i.e., Phase 1 and Phase 2 (as delineated in **Exhibit "B"** attached hereto)) from commencement of construction through acceptance by the Town without delay or interruption. All of the Improvements for each phase shall be constructed at once in accordance with the cadence approved by the Town.

3.5 ***Assurances; Criteria***. Owner shall provide to the Town at Owner's sole cost and expense: (a) adequate assurance by a registered engineer that all design, engineering and construction of the Project shall be completed in accordance with the Plans and Specifications; (b) adequate assurance that the Improvements have been designed, engineered and constructed in accordance with the Town's *Public Works Criteria for Design and Construction of Earthwork, Sewer and Water* (the "**Criteria**"); and (c) "as-built" drawings for all Improvements before acceptance by the Town. Owner shall hire one or more inspectors acceptable to the Town to provide inspection services. All Improvements shall be constructed to the reasonable satisfaction of the Town.

3.6 ***Master Planning***. In connection with its planning, design, engineering and construction of the Improvements, Owner shall master plan the Development Property, including, without limitation, preparing storm water management, grading, utility and easement plans (collectively, the "**Plans**") for the Project at its sole costs and expense. Such Plans shall be subject to the Town's approval.

3.7 ***Easements***. Owner shall grant easements to the Town as and when required by the Town for the location of utilities and associated access for maintenance, upgrade and repair purposes. Such easements shall be granted by recorded instrument acceptable to the Town at the time of the Town's acceptance of the Improvements.

3.8 ***Plat***. Upon completion of each phase of the Improvements, Owner shall prepare a preliminary plat identifying all lots, tracts or parcels, streets, alleys, easements, ditches and utilities affecting the Development Property for the Town's approval pursuant to Section 17-3-40 of the Code. Upon the Town's approval of the final plat for each Phase by the Town Council, Owner shall cause the Final Plat to be recorded in the official real property records of the Office of the Clerk and Recorder of Gunnison County, Colorado, at which time Owner shall have the right to sell lots within the approved phase of the development Property.

3.9 ***Weed Control***. Owner shall identify and manage noxious weeds before, during and after Project so as to minimize the spread of such species. Control of noxious weeds respecting the Development Property shall be the sole responsibility of Owner. Heavy equipment used for construction of the Improvements shall be power-washed to remove noxious weed seed prior to bringing the same on-site. The site shall be re-vegetated with native seed after Improvements are constructed unless the Town agrees that other vegetation is more appropriate.

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3.10 ***Erosion Control***. Owner shall comply with all erosion control provisions of the Code during and after the construction of the Improvements.

3.11 ***Debris***. Owner shall take all steps necessary to limit and prevent the accumulation of, and to remove accumulated mud, sediment, dirt, trash and other debris that is tracked, blown or otherwise carried onto Development Property or off-site onto other property. Such obligation shall continue until all Improvements are dedicated to the Town. If Owner fails to remedy any such condition within 24 hours of notice from the Town, Owner shall pay the Town on demand any costs incurred by the Town in remedying such condition. Nothing herein shall obligate the Town to remedy such condition or limit the Town in its selection of the method or manner of such remedy.

3.12 ***Coordination***. All Owner activities on the Project shall be closely coordinated with the Town.

3.13 ***Warranty***. The Improvements shall be designed, engineered and constructed in a good and workmanlike manner consistent with the highest industry standards. Owner represents and warrants that the Improvements shall remain free from defects in materials and workmanship for a period of two years from the date that Owner conveys title to the Improvements to the Town (the "**Warranty Period**"). During such two-year period, any defect with respect to the Improvements shall be repaired, or the defective Improvements replaced, at the Town's option, at Owner's sole cost and expense.

3.14 ***Defects; Notice***. The Town shall provide notice to Owner if an inspection reveals that any Improvement is defective. Except with respect to emergency repairs, Owner shall have 20 days from receipt of such notice to cure the defect. In the event Owner fails to cure the defect within such 20-day period, the Town may declare a default under this Agreement. No notice shall be required with respect to emergency repairs.

3.15 ***Emergency***. If at any time it appears that the Improvements or any portion of the Town's infrastructure may be damaged or destroyed as a result of an emergency in connection with the Improvements, the Town shall have the right, but not the obligation, to enter upon the subject real property and perform such repairs and take such other action as may be necessary to protect and preserve the Improvements. The Town shall have no duty to inspect the subject real property to identify or correct emergency circumstances respecting the Improvements. The Town shall use reasonable efforts to locate Owner and advise the same of the emergency. The Town shall have the right to enter the subject real property and perform any needed emergency repairs, and, upon demand, Owner shall reimburse the Town the costs of such emergency repairs. Failure of Owner to pay to the Town the costs of emergency repairs within 15 days following demand therefor shall constitute a default under this Agreement.

3.16 ***Right of Access***. Owner grants the Town, its agents, contractors and

employees, a non-exclusive right and easement to enter the Development Property for the purposes of inspecting, constructing, maintaining, upgrading and repairing any Improvements pursuant to this Agreement.

3.17 ***Obligation Independent***. Owner's obligation to complete the Improvements shall arise upon its execution of this Agreement, shall be independent of any obligations of the Town contained herein and shall not be conditioned on any event involving the Development Property.

3.18 ***Restriction on Sale of Lots***. Owner shall sell and convey only two-lot (6,250 square feet) or three lot (9,375 square feet) parcels, such lots being shown on the official plat of Crested Butte.

4. **Acceptance of Improvements**. Preliminary acceptance of the Improvements by the Town shall occur following a final inspection, which shall occur no later than 10 business days after Owner notifies the Town that the Improvements have been completed. The Town shall not be required to finally accept any of the Improvements until the Town determines that: (a) the Improvements are constructed in accordance with the Plans and Specifications and the Criteria; (b) Owner has delivered as-built drawings to the Town; and (c) the Town has approved the Final Plat. Acceptance of the Improvements shall not constitute a waiver by the Town of the right to draw upon the Surety (as defined below) to remedy any defect in the Improvements, nor shall acceptance operate to release Owner from its warranty obligations.

5. **Dedication of Improvements**. Owner shall dedicate the Improvements to the Town at the time that Town approves the Final Plat. The Improvements shall be conveyed to the Town by bill of sale with full warranty of title, free and clear of all liens and encumbrances. Following the dedication and conveyance of the Improvements, the Town shall maintain the Improvements subject to Owner's obligations under this Improvements Agreement.

6. **Surety**.

6.1 ***Letters of Credit***. The Owner shall prepare an estimated cost (the "**Project Estimate**") of constructing the Improvements prior to the commencement of the construction of any Improvements of any phase to be approved by the Town. Prior to the commencement of the construction of each phase of the Project, Owner shall post separate irrevocable standby letters of credit issued by a qualified Colorado lending institution on terms acceptable to the Town in the amount of (a) 120% of the estimate costs of construction of each phase as a guarantee of Owner's performance under this Agreement, and (b) $ 20% of the estimate costs of construction of each phase as a guarantee of Owner's warranty obligations under this Agreement (collectively, the "**Surety**"). Such Surety shall remain in effect and shall be renewed by the Owner as necessary until released by the Town. The Town shall use the Surety or any funds realized from the Surety for the purposes of completing the Improvements, correcting defects in

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or associated therewith or curing any Owner default.

6.2 ***Release***. The Surety shall be released and returned to Owner without interest thereon at such time as, as applicable, Owner has dedicated the Improvements to the Town with respect to the guarantee of performance Surety, and the Warranty Period has run with no outstanding claims with respect to the warranty Surety. The Town may, in its sole discretion issue partial releases of the guarantee of performance Surety provided that at all times the Surety exceeds 120% of the estimated cost to complete the Improvements. With respect to warranty Surety, such Surety shall not be released until the Warranty Period has run. There shall be no reduction in the amount of any portion of the Surety if Owner is in default. All requests for partial releases for the guarantee of performance Surety shall be in writing to the Town Manager and shall be for a reduction of at least 20% of the initial Surety.

7. **Compliance with Laws; Permit**. When fulfilling its obligations under this Agreement, Owner shall comply with all applicable laws, ordinances and regulations. Such compliance includes, without limitation, compliance with the requirements of Section 17-3-40 of the Code. Owner shall strictly comply with the terms, conditions, limitations and requirements of any permit issued for the construction of the Improvements.

8. **Payments**.

8.1 Owner shall pay all costs, expenses, fees and other charges as required by the Town in a timely manner, not to exceed 20 days from receipt of an invoice therefor. Such costs, expenses, fees and other charges shall include, without limitation, availability of service fees, permit fees, inspection costs and costs of third party services such as engineering and legal services.

8.2 Any amount required to be paid by Town under this Agreement that is not timely paid shall accrue interest at a rate of 18% per annum, commencing as of the date such sum is due until paid.

9. **Indemnification**.

9.1 Owner shall indemnify and hold the Town, its elected and appointed officials, employees, insurers, insurance pools, attorneys, agents, contractors and representatives harmless from and against any an all liabilities, claims, demands, costs, expenses, including attorneys' fees, on account of injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the construction of the Improvements or the transactions contemplated in this Agreement, if such injury, loss or damage (a) is caused in whole or part by, or is claimed to be caused in whole or part by the act, omission, error, professional error, mistake, negligence, intentional act or other

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fault of Owner, or any officer, employee, representative, contractor or agent of Owner, (b) arises from any worker's compensation claim of any employee of Owner, or of any employee of any contractor, representative or agent of Owner, (c) is caused by Owner's failure to comply with any term or condition of this Agreement, or (d) arises out of the rights granted Owner under this Agreement (collectively "**Claims**").

9.2 Owner agrees to investigate, handle, respond to and provide defense for and defend against any such Claims at Owner's sole cost and expense. Owner also agrees to bear all other costs and expenses in such matter, including court costs and attorneys' fees, whether or not any such liability, claims or demands alleged are determined to be groundless, false or fraudulent.

10. **Waiver of Claims**. Owner hereby waives all claims, suits and causes of action against the Town, its elected and appointed officials, employees, insurers, insurance pools, attorneys, agents, contractors and representatives related to claims that the Town does not have the right or authority to enter into this Agreement and grant the rights provided herein.

11. **Default**.

11.1 The following conditions, occurrences, actions or inactions shall constitute a default by Owner: (i) Owner's failure to commence and complete the construction of the Improvements; (ii) Owner's failure to construct the Improvements in accordance with terms of this Agreement; (iii) Owner's failure to timely cure defects in the Improvements; (iv) Owner's failure to perform the Project for a period of more than 20 consecutive days; (v) Owner's failure to pay the Town within 20 days any amounts due the Town under this Agreement or applicable law; (vi) Owner's failure to comply with any provision of this Agreement or any requirement under applicable law; (vii) the placement of any mechanics lien or encumbrance on the Improvements; (viii) a breach of any term, condition or requirement contained in this Agreement which remains uncured for more than the time period allowed herein; (ix) a breach of any term, condition or requirement contained in the Ditch Relocation Agreement which remains uncured for more than the time period allowed therein; (x) a breach of any term, condition or requirement contained in any instrument dedicating the Improvements to the Town; and (xi) a breach of any term, condition or requirement contained in any instrument granting to the Town and easement or similar right.

11.2 The Town may not declare a default hereunder until written notice has been given to Owner and Owner has not cured such failure or breach within 20 days after receipt of notice from the Town specifying such failure or breach, except that if such failure or breach is not capable of being cured within such 20-day period, Owner shall have such additional time as may be reasonably required as long as Owner is diligently attempting to cure such breach or failure.

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11.3 No notice of breach shall be required with respect to any failure to pay the Town for which an invoice has been given as set forth in this Agreement.

11.4 No notice of breach shall be required where another provision in this Agreement provides for notice and a time period to comply.

12. **Remedies**. In the event of an uncured default by Owner the Town shall have the following rights and remedies:

12.1 The Town may stop Owner's work on the Improvements until Owner has entered into an agreement for compliance.

12.2 The Town may, but shall not be required to have the Improvements constructed by such means and in such manner as the Town shall determine.

12.3 The Town may refuse to issue building permits for the Development Property.

12.4 The Town may exercise all rights it may have under law and in equity, including, without limitation, the right to bring suit against Owner for injunctive relief or specific performance, and to recover damages for the breach. All remedies may be applied concurrently and not to the exclusion of any other remedy.

12.5 If the Town elects to have the Improvements constructed, it shall have the right to use Owner's Surety to pay the cost of construction. If the Surety is insufficient to fully pay such costs, Owner shall, upon demand, pay such deficiency to the Town. If the amount of the Surety exceeds the reasonable costs of obtaining the Surety and constructing the Improvements, the Town shall deliver any excess funds to Owner.

13. **Immunity**. Owner acknowledges and agrees that the Town is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations (currently $350,000 per person and $990,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as from time to time amended, or otherwise available to the Town, its elected and appointed officials, employees, insurers, insurance pools, attorneys, agents, contractors and representatives.

14. **Force Majeure**. If Owner is delayed in commencing or completing construction of the Improvements as required herein by reasons of strikes or other labor troubles, unavailability of materials, weather, ground conditions, national emergency, any rule, order or regulation of any governmental authority or other similar cause not within the Owner's control or power, and provided that prompt written notice of said cause of delay is given to the Town by

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Owner, then the time for Owner's performance of such construction shall be extended but only by such amount of time as such cause for delay exists and is continuing.

15. **No Third Party Beneficiary**. Enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the Town and Owner, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party in this Agreement. It is the express intention of the Town and Owner that any person other than the Town or Owner receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

16. **No Waiver**. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall it constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both Town and Owner, nor shall the waiver of any default under this Agreement represent a waiver of any subsequent default or defaults of the same type. A party's failure to exercise any right under this Agreement shall not constitute the approval of any act or inaction, nor shall the Town's failure to exercise any such right constitute its acceptance of such act or inaction.

17. **Governing Law**. This Agreement shall be interpreted in accordance with the laws of the State of Colorado.

18. **Personal Jurisdiction and Venue**. Personal jurisdiction and venue for any civil action commenced by either party to this Agreement, whether arising out of or relating to this Agreement or the Surety shall be deemed to be proper only if such action is commenced in the District Court of Gunnison County, Colorado. The parties expressly waive their rights to bring such action in or to remove such action to any other court, whether state or federal.

19. **Attorneys' Fees and Costs**. If any issue arises necessitating the enforcement, interpretation or construction of this Agreement, or documents provided for herein or related hereto, the substantially prevailing party in such matter shall be entitled to attorneys' fees as well as costs and expenses in such matter.

20. **Notices**. Any notice required or permitted hereunder shall be in writing and shall be personally delivered or mailed by certified mail, return receipt requested, addressed as follows:

If to the Town: Town of Crested Butte
Attn: Town Manager
P.O. Box 39
507 Maroon Avenue
Crested Butte, CO 81224

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with a copy to:	Town of Crested Butte Attn: Town Attorney P.O. Box 39 507 Maroon Avenue Crested Butte, CO 81224
If to Owner:	Ruth M. Kapushion Family Partnership LLLP P.O. Box 343 429 Gothic Avenue Crested Butte, CO 81224
with a copy to:	David Leinsdorf, Esq. P.O. Box 187 215 Elk Avenue Crested Butte, CO 81224

Notices mailed in accordance with the above provision shall be deemed to have been given on the third business day after mailing. Notices personally delivered shall be deemed to have been given upon delivery.

21. **Entire Agreement**. This Agreement constitutes the entire agreement and understanding between the parties relating to the subject matter addressed herein. All prior written and oral agreements by the parties with respect to the subject matters addressed herein shall be deemed merged herein.

22. **Severability**. If any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law, state or federal, the validity of the remaining portions or provisions hereof shall not be affected thereby, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

23. **Modification**. This Agreement may be modified or amended only by a duly authorized written instrument executed by both parties.

24. **Counterparts; Electronic Reproductions**. This Agreement may be executed in multiple counterparts, each of which shall be considered an original for all purposes and both of which together shall constitute but one and the same instrument. An electronic reproduction of this Agreement shall be deemed to be original for purposes of enforcement of the terms hereof.

25. **Paragraph Headings**. Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon any provision of this Agreement.

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26. **Recitals**. The introductory paragraph and the Recitals set forth in this Agreement are considered materials terms hereof and binding on the parties in accordance with their terms.

27. **Binding Effect**. This Agreement shall be binding upon, and shall inure to the benefit of the parties and their respective heirs, successors, assigns and legal representatives.

29. **Run with the Land**. This Agreement and the requirements, rights and obligations contained herein are intended to be covenants that run with the land respecting the subject real property, and, accordingly, shall so run with the land.

[**Remainder of Page Intentionally Left Blank;**
Signature Page to Follow]

DRAFT

IN WITNESS WHEREOF, the parties have entered into this Agreement effective as of the Effective Date set forth above.

TOWN:

TOWN OF CRESTED BUTTE,
a Colorado home rule municipality

By: _____
Glenn Michel, Mayor

ATTEST:
_____ (SEAL)
Lynelle Stanford, Town Clerk

OWNER:

RUTH M. KAPUSHION FAMILY PARTNERSHIP, LLLP,
limited liability limited partnership

By: _____
Name: Ina Kristine Kapushion
Title: _____

By: _____
Name: Antonette C. Kapushion
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

The foregoing Development Improvements Agreement was acknowledged before me this _____ day of _____, 2016, by Glenn Michel, Mayor of the Town of Crested Butte, a Colorado home rule municipality, on behalf of said entity.

Witness my hand and official seal.
My commission expires:

_____

DRAFT

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

The foregoing Development Improvements Agreement was acknowledged before me this _____ day of _____, 2016, by Ina Kristine Kapushion, _____ of the Ruth M. Kapushion Family Partnership LLLP, a Colorado limited liability limited partnership, on behalf of said entity.

Witness my hand and official seal.
My commission expires:

_____
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

The foregoing Development Improvements Agreement was acknowledged before me this _____ day of _____, 2016, by Antonette C. Kapushion, _____ of the Ruth M. Kapushion Family Partnership LLLP, a Colorado limited liability limited partnership, on behalf of said entity.

Witness my hand and official seal.
My commission expires:

_____
Notary Public

Incorporated Exhibits:

Exhibit "A" – Development Property
Exhibit "B" – Phasing (Phase 1 and Phase 2)
Exhibit "C" – Affiliates
Exhibit "D" – Title Commitment
Exhibit "E" – Improvements
Exhibit "F" – Ditch Relocation Agreement
Exhibit "G" – Project Estimate

DRAFT

EXHIBIT "A"

Development Property

Lots 17-27, Block 1

Lots 6-16, Block 12

Lots 1-13, Block 11

Lots 30-32, Block 11

Lots 17-32, Block 2

DRAFT

EXHIBIT "B"

Phasing (Phase 1 and Phase 2)

Phase 1 – To begin within 2 years of Executed Agreement

1. McCormick Ditch piping relocation.
2. Construction of Fifth Street, including curb and gutter.
3. Teocalli Avenue between Fifth and Sixth Streets
   a. Construction of Teocalli Avenue, including curb and gutter.
4. Construction of sewer line in Teocalli Avenue, including stubs for service lines between Fifth and Sixth Streets
5. Grading and storm water infrastructure in Lots 17-27 Blocks 1 and Lots 6-16, Block 12
6. Grading and construction of Alleys improvements in Block1 and Block 12.

Phase 2 - Completion Date to be determined by mutual agreement of the parties

1. Teocalli Avenue, including curb and gutter between Fourth and Fifth Streets
   a. Construction of sewer line between Fourth and Fifth Street, including stubs for service lines.
   b. Construction of Teocalli Avenue, including curb and gutter.
2. Grading and storm water infrastructure in Lots 17-32, Block 2, Lots 1-13, Block 11, and Lots 30-32, Block 11
3. Grading and construction of alley improvements in Block 2 and Block 11

DRAFT

EXHIBIT "C"

Affiliates

CONSENT OF AFFILIATES

The undersigned affiliates of Owner, Ruth M. Kapushion Family Limited Partnership LLLP, a Colorado limited liability limited partnership, hereby consent to and agree to be bound by the terms and provisions of the foregoing Development Improvements Agreement:

Terreno LLC, a Colorado limited liability company
Owner of Lots 25 and 26 in Block 2 and
Lots 15 and 16 in Block 12

By: _____
Whitney R. Meredith, sole member

J. Antonnette LLC, a Colorado limited liability company
Owner of Lots 1-5 in Block 11

By: _____
Jodie A. Meredith, sole member

Antonette C. Kapushion and Ina Kristine Kapushion
Owner of Lots 30, 31 and 32 in Block 11

_____
Antonette C. Kapushion, individually

_____
Ina Kristine Kapushion, individually

DRAFT

EXHIBIT "D"

Title Commitment

DRAFT

EXHIBIT "E"

Improvements

DRAFT

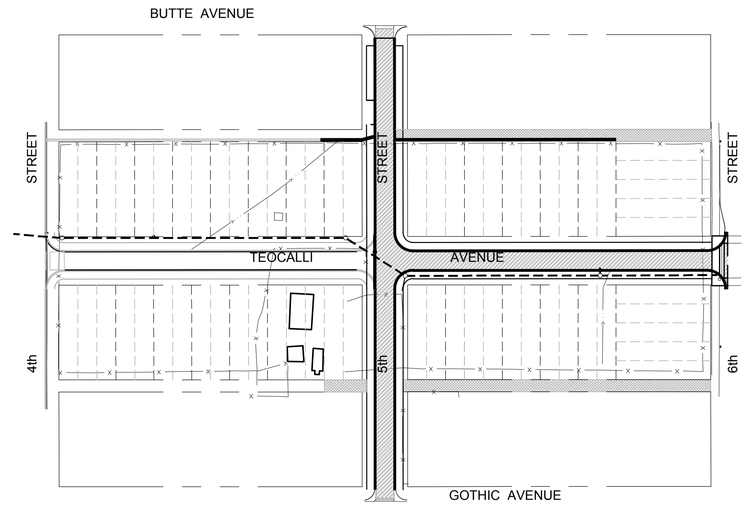
EXHIBIT "F"

Ditch Relocation Agreement

DRAFT

CONSTRUCTION PLANS

FOR



SHEET LIST	
COVER	COVER SHEET
1	CONSTRUCTION NOTES
2	SITE OVERVIEW
3	EARTHWORK STAGING PLAN
4	EARTHWORK STAGING PLAN
5	OVER-LOT GRADING PLAN - PHASE 1
6	OVER-LOT GRADING PLAN - PHASE 2
7	UTILITY PLAN
8	TEOCALLI AVE. PLAN AND PROFILES
9	TEOCALLI AVE. PLAN AND PROFILES
10	TEOCALLI AVE. INTERSECTION DETAILS
11	TEOCALLI AVE. INTERSECTION DETAILS
12	TEOCALLI AVE. & 5TH ST LIP OF GUTTER PROFILES
13	TEOCALLI AVE. & 5TH ST LIP OF GUTTER PROFILES
14	TEOCALLI AVE. SECTIONS
15	TEOCALLI AVE. SECTIONS
16	TEOCALLI AVE. SECTIONS
17	TEOCALLI AVE. SECTIONS
18	TEOCALLI AVE. SECTIONS
19	TEOCALLI AVE. SECTIONS
20	TEOCALLI AVE. SECTIONS
21	5TH STREET PLAN AND PROFILES
22	ALLEY PLAN AND PROFILE
23	5TH STREET SECTIONS
24	5TH STREET SECTIONS
25	SANITARY SEWER PLAN AND PROFILE
26	STORM DRAIN PLAN AND PROFILE
27	STORM DRAIN PLAN AND PROFILE
28	STORM DRAIN PLAN AND PROFILE
29	CONSTRUCTION DETAILS
30	CONSTRUCTION DETAILS

TEOCALLI AVE & 5th STREET IMPROVEMENTS

INCLUDING STREETS, DRAINAGE, SANITARY SEWER, AND STORM SEWER

Phase 1

SUBMITTAL SET

PREPARED FOR:

Ruth M. Kapushion Family Partnership

BY:

DEL-MONT CONSULTANTS, INC.
ENGINEERING ▼ SURVEYING
125 Colorado Ave.▼ Montrose, CO 81401 ▼ (970) 249-2251 ▼ (970) 249-2342 FAX
www.del-mont.com ▼ service@del-mont.com

NO	DATE	REVISIONS	BY
9	1/23/17	SEPARATE IRR; TOWN EGR COMMENTS	JT/PI
8	12/12/16	TOWN ENGINEER REVIEW COMMENTS	JT/PI
7	9/8/16	SANITARY SEWER SVC LOC REVS	JT/PI
6	9/7/16	REMOVE ALLEY DESG, STORM,IRR,PHASING REVS	JT/PI
5	7/24/15	ADDED SOUTH ALLEY DESIGN	JT/PI
4	7/1/15	IRR, STORM SEW & GRADING REVS	JT/PI

DEL-MONT CONSULTANTS, INC.
ENGINEERING ▼ SURVEYING
125 Colorado Ave.▼ Montrose, CO 81401 ▼ (970) 249-2251 ▼ (970) 249-2342 FAX
www.del-mont.com ▼ service@del-mont.com

DESIGNED BY: JRR/JT/MGW	SCALE: AS-NOTED	CHECKED BY: JT	
DRAWN BY: MGW/PJI	FILE NAME: 14110C_DETAILS.DWG	DATE ISSUED: 2014-10-25	

RUTH M. KAPUSHION FAMILY PARTNERSHIP
TEOCALLI & 5TH
CRESTED BUTTE, CO

COVER SHEET
VICINITY MAP, AND SHEET INDEX

DMC JOB NO.: 16109

SHEET NO.: COVER
OF 31 SHEETS

PLOTTED BY PETER. FILE PATH & NAME = \\DMS14\PROJECTS\ACTIVE PROJECTS\2014\14110-WAYNE MEREDITH TEOCALLI & 5TH ST IMPROVEMENTS\CIVIL3D\14110C_DETAILS.DWG , PLOT DATE = 1/24/2017 4:33 PM, PRINTER/PLOTTER = DWG TO PDF.PC3 , PAGE SETUP = 34 X 22 OCE DSN (LINES OVERWRITE)

STREET & UTILITY SPECIFICATIONS

GENERAL SPECIFICATIONS

1. Safety Requirements: The Contractor shall have full and complete responsibility for jobsite safety, and shall perform all work in full conformance with all Federal, State, and local safety regulations.
2. Contractor Investigation: The Contractor shall familiarize himself with local conditions and the specifications of the governing entities, and shall examine the site, make such tests, and perform such explorations as he deems necessary to evaluate all conditions on site, in order to perform the work in accordance with the Contract Documents for the Contract Price within the Contract Time.
3. Underground Utility Locates: The Contractor shall have full responsibility to identify, locate, and protect all existing utilities lines, and to repair any damage to utilities caused by Contractor's operations. Contractor shall contact the Town of Crested Butte, the Utility Notification Center of Colorado (1-800-922-1987), and individual utility companies as needed, to locate existing underground utilities prior to construction. The construction drawings show utilities that were located for the site survey and represent the best information available at the time, but may not be complete or current .
4. Hazardous Materials: In the event that the Contractor encounters any hazardous materials on the site (including but not limited to asbestos cement pipe), Contractor shall leave such materials undisturbed and shall contact the Owner for directions regarding disposal of said materials.
5. Town of Crested Butte Standards and Specifications: All construction work shall be performed in conformance with the Crested Butte Public Works Criteria for Design and Construction: Earthwork, Sewer, and Water (March 2009 or later version), and with standard details published separately by the Town.
6. CDOT: Colorado Department of Transportation Standard Specifications for Road and Bridge Construction are incorporated herein by reference to address technical details not otherwise addressed by Town specifications, including specifically CDOT specifications for asphalt paving.
7. Conflicts: In the event of a conflict between project specifications herein, Town specifications, and CDOT specifications, the more rigorous requirement shall apply.
8. Stormwater Pollution Prevention Plan: Contractor shall prepare a Stormwater Pollution Prevention Plan, obtain the requisite permit from the Colorado Department of Health & Environment, and shall implement the plan and manage stormwater control devices until receipt of final payment from the owner.
9. Pre Construction Conference: Contractor shall schedule a Pre Construction Conference with the Owner, the Crested Butte Public Works Director (or his designee), the Owner's Representative, and the Project Engineer prior to commencement of work to establish lines of communication, quality assurance and materials testing protocols, surveying requirements, schedules, and to resolve any remaining questions about the intent and purpose of the design.
10. Construction Surveying: Owner will provide construction staking for earthwork and pipelines, set at offsets satisfactory to the Contractor. Any stakes lost during construction will be replaced at Contractor's expense, including stakes needed for the Engineer to evaluate Contractor's work.
11. Quality Assurance Testing will be provided by the Owner, at intervals determined by the Engineer. Contractor shall generally be responsible to notify the testing laboratory of readiness for testing. Any work that is covered up without according the Owner opportunity to test and / or observe shall be removed and reconstructed at no expense to the Owner.
12. Notifications: Contractor shall notify the Crested Butte Public Works Department (349-5338) at least 72 hours prior to commencing construction, initiating utility connections or street / pedestrian disruptions, or other construction activity that may require the Town's oversight or assistance.
13. Owner's Representative: Contractor shall notify the designated Owner's Representative at least 48 hours in advance to arrange for quality assurance observation of the work. Any work undertaken without according the Owner's Representative the opportunity to observe the work while it is in progress shall be removed and reconstructed by the Contractor at no additional expense to the Owner.
14. Payment for Extra Work: A Change Order signed by the Owner is required to qualify any extra work for extra payment. Any extra work undertaken by the Contractor without having a Change Order signed by the Owner shall be deemed to have been undertaken for the Contractor's convenience, and shall not be eligible for extra compensation.
15. Record Drawings: Contractor shall record all variations from the design on "as-built" drawings showing the locations and dimensions of any element of the project that is not constructed as designed, and shall provide that information to the Engineer prior to release of final payment.
16. Working Hours: All work must follow the Town noise and construction operation hours of 7:00am to 7:00 pm.
17. Pipeline extensions across existing streets shall conform to Crested Butte regulations and specifications, including providing traffic control, signage, barricades, and related measures for pedestrian safety. Utility trenches across existing paved streets shall be backfilled with flowfill.

TECHNICAL SPECIFICATIONS

EARTHWORK:

River gravel is believed to underlay the topsoil in the low lying pasture areas. The glacial moraine in the higher areas will be utilized as structural fill for street subgrades in low lying areas. Topsoil shall be removed from all fill and borrow zones prior to placing fill material. Structural fills for streets shall be constructed beginning at the top of the underlying gravel layer.

Contractor shall remove topsoil from street rights of way and building sites, extending to the limits of cut and fill zones, excavating down to the underlying gravel formation and / or glacial moraine prior to installation of pipelines, construction of street structural sections, or placement of fill on building sites. Topsoil shall be saved and stockpiled for re-use.

The quantity of topsoil to be handled and preserved has been estimated, not measured directly, and is believed to be 2 to 3 feet deep in the low lying pasture areas of the site. Only a modest amount of topsoil is expected to be recoverable from the high ground (the glacial moraine). Actual depths of topsoil on site may vary from these expectations

Contractor shall notify Owner of any variations in apparent topsoil quantities prior to proceeding with work in areas where subsurface conditions and / or topsoil depths vary from anticipated conditions. Appropriate changes to Contractor's compensation shall be negotiated in the event that quantities of earthwork vary significantly from Contract quantities.

Contractor shall call the Engineer to observe the completed topsoil stripping prior to placement of subgrade and building site fill.

The glacial moraine includes some large rock. Any individual stone greater than 8" in largest dimension shall be segregated out from the bulk earthwork, and shall not be utilized in any structural fill within street rights of way. Rock may be stored on site for future use constructing erosion control devices or stacked rock retaining walls.

Street subgrade fills shall be constructed utilizing the glacial moraine material excavated from the high ground on the site. Contractor shall excavate to design elevation across the high ground (the glacial moraine), and shall utilize the glacial moraine thus excavated to construct the fill sections of the low lying street subgrades and building sites.

Glacial moraine placed as fill for street subgrade and building site grading shall be placed in lifts not exceeding nine inches (0.75 feet) thick in loose thickness, moisture conditioned to +/- 2% of optimum moisture, and shall be compacted to 90% modified proctor density, ASTM D 1557.

Contractor shall provide suitable equipment with adequate capacity to moisture condition and compact all fill placed during overlot grading operations. For the purposes of this compaction specification, street and building site fills will be treated the same.

Density testing of structural fills will be provided by the Owner. Any fill which fails to meet the density standard shall be reworked by the Contractor at no additional expense to the Owner, and shall be retested at Contractor's expense.

IRRIGATION DIVERSION

The McCormick Ditch shall be relocated and piped within the Teocalli right of way. Contractor shall complete bulk excavation to subgrade through the high ground, and shall construct street structural fill sections up to subgrade elevation prior to installing pipelines. To protect pipelines from potential damage from street construction work, Contractor shall construct Phase 1 streets to subgrade prior to constructing pipelines. The pipelines shall be installed in order of depth, deepest first.

GENERAL PIPELINE SPECIFICATIONS

1. Street Subgrade: Streets in Phase 1 shall be constructed to subgrade elevation prior to commencing pipeline installation.
2. Pipelines in Phase 1 which extend across Phase 2 shall be constructed after topsoil stripping operations along pipeline alignments have been completed.
3. Pipelines extending across Phase 2 shall be backfilled and compacted with structural fill to match adjacent ground surface less 1 vertical foot, and then shall be covered with replacement topsoil to re-establish the existing pasture.
4. Survey Control: The Owner will provide one (1) set of stakes at manholes, inlets, and sewer service locations at offsets satisfactory to the Contractor.
5. Replacement Stakes: The Contractor shall be responsible to maintain the survey stakes for use in the work. The Owner will replace lost survey stakes at the Contractor's expense, including replacing any lost stakes needed by the Engineer to evaluate the Contractor's work.
6. Grade Transfer: It shall be the Contractor's responsibility to transfer grades from the stakes to the work.
7. Topsoil: Contractor shall manage pipeline operations so that all topsoil is removed from beneath pipelines. No topsoil may be used for trench backfill.
8. Trench Stabilization Rock: If unstable ground conditions are encountered in trenches, Contractor shall over excavate the trench as needed, and backfill to pipeline grade using 1 1/2" washed rock to stabilize the bottom of the trench. A signed change order is required to qualify trench stabilization rock for compensation by Owner. Rock furnished and installed without a signed change order will be considered work for the convenience of the contractor, and will not be eligible for payment.
9. Direction of Installation: Contractor shall commence sewer installation at the low point in the system and work uphill.
10. Laser Control of Grade and Alignment: The Contractor shall install sewer mains using laser grade control equipment. The Contractor shall provide trained, competent personnel to set and manage the laser. The Contractor shall provide appropriate surveying equipment to establish laser alignment from manhole to manhole.
11. Adjustments to Grade: At each manhole or inlet, the Contractor shall check the actual elevation of the pipeline as installed, and, if necessary, re-calculate the grade to the next manhole to compensate for any error in the previous segment. Allowable tolerances for error in elevation and alignment are defined to be 0.5' horizontal and 0.2' vertical, except when the error would reduce the grade or other pipeline clearances below acceptable minimums.
12. Contractor shall comply with regulations regarding disposal of water from dewatering of trenches. Discharge of water into sewer, storm drain, or irrigation pipeline systems is prohibited.
13. Pipeline Bedding: The Contractor shall bed all pipelines and sewer services in 3/4" minus screened or washed rock, at least 6" all around the pipe. Rock bedding shall be included in the unit cost of the sewer installation.
14. Select Backfill: Contractor shall backfill pipeline trenches with screened native gravels, screened glacial moraine, or other select material approved by the Engineer, free of rock larger than 2" in any dimension. Contractor shall moisture condition backfill material to +/- 2% of optimum moisture prior to placement in the trench, and shall compact backfill to at least 90% of Modified Proctor density, ASTM D 1557.
15. Flowfill shall be used to backfill trenches across existing paved streets. Thickness of asphalt pavement patches across existing streets shall equal or exceed thickness of the existing pavement.
16. Lift depths for trench backfill are dependent upon the size, weight, and power of the contractor's compaction equipment, and shall be subject to Engineer's approval. In general, lift depths in excess of nine inches (9") will not be approved.
17. Density Testing of pipeline backfill will be provided by the Owner. Contractor shall coordinate the testing schedule with the Engineer, and shall normally be responsible for notifying the testing agency of readiness for testing. Contractor may expect density testing on every lift until effective methods have been demonstrated, and random testing thereafter. Retests in areas where density tests failed to meet the specification will be made at the Contractor's expense.
18. Backfill of Structures: Manholes, inlets, and the connecting trench within 6' of those structures shall be backfilled with Class 6 base course gravel, compacted to 95% of modified proctor, in 6" lifts, unless otherwise approved by the engineer. Contractor shall schedule density testing of backfill at structures on 2 vertical foot intervals, within 2' horizontal of the manhole. Cost of gravel backfill shall be included the cost of each structure.
19. Subsidence Warranty: The Contractor shall manage all backfill and compaction operations in degree and detail sufficient to prevent future subsidence of finished, paved streets and parking areas along trench lines, and shall be responsible to repair any subsidence that may occur within two (2) years of the delivery of final payment to the Contractor by the Owner.
20. Manhole Covers: Manholes in the street shall be manufactured and installed so that the top of the cover is about 4" below finish asphalt grade. During street construction, the ring and cover shall be set flush with top of gravel. The cover shall be raised with steel grade rings during paving operations to an elevation 1" below finish asphalt grade to ensure clearance for snowplows.
21. Proof Roll of the Subgrade: Upon completion of each pipeline installation, backfill, and compaction, the Contractor shall demonstrate the competence of the backfill by proof rolling the trench alignment (using a fully loaded dump truck or water truck) in the presence of the Engineer. Proof rolling shall be considered incidental to the work, and the cost thereof shall be included in pipeline unit prices. Any trench backfill which, in the opinion of the engineer, yields excessively under load shall be excavated and recompacted to the specifications, and proof rolled again. Because surface proof rolling will not necessarily reveal compaction deficiencies deep in a trench, any future settlement of Contractor placed fill remains the responsibility of the Contractor.
22. Cast in Place Concrete: Contractor shall call the Engineer to observe the formwork and reinforcing for cast in place structures prior to casting concrete. Site cast concrete shall conform to CDOT Class D mix design. Slump shall not exceed 4". All fresh concrete shall be consolidated using concrete vibrators. Concrete shall be protected from freezing for 5 days after casting. In the event that daytime temperatures are below 60°, and fall below freezing at night, ACI specifications for cold weather concreting shall be applied.
23. Locations for Record Drawings: Contractor shall measure and record all departures from the design, and shall deliver that information to the Engineer prior to release of the final payment.

SEWER COLLECTION SYSTEM

1. Town of Crested Butte Sewer Specifications: The Contractor shall construct the sewer system in conformance with these plans and with the Public Works Criteria of the Town of Crested Butte, latest edition, except as modified or augmented herein.
2. Pipe Specifications: Sewer Pipe shall be PVC, ASTM designation D3034, SDR35. Connections between mains and services shall be by full body Wyes.
3. Connection: Elevation and location of the sewer connection point near 6th Street is not known. Contractor shall locate the end of the existing pipeline and measure the actual elevation of the existing sewer main at the connection point, determine the grade on the existing pipeline, and determine whether the design elevations and minimum grades can be achieved prior to ordering the manufacture of Structure - 01. Contractor shall notify the Engineer of any discrepancies to arrange for adjustments to the design.
4. Sewer Services shall be installed where shown, on straight lines and uniform grades, extending four feet into each individual lot and shall be capped and marked with a pressure treated 4x4 wood post painted green. Services shall be installed at grades not less than 2%, and at a depth of at least 7' at the property line unless otherwise limited by depth of the main. Posts shall be set vertical at a uniform height and uniform distance behind the parking strip. Services shall be bedded in ¾" screened rock at least 6" all around.
5. Low Pressure Air Testing: The Contractor shall pressure test the sewer main and services in accordance with Town specifications to demonstrate water tight integrity of the pipeline.
6: Sewer Manhole Testing: The Contractor shall perform water tightness testing of the manholes in accordance with Town specifications to demonstrate water tight integrity of the manholes.
7. TV Test: The Contractor will perform a TV inspection of the sewer lines to verify alignment and profile. Test results not meeting Town standards must be repaired at the Contractor's expense.
8. Other Testing in accordance with Town specifications may be required by the Town. Contractor shall include all testing costs in the price of the sewer items.

STORM DRAINS

1. Storm Drains shall be constructed of Corrugated Double Wall HDPE N-12 pipe bedded in ¾" screened rock to 6" over top of pipe.
2. Reinforced Concrete Inlet Boxes shall be manufactured and installed so the top of the box is two inches lower than theoretical elevation to allow field adjustments of the gutters to ensure unimpeded flow into the boxes. Precast inlet boxes shall be installed on compacted subgrade, using washed rock to raise the box to design elevation. Back fill around inlet boxes shall be 3/4 minus road base gravel compacted to 95% modified proctor density, ASTM D-1557, and will be tested. Contractor shall include cost of road base backfill of inlet boxes & manholes in the cost each structure.
3. Precast concrete structures: Shop drawings of precast structures shall be submitted to the Engineer for review at least 10 days prior to casting. The joints between RCP and precast concrete structures shall be sealed with non shrink grout.
4. Lamp test: The Engineer will visually check the alignment of the pipeline by looking through it. At least 95% of a full circle must be visible when viewed from structure to structure.

IRRIGATION PIPELINE

1. See "McCormick Ditch Relocation" plans for design and details of the irrigation pipeline.
2. Temporary Inlet: The irrigation pipeline was designed to accommodate temporary irrigation inflow and historic stormwater flows at irrigation structure #4. This inlet shall be capped and sealed when the storm sewer pipeline is placed in service.

STREET SPECIFICATIONS

1. Crested Butte Specifications: All street construction work shall be performed in conformance with these Plans, and with Crested Butte Criteria for Public Works, supplemented as needed with standard street details published separately by the Town of Crested Butte, and with CDOT Standard Specifications for Roads and Bridges, latest edition. In the event of a conflict in specifications, the more rigorous specification shall apply.
2. Survey Control: The Owner will provide one (1) set of cut / fill stakes on a 100' grid for primary bulk excavation and fill for overlot grading. Owner will subsequently provide one (1) set of cut / fill stakes at 50' intervals plus PC's, PT's, and grade breaks on both sides of each street, at offsets designated by the Contractor, for street construction and subgrade preparation. Stakes lost during construction will be replaced at the Contractor's expense, including stakes needed for the Engineer to evaluate the Contractor's work.
3. Subgrade Preparation in Undisturbed Native Material: Contractor shall scarify subgrade to 12" deep, moisture condition to +/- 2% of optimum moisture, and compact to 90% of Modified Proctor, ASTM D 1557, prior to placement of structural fill or base course gravel, unless otherwise directed by the Engineer. Subgrade preparation and density testing may not be required where excavation to design elevation reveals tight, dense native material. Call the Engineer to observe subgrade upon completion of excavation. Density testing will be provided by the Owner. Retesting in areas where density tests failed to meet the specification will be made at the Contractor's expense. Contractor shall finish the subgrade to within +.05' / -0.15' of design elevation.
4. Subgrade Preparation of Man Placed Structural Fill: Contractor shall moisture condition subgrade structural fill to +/- 2% of optimum moisture, and compact to 90% of Modified Proctor, ASTM D 1557, prior to placement of base course gravel. Density testing will be provided by the Owner. Retesting in areas where density tests failed to meet the specification will be made at the Contractor's expense. Contractor shall finish the subgrade to within +.05' / -0.15' of design elevation.
5. Contractor shall set hubs left, right, and center at not more than 50' intervals to control subgrade finishing operations prior to placement of base course gravel, and shall replace any hubs lost during finishing operations to facilitate final elevation checks by the Engineer. Contractor may substitute GPS controlled grading equipment for blue top hugs.
6. Subsurface Soil Conditions: Existing native soil conditions at subgrade elevation may not be satisfactory for road construction without remedial measures at some locations within the project. The Engineer will evaluate the subgrade prior to placement of subbase. At any location where unstable subgrade conditions are encountered, the Engineer will determine appropriate remedial measures.
7. Compensation for Extra Work to Stabilize Subgrade: The Contractor shall be compensated by Change Order for extra work, if any, required to stabilize the subgrade.
8. Proof Roll Observation by the Engineer: Contractor shall proof roll the finished street subgrade utilizing a fully loaded tandem dump truck or tandem water truck in the presence of the Engineer prior to placement of base course gravel to demonstrate the stability, uniformity, and compaction of the subgrade. Proof rolling is incidental to the work, and the cost thereof shall be included in Contractor's unit prices. Any areas that yield excessively, in the judgment of the Engineer, will be reprocessed and recompacted to specifications at no additional expense to Owner, and shall be proof rolled again to demonstrate competence of the subgrade.
9. Subbase Gravel, if required, shall be crushed gravel conforming to CDOT Class 2 gradation specifications, compacted to 90% Modified Proctor, ASTM D 1557, at +/- 2% of optimum moisture. Density testing will be provided by the Owner. Retesting in areas where density tests failed to meet the specification will be made at the Contractor's expense.
10. Base Course Gravel shall be crushed gravel conforming with CDOT Class 6 gradation specifications, compacted to 95% Modified Proctor, ASTM D 1557, at +/- 2% of optimum moisture. At least 50% of the coarse aggregate (plus #4 sieve size) shall have at least 2 fractured faces. Density, gradation, and fractured face testing will be provided by the Owner. Retesting in areas where density tests failed to meet the specification will be made at the Contractor's expense. Contractor shall submit samples of proposed base course gravel for testing at least 10 days in advance of use on the project.
11. Base Preparation for Paving: Tolerances for base preparation for paving (3" mat): gravel base course shall be finished to match curb or pan at a depth of 2 1/2" below the lip of the gutter prior to paving. Allowable tolerance for compacted base course prior to paving shall be +/- 1/4" at curb line, and -0" to +1" at centerline. Contractor shall set bluetop hubs on 50' intervals at centerline to control gravel finishing operations.
12. Proof Roll Observation by the Engineer: Contractor shall proof roll the base course prior to placement of paving to demonstrate to the Engineer the stability, uniformity, and compaction of the base. Any areas that yield excessively, in the judgment of the Engineer, will be reprocessed and recompacted to meet specifications at no additional expense to Owner, and shall be proof rolled again to demonstrate competence of the base course gravel. Proof rolling is incidental to the work, and the cost thereof shall be included in the price of gravel.
13. Manhole Covers shall be installed flush with or slightly below the grade of the base course gravel. Density tests of base course gravel will be performed within 12" of the manhole. The top of the cover shall be set to match street grade longitudinally, and to match the cross slope perpendicularly. Grout placed under the ring shall be full width of the base of the ring. Allowable tolerance from design elevation and slope shall be +/- 1/4". At the time of placement of the 3" thick asphalt mat, a manhole riser ring shall be installed to set the top of the cover 3/4" (+/- 1/4") below finished pavement surface.
14. Survey Control for Curb & Gutter: The Owner will provide one (1) set of cut / fill stakes at 50' intervals, plus BCR's, ECR's, grade breaks, and radius points, on both sides of each street, to construct the curb and gutter. Stakes lost during construction will be replaced at the Contractor's expense.
15. Concrete shall conform to CDOT Class D concrete specifications. Contractor shall submit a concrete mix design to the Engineer for approval at least 10 days prior to the first concrete placement. Concrete shall achieve 4,500 psi strength at 28 days. Slump shall not exceed 4". Sprinkling water on the surface during finishing is prohibited. Freshly placed concrete surfaces shall be protected from rain for 24 hours. Concrete flatwork shall be protected with curing compound approved by the Engineer applied immediately after finishing work is complete. Concrete shall be protected from freezing for at least 5 days after placement. If daytime temperatures are consistently below 60 F, and fall below freezing at night, ACI specifications for cold weather concrete placement will be implemented. The Owner will provide quality assurance testing.
16. Concrete Ponding Tolerance: All concrete surfaces shall be finished to drain. Gutters and pans shall be checked for ponding by the Engineer. Any area that holds water more than 1/2" deep, or which covers more than 2 sf, shall be repaired or reconstructed as directed by the Engineer.
17. Asphalt Pavement: Paving shall conform to CDOT specifications. The hot bituminous pavement mixture shall be designed in accordance with CDOT procedures for Superpave mixes by an accredited laboratory, and shall be signed and stamped by a Colorado Registered Engineer. The mix design shall be one that is in current use on CDOT work in this area, and shall conform to the tolerances specified in Table 401-1, CDOT Standards for Road & Bridge Construction, current edition. Contractor shall submit a mix design to the Engineer for approval at least 10 days prior to paving. The asphalt binder shall be a performance graded binder in common use on CDOT projects in this area and at this elevation (PG 58-28 unless otherwise approved). Aggregate gradation shall be CDOT Grading S or SX, or a substitute approved by the Engineer. Aggregate shall conform to CDOT fractured face requirements for Superpave asphalt mixes. Three inch mats shall be placed in a single lift. Pavement shall be compacted to 94% +/-2% of maximum theoretical density. CDOT temperature restrictions for asphalt placement will be fully observed. Quality assurance testing will be provided by the Owner. Contractor shall notify the Engineer at least 72 hours in advance of paving in order to schedule testing.
18. Pavement Tolerances: Smoothness tolerances shall conform to CDOT specifications and measurement protocols. Pavement adjacent to concrete shall be finished off 3/4" (+/- 1/4") above lips of gutters and 1" (+/- 1/4") above edges of pans.

NO	DATE	REVISIONS	BY
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8	12/12/16	TOWN ENGINEER REVIEW COMMENTS	JT/PI
7	9/8/16	SANITARY SEWER SVC LOC REVS	JT/PI
6	9/7/16	REMOVE ALLEY DESG, STORM/IRR,PHASING REVS	JT/PI
5	7/24/15	ADDED SOUTH ALLEY DESIGN	JT/PI
4	7/1/15	IRR, STORM SEW & GRADING REVS	JT/PI

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MGW/PJI		2014-10-25

RUTH M. KAPUSHION FAMILY PARTNERSHIP
TEOCALLI & 5TH
CRESTED BUTTE, CO

GENERAL CONSTRUCTION NOTES

DMC JOB NO.: 16109

SHEET NO. 1 OF 31 SHEETS

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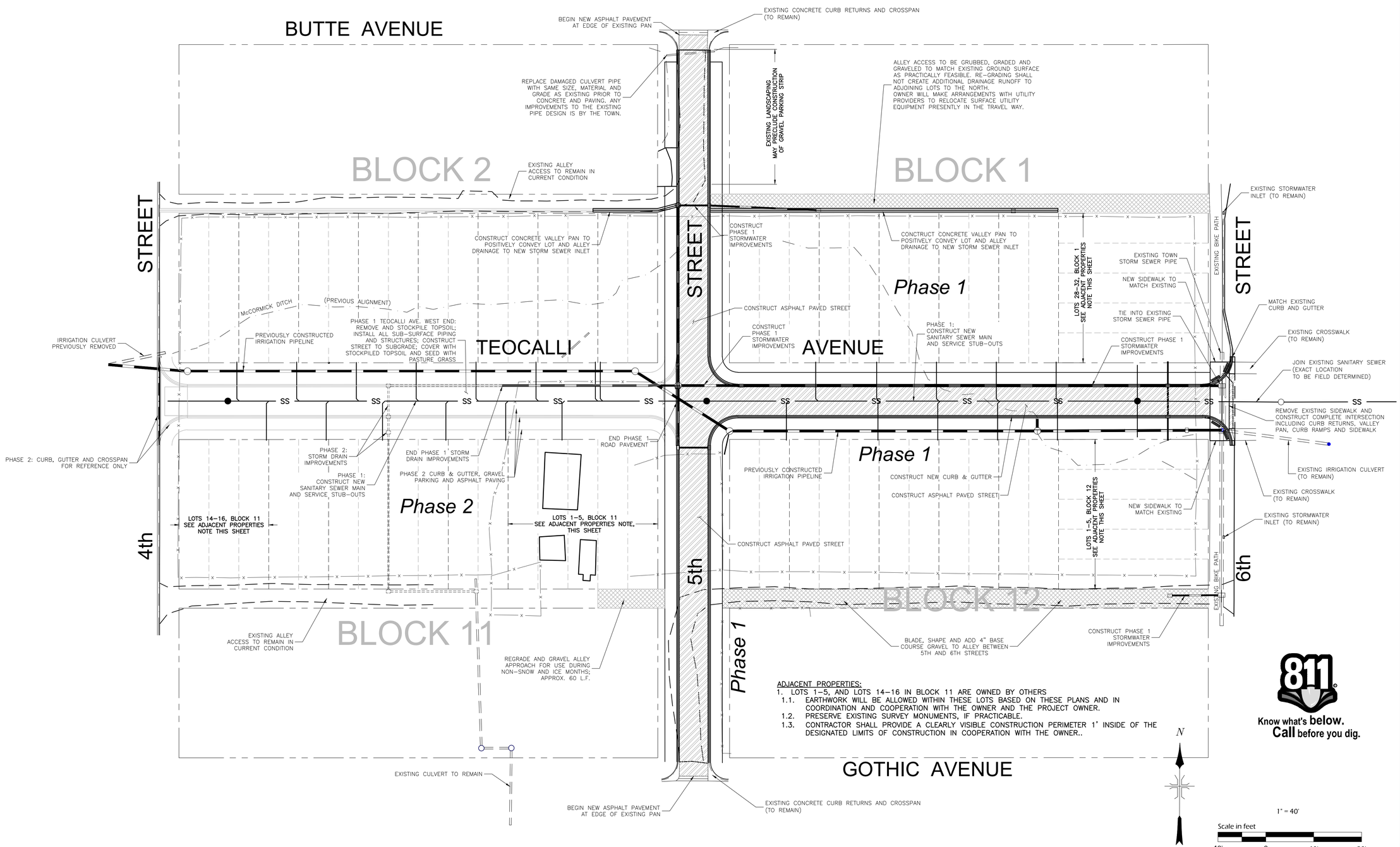

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MGW/PJI	14 HOC_BASE.DWG		

RUTH M. KAPUSHION FAMILY PARTNERSHIP
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SITE OVERVIEW AND CONSTRUCTION LIMITS PLAN

DMC JOB NO.: 16109

SHEET NO.: 2 OF 31 SHEETS

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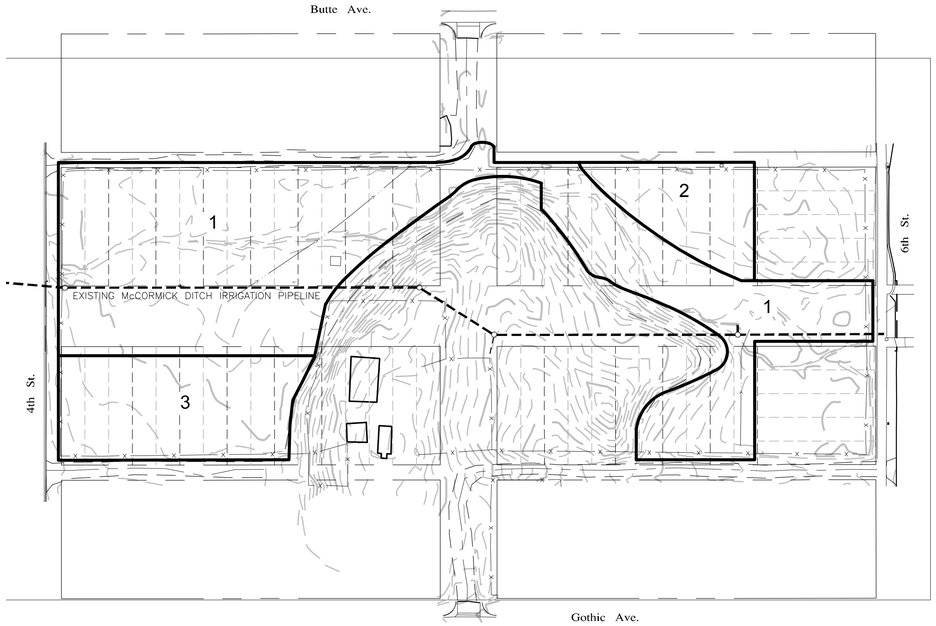
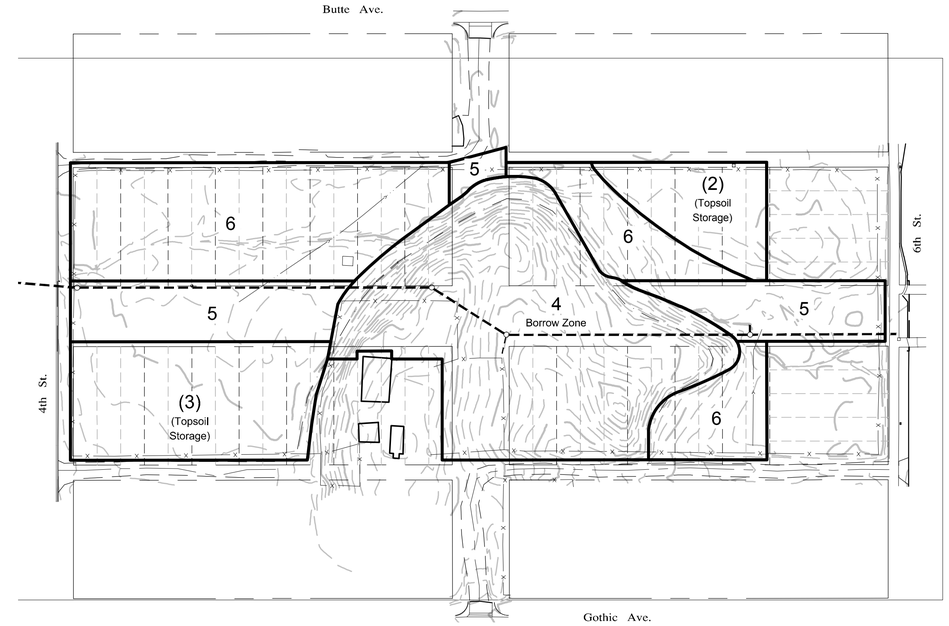


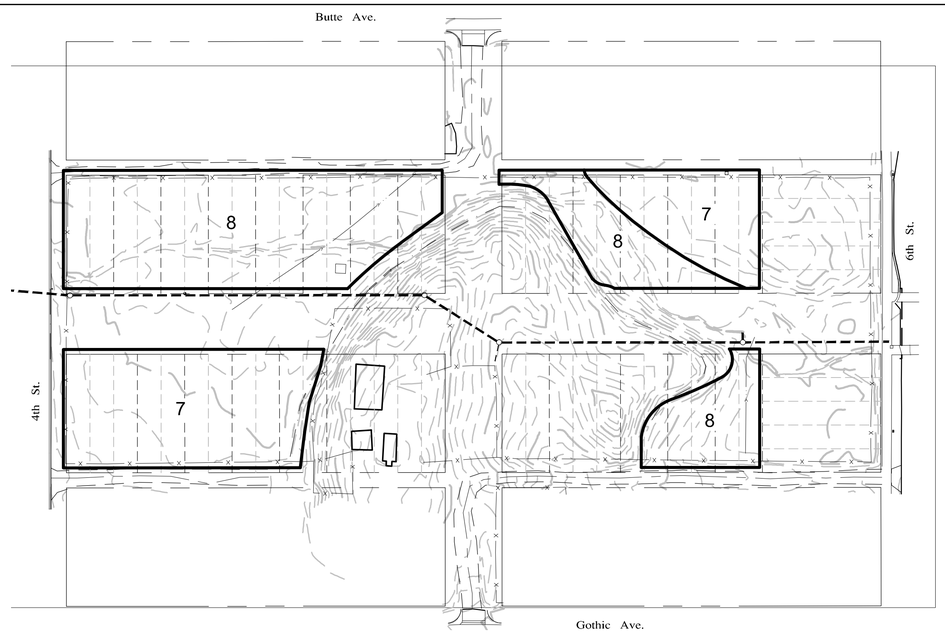
STAGE 1 WORK PLAN

Area	Work To Be Done
1	Strip Topsoil to Underlying Gravel, Store in Areas #2 & #3
2	Topsoil Storage Area
3	Topsoil Storage Area



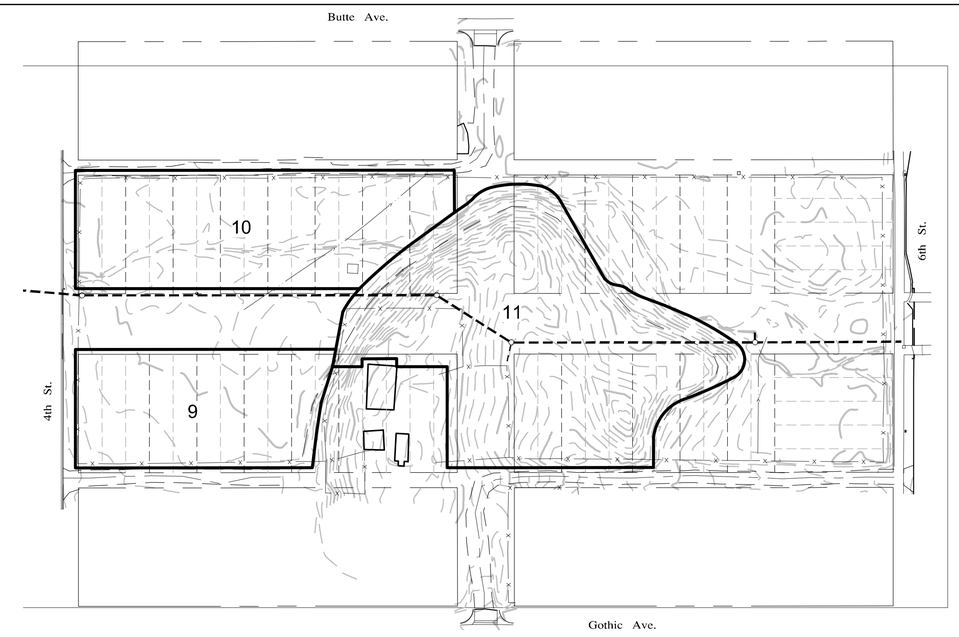
STAGE 2 WORK PLAN

Area	Work To Be Done
4	Excavate Area #4
5	Construct Street Structural Fills to Subgrade in Areas #5
6	Place Compacted Fill for Building Sites in Areas #6



STAGE 3 WORK PLAN

Area	Work To Be Done
7	Move Stored Topsoil from Areas #7 into Areas #8
8	Distribute Stored Topsoil from Areas #7



STAGE 4 WORK PLAN

Area	Work To Be Done
9	Strip Topsoil from Area #9, Store in Area #10
10	Topsoil Storage Area
11	Excavate Area #11, Complete All Excavation to Design Elevation
9	Place Compacted Fill for Building Sites in Area #9

Know what's **below.**
Call before you dig.

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4	7/1/15	IRR, STORM SEW & GRADING REVS	JT/PI

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RUTH M. KAPUSHION FAMILY PARTNERSHIP
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EARTHWORK STAGING PLAN

DMC JOB NO.: 16109

SHEET NO.: 3 OF 31 SHEETS

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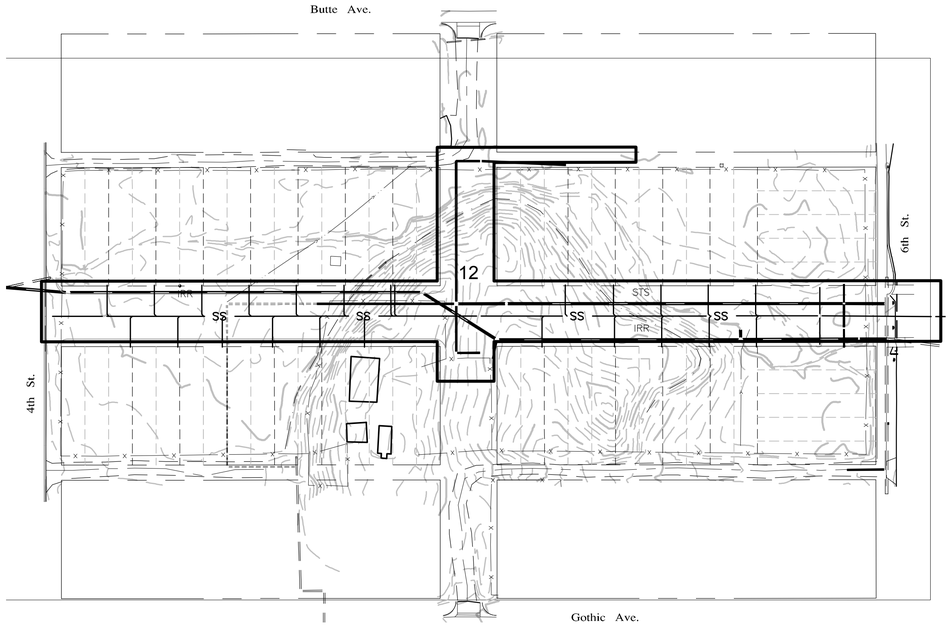
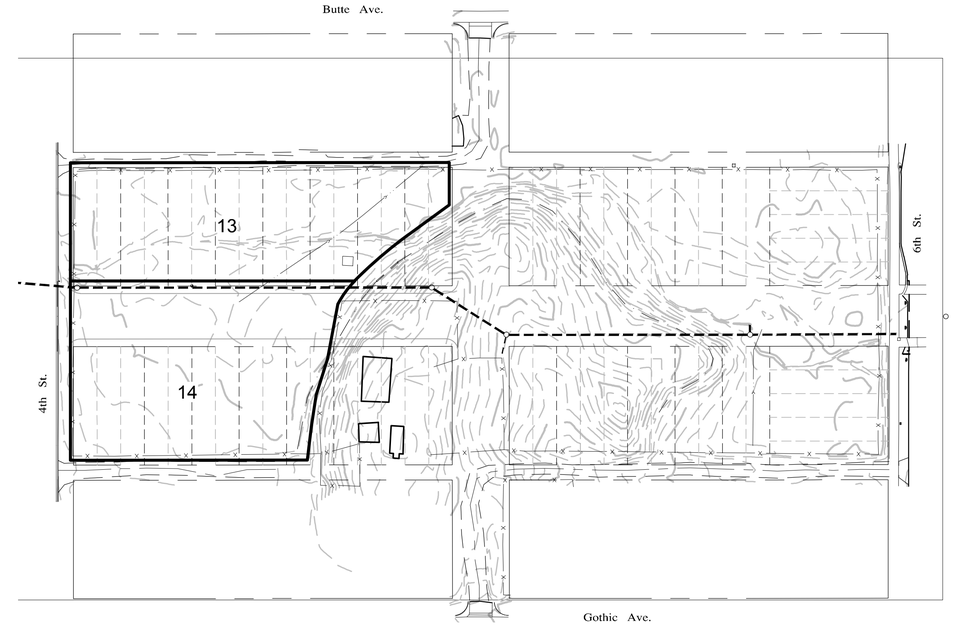


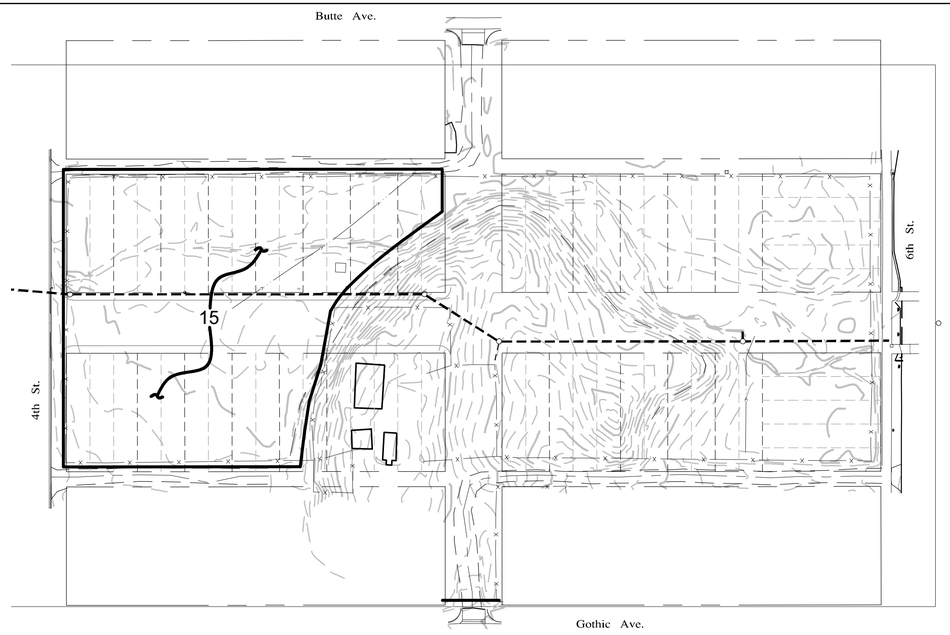
STAGE 5 WORK PLAN

Area	Work To Be Done
12	Construct Sanitary Sewer and Storm Sewer Systems in Area #12



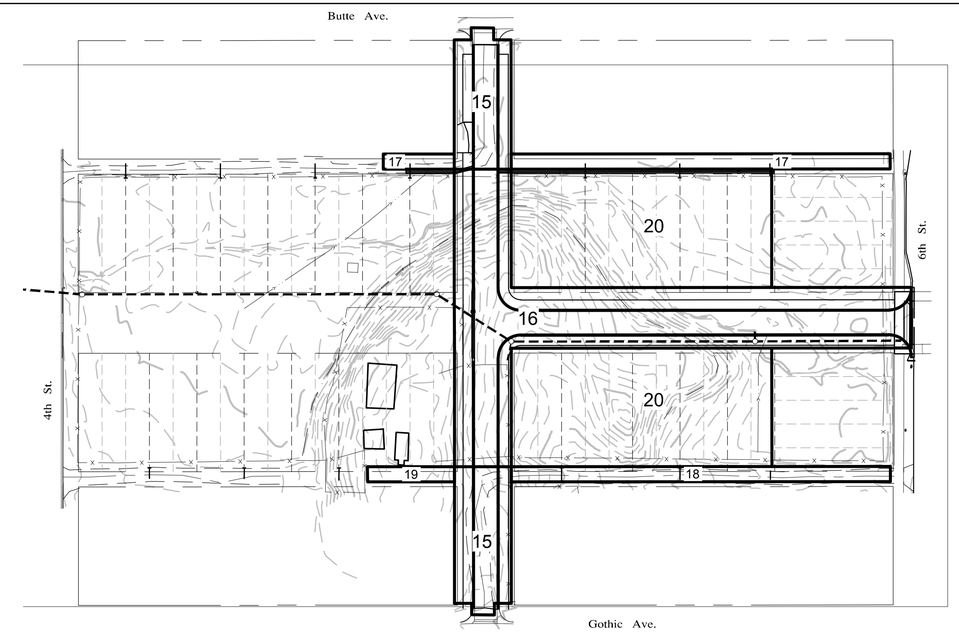
STAGE 6 WORK PLAN

Area	Work To Be Done
13, 14	Move Topsoil from Area #13, Distribute in area #14



STAGE 7 WORK PLAN

Area	Work To Be Done
15	Grade Pasture Uniformly, Re-Seed, Restore Fences



STAGE 8 WORK PLAN

Area	Work To Be Done
15	Excavate Areas #15 to Subgrade
15,16	Construct Phase 1 Street Structural Section in Areas #15 & #16
15,16	Construct Phase 1 Curb & Gutter in Areas #15 & #16
15,16	Construct Phase 1 Parking Strips in Areas #15 & #16
17	Strip Topsoil and Organics from North Alley & Construct Subgrade
17	Gravel North Alley and Construct Drainage Pans

Area	Work To Be Done
18	Grade and Gravel Southeast Alley
19	Grade and Gravel Phase 1 Southwest Alley Segment
15,16	Pave Phase 1 Streets in Areas #15 & #16
20	Finish Grade Topsoil on Building Sites in Phase 1

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RUTH M. KAPUSHION FAMILY PARTNERSHIP
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CRESTED BUTTE, CO

EARTHWORK STAGING PLAN

DMC JOB NO.: 16109

SHEET NO.: 4 OF 31 SHEETS

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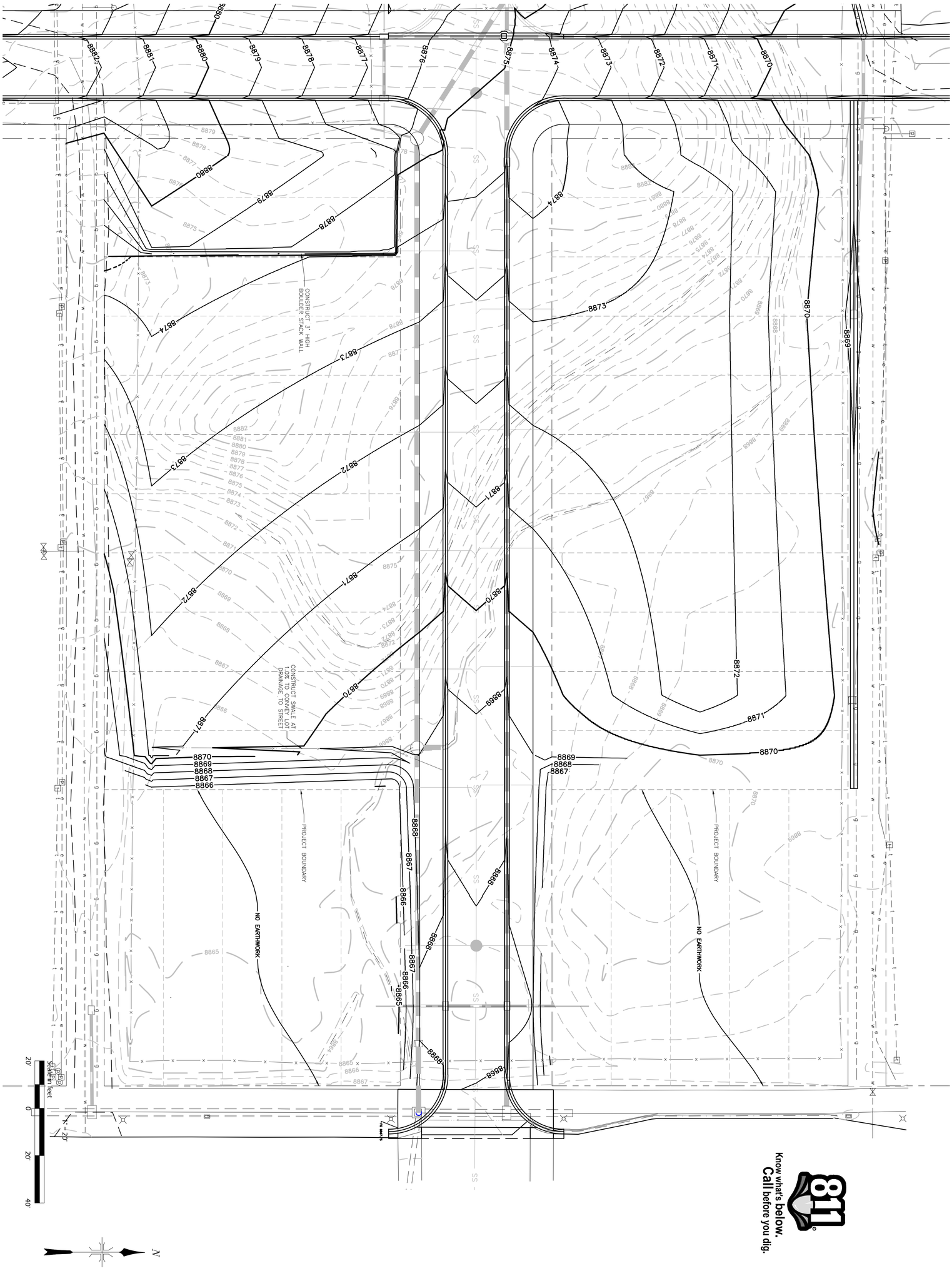

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RUTH M. KAPUSHION FAMILY PARTNERSHIP
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OVER-LOT GRADING PLAN - PHASE 1

JOB NO. 16109

SHEET NO. 5 OF 31 SHEETS

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6	9/7/16	IRR, STORM, SEW, PHASING REVS	JT/PI
5	7/24/15	ADDED SOUTH ALLEY DESIGN	JT/PI
4	7/2/15	IRR,STORM,SEWER & GRADING REVS.	JT/PI

Know what's **below.**
Call before you dig.

N

1" = 20'

Scale in feet

20' 0 20' 40'

TEMPORARY PHASE 1 GRADING CONTOURS UNTIL PHASE 2 STORM SEWER SYSTEM IS CONSTRUCTED

CONSTRUCT TEMPORARY SWALE TO DRAIN LOW POINT OF OVERLOT GRADING TOWARDS INLET OF PHASE 1 STORM SEWER SYSTEM

EXISTING PIPE TO BE REMOVED

CUT SLOPE WILL EXPOSE MODERN CONCRETE BASEMENT FOUNDATION WALL

2:1 CUT SLOPE VEGETATED FOR EROSION PROTECTION

EXISTING STRUCTURES TO REMAIN

OWNED BY OTHERS. CONTRACTOR TO COORDINATE OVER-LOT GRADING WITH PROPERTY OWNER

NO	DATE	REVISIONS	BY
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RUTH M. KAPUSHION FAMILY PARTNERSHIP
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OVER-LOT GRADING PLAN - PHASE 2

DMC JOB NO.: 16109

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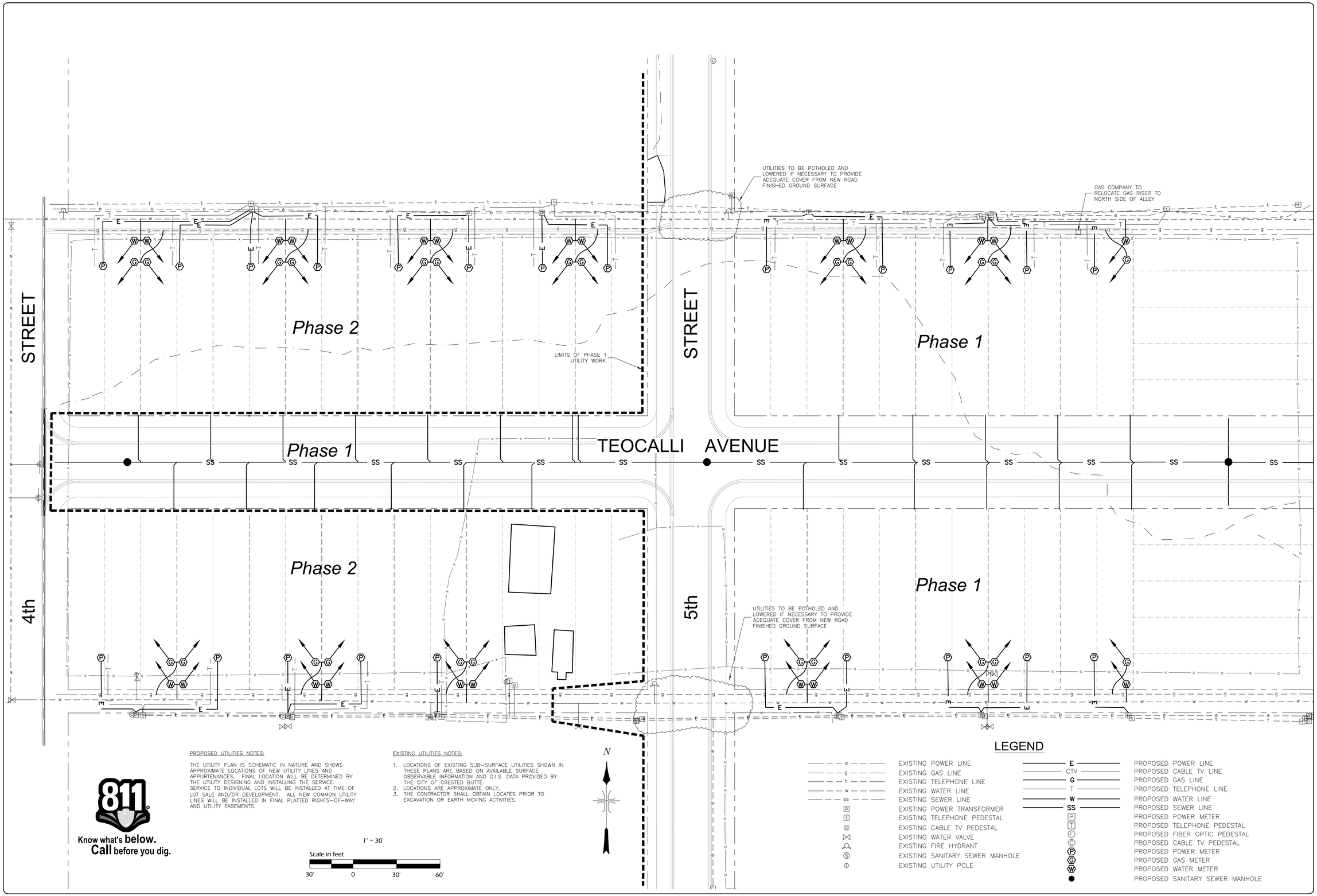

PROPOSED UTILITIES NOTES:

THE UTILITY PLAN IS SCHEMATIC IN NATURE AND SHOWS APPROXIMATE LOCATIONS OF NEW UTILITY LINES AND APPURTENANCES. FINAL LOCATION WILL BE DETERMINED BY THE UTILITY DESIGNING AND INSTALLING THE SERVICE. SERVICE TO INDIVIDUAL LOTS WILL BE INSTALLED AT TIME OF LOT SALE AND/OR DEVELOPMENT. ALL NEW COMMON UTILITY LINES WILL BE INSTALLED IN FINAL PLATTED RIGHTS-OF-WAY AND UTILITY EASEMENTS.

EXISTING UTILITIES NOTES:

1. LOCATIONS OF EXISTING SUB-SURFACE UTILITIES SHOWN IN THESE PLANS ARE BASED ON AVAILABLE SURFACE OBSERVABLE INFORMATION AND G.I.S. DATA PROVIDED BY THE CITY OF CRESTED BUTTE.
2. LOCATIONS ARE APPROXIMATE ONLY.
3. THE CONTRACTOR SHALL OBTAIN LOCATES PRIOR TO EXCAVATION OR ERTH MOVING ACTIVITIES.

LEGEND

e	EXISTING POWER LINE
g	EXISTING GAS LINE
t	EXISTING TELEPHONE LINE
w	EXISTING WATER LINE
ss	EXISTING SEWER LINE
P	EXISTING POWER TRANSFORMER
T	EXISTING TELEPHONE PEDESTAL
C	EXISTING CABLE TV PEDESTAL
	EXISTING WATER VALVE
	EXISTING FIRE HYDRANT
S	EXISTING SANITARY SEWER MANHOLE
	EXISTING UTILITY POLE
E	PROPOSED POWER LINE
CTV	PROPOSED CABLE TV LINE
G	PROPOSED GAS LINE
T	PROPOSED TELEPHONE LINE
W	PROPOSED WATER LINE
SS	PROPOSED SEWER LINE
P	PROPOSED POWER METER
T	PROPOSED TELEPHONE PEDESTAL
F	PROPOSED FIBER OPTIC PEDESTAL
C	PROPOSED CABLE TV PEDESTAL
P	PROPOSED POWER METER
G	PROPOSED GAS METER
W	PROPOSED WATER METER
	PROPOSED SANITARY SEWER MANHOLE

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UTILITY PLAN

DMC JOB NO.: 16109

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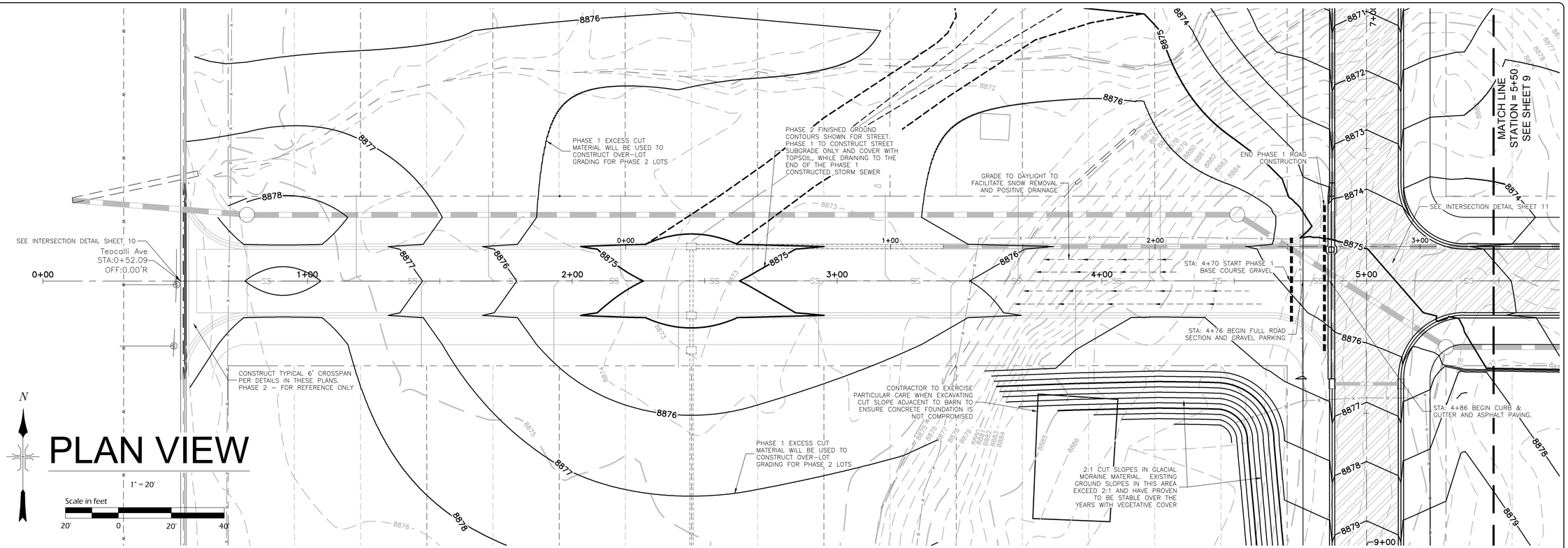

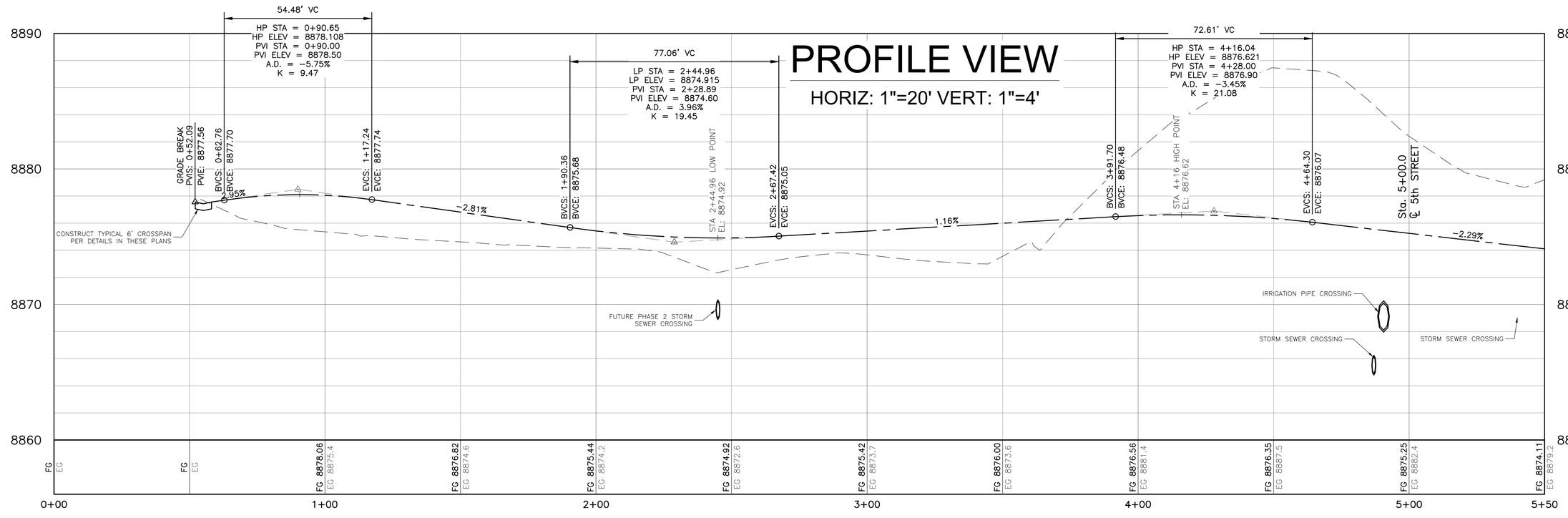

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CRESTED BUTTE, CO

STREET PLAN AND PROFILES
TEOCALLI AVE

DMC JOB NO.: 16109

SHEET NO.: 8 OF 31 SHEETS

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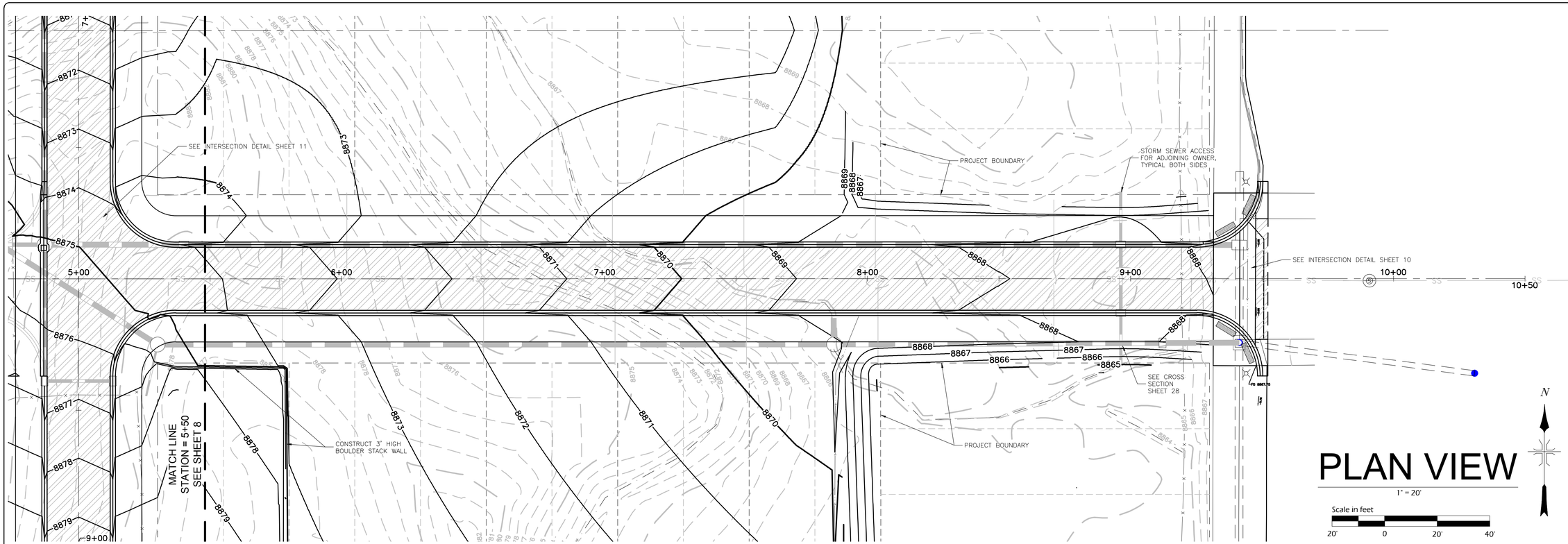
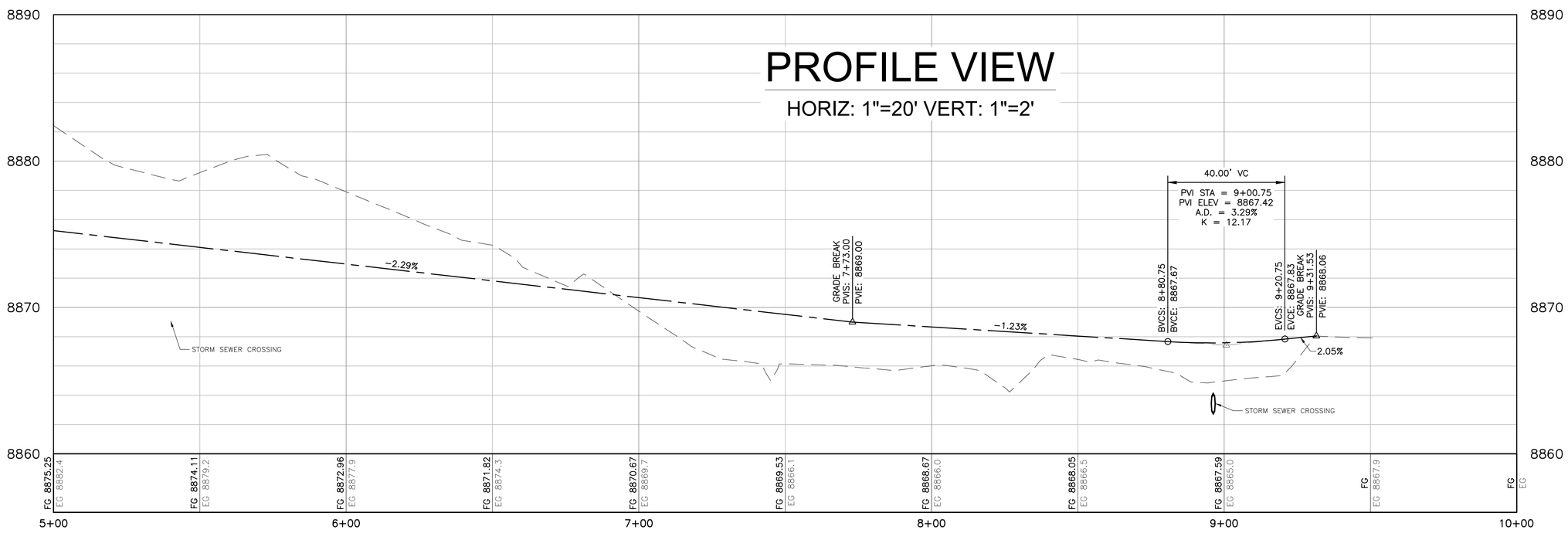


PLAN VIEW

1" = 20'

Scale in feet

20' 0 20' 40'



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STREET PLAN AND PROFILES
TEOCALLI AVE

DMC JOB NO.: 16109

SHEET NO.: 9 OF 31 SHEETS

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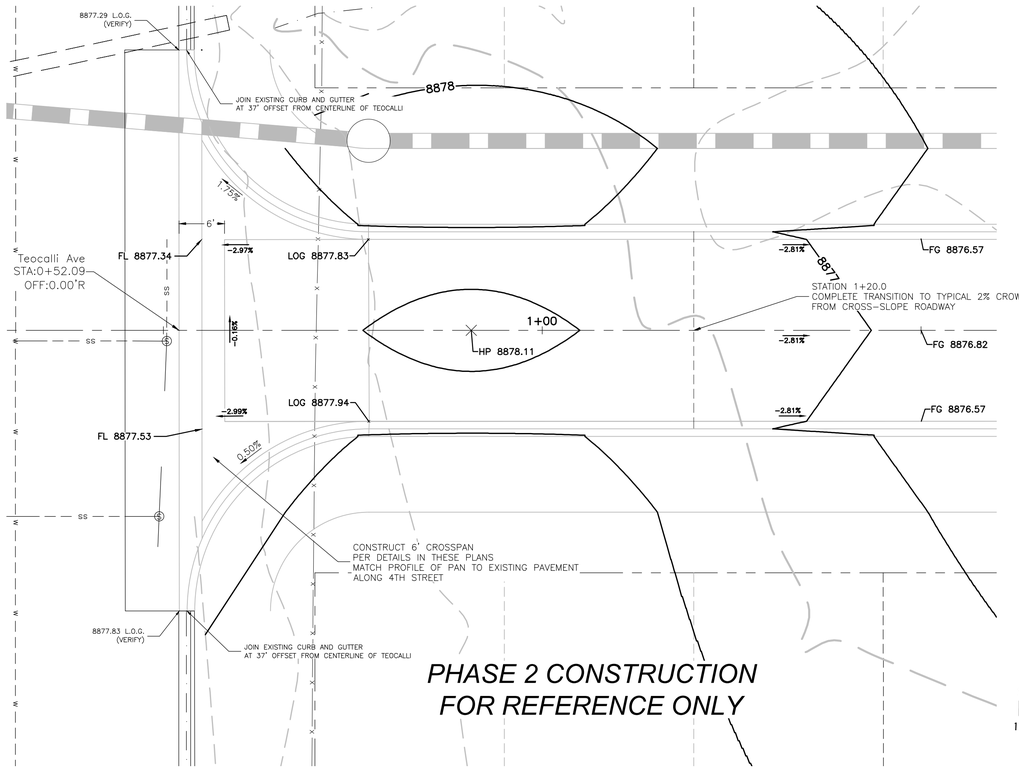

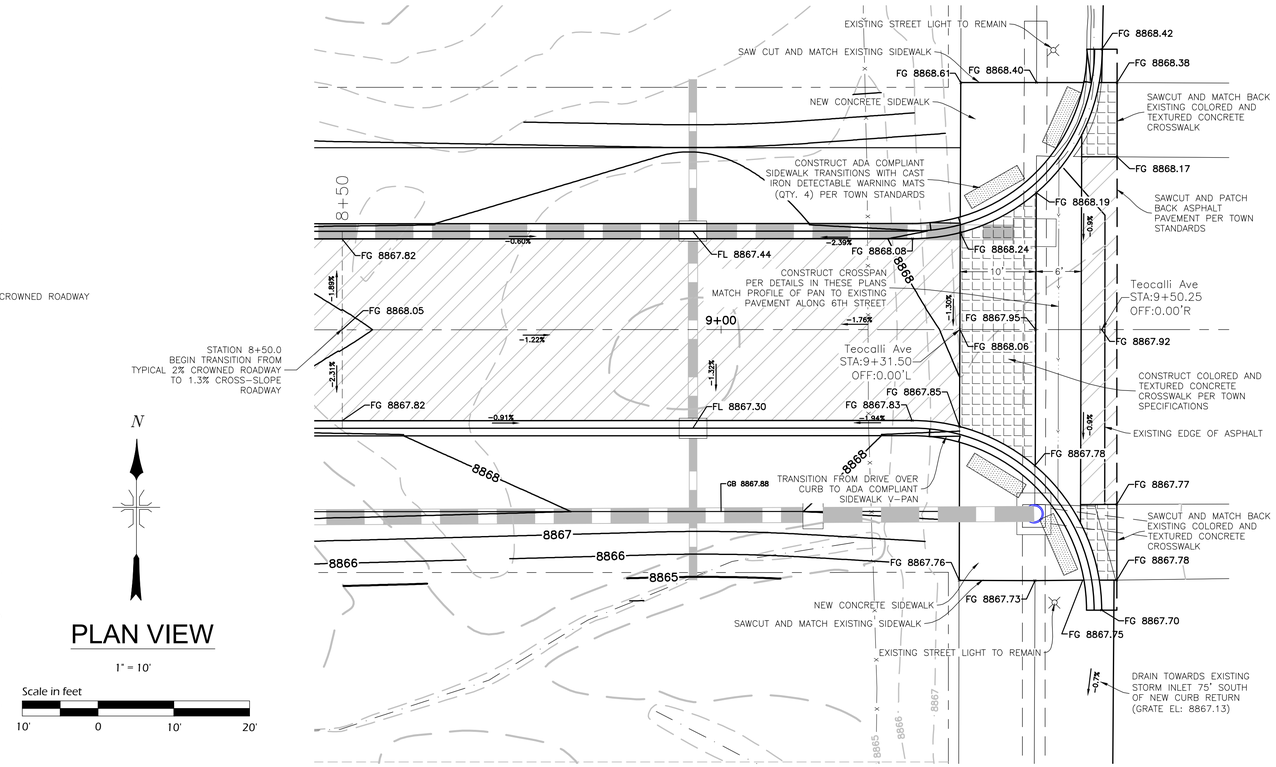

PLAN VIEW

1" = 10'

Scale in feet

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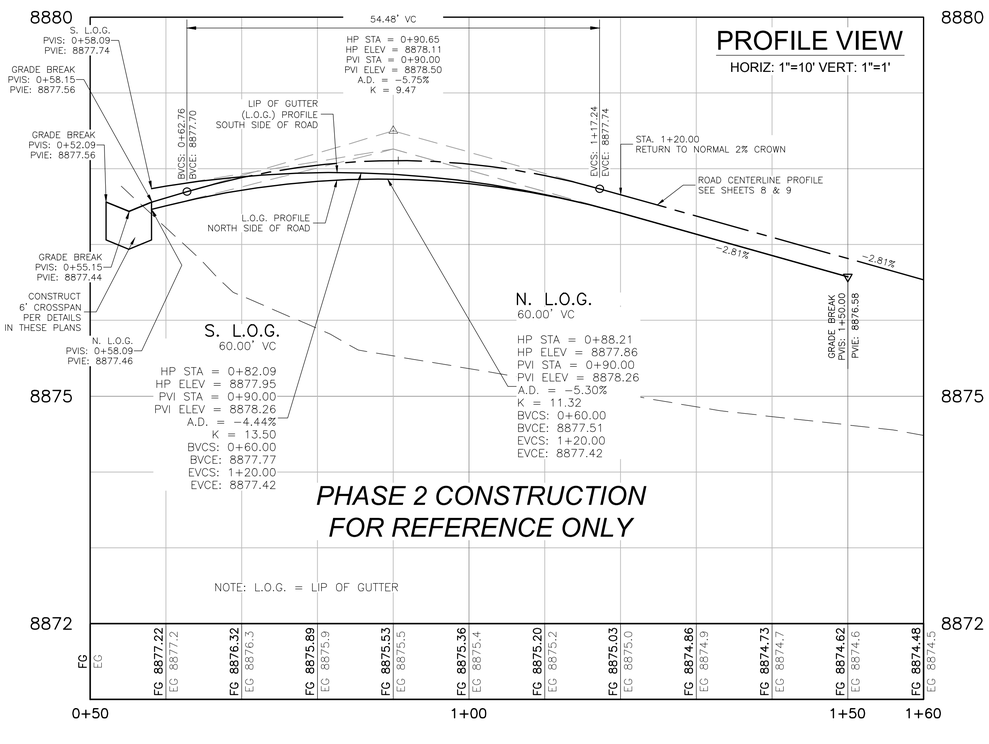

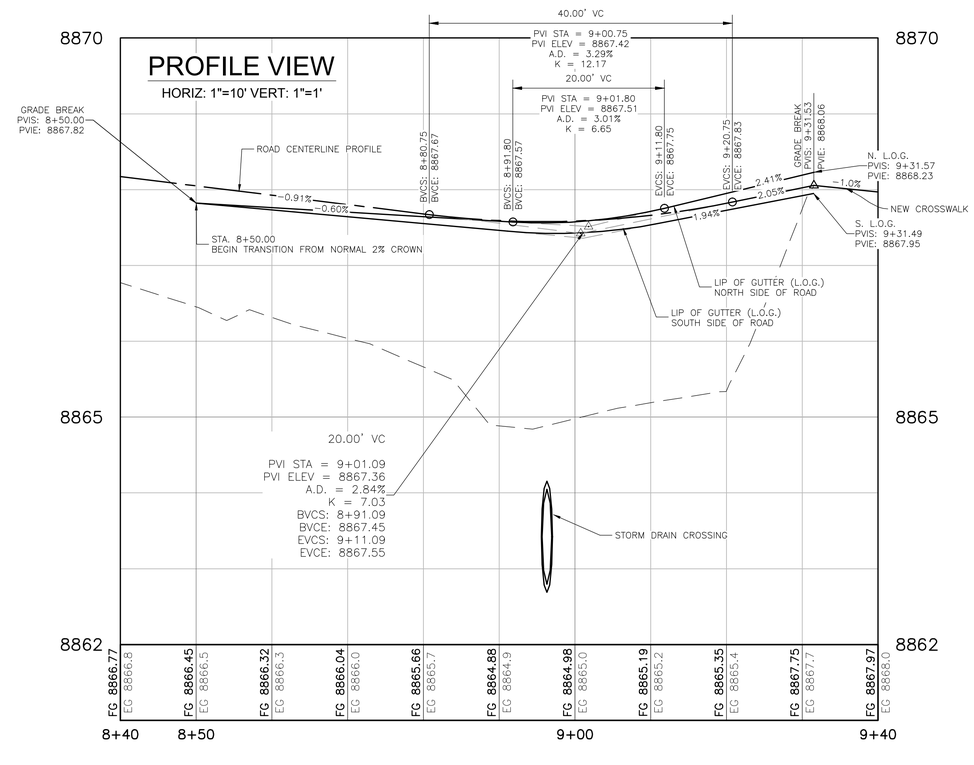

NO	DATE	REVISIONS	BY
9	1/23/17	SEPARATE IRR; TOWN EGR COMMENTS	JT/PI
8	12/12/16	TOWN ENGINEER REVIEW COMMENTS	JT/PI
7	9/8/16	SANITARY SEWER SVC LOC REVS	JT/PI
6	9/7/16	IRR. STORM, SEW, PHASING REVS	JT/PI
5	7/24/15	ADDED SOUTH ALLEY DESIGN	JT/PI
4	7/2/15	IRR.STORM,SEWER & GRADING REVS.	JT/PI

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DRAWN BY: MGW/PJI	FILE NAME: 14 11CC_BASE.DWG	DATE ISSUED: 2014-10-25	

RUTH M. KAPUSHION FAMILY PARTNERSHIP
TEOCALLI & 5TH
CRESTED BUTTE, CO

CROSSPAN GRADING DETAILS AND PROFILES

DMC JOB NO.: 16109

SHEET NO.: 10 OF 31 SHEETS

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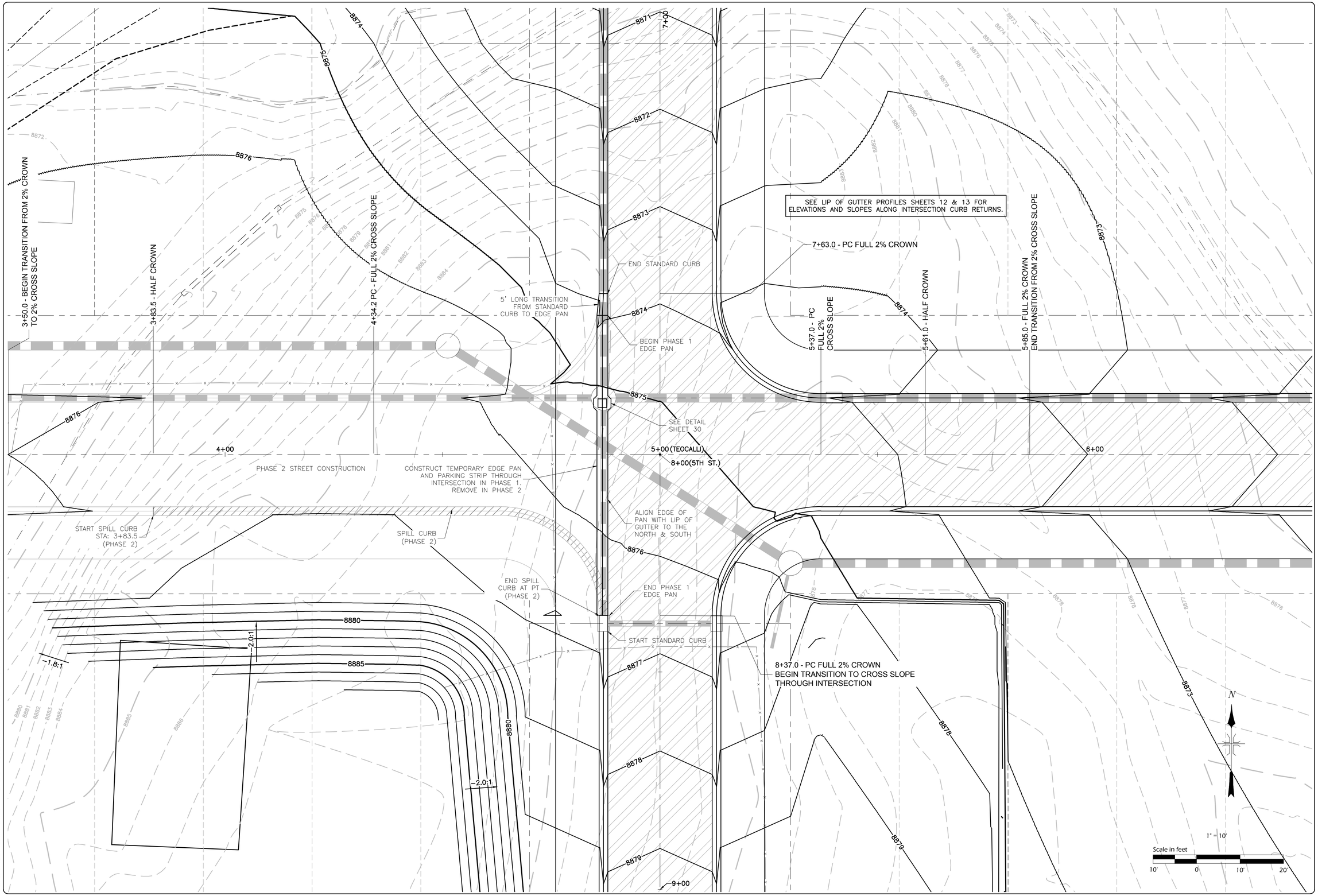

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8	12/12/16	TOWN ENGINEER REVIEW COMMENTS	JT/PI
7	9/8/16	SANITARY SEWER SVC LOC REVS	JT/PI
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RUTH M. KAPUSHION FAMILY PARTNERSHIP
TEOCALLI & 5TH
CRESTED BUTTE, CO

TEOCALLI AVE & 5TH STREET DETAILED GRADING PLAN

DMC JOB NO.: 16109

SHEET NO.: 11 OF 31 SHEETS

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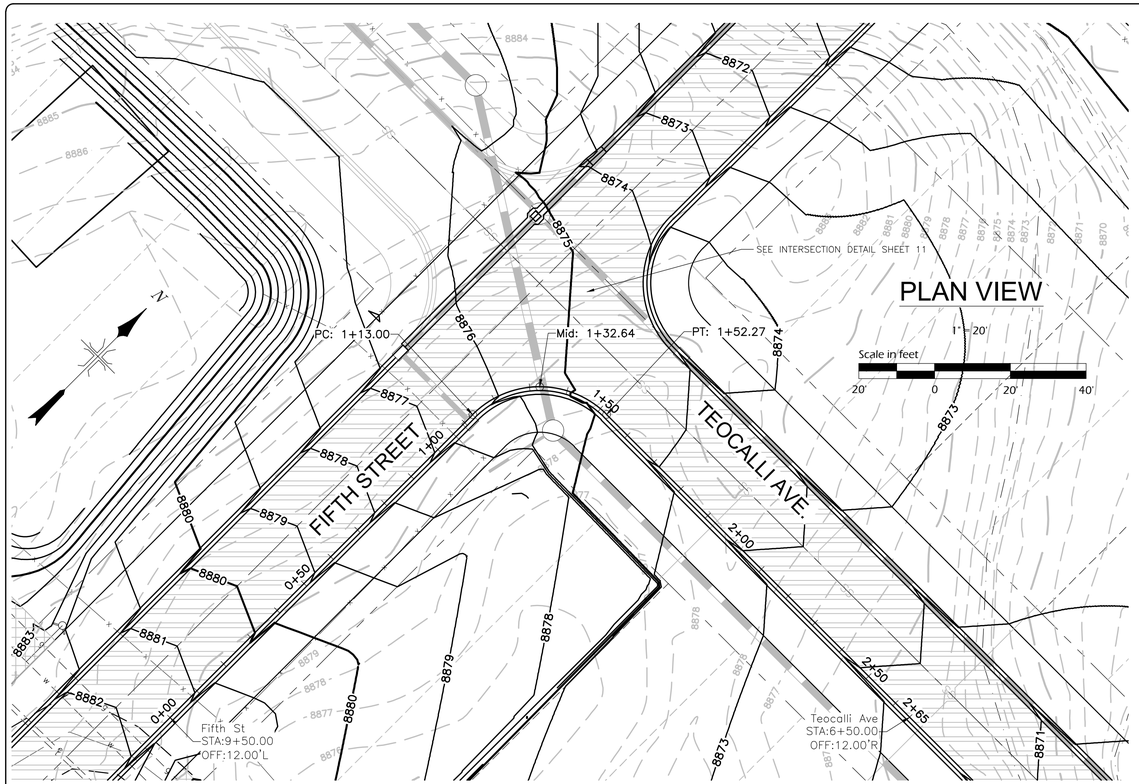

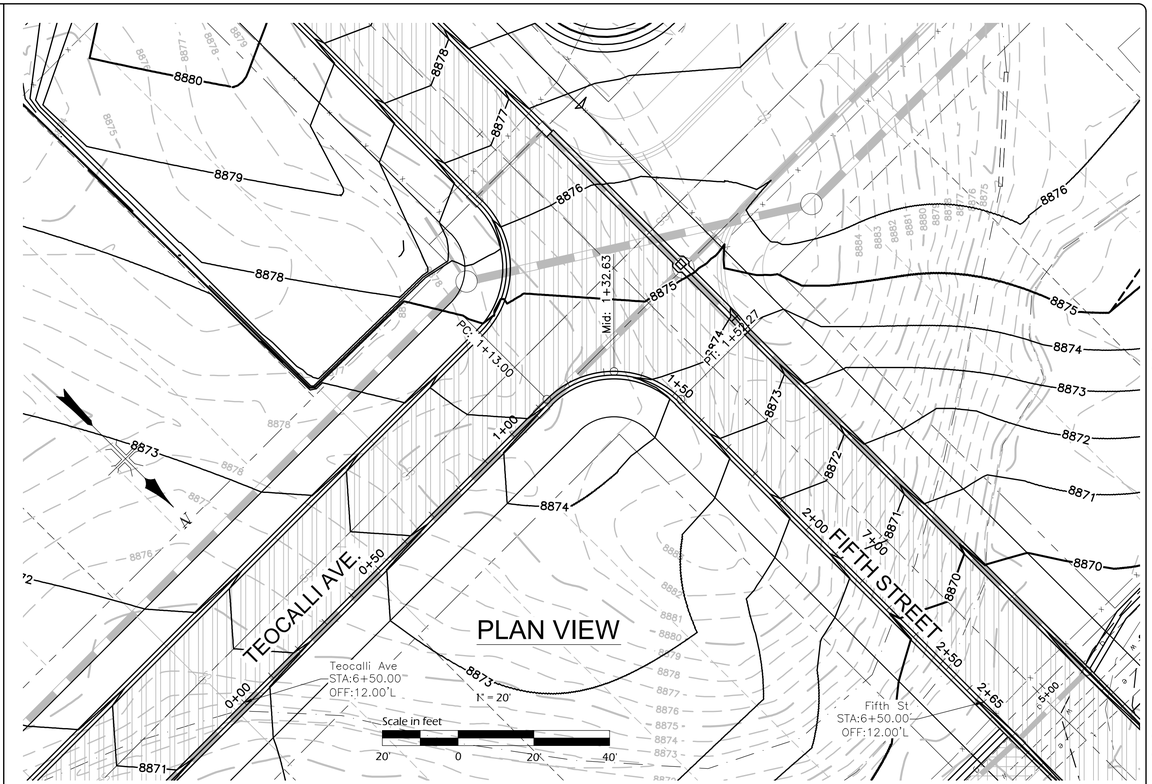

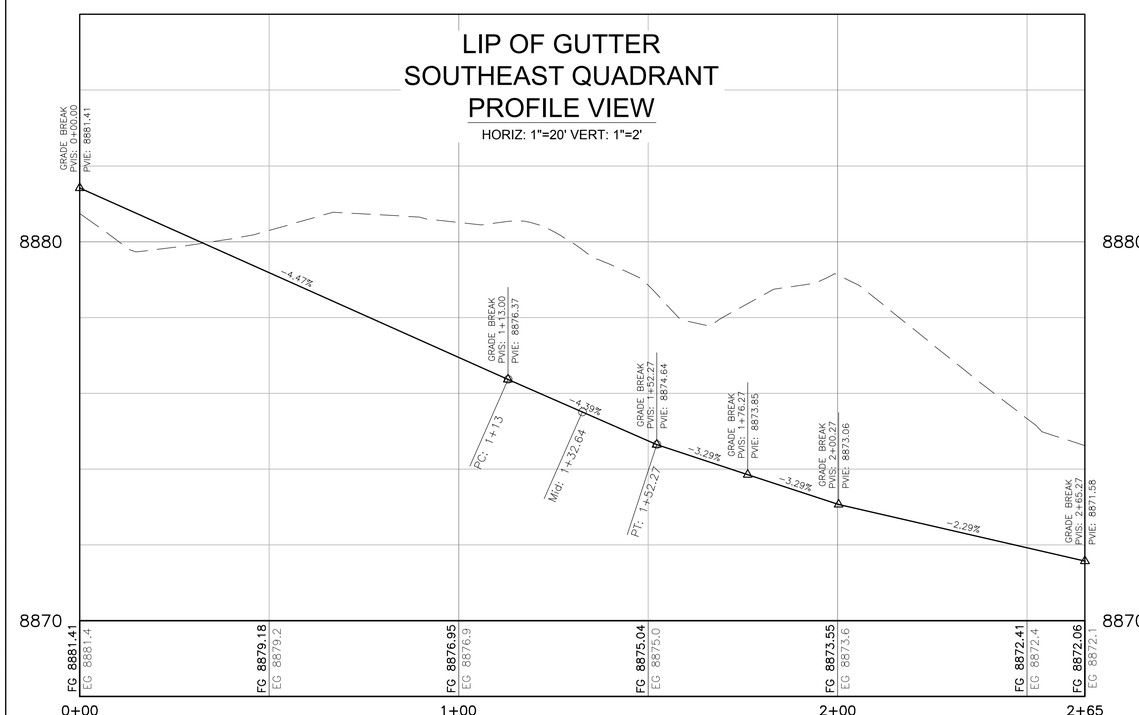

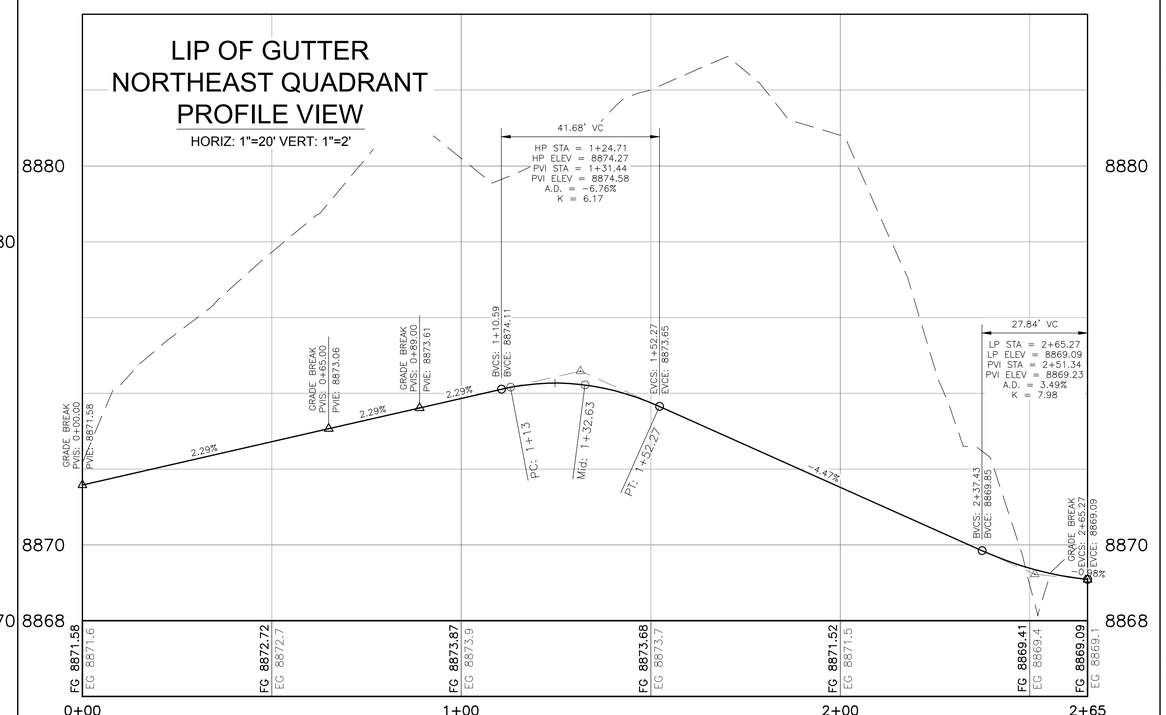

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6	9/7/16	IRR. STORM, SEW. PHASING REVS	JT/PI
5	7/24/15	IRR DESIGN REVS	JT/PI
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RUTH M. KAPUSHION FAMILY PARTNERSHIP
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CRESTED BUTTE, CO

TEOCALLI AVE. & 5TH ST. LIP OF GUTTER PROFILES

DMC JOB NO.: 16109

SHEET NO.: 12 OF 31 SHEETS

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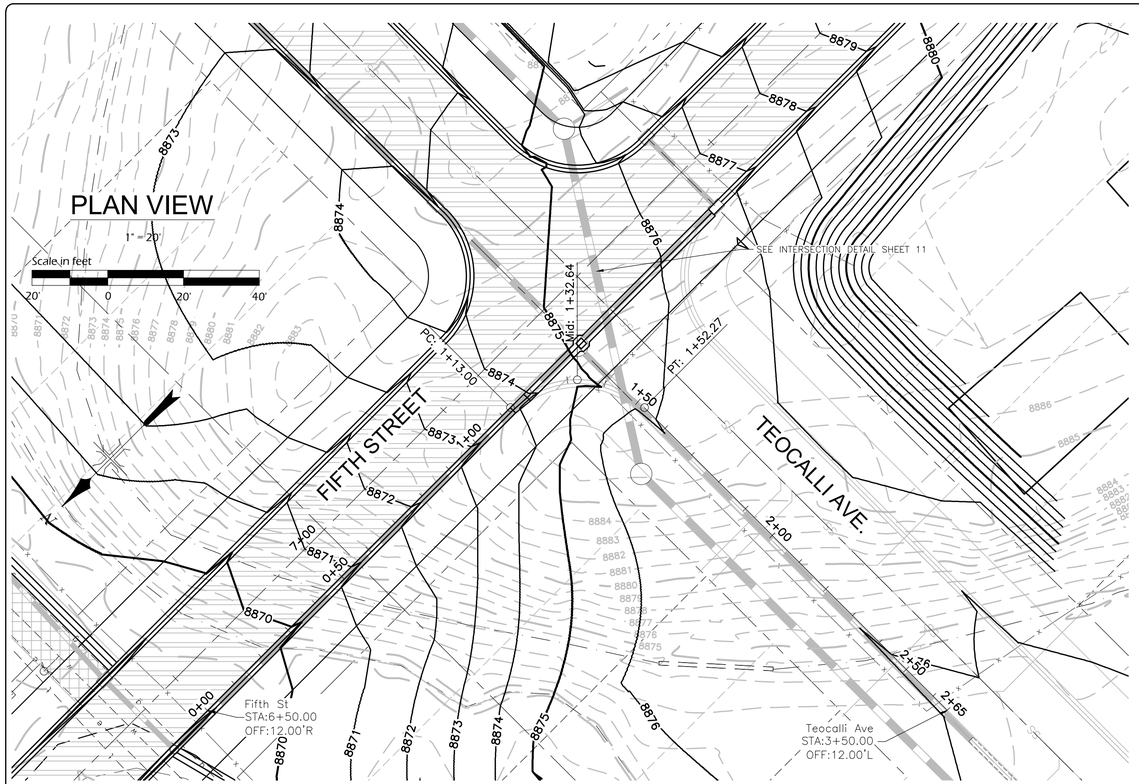

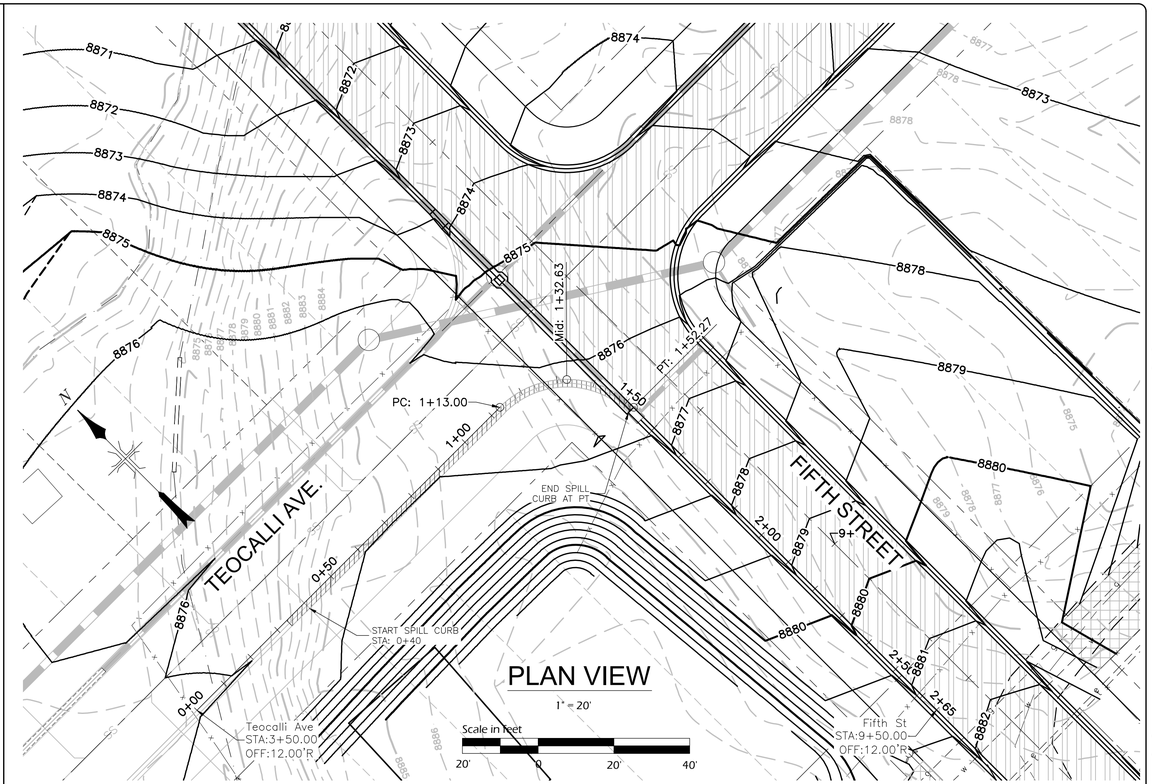

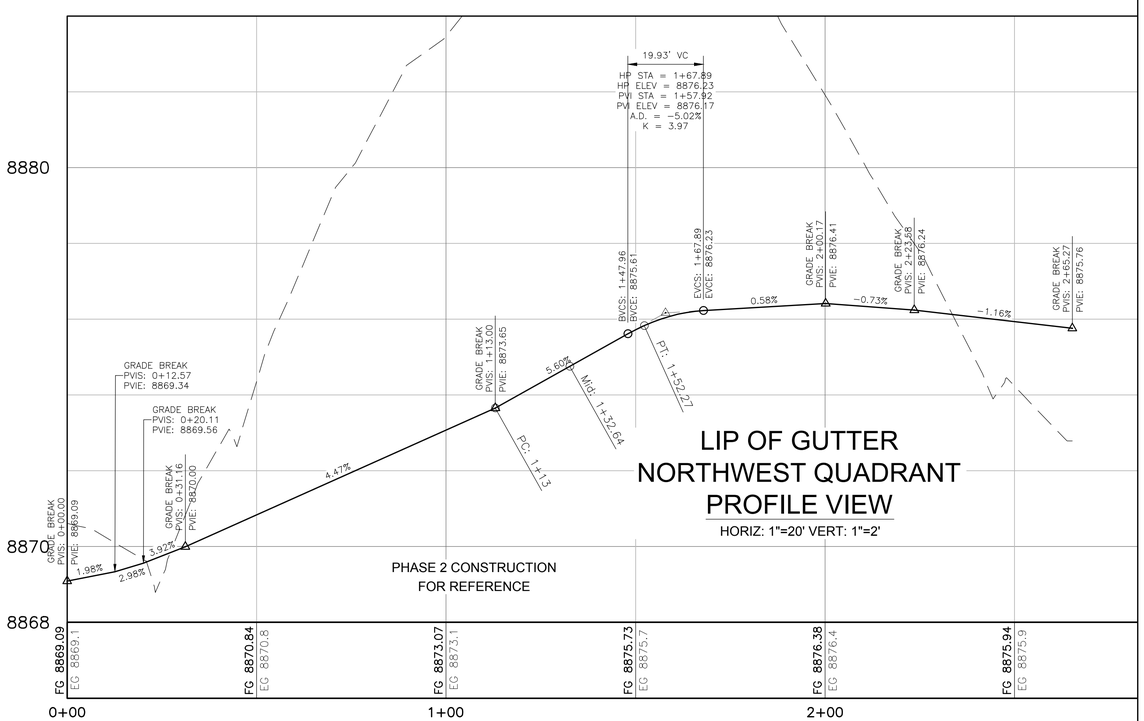

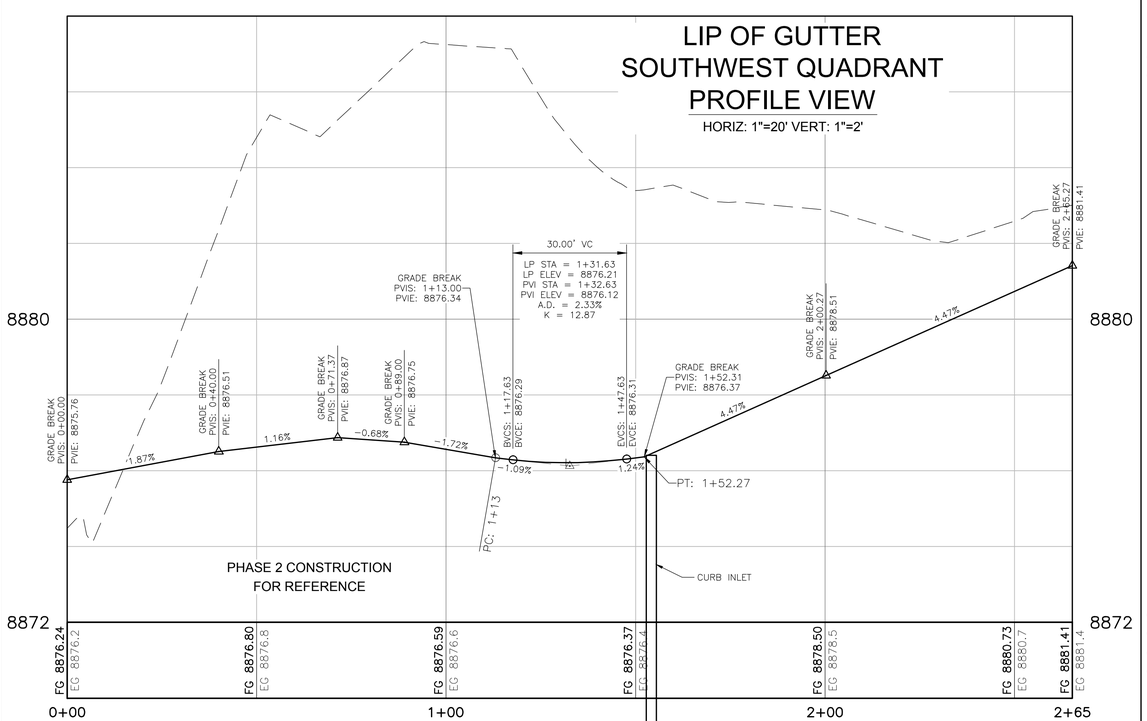

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DRAWN BY: MGW/PJI	FILE NAME: 14110C_BASE.DWG	DATE ISSUED: 2014-10-25

RUTH M. KAPUSHION FAMILY PARTNERSHIP
TEOCALLI & 5TH
CRESTED BUTTE, CO

TEOCALLI AVE. & 5TH ST. LIP OF GUTTER PROFILES

DMC JOB NO.: 16109

SHEET NO.: 13 OF 31 SHEETS

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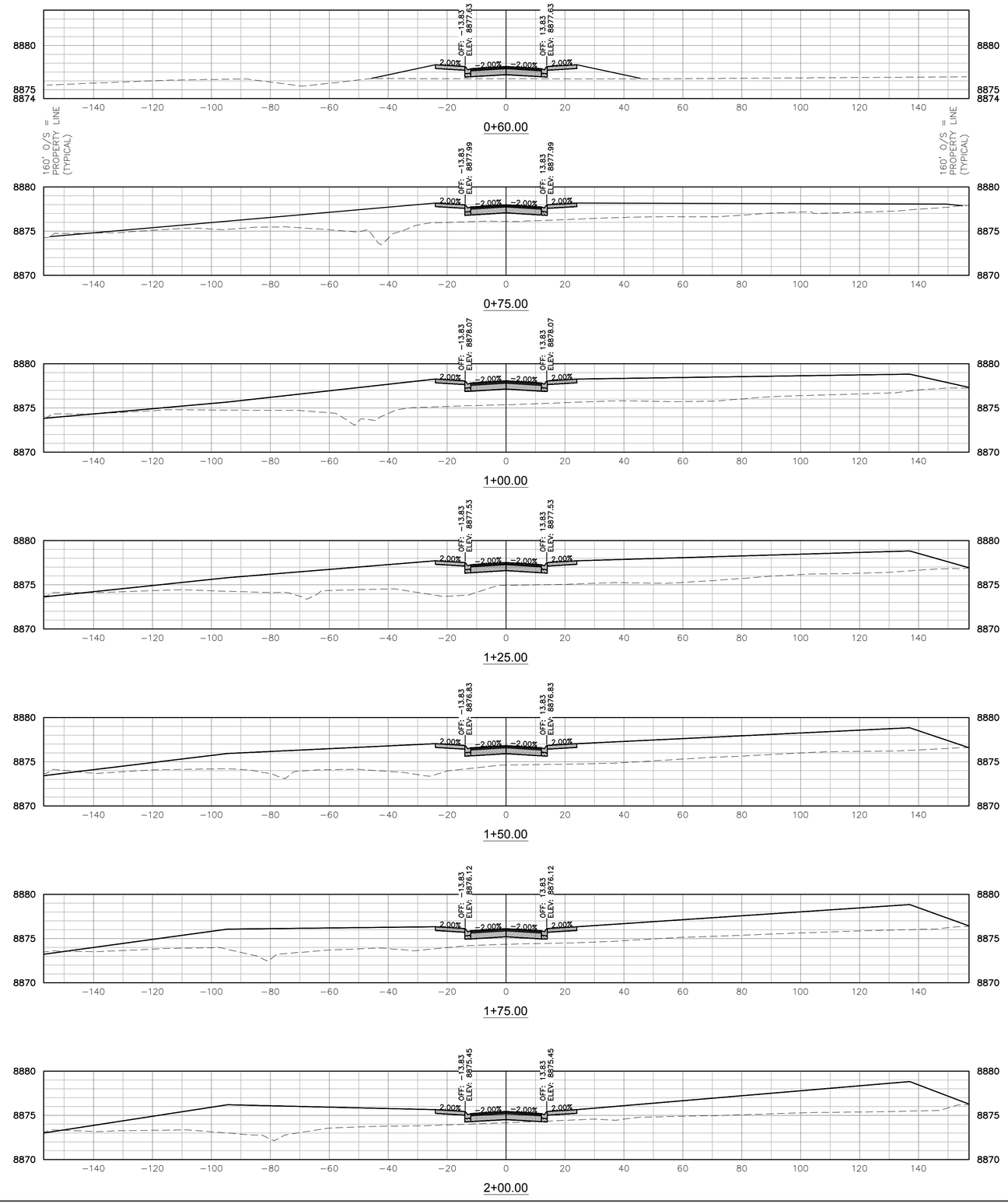

1" = 20'

Scale in feet

20' 0 20' 40'

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RUTH M. KAPUSHION FAMILY PARTNERSHIP
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CROSS SECTIONS TEOCALLI AVE

DMC JOB NO.: 16109

SHEET NO.: 14 OF 31 SHEETS

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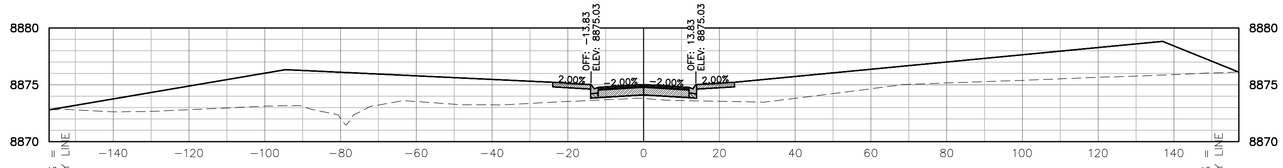

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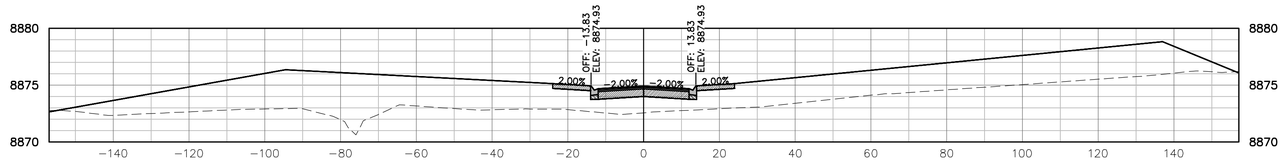

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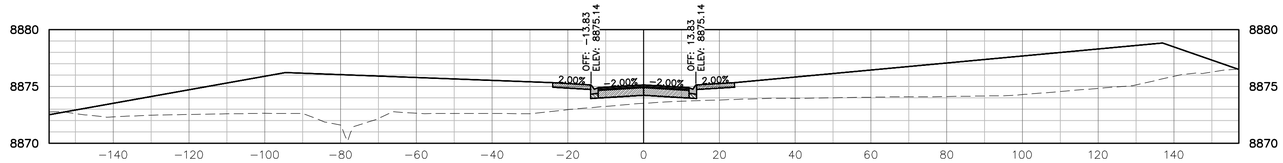

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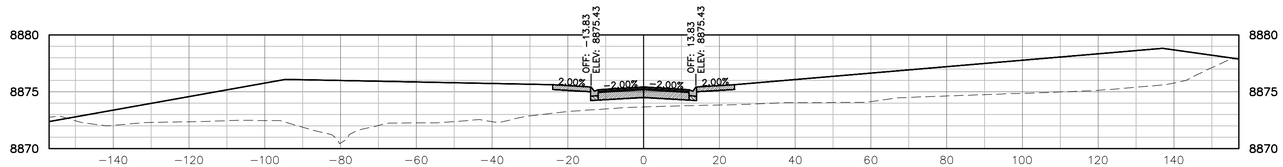

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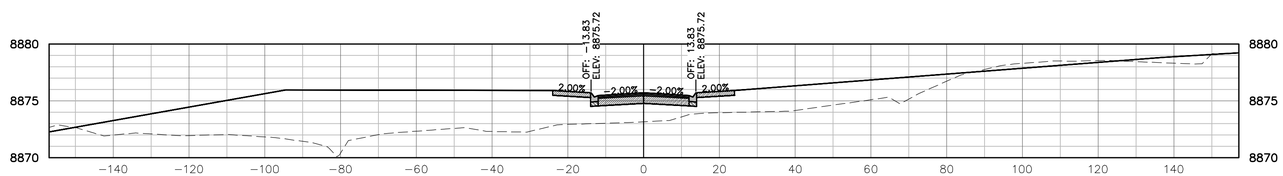

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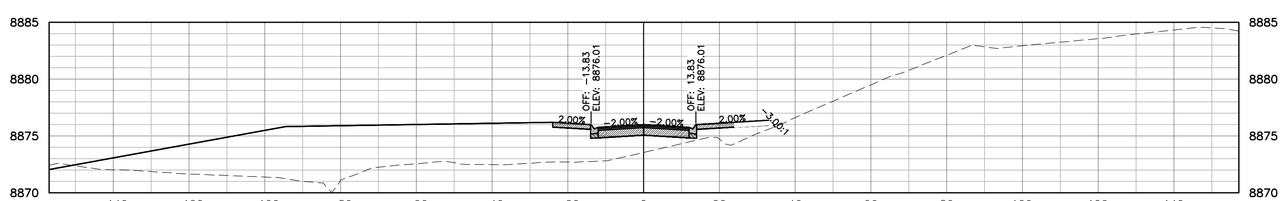

3+50.00

1" = 20'

Scale in feet

20' 0 20' 40'

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RUTH M. KAPUSHION FAMILY PARTNERSHIP
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CRESTED BUTE, CO

CROSS SECTIONS TEOCALLI AVE

DMC JOB NO.: 16109

SHEET NO.: 15 OF 31 SHEETS

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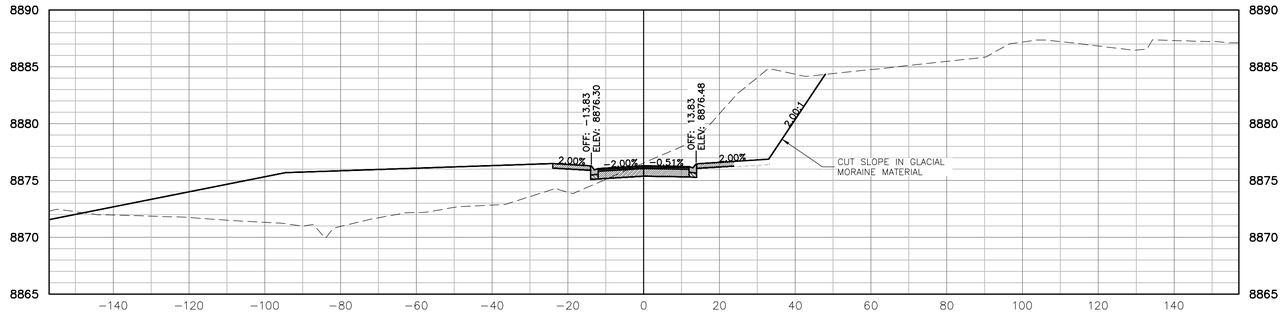

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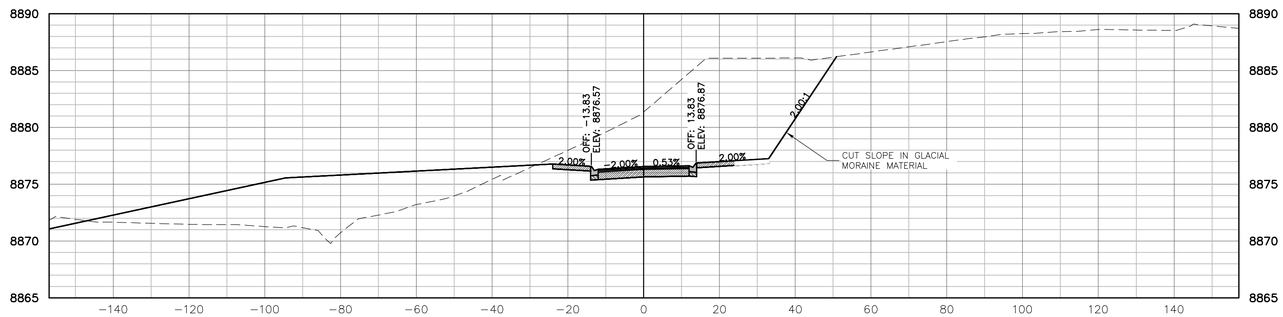

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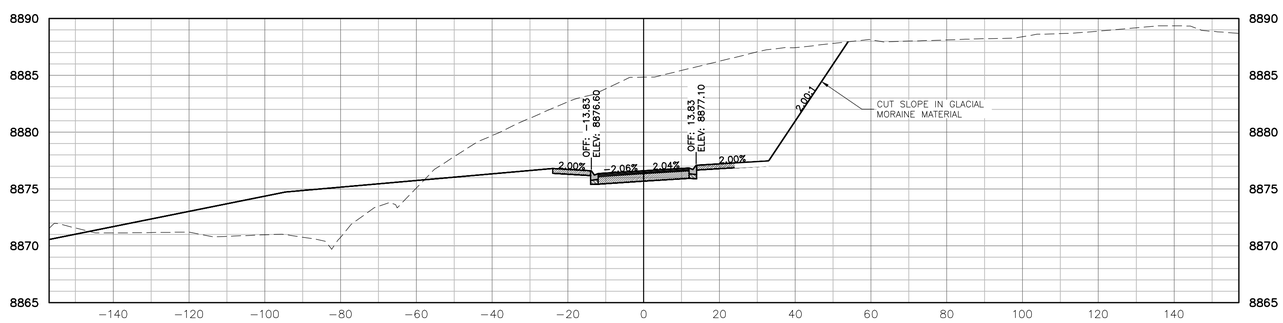

4+25.00

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RUTH M. KAPUSHION FAMILY PARTNERSHIP
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CROSS SECTIONS
TEOCALLI AVE

DMC JOB NO.: 16109

SHEET NO.: 16 OF 31 SHEETS

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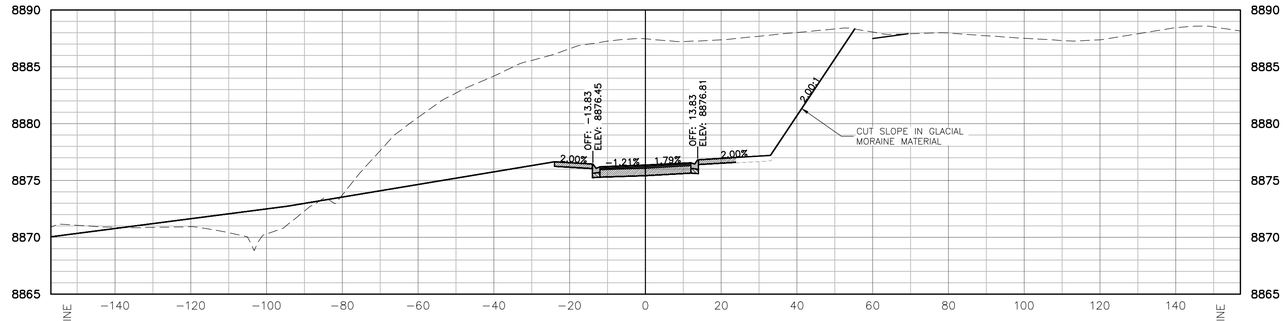

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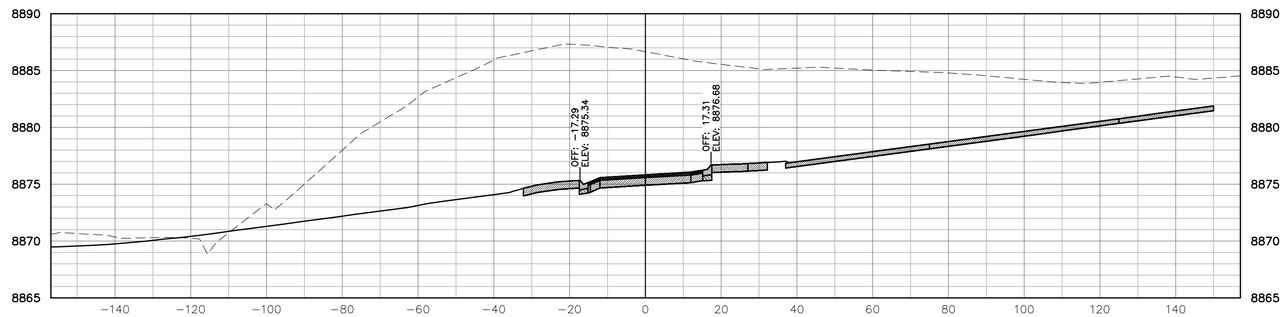

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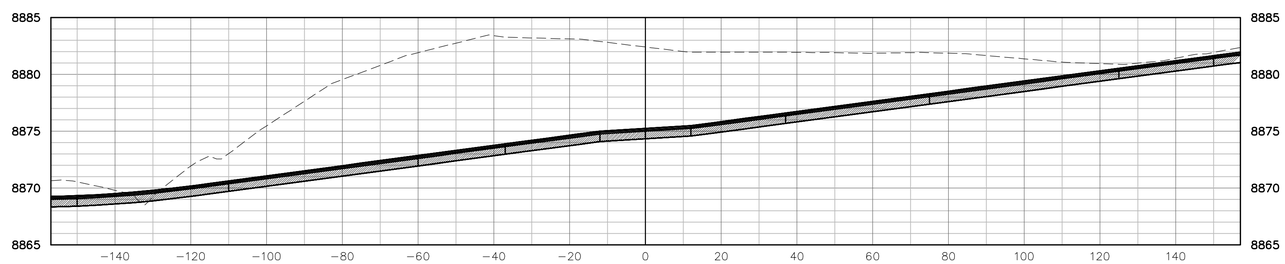
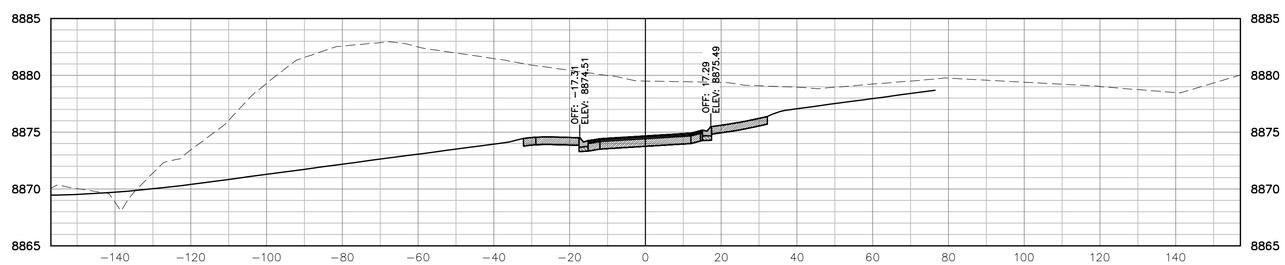


5+00.00

CENTER LINE 5th STREET

SECTIONS 4+75 – 5+25 ARE WITHIN THE LIMITS OF THE INTERSECTION WITH 5TH STREET. THE GRADES IN THIS AREA ARE NON-TYPICAL AND ARE DETAILED ELSEWHERE IN THE PLANS.



5+25.00

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Scale in feet

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TEOCALLI & 5TH
CRESTED BUTTE, CO

CROSS SECTIONS TEOCALLI AVE

DMC JOB NO.: 16109

SHEET NO.: 17 OF 31 SHEETS

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TEOCALLI & 5TH
CRESTED BUTTE, CO

CROSS SECTIONS
TEOCALLI AVE

DMC JOB NO.: 16109

SHEET NO.: 18 OF 31 SHEETS

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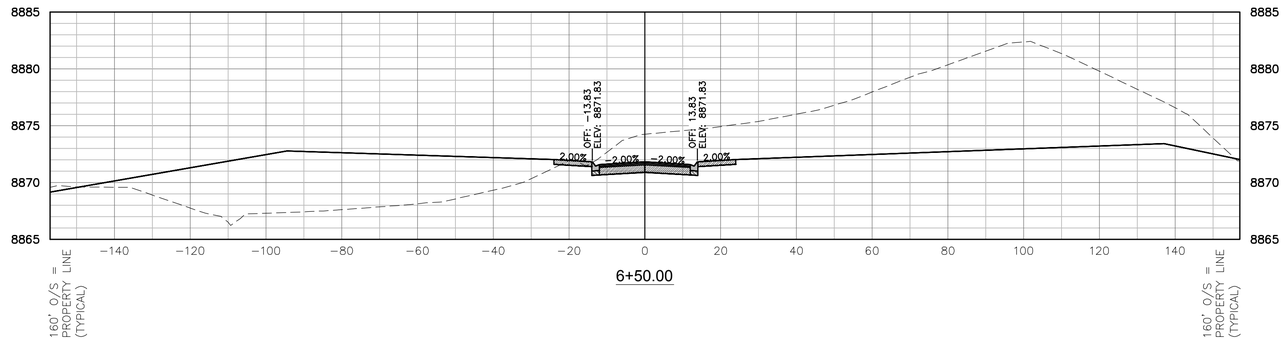

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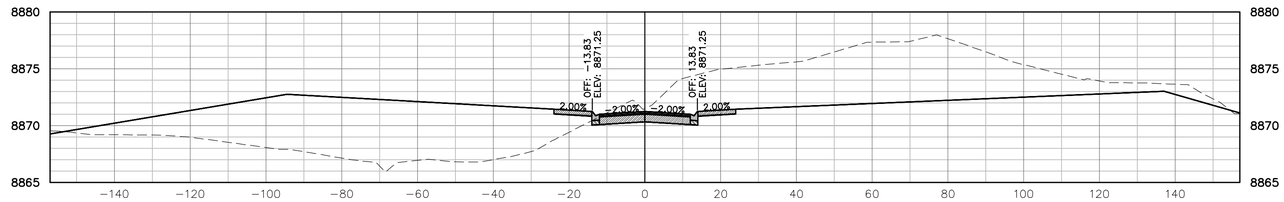

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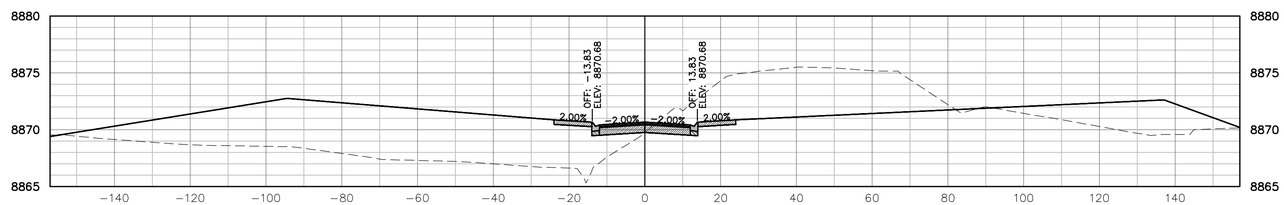

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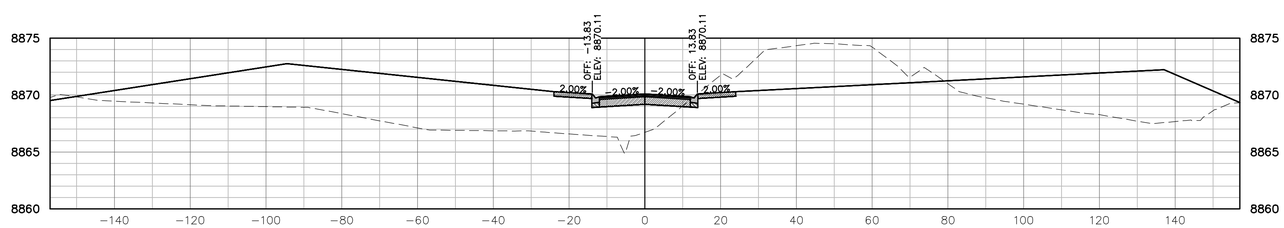

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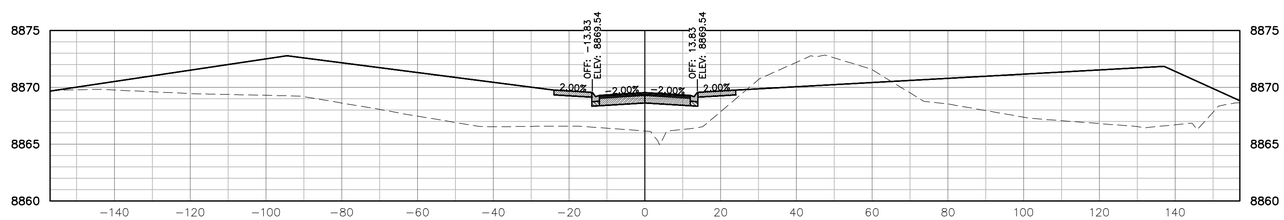

7+50.00

1" = 20'

Scale in feet

20' 0 20' 40'

NO	DATE	REVISIONS	BY
9	1/23/17	SEPARATE IRR; TOWN EGR COMMENTS	JT/PI
8	12/12/16	TOWN ENGINEER REVIEW COMMENTS	JT/PI
7	9/8/16	SANITARY SEWER SVC LOC REVS	JT/PI
6	9/7/16	IRR, STORM, SEW, PHASING REVS	JT/PI
5	7/24/15	ADDED SOUTH ALLEY DESIGN	JT/PI
4	7/2/15	IRR,STORM,SEWER & GRADING REVS.	JT/PI

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DRAWN BY: MGW/PJI
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FILE NAME: 14110C_BASE.DWG
CHECKED BY: JT
DATE ISSUED: 2014-10-25

RUTH M. KAPUSHION FAMILY PARTNERSHIP
TEOCALLI & 5TH
CRESTED BUTTE, CO

CROSS SECTIONS TEOCALLI AVE

DMC JOB NO.: 16109

SHEET NO.: 19 OF 31 SHEETS

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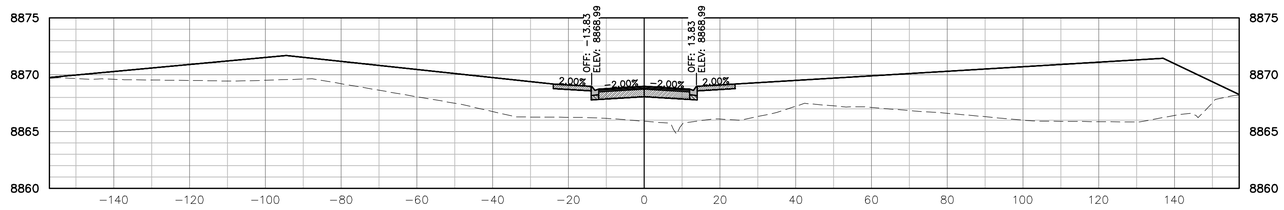

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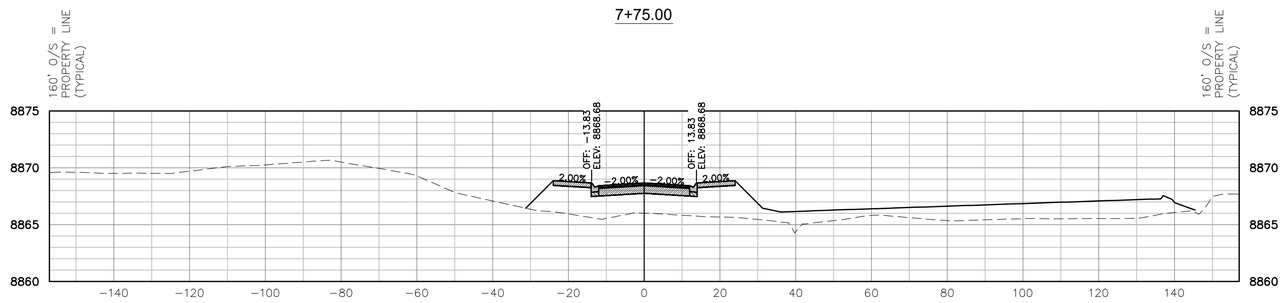

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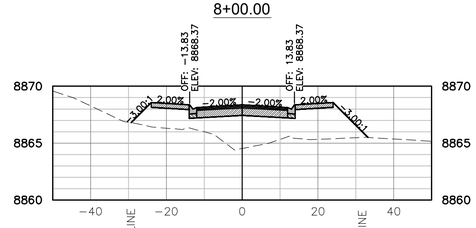

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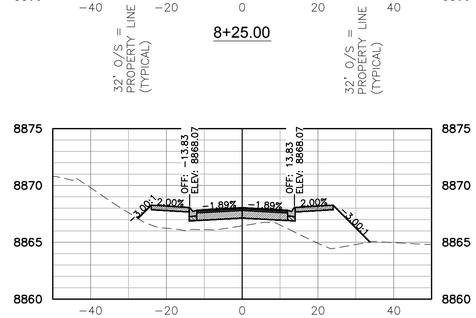

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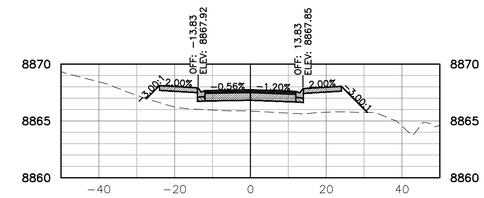

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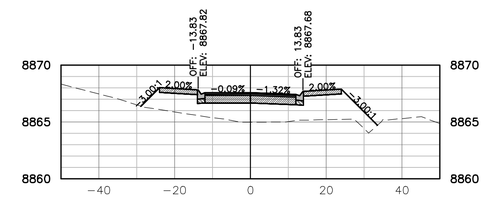

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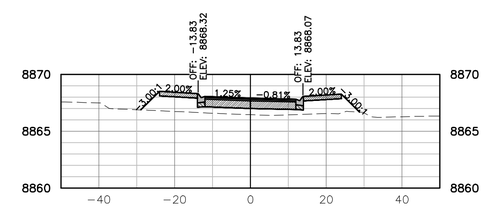

9+25.00

1" = 20'

Scale in feet

20' 0 20' 40'

NO	DATE	REVISIONS	BY
9	1/23/17	SEPARATE IRR; TOWN EGR COMMENTS	JT/PI
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DESIGNED BY: JRR/JT/MGW
DRAWN BY: MGW/PJI
SCALE: AS-NOTED
FILE NAME: 14110C_BASE.DWG
CHECKED BY: JT
DATE ISSUED: 2014-10-25

RUTH M. KAPUSHION FAMILY PARTNERSHIP
TEOCALLI & 5TH
CRESTED BUTTE, CO

CROSS SECTIONS
TEOCALLI AVE

DMC JOB NO.: 16109

SHEET NO.: 20 OF 31 SHEETS

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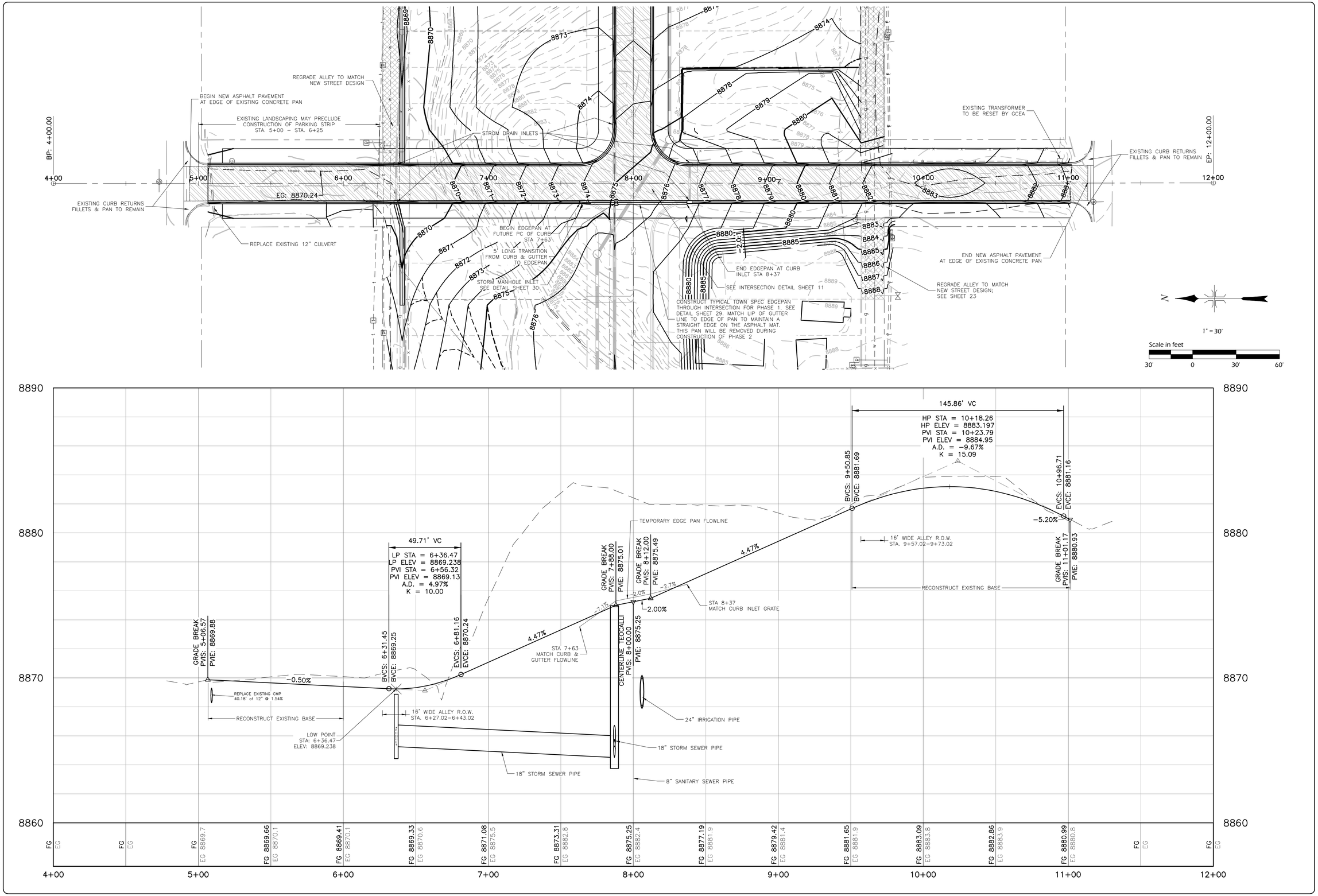

NO	DATE	REVISIONS	BY
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DRAWN BY:	FILE NAME:	DATE ISSUED:
MGW/PJI	14116_BASE.DWG	2014-10-25

RUTH M. KAPUSHION FAMILY PARTNERSHIP
TEOCALLI & 5TH
CRESTED BUTTE, CO

PLAN AND PROFILES 5TH STREET

DMC JOB NO.: 16109

SHEET NO.: 21 OF 31 SHEETS

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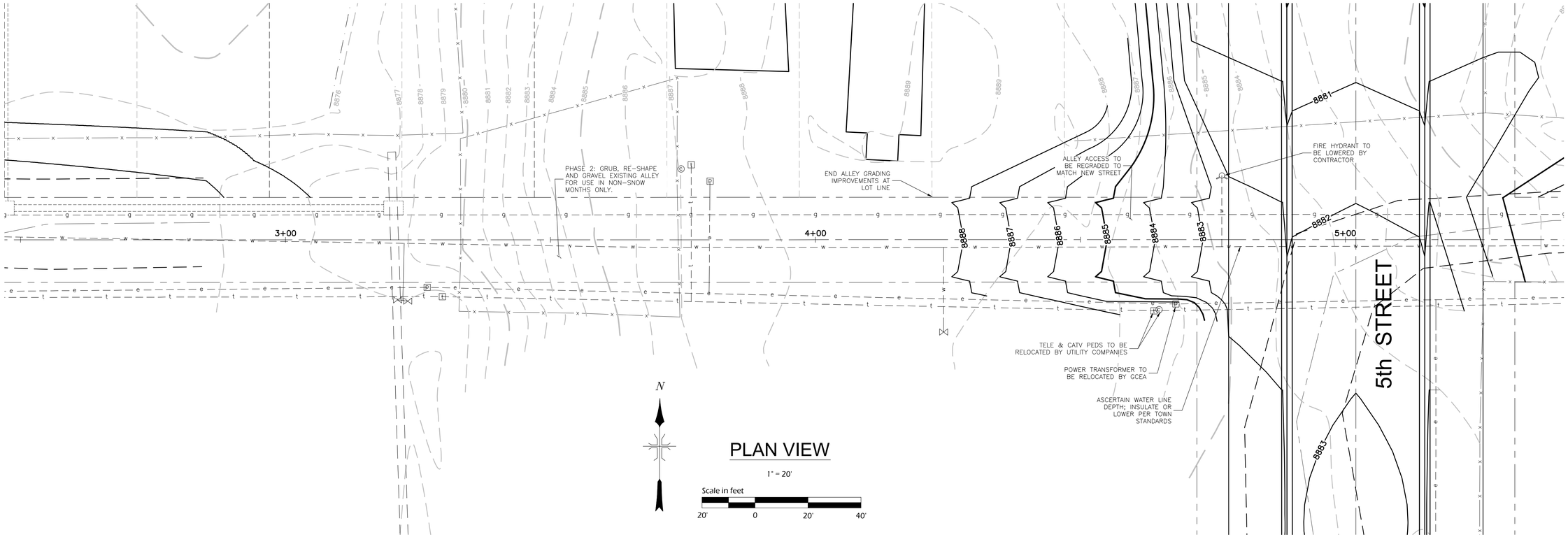
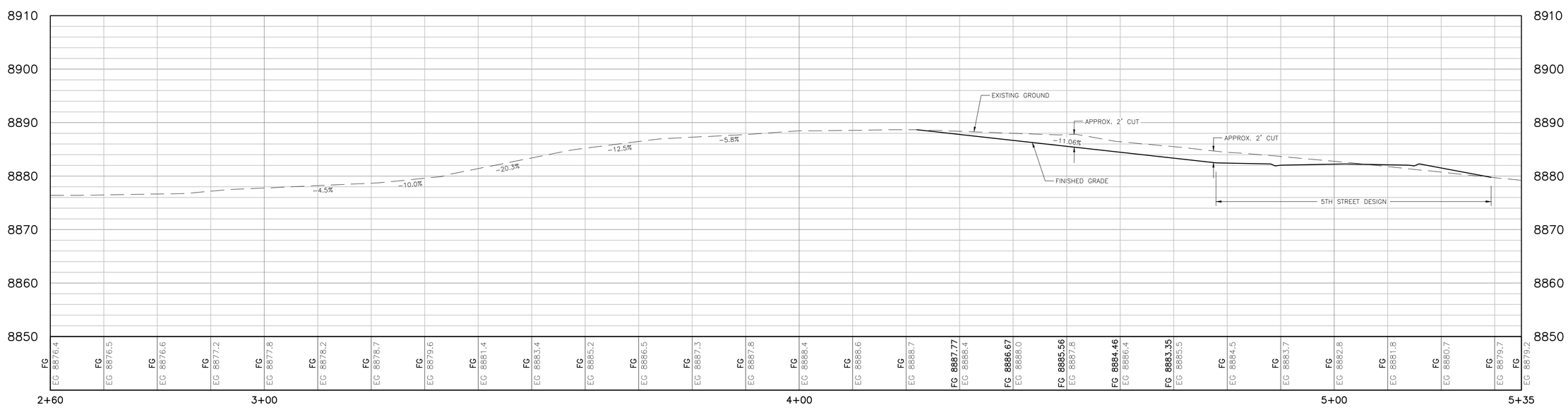


PLAN VIEW

1" = 20'

Scale in feet

20' 0 20' 40'



PROFILE VIEW

HORIZ: 1"=20' VERT: 1"=20' (No vertical Exaggeration)

NO	DATE	REVISIONS	BY
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FILE NAME: 14110C_BASE.DWG

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PLAN AND PROFILE
ALLEY TIE-IN

DMC JOB NO.: 16109

SHEET NO.: 22 OF 31 SHEETS

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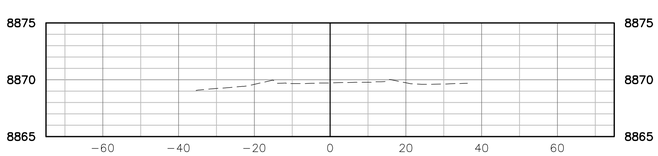

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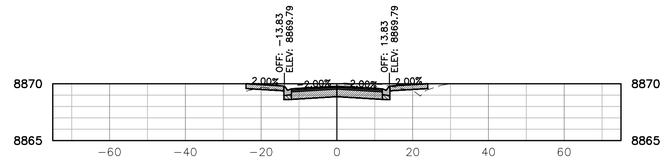

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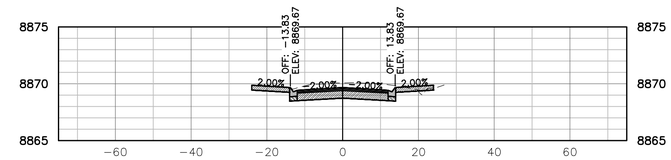

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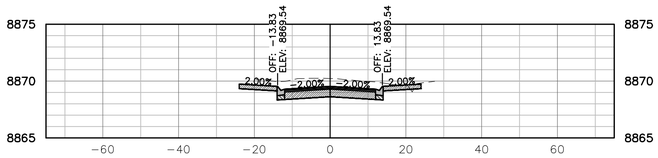

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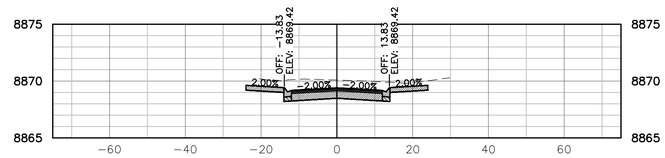

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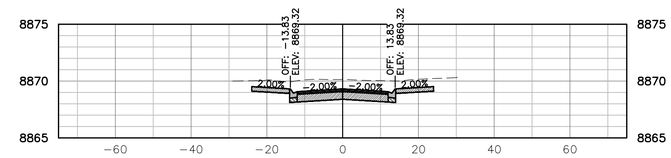

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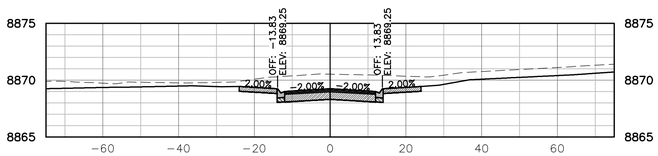

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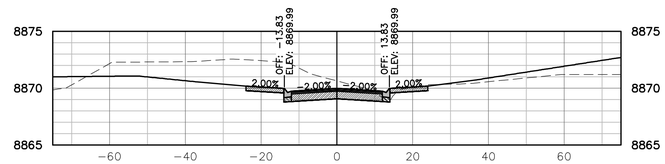

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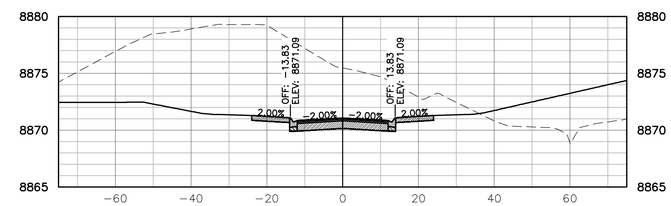

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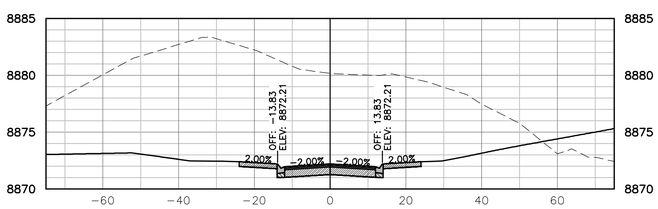

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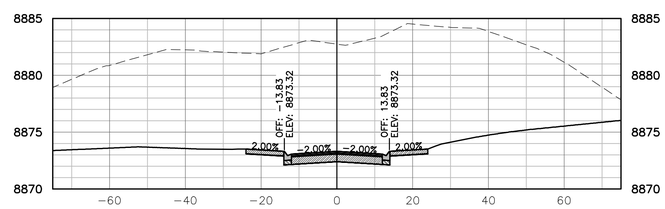

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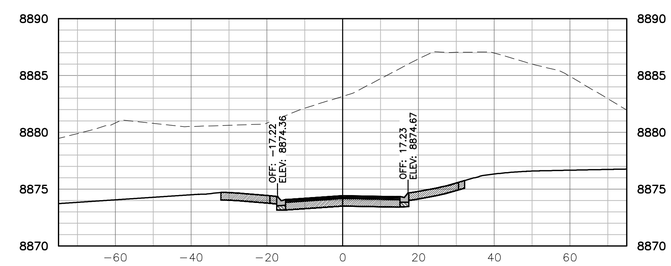

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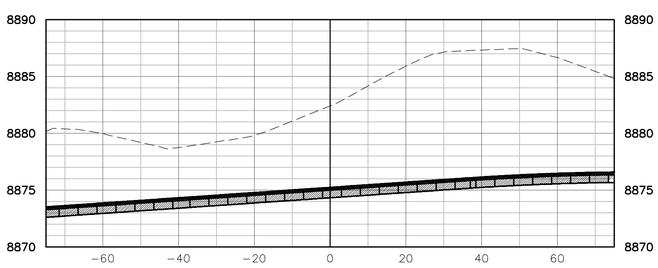

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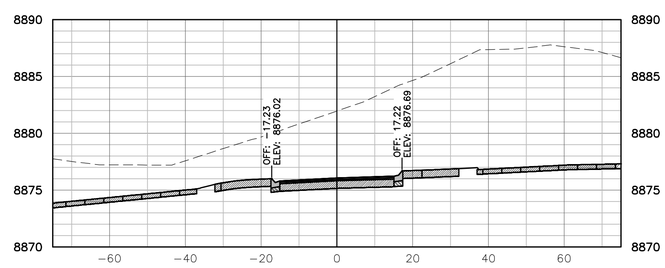

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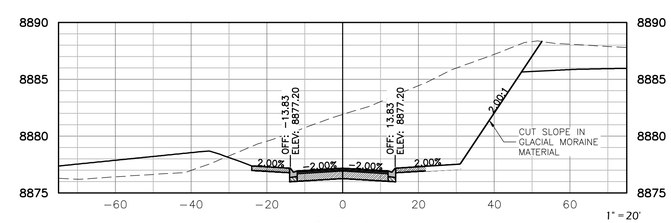

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1" = 20'

Scale in feet

20' 0 20' 40'

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RUTH M. KAPUSHION FAMILY PARTNERSHIP
TEOCALLI & 5TH
CRESTED BUTTE, CO

CROSS SECTIONS
5TH STREET

DMC JOB NO.: 16109

SHEET NO.: 23 OF 31 SHEETS

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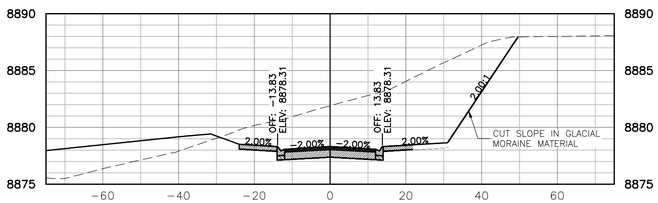

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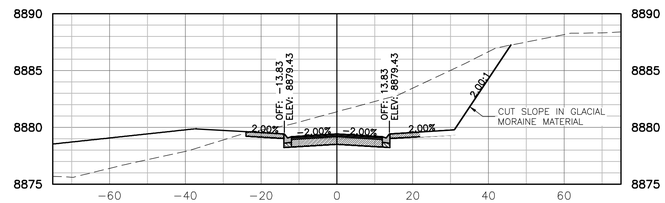

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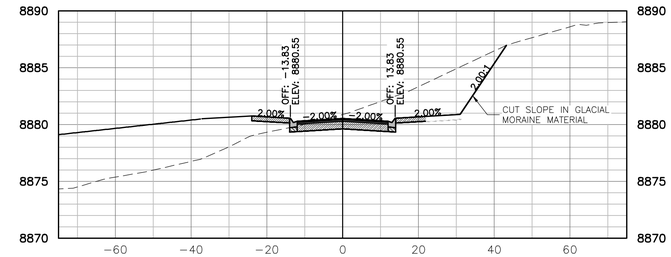

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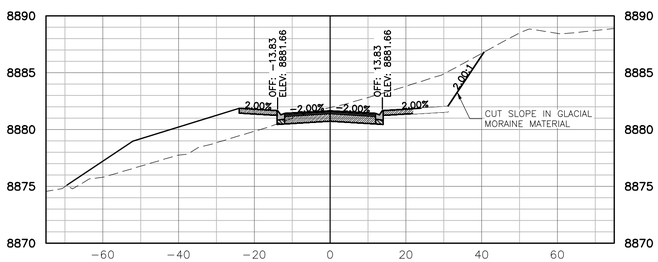

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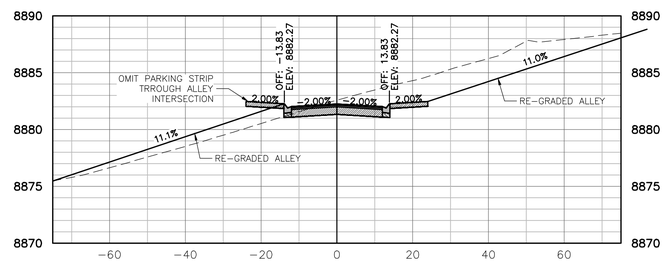

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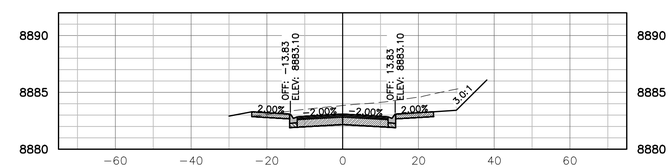

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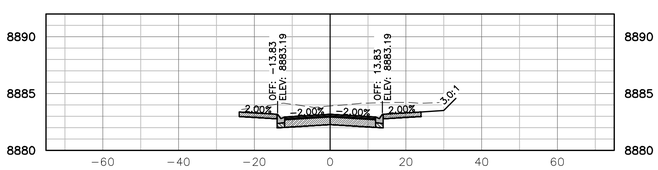

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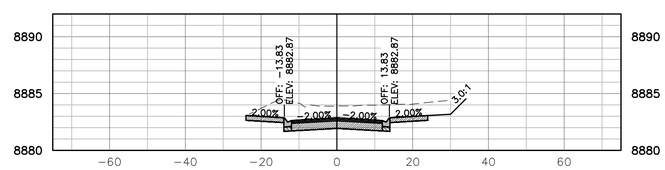

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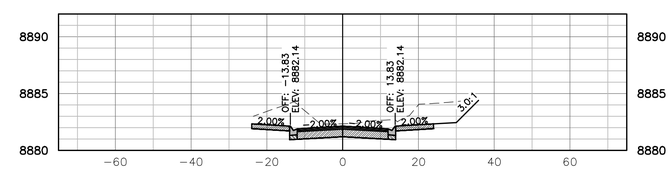

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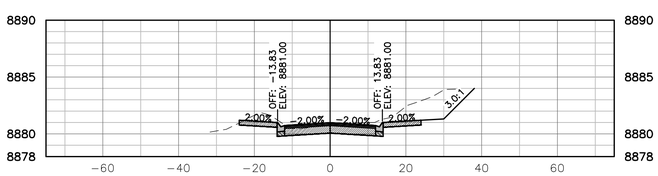

11+00.00

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NO	DATE	REVISIONS	BY
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8	12/12/16	TOWN ENGINEER REVIEW COMMENTS	JT/PI
7	9/8/16	SANITARY SEWER SVC LOC REVS	JT/PI
6	9/7/16	IRR, STORM, SEW, PHASING REVS	JT/PI
5	7/24/15	ADDED SOUTH ALLEY DESIGN	JT/PI
4	7/2/15	IRR,STORM,SEWER & GRADING REVS.	JT/PI

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DRAWN BY: MGW/PJI
SCALE: AS-NOTED
FILE NAME: 14110C_BASE.DWG
CHECKED BY: JT
DATE ISSUED: 2014-10-25

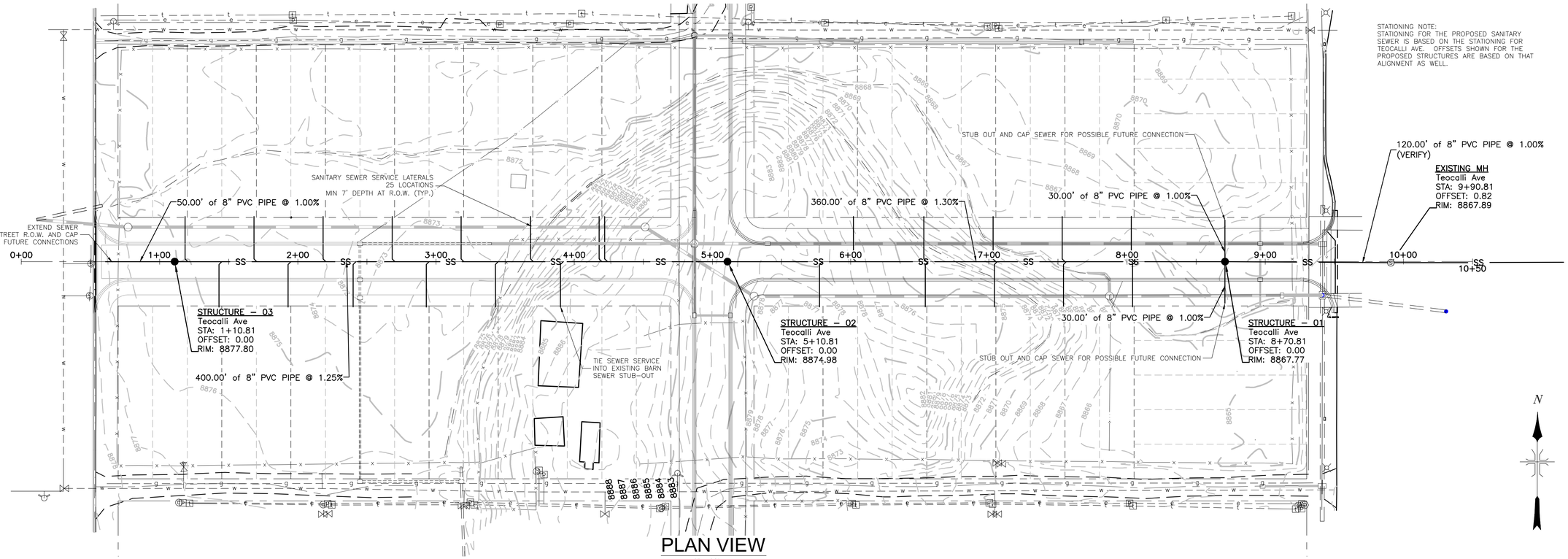
RUTH M. KAPUSHION FAMILY PARTNERSHIP
TEOCALLI & 5TH
CRESTED BUTTE, CO

CROSS SECTIONS 5TH STREET

DMC JOB NO.: 16109

SHEET NO.: 24 OF 31 SHEETS

PLOTTED BY PETER. FILE PATH & NAME = \\DMS14\PROJECTS\ACTIVE PROJECTS\2014\14110\WAYNE MEREDITH TEOCALLI & 5TH ST IMPROVEMENTS\CIVIL3D\2014\110C_BASE.DWG . PLOT DATE = 1/24/2017 4:35 PM . PRINTER/PLOTTER = DWG TO PDF.PC3 . PAGE SETUP = 34 X 22 OCE DSN (LINES OVERWRITE)

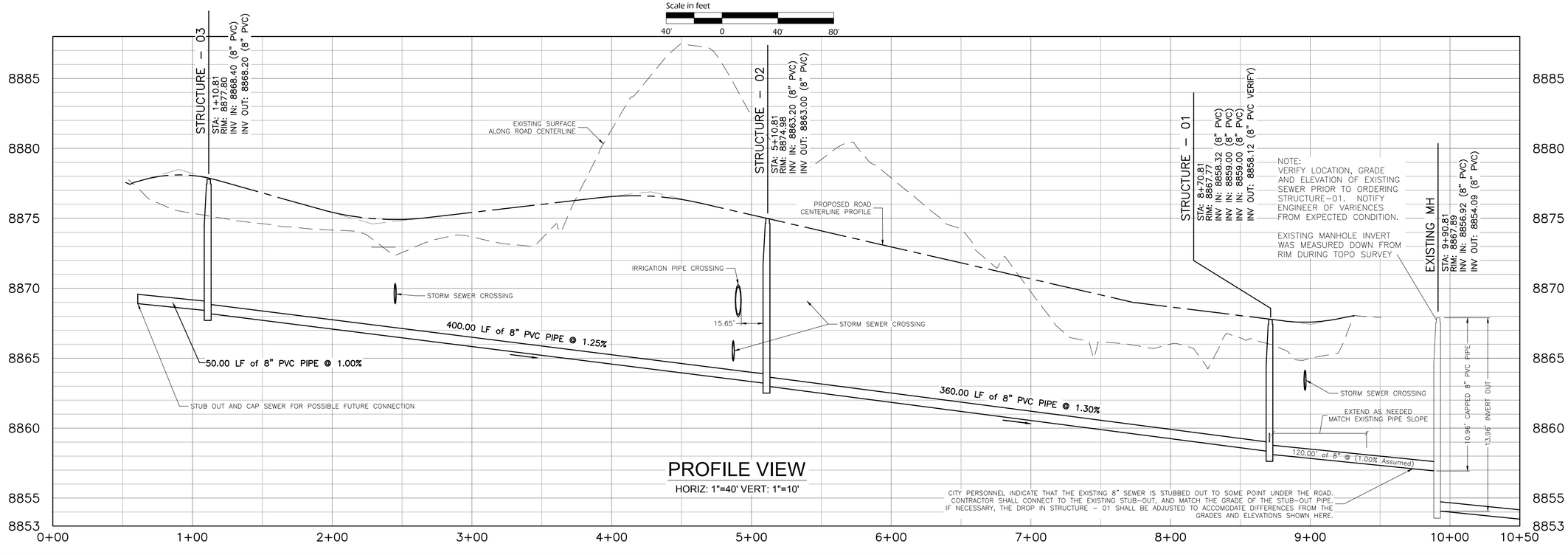


PLAN VIEW

1" = 40'

Scale in feet

40' 0 40' 80'



PROFILE VIEW

HORIZ: 1"=40' VERT: 1"=10'

NO	DATE	REVISIONS	BY
9	1/23/17	SEPARATE IRR; TOWN EGR COMMENTS	JT/PI
8	12/12/16	TOWN ENGINEER REVIEW COMMENTS	JT/PI
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DRAWN BY: MGW/PJI	FILE NAME: 14 11CC_BASE.DWG	DATE ISSUED: 2014-10-25	

RUTH M. KAPUSHION FAMILY PARTNERSHIP
TEOCALLI & 5TH
CRESTED BUTTE, CO

PLAN AND PROFILES
SANITARY SEWER - TEOCALLI AVE

DMC JOB NO.: 16109

SHEET NO.: 25 OF 31 SHEETS

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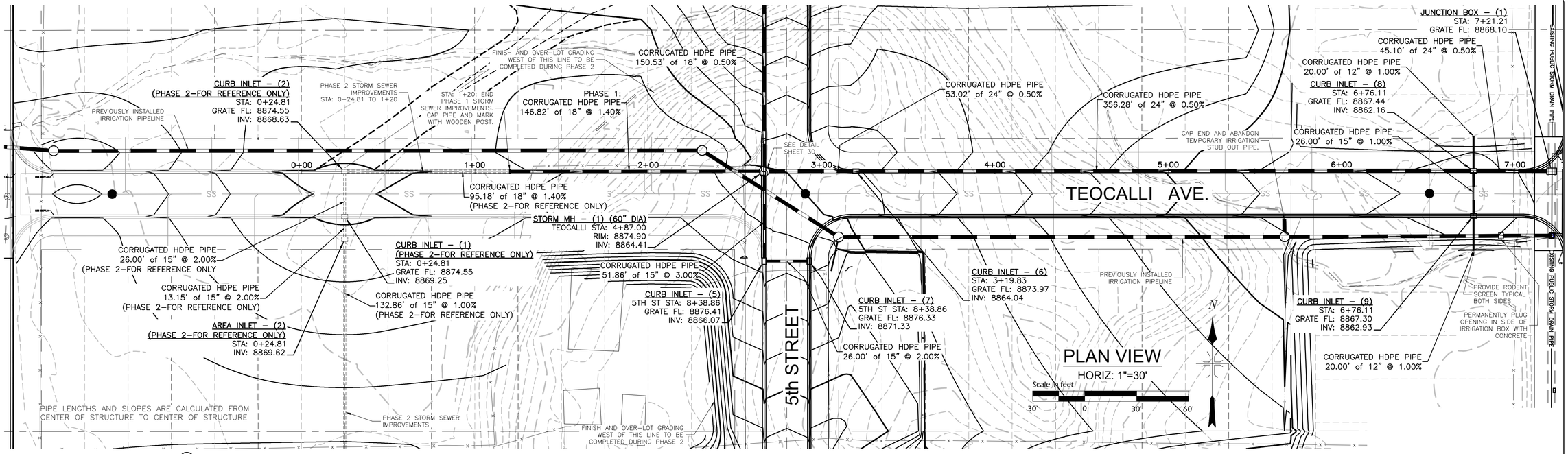

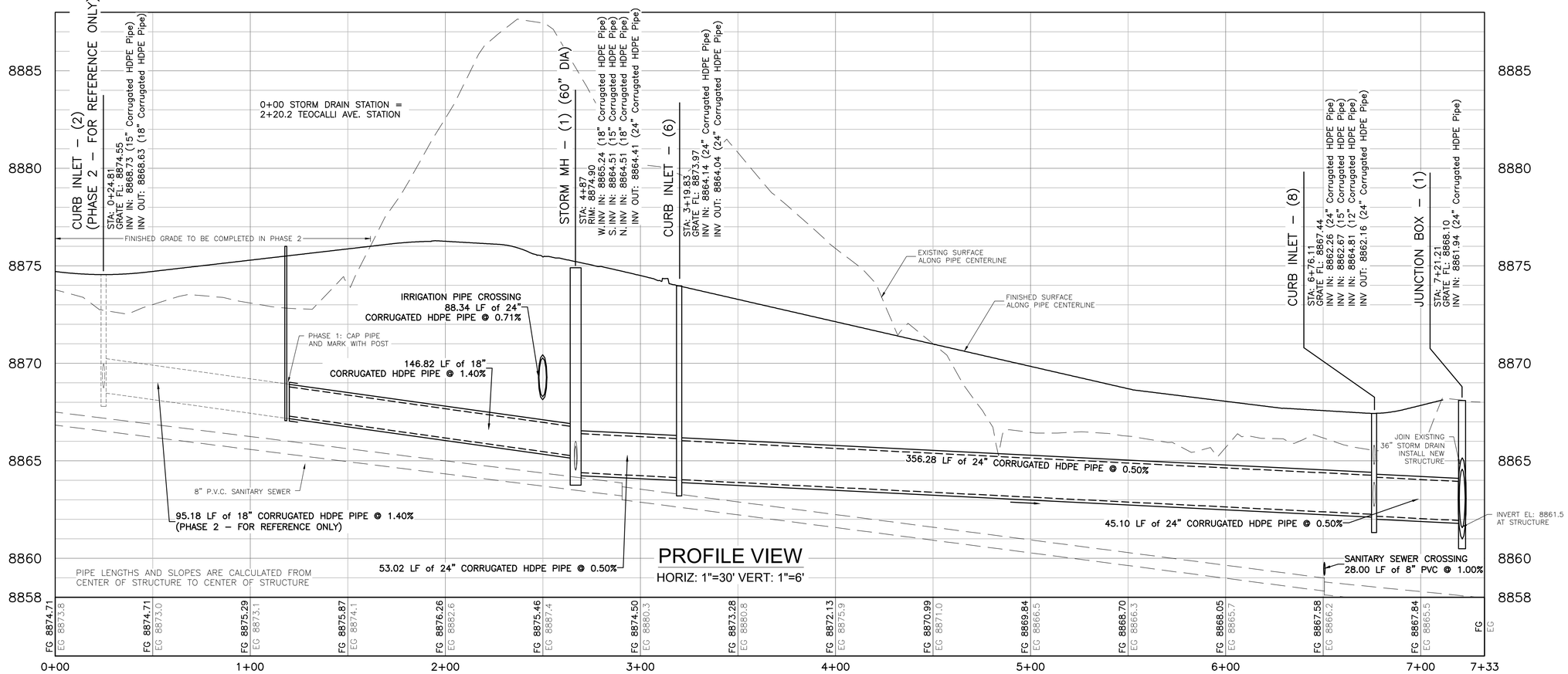

NO	DATE	REVISIONS	BY
7	1/23/17	SEPARATE IRR; TOWN EGR COMMENTS	JT/PI
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4	7/1/15	IRR, STORM, SEW & GRADING REVS.	JT/PI
3	11/24/14	IRRIGATION PIPELINE REVISION	JT/MW

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DESIGNED BY:	SCALE:	CHECKED BY:
JT/MGW/PJI	AS-NOTED	JRR/JT
DRAWN BY:	FILE NAME:	DATE ISSUED:
MGW/PJI	14116C_SWPMP.DWG	2014-10-25

RUTH M. KAPUSHION FAMILY PARTNERSHIP
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STORM DRAIN PLAN AND PROFILES

DMC JOB NO.: 16109

SHEET NO.: 26 OF 31 SHEETS

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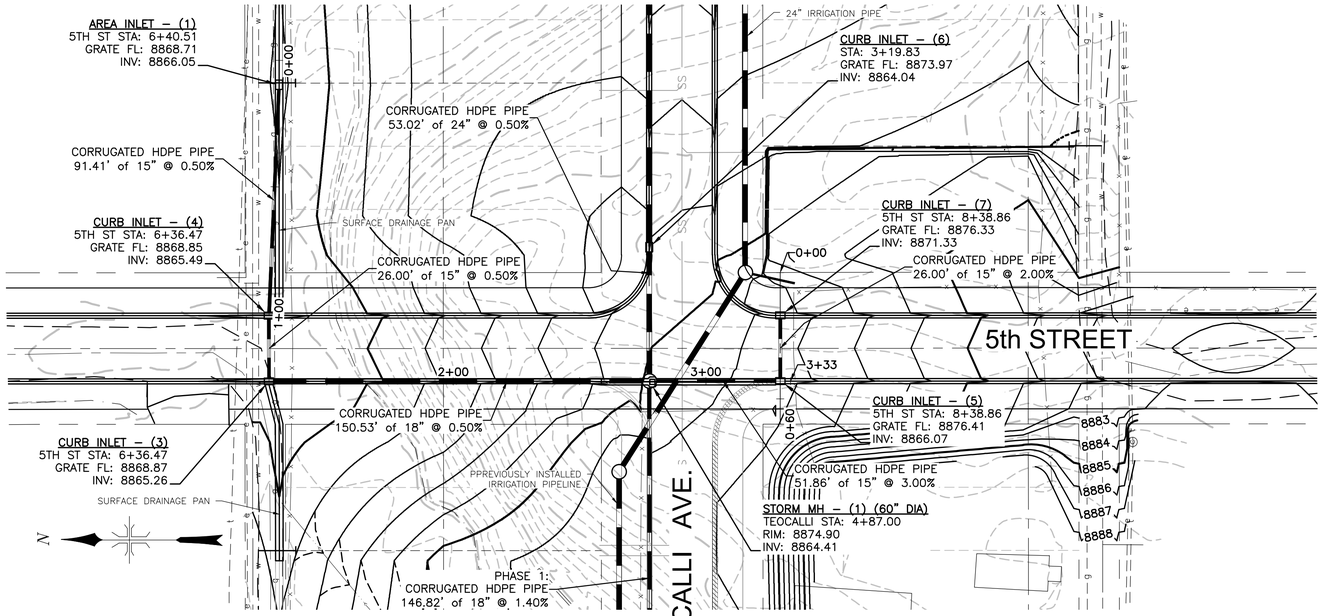
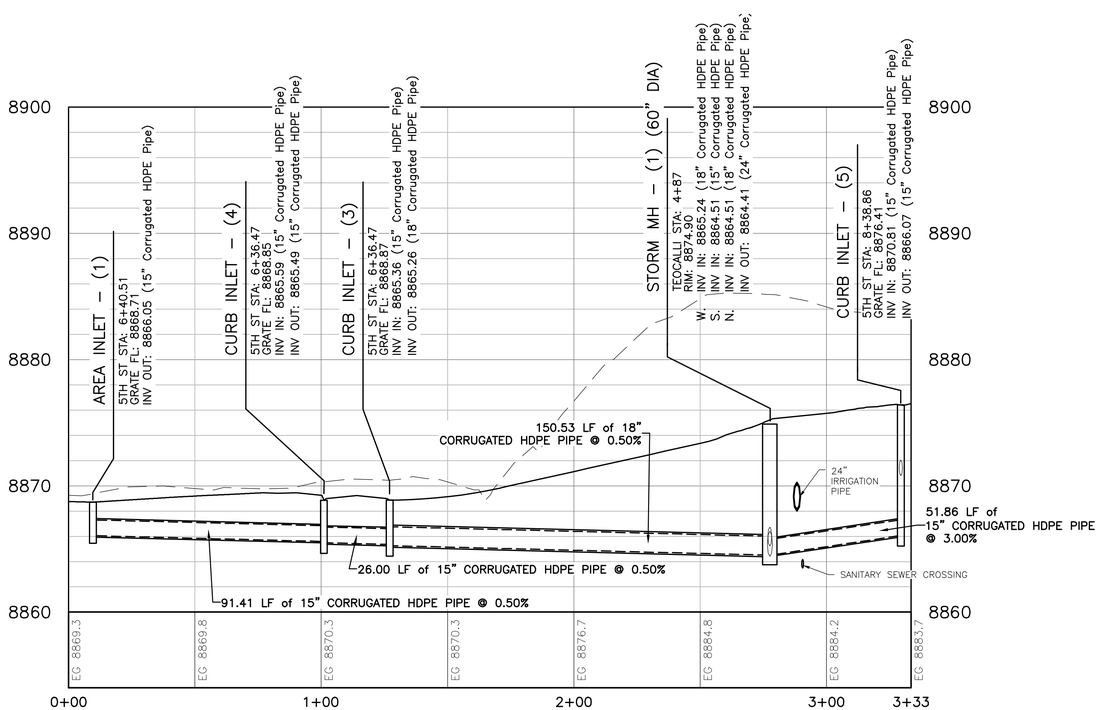


PLAN VIEW

HORIZ: 1"=30'

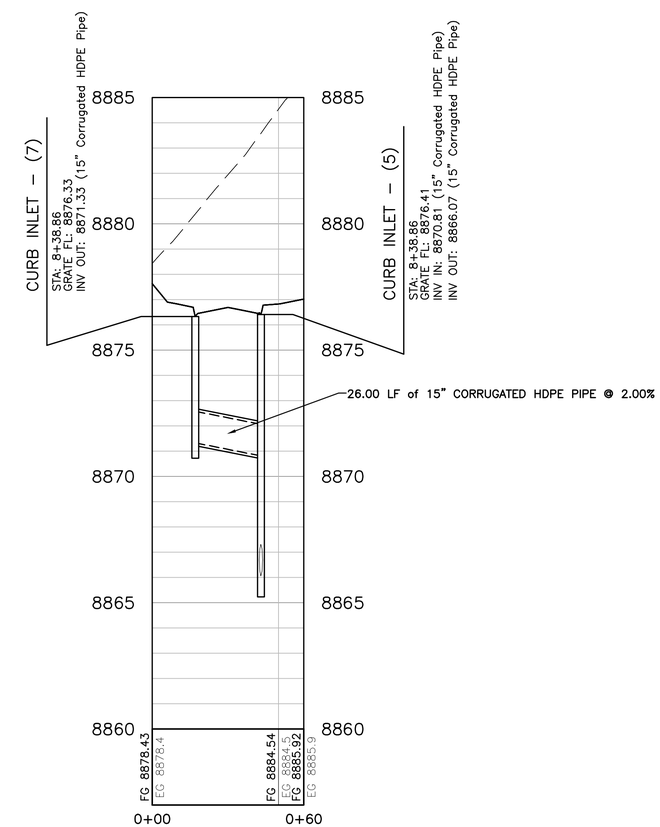
Scale in feet

30' 0 30' 60'



PROFILE VIEW

HORIZ: 1"=30' VERT: 1"=6'



PROFILE VIEW

HORIZ: 1"=30' VERT: 1"=6'

PIPE LENGTHS AND SLOPES ARE CALCULATED FROM CENTER OF STRUCTURE TO CENTER OF STRUCTURE

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4	7/1/15	IRR, STORM, SEW & GRADING REVS.	JT/PI
3	11/24/14	IRRIGATION PIPELINE REVISION	JT/MW

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FILE NAME: 14140_SWPMP.DWG
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DATE ISSUED: 2014-10-25

RUTH M. KAPUSHION FAMILY PARTNERSHIP
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STORM DRAIN PLAN AND PROFILES

DMC JOB NO.: 16109

SHEET NO.: 27 OF 31 SHEETS

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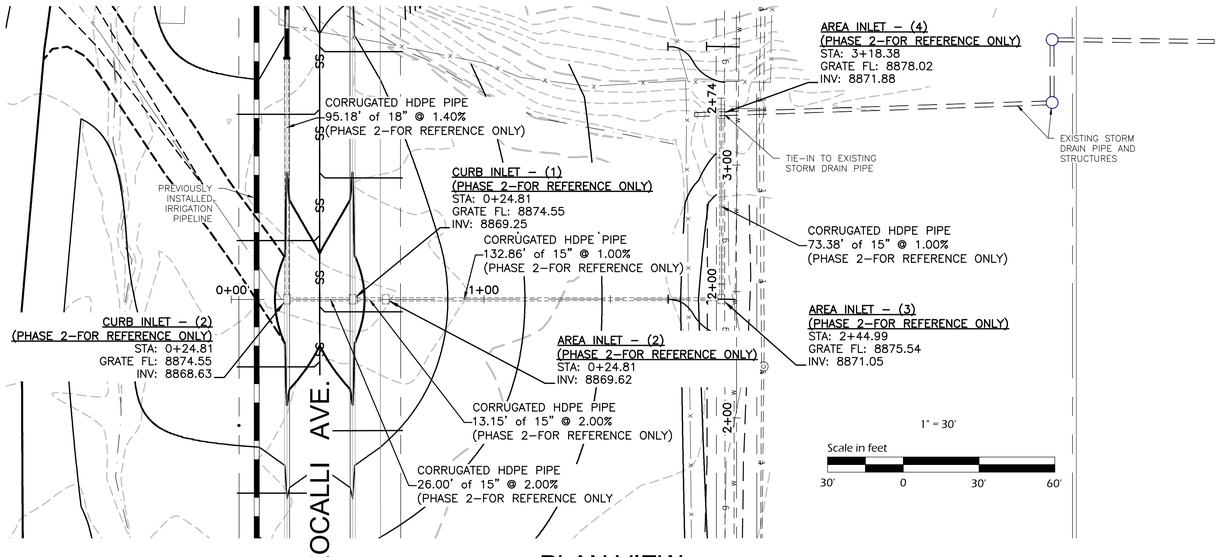
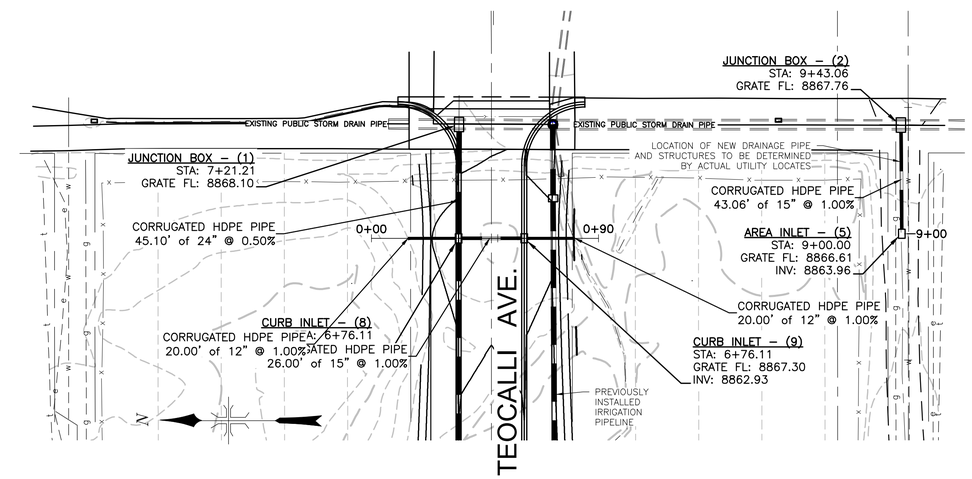


PLAN VIEW

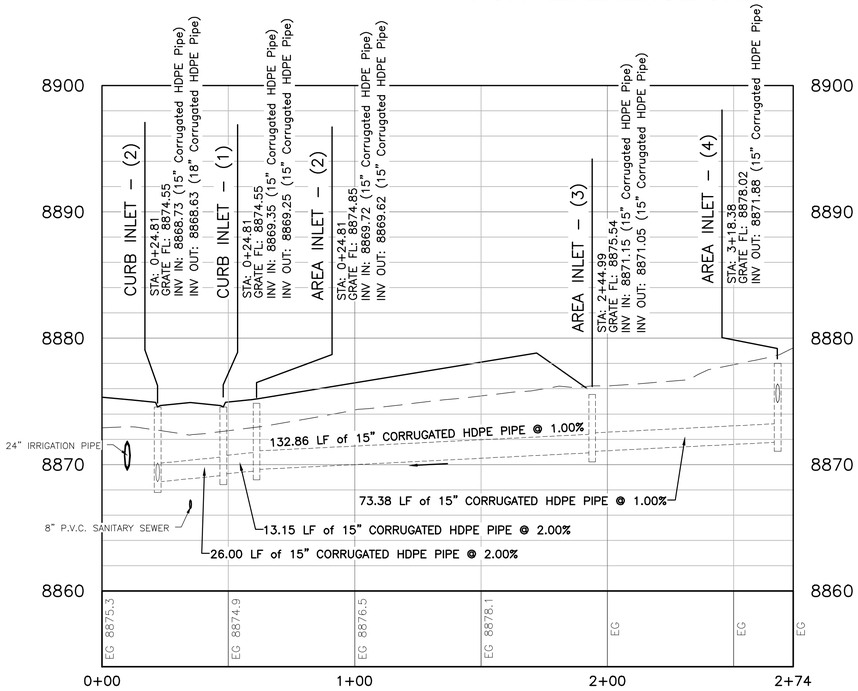
HORIZ: 1"=30'



PLAN VIEW

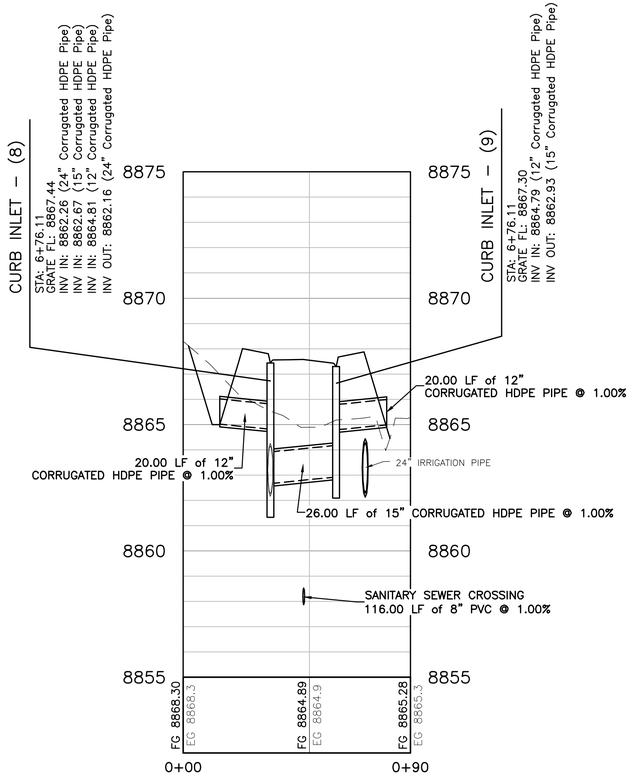
HORIZ: 1"=30'

PHASE 2 CONSTRUCTION FOR REFERENCE ONLY



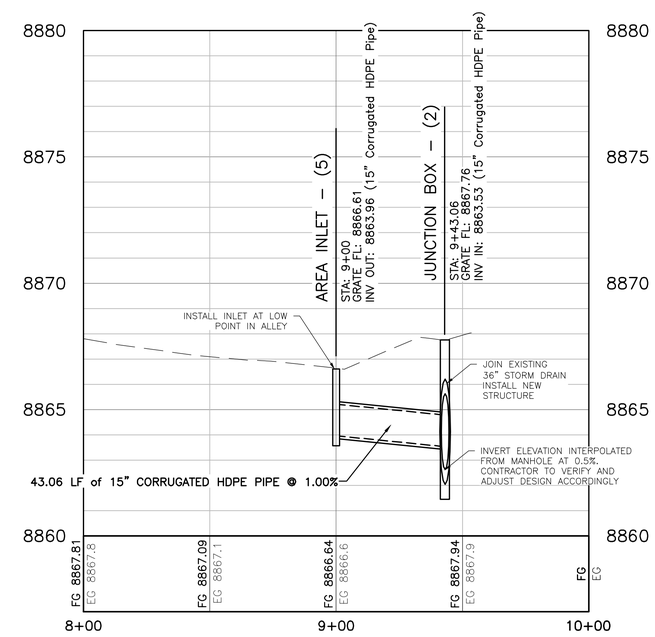
PROFILE VIEW

HORIZ: 1"=30' VERT: 1"=6'



PROFILE VIEW

HORIZ: 1"=30' VERT: 1"=6'



PROFILE VIEW

HORIZ: 1"=30' VERT: 1"=6'

PIPE LENGTHS AND SLOPES ARE CALCULATED FROM CENTER OF STRUCTURE TO CENTER OF STRUCTURE

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4	7/1/15	IRR, STORM, SEW & GRADING REVS.	JT/PI
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RUTH M. KAPUSHION FAMILY PARTNERSHIP
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STORM DRAIN PLAN AND PROFILE

DMC JOB NO.: 16109

SHEET NO.: 28 OF 31 SHEETS

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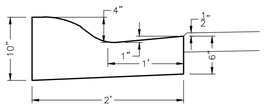
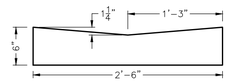
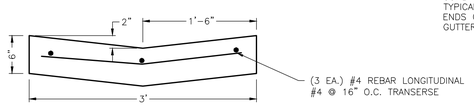


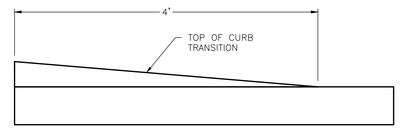
TYPICAL TOWN SPEC CURB AND GUTTER
N.T.S.



TYPICAL TOWN SPEC EDGEPAN
N.T.S.

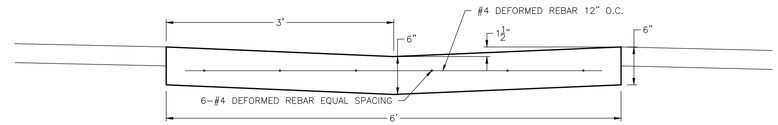


TYPICAL ALLEY VALLEY PAN
N.T.S.



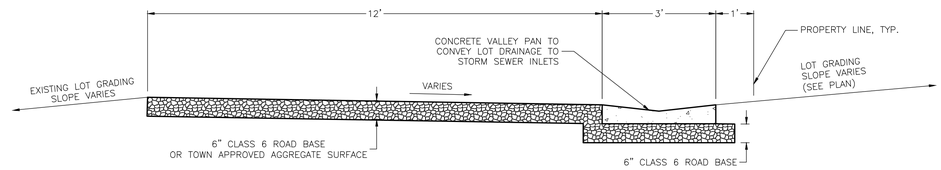
NOTE:
CURB TRANSITION SHALL BE USED IN ALL LOCATIONS WHERE FULL-HEIGHT TYPICAL CURB AND GUTTER TRANSITIONS TO NON-TYPICAL CURB AND AT THE ENDS OF CURB AND GUTTER WHICH DOES NOT TIE INTO EXISTING CURB AND GUTTER.

TYPICAL CURB TRANSITION
N.T.S.

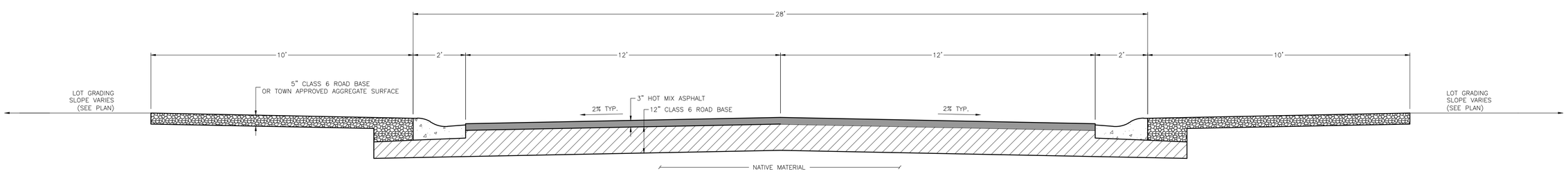


REINFORCE FILLET AREAS WITH #4 DEFORMED BARS AT 12" O.C. EACH WAY

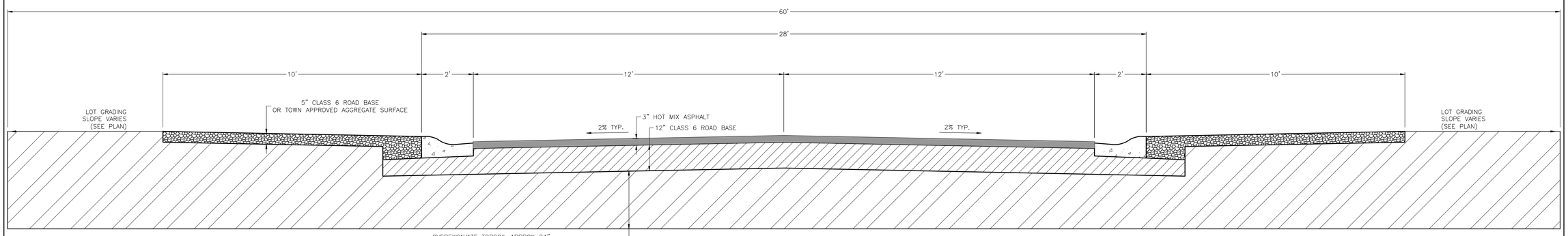
CROSS PAN ON TEOCALLI AVE.
STATIONS 0+52.09 AND 9+50.25
N.T.S.



TYPICAL ALLEY SECTION
WITH CONCRETE VALLEY PAM
N.T.S.



TYPICAL ROAD SECTION
IN CUT SECTIONS THROUGH GLACIAL MORAINE
N.T.S.



TYPICAL ROAD SECTION WITH OVEREXCAVATION
IN FILL SECTIONS THROUGH FILL SECTIONS
N.T.S.

NO	DATE	REVISIONS	BY
9	1/23/17	SEPARATE IRR; TOWN EGR COMMENTS	JT/PI
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DESIGNED BY: JRR/JT/MGW
DRAWN BY: MGW
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RUTH M. KAPUSHION FAMILY PARTNERSHIP
TEOCALLI & 5TH
CRESTED BUTTE, CO

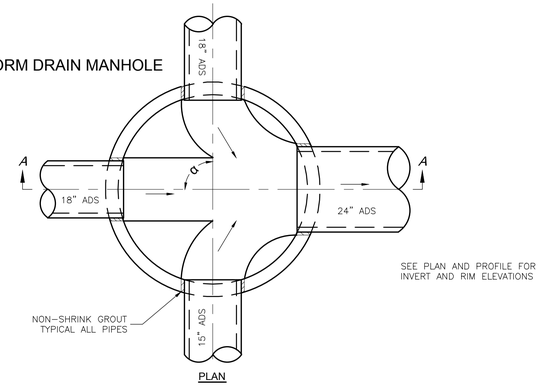
CONSTRUCTION DETAILS

DMC JOB NO.: 16109

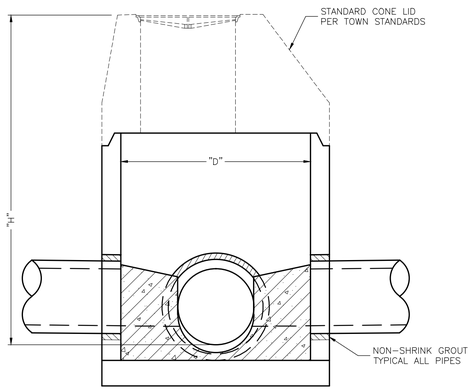
SHEET NO.: 29
OF 31 SHEETS

PLOTTED BY PETER. FILE PATH & NAME = \\DMS14\PROJECTS\ACTIVE PROJECTS\2014\14110-WAYNE MEREDITH TEOCALLI & 5TH ST IMPROVEMENTS\CIVIL3D\14110C_DETAILS.DWG , PLOT DATE = 1/24/2017 4:36 PM, PRINTER/PLOTTER = DWG TO PDF.PC3, PAGE SETUP = 34 X 22 OCE DSN (LINES OVERWRITE)

STORM DRAIN MANHOLE



PLAN

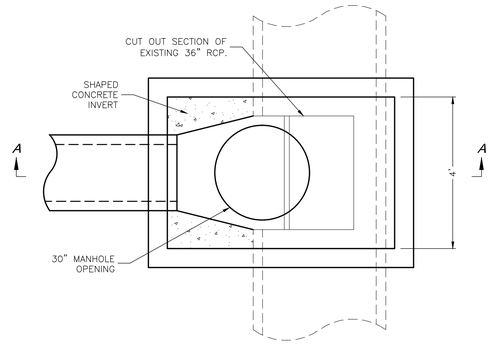


SECTION A-A

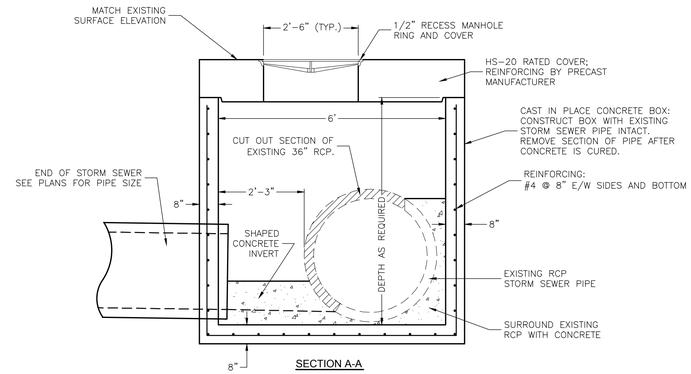
PRECAST BASE DETAIL W/ SHAPED INVERT FOR 4-WAY PIPE JUNCTION

N.T.S.

PRECAST MANHOLE BASE DIMENSIONS			
MANHOLE I.D.	α	D(in)	H(FT)
STORM MH – (1)	90°	60	10.57



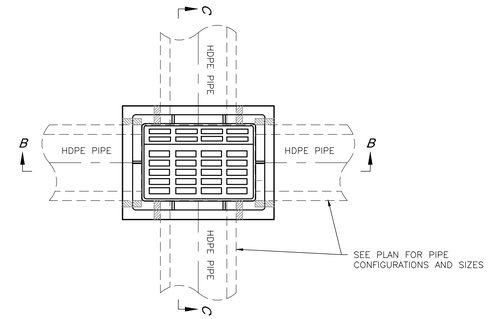
PLAN



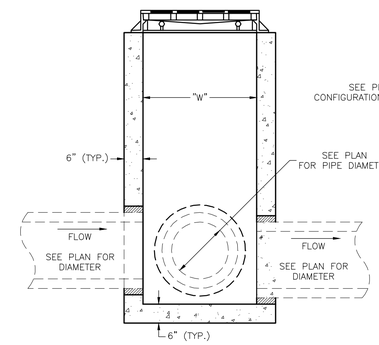
SECTION A-A

STORM SEWER OUTFALL JUNCTION BOX TO EXISTING PIPE

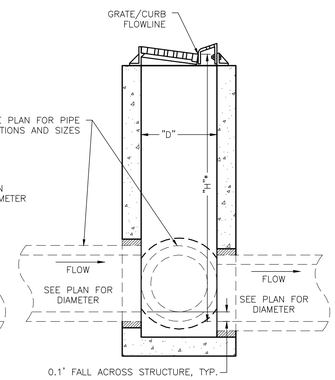
N.T.S.



PLAN VIEW INLET



SECTION B-B



SECTION C-C

TYPICAL STORM INLET STRUCTURE

N.T.S.

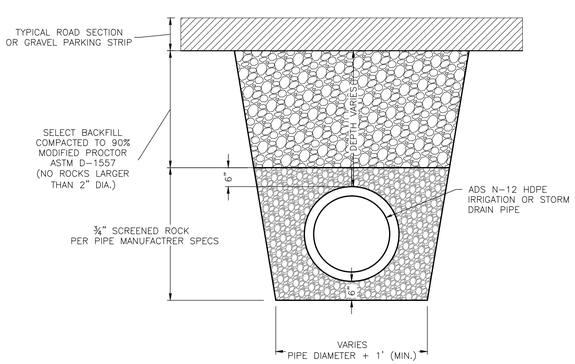
PRECAST STORM INLET DIMENSIONS			
INLET I.D.	W(FT)	D(FT)	H(FT)*
AREA INLET – (1)	3.0	2.0	2.66
AREA INLET – (5)	3.0	2.0	2.65
CURB INLET – (3)	3.0	2.0	3.61
CURB INLET – (4)	3.0	2.0	3.36
CURB INLET – (5)	3.0	2.0	10.34
CURB INLET – (6)	3.0	3.0	9.93
CURB INLET – (7)	3.0	2.0	5.00
CURB INLET – (8)	3.0	3.0	5.28
CURB INLET – (9)	3.0	2.0	4.37

STORM INLET STRUCTURE NOTES:

*1. INLET BOXES SHALL BE CONSTRUCTED 0.20' SHORTER IN "H" DIMENSION TO ALLOW FOR FIELD ADJUSTMENTS OF GRATE ELEVATION.
2. SEE PLAN VIEW FOR ORIENTATION OF BOX WITH RESPECT TO PIPE(S).
3. FABRICATOR SHALL VERIFY ALL DIMENSIONS, ELEVATIONS AND GRADES PRIOR TO CASTING CONCRETE. ADVISE ENGINEER OF ANY DISCREPANCIES.
4. THE CONTRACTOR SHALL SUBMIT MANUFACTURER'S CATALOG DATA OR SHOP DRAWINGS TO THE ENGINEER FOR APPROVAL PRIOR TO PURCHASING BOXES OR GRATES.
5. FOR INLETS HAVING A "D" DIMENSION OF 3.0', CONTRACTOR SHALL PROVIDE SHOP DRAWINGS SHOWING DETAIL FOR SUPPORTING 2' WIDE GRATE ON 3' WIDE CONCRETE BOX.

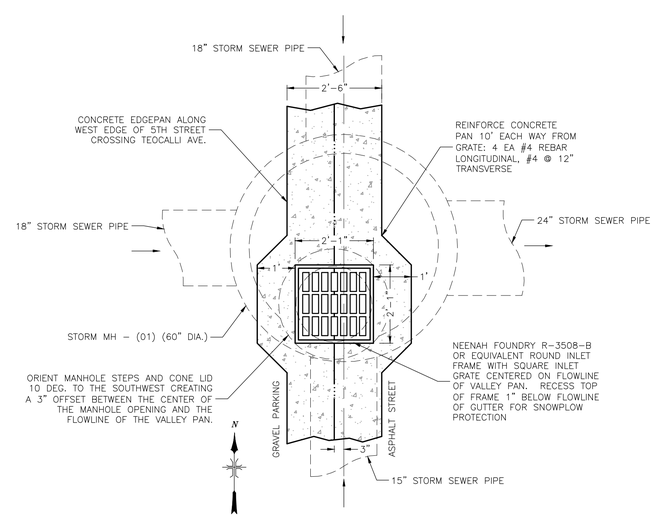
INLET TYPE: CURB INLET
FRAME: CASTINGS IFG-3246-R-C1
GRATE TYPE: C,DR,DL,L,V

INLET TYPE: AREA INLET
FRAME: CASTINGS NO. 13



TYPICAL PIPE TRENCH DETAIL

N.T.S.



STORM MANHOLE INLET

N.T.S.

NO	DATE	REVISIONS	BY
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DESIGNED BY: JRR/JT/MGW | SCALE: AS-NOTED | CHECKED BY: JT
DRAWN BY: MGW/PJI | FILE NAME: 14110C_DETAILS.DWG | DATE ISSUED: 2014-10-25

RUTH M. KAPUSHION FAMILY PARTNERSHIP
TEOCALLI & 5TH
CRESTED BUTTE, CO

CONSTRUCTION DETAILS

DMC JOB NO.: 16109

SHEET NO.: 30 OF 31 SHEETS

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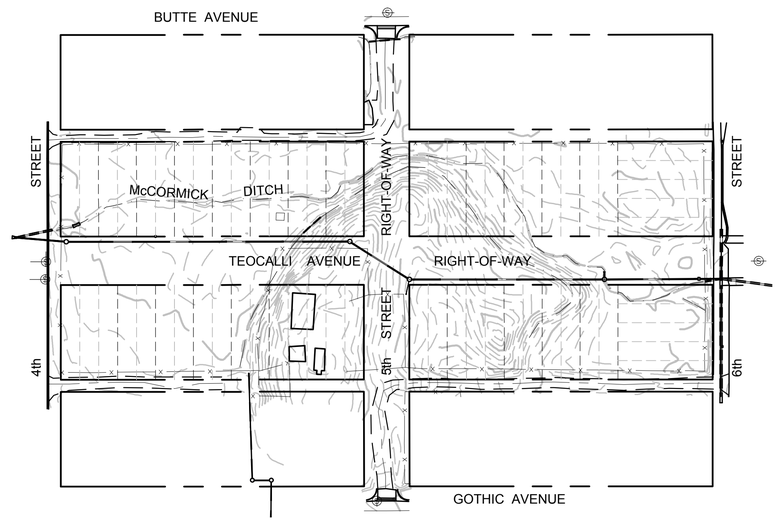
CONSTRUCTION PLANS
FOR



SHEET LIST	
COVER	COVER SHEET
1	CONSTRUCTION NOTES
2	PLAN AND PROFILE
3	PLAN AND PROFILE
4	CROSS SECTIONS
5	CONSTRUCTION DETAILS

McCORMICK DITCH RELOCATION

INCLUDING EARTHWORK, IRRIGATION PIPING AND STRUCTURES, CONCRETE & PAVING REPLACEMENT

SUBMITTAL SET

PREPARED FOR:

Ruth M. Kapushion Family Partnership

BY:

DEL-MONT CONSULTANTS, INC.
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NO	DATE	REVISIONS	BY
1	1/23/17	TOWN ENGINEER REVIEW COMMENTS	JT/PI

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DRAWN BY: PJI	FILE NAME: 14YNG_DITCH PIPING.DWG	DATE ISSUED: 12/09/16	

RUTH M. KAPUSHION FAMILY PARTNERSHIP
McCORMICK DITCH RELOCATION
CRESTED BUTTE, CO

COVER

DMC JOB NO.: 16109

SHEET NO.: COVER

OF 5 SHEETS

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IRRIGATION PIPELINE SPECIFICATIONS

GENERAL SPECIFICATIONS

1. Safety Requirements: The Contractor shall have full and complete responsibility for jobsite safety, and shall perform all work in full conformance with all Federal, State, and local safety regulations.
2. Contractor Investigation: The Contractor shall familiarize himself with local conditions and the specifications of the governing entities, and shall examine the site, make such tests, and perform such explorations as he deems necessary to evaluate all conditions on site, in order to perform the work in accordance with the Contract Documents for the Contract Price within the Contract Time.
3. Underground Utility Locates: The Contractor shall have full responsibility to identify, locate, and protect all existing utilities lines, and to repair any damage to utilities caused by Contractor's operations. Contractor shall contact the Town of Crested Butte, the Utility Notification Center of Colorado (1-800-922-1987), and individual utility companies as needed, to locate existing underground utilities prior to construction. The construction drawings show utilities that were located for the site survey and represent the best information available at the time, but may not be complete or current.
4. Hazardous Materials: In the event that the Contractor encounters any hazardous materials on the site (including but not limited to asbestos cement pipe), Contractor shall leave such materials undisturbed and shall contact the Owner for directions regarding disposal of said materials.
5. Town of Crested Butte Standards and Specifications: All construction work shall be performed in conformance with the Crested Butte Public Works Criteria for Design and Construction: Earthwork, Sewer, and Water (March 2009 or later version), and with standard details published separately by the Town.
6. CDOT: Colorado Department of Transportation Standard Specifications for Road and Bridge Construction are incorporated herein by reference to address technical details not otherwise addressed by Town specifications, including specifically CDOT specifications for asphalt paving.
7. Conflicts: In the event of a conflict between project specifications herein, Town specifications, and CDOT specifications, the more rigorous requirement shall apply.
8. Stormwater Pollution Prevention Plan: Contractor shall prepare a Stormwater Pollution Prevention Plan, obtain the requisite permit from the Colorado Department of Health & Environment, and shall implement the plan and manage stormwater control devices until receipt of final payment from the owner.
9. Pre Construction Conference: Contractor shall schedule a Pre Construction Conference with the Owner, the Crested Butte Public Works Director (or his designee), the Owner's Representative, and the Project Engineer prior to commencement of work to establish lines of communication, quality assurance and materials testing protocols, surveying requirements, schedules, and to resolve any remaining questions about the intent and purpose of the design.
10. Construction Surveying: Owner will provide construction staking for earthwork and pipelines, set at offsets satisfactory to the Contractor. Any stakes lost during construction will be replaced at Contractor's expense, including stakes needed for the Engineer to evaluate Contractor's work.
11. Quality Assurance Testing will be provided by the Owner, at intervals determined by the Engineer. Contractor shall generally be responsible to notify the testing laboratory of readiness for testing. Any work that is covered up without according the Owner opportunity to test and / or observe shall be removed and reconstructed at no expense to the Owner.
12. Notifications: Contractor shall notify the Crested Butte Public Works Department (349-5338) at least 72 hours prior to commencing construction, initiating street / pedestrian disruptions, or other construction activity that may require the Town's oversight or assistance.
13. Owner's Representative: Contractor shall notify the designated Owner's Representative at least 48 hours in advance to arrange for quality assurance observation of the work. Any work undertaken without according the Owner's Representative the opportunity to observe the work while it is in progress shall be removed and reconstructed by the Contractor at no additional expense to the Owner.
14. Payment for Extra Work: A Change Order signed by the Owner is required to qualify any extra work for extra payment. Any extra work undertaken by the Contractor without having a Change Order signed by the Owner shall be deemed to have been undertaken for the Contractor's convenience, and shall not be eligible for extra compensation.
15. Record Drawings: Contractor shall record all variations from the design on "as-built" drawings showing the locations and dimensions of any element of the project that is not constructed as designed, and shall provide that information to the Engineer prior to release of final payment.
16. Working Hours: All work must follow the Town noise and construction operation hours of 7:00am to 7:00 pm.
17. Pipeline extensions across existing streets shall conform to Crested Butte regulations and specifications, including providing traffic control, signage, barricades, and necessary measures for pedestrian safety. Trenches across existing paved streets or which may compromise existing sidewalks shall be backfilled with flowfill.

TECHNICAL SPECIFICATIONS

EARTHWORK:

River gravel is believed to underlay the topsoil in the low lying pasture areas. The high ground on the site is glacial moraine. All topsoil shall be excavated from pipeline trenches, down to the underlying gravel or glacial moraine, and shall be stockpiled separately from other materials from trenches. Upon completion of pipeline construction, topsoil shall be distributed on site as directed by Owner.

Trench backfill above the washed rock used for pipe bedding shall be select structural fill developed on site. Glacial moraine and river gravel for use as trench backfill shall be screened to exclude rock larger than 2" in largest dimension, shall be moisture conditioned to +/- 2% of optimum moisture, placed in lifts not exceeding nine inches (0.75 feet) thick in loose thickness, and compacted to at least 90% modified proctor density, ASTM D 1557.

IRRIGATION DIVERSION

The McCormick Ditch shall be relocated and piped within the Teocalli right of way. Water flow shall be maintained through the property during irrigation season. Contractor may need to provide pumped bypass of irrigation water during construction of connections on either end of the project.

The design provides a temporary irrigation inlet at irrigation structure #4, station 7+95, to allow delivery of irrigation water through the existing McCormick Ditch while construction of the pipeline proceeds upslope. Upon completion of pipeline construction, and diversion of irrigation water into the pipeline, the temporary inlet shall be plugged, capped, or otherwise sealed off. If the temporary pipe is abandoned in place it shall be filled with flowfill.

GENERAL PIPELINE SPECIFICATIONS

1. Survey Control: The Owner will provide one (1) set of stakes at manholes and inlets at offsets satisfactory to the Contractor.
2. Replacement Stakes: The Contractor shall be responsible to maintain the survey stakes for use in the work. The Owner will replace lost survey stakes at the Contractor's expense, including replacing any lost stakes needed by the Engineer to evaluate the Contractor's work.
3. Grade Transfer: It shall be the Contractor's responsibility to transfer grades from the stakes to the work.
4. Laser Control of Grade and Alignment: The Contractor shall install pipelines using laser grade control equipment. The Contractor shall provide trained, competent personnel to set and manage the laser. The Contractor shall provide appropriate surveying equipment to establish laser alignment from manhole to manhole.
5. Adjustments to Grade: At each manhole or inlet, the Contractor shall check the actual elevation of the pipeline as installed, and, if necessary, re-calculate the grade to the next manhole to compensate for any error in the previous segment. Allowable tolerances for error in elevation and alignment are defined to be 0.5' horizontal and 0.2' vertical, except when the error would reduce the grade or other pipeline clearances below acceptable minimums.
6. Topsoil: Contractor shall manage pipeline operations so that all topsoil is removed from beneath pipelines. No topsoil may be used for trench backfill.
7. Trench Stabilization Rock: If unstable ground conditions are encountered in trenches, Contractor shall over excavate the trench as needed, and backfill to pipeline grade using 1 1/2" washed rock to stabilize the bottom of the trench. A signed change order is required to qualify trench stabilization rock for compensation by Owner. Rock furnished and installed without a signed change order will be considered work for the convenience of the contractor, and will not be eligible for payment.
8. Direction of Installation: Contractor shall commence pipeline installation at the low point in the system, and work uphill.
9. Contractor shall comply with regulations regarding disposal of water from dewatering of trenches. Discharge of water into sewer, storm drain, or irrigation pipeline systems is prohibited.
10. Pipeline Bedding: The Contractor shall bed all pipelines in 3/4" minus screened or washed rock, at least 6" all around the pipe. Rock bedding shall be included in the unit cost of the pipeline installation.
11. Select Backfill: Contractor shall backfill pipeline trenches, above the bedding rock, with screened native gravels, screened glacial moraine, or other select material approved by the Engineer, free of rock larger than 2" in any dimension. Contractor shall moisture condition backfill material to +/- 2% of optimum moisture prior to placement in the trench, and shall compact backfill to at least 90% of Modified Proctor density, ASTM D 1557.
12. Flowfill shall be used to backfill trenches across existing paved streets. Thickness of asphalt pavement patches across existing paved streets shall equal or exceed thickness of existing pavement.
13. Lift depths for trench backfill are dependent upon the size, weight, and power of the contractor's compaction equipment, and shall be subject to Engineer's approval. In general, lift depths in excess of nine inches (9") will not be approved.
14. Pipelines extending across Phase 2 shall be backfilled and compacted with structural fill to match adjacent ground surface less 1 vertical foot, and then the top foot shall be covered with replacement topsoil to re-establish the existing pasture.
15. Density testing of pipeline backfill will be provided by the Owner. Contractor shall coordinate the testing schedule with the Engineer, and shall normally be responsible for notifying the testing agency of readiness for testing. Contractor may expect density testing on every lift until effective methods have been demonstrated, and random testing thereafter. Retests in areas where density tests failed to meet the specification will be made at the Contractor's expense.
16. Backfill of Structures: Manholes and the connecting trench within 6' of those structures shall be backfilled with Class 6 base course gravel, compacted to 95% of modified proctor, in 6" lifts, unless otherwise approved by the engineer. Contractor shall schedule density testing of backfill at structures on 2 vertical foot intervals, within 2' horizontal of the manhole. The cost of gravel backfill for structures shall be included in the cost of the structure.
17. Subsidence Warranty: The Contractor shall manage all backfill and compaction operations in degree and detail sufficient to prevent future subsidence of finished, paved streets and parking areas along trench lines, and shall be responsible to repair any subsidence that may occur within two (2) years of the delivery of final payment to the Contractor by the Owner.
18. Manhole Covers: Manholes in the parking strips shall be manufactured and installed so that the top of the cover is about 1" below the design elevation of the adjacent top back of curb to minimize conflict with snowplowing operations.
19. Proof Roll of the Trench Backfill: Upon completion of each pipeline installation, backfill, and compaction, the Contractor shall demonstrate the competence of the backfill by proof rolling the trench alignment (using a fully loaded dump truck or water truck) in the presence of the Engineer. Proof rolling shall be considered incidental to the work, and the cost thereof shall be included in pipeline unit prices. Any trench backfill which, in the opinion of the engineer, yields excessively under load shall be excavated and recompacted to the specifications, and proof rolled again. Because surface proof rolling will not necessarily reveal compaction deficiencies deep in a trench, any future settlement of Contractor placed fill remains the responsibility of the Contractor.
20. Cast in Place Concrete: Contractor shall call the Engineer to observe the formwork and reinforcing for cast in place structures prior to casting concrete. Site cast concrete shall conform to CDOT Class D mix design. Slump shall not exceed 4". All fresh concrete shall be consolidated using concrete vibrators. Concrete shall be protected from freezing for 5 days after casting. In the event that daytime temperatures are below 60°, and fall below freezing at night, ACI specifications for cold weather concreting shall be applied.
21. Locations for Record Drawings: Contractor shall measure and record all departures from the design, and shall deliver that information to the Engineer prior to release of the final payment.

IRRIGATION PIPELINE

1. The irrigation pipe shall be corrugated Double Wall HDPE N-12 Pipe.
2. Contractor shall connect the irrigation pipeline to the existing concrete irrigation & storm drain box adjoining 6th Street. Contractor shall modify that structure as needed to accommodate installation of the new HDPE pipe, grout the joint with non shrink grout, and shall backfill that portion of the excavation within the zone of influence of the existing sidewalk and street with flowfill.
3. Precast concrete structures: Contractor shall submit shop drawings of precast structures to the Engineer for review at least 10 days prior to casting. The joints between pipe and precast concrete structures shall be sealed with non shrink grout.
4. Contractor shall comply with Town of Crested Butte requirements and specifications, including traffic control and pedestrian safety, when working adjacent 6th Street and when extending the pipeline across 4th Street.
5. The new pipeline across 4th Street shall be backfilled with flowfill, and those concrete and pavement surfaces removed or damaged by pipeline installation shall be reconstructed to equal or better condition.
6. Contractor shall make arrangements to minimize disruption to irrigation users when diverting the McCormick Ditch into the new pipeline.
7. Lamp Test: The Engineer will lamp test the irrigation and storm drain pipelines to verify alignment. The test must show at least 95% visibility from manhole to manhole.

NO	DATE	REVISIONS	BY
1	1/23/17	TOWN ENGINEER REVIEW COMMENTS	JT/PI

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JT	AS-NOTED	JT
DRAWN BY:	FILE NAME:	DATE ISSUED:
PI	14116_DITCH PIPING.DWG	12/09/16

RUTH M. KAPUSHION FAMILY PARTNERSHIP
McCORMICK DITCH RELOCATION
CRESTED BUTTE, CO

CONSTRUCTION NOTES

DMC JOB NO.: 16109

SHEET NO.: 1 OF 5 SHEETS

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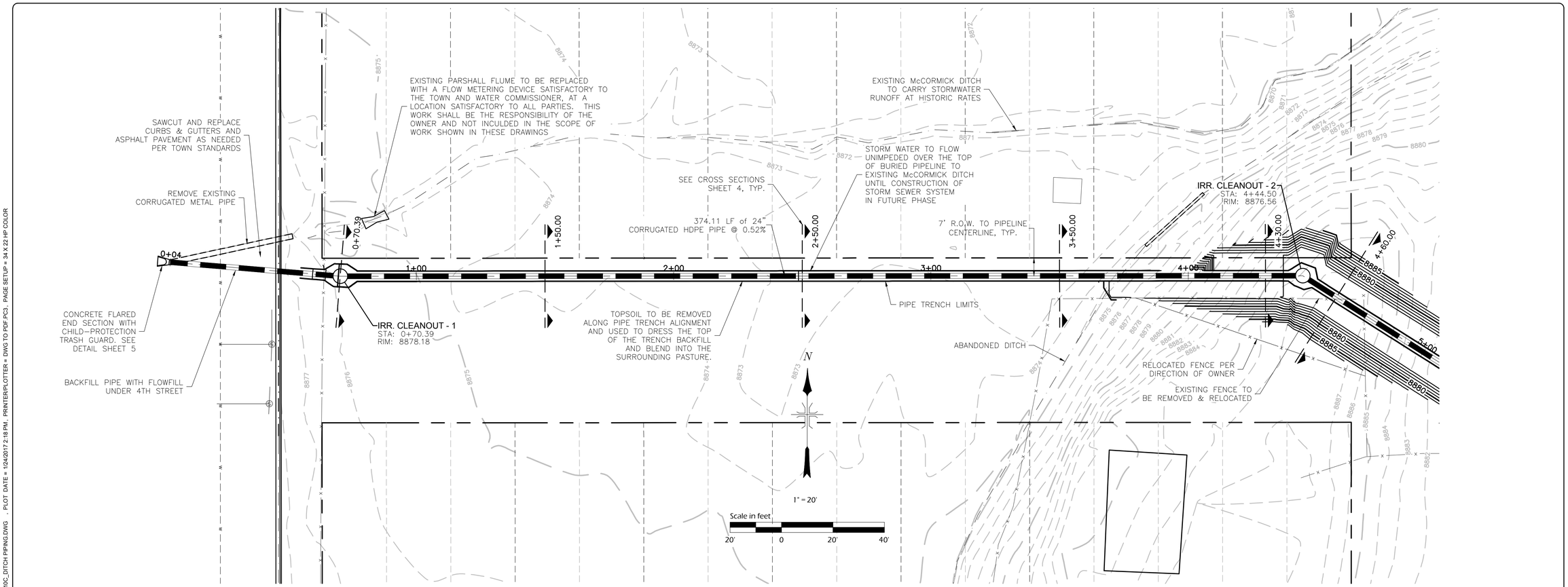

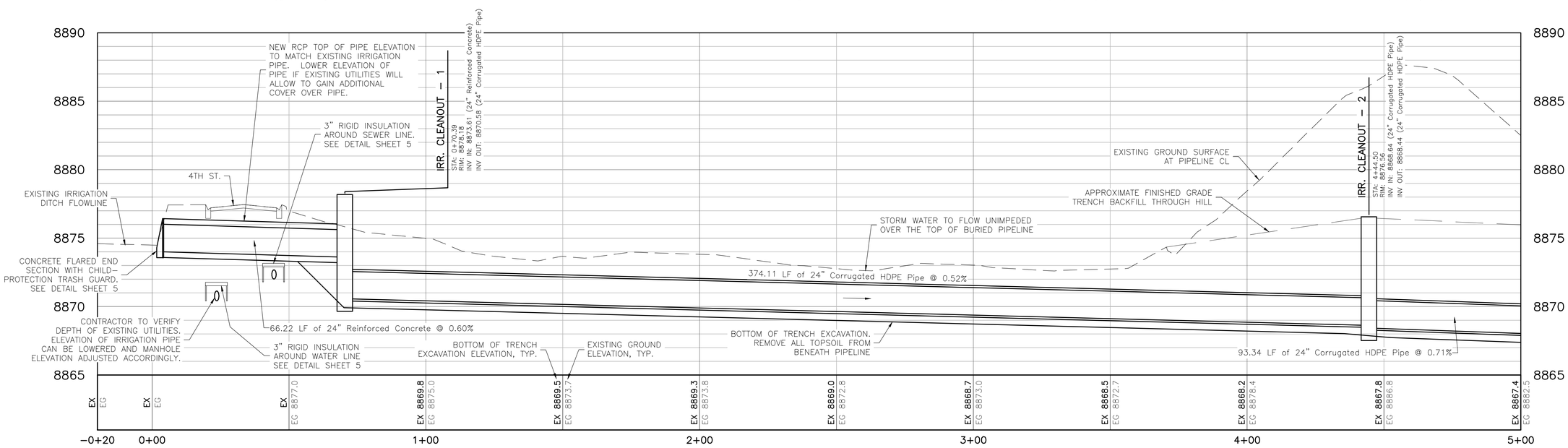

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RUTH M. KAPUSHION FAMILY PARTNERSHIP
McCORMICK DITCH RELOCATION
CRESTED BUTTE, CO

PLAN AND PROFILE

DMC JOB NO.: 16109

SHEET NO.: 2 OF 5 SHEETS

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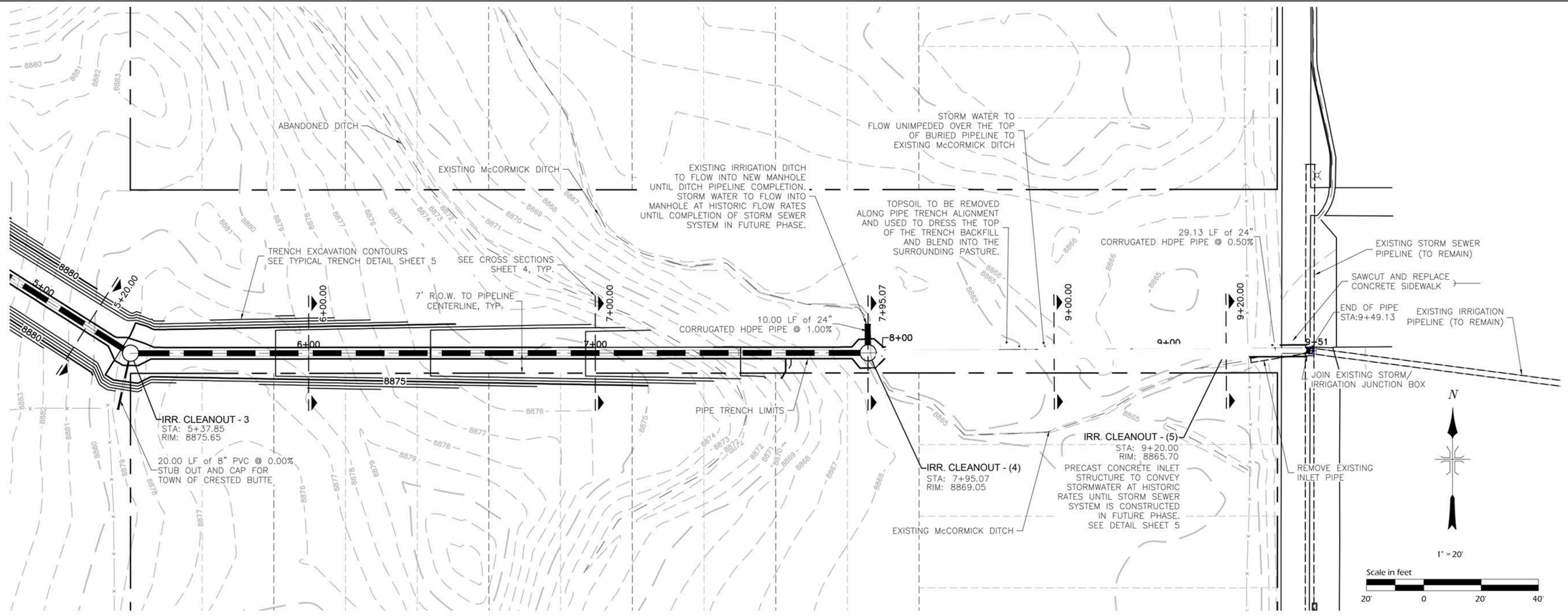

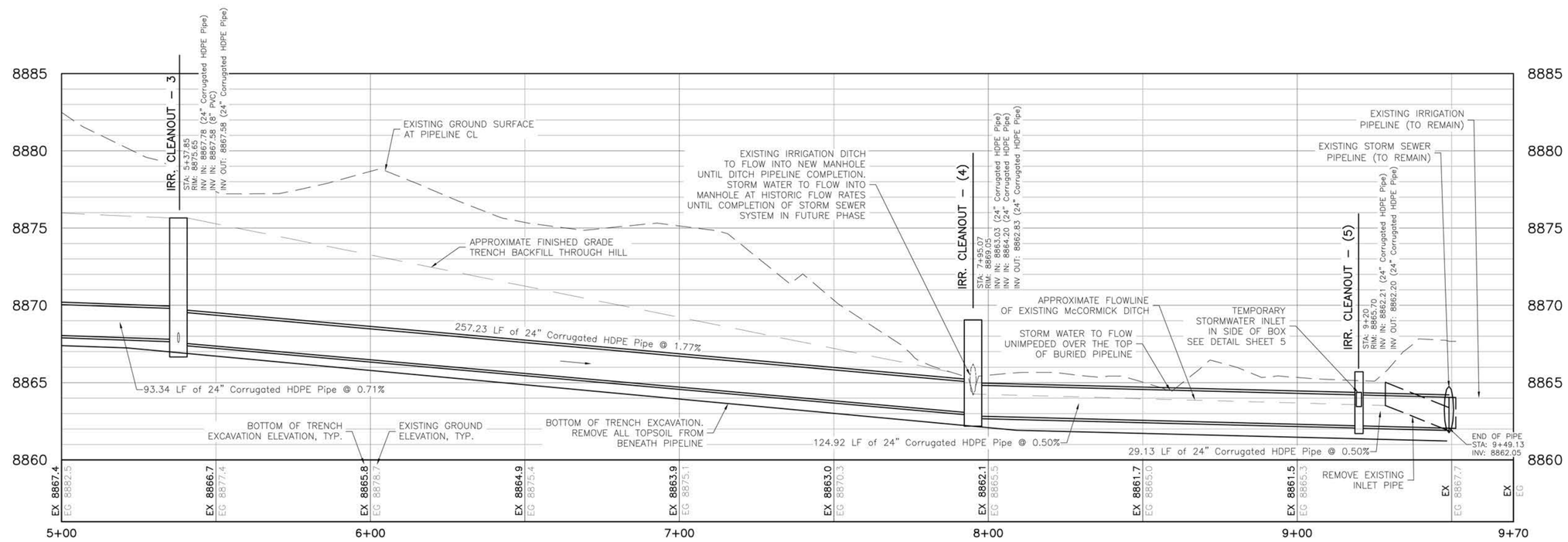

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RUTH M. KAPUSHION FAMILY PARTNERSHIP
McCORMICK DITCH RELOCATION
CRESTED BUTTE, CO

PLAN AND PROFILE

DMC JOB NO.: 16109

SHEET NO.: 3 OF 5 SHEETS

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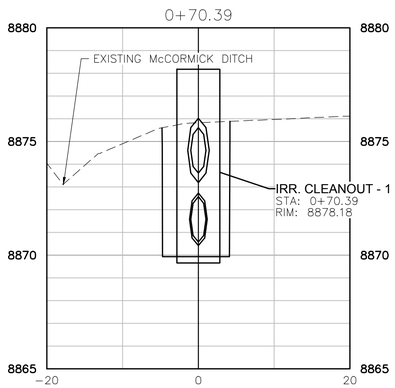
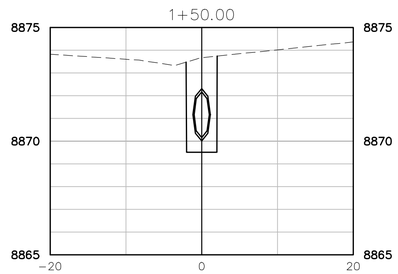
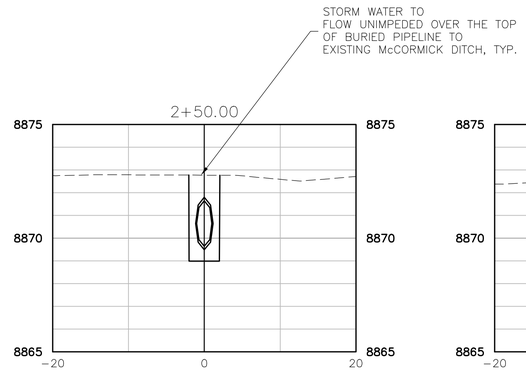
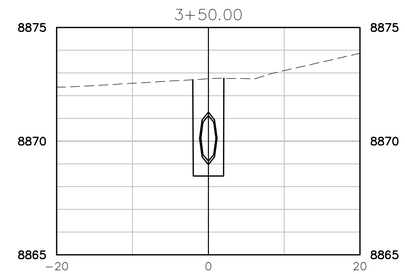
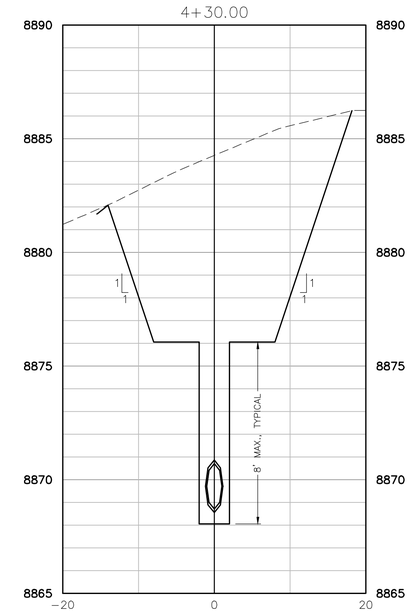
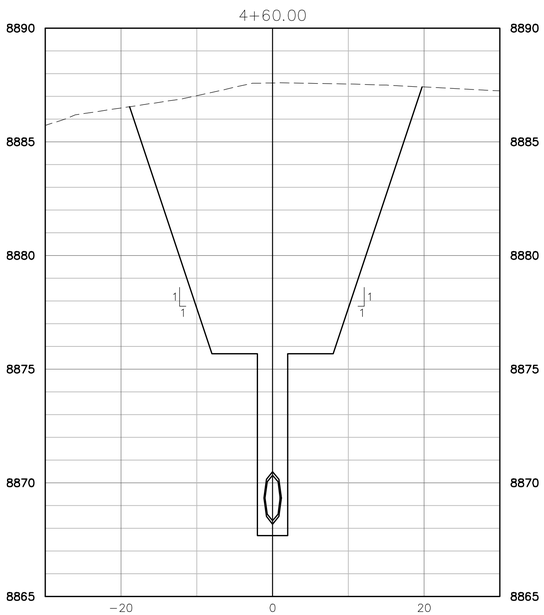


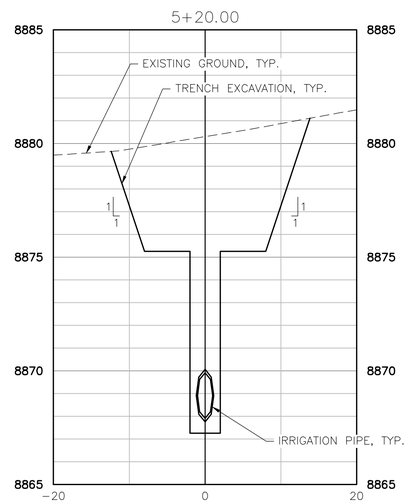


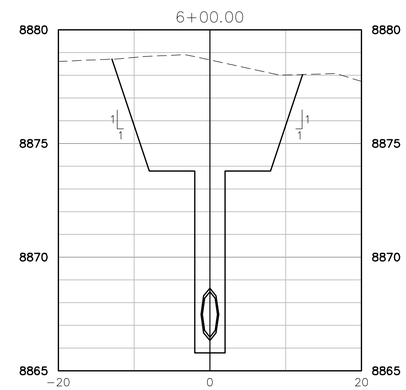


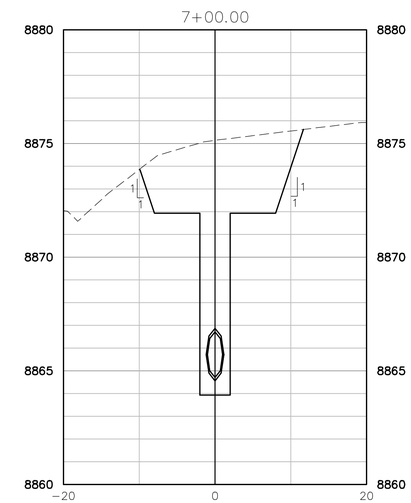




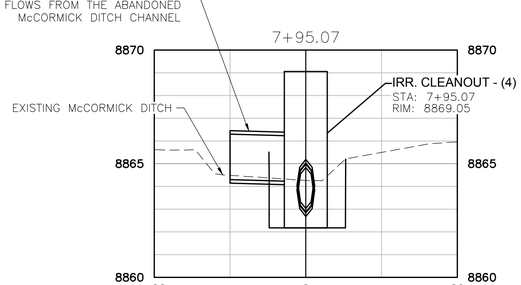


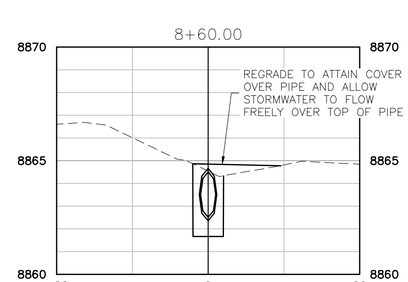


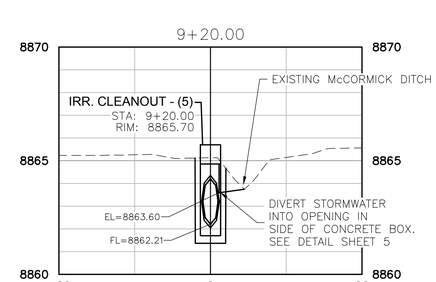




TEMPORARY McCORMICK DITCH DIVERSION
INLET PIPE DURING CONSTRUCTION.
AFTER PIPELINE IS IN SERVICE
CONVEYING IRRIGATION WATER,
THIS PIPE COLLECTS HISTORIC STORM
WATER FLOWS FROM THE ABANDONED
McCORMICK DITCH CHANNEL







1" =10'

Scale in feet

10' 0 10' 20'

NO	DATE	REVISIONS	BY
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JT	AS NOTED	JT
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PI	14YMG_DITCH PIPING.DWG	12/09/16

RUTH M. KAPUSHION FAMILY PARTNERSHIP
McCORMICK DITCH RELOCATION
CRESTED BUTTE, CO

CROSS SECTIONS

DMC JOB NO.: 16109

SHEET NO.: 4 OF 5 SHEETS

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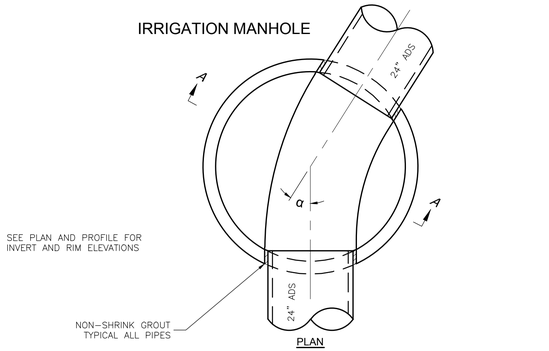
IRRIGATION MANHOLE

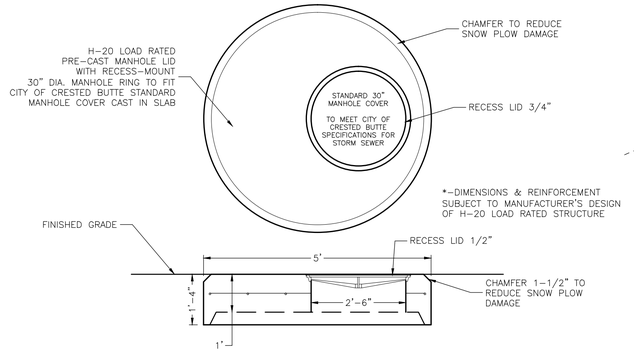


SECTION A-A

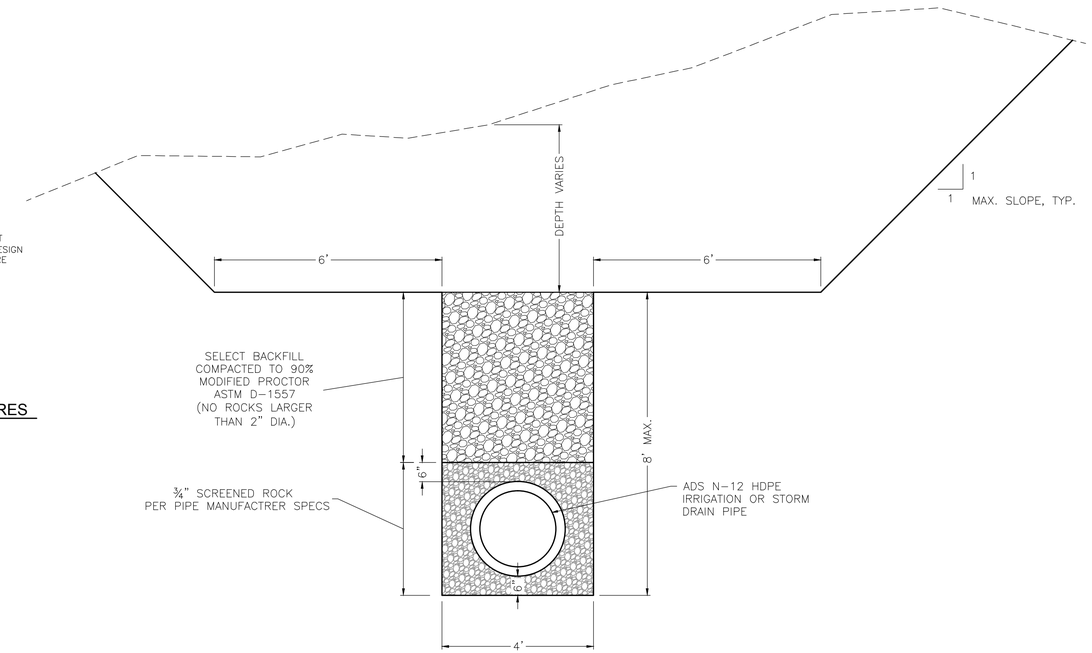
PRECAST MANHOLE BASE DIMENSIONS			
MANHOLE I.D.	α	D(in)	H(FT)
IRR. CLEANOUT – (1)	4.75°	60	7.61
IRR. CLEANOUT – (2)	32.5°	60	8.02
IRR. CLEANOUT – (3)	32.5°	60	8.09
IRR. CLEANOUT – (4)	0.25°	60	6.40

PRECAST BASE DETAIL W/ SHAPED INVERT FOR CHANGES IN PIPE DIRECTION

N.T.S.

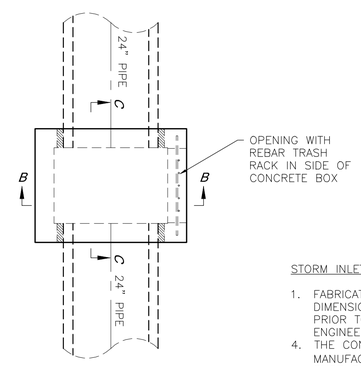


PRECAST LID AND COVER FOR IRRIGATION CLEANOUT / JUNCTION STRUCTURES



TYPICAL PIPE TRENCH DETAIL

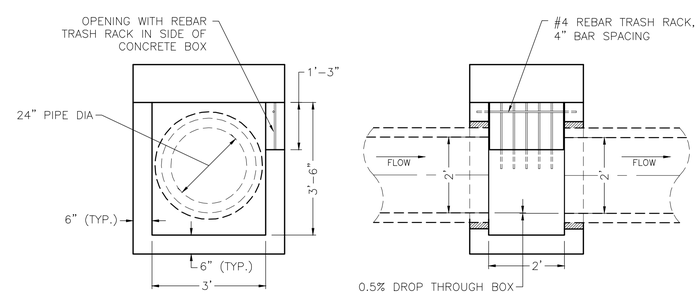
N.T.S.



PLAN VIEW INLET

STORM INLET STRUCTURE NOTES:

1. FABRICATOR SHALL VERIFY ALL DIMENSIONS, ELEVATIONS AND GRADES PRIOR TO CASTING CONCRETE. ADVISE ENGINEER OF ANY DISCREPANCIES.
4. THE CONTRACTOR SHALL SUBMIT MANUFACTURER'S CATALOG DATA OR SHOP DRAWINGS TO THE ENGINEER FOR APPROVAL PRIOR TO PURCHASING BOXES OR GRATES.



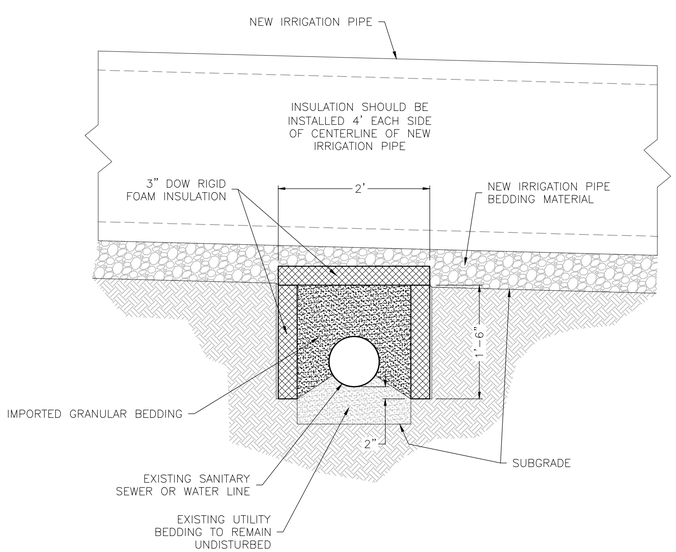
SECTION B-B

SECTION C-C

IRRIGATION CLEANOUT - (5) PRECAST CONCRETE INLET STRUCTURE

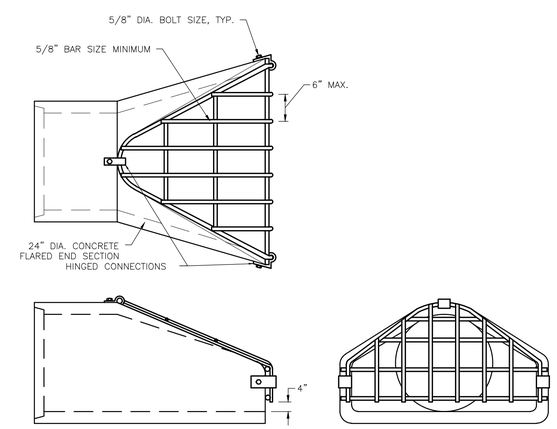
N.T.S.

NOTE:
THIS STRUCTURE IS NECESSARY TO ACCOMMODATE HISTORIC SURFACE DRAINAGE PENDING COMPLETION OF CONSTRUCTION OF STORM SEWER SYSTEM IN FUTURE PHASE



TYPICAL INSULATED UTILITY PIPE

N.T.S.



NOTE: HOT DIP GALVANIZED PER ASTM A153.

CHILD-PROTECTION TRASH GUARD FOR CONCRETE FLARED END SECTION

N.T.S.

NO	DATE	REVISIONS	BY
1	1/23/17	TOWN ENGINEER REVIEW COMMENTS	JT/PI

DMC DEL-MONT CONSULTANTS, INC.
ENGINEERING ▼ SURVEYING
125 Colorado Ave. ▼ Montrose, CO 81401 ▼ (970) 249-2251 ▼ (970) 249-2342 FAX
www.delmontcon.com ▼ service@del-mont.com

DESIGNED BY:	DRAWN BY:	SCALE:	TITLE NAME:	CHECKED BY:	DATE ISSUED:
JT	PJI	AS-NOTED	14THAC_DITCH PIPING.DWG	JT	12/09/16

RUTH M. KAPUSHION FAMILY PARTNERSHIP
McCORMICK DITCH RELOCATION
CRESTED BUTTE, CO

CONSTRUCTION DETAILS

DMC JOB NO.: 16109

SHEET NO.: 5 OF 5 SHEETS

PLOTTED BY: PETER. FILE PATH & NAME = \\DMS14\PROJECTS\ACTIVE PROJECTS\2014\14110-WAYNE MEREDITH TEOCALLI & 5TH ST IMPROVEMENTS\CIVIL3D\2014110C_DITCH PIPING.DWG . PLOT DATE = 1/24/2017 2:18 PM. PRINTER\PLOTTER = DWG TO PDF.PC3. PAGE SETUP = 34 X 22 HP COLOR

Ditch Relocation Agreement and Grant of Easement

THIS DITCH RELOCATION AGREEMENT and GRANT OF EASEMENT (this "**Agreement**") is made and entered into this ____ day of _____, 20__ (the "**Effective Date**") by and between the **TOWN OF CRESTED BUTTE,** a Colorado home rule municipality (the "Town"); **SHEEP MOUNTAIN PARTNERS, LLC,** a Colorado limited liability company ("Sheep Mountain"); and **VERZUH RANCH, INC.,** a Colorado corporation ("Verzuh") (collectively **"Ditch Holders**"), and **RUTH M. KAPUSHION FAMILY PARTNERSHIP, LLLP**, a Colorado limited liability limited partnership ("**Owner**").

WITNESSETH:

WHEREAS, the Owner is the fee title owner of the real property (the "**Development Property**") described in **Exhibit "A"** of the Development Improvements Agreement made and entered into on the ____ day of _____, 20__ by and between the Town and the Owner, and recorded at Reception No. _____, Gunnison County Clerk and Recorder's Office (the **"Development Improvements Agreement"**).

WHEREAS, the development project described in the Development Improvements Agreement (the "**Project**") includes construction of the improvements (the "**Improvements**") described on **Exhibit "E"** of the Development Improvements Agreement, at the Owner's sole expense, in strict accordance with Town-approved plans and specifications;

WHEREAS, construction of the Improvements includes relocating and piping a segment of the McCormick Ditch that crosses the Development Property (the **"Relocation Work"**);

WHEREAS, the McCormick Ditch, located in Gunnison County, Colorado, is adjudicated to divert and carry the following water rights out of Coal Creek:

Priority	Case No.	Appropriation Date	Adjudication Date	Amount (cfs)
164	CA 1325	6/1/1903	9/14/1906	2.25
533	CA 5590	6/1/1903	1/27/1961	6.75
558	CA 5590	4/1/1952	1/27/1961	1.0
				TOTAL = 10.0

WHEREAS, the Ditch Holders own all McCormick Ditch water rights, structures, easements, and physical appurtenances. Specifically, the Town owns 2.617 c.f.s., or approximately 26%, of the water decreed to be carried in the ditch; Sheep Mountain owns 3.89 c.f.s., or approximately 39%, of the water decreed to be carried in the ditch; and Verzuh owns 3.495 c.f.s., or approximately 35%, of the water decreed to be carried in the ditch;

WHEREAS, the Ditch Holders desire to protect their respective property interests in the McCormick Ditch from any and all injury and/or increased operational, maintenance, repair and replacement expenses that may result from the Relocation Work; and

Draft

WHEREAS, the Owner agrees to grant the Ditch Holders an easement on the Development Property for the relocated and piped segment of the McCormick Ditch under the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the preambles, covenants, conditions and agreements set forth in this Agreement, the parties agree as follows:

AGREEMENT and GRANT OF EASEMENT:

1. Preamble. The parties recognize the McCormick Ditch water rights, structures, easements, and physical appurtenances as valuable property rights that must be protected from any and all harm that may result from the Relocation Work. The parties further recognize that this Agreement establishes contract duties, rights, and remedies to protect the Ditch Holders' respective property interests in the McCormick Ditch. The Owner acknowledges and agrees that the relocated and piped segment of the McCormick Ditch must be capable of handling up to 10 cubic feet per second of flow ("c.f.s."), the historic and decreed capacity of the McCormick Ditch, through the entirety of its length.

2. Approval of, and Changes to, the Improvements. Each Ditch Holder has approved the plans to construct the Relocation Work as attached as **Exhibit "E"** of the Development Improvements Agreement and incorporated by reference into this Agreement. These agreed-upon plans for the Relocation Work form the material basis of this Agreement. The Ditch Holders reserve the right to review and approve, disapprove, or approve with conditions, any material changes or other updates to the Relocation Work plans, prior to commencement of any construction work by the Owner relating to the changes. The Ditch Holders will not unreasonably withhold their approval of any changes or other updates, and will provide the Owner with their approval or reasons for denial in writing as soon as reasonably possible but in any case within five business days of receipt of the Owner's written proposal and request to make changes. However, the Ditch Holders reserve the right to require restoration, alteration, and/or remedial efforts as conditions of their approval. In the event that the Ditch Holders require assistance from an engineer and/or attorney to review any changes or other updates to the Relocation Work plans, the Owner will pay the costs of such services; provided that payment to the Town of its costs shall be addressed by separate reimbursement agreement agreed to by and between the Town and Owner. All approved changes or other updates to the Relocation Work plans will be incorporated into the meaning of the Relocation Work as used in, and for purposes of, this Agreement.

3. Timely and Proper Completion of Construction of the Relocation Work.

3.1. The Owner is not obligated to start the Relocation Work until 2 years following execution of this Agreement by all parties.

3.2. The Owner must accomplish all Relocation Work that involves turning off the

McCormick Ditch at times that does not interfere with operation of the McCormick Ditch and that is outside the McCormick Ditch's historic season of use of May 1 through September 15 of each year, unless the Ditch Holders agree otherwise in writing. Notwithstanding any other provision of this Agreement to the contrary, (a) notice to or approval by the Ditch Holders shall not be required for Relocation Work that does not involve turning off the McCormick Ditch; (b) the McCormick Ditch shall not be turned off between May 1 and September 15, except upon the prior written approval of the Ditch Holders, which may be granted or withheld by the Ditch Holders in their sole, subjective discretion; (c) between September 15 and October 31, Owner shall have the right to turn off the McCormick Ditch once for up to 7 days upon 7 days prior written notice to the Ditch Holders; and (d) between November 1 and April 30, Owner shall have the right to turn off the McCormick Ditch at any time without notice to or approval by the Ditch Holders.

3.3. The Owner must accomplish all Relocation Work in a workmanlike manner and in strict conformity with the Relocation Work components of the Improvements plans attached as **Exhibit "E"** of the Development Improvements Agreement (or any changes or other updates to the Relocation Work plans made pursuant to paragraph 2 above). The Owner must also ensure that the McCormick Ditch's carrying capacity of 10 c.f.s., volume of water flow, velocity of water flow, quality of water, and water seepage qualities (to the extent the ditch remains an open structure) are maintained at values consistent with the values existing prior to completion of the Relocation Work. To ensure compliance with this Agreement, the Owner will include construction of the Relocation Work in any performance and warranty sureties provided to the Town pursuant to the Development Improvements Agreement between the Town and Owner. Upon completion of the Relocation Work, the Owner's professional engineer will certify in writing to the Ditch Holders that construction was accomplished in a workmanlike manner and in strict conformity with the Relocation Work plans. Upon receipt of such certification, and within a reasonable time period based on ability to observe the actual performance of the Relocation Work under a full flow and peak scenarios during the May 1 through October 31 season of use, the Ditch Holders will undertake a test and inspection of the completed Relocation Work. The Ditch Holders will then provide the Owner with notice of approval of the Relocation Work, or notice of any construction items that do not substantially comply with the approved Relocation Work plans or that otherwise do not perform as intended under the terms of this Agreement. Upon receipt of any notice of failure of compliance, the Owner will undertake to fully correct the items that do not substantially comply with the approved plans or the intended performance of the Relocation Work. The Owner will then re-undertake and re-comply with the certification and inspection processes set forth in this paragraph as if it had completed the original construction. The Owner will likewise re-undertake and re-comply with the certification and inspection process set forth in this paragraph for any approved changes or other updates to the Relocation Work made pursuant to paragraph 2 above.

3.4. Once the Ditch Holders have certified the completed Relocation Work pursuant to paragraph 3.3 above, the Owner will hire a licensed surveyor to prepare a field survey showing the location and legal descriptions of the centerline of the new relocated and piped McCormick Ditch alignment, the width of the easement granted pursuant to paragraph 4 below, and the entire

segment of McCormick Ditch that crosses the Development property. Upon completion of the field survey, the Owner will record the survey, along with a memorandum incorporating the survey into this Agreement, with Gunnison County Clerk and Recorder's Office.

4. Grant of Easement. Upon completion, testing, and final Ditch Holder approval and certification of the Relocation Work under the terms and conditions of this Agreement, the Owner will convey and grant to each Ditch Holder an easement for the realigned McCormick Ditch. The easement will be 30 feet wide and located on 15 feet of either side of the relocated ditch's centerline; provided that the easement over Block 2 shall encumber the south six feet of Lots 17-32 and the easement over Block 12 shall encumber the north six feet of Lots 6-16 (or any changes or other updates to the Relocation Work plans made pursuant to paragraph 2 above). The general location of the easement is reflected on **Attachment B** attached hereto. Upon completion, testing, and final Ditch Holder approval and certification of the Relocation Work under the terms and conditions of this Agreement, the actual location of the easement shall be reflected in an amended **Attachment B-1** that shall be appended to this Agreement by recordation in the Office of the Clerk and Recorder of Gunnison County, Colorado. The easement is granted for purposes of transporting the 10 c.f.s. of water carried through the McCormick Ditch by decree and historic use, and for accessing the ditch for inspection, monitoring, cleaning, operation, maintenance, repair and replacement. The easement will be limited and non-exclusive in nature, and is intended for the sole benefit of all parties to this Agreement. The easement will be binding upon, and will insure to the benefit of, the parties and their heirs, successors, assigns, and personal representatives, and will run with the lands benefited and burdened by this Agreement.

5. Abandonment of Easement. The existing alignment of the segment of the McCormick Ditch that crosses the Development Property is shown on the Improvements plans attached as **Exhibit "E"** of the Development Improvements Agreement. Upon completion, testing, and final Ditch Holder approval and certification of the Relocation Work under the terms and conditions of this Agreement, the Ditch Holders will abandon or vacate their easement for the existing historic alignment. After 30 days following final certification of the Relocation Work pursuant to paragraph 3.3 above, and only upon request, the Ditch Holders will deliver to the Owner a quitclaim deed in substantially the form attached as **Attachment A** vacating the existing historic McCormick Ditch alignment and conveying and granting their easement for the old alignment back to the Owner.

6. Ongoing Operation, Maintenance, Repair and Replacement (**"OMR&R"**).

6.1 The Ditch Holders will be solely responsible for all OMR&R of the segment of the McCormick Ditch that crosses the Development Property, both prior to and after completion of the Relocation Work. The Ditch Holders will coordinate and work together on an ongoing basis to address any OMR&R in a manner that allows the McCormick Ditch to operate in accordance with its historic values and that prevents or mitigates any damages to down-gradient property and to the ditch's structures, laterals, and appurtenances.

6.2 Prior to the commencement of annual ditch opening and operations, the Ditch Holders agree to confer and determine which Ditch Holder or Ditch Holders will take responsibility for the year's OMR&R, and the estimated costs for such OMR&R. The actual costs associated with the OMR&R work will be split between the Ditch Holders in accordance with their respective ownership interests in the ditch. Specifically, the Town is responsible for 26% of all OMR&R costs; Sheep Mountain is responsible for 39% of all OMR&R costs; and Verzuh is responsible for 35% of all OMR&R costs. The Ditch Holders will reimburse the responsible party within thirty (30) days for all reasonable expenses and labor charges incurred through performance of OMR&R. If the Ditch Holders cannot agree on whether a particular aspect of OMR&R is needed or how the work should be accomplished, the Ditch Holders agree to designate a neutral, third-party water engineer ("Designated Engineer") to render an opinion as to whether the proposed work is reasonably necessary and on how to accomplish such. If the Ditch Holders cannot agree on who will serve as the Designated Engineer, then each Ditch Holder will nominate one neutral water engineer. The three nominated engineers will then select a fourth neutral water engineer to be the parties' Designated Engineer. The opinions and recommendations of the Designated Engineer will be binding on the Ditch Holders. The parties agree to split the reasonable costs or fees charged by the Designated Engineer according to the above percentages.

6.3 The Ditch Holders may use any equipment and vehicles, including heavy machinery, reasonable and customary to exercise their OMR&R rights and responsibilities under this Agreement.

6.4 The Ditch Holders may alter or remove all or any portion of the Relocation Work, and reconstruct such at the Owner's sole expense, if necessary to ensure that the McCormick Ditch's carrying capacity of 10 c.f.s., volume of water flow, velocity of water flow, quality of water, and water seepage qualities (to the extent the ditch remains an open structure) are maintained at values consistent with the values existing prior to completion of the Relocation Work, subject to the provisions of this paragraph. The Ditch Holders shall first notify the Owner in writing of any such perceived failure of the Relocation Work, and must specify with particularity the nature of the failure. The Owner shall be given the opportunity to examine and remedy any actual failure of the Relocation Work, such remedial work to commence within forty-eight (48) hours after receipt of proper notice during the May 1 through October 31 irrigation season, and within fourteen (14) days during the non-irrigation season; and thereafter proceeding with diligence to completion. So long as the Owner is taking diligent, proper, and timely remedial action within a reasonable time period, the Ditch Holders may not unilaterally exercise their rights under the first sentence hereof. In the event of a dispute over failure of the Relocation Work and whether remedial work is necessary and being performed timely, the Owner and Ditch Holders agree to each designate a neutral, third-party water engineer ("Designated Engineer") to render an opinion as to such matters and on how to accomplish any such remedial work; and parties agree to otherwise follow the procedure and substance of paragraph 6.2 above in this regard.

7. <u>Indemnification</u>.

Draft

7.1. The Owner expressly agrees to indemnify and hold harmless the Ditch Holders from any and all liability, including court costs and attorneys' fees, resulting from untimely or improper performance of the Relocation Work of the segment of the McCormick Ditch that crosses the Development Property. It further agrees to indemnify and hold harmless the Ditch Holders from any and all liability resulting from flooding, erosion, sedimentation, blockage, failure to deliver water in prescribed amounts, or other malfunction of the ditch due to untimely or improper performance of the Relocation Work. This indemnification is construed broadly and covers all fees, costs, judgments, and damages incurred by any Ditch Holder, regardless of whether or not such fees, costs, judgments, or damages stem from an action that is filed or threatened.

7.2. The Ditch Holders will promptly notify the Owner in writing upon the filing of any action, claim, or lawsuit for which any Ditch Owners seeks indemnification pursuant to paragraph 7.1 above. The notice will include a statement describing the liability and related events for which the Ditch Owner seeks indemnification.

8. Lien Waiver. The Owner expressly waives in advance its rights and the rights of its contractors and subcontractors to any and all liens arising out of performance of the Relocation Work. It will obtain lien waivers, in a form reasonably acceptable to the Ditch Holders, from any and all laborers or materialmen that will be performing any of the Relocation Work.

10. Attorney Fees. In the event that one or more of the parties to this Agreement deems it necessary to take legal action to enforce or defend any part of this Agreement, the prevailing party will recover its reasonably incurred attorneys' fees and costs.

11. Notice. All notices required under this Agreement must be in writing, and must be hand-delivered or sent by facsimile transmission or regular mail to the addresses of the parties listed in this paragraph. All facsimile transmissions are considered effective upon transmission receipt. All notices by mail are considered effective 72 hours after deposit in the U.S. mail if inscribed with the proper address. Any party may give notice of a change in its address pursuant to the terms of this paragraph.

Town:	Town of Crested Butte Attn: Town Manager P.O. Box 39 507 Maroon Avenue Crested Butte, CO 81224
with copy to:	Town of Crested Butte Attn: Town Attorney P.O. Box 39 507 Maroon Avenue Crested Butte, CO 81224

Draft

Sheep Mountain:

Verzuh:

Kapushion:	Ruth M. Kapushion Family Partnership LLLP P.O. Box 343 429 Gothic Avenue Crested Butte, CO 81224
with copy to:	David Leinsdorf, Esq. P.O. Box 187 215 Elk Avenue Crested Butte, CO 81224

10. Binding Agreement. This Agreement inures to the benefit of, and is binding upon, the heirs, executors, administrators, successors, and assigns of all parties. The easement granted in paragraph 5 runs with the Development Property for the benefit of the Ditch Owners, and is binding on all parties to this Agreement and their heirs, successors, and assigns having any right, title or interest in all or any part of the lands benefited and burdened by this Agreement.

11. Entire Agreement of the Parties. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, offers, acceptances, and understandings of the parties with respect to the stated subject matter. All prior and contemporaneous conversations, negotiations, possible alleged agreements, representations, covenants, and warranties concerning the stated subject matter are now merged into this Agreement.

12. Recordation. Upon execution, the Owner will record this Agreement at the Gunnison County Clerk and Recorder's Office.

13. Counterparts. This Agreement may be executed in counterpart copies, which taken together constitute the agreement between the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

Draft

TOWN OF CRESTED BUTTE,
a Colorado home rule municipality

By: _____ Date: _____
Glenn Michel, Mayor

ATTEST:

_____ (SEAL)
Lynelle Stanford, Town Clerk

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

Subscribed and sworn to me before this ____ day of _____, 20__, by Glenn Michel, Mayor of the Town of Crested Butte, a Colorado home rule municipality.

Witness my hand and official seal.
My commission expires:

_____
Notary Public

Draft

SHEEP MOUNTAIN PARTNERS, LLC
a Colorado limited liability company

By: _____ Date: _____

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

Subscribed and sworn to me before this ____ day of _____, 20__, by _____, as _____ of Sheep Mountain Partners, LLC, a Colorado limited liability company.

Witness my hand and official seal.
My commission expires:

_____
Notary Public

VERZUH RANCH, INC.
a Colorado corporation

By: _____ Date: _____

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

Subscribed and sworn to me before this ____ day of _____, 20__, by _____, as _____ of Verzuh Ranch, Inc., a Colorado corporation.

Witness my hand and official seal.
My commission expires:

_____
Notary Public

Draft

RUTH M. KAPUSHION FAMILY PARTNERSHIP, LLLP
A Colorado limited liability limited partnership

By: _____ Date: _____
Ina Kristine Kapushion

By: _____ Date: _____
Antonette C. Kapushion

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

Subscribed and sworn to me before this ____ day of _____, 20__, by Ina Kristine Kapushion, as _____ of the Ruth M. Kapushion Family Partnership, LLLC, a Colorado limited liability limited partnership.

Witness my hand and official seal.
My commission expires:

_____
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

Subscribed and sworn to me before this ____ day of _____, 20__, by Antonette C. Kapushion, as _____ of the Ruth M. Kapushion Family Partnership, LLLC, a Colorado limited liability limited partnership.

Witness my hand and official seal.
My commission expires:

_____
Notary Public

Draft

ATTACHMENT A

Quit Claim Deed

THIS QUIT CLAIM DEED was made the ____ day of _____, 20__, by and between the **TOWN OF CRESTED BUTTE,** a Colorado home rule municipality; **SHEEP MOUNTAIN PARTNERS, LLC,** a Colorado limited liability company; and **VERZUH RANCH, INC.,** a Colorado corporation (collectively **"Grantors"**); and **RUTH M. KAPUSHION FAMILY PARTNERSHIP, LLLP**, a Colorado limited liability limited partnership **("Grantee"**).

WITNESSETH, Grantors, for and in consideration of the sum of TEN DOLLARS and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, have remised, released, granted, sold, conveyed, and QUIT CLAIMED unto the Grantee, its successors and assigns forever, all right, title, interest, claim, and demand that the Grantors have in and to the real and personal property, together with all improvements, if any, situate, lying and being in the County of Gunnison, State of Colorado, described as follows:

- The historic McCormick Ditch alignment and ditch structure located on Grantee's property described in Exhibit "A" of the Development Improvements Agreement made and entered into on the ____ day of _____, 20__ by and between the Town of Crested Butte and the Grantee, and recorded at Reception No. _____, Gunnison County Clerk and Recorder's Office (**"Development Improvements Agreement"**). Grantee's property is also described as Lots 17-27, Block 1; Lots 6-16, Block 12; Lots 1-13, Block 11; Lots 30-32, Block 11; and Lots 17-32, Block 2.

It is the intent of the parties that Grantors, by this Deed, hereby vacate, release, and abandon the historic McCormick Ditch alignment and ditch structure that is no longer utilized as a result of the relocation and piping of the segment of the McCormick Ditch that crosses Grantee's property. The historic McCormick Ditch alignment is described on Exhibit "E" of the Development Improvements Agreement, and is incorporated into this Deed by reference. Grantors specifically release, convey, and QUIT CLAIM to Grantee all their right, title, interest, claim, and demand to the historic alignment.

TOGETHER with all and singular hereditaments and appurtenances thereto belonging, or in anyways appertaining, and the revision and revisions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, claim, and demand whatsoever of Grantors, either in law or in equity, of, in and to the above bargained property, with the hereditaments and appurtenances;

TO HAVE AND TO HOLD the said premises above bargained and described with the appurtenances, unto the Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, Grantors have executed this Deed on the date set forth

above.

TOWN OF CRESTED BUTTE,
a Colorado home rule municipality

By: _____ Date: _____
Glenn Michel, Mayor

ATTEST:

_____ (SEAL)
Lynelle Stanford, Town Clerk

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

Subscribed and sworn to me before this ____ day of _____, 20__, by Glenn Michel, Mayor of the Town of Crested Butte, a Colorado home rule municipality.

Witness my hand and official seal.
My commission expires:

_____
Notary Public

Draft

SHEEP MOUNTAIN PARTNERS, LLC
a Colorado limited liability company

By: _____ Date: _____

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

Subscribed and sworn to me before this ____ day of _____, 20__, by _____, as _____ of Sheep Mountain Partners, LLC, a Colorado limited liability company.

Witness my hand and official seal.
My commission expires:

_____
Notary Public

VERZUH RANCH, INC.
a Colorado corporation

By: _____ Date: _____

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

Subscribed and sworn to me before this ____ day of _____, 20__, by _____, as _____ of Verzuh Ranch, Inc., a Colorado corporation.

Witness my hand and official seal.
My commission expires:

_____
Notary Public

Draft

ATTACHMENT B

Ditch Easement Location

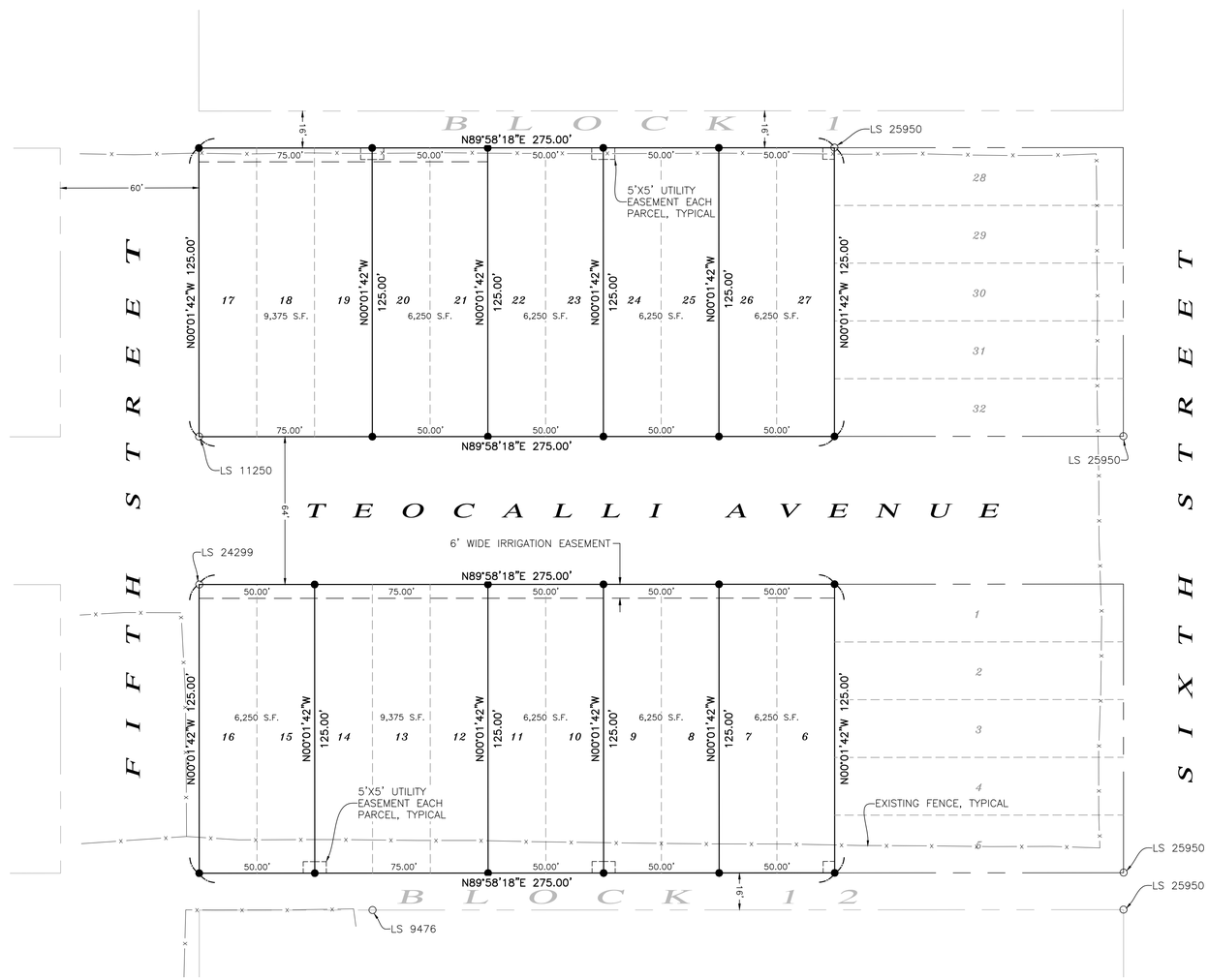
Draft

AMENDED PLAT OF
BLOCK 1, LOTS 17-27 AND BLOCK 12, LOTS 6-16
TOWN OF CRESTED BUTTE

SITUATED IN SECTION 3, TOWNSHIP 14 S, RANGE 86 W, 6TH PRINCIPAL MERIDIAN
TOWN OF CRESTED BUTTE, GUNNISON COUNTY, COLORADO

FOR THE PURPOSE OF CREATING UTILITY, DRAINAGE AND IRRIGATION EASEMENTS

PRELIMINARY



VICINITY MAP
N.T.S.

N

1" = 30'

Scale in feet
30' 0 30' 60'

LEGEND

○ = FD. REBAR & CAP (L.S. AS NOTED)

● = SET 5/8"x18" REBAR W/ 1 1/2" CAP

NOTICE: According to Colorado Law (13-80-105, CRS) you must commence any legal action based upon any defect in this survey within three (3) years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten (10) years from the date of the certification shown hereon.

DMC DEL-MONT CONSULTANTS, INC.
ENGINEERING ▼ SURVEYING
125 Colorado Ave ▼ Montrose, CO 81401 ▼ (970) 249-2251 ▼ (970) 249-2342 FAX
www.del-mont.com ▼ service@del-mont.com

FIELD BOOK: 397	DRAWN BY: PJI	DATE: 1/31/17	
SHEET: 2 OF 2	FILE: 16109V_PLAT	JOB NO.: 16109	

TITLE: AMENDED PLAT
BLOCK 1 LOTS 17-27 ; BLOCK 12 LOTS 6-16

CLIENT: RUTH M. KAPUSHION FAMILY PARTNERSHIP

ADDRESS & PHONE: P.O. Box 343
Crested Butte, CO 81224

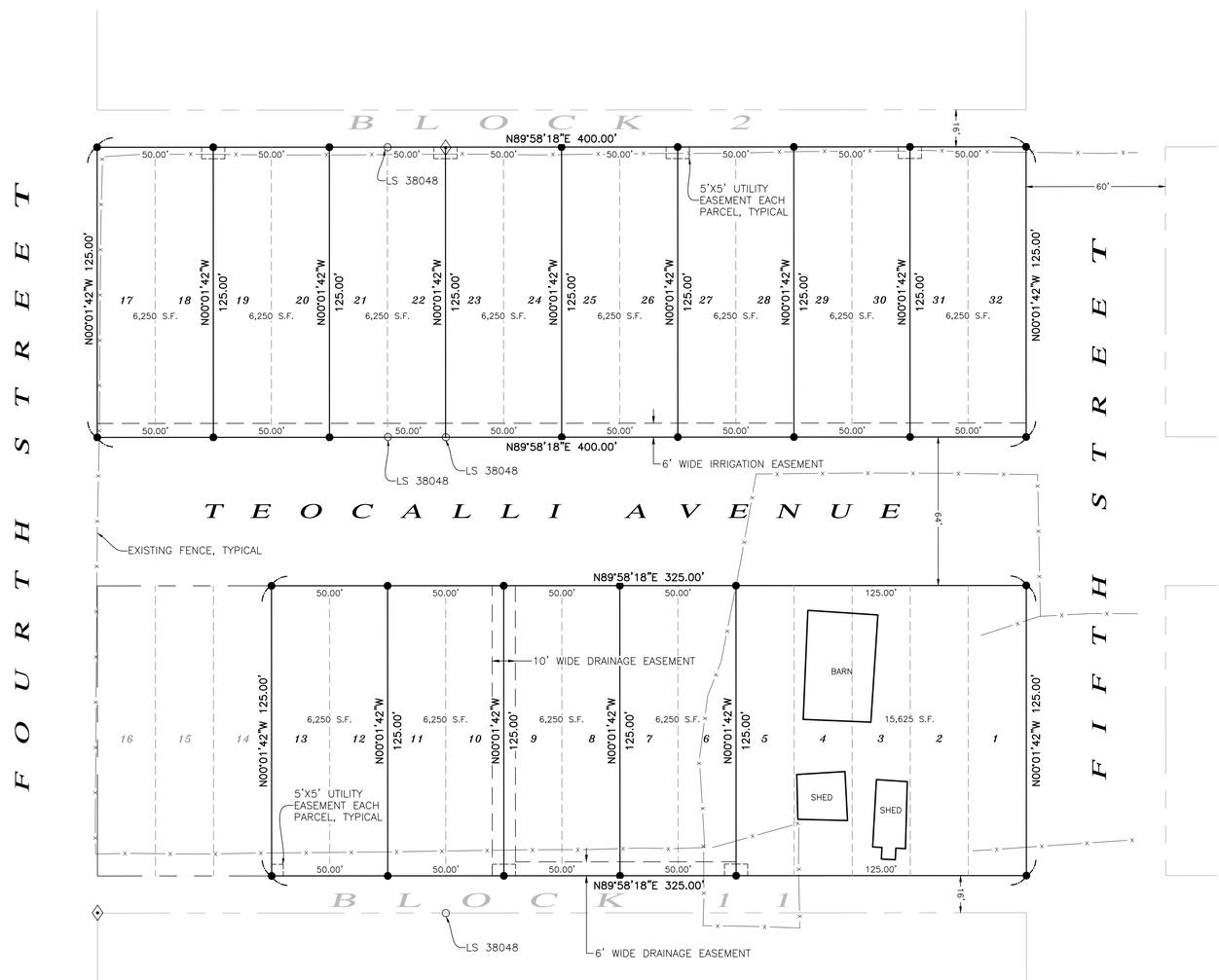
TYPE: PLAT

AMENDED PLAT OF
BLOCK 2, LOTS 17-32 AND BLOCK 11, LOTS 1-13
TOWN OF CRESTED BUTTE

SITUATED IN SECTION 3, TOWNSHIP 14 S, RANGE 86 W, 6TH PRINCIPAL MERIDIAN
TOWN OF CRESTED BUTTE, GUNNISON COUNTY, COLORADO

FOR THE PURPOSE OF CREATING UTILITY, DRAINAGE, AND IRRIGATION EASEMENTS

PRELIMINARY



VICINITY MAP
N.T.S.

N

1" = 30'

Scale in feet
30' 0 30' 60'

LEGEND

- ○ = FD. REBAR & CAP (L.S. AS NOTED)
- ● = SET 5/8"x18" REBAR W/ 1 1/2" CAP
- ◇ = FD. REBAR

NOTICE: According to Colorado Law (13-80-105, CRS) you must commence any legal action based upon any defect in this survey within three (3) years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten (10) years from the date of the certification shown hereon.

DEL-MONT CONSULTANTS, INC.
ENGINEERING ▼ SURVEYING
125 Colorado Ave ▼ Montrose, CO 81401 ▼ (970) 249-2251 ▼ (970) 249-2342 FAX
www.del-mont.com ▼ service@del-mont.com

FIELD BOOK: 397	DRAWN BY: PJI	DATE: 1/31/17	TITLE: PRELIMINARY PLAT BLOCK 2 LOTS 17-32 ; BLOCK 11 LOTS 1-13
SHEET: 2 OF 2	FILE: 16109V_PLAT	JOB NO.: 16109	CLIENT: RUTH M. KAPUSHION FAMILY PARTNERSHIP ADDRESS & PHONE: P.O. Box 343 Crested Butte, CO 81224 TYPE: PLAT

Staff Report

To: **Mayor Michel and Town Council**

From: Michael Yerman, Director of Planning

Subject: 8th Street Cleanup License Agreement-Cypress

Date: May 1, 2017

Background:

Town staff has received a request from Cypress Foothills, LP to include the western right of way portion of 8th Street in their VCUP application to the State. Under the proposed license agreement, Cypress is responsible for the cleanup of portions of the dump located on their property that will eventually be dedicated to the Town. The VCUP will occur while the property is under the County's jurisdiction. However, there is a small strip of potential landfill material located on in the eventual 8th Street right of way on Town property.

Cypress has agreed to include this portion of the 8th Street right of way in the VCUP application and cover the costs of the cleanup. The estimated cost of the Cypress's contribution to the 8th Street portion of the cleanup is between $13,661-$27,322. This is a reduced cost because Cypress will have done all the due diligence and paper work required by the state for the other portions of the cleanup. The cost is also reduced because of the mobilization of Casey Resources for the remainder of the cleanup on their property located in the County.

Cypress can extend utilities without disturbing the small portion of the landfill on the western extent of the 8th Street right of way. If the cleanup does occur under this VCUP application and 8th Street can be constructed to Town specifications. Cypress will then be responsible for its construction. If the right of way is not included in Cypress's VCUP application, the Town may be responsible for the costs of a future VCUP cleanup application, the construction of 8th Street, and the 8th Street sidewalk if a future Council determines the connection is a benefit to the community.

The Council will need to weigh the risks of allowing the 8th Street cleanup to occur on the Town's property to the benefits of the connections to the eventual public uses that will locate on the northern portion of Cypress's property. If the Council elects not to include this portion of the 8th Street right of way into Cypress's VCUP application, the Town would need to file its own VCUP application and take on the costs of the cleanup if the extension of 8th Street is determined to be completed in the future.

LICENSE AGREEMENT

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

RECITALS

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

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

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

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

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

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

G. Cypress and the Town desire to expand Cypress's VCUP application to include that portion of the Town Property within the Eighth Street ROW ("the Eighth

Street ROW Area") so that any portion of the Eighth Street ROW Area determined to include a portion of the Old Town Landfill can be addressed by Cypress under the VCUP. The Eighth Street ROW Area is generally and approximately depicted on **Exhibit A** hereto.

H. To allow inclusion of the Eighth Street ROW Area in Cypress's VCUP Application and to allow Cypress to perform response actions, as necessary, in the Eighth Street ROW Area, at Cypress's sole cost and expense, if and when CDPHE approves Cypress's VCUP application, the Parties desire to agree on terms and conditions pursuant to which Cypress will access the Eighth Street ROW Area and adjacent Town Property in order to perform certain work.

AGREEMENT

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

1. License. Owner hereby grants to Grantee, subject to the terms of this License Agreement, a license ("License") for access to the area of the Property shown in Exhibit B (the "Identified Area") by Grantee and its contractors, along with the subcontractors, employees and agents of the foregoing (such persons are referred to herein individually as a "Contractor", and, collectively, as "Contractors") to perform Work as that term is defined below. Work, as defined

in Section 2 below, will only be performed on the Eighth Street ROW Area, and the sole purpose of the License extending to that portion of the Identified Area that is outside of the Eighth Street ROW Area is to allow Grantee surface access to the Eighth Street ROW Area in order to perform the Work thereon. The License expressly does not confer any interest in real property. The License shall continue until the Work contemplated in this Agreement has been completed, at which time the License shall expire by its terms.

2. Work.

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

(b) Following response actions in the Eighth Street ROW Area as described in paragraph 2(a) above, Cypress shall continue to have access under this Agreement as necessary for all purposes related to the Construction Project. Prior to the commencement of the Construction Project, Cypress shall enter into a standard development improvements agreement with the Town that is (i) substantially similar to

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

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

(a) All Work will be performed at Grantee's sole expense by one or more Contractors selected and engaged by Grantee.

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

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

(d) Grantee will cooperate with Owner so that Work is performed in a manner that will reasonably minimize interference with the existing use of, or activities at, the Town Property within and adjacent to the Identified Area.

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

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

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

4. Cooperation

(a) Grantee shall be responsible for the timely and proper management, transportation and off-site disposal of all waste generated by Grantee or its Contractors in performing Work. Grantee shall bear sole responsibility for compliance with federal, state, and local requirements with respect to the generation, management, and ultimate disposition of such waste. Owner shall be identified as an owner and a generator of any such waste, and in arranging for execution of the required manifests, bills of lading or similar documents ("Waste Documentation"), for transport and disposal off-site of wastes generated in connection with the Work, Grantee may act as agent for Owner in the event Owner does not execute such Waste Documentation.

(b) Owner shall identify in writing to Grantee any utilities or other subsurface structures that could be impacted by Work in the Identified Area. Neither Grantee nor its

Contractors shall be responsible for any damage resulting from the Work to utilities or other surface structures that were not identified in writing by Owner to Grantee.

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

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

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

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

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

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

8. Performance Guarantee and Indemnification. Cypress's environmental engineers have estimated the total cost of response actions for the Eighth Street ROW Area to be between $13,661 and $27,322. In order to secure all obligations of Cypress herein, Cypress and the Town agree that Cypress shall, at Cypress's sole cost, and before accessing the Eighth Street ROW Area or performing any Work hereunder, obtain and provide to the Town, either cash, a bond, an irrevocable letter of credit or other performance guarantee in a form and content satisfactory to the Town to the benefit of the Town in the amount of at least $81,966, which is three times the maximum estimated cost of response actions for the Eighth Street ROW Area (the "Security"). Further, Cypress hereby indemnifies the Town against all losses from claims by third parties arising from or related to the Work up to the amount of the Security.

9. Release. Upon receipt of a No Action Determination from CDPHE which includes the Eighth Street ROW Area , the Town shall release all claims against Cypress arising out of or related to Work or in any way arising out of or related to the environmental conditions of the Identified Area before, during, or subsequent to performance of Work and further, the Town covenants not to sue with respect to any site conditions and any responsibilities or liabilities, including without limitation any environmental liabilities, arising out of or related to the Identified Area, performance of Work, or the construction of Eighth Street and any associated utility infrastructure work.

10. Additional Provisions.

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

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

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

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

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

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

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

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

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

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

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

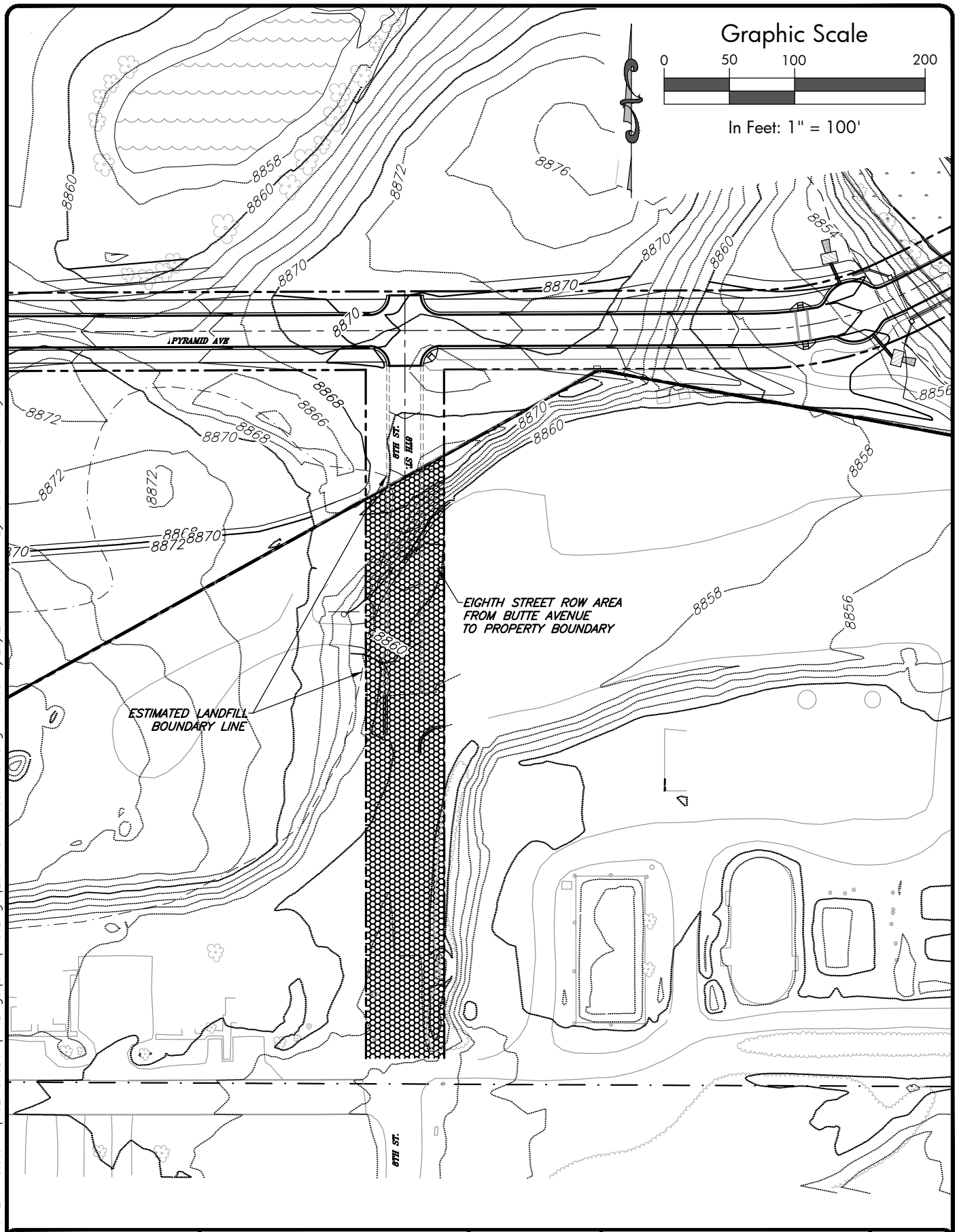
(l) The Parties agree to attempt to resolve amicably any dispute arising hereunder before proceeding with litigation. The prevailing Party in any litigation shall be entitled to its reasonable costs and expenses, including, but not limited to, reasonable attorney's fees and disbursements.

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

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

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

OWNER	**GRANTEE**
TOWN OF CRESTED BUTTE	**CYPRESS FOOTHILLS LP**
	By: Cypress Foothills GP, LLC
By:_____	
	By: _____
Date:_____	
	Date: _____



SGM
103 W. Tomichi Ave., Suite A
Gunnison, CO 81230
970.641.5355 www.sgm-inc.com

Exhibit A

Job No.	2015-201.002
Drawn by:	TJH
Date:	4/25/2017
QC: XXX	PE: TJH
File:	Landfill8thstreetexhibit

Eighth Street ROW Area

Sht. 1 Of 1

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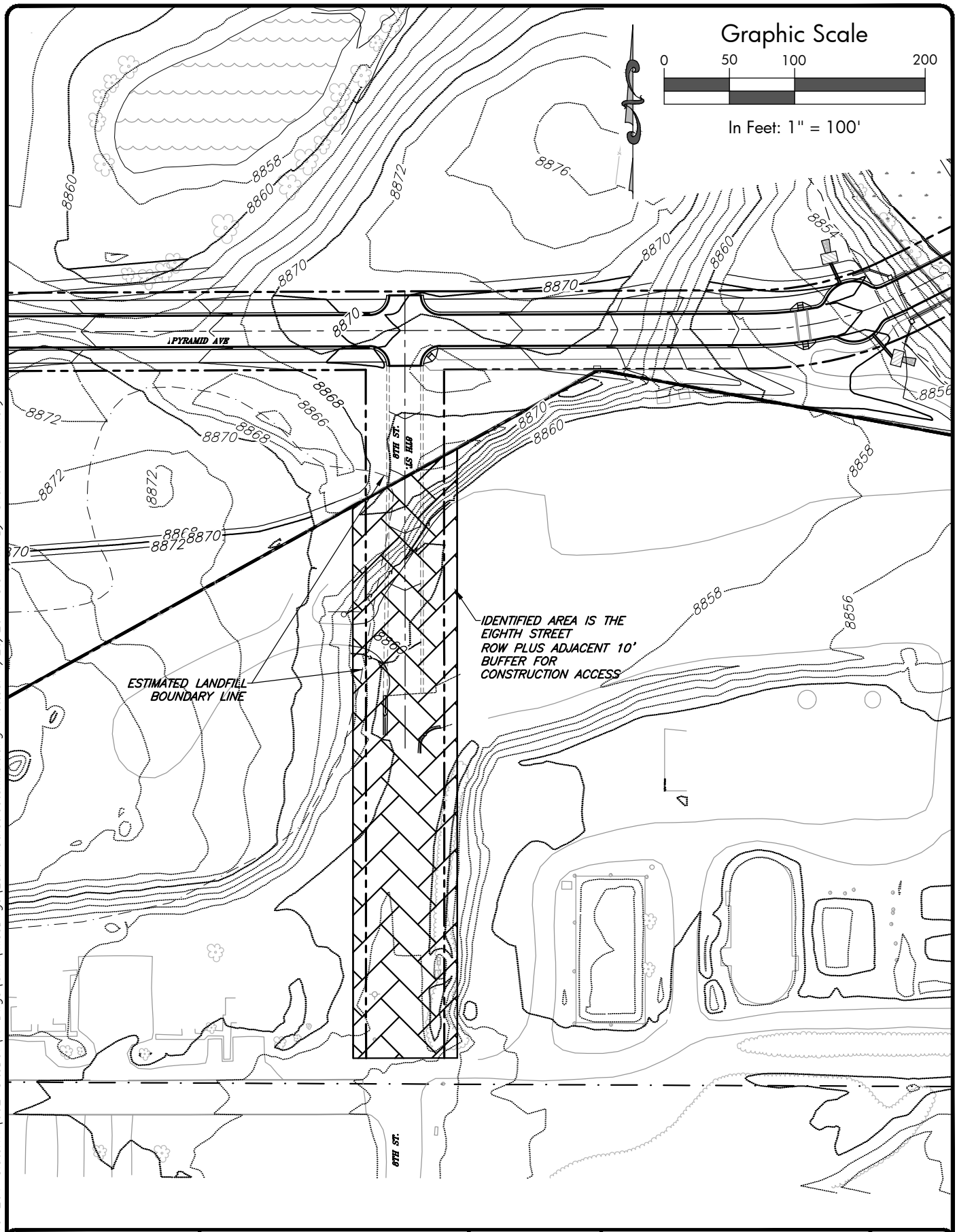

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SGM
103 W. Tomichi Ave., Suite A
Gunnison, CO 81230
970.641.5355 www.sgm-inc.com

Exhibit B

Job No.	2015-201.002
Drawn by:	TJH
Date:	4/25/2017
QC: XXX	PE: TJH
File:	Landfill8thstreetexhibit

Identified Area (Eighth Street ROW Area Plus Adjacent Buffer for Construction Access)

Sht. 1 Of 1

CAST										
	Population	**2017 Annual Budget**		**Mayor Pay**		**Annual**		**Council Pay**		**Annual**
				Basis	Amount	Total		Basis	Amount	Total
Aspen	6,658	$ 94,184,525		Hourly	$ 29.06			Hourly	$ 21.25	
Avon	6,447	$ 33,373,157		Monthly	$ 1,000.00	$ 12,000.00		Monthly	$ 500.00	$ 6,000.00
Breckenridge	4,500	$ 75,727,629		Monthly	$ 1,200.00	$ 14,400.00		Monthly	$ 800.00	$ 9,600.00
Carbondale	6,427	$ 17,472,694		Monthly	$ 1,500.00	$ 1,500.00		Monthly	$ 900.00	$ 10,800.00
Dillon	904	$ 10,674,781		Annual	$ 10,800.00	$ 10,800.00		Annual	$ 4,800.00	$ 4,800.00
Durango	16,887	$ 41,060,471		Annual	$ 9,000.00	$ 9,000.00		Annual	$ 6,000.00	$ 6,000.00
Estes Park	5,858	$ 9,898,297		Annual	$ 7,500.00	$ 7,500.00		Annual	$ 5,500.00	$ 5,500.00
Frisco	2,683	$ 13,080,948		Annual	$ 11,400.00	$ 11,400.00		Annual	$ 6,000.00	$ 6,000.00
Glenwood Springs	9,614	$ 66,753,211		Annual	$ 14,400.00	$ 14,400.00		Annual	$ 12,000.00	$ 12,000.00
Gunnison	5,854	$ 22,401,593		Monthly	$ 600.00	$ 7,200.00		Monthly	$ 500.00	$ 6,000.00
Mountain Village	1,320	$ 39,005,737		Annual	$ 9,600.00	$ 9,600.00		Annual	$ 4,800.00	$ 4,800.00
Mt. Crested Butte	801	$ 5,721,690		Per Meeting	$ 300.00	$ 7,200.00		Per Meeting	$ 150.00	$ 3,600.00
Ouray	1,000	$ 6,076,566		Monthly	$ 500.00	$ 6,000.00		Monthly	$ 200.00	$ 2,400.00
Pagosa Springs	1,127	$ 8,223,000		Annual	$ 3,600.00	$ 3,600.00		Annual	$ 2,400.00	$ 2,400.00
Silverthorne	3,887	$ 14,000,000		Annual	$ 9,000.00	$ 9,000.00		Annual	$ 3,600.00	$ 3,600.00
Snowmass Village	2,826	$ 23,906,706		Monthly	$ 1,700.00	$ 20,400.00		Monthly	$ 1,000.00	$ 12,000.00
Steamboat Springs	12,088	$ 46,271,468		Annual	$ 13,460.00	$ 13,460.00		Annual	$ 10,250.00	$ 10,250.00
Telluride	2,325	$ 30,339,513		Annual	$ 18,000.00	$ 18,000.00		Annual	$ 9,600.00	$ 9,600.00
Vail	5,305	$ 73,012,360		Annual	$ 12,000.00	$ 12,000.00		Annual	$ 7,500.00	$ 7,500.00
Winter Park	999	$ 17,412,013		Per Meeting	$ 400.00	$ 9,600.00		Per Meeting	$ 200.00	$ 4,800.00
Crested Butte	1,487	$ 20,993,219		Annual	$ 9,600.00	$ 9,600.00		Annual	$ 4,800.00	$ 4,800.00
				Average (excluding Aspen & CB)		**$ 10,371.58**				**$ 6,718.42**
	Average (excluding Aspen, Carbondale, Snowmass & CB)					**$ 10,303.53**				**$ 6,167.65**

From:	R Mason
To:	Lynelle Stanford
Cc:	J Schmidt; Chris Ladoulis; Paul Merck; Laura Mitchell; Jackson Petito; Glenn Michel
Subject:	Fwd: CB Town Leases
Date:	Saturday, April 01, 2017 11:18:16 AM

Please add this to the public record
Thanks
Roland

Sent via the Samsung Galaxy S®6 active, an AT&T 4G LTE smartphone

-------- Original message --------
From: Nick & Debby Faes <nadfaes@comcast.net>
Date: 3/29/17 10:38 AM (GMT-07:00)
To: R Mason <RMason@crestedbutte-co.gov>
Subject: CB Town Leases

Roland –

I was very alarmed to read about the closing of the CB motor vehicle office in town hall due to a rent increase. Other town tenants, such as the Mountain Theatre, have expressed serious concerns with proposed rent increases. While I understand and applaud the town undertaking to have current, signed leases in place for every tenant, I would urge extreme caution when considering raised lease rates.

We are “One Valley” far away (thankfully) from the current federal trauma. We rely heavily on each other, local non-profits, Gunnison and the county for our fantastic community. We need to collaborate and share resources to our mutual best advantage. On a carbon level, it is ridiculous to send 25 people a week to Gunnison for motor vehicle business. It would be more than ridiculous to force local non-profits into painful financial straits. The town must be prudent, but it is NOT a business. Especially during these threatening times, please guide Crested Butte to be sensitive and magnanimous in these dealings. We will all be better off for it.

Thanks!

Nick Faes

PO Box 514
408 Sopris Avenue
Crested Butte, CO 81224-0514
303-250-7612
nadfaes@comcast.net

From:	Matt Reed
To:	Lynelle Stanford
Subject:	May 1 Agenda Item Request
Date:	Wednesday, April 12, 2017 2:22:12 PM

Hi Lynelle,

I hope you're enjoying the relatively quiet spring here.

I'm writing to request a 10-minute agenda item at the May 1 Town Council meeting. Next week the Forest Service will initiate a public comment period on its proposal to approve a 1700-acre expansion for the West Elk coal mine on roadless forest in Gunnison County to develop 19 millions tons of coal. I am requesting that HCCA be allowed a brief presentation to the council on this and conclude with a request that the council submit a letter to the Forest Service. Is the town able to accommodate that?

Please let me know if that's possible. Thank you!

Matt Reed
Public Lands Director
High Country Conservation Advocates
PO Box 1066
Crested Butte, CO 81224
(303) 505-9917

May 15, 2017
Work Session
Vinotok

New Business
Continued first reading:
Ordinance No. 6, Series 2017 - An Ordinance of the Crested Butte Town Council Amending the Definition of Vacation Rental in Section 16-1-20 of the Crested Butte Municipal Code; Amending Section 16-14-90 of the Code to Include New Regulations for Vacation Rentals; and Making Such Other Conforming Changes to Code in Connection Therewith.

Update from Maddie Rehn from Gunnison Public Lands Initiative on the status of the Gunnison Public Lands Initiative Project.

June 5, 2017
New Business
Update from Zach Vaughter from Coal Creek Watershed Coalition (CCWC) on the Gunsight Reclamation Project

Future Work Session Items:

- Camping @ Town Ranch (allow? Not allow? Allow camping in other places?)
- BLM and OBJ Campground/Seasonal Housing Shortage (this could be combined with others – especially the Affordable Housing item at the bottom of this list)
- Perimeter Trail – Update, timelines, costs, what does this look like when finished
- Land Trust and Town Preservation Priorities – basically a joint planning/discussion with the CBLT (maybe in Exec Session if they would like) to confer on the priority parcels identified by the CBLT and the priorities of the Town (for planning future open space acquisitions). Maybe even a discussion about purchasing trail easements.
- Elk Avenue Rule Set re: Private Clubs – the whole "private clubs on Elk Avenue" concern that was raised when Irwin obtained a private liquor license for the Scarp Ridge Lodge.
- Affordable Housing/Density/Workforce – Blk 79/80
- Drones
- Special Events
- Speeding