

**AGENDA**  
**Town of Crested Butte**  
**Regular Town Council Meeting**  
**Monday, August 19, 2019**  
**Council Chambers, Crested Butte Town Hall**

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

**6:00 WORK SESSION**

1) Keystone Mine Update from Dave Gosen on Reclamation Activities and Possible Plans for Water Treatment Plant.

**6:30** 2) Presentation by Janna Hansen on Henderson Park Redesign.

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

**7:02 APPROVAL OF AGENDA**

**7:04 CONSENT AGENDA**

1) August 6, 2019 Regular Town Council Meeting Minutes.

2) Resolution No. 15, Series 2019 - A Resolution of the Crested Butte Town Council Approving the Lease Agreement with the Center for the Arts for the Film Festival's use of 620 Second Street, AKA Big Mine Warming House.

3) Resolution No. 16, Series 2019 - A Resolution of the Crested Butte Town Council Authorizing the Grant of a Revocable License to GIP Epsilon LLC to Encroach Into the Right-Of-Way Adjacent to Third Street, the North Side of the Big Mine Ice Arena Parking Lot and Lot 28, Block 40, Town of Crested Butte.

4) Approval of Letter of Interest for DOLA Renewable Energy Challenge Grant.

*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.*

**7:06 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**

**7:20 PUBLIC HEARING**

1) Ordinance No. 28, Series 2019 - An Ordinance of the Crested Butte Town Council Approving: (1) the Assignment of the Town's Conservation Easement in Kikel Parcel A to Crested Butte Land Trust, (2) the Termination of the Town's Covenant to Limit Development on Kikel Parcel A, and 3) Granting New Conservation Easement to Crested Butte Land Trust in Exchange for the Conveyance of Kikel Parcel A from Crested Butte Land Trust to the Town of Crested Butte.

**7:45 OLD BUSINESS**

1) Discussion on The Corner at Brush Creek.

**8:05 NEW BUSINESS**

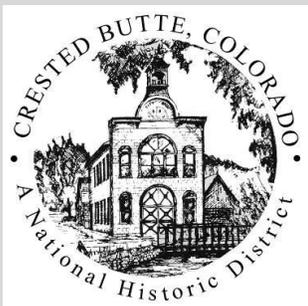
1) Review of the 2019 School District IGA.

**8:25** 2) Discussion on Amending the Affordable Housing Guidelines and Business-Owned Units.

**8:45 LEGAL MATTERS**

**8:50 COUNCIL REPORTS AND COMMITTEE UPDATES**

**9:00 OTHER BUSINESS TO COME BEFORE THE COUNCIL**



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

**Town Council Values**

- *Support Crested Butte's quality of life*
- *Promote resource efficiency and environmental stewardship*
- *Encourage a sustainable and healthy business climate*
- *Maintain an authentic and unique community*
- *Remain fiscally responsible*
- *Continue thoughtful management of our historic character*
- *Seek collaborative solutions to regional and local issues*

**9:10 DISCUSSION OF SCHEDULING FUTURE WORK SESSION TOPICS AND COUNCIL MEETING SCHEDULE**

2

- *Tuesday, August 20, 2019 - 6:00PM Demolition Moratorium Work Session*
- *Tuesday, August 27, 2019 - 6:00PM Joint Meeting on Brush Creek*
- *Tuesday, September 3, 2019 - 6:00PM Work Session - 7:00PM Regular Council*
- *Monday, September 16, 2019 - 6:00PM Work Session - 7:00PM Regular Council*
- *Monday, October 7, 2019 - 6:00PM Work Session - 7:00PM Regular Council*

**9:15 ADJOURNMENT**



## Staff Report

August 19, 2019

**To:** Mayor and Town Council

**Through:** Dara MacDonald, Town Manager

**From:** Janna Hansen, Parks and Recreation Director

**Subject:** Henderson Park Renovation

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### **Background:**

Henderson Park is a 1,250 sq. ft. pocket park located on the corner of 3<sup>rd</sup> St. and Whiterock Ave. Existing amenities consist of play equipment for 2-5 year olds including 2 bucket swings, a 5' metal slide into a sand pit, and 1 spring rocker. A bench, bike rack, and trash can are also located on site. Henderson Park was dedicated in honor of Betty Henderson, a local school teacher who was married to Robert Henderson, namesake of the Henderson Mine.

Henderson Park is at the end of its usable life and as items break, our insurance provider will not allow the Town to replace them without installing proper fall surfaces. A survey was conducted in the spring of 2019, and a community meeting was held on April 9<sup>th</sup> to receive public input about the amenities people wished to see at Henderson Park. The feedback received from both the survey and the community meeting was consistent with regards to desired amenities. People wished to keep Henderson as a play park for 2-5 year olds and provide additional picnic and garden space. Play equipment, a shade structure, benches, and picnic tables were the most desired amenities with 70% of users arriving on foot and almost 30% arriving on bicycle.

### **Henderson Park Conceptual Design:**

During the community meeting, multiple design alternatives were presented. The favored feature was an "earth mound" concept that would allow for integration of the existing berm with creative play features while maintaining the grass surface. Town Planner, Bob Nevins, developed the concept plan and it was informally reviewed and given the thumbs up by BOZAR on July 30<sup>th</sup>. The concept plan includes the following amenities:

- Earth mound feature with grassy slope to crawl up on one side, a 5' double slide into an engineered wood fiber pit on the other side, and a tunnel to crawl through underneath. A rustic wooden hand rail provides safety at the top of the mound.
- A log stump hop is incorporated at the bottom of the berm along the south border of the park.
- A trellis with side benches and an open top is connected to a wooden fence along the east side of the park.
- A picnic table and two benches with privacy screens provide a buffer from the neighbor to the north. One screen is a trellis concept with hops growing on it, and the other screen is a wildflower sculpture concept.

- One bench will be located on the top of the berm to provide a space for supervising adults to be between play areas and Whiterock Ave.
- Seven aspen trees are proposed as well as flowers and shrubs.
- The Henderson Park sign would be relocated to the outer corner of the park at 3<sup>rd</sup> St. and Whiterock Ave.
- A bike rack, trash can, and doggie doo station would be provided.

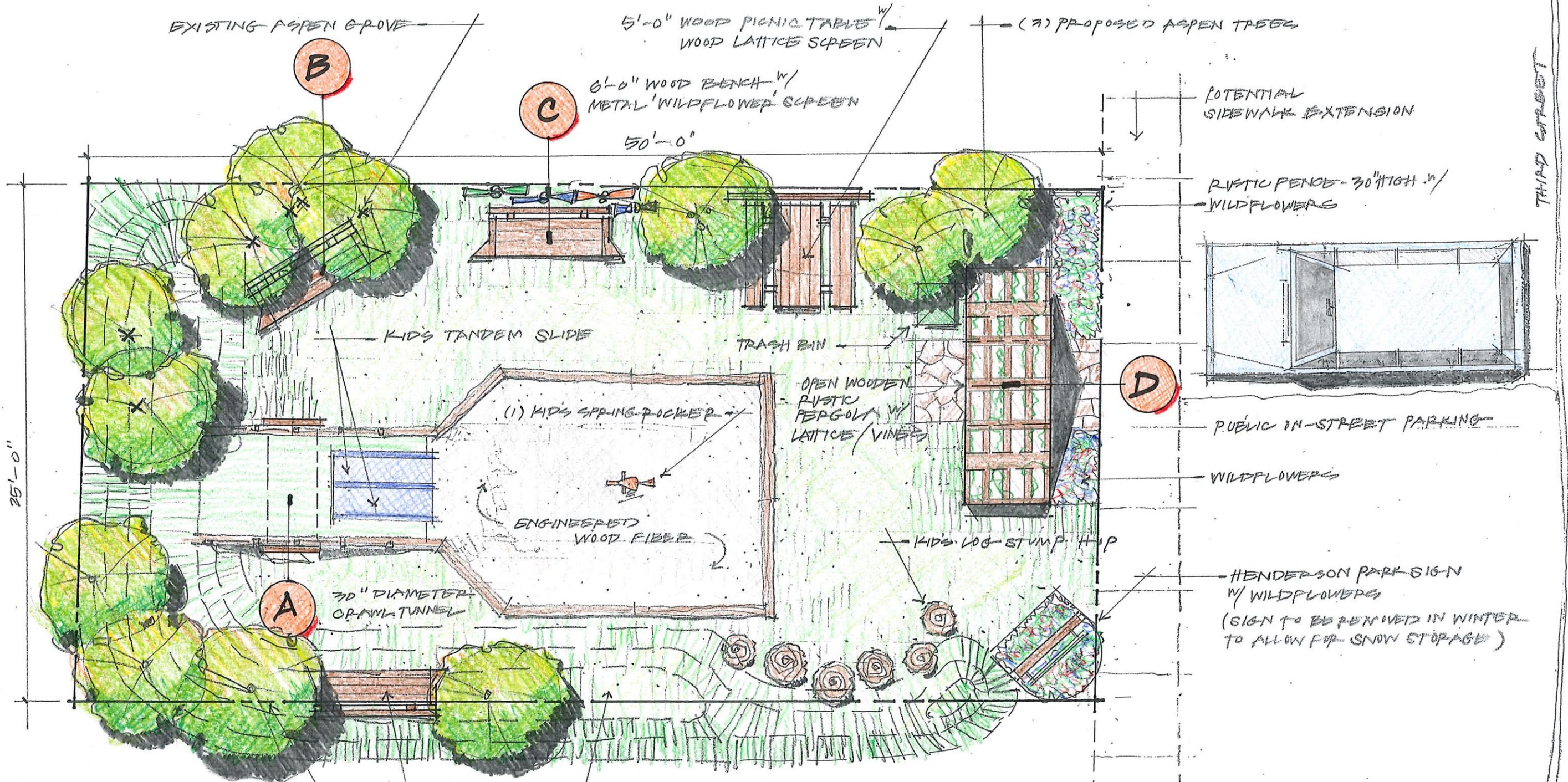
Both the trellis and the wildflower sculpture provide opportunities for engagement with the Creative District. The right-of-way along 3<sup>rd</sup> St. would allow for head-in parking while retaining sufficient space for a future sidewalk. The fencing along 3<sup>rd</sup> St. and the berm along Whiterock create buffers from parking areas and road traffic. Existing trees to the west and newly proposed trees and shrubs to the north will create visual and physical buffers from adjacent properties.

**Timeline and Financial Implications:**

Staff plans to apply for a Mini Grant with Great Outdoors Colorado (“GOCO”) in the amount of \$40,000.00 with a total project cost not to exceed \$60,000.00. \$20,000.00 in matching funds would be requested in the 2020 budget. The grant application deadline is October 24, 2019 with a grant award in March of 2020. Construction would be anticipated for the summer of 2020.

**Recommendation:**

Staff recommends that Council direct Staff to move forward with the Henderson Park Renovation Project including applying for a GOCO grant. A resolution of support for the GOCO grant application would come before Council on September 3<sup>rd</sup>.



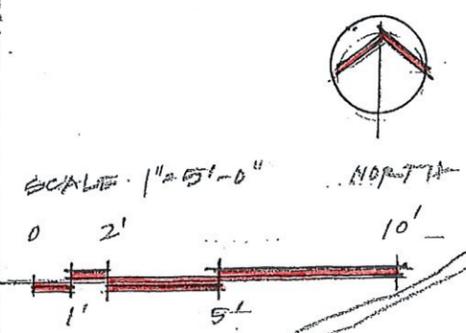
(4) PROPOSED ASPEN TREES  
 (1) 6'-0" WOOD BENCH

Site Plan

# Henderson Park

Crested Butte, Colorado

WHITE ROCK AVENUE



THIRD STREET

**MINUTES**  
**Town of Crested Butte**  
**Regular Town Council Meeting**  
**Tuesday, August 6, 2019**  
**Council Chambers, Crested Butte Town Hall**

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

Council Members Present: Will Dujardin, Candice Bradley, Chris Haver, Mallika Magner, and Laura Mitchell

Staff Present: Town Manager Dara MacDonald, Town Attorney John Sullivan, Town Attorney Barbara Green, and Finance Director Rob Zillioux

Community Development Director Michael Yerman, Town Clerk Lynelle Stanford, and Public Works Director Shea Earley (for part of the meeting)

Schmidt mentioned the topic of the work session, the role and authority of the Town Council, presented by Green and Sullivan.

**APPROVAL OF AGENDA**

Mitchell moved and Haver seconded a motion to approve the agenda. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

**CONSENT AGENDA**

- 1) July 15, 2019 Regular Town Council Meeting Minutes.**
- 2) Execution of Contract with Energy Services Company for Investment Grade Audit and Energy Performance Contracting Services of Town Facilities, Parks, and Vehicle Fleets.**
- 3) CC4CA Policy Statement.**
- 4) Final Payment for Paradise Park Duplex Build to High Mountain Concepts.**

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

**PUBLIC COMMENT**

None

**STAFF UPDATES**

- Schmidt referred to the staff report from MacDonald.
- Zillioux reported that he met with representatives from the County, Mt. CB, CB South, and Mountain Express. The group wanted to continue with the late night town taxi service. They came forward with a suggested outline on what the service would look like. They would put the outline in front of Telluride Express that did not have a representative present at the meeting.
- Yerman mentioned a work session was needed on the demolition moratorium, which the Council could schedule later in the meeting.
- Schmidt was sorry to hear the hockey changing rooms were delayed another year.
- MacDonald asked Council members to let her know if anyone was interested in attending the conference in Park City.
- Mitchell asked about the Marshals' responses to the bear running around. MacDonald would follow up with Mike Reily.

## **PUBLIC HEARING**

### **1) Ordinance No. 29, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Transfer of Town-Owned Property Legally Described as Lot 6 Block 78 and Lots 4, 10, and 11 Block 79, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Bywater, LLC for the Construction of Affordable Housing.**

Schmidt read the title of the ordinance. Green explained the reason there was a public hearing on the transfer of public property. Yerman stated Wisian was able to provide an overage bond, rather than a performance bond that covered the project. He reviewed the amendment to the contract. Town would buy the plans in order to re-bid the project. The intent would be to re-bid Phase 2 to break ground in the spring. For now, Staff recommended not moving forward with Phase 2 this fall. Yerman said they would have the surety and bond issues with Town transferring the property, and he wanted to consider different financial solutions. Yerman elaborated upon the changes to the amounts in the contract.

Sullivan concurred with Staff's recommendation to not pass the ordinance. Joel Wisian, from Bywater, affirmed he did not have a bond in hand. He reviewed conversations he had, including one with someone who offered help in securing the bond. Wisian acknowledged that Town was asking for a completion bond. Town staff and the attorneys were not comfortable with the proposed solution. Wisian provided a letter from a bonding agent, and he said that he could gain final approval. There was a solution on the table.

Wisian outlined performance bonds and completion bonds. Schmidt questioned if it mattered to Town to postpone another two weeks. MacDonald explained the timing of the contract approval related to the bond. Green distinguished between a performance bond and a completion bond. Green said they could not change the recommendation. Sullivan stated the letter was not sufficient. MacDonald confirmed Bywater was in

default of the current contract. Sullivan reiterated they could not recommend approval tonight.

Green informed the Council they would not be risking anything to approve the ordinance because of the contract. Sullivan identified language in the ordinance that was not accurate. There was discussion on the date on which to require the bond. Yerman said they were looking at proceeding with Bywater, or re-bidding for next spring. He suggested a deadline date for the bond of August 30<sup>th</sup>. Dujardin voiced concerns about the affordable housing guidelines coming up on the agenda.

Schmidt confirmed proper public notice had been given, and he opened the public hearing.

Benjamin Diem - Owner at Bonez

- It was super critical to have key players available (at the restaurant). They were trying to get places up here.
- The Stash and Bonez had many employees.
- He wanted Wisian to keep their checks in order to build.
- He said to go for it.

Greg Wiggins - PR Property Management

- He did not want Wisian's check back, either.
- He wanted the Town to give Wisian two more weeks to correct the contract.

Anne Moore - 622 Teocalli

- This was a yes for her.
- Wisian was throwing up houses.
- She thought they could trust him.

Schmidt closed the public hearing.

Mitchell suggested the ordinance be moved to the next Council meeting and to amend the contract to a date certain. Haver was comfortable giving Wisian to August 30<sup>th</sup>. Dujardin agreed. MacDonald said the Council could amend and approve the ordinance and the amended contract with the deadline date of August 30<sup>th</sup> to produce the bond. The conveyance would occur once the bond was produced. Yerman recommended the Council continue the public hearing to after item #4 under New Business. They would also amend the contract to be date specific. Green confirmed for Magner the risk was for Phase 1. Magner questioned worst-case scenario if the Council approved. Sullivan confirmed the direction he was hearing. Green did not see any risk to Phase 2 with what was being proposed.

Dujardin moved and Haver seconded a motion to continue Ordinance No. 29, Series 2019 until after #4 on New Business. A roll call vote was taken with all voting, "Yes."

**Motion passed unanimously.**

**2) Ordinance No. 32, Series 2019 - An Ordinance of the Crested Butte Town Council Approving the Lease of 808 9<sup>th</sup> Unit 1 (A Town Owned Building) to Chris Wiig.**

Schmidt read the title of the ordinance, and he confirmed proper public notice had been given. Zillioux described the unit, and he identified the amount for rent. Schmidt opened the public hearing. There was no one who chose to comment, and the public hearing was closed.

Dujardin moved and Bradley seconded a motion to approve Ordinance No. 32, Series 2019. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

**3) Ordinance No. 33, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Release of Trail Easement and Bridge Easement Upon Lot 6 of the McCormick Ranch in Exchange for a Replacement Trail Easement Across Lot 6.**

Schmidt read the title of the ordinance. Yerman acknowledged that the rec path did not exist when McCormick Ranch was platted, and he described the location of the trail. This ordinance correctly reflected the current trail location. Yerman recommended approval.

Schmidt confirmed proper public notice had been given. He opened the public hearing. No one from the public commented, and the public hearing was closed.

Haver moved and Dujardin seconded a motion to approve and adopt the second reading of Ordinance No. 33, Series 2019. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

**NEW BUSINESS**

**1) Discussion and Possible Action Regarding Upcoming Construction Activity on Block 80 and Associated Noise.**

Earley reported that the Slate River Development needed to connect to Town's sanitary sewer system. He described associated work, including a new lift station, manhole, and sanitary sewer main. The contractor expected a large amount of groundwater, and he recommended the use of a diesel powered generator to manage the groundwater in the excavation. Earley identified the alternative was to get power directly from the grid, which was single-phase power that may not be adequate to manage the water. He recognized the generator would need to run all night for three to four weeks. Earley stated they were doing Town a service by replacing the lift station with a brand new one. Magner wondered if it would be possible for the noise to cease on nights and weekends. Earley explained reasons it was not possible. The discussion turned to solutions with lesser noise.

Green redirected the Council's attention to the Code provision cited in the staff report. Schmidt thought three to four weeks would be a horrible burden on the neighbors.

MacDonald confirmed Town was obligated to provide water and sewer to the development. There was discussion on the cost to use the electrical grid and whom would bear the cost. Schmidt outlined the options.

Schmidt opened the meeting for comments from the neighbors present at the meeting.

Trevor Main - 14 10<sup>th</sup> Street

- He almost lost his mind the last time a generator was run.
- It was a huge burden on him.
- He could hear the noise over his TV at a reasonable level.

Mike Horn - 7 10<sup>th</sup> Street

- There had been pumps running illegally 24 hours a day.
- There was not a good precedent of trust and consideration.
- They were asking for basic humane conditions.

Sioux Emery - 902 Butte Avenue

- She asked if the contractor could use electric generators at night.

Kevin Emery - 902 Butte Avenue

- He did not like practicality before people.
- He did not want the noise for six weeks.

Tim Szurgot

- Asked if the work could be done during a low water year.

John Hess - 324 Sopris Avenue

- Cited the sale price of lots in the development.
- He confirmed the developer bore the cost.

John Stock

- He acknowledged there were other options, and he explained how he had three-phase power in his shop.
- He stated the blue foam was not effective for noise.

Schmidt did not think diesel was the option. The developer needed to insulate for sound or use electric. He thought electrical would be as quiet as could be. Mitchell thought they should insist on electric. Haver was not comfortable with approving the diesel pump. The contractor needed to go back to find a better solution. Green reminded that the (prohibited noise) ordinance was in effect. Dujardin recommended they instruct the contractor to figure it out. Magner did not want the community burdened by the noise, and the Code prohibited it. She was not comfortable with waiving rules that affected citizens.

Haver moved and Mitchell seconded a motion that the diesel generator as presented was not an acceptable solution. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

## 2) Proposal for 2020 CBCS Student Led Affordable Housing Build.

Yerman informed the Council that Student Organization Achieving Results (SOAR) approached Town. The program had taken off, and they were looking for an additional place to build this year. Staff would present two options. Option 1 would be teaming up with the Nordic Center to build on Lot 1. The build would be comprised of an affordable housing unit and a cat barn to include a restroom. Option 2 would be to build another Town rental on the micro lot. Yerman recognized it was important to maintain the neighborhood context with Option 1. He did not know of a housing solution other than Option 1 for Lot 1 due to the flood plain. He reviewed contributions proposed by the Nordic Center. Mitchell suggested they take input from the neighbors.

Executive Director of the Nordic Center, Christie Hicks, identified those in attendance in support of Option 1. She described growth they had experienced. She acknowledged that residents would have access to the rec path trail that was free. Their need for additional storage would not change. The cat barn would eliminate the crossing at 135. Hicks spoke about the noise from a snow cat. Heating the concrete pad would eliminate idling. The snow cat would need to back up, which would be loud and annoying. She stated Nordic was not interested in angering the neighbors. The cat barn would help to alleviate congestion at Big Mine. Mitchell questioned how they would fuel up the snow cat.

John Stock described the SOAR program. They did not have a lot of funding but were hoping to evolve to the kids making the decisions regarding the people who would move into the houses. Once the program became self-funding, the school would handle the money. Schmidt thanked Stock for the Paradise Park builds.

Mike Horn - Lives across from Lot 1

- He wanted to know what the master plan was for Paradise Park.
- It was like the Wild West in terms of usage.
- Everything was funneling into this area.
- It would be ideal for Lot 1 to be residential.

Trevor Main - 14 10<sup>th</sup> Street

- It was crazy how much use the zone had. It was frustrating.
- Adding more use to a zone that was already used a lot concerned him.
- The area was designed to be residential.

Anne Moore - 622 Teocalli

- She asked who would be cleaning the public restroom. Yerman responded. He said the resident would have a good deal in order to look after the restroom.

Yerman added that a changing room was needed. He identified areas that had two rights of way.

Sioux Emery

- There were people pumping up their boats at 6AM.
- She suggested using the area around the school for the snow cat. Hicks responded. The Nordic Center would help to develop a lot that otherwise would not be developed. Hicks encouraged the Council to look at the big picture problems solved with Option 1.

Noel Durant - Crested Butte Land Trust

- The Peanut Mine property was a mess. He was encouraged by the community-based solution with Option 1.

Mitchell was comfortable with Option 1. Dujardin was too. Bradley agreed. Haver thought there needed to be an agenda item to discuss dealing with traffic in the area. He was okay with Option 1, so was Magner. She agreed with Haver's thoughts. Schmidt agreed with the Council to proceed. There was discussion on process moving forward. Yerman reviewed conditions that BOZAR could place and designs that would reduce impacts to the neighborhood.

**3) Ordinance No. 28, Series 2019 - An Ordinance of the Crested Butte Town Council Approving: (1) the Assignment of the Town's Conservation Easement in Kikel Parcel A to Crested Butte Land Trust, (2) the Termination of the Town's Covenant to Limit Development on Kikel Parcel A, and 3) Granting New Conservation Easement to Crested Butte Land Trust in Exchange for the Conveyance of Kikel Parcel A from Crested Butte Land Trust to the Town of Crested Butte.**

Schmidt read the title of the ordinance. Yerman stated the ordinance represented the transfer of the Conservation Easement (CE) from the Town to the Land Trust with the Town taking ownership of Parcel A. He explained it was part of the commitment to Long Lake, and he listed the wins associated with the open space project. They discussed several options for the structure, including a new option for a campground, which could be put in for less money than a campground at Avalanche Park. Yerman mentioned the possibility for a stewardship cabin. The area was at a point that human presence could be needed in the next twenty years. The CE was amended since the last meeting in that if Town moved forward with a cabin, Town would make a contribution back to the RETT fund. If the Council decided to build the cabin, it would be a deliberate act.

Executive Director of the Land Trust, Noel Durant, explained funding mechanisms and conservation easements. The Land Trust was the willing seller. He could not think of a better long-term project for the Slate River Valley. Schmidt summarized that instead of a 5,000 square foot house there could be a 2,000 square foot cabin that would take a deliberate action from a future Council requiring \$80,000 from the General Fund to repay the RETT.

Schmidt opened the meeting to public comment.

Jim Martin - Resident at Alpine Meadows

- The residents at Alpine Meadows supported a sale that was oriented around conservation values.
- They believed the CE presented at the last meeting was too broadly written, and their suggested changes were not incorporated into the new CE.
- They felt the public camping option should be taken off the table, which Yerman confirmed to be out of the picture.
- He wanted to discuss the parking lot. They thought it should be built after the Town structure.
- Listed issues that remained since the July 2<sup>nd</sup> meeting.
- Yerman differentiated between a stewardship campground and a public campground.

Dave Ochs - 801 Red Lady Avenue

- He applauded the collaboration of the towns and the Land Trust.
- It was an opportunity for human stewardship before people travelled into the corridor.
- 24/7 presence was important.
- There were massive issues with people pulling up and setting up tents.
- We were already way behind what was happening in the backcountry.

Bert Phillips - Lives at Alpine Meadows

- He asked if the Town would be responsible for bathrooms, garbage, and negative impacts in their neighborhood.
- It would be comforting to neighbors to know where the buck stopped. Schmidt said the Town would be responsible. Durant spoke to the Land Trust's role regarding the CE.

John Hess

- He referred to the CE itself. He suggested changes to language.
- He questioned how many information centers were needed.
- The bigger question was what they were doing with the Slate River Valley.

Brian Lieberman - From the Crested Butte Land Trust

- People were moving boulders and pulling out signs. Human presence was the only thing helping.
- The main intent was to have someone onsite, not to have an attraction to draw people.

Jim Starr

- When the Land Trust purchased the parcel, they had to set aside to make the deal.
- It was a win-win situation.
- He encouraged the Council to set the ordinance for public hearing.

Bert Phillips

- He asked whether they would have the authority with enforcing all of the rules being violated.
- They needed the equivalent of a nature cop.
- There needed to be an enforcement arm.

Dave Ochs

- There was a lot of discussion on more enforcement.
- Human presence helped with behavior.

John Hess

- He supported the Town purchasing the land.

Christie Hicks

- All of these things supported the needs identified by the STOR Committee.

Peter Dea - Member of the Land Trust's Lands Committee

- They thought with all of the use, there would be years of discussion on what could be there. The CE gave maximum leverage for the uses going forward.

Dujardin identified language on enforcement that he wanted cleaned up, and Schmidt recommended a change to replace an "or" with an "and/or."

Mitchell moved and Haver seconded a motion to set Ordinance No. 28, Series 2019 as amended to public hearing on August 19<sup>th</sup>, 2019. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

#### **4) Amendment to Contract to Buy, Sell, and Develop Deed Restricted Housing in the Town of Crested Butte's Paradise Park Subdivision with Bywater, LLC.**

Sullivan pointed out changes to the contract on pages 120 and 121 in the packet. Ordinance No. 29 was amended for consistency with changes to the contract. If the amendments were not performed, there was no conveyance, and if the bond received by the Town looked like Exhibit E to the contract, the requirement would be fulfilled. There were additional changes to wording for consistency that were discussed. Wisian wanted explicit wording in the amendment to the contract that the bonding for Phase 1 was being rescinded.

Haver moved and Dujardin seconded a motion to approve the amendments to the contract to buy, sell, and develop, and the official verbiage is John's copy. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

### **PUBLIC HEARING CON'T**

#### **1) Ordinance No. 29, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Transfer of Town-Owned Property Legally Described as Lot 6**

**Block 78 and Lots 4, 10, and 11 Block 79, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Bywater, LLC for the Construction of Affordable Housing.**

The public hearing had already been closed. Schmidt confirmed with Sullivan and Green that the Council could pass the ordinance as amended.

Dujardin moved and Bradley seconded a motion to approve the amended Ordinance No. 29, Series 2019. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

**NEW BUSINESS CON’T**

**5) Resolution No. 12, Series 2019 - A Resolution of the Crested Butte Town Council Amending Town of Crested Butte Affordable Housing Guidelines Adding Section 8 Regulations for Employer Rentals Units to Part III Purchasing Affordable Housing.**

Yerman recommended continuing the resolution contingent upon Phase 2 moving forward. He was working on a comprehensive update with the Housing Authority. Dujardin was concerned there had not been enough public process and Haver about wording that he related to the ADU case. Dujardin reiterated they needed a conversation with the public and amongst the Council. He recommended an agenda item for discussion at the next meeting.

Mitchell moved and Dujardin seconded a motion to continue Resolution No. 12, Series 2019 to September 3<sup>rd</sup>. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

**6) Discussion on The Corner at Brush Creek.**

Schmidt and MacDonald attended the County meeting today where the Commissioners discussed giving Gatesco one more year for the project. MacDonald summarized the decision she outlined in an email. October 31<sup>st</sup> would be a hard stop. They talked about setting up a meeting between Crested Butte and Mt. Crested Butte, and they would invite Tim Baker and the proponent to the meeting. They picked out dates of August 21<sup>st</sup> and 27<sup>th</sup>. Alternative dates and times were discussed. Schmidt referred to an email sent by Kendall Burgemeister on Gatesco’s behalf. MacDonald asked the Council to discuss possible topics for the agenda. The discussion went back to dates. Dujardin expressed frustration with the process in general.

Kendall Burgemeister

- The conditions collectively imposed were tough to grapple with.
- The 156 (units) seemed like the big condition. They asked for flexibility on the other conditions.
- He mentioned other considerations for feasibility.

There was further discussion on the logistics of the next joint meeting, with August 21<sup>st</sup> and August 27<sup>th</sup> identified.

## **LEGAL MATTERS**

None

## **COUNCIL REPORTS AND COMMITTEE UPDATES**

Laura Mitchell

- Attended a Scenic Byways meeting. They were now a 501(c)(3). They talked about a \$150 member fee for towns on the Byway.
- Attended a Mountain Express meeting where others wanted to do a survey with RTA. They talked about a strategic agenda working towards more sustainable busses.
- There would be a RTA meeting on Friday.

Will Dujardin

- He attended the Mountain Express meeting. They approved the strategic plan. Ridership matched Town sales tax. They saw a drop in ridership this summer. He reported regarding the situation and his thoughts with the town taxi situation. He recognized it was a deeper, long-term conversation that needed to happen.
- The Upper Gunnison River Water Conservancy District reported things were pretty good. Area reservoirs were full. The Colorado River District reported that it would take eight to ten years like this one to fill Lake Powell.
- He attended a public meeting for ranchers to discuss the economic effects on ranching on the valley. The ranchers' comments were questioning why they would give ideas that would curtail their rights. There was more momentum on mandatory curtailment.
- The Growing Waters Smart group met. They wanted to look at a speaker series on water.
- The Climate Action Planning meeting was productive. They identified four action items.

Candice Bradley

- She went to The Center's board meeting. They were now in compliance with insurance. They talked about follow up meetings with Town to discuss financial shortcomings. Their construction bills were coming due.
- The Trailhead was moving into the lobby of the old Center.
- They were shooting for 100% completion in December.

Chris Haver

- He had an OVLC meeting. There was a DOLA presentation. He pointed out the link to the survey in the packet.
- At the upcoming meeting, they would look at possible ways to improve the recycling program.

Jim Schmidt

- They had the Climate Action stakeholder meeting on the 31<sup>st</sup>.
- Went to mayor/managers on August 1<sup>st</sup>. Frank Kugel, from the Upper Gunnison River Water Conservancy District, applied for a different job and may be leaving. Blue Mesa was five inches from going over the spillway.
- The Gunnison Housing Foundation would be having a fundraiser at the I Bar.
- The hospital was filling management spots.

### **OTHER BUSINESS TO COME BEFORE THE COUNCIL**

- The Council discussed scheduling the demolition work session. They decided upon August 20<sup>th</sup> at 6PM. Magner received information from Bob Gillie she would send to the whole Council.
- Schmidt pulled a petition for Mayor.
- CC4CA had been notified of the approval on the Consent Agenda.

### **DISCUSSION OF SCHEDULING FUTURE WORK SESSION TOPICS AND COUNCIL MEETING SCHEDULE**

- *Tuesday*, August 13, 2019 - 4PM to 6PM Retreat to Discuss Budget for 2020
- Monday, August 19, 2019 - 6:00PM Work Session - 7:00PM Regular Council
- *Tuesday*, September 3, 2019 - 6:00PM Work Session - 7:00PM Regular Council
- Monday, September 16, 2019 - 6:00PM Work Session - 7:00PM Regular Council

MacDonald reminded the Council of the budget work session on August 13<sup>th</sup>.

### **EXECUTIVE SESSION**

Schmidt read the title of the Executive Session: for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under C.R.S. Section 24-6-402(4) regarding tenant leases.

Mitchell moved and Dujardin seconded a motion to go into Executive Session. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

The Council went into Executive Session at 11:18PM. They returned to open meeting at 11:53PM. Mayor Schmidt made the required announcement upon returning to open meeting.

Haver moved and Dujardin seconded a motion to negotiate with the library and to appoint Jim, Dara, and Candice as the negotiating team. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

**ADJOURNMENT**

Mayor Schmidt adjourned the meeting at 11:55PM.

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James A. Schmidt, Mayor

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Lynelle Stanford, Town Clerk (SEAL)



## Staff Report

August 19, 2019

**To:** Mayor and Town Council

**Through:** Dara MacDonald, Town Manager

**From:** Janna Hansen, Parks and Recreation Director

**Subject:** Resolution No. 15, Series 2019 – Resolutions of the Crested Butte Town Council Approving the Lease Agreement with the Center for the Arts for the Film Festival’s use of 620 Second Street, AKA Big Mine Warming House.

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### **Background:**

Since 2015 the Crested Butte Film Festival (“Film Festival”), operating under the umbrella of the Center for the Arts, has rented the first floor of the Big Mine Warming House to conduct administrative operations leading up to and during the Film Festival. The Film Festival has once again requested use of that space for September 4 – October 2, 2019. The Town supports the use of Town-owned buildings by non-profits and as such would be happy to have the Film Festival occupy that space again this year. Crested Butte Nordic occupies the second floor of the Warming House through the summer months and will occupy the downstairs space again in October after the Film Festival moves out. The lease agreement, insurance certificate, and fees will be under the Center for the Arts name. The proposed rental amount is \$285.32 based upon \$.40 per square foot per month.

### **Recommendation:**

Staff recommends approving Resolution No. 15, Series 2019.

**RESOLUTION NO. 15**

**SERIES NO. 2019**

**RESOLUTIONS OF THE CRESTED BUTTE TOWN  
COUNCIL APPROVING THE LEASE AGREEMENT  
WITH THE CENTER FOR THE ARTS FOR THE FILM  
FESTIVAL'S USE OF 620 2ND STREET, AKA BIG MINE  
WARMING HOUSE**

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, 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 lease is one year or less, the Town Council may approve such lease by resolutions of the Town Council; and

WHEREAS, the Town Council finds hereby that approving a lease of 620 Second Street, Crested Butte for use by the Center for the Arts is in the best interest of the Town, Crested Butte residents and visitors.

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 granting a lease of 620 Second Street, Crested Butte for use by the Center for the Arts is in the best interest of the Town, Crested Butte residents and visitors.

2. **Authorization of Town Manager**. Based on the foregoing, the Town Council hereby authorizes the Town Manager to execute the lease agreement with the Center for the Arts in substantially the same form as attached hereto as **Exhibit "A."**

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL THIS \_\_\_\_  
DAY OF \_\_\_\_\_, 2019.

TOWN OF CRESTED BUTTE, COLORADO

By: \_\_\_\_\_  
James A. Schmidt, Mayor

ATTEST

\_\_\_\_\_  
Lynelle Stanford, Town Clerk

(SEAL)

**EXHIBIT "A"**

**620 Second Street Lease Agreement (Center for the Arts)**

[attach form lease agreement here]

**LEASE AGREEMENT**

**THIS LEASE AGREEMENT** (this “Lease”), made and entered into this \_\_\_\_\_ day of August, **2019**, by and between the **TOWN OF CRESTED BUTTE**, a Colorado home rule municipality (hereafter referred to as the “Town”) and **CENTER FOR THE ARTS**, a Colorado nonprofit corporation (hereafter referred to as the “Lessee”) is upon the following terms and conditions:

**WITNESSETH:**

**IN CONSIDERATION** of the keeping and performance of the mutual promises, covenants, and conditions contained herein, the parties agree as follows:

1. **TERM:** This Lease shall commence as of September 4, 2019, and shall expire on October 2, 2019 (the “Term”). The Term of this lease may be extended only by a writing executed by the Town. The defined word “Term” as used throughout this Lease shall include any extension thereof.
2. **LEASE OF PREMISES TO LESSEE:** The Town hereby leases to Lessee, and the Lessee hereby takes and rents from the Town, the following described premises, together with the improvements thereon, situate in the County of Gunnison and State of Colorado, to wit:

An area of approximately 790 square feet, being the space identified on **EXHIBIT A** attached hereto and incorporated herein, located at 620 2<sup>nd</sup> Street, Town of Crested Butte. Also known as the **first floor of the Big Mine Warming House** (hereafter, the “Premises”).

3. **RENT:** The Lessee agrees to pay to Town as rent for the Premises during the Term, the sum of **\$285.32** for the term of the lease, based upon \$.40 per square foot per month, payable in advance on or before the fifteenth day of each calendar month during the Term. Where the Term commences during any month, the rent shall be prorated for the first month with such amount due upon Lessee’s execution of this Lease. All rent and other payments required under this Lease shall be made without offset or deduction and no prior notice from the Town shall be required. Lessee shall pay a \$25.00 late fee and interest at a rate of one and one-half percent (1 ½%) per month (18% per year) on rental or other payments which are not paid when due
4. **UTILITIES:** Unless otherwise specified, the Town shall pay for heating, electricity, water and sewer. Lessee shall pay all charges for telephone, internet, television, trash and recycling removal and other such services.
5. **CHARACTER OF OCCUPANCY:**
  - (a) The Premises shall be occupied by Lessee for the purpose of conducting its administrative business for the Crested Butte Film Festival. Lessee shall at all times properly maintain the Premises, fixtures, and furnishings located therein, and at its sole cost make all necessary day-to-day repairs needed to preserve the interior walls, floor, ceiling, and doors of the Premises,

the fixtures and furnishings in good working order and condition. All such repairs or replacements shall be of a kind and quality, and shall be done in a good workmanlike manner.

- (b) Lessee shall make no alterations, repairs, or improvements to the Premises, including, without limitation, painting the Premises, without the prior written permission of the Town. Lessee shall secure the Premises with a key provided by the Parks and Recreation Director. Lessee shall not make additional copies of the key for the Premises. Lessee shall return the Premises to the Town in good condition at the expiration or earlier termination of this Lease, ordinary wear and tear excepted.
  - (c) Lessee shall not use the Premises in any fashion that would increase the risk of fire, explosion, or any physical destruction to the Premises or the building in which such Premises are located. Said limitation on use shall specifically include a prohibition on smoking, alcohol consumption, and use of controlled substances within Premises. Further, Lessee shall not use the Premises to further any discrimination based on race, sex, creed, sexual orientation or national origin.
  - (d) Lessee occupancy shall not exceed 49 people at any time including staff and patrons.
  - (e) Lessee use is restricted to the downstairs of the Premises excluding closets locked and designated for other purposes.
  - (f) Lessee shall cause the restrooms to be maintained such that, without limitation, all toilets, sinks and other facilities are kept obstruction free and clear from debris, clothing and other articles that could cause such facilities to become clogged and otherwise function improperly.
  - (g) Lessee shall at all times use best efforts to cooperate with any other tenants in the building and the Town.
6. **JANITORIAL:** Lessee agrees to keep and maintain the Premises used exclusively by Lessee in a neat, orderly, clean and sanitary condition at all times, and to provide such janitorial and other services as may be necessary to do so. All refuse or trash resulting from Lessee's use of the Premises shall be stored in the Premises or in an external, wildlife proof dumpster to be picked up by a vendor of the Lessee's choice and expense. Lessee agrees to maintain and clean the premises including bathrooms, common areas and entryways within the building where the Premises are located once per week. Lessee agrees to replace all light bulbs as needed in the Premises. All light fixtures shall have compact fluorescent light bulbs.
7. **SIGNS:** Lessee shall be allowed to have one sign located on or near the building in which the Premises is located. Said sign shall be no more than seven (7) square feet. The design and placement of the sign shall be approved by the Board of Zoning and Architectural Review.
8. **PARKING:** Lessee is allowed the use of the parking lot at Big Mine Park located to the west and north of the Premises. Lessee shall not park more than one (1) vehicle overnight in said parking lot.

9. **ACCESS TO THE PREMISES:** The Town or the Town's authorized representative may enter upon the Premises at any reasonable hour to inspect and make repairs to the same. The Town or its representative may show the Premises to prospective tenants, upon reasonable advance notice to Lessee. In the event of an emergency, the Town and/or its representatives shall be entitled to access the Premises with or without notice to Lessee.
10. **LIENS:** Lessee agrees to keep the Premises free and clear of all liens and encumbrances of any kind, whether caused by the action or inaction of Lessee.
11. **PAYMENT OF INCREASED COSTS:** Lessee agrees to pay to the Town any and all increased costs and expenses attributable to Lessee's occupation of the Premises including but not limited to any insurance increases or taxes that are directly attributable to Lessee's occupancy.
12. **SECURITY DEPOSIT:** Lessee agrees to pay the Town the sum of **\$250.00** to be used as security for Lessee's faithful performance of the terms and obligations of this Lease. Said amount shall be paid at the time of Lessee's execution of this Lease. This deposit shall be held by the Town during the term. The security deposit shall not bear interest. The Town shall be entitled to apply any of the security deposit to the repair of damages caused to the Premises by Lessee or on account of Lessee's use thereof, and/or to pay for cleaning of the Premises. In the event the Town determines that it is necessary in its reasonable judgment to have the Premises cleaned or repaired during the Term, or after the expiration or earlier termination of this Lease, such cleaning or repairs shall be performed at Lessee's sole cost and expense. Any amount paid out of the security deposit during the Term shall be reimbursed by the Lessee to the Town within five (5) days. At no point will the security deposit on reserve be less than \$250.00. The security deposit shall not be deemed to be the total amount for which the Lessee shall be responsible to the Town in the event of damages to the Premises. Lessee shall not be entitled to credit any amount of the deposit toward payment of any other obligation owed under this Lease. Within thirty (30) days following the expiration of the Term or sooner termination of this Lease, the Town shall either return the security deposit or, as required by Colorado law, provide Lessee with a written statement, setting forth the reason for the retention of any portion thereof together with the payment of the difference, if any between the amount of the security deposit and the damages claimed by the Town.
13. **TELEPHONE:** The Town shall be responsible for providing telephone service lines to the building. Lessee shall be responsible for placing lines from the main switch box on the building to the Premises. Lessee shall use no more than three (3) separate telephone lines within the building. Lessee shall be responsible for causing any necessary television or other cable lines to be placed for service to the Premises. Any such placement shall not cause damage to the Premises and/or building.
14. **TAXES:** The Town shall pay any and all real and personal property taxes and special assessments which may be levied upon the Premises, except those personal property taxes levied specifically upon the personal property of Lessee. Lessee shall pay all sales and uses taxes in connection with its lease and use of the Premises.

**15. ASSUMPTION OF RISK; INDEMNIFICATION; RELEASE OF CLAIMS:** In

consideration for the Town leasing the Premises to Lessee, Lessee, its members, managers and officers (collectively, "Releasor/Idemnitor") hereby acknowledge and agree to the following:

(a) Releasor/Idemnitor hereby assumes all risk of claims, liabilities, injuries, losses, demands or damages, whether related to bodily injury, personal injury, sickness, disease, death, property loss or damage (including attorneys' fees, costs and expenses) (collectively, "Claims") arising out of, directly or indirectly, the use of the Premises, whether or not caused by any act or omission, negligence or other fault of Releasor/Idemnitor and/or Indemnatee its elected officials, officers, employees, agents, insurers, insurance pools, attorneys, representatives, contractors and subcontractors (collectively, "Releasee/Indemnatee");

(b) Releasor/Idemnitor hereby waives any claims, and hereby releases, Releasee/Indemnatee against and from any and all Claims arising out of, directly or indirectly, the use of the Property, whether or not caused by any act or omission, negligence or other fault of Releasor/Idemnitor and/or Releasee/Indemnatee; and

(c) Releasor/Idemnitor shall indemnify, defend and hold harmless Releasee/Indemnatee from and against any and all Claims of Releasor/Idemnitor, Releasee/Indemnatee or third parties, any of them, including, without limitation, employees, agents and contractors of Releasor/Idemnitor, Releasee/Indemnatee or any of their invitees, guests, trespassers or otherwise on the Subject Property, arising out of, directly or indirectly, the use of the Property, whether or not caused by any act or omission, negligence or other fault of Releasor/Idemnitor, Releasee/Indemnatee or third parties

**16. TOWN NOT LIABLE:** Unless due to the gross negligence of the Town, the Town shall not be liable for any damage or injury which may be sustained by Lessee or any other person resulting from any reason or cause whatsoever, including, but not limited to, as a consequence of the failure, leakage or obstruction of the water, plumbing, steam, sewer, waste or sail pipes, roof, drains, leaders, gutters, valleys, downspouts, or the like, or of the electrical or heating systems, appliances; or by reason of the elements; or resulting from, either directly or indirectly, any act of Lessee or Lessee's agents, contractors, subcontractors, employees, guests, licensees, invitees, or successors; or attributable to any interference with, interruption of, or failure, beyond the reasonable control of the Town of any services to be furnished or supplied by the Town.

**17. INSURANCE:** (a) At its sole cost and expense, Tenant shall obtain and keep in force during and through the Term "all-risk" property coverage naming the Town and Tenant as their interests may appear.

(b) At its sole expense, Tenant shall obtain and keep in force during and through the Term commercial general liability insurance (coverage shall include , public liability, operations, property damage and personal injury, including death, with a minimum combined single limit of not less than \$1,000,000.00 per occurrence / \$1,000,000.00 general aggregate) and insurance covering obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee of Tenant within the meaning of applicable law insuring the Town and Tenant, as their interests under this Lease appear, including, without

limitation, coverage for contractual liability and broad form property damage with respect to the Premises. The insurance shall be noncontributing with any insurance that may be carried by Town and shall contain a provision that Town, although named as an insured, shall nevertheless be entitled to recover under the policy for any loss, injury, cost or damage to Town, or the property of the same.

(c) All insurance required herein and all renewals thereof shall be issued by companies authorized to transact business in the State of Colorado and rated at least A+ Class X by Best's Insurance Reports (property liability) or otherwise approved by Town in writing. All insurance policies shall be subject to approval by Town as to form and substance, shall expressly provide that the policies shall not be canceled without 30 days' prior written notice to Town and shall provide that no act or omission of Town that would otherwise result in forfeiture or reduction of the insurance shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained. Tenant may satisfy its obligation under this Section by appropriate endorsements of its blanket insurance policies.

(d) All policies of liability insurance that Tenant is obligated to maintain according to this Agreement (other than any policy of workmen's compensation insurance) shall name Town as an additional insured. Originals or copies of original policies (together with copies of the endorsements naming Town as an additional insured) and evidence of the payment of all premiums of such policies shall be made available to Town on the date first written above. All public liability, property damage liability and casualty policies maintained by Town shall be written as primary policies, not contributing with and not in excess of coverage that Town may carry.

(e) The parties waive all rights to recover against each other, or against the elected and appointed officials, employees, contractors, agents, advisors, attorneys, insurers, insurance pools, shareholders, directors, members, managers, officers, suppliers, agents or servants of each other, for any loss or damage arising from any cause covered by any insurance required to be carried by each of them pursuant to this Section or any other insurance actually carried by each of them. Tenant shall cause its insurer to issue an appropriate waiver of subrogation rights endorsements to all policies of insurance carried in connection with Tenant's operations and Town's operations and property.

18. **ASSIGNMENT:** Lessee shall not assign this Lease, and shall not sublet the Premises, or encumber this lease or the Premises in whole or in part, without the prior written consent of the Town, which consent may be withheld in the Town's sole and absolute discretion.
19. **RESTRICTIONS ON USE:** Animals are not allowed within the Premises. Lessee will not construct temporary or permanent structures on the inside or outside of the building for recreational or other purposes. All outside fixtures not provided by the Town including but not limited to bike racks, benches and picnic tables must be approved by the Town. All recreational equipment such as bicycles, boats and skateboards must be stored inside the Premises overnight. Indoor furniture such as couches, tables and chairs will not be used or stored outside the Premises at any time.

20. **COMPLIANCE WITH LAWS:** Lessee agrees to comply with all laws, orders and regulations of the Town, the County, federal land management agencies and any other applicable governmental authority with respect to the Premises and Lessee's use thereof. Lessee has obtained and shall keep in force during the Term, all licenses, authorizations and permits necessary for Lessee to conduct its business operation.
21. **DEFAULT:** Except where Lessee fails to timely pay any amount due under this Lease, neither party shall be in default under this Lease unless such party fails to perform any obligation or covenant contained herein and such failure remains uncured for ten (10) days following receipt of written notice from the non-defaulting party. If Lessee is in default under this Lease it is agreed that the Town may (i) retake possession of the Premises upon ten (10) days' written notice to the Lessee without terminating the Lease, (ii) in the event of default in the payment of rent or any other payments due from Lessee, treat this Lease as automatically terminated on the date specified in the Town's three (3)-day notice for payment of the rent or surrender possession of the Premises under Section 13-40-104(d) (1973 C.R.S.) if Lessee fails to pay such rent as demanded in said notice, or (iii) in the event of any other default by Lessee, treat this Lease as automatically terminated on the date specified in the Town's three (3)-day notice thereof under Section 13-40-104(e) (1973 C.R.S.). Upon the termination of this Lease, Lessee shall peacefully surrender the Premises to the Town and the Town, at any time after such termination, may, without further notice, reenter the Premises and repossess it by summary proceedings, ejectment or otherwise and may dispossess Lessee and remove Lessee and all other persons and property from the Premises and may have, hold and enjoy the Premises and the right to receive all rental income therefrom. The Town may also, at the Town's option, and without being liable to Lessee for any damage therefore, remove and store, at Lessee's sole cost and expense, all personal property and effects of Lessee, upon the Premises without responsibility for loss or damage so long as the Town uses reasonable care in the removal thereof, and the Town shall have a valid lien on such property for any damages due the Town under this Lease and for any reasonable costs incurred by the Town in such removal or storage. The foregoing remedies shall not be exclusive, and the Town may exercise any other remedy available under the laws of the State of Colorado. Upon the termination of this Lease by reason of any default by Lessee in the obligations contained herein, the Town shall have the right to re-let the Premises for and on the account of Lessee and Lessee shall remain liable for the difference, if any, between the full amount of rent reserved hereunder and the amount received by the Town after such re-letting, after having deducted therefrom any reasonable costs and expenses of the Town. Any excess that may be derived shall belong to the Town and Lessee shall have no claim to same. The Town's failure to re-rent the Premises shall not preclude it from being able to seek damages against Lessee for any of the sums reserved hereunder. No right of redemption shall be exercised under any present or future law of the State of Colorado, in case Lessee shall be disposed for any cause, or if the Town shall in any other manner, obtain possession of the Premises in consequence of the violation of any of the covenants and agreements contained herein.
22. **SURRENDER OF PREMISES:** The Town shall have the sole discretion as to whether to renew the Lease and shall have the right to change the terms and conditions contained herein, including, without limitation, the rent. Upon the expiration or earlier termination of this Lease, Lessee shall quit and surrender the Premises in as good as state and condition as received,

reasonable wear and tear excepted. If after the expiration or earlier termination of the Lease, Lessee remains in possession without written agreement as to such possession, Tenant shall be deemed to hold the Premises as a "Tenant-at-will" and shall be obligated thereon to pay rent for such period in advance at the per diem rate of \$50.00 per day. During such period of time all of the terms and conditions of this Lease shall remain in full force and effect. It shall be Lessee's responsibility to remove all additions, fixtures, or improvements located on the Premises at the time of such expiration, or upon termination of this Lease. In the event of removal of additions, fixtures, or improvements located on the Premises, Lessee shall restore the Premises to its original condition. Lessee shall cause the carpet in the Premises to be professionally cleaned at the time of vacating the Premises, and shall remove all debris and personal property at its own cost.

23. **TOWN'S REPAIR AND MAINTENANCE OBLIGATION:** The Town shall keep the remainder of the building in which the Premises is located and the exterior thereof in good repair. The Town shall make such structural repairs as are necessary, and repair all plumbing, electrical, heating, ventilating, and other facilities serving the building, unless such repairs are caused by the acts or omissions Lessee, its officers, agents, contractors, subcontractors, employees, customers, invitees, guests or visitors, in which case the Lessee shall pay for such repairs.
24. **DESTRUCTION:** In the event the Premises are damaged in any manner that renders them untenable as a result of the acts or omission of Lessee or any person whose actions are imputable to Lessee, then Lessee shall continue to remain liable for the rentals called for hereunder through the remainder of the Term. If the damage has occurred that renders the Premises untenable through no fault of the Lessee, and the damage cannot be remedied within thirty (30) days, then either party can terminate this Lease. During the period that the Premises are untenable, rental shall abate so long as the damage was not caused by Lessee. In the event the damage was caused by Lessee or by persons or entities attributable to Lessee then rent shall continue to be paid monthly by Lessee regardless of whether Lessee can occupy the Premises.
25. **SUBORDINATION; ATTORNEY-IN-FACT:** This Lease is subject and subordinate to all present and future mortgages or deeds of trust affecting the Premises, and to any and all advances made, or that may be made on account of such mortgage or deed of trust to the full extent of the principal sum or sums secured, or intended to be secured, in the interest due thereon. Lessee agrees upon the request of the Town, to execute and deliver any and all instruments that the Town may reasonably deem necessary or advisable to be executed in respect to this provision. The failure of Lessee to execute and deliver any and all such instruments, shall afford the Town the power to execute and deliver any such instrument or instruments in the name of and on behalf of Lessee and Lessee's failure to so deliver shall constitute a default under this Lease.
26. **NOTICES:** All notices or deliveries required under this Lease shall either be (i) hand-delivered; (ii) given by certified mail directed to the address of the Town or Lessee set forth below; or (iii) given by overnight courier directed to the address of the Town or Lessee set forth below. All notices so given shall be considered effective (i) if hand-delivered, when received; (ii) if by certified mail, three (3) days after deposit; certified mail postage prepaid, with the

United States Postal Service; or (iii) if by overnight courier, one (1) day after deposit with the overnight courier company. Either party may change the address to which future notices shall be sent by notice given in (Facsimile numbers are provided for convenience only.)

TOWN: Town Manager  
Town of Crested Butte  
P.O. Box 39  
507 Maroon Ave  
Crested Butte, CO 81224  
Fascimile: (970) 349-6626

LESSEE: Center for the Arts  
P.O. Box 1819  
Crested Butte, CO 81224

Notice shall be deemed properly given when sent, mailed, or hand delivered to the above addresses. Either party may change its address by giving written notice of the change to the other party.

- 27. **APPLICABLE LAW; VENUE:** This Lease is entered into in the Town of Crested Butte, Gunnison County, State of Colorado; and it is agreed that the proper jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Lease shall be in the County of Gunnison, State of Colorado.
- 28. **ATTORNEYS' FEES:** It is agreed that if the enforcement, interpretation or construction of this Lease becomes necessary of advisable, the prevailing party in such effort shall be entitled to reasonable attorneys' fees, as well as all related costs and expenses.
- 29. **NO WAIVER:** The failure of the Town to insist in any one or more instances upon strict compliance of any of the obligations, covenants, and agreements herein contained, or the failure of the Town in any one or more instances to exercise any option, privilege, or right herein contained shall in no way be construed as constituting a waiver of such default or option by the Town.
- 30. **CAPTIONS:** The captions are inserted only as a matter of convenience for reference and in no way define, limit, or describe the scope of the Lease nor the intent of any provision hereof.
- 31. **SEVERABILITY:** If any provision, covenant, clause, or agreement contained in the Lease or the application thereof shall be found to be invalid, such invalidity shall not affect the validity of the remaining provisions, covenants, clauses, agreements, or the validity of the Lease as a whole.
- 32. **BINDING:** This Lease shall be binding upon the parties hereto, their respective permitted heirs, successors and assigns.

33. **ENTIRE AGREEMENT:** This Lease contains the entire agreement between the parties and supersedes all prior understandings, negotiations and representations, written and oral, not contained herein. It may not be amended or modified, except by an agreement in writing signed by both parties hereto.

34. **COUNTERPARTS; FASCIMILE:** For purposes of enforcement of any term or condition of this Lease, facsimile signatures shall be deemed originals. This Lease may be executed in multiple counterparts, each of which, when taken together, shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties have executed this Lease in duplicate as of the date first set forth above.

TOWN OF CRESTED BUTTE,  
Colorado home rule municipality

By: \_\_\_\_\_  
Dara MacDonald, Town Manager

ATTEST:

By: \_\_\_\_\_  
Lynelle Stanford, Town Clerk

(SEAL)

LESSEE:

CENTER FOR THE ARTS

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

**Premises**

2ND ST



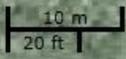
**Exhibit A**  
**Big Mine Warming House, 1st Floor**  
**620 2nd Street**  
**Crested Butte, CO 81224**

325503157011

325503156010

325503161001

325503160013



**Reports**

Parcel 32

**PARCEL INFORMATION TABLE**

|                                |  |
|--------------------------------|--|
| <b>Selected Account</b>        | <a href="#">R027736</a><br>(Click for Complete Card) |
| <b>Parcel Number</b>           | 3255-031-56-010                                      |
| <b>Account Type</b>            | Exempt   |
| <b>Physical Address</b>        | /  |
| <b>LEA</b>                     | PARKS, RECREATION, OPEN SPACE (29991)                |
| <b>Subdivision</b>             | CRESTED BUTTE (TOWN OF)                              |
| <b>Lot/Block</b>               | 17-27 / 40   |
| <b>Tax District</b>            | 200  |
| <b>Acres</b>                   | 1.424  |
| <b>Number of Buildings</b>     |  |
| <b>Total Above Grade Sq Ft</b> | 0  |

**OWNERSHIP INFORMATION**

|                        |  |
|------------------------|--|
| <b>Name</b>            | CRESTED BUTTE TOWN OF                    |
| <b>Mailing Address</b> | PO BOX 39<br>CRESTEDBUTTE, CO 81224-0039 |

**VALUATION SUMMARY**

|                                   |           |
|-----------------------------------|-----------|
| <b>Total Current Value</b>        | \$1426920 |
| <b>Current Assessed Value</b>     | \$413810  |
| <b>Mill Levy</b>                  | 67.759    |
| <b>Last Year's Property Taxes</b> | \$0.00    |

**LAST 2 SALES**

| Date       | Amount | Qualified Sale |
|------------|--------|----------------|
| 0000-00-00 | \$0    | N/A            |

**Parcel List**

Legend

Measure



## Staff Report

August 19, 2019

**To: Town Council**

**Thru: Dara MacDonald, Town Manager, Michael Yerman, Community Development Director and Shea Earley, Public Works Director**

**From: Jessie Earley**

**Subject: Revocable License Agreement (RLA), 611 Third Street, Block 40, Lot 28, GIP Epsilon LLC**

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### SUMMARY:

The owner of the building located at 611 Third Street is in the process of condominiumizing the building. When the building was built, a portion of the foundation was placed in the town right-of-way adjacent to the South side of Lot 28 and the north side of the Big Mine Ice Arena parking lot. This portion of the foundation is 1' x 41.5' is on town right of way (shown in "Exhibit B" of the RLA). Use of the public right of way requires such an agreement per the Public Works Director and this information will be placed on the Condominium Plat.

It is not uncommon for the Town to grant licenses for this type of feature. Attached you will find the license agreement. Exhibits identifying the area are included.

### RECOMMENDED MOTION:

A Councilmember make a motion followed by a second to approve Resolution 16, Series 2019 for a license agreement with GIP Epsilon, LLC to allow the foundation adjacent Third Street, the north side of the Big Mine Ice Arena parking lot and Lot 28, Block 40 as part of the consent agenda.

**RESOLUTION NO. 16**

**SERIES NO. 2019**

**A RESOLUTION OF THE CRESTED BUTTE TOWN COUNCIL AUTHORIZING THE GRANT OF A REVOCABLE LICENSE TO GIP EPSILON LLC TO ENCROACH INTO THE RIGHT-OF-WAY ADJACENT TO THIRD STREET, THE NORTH SIDE OF THE BIG MINE ICE ARENA PARKING LOT AND LOT 28, BLOCK 40, TOWN OF CRESTED BUTTE**

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

WHEREAS, the Town staff has recommended to the Town Council that it grant a revocable license to GIP Epsilon, LLC to encroach into the right-of-way adjacent to Third Street, the north side of the Big Mine Ice Arena parking lot and Lot 28, Block 40, Town of Crested Butte; and

WHEREAS, the Town Council hereby finds that granting a revocable license to GIP Epsilon, LLC to encroach into the right-of-way adjacent to Third Street, the north side of the Big Mine Ice Arena parking lot and Lot 28, Block 40, Town of Crested Butte, for the foundation currently located in the right-of-way is in the best interest of the Town and the health, safety and welfare of the residents and visitors of the Town.

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 granting a revocable license to GIP Epsilon, LLC for the foundation currently located in the right-of-way to encroach into the right-of-way adjacent to Third Street, the north side of the Big Mine Ice Arena parking lot and Lot 28, Block 40, Town of Crested Butte, is in the best interest of the Town and the health, safety and welfare of the residents and visitors of the Town.

2. **Authorization of Mayor.** Based on the foregoing, the Town Council hereby authorizes the Mayor to execute the "Revocable License Agreement" in substantially the same form as attached hereto as **Exhibit "A."**

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

TOWN OF CRESTED BUTTE

By: \_\_\_\_\_  
James A. Schmidt, Mayor

ATTEST

\_\_\_\_\_  
Lynelle Stanford, Town Clerk

(SEAL)

**EXHIBIT "A"**

**Revocable License Agreement**

[attach approved form here]

**RECORDING REQUESTED BY:  
WHEN RECORDED RETURN TO:**

Town of Crested Butte  
Attn: Town Clerk  
507 Maroon Avenue  
Crested Butte, CO 81224

**REVOCABLE LICENSE AGREEMENT**

THIS REVOCABLE LICENSE AGREEMENT (this “**Agreement**”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the TOWN OF CRESTED BUTTE, COLORADO (“**Licensor**”), a Colorado home rule municipality with an address of 507 Maroon Avenue, P.O. Box 39, Crested Butte, CO 81224 and GIP Epsilon LLC (“**Licensee**”), P.O. Box 353, Crested Butte, CO 81224.

**RECITALS:**

- A. Licensee owns the real property described as follows:
- Block 40,  
Lot 28,  
Town of Crested Butte,  
County of Gunnison,  
State of Colorado,
- commonly known as 611 Third Street, Crested Butte, Colorado 81224 (the “**Premises**”).
- B. The Premises is bound by that certain public right of way known as Third Street and the North side of the Big Mine Ice Arena parking Lot (the “**Public Property**”).
- C. Licensee has requested the right to keep and maintain certain improvements in the Public Property that were previously constructed.
- D. The Town is willing to allow Licensee to keep and maintain such improvements in the Public Property, subject to certain conditions and requirements.

NOW, THEREFORE, for and in consideration of the covenants, terms, conditions and requirements set forth herein, the sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

**AGREEMENT:**

1. **Grant of License.** Licensor hereby grants to Licensee and its successors in interest a revocable license (the “**License**”) to keep and maintain the improvements, which is the foundation in and parallel to the right of way and adjacent to Lot 28, Block

40, as described in **Exhibit “A”** (the “**Improvements**”) attached hereto on the Public Property in the location set forth on **Exhibit “B”** attached hereto.

2. **Permit for Construction and Maintenance.** If Licensee has not already done so, Licensee shall obtain permits from the Town pursuant to Chapter 11, Article 2 of the Crested Butte Municipal Code relative to all construction, installation and maintenance activities relative to the Improvements.

3. **Term of License; Revocation.**

3.1. The License shall exist and continue until the happening of either the following events, which such event shall automatically terminate and extinguish the License:

(a) the Improvements are demolished, removed or damaged by fire or other casualty such that such Improvements cannot be reasonably repaired in their present location; or

(b) the Town Council finds at a regular, public meeting that (i) the Improvements must be removed in order to make the Public Property available for public use or for such other reason as determined by the Town Council in its sole discretion, or (ii) Licensee is in default of this Agreement.

3.2. The License is made subordinate to the right of Licensor to use the Public Property for any public purpose, including, without limitation, public pedestrian uses, surface and subsurface improvements and public utilities. In addition to Licensor’s revocation rights set forth in Section 3.1, Licensee agrees that if Licensor subsequently determines to, without limitation, install, modify or change the grade of any street or sidewalk, or to modify, repair or install any underground utility, or to effect any other work in connection with any other public or utility improvement, or to use or occupy the area of the encroachment by the Improvements, then the License hereby authorized must be modified and the Improvements removed completely or otherwise relocated to a location acceptable to Licensor, and the Public Property shall be restored to its pre-existing and/or unobstructed condition to the satisfaction of Licensor at Licensee’s sole cost and expense. Licensor’s decision as to the necessity of such public use, occupancy or improvements shall be final and binding upon Licensee.

4. **Assumption of Risk.** Licensee assumes the risk of damage to the Improvements and agrees to repair any damage to the Public Property, and any third party’s property, arising from or relating to Licensee’s use of the Public Property. Additionally, Licensee assumes all risk of damage to property or injury to persons, including death, in connection, whether directly or indirectly, with the License and the Improvements. In the event of any such damage or injury, Licensee agrees to pay all costs related thereto, including, without limitation, reasonable attorneys’ fees.

5. **Indemnification.** By execution of this License, Licensee, for itself and its successors, hereby agrees to indemnify, defend and hold harmless Licensor, its elected

officials, employees, contractors, agents, insurers, insurance pools and attorneys against any and all claims, suits, damages, costs, losses and expenses, including reasonable attorneys' fees, in connection with any personal injury, including death, or property damage, arising out of or connected in any way with, whether directly or indirectly, the License, Licensee's use of the Public Property and the Improvements.

6. **Insurance.**

6.1. At its sole cost and expense, Licensee shall obtain and keep in force during from the date first written above until the Improvements are removed or relocated from the Public Property "all-risk" property coverage naming Licensee and Licensor as their interests may appear.

6.2 At its sole expense, Licensee shall obtain and keep in force from the date first written above until the Improvements are removed or relocated from the Public Property commercial general liability insurance with a combined single limit of not less than \$1,000,000.00 for injury to or death of any one person, for injury to or death of any number of persons in one occurrence, and for damage to property, insuring Licensee and Licensor, including, without limitation, coverage for contractual liability, broad form property damage and non-owned automobile liability, with respect to the Public Property. The insurance shall be noncontributing with any insurance that may be carried by Licensor and shall contain a provision that Licensor, although named as an insured, shall nevertheless be entitled to recover under the policy for any loss, injury, cost or damage to Licensor, or the property of the same.

6.3. All insurance required herein and all renewals thereof shall be issued by companies authorized to transact business in the State of Colorado and rated at least A+ Class X by Best's Insurance Reports (property liability) or otherwise approved by Licensor in writing. All insurance policies shall be subject to approval by Licensor as to form and substance, shall expressly provide that the policies shall not be canceled without 30 days' prior written notice to Licensor and shall provide that no act or omission of Licensor that would otherwise result in forfeiture or reduction of the insurance shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained. Licensee may satisfy its obligation under this Section by appropriate endorsements of its blanket insurance policies.

6.4. All policies of liability insurance that Licensee is obligated to maintain according to this Agreement (other than any policy of workmen's compensation insurance) shall name Licensor as an additional insured. Originals or copies of original policies (together with copies of the endorsements naming Licensor as an additional insured) and evidence of the payment of all premiums of such policies shall be made available to Licensor on the date first written above. All public liability, property damage liability and casualty policies maintained by Licensor shall be written as primary policies, not contributing with and not in excess of coverage that Licensor may carry.

6.5. The parties waive all rights to recover against each other, or

against the elected and appointed officials, employees, contractors, agents, advisors, attorneys, insurers, insurance pools, shareholders, directors, members, managers, officers, suppliers, agents or servants of each other, for any loss or damage arising from any cause covered by any insurance required to be carried by each of them pursuant to this Section or any other insurance actually carried by each of them. Licensee shall cause its insurer to issue an appropriate waiver of subrogation rights endorsements to all policies of insurance carried in connection with Licensee's operations and Licensor's operations and property.

7. **Licensee Obligations Upon Revocation; Remedies.** Upon notice to Licensee of the Town Council's decision to revoke this License, the Improvements must be promptly removed. In the event that the Improvements are not so removed by Licensee, Licensor may remove the Improvements and restore the location to its original condition at Licensee's sole cost and expense. In such case Licensor shall have no responsibility for damage to the Improvements or Licensee's other property, whether personal or real property, located on Public Property and the Premises. Licensee shall immediately reimburse Licensor such costs and expenses incurred by Licensor in such removal. Licensor shall have the right to make an assessment against the Premises and collect the costs of removal and restoration in the same manner as general taxes are collected under State and local laws. Such rights shall be in addition to any rights available at law or in equity. 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 removal, Licensee shall pay Licensor all reasonable costs and expenses in connection therewith, including, without limitation, reasonable attorneys' fees.

8. **Responsibility for Maintenance; Damage to Improvements.** Licensee assumes and accepts sole responsibility for the maintenance and upkeep of the Improvements, which shall be performed only upon receipt of permits from Licensor as required by applicable law. Further, Licensor shall not be liable for any damage to the Improvements caused by Licensor's operations, including, without limitation, snow removal, street or alley maintenance, street or alley repairs and improvements and utility installation, maintenance and repairs.

9. **No Assignment.** This Agreement and the License granted hereunder shall not be assignable or transferrable by Licensee without Licensor's prior written consent. Failure to obtain Licensor's consent to such assignment or transfer as required shall make such assignment or transfer void *ab initio*.

10. **Subject to Laws.** This License is subject to all State and municipal laws as they now exist or may hereafter be amended.

11. **Licensee Representations.** Licensee represents and warrants that: (a) it is duly qualified to do business and is in good standing in the State of Colorado; (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement; (c) the individual executing this Agreement has the full power and authority to do so; and (d) the Agreement does not violate any other obligation of Licensee.

12. **Notices.** All notices required pursuant to this Agreement 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, unless a request to mail to a different address is provided in writing to the other party.

13. **Prevailing Party.** In the event of any dispute between the parties in connection with this License, the non-prevailing party shall pay the prevailing party all costs and expenses, including, without limitation, reasonable attorneys' fees, costs and expenses, incurred in such dispute.

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

15. **Successors and Assigns.** The rights and obligations of the parties shall inure to the benefit and burden to the parties' successors and permitted assigns.

16. **No Waiver.** No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

17. **Photo-static Copies.** For purposes of enforcement of the terms hereof, photo-static reproductions shall be deemed to be originals.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGE(S) TO FOLLOW]

IN WITNESS WHEREOF, the parties have entered into this Agreement by their duly authorized representatives effective as of the date first written above.

LICENSOR:

TOWN OF CRESTED BUTTE,  
a Colorado home rule municipality

By: \_\_\_\_\_  
James A. Schmidt, Mayor

Attest:

By: \_\_\_\_\_  
Lynelle Sanford, Town Clerk

[SEAL]

LICENSEE:  
GIP Epsilon, LLC

\_\_\_\_\_,

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing Revocable License Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, 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: \_\_\_\_\_

\_\_\_\_\_  
Notary Public Signature

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

The foregoing Revocable License Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, \_\_\_\_\_ of Samantha Smiles, LLC on behalf of said entity.

WITNESS my hand and official seal.  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public Signature

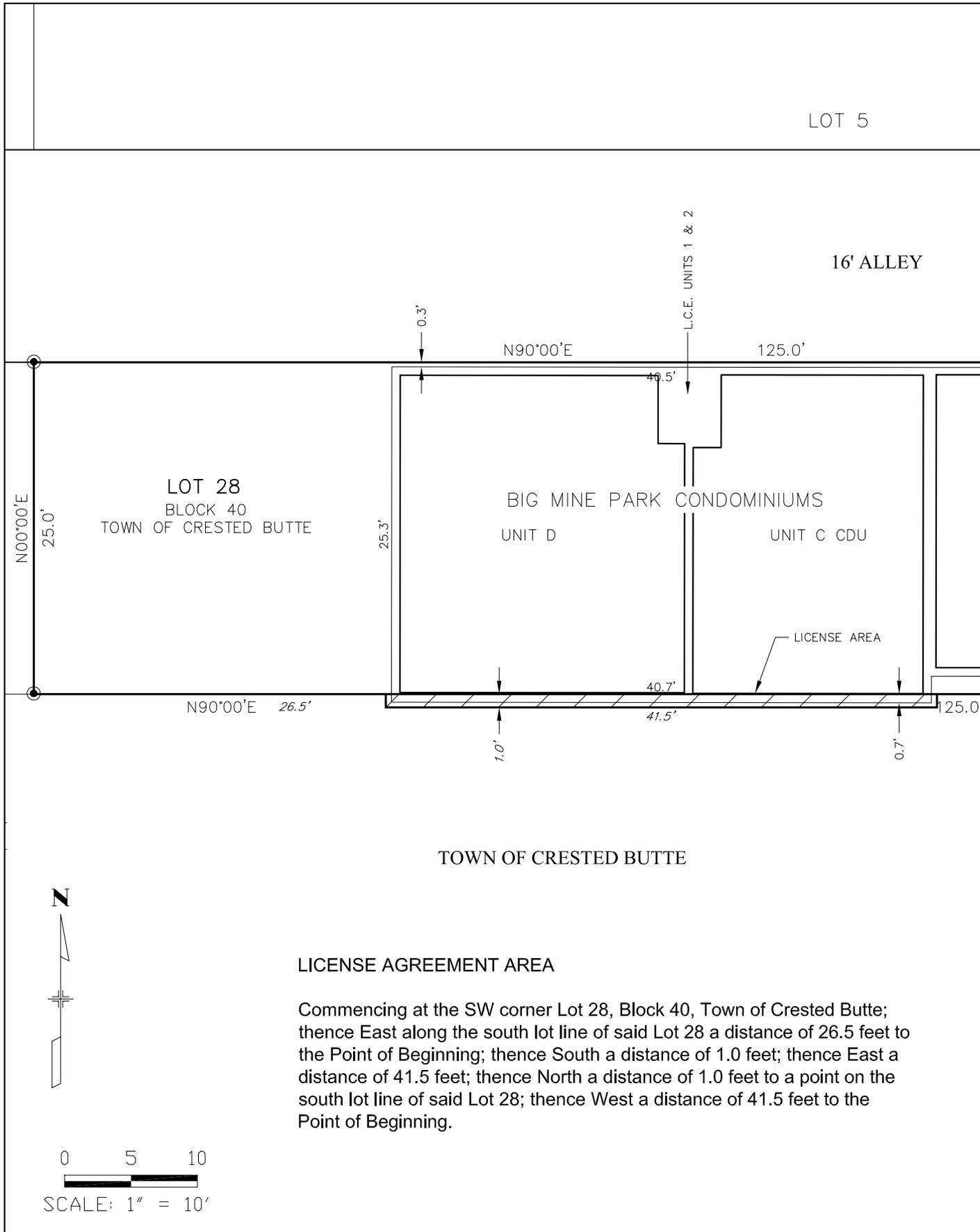
**EXHIBIT "A"**

A 1' wide x 41.5' long section of the Third Street and north portion of the Big Mine Ice Arena parking lot, right of way, adjacent to Lot 28, Block 40.

**EXHIBIT "B"**

# LICENSE AGREEMENT - EXHIBIT A

7/16/19





## Staff Report

August 19, 2019

**To:** Mayor Schmidt and Town Council

**From:** Mel Yemma, Open Space/Creative District Coordinator

**Thru:** Michael Yerman, Community Development Director

**Subject:** **Approval of Letter of Interest for DOLA Renewable Energy Challenge Grant**

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**Background:** The Department of Local Affairs (DOLA) released a new grant opportunity this year called the Renewable and Clean Energy Challenge. DOLA has \$10 million in grant funding for projects that achieve renewable energy, energy efficiency, energy conservation efforts, and support innovations in renewable energy. DOLA is especially looking to fund local governments to implement demonstration projects that will move recipient communities towards 100% renewable energy by 2040.

This new grant opportunity is very exciting and in alignment with the Town Council's greenhouse gas emissions reduction goals. The deadline for the initial letter of interest is September 1<sup>st</sup>, which is before the Town's Climate Action Plan will be finalized. However, the Town has started its investment grade audit (IGA) and energy performance contract process (EPC) with Johnson Controls. This process will lead to renewable energy projects that could be implemented by the Town ranging from Solar PV arrays on Town-owned buildings, and an Electric vehicle conversion analysis and implementation plan for the Town's vehicle fleet and Mountain Express buses.

Town staff is currently working with Johnson Controls to refine a proposed project within the scope of the IGA/EPC to apply for this grant opportunity. The staff is requesting that the Town council authorize the submittal of a letter of interest to DOLA as well as a 50% grant match up to \$200,000 from the 2020 capital budget. If selected to apply for the formal application process (due December 1), Town staff will bring back a formal action to the Town Council.

**Recommendation:** A council member make a motion on the consent agenda to approve the submittal of a letter of interest and up to \$200,000 match from the 2020 Capital Budget for the DOLA Renewable and Clean Energy Challenge Grant.



## Memorandum

**To:** Town Council  
**From:** Dara MacDonald, Town Manager  
**Subject:** Manager's Report  
**Date:** August 19, 2019

### Town Manager

- 1) 2020 Goals – Please see the attached annotated presentation from the Council work session on August 13<sup>th</sup>. Let staff know if you have any questions or changes. The 2020 goals will be on the Sept 3<sup>rd</sup> agenda for consideration and approval.
- 2) Verizon tower – The site inspection was postponed until August 19<sup>th</sup>. An update may be available at the Council meeting.
- 3) Center - Rob and I met with Ed Schmidt, Joel Benisch and Jenny Birnie from the Center on August 13<sup>th</sup> to further discuss their request to own or be able to collateralize the building/property.
  - They assured us that there is no financial problem with completing Phase 1. They stated that they have raised the entire \$18M for Phase 1 - \$13.7 M for construction and the balance for furniture and all of the specialized equipment and fixtures to be able to operate the new portion of the facility.
  - The Center has exceeded their goal of \$2.5M for an endowment or fund to support ongoing operations of the Center. This is in addition to the \$18M for construction of Phase 1. Known as the “Front Row” campaign.
  - The Board would like to be able to leverage the \$18M asset that they and their donors have invested in to support future capital improvements. If they could borrow against the property/building they feel they could utilize future donations to repay any debt.
  - They feel ownership of the building would provide some donors with more comfort in giving where they are not currently comfortable giving money towards improvement of an asset that is owned by the Town.
  - In the end I recommended that the Board complete construction of Phase 1, get it operational and then come back for a more specific and focused discussion about their funding needs and the role the Town and the building might play in that going forward.
- 4) Packet length – In order to try and reduce the size of Council packets, staff will no longer be including some of the detailed materials that do not require Council scrutiny. Example of this include things like certificates of insurance for events, operating plans associated with liquor or marijuana license applications, construction or professional services agreements when using the Town's standard forms. Of course these materials will still be reviewed by staff for compliance.

Public Works

- 1) Kapushion project update
  - Contractor is continuing to extend the sanitary sewer system along Teocalli Ave
  - Contractor will start installing the underground irrigation pipe for the McCormick Ditch in the upcoming weeks.
  - The contractor and Town met with GCEA to coordinate the installation of underground conduit for both the current project and future expansion.
- 2) Patch on 6<sup>th</sup> Street
  - Tentatively scheduled to occur in the last two weeks of August. United Companies needs to confirm.
- 3) Block 76 Water main
  - Lacy construction is continuing to install the water main in block 76. The work is anticipated to be completed by the end of August.
- 4) Pedestrian bridge on the south side of Elk Ave
  - Started the initial design of the bridge with REG. Anticipate completing the design in the next month with construction of the new bridge in late September and October.

Marshals

- 1) No updates

Parks & Rec

- 1) Ball Bash - The Ball Bash was again full with 12 teams from all over the western slope. Delta, Montrose, Junction, Palisade, Gunnison, Glenwood and Crested Butte are where teams traveled from this year. Saturday's pool play was a great success and Sunday shaped up to be a competitive day. Unfortunately, poor weather on Sunday morning led to rapidly deteriorating field conditions and the eventual calling of the tournament. Teams left satisfied in the end and understood the decision to call things off. Net profit of the tournament came in around \$5700 to be split between the Parks and Rec Scholarship fund and the Tommy Villanueva Youth Sports and Recreation fund.
- 2) Matt - Matt Sweeney, our summer Recreation Programs Assistant has taken a job closer to home in Gunnison and will be leaving us at the end of the week. We are greatly appreciative of all the work he has done this summer and wish him the best of luck moving forward.
- 3) Fall Programs - We've got a host of fall youth programs coming up including; Soccer, Gymnastics, Flag Football and After School Sports. We always need volunteers to help out coaching. If anyone comes to mind, send them our way!
- 4) Staffing - We are searching to fill a few positions within the recreation department. A head soccer coach, second gymnastics instructor, and various volunteer positions for fall programming. Hopes are high that we can get these positions filled and continue to run so many positive programs.

Community Development

- 1) No updates

Town Clerk

- 1) A new candidate informational session will be held on Tuesday, August 20<sup>th</sup> from 4PM to 6PM in the Council Chambers. The session is meant to be an open house question and answer to help candidates understand the roles of Council members.
- 2) Candidate petitions are due to the Clerk's Office by Friday, August 30<sup>th</sup> at 5PM.

- 3) Staff met with the organizers of Vinotok. There were no major changes proposed for the event this year. The application will be on the September 3<sup>rd</sup> agenda for the Council's consideration.

### Finance

- 1) Pending Recession....Maybe? - On August 14, the Dow Jones Industrial Average fell by a whopping 800 points, the worst decline of the year. An inverted yield curve for the 2 year and 10-year treasury market was the culprit. An inverted yield curve is an interest rate environment in which long-term debt instruments have a lower yield than short-term debt instruments. One reason inversions happen is because investors are selling stocks and shifting their money to bonds. They've lost confidence in the economy and believe the meager returns that bonds promise might be better than potential losses they could incur by holding stocks into a recession. So demand for bonds goes up and the yields they pay go down. Inverted yield curves have historically an indicator of an upcoming recession. Germany, Italy, the UK and China are all showing indicators pointing to a possible global slowdown. However, Janet Yellen, former Federal Reserve Chair, cautioned that investors should place less emphasis on this inversion of the yield curve by saying "Historically, [the yield curve inversion] has been a pretty good signal of recessions and I think that's why markets pay attention to it but I would really urge that on this occasion it may be a less good signal." Please remember that although an inverted yield curve can indicate a future recession, it does little to telegraph the timing of the next contraction. We could still be months or even years away from it.
- 2) Q2 financial update – See attached

### Intergovernmental

Crested Butte is scheduled to host the next Intergovernmental dinner with all of the municipalities and the County. Neither of the possibilities proposed for September 24<sup>th</sup> or 30<sup>th</sup> work for our partners. Please let Lynelle know if either September 18<sup>th</sup> or October 10<sup>th</sup> would work.

### Upcoming Meetings or Events

August 27<sup>th</sup> Joint work session with Mt. Crested Butte regarding The Corner at Brush Creek, 6:00 p.m.  
September 4<sup>th</sup> – 5<sup>th</sup> Park City CityTour 2019, various times and venues

\* As always, please let me know if you have any questions or concerns. You may also directly contact department directors with questions as well.

# 2020 Budget – Town Council Work Session

## August 13, 2019



# Discussion Topics

- Existing priorities – 5 year and 2019
- Staff guiding principles
- Initial list of 2020 priorities
- Budget calendar / approach
- Open questions / Council direction

# Council Vision Statement & Long Range Goals

## Vision Statement

Crested Butte is a small mountain town with a big community that strives toward a balanced and sustainable lifestyle while enjoying and protecting the soul of the Valley.

## Five Year Goals

- ✓ Increase percentage of residents living in Town by achieving a 75% housing full-time occupancy
- ✓ 30% of units in Town are deed restricted, including 15 Town rental units for employees
  - ✓ staff to bring forward recommendations for “in-deed” program, as a potential tool
- ✓ Permanent removal of mining claims by Mt. Emmons Mining Company on Red Lady

- ✓ Moving forward
- ? Need to validate if still 5 year goal

# Council Vision Statement & Long Range Goals

## Five Year Goals

- ? Maintain at least one year of operating reserves in Town's funds
  - ✓ keep as a five year goal. move in that direction and add to reserves in 2020.
- ✓ Reduce greenhouse gas emissions footprint of Town's operations by 50% versus 2017 levels; and, reduce Town of Crested Butte community emissions footprint by 25%
- ✓ Ban new formula / franchise retail and restaurant businesses on Elk Ave
- ? Implement traffic and parking plan
  - ✓ keep as a five year goal
- ✓ Complete modified recommended capital projects in Parks & Recreation master plan
- ? Upgrade Marshal Office facilities
  - ✓ keep as a five year goal

- ✓ Moving forward
- ? Need to validate if still 5 year goal

## Council 2019 Goals / Priorities

- ✓ Block 76 Paradise Park housing project under construction (*Phase 2 halted*)
- ✓ Long Lake conservation project funded and closed
- ✓ Greenhouse Gas Emissions Action Plan implemented toward five year greenhouse gas reduction goals
- ✓ Water Plant upgrade funded and under construction
- ✓ Implement ban on new formula / franchise retail and restaurant businesses on Elk Ave
- ✓ Town Park playground completed
- × Architectural plans and cost estimates completed for Marshal's facility
- × Capital planning begun for carbon neutral Big Mine / Warming House expansion and refrigerated ice arena

- ✓ Moving forward or completed
- × Project halted

## Senior Staff – Budget Guiding Principles

1. Council Vision, Five Year Goals and 2020 Priorities serve as guideposts
2. Operating Budget should be balanced
  - Overall, 2020 expenses should be roughly equal to or less than revenue, without first needing to raise taxes, rates or fees
  - Enterprise fund rates will need to increase to accommodate WTP and WWTP debt service.
3. Significant replacements or new expenses much be justified / prioritized based on Council Vision and long term goals

## Proposed 2020 Goals / Priorities

- Climate Action Plan implementation begins
  - ✓ High priority. Set aside \$20k, in the 2020 budget, for paying GCEA renewable energy credits for all of the housing stock in the Town of CB. Staff will propose a set-aside amount for implementation.
- Complete Paradise Park Phase 2 affordable housing build
  - ✓ High priority.
- SOAR Community School Town rental build (1 unit)
  - ✓ High priority. Set aside \$250k in 2020 budget.
- Perform sorely needed streets repair and maintenance
  - ✓ High priority. Alley is secondary priority. Staff to bring forward funding mechanisms for potential alley paving.
- Henderson Park renovation
  - ✓ Low to Medium priority.

## Proposed 2020 Goals / Priorities, continued

- Big Mine hockey changing rooms
  - ✓ High priority.
- Town of Crested Butte – “Comprehensive Plan”
  - ✓ High priority. Set aside \$30k in 2020 budget for facilitation.
- WTP and WWTP projects
  - ✓ High priority.
- Improve snow storage
  - ✓ staff to investigate funding mechanisms to help fund snow storage.
- Investigate selling 308 3<sup>rd</sup> St.
  - ✓ NO.

## Town of Crested Butte Community Compass

Community Compass (Comprehensive Plan) is a road map and not a final destination. It is an ever-changing pathway or course that requires constant effort, **vigilance**, reevaluation and **courage**.

- This updated Community Compass will be a continuation of our shared journey and provide us with a set of clearly re-focused public aspirations and expectations. These public guideposts will form the foundation upon which responsible, enduring decisions can be made in correlation to establishing a “level of acceptable change” whereby the natural environment does not deteriorate, the resident community is not be adversely affected and the quality of the visitor experience does not decline.
- The Compass would be publicly driven and the document itself would be a concise document that will be readable and referenced into the future on goals and strategies potentially covering the following topics:

Natural Environment

Land Use/Zoning

Historic District/Built Environment

Circulation/Parking/Transportation

Infrastructure/Utilities

Recreation/Parks/Open Space

Resident Housing

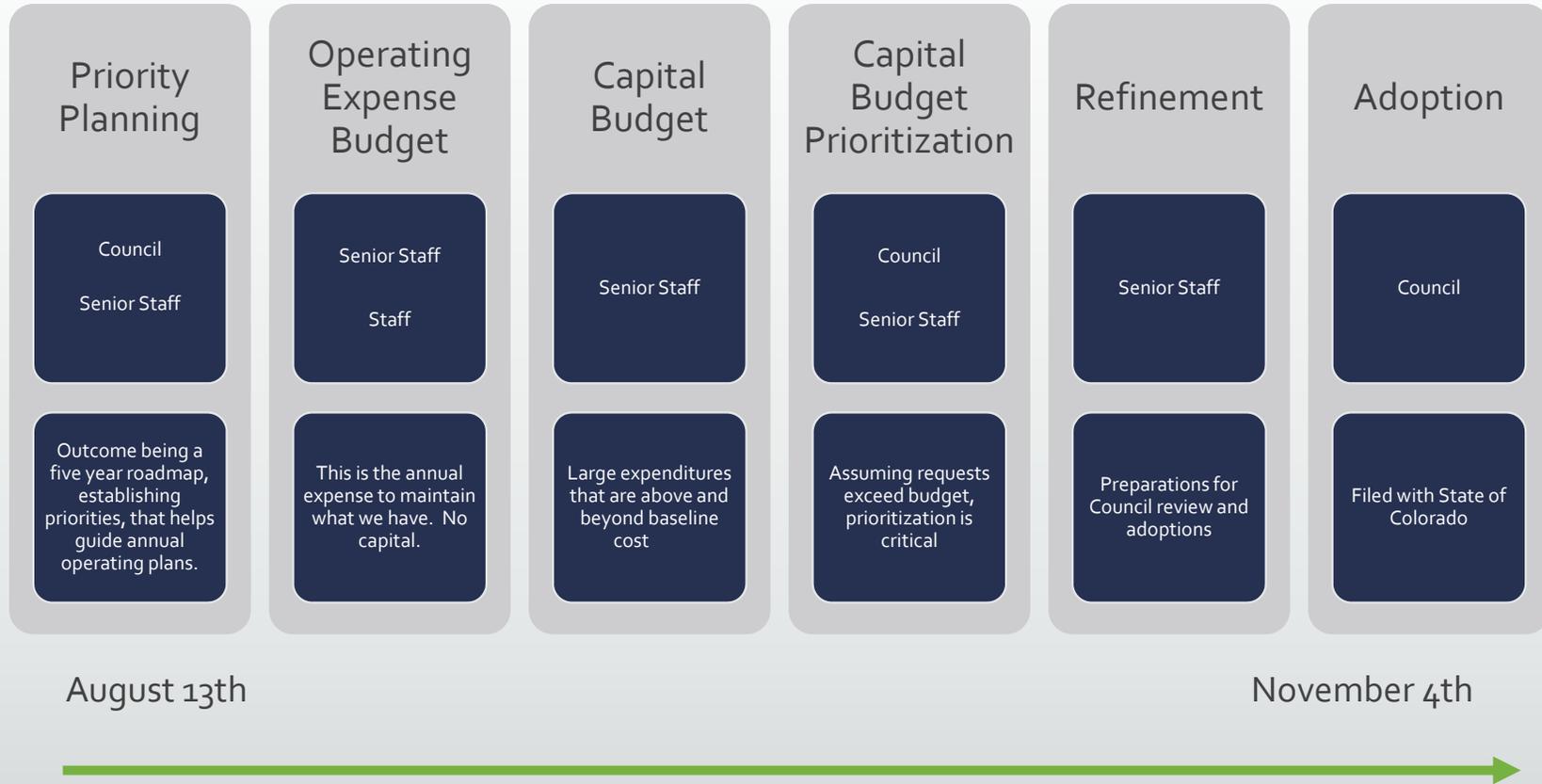
Economic Development/Tourism

Social/Cultural/Special Events

Public Health and Safety

Regional Considerations

# Approach to 2020 Budgeting



## Open Items – Council Input Required

- What, if any, proposed 2020 goals should be eliminated and/or added?
  - ✓ Council supports all 2020 priorities shown on pages 6 and 7, other than selling 308 3<sup>rd</sup> street.
  - ✓ Council directed Staff to investigate potential bike / scooter share programs
- Shall we balance the 2020 budget and/or increase reserves?
  - ✓ Yes. Chris suggested aiming for 88% reserves at the end of 2020.
  - ✓ Specifically, the one year reserve goal is for operations, not for capital projects.
- What amount of monies to earmark for CAP project implementation?
  - ✓ Put aside \$20k for GCEA renewable energy offsets, for CB residences
  - ✓ Put aside additional funds in 2020 budget as CAP projects crystalize
- Should we increase mill levy for Streets & Alleys?
  - ✓ Staff come back to Council with proposed funding mechanisms, including potentially increasing the property tax mill levy. Staff will also come back to Council with updated 15 year plan.
- Should we find room to increase reserves for housing, open space and green projects?
  - ✓ Yes. Council agreed to build reserves. Town funds will go much further on associated projects when the next recession hits.

## 1H19 Financial Summary

(all numbers reflect totals for January through June)



## Primary Revenue Sources

| Town Sales Tax<br>Business Category | 2019               | 2018               | \$ Diff         | % Diff      |
|-------------------------------------|--------------------|--------------------|-----------------|-------------|
| BARS/REST                           | \$567,729          | \$570,538          | (\$2,809)       | 0%          |
| GROCERY                             | \$215,083          | \$203,311          | \$11,772        | 6%          |
| RETAIL                              | \$412,865          | \$424,734          | (\$11,869)      | -3%         |
| RETAIL:MMJ                          | \$54,026           | \$68,916           | (\$14,890)      | -22%        |
| LODGING                             | \$188,459          | \$174,901          | \$13,558        | 8%          |
| CONST/HRDWR/AUTO                    | \$178,227          | \$146,939          | \$31,288        | 21%         |
| SERVICE                             | \$84,296           | \$88,328           | (\$4,032)       | -5%         |
| OTHER                               | \$134,044          | \$106,279          | \$27,765        | 26%         |
| <b>Grand Total</b>                  | <b>\$1,834,729</b> | <b>\$1,783,946</b> | <b>\$50,783</b> | <b>2.8%</b> |
| County Sales Tax                    | \$205,165          | \$202,749          | \$2,416         | 1%          |
| STR Excise Tax                      | \$122,819          | \$111,079          | \$11,740        | 11%         |
| RETT                                | \$598,745          | \$613,816          | -\$15,071       | -2%         |
| Property Tax                        | \$720,940          | \$722,556          | -\$1,616        | 0%          |
| <b>Total Major Sources</b>          | <b>\$3,482,398</b> | <b>\$3,434,146</b> | <b>\$48,252</b> | <b>1.4%</b> |

### Monthly Growth

|       |     |
|-------|-----|
| April | 6%  |
| May   | -6% |
| June  | -4% |

### Notes:

- Late spring and early summer Town sales tax below 2018, driven primarily by weather differences
- Tax collections overall on budget
- RETT checks increasing in size, but fewer than 2018
- April and May are typically low months for sales tax

## General Fund Expense Summary

|                      | <u>Actual</u>       | <u>Budget</u>       | <u>Variance</u>   |
|----------------------|---------------------|---------------------|-------------------|
| General Government   | 163,900.06          | 195,107.10          | 31,207.04         |
| Court                | 3,778.30            | 3,681.00            | (97.30)           |
| Council              | 34,354.82           | 36,009.06           | 1,654.24          |
| Elections            | 0.00                | 0.00                | 0.00              |
| Legal                | 82,900.92           | 101,549.94          | 18,649.02         |
| Clerk                | 91,737.61           | 101,836.16          | 10,098.55         |
| Manager              | 87,243.34           | 90,565.38           | 3,322.04          |
| Finance              | 188,182.18          | 199,946.38          | 11,764.20         |
| Marshal              | 504,238.15          | 494,407.26          | (9,830.89)        |
| Planning             | 187,410.22          | 190,862.88          | 3,452.66          |
| Facility Maintenance | 106,922.04          | 115,521.64          | 8,599.60          |
| Town Shop            | 104,592.26          | 130,855.62          | 26,263.36         |
| Public Works         | 80,682.39           | 136,510.84          | 55,828.45         |
| Building             | 203,006.19          | 139,363.38          | (63,642.81)       |
| Recreation           | 159,163.02          | 183,039.70          | 23,876.68         |
| Total Expenditures   | <u>1,998,111.50</u> | <u>2,119,256.34</u> | <u>121,144.84</u> |

### Notes:

- Overall, Staff doing a nice job managing at or under their budgets.
- Marshal overage due to 8<sup>th</sup> officer, which Council approved mid-year
- Building expense overage due to timing and allocations. Will be on budget for the full year.

## Sewer & Water Fund Summary

|                         | <u>Actual</u>    | <u>Budget</u>    | <u>Variance</u>  |
|-------------------------|------------------|------------------|------------------|
| <b>REVENUE</b>          |                  |                  |                  |
| ATAD CONTRIBUTION-MT CB | 48,427           | 42,000           | 6,427            |
| WATER TAP FEE           | 50,800           | 130,000          | (79,200)         |
| SEWER TAP FEE           | 56,104           | 185,000          | (128,896)        |
| SEWER CHARGES           | 371,786          | 370,761          | 1,025            |
| SEWER AVAILABILITY CHG  | 5,535            | 5,945            | (410)            |
| SEWER PRETREATMENT      | 4,964            | 5,264            | (300)            |
| WATER CHARGES           | 297,893          | 313,286          | (15,393)         |
| WATER AVAILABILITY CHG  | 6,183            | 6,545            | (362)            |
| SANITATION CHARGES      | 136,073          | 135,674          | 399              |
| DEBT PROCEEDS           | 0                | 300,000          | (300,000)        |
| GRANT REVENUE           | 162,946          | 495,000          | (332,054)        |
| <b>TOTAL REVENUE</b>    | <b>1,161,679</b> | <b>2,001,350</b> | <b>(839,670)</b> |
| <br>                    |                  |                  |                  |
| <b>TOTAL EXPENSES</b>   | <b>1,754,705</b> | <b>2,191,694</b> | <b>436,989</b>   |

### Notes:

- Sewer, Water and Trash operations generally on budget. Fees were not increased in 2019, but will need increase for 2020.
- Debt proceeds will be taken in 1Q19
- Grant revenue will be managed so as to not cause a TABOR issue
- Tap fees historically difficult to predict. However, we believe tap fees will catch up by year end. Water tap fee is \$8,100 per EQR and sewer tap fee is \$9,900 per EQR. Equivalent Residential Usage is the amount of water and sewer used by a standard residential unit of 1,875 sq ft.
- Expenses below plan do to timing on WTP project and some other capital expenditures

# Capital Fund Expense Summary

|                           | <u>Actual</u> | <u>Budget</u> | <u>Variance</u> |
|---------------------------|---------------|---------------|-----------------|
| WAGES-FULL TIME           | 104,304       | 105,062       | 758             |
| WAGES-SEASONAL            | 38,677        | 40,166        | 1,489           |
| WAGES - TRAILS            | 4,922         | 4,242         | (680)           |
| OVERTIME                  | 4,363         | 3,665         | (698)           |
| OPEN SPACE TRUST          | 0             | 1,000,000     | 1,000,000       |
| OPEN SPACE MAINT          | 16,009        | 11,000        | (5,009)         |
| CAPITAL EQUIPMENT         | 0             | 60,000        | 60,000          |
| OTH ADA lift              | 2,820         | 0             | (2,820)         |
| PARK MAINT SUPPLIES       | 15,750        | 17,748        | 1,998           |
| PORTABLE TOILETS          | 3,010         | 2,336         | (674)           |
| FLOWERS & SHRUBS          | 9,834         | 8,000         | (1,834)         |
| DOGGIE DOO PROJECT        | 1,900         | 1,750         | (150)           |
| PARK CAPITAL EQUIPMENT    | 72,215        | 75,000        | 2,785           |
| PARK MAINT PROJECTS       | 39,823        | 5,000         | (34,823)        |
| WEED MANAGEMENT           | 1,967         | 3,000         | 1,033           |
| CEMETERY                  | 2,263         | 5,000         | 2,737           |
| BUILDING CAPITAL PROJECTS | 480           | 199,000       | 198,520         |
| <br>                      |               |               |                 |
| BUILDING MAINT.           | 34,578        | 60,000        | 25,422          |
| Bldg Snow Removal         | 21,720        | 0             | (21,720)        |
| AVALANCHE MITIGATION      | 15,000        | 15,000        | 0               |
| TOWN PARK PROJECT         | 239,540       | 225,000       | 14,540          |
| BIKE PARK                 | 2,911         | 0             | (2,911)         |
| TOTAL EXPENSES            | 751,865       | 1,919,281     | 1,196,496       |
| <br>                      |               |               |                 |
| Net of Open Space Trust   | 751,865       | 919,281       | (167,416)       |

## Notes:

- Town has not yet spent the planning \$1mm for Long Lake
- Old Town Hall ADA lift project did not happen during 1H19

## Street & Alley Fund Summary

|                         | <u>Actual</u>  | <u>Budget</u>  | <u>Variance</u> |
|-------------------------|----------------|----------------|-----------------|
| <b>REVENUE</b>          |                |                |                 |
| PROPERTY TAX-Street     | 540,705        | 456,000        | 84,705          |
| PROPERTY TAX-Trans.     | 180,235        | 152,000        | 28,235          |
| HIGHWAY USERS TAX       | 25,001         | 25,637         | (636)           |
| <b>TOTAL REVENUE</b>    | <b>746,975</b> | <b>636,477</b> | <b>110,497</b>  |
| <b>EXPENSES</b>         |                |                |                 |
| LABOR-SNOW REMOVAL      | 122,413        | 62,667         | (59,746)        |
| LABOR-STREET MAINT      | 52,983         | 49,000         | (3,983)         |
| REPAIR & MAINT STREETS  | 1,516          | 11,000         | 9,484           |
| SIDEWALK REPAIR/MAINT   | 0              | 2,500          | 2,500           |
| ENGINEERING             | 2,950          | 16,000         | 13,050          |
| PAVING PROJECT          | 43,084         | 25,000         | (18,084)        |
| Striping                | 6,596          | 6,000          | (596)           |
| STORM WATER PROJECT     | 0              | 2,500          | 2,500           |
| R&M VEHICLES            | 7,520          | 10,000         | 2,480           |
| SNOW REMOVAL-SUPPLIES   | 22,144         | 26,667         | 4,523           |
| Snow Removal - Trucking | 131,875        | 0              | (131,875)       |
| TREASURER FEES          | 21,642         | 25,612         | 3,970           |
| CAPITAL EQUIPMENT       | 12,129         | 165,000        | 152,871         |
| <b>TOTAL EXPENSES</b>   | <b>493,832</b> | <b>523,434</b> | <b>29,602</b>   |

### Notes:

- Property tax collections slightly ahead of budget, but should level out by the end of 2019.
- Winter of 2018-2019 had the highest cost for snow removal in recent past. 4,492 truck loads hauled from Town, including 900 off Elk. This amount surpasses the snowmagedden winter of 2016-2017, with 3,604 loads. Winter of 2017-2018 was only 350.
- Timing. Budget assumed replacing larger snow blower and Bobcat during March. These purchases will occur during 2019 and will likely be 3Q19. Both Blower and Bobcat are end of life, require much maintenance and are ready for replacement.

## Affordable Housing Fund Summary

|                         | <u>Actual</u>    | <u>Budget</u>    | <u>Variance</u>  |
|-------------------------|------------------|------------------|------------------|
| <b>REVENUE</b>          |                  |                  |                  |
| HOUSING PMT IN LIEU     | 4,059            | 30,000           | (25,941)         |
| PARADISE PARK SALES     | 29,320           | 0                | 29,320           |
| PARADISE UNIT SALE      | 310,272          | 0                | 310,272          |
| Excise Tax              | 122,023          | 110,000          | 12,023           |
| RETT CONTRIBUTION       | 392,891          | 275,000          | 117,891          |
| <b>TOTAL REVENUE</b>    | <b>864,270</b>   | <b>437,278</b>   | <b>426,992</b>   |
| <b>EXPENSES</b>         |                  |                  |                  |
| AFFORDABLE HOUSING TAPS | 264,000          | 264,000          | 0                |
| UTILITIES               | 6,179            | 1,000            | (5,179)          |
| HOUSING AUTHORITY       | 29,374           | 58,000           | 28,626           |
| Block 76 PROJECT BUILD  | 114,837          | 0                | (114,837)        |
| TOWN RENTAL BUILD       | 420,000          | 206,667          | (213,333)        |
| PARADISE PARK BUILD     | 932,185          | 825,000          | (107,185)        |
| HOUSING MAINTENANCE     | 9,165            | 16,500           | 7,335            |
| <b>TOTAL EXPENSES</b>   | <b>1,776,059</b> | <b>1,379,916</b> | <b>(396,142)</b> |

### Notes:

- PMT in lieu difficult to predict, but will likely catch up during 3Q
- TR excise tax up 11% versus 2018.
- RETT above budget and continuing recent trend of escalating real estate sale prices in Town. For 2019, RETT is split 50/50 between Open Space and Affordable Housing
- Expense variance largely timing versus budget assumption. Project will be managed to overall budget and contracts.

## Debt Schedule

|                                      | Year | Term     | Interest Rate | Principal          | Current Balance    | 2019 Payments    | Maturity Date |
|--------------------------------------|------|----------|---------------|--------------------|--------------------|------------------|---------------|
| Water Tank                           | 2012 | 20 years | 2%            | \$400,000          | \$272,960          | \$24,788         | 2032          |
| Wastewater Treatment Plant           | 2017 | 20 years | 2%            | \$2,500,000        | \$2,332,247        | \$154,926        | 2037          |
| Wastewater Treatment Plant clarifier | 2011 | 20 years | 2%            | \$1,900,000        | \$1,204,580        | \$90,766         | 2030          |
| Sub-Total as of May 2019             |      |          |               | \$4,800,000        | \$3,809,787        | \$270,480        |               |
| <i>Approved 2020 WTP Loan</i>        | 2020 | 20 years | 2.5%          | \$2,025,000        | \$2,025,000        | \$129,899        | 2040          |
| <b>Total</b>                         |      |          |               | <b>\$6,825,000</b> | <b>\$5,834,787</b> | <b>\$400,379</b> |               |

### Notes:

- Mt Emmons \$2.11m – ballot measure approved debt
- 2020 Water Treatment Plan project \$2,025,000. Loan approved by CWR&PDA, but Town will not take out until 1Q20. 2019 Project will be funded through Enterprise Fund reserves and cash flow.
- Water and Sewer Rates not raised for 2019. However, will need to be raised for 2020 so as to cash flow increased debt.

## Cash Position

|                             | Closing Balance     |                     |                     | Interest Rate |        |        | Implied Full Year Interest |                  |                 |
|-----------------------------|---------------------|---------------------|---------------------|---------------|--------|--------|----------------------------|------------------|-----------------|
|                             | 15-Aug-19           | Dec-18              | Dec-17              | May-19        | Dec-18 | Dec-17 | 2019                       | 2018             | 2017            |
| Bank of the West            | \$13,245,888        | \$15,063,135        | \$18,987,209        | 1.75%         | 0.22%  | 0.22%  | \$231,803                  | \$33,139         | \$41,772        |
| Crested Butte Bank          | \$0                 | \$0                 | \$165,143           |               |        | 0.50%  | \$0                        | \$0              | \$826           |
| Community Banks of Colorado | \$165,143           | \$165,143           | \$0                 | 1.60%         | 1.60%  |        | \$2,642                    | \$2,642          | \$0             |
| ColoTrust                   | \$7,874,814         | \$5,801,494         | \$738,434           | 2.56%         | 2.59%  | 1.51%  | \$201,595                  | \$150,259        | \$11,150        |
| <b>Total</b>                | <b>\$21,285,845</b> | <b>\$21,029,772</b> | <b>\$19,890,786</b> |               |        |        | <b>\$438,060</b>           | <b>\$186,040</b> | <b>\$53,748</b> |

### Notes:

- Approach is to protect taxpayer / Town funds, while maximizing returns in secure investments
- May continue to invest more with ColoTrust while maintaining sufficient operating funds in Bank of the West
- We are now receiving meaningful interest income with Bank of the West
- Annual interest income increase of +/- \$340,000 as compared to 2017
- Cash position is not the same as Reserves. For example, our \$3.8mm debt balance in the Enterprise Fund nets against cash position to calculate Reserves.



**To:** Mayor Schmidt and Town Council

**From:** Michael Yerman, Community Development Director  
Noel Durant, Executive Director

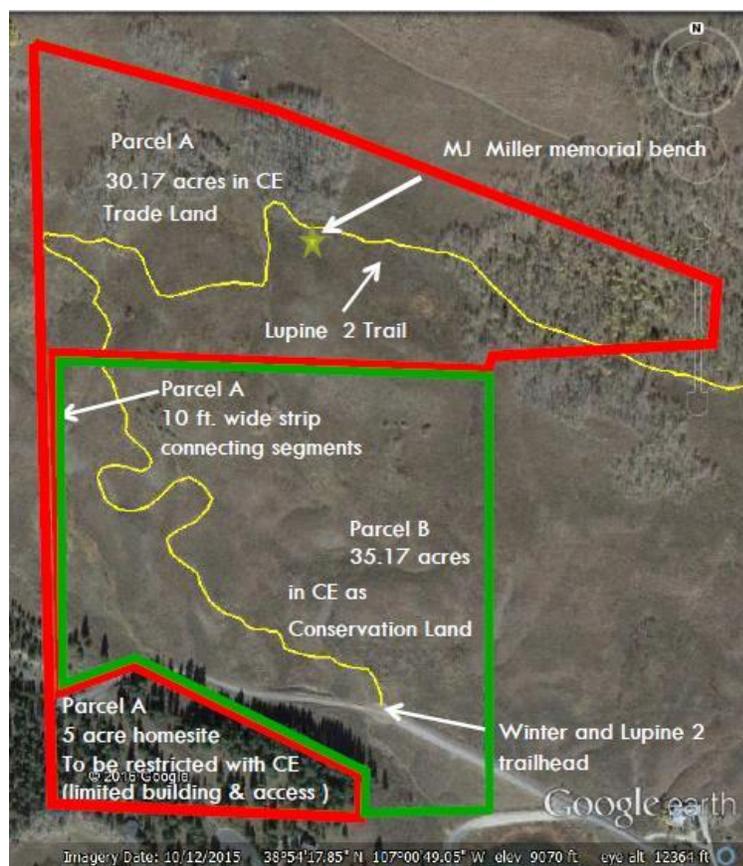
**Subject: Ordinance 28, Series 2019- Purchase and Transfer of Conservation Easement of Kikel Parcel A between the Town of Crested Butte and Crested Butte Land Trust**

**Date:** August 19, 2019

### Background:

The Kikel property, also known as the Slate River Trailhead, is located just northeast of Nicholson Lake. The 70-acre parcel was purchased by the Crested Butte Land Trust (Land Trust) in May 2007 for \$2,684,378 with help from the Town of Crested Butte (Town), Great Outdoors Colorado, Crested Butte Mountain Resort, 1% for Open Space, and the Gunnison County Land Preservation Board. With these funding sources there was still a funding gap to close the project, so the Land Trust took a loan to finance the remainder needed and created the ownership structure below to repay its debt for the property.

The property includes two parcels, each encumbered by a conservation easement (parcels A and B). Parcel A is a 35-acre trade land, owned by the land trust for the purpose of resale, the proceeds of which will benefit further open space conservation. Parcel A is encumbered by a 30-acre Conservation Easement (CE) on the northern “flag” of the property held by the Town and includes a 5-acre homesite 5,000 square foot single-family home site adjacent to Alpine Meadows subdivision that is encumbered by a deed to restrict development that limits what can be built on the property, also held by the Town. Parcel B is a 35-acre conservation land owned by the Land Trust which is encumbered by a conservation easement held by the Town which covers all 35 acres and prohibits development.



Today, these parcels are the starting point for endless summer and winter adventures. Nordic skiers and snowshoers can reach pristine wilderness areas via the trailhead while taking in breathtaking views of Paradise Divide and the surrounding peaks. In the summer and fall, the Lupine Trail, which meanders across the parcel, hosts thousands of hikers and bikers. The property also continues to provide grounds for historic grazing lands for the Allen Family cattle operation.

**About the Purchase and Transfer of CE:**

On April 1, 2019 the Town entered into a purchase contract with the Crested Butte Land Trust for the purchase of Kikel Parcel A for an amount of \$530,000. Funding for the purchase will come from the Town's 1.5% Real Estate Transfer Tax (RETT) dedicated for open space. The Town will take ownership of the property and the existing CE which encumbers the 30-acre portion of Parcel A will be assigned from the Town to the Land Trust.

The remaining 5 acres will have a new CE deeded on it to limit the potential development into the future. The existing CE which would have allowed for a 5,000 square foot house single-family home site will be replaced by, and in its place, the Town may construct a residence (cabin), outbuildings and public restroom facilities within the Building Envelope which in aggregate shall occupy no more than 2,000 square feet. The cabin shall be used only for housing, visitor information center, and open space stewardship for use by Town of Crested Butte, agents, employees, volunteers or associated with other nonprofits focused on open space stewardship. The design of any structures will strive to be carbon neutral. The location of parking and the cabin is shown on the attached map.

While the Town has no immediate intentions to construct any stewardship monitoring facilities, this site represents the develop a recreation monitoring presence. This parcel allows the Town the potential to protect this investment in the future as visitation and additional pressures are placed on this valley.

The new CE as well as the assignment of the existing CE from the Town to the Crested Butte Land Trust will occur with this Ordinance.

**Update from August 6<sup>th</sup> Council meeting:**

At the August 6<sup>th</sup> Council meeting a provision was added to require a \$80,000 pay back to the RETT in the event of the stewardship cabin being constructed. This payment represents 15% of the purchase price or the percentage of the 5-acre site that encumbers the total 35-acre property. This follows the Town's practice for the use of RETT funding to purchase open space.

During the month of July, several discussions with our local partners occurred including the US Forest Service were had regarding the closure of dispersed camping in Federal lands surrounding Town. After this discussion, the Town and Land Trust investigate how a potential walk-in campground could be accommodated on this site. However, at the August 6<sup>th</sup> meeting this option was omitted this as an option.

Finally, the total area of the cabin and other structures was on the site was limited to a total of 2,000 square feet and the word "or" was added to provide clarify the stewardship partners that are permitted to occupy the Cabin.

**Recommendation:**

A Council member make a motion followed by a second to approve Ordinance 28, Series 2019.

**ORDINANCE NO. 28****SERIES 2019**

**AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL APPROVING: (1) THE ASSIGNMENT OF THE TOWN'S CONSERVATION EASEMENT IN KIKEL PARCEL A TO CRESTED BUTTE LAND TRUST, (2) THE TERMINATION OF THE TOWN'S COVENANT TO LIMIT DEVELOPMENT ON KIKEL PARCEL A, AND 3) GRANTING NEW CONSERVATION EASEMENT TO CRESTED BUTTE LAND TRUST IN EXCHANGE FOR THE CONVEYANCE OF KIKEL PARCEL A FROM CRESTED BUTTE LAND TRUST TO THE TOWN OF CRESTED BUTTE.**

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

**WHEREAS**, the Town entered into a Contract for the Sale of Real Estate with the Crested Butte Land Trust ("CBLT") ("Contract") concerning the real property known as the Kikel Parcel A according to the Plat recorded on September 25, 2008 at Reception No. 586761 of the records of the Gunnison County Clerk and Recorder ( the "Kikel Property"); and

**WHEREAS**, the Town Council unanimously approved the Contract with CBLT at its public meeting on April 1, 2019; and,

**WHEREAS**, CBLT currently owns the Kikel Property, which contains approximately 35.17 acres; and

**WHEREAS**, the Town currently owns a Conservation Easement upon 30.17 acres of the Kikel Property pursuant to a Deed of Conservation Easement granted by CBLT to the Town, recorded on December 19, 2008 at Reception No. 588208 (the "2008 Conservation Easement"), and the Town currently owns an interest in a Covenant to Limit Development on 5 acres of the Kikel Property granted by CBLT to the Town by CBLT, recorded at December 19, 2008 at Reception No. 588208 (the "Covenant to Limit Development"); and

**WHEREAS**, pursuant to the Contract CBLT has agreed to convey fee title of the Kikel Parcel to the Town in exchange for the payment of Five Hundred Thirty Thousand Dollars (\$530,000), the Town's assignment of its 2008 Conservation Easement to CBLT, the termination of the Covenant to Limit Development, and the Town granting CBLT a new Conservation Easement encumbering the 5 acre tract of the Kikel Property; and

**WHEREAS**, the Town and CBLT have agreed upon the terms of the new Conservation Easement that will encumber the 5 acre tract of the Kikel Property after CBLT conveys the Kikel Property to the Town;

**WHEREAS**, the agreed upon forms of the Special Warranty Deed from CBLT to the Town, the Assignment of the 2008 Conservation Easement from the Town to CBLT, the Termination of the Covenant to Limit Development and the new Deed of Conservation Easement upon the 5 acre tract of the Kikel Property from the Town to CBLT, are attached to this Ordinance; and

**WHEREAS**, pursuant to Section 14.4 of the Town Charter and C.R.S. Section 31-15-713(1), the Town has the authority to sell and convey property owned by the Town; and

**WHEREAS**, the Kikel Property has significant value as open space for scenic, environmental and recreational purposes; and

**WHEREAS**, the Town Council hereby finds that it is in the best interests of the Town and its residents to acquire the Kikel Property for the purpose of maintaining the Property as open and scenic space on the terms contained in the Contract and the other documents attached to and made a part of this Ordinance.

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

**Section 1. Authorization to Assign 2008 Conservation Easement, Terminate Covenant Limit Development, Grant New Deed of Conservation Easement and Pay \$530,000 to CBLT in Exchange for Special Warranty Deed for Kikel Property.** The Town Council, pursuant to the Crested Butte Town Charter and the laws of the State of Colorado, hereby authorizes the Town to assign the 2008 Conservation Easement, terminate the Covenant to Limit Development, grant a new Deed of Conservation Easement and pay \$530,000 to the Crested Butte Land Trust in exchange for the CBLT's conveyance of a Special Warranty Deed for the Kikel Property to the Town pursuant to the Contract and the other documents attached to this Ordinance as **Exhibit A**.

The Town Council further authorizes and directs the Town Manager and Town Clerk to appropriately execute any additional documents necessary and appropriate to consummate the transaction for the Kikel Property, following approval thereof by the Town Attorney.

**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 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 of any ordinance previously adopted by the Town which conflicts with this ordinance is hereby repealed as of the enforcement date hereof.

**INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS \_\_\_\_ DAY OF JULY, 2019.**

**ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2019.**

**TOWN OF CRESTED BUTTE**

\_\_\_\_\_  
James A. Schmidt, Mayor

**ATTEST:**

\_\_\_\_\_  
Lynelle Stanford, Town Clerk

[SEAL]

Exhibit A  
**DEED OF CONSERVATION EASEMENT, SPECIAL WARRANTY DEED,  
TERMINATION OF COVENANT TO LIMIT DEVELOPMENT, and ASSIGNMENT OF  
INTEREST IN  
DEED OF CONSERVATION EASEMENT**

**DEED OF CONSERVATION EASEMENT**

Kikel Five Acre Area

**THIS DEED OF CONSERVATION EASEMENT** is made this \_\_\_ day of August, 2019, by the **TOWN OF CRESTED BUTTE**, a Colorado home rule municipality, having its address at P.O. Box 39, Crested Butte, CO 81224 (“**Grantor**”), in favor of the **CRESTED BUTTE LAND TRUST**, a Colorado nonprofit corporation, having its address at P.O. Box 2224, Crested Butte, CO 81224 (“**Grantee**”). The following exhibit is attached hereto and is incorporated by reference:

Exhibit A - Plat of Crested Butte Land Trust Kikel Property

RECITALS:

A. Grantor is the sole owner in fee simple of certain real property approximately 35.17 acres in size known as “**Kikel Parcel A**” in Gunnison County, Colorado, described and depicted on the Plat of Crested Butte Land Trust Land, Kikel Property attached hereto as **Exhibit A**, which is incorporated herein by this reference, which Plat was recorded on September 25, 2008, at Reception No. 586761 of the records of the Gunnison County, Colorado, Clerk and Recorder.

B. The real property to be encumbered by this Deed of Conservation Easement is that portion of Kikel Parcel A described as the 5-acre home site tract depicted in **Exhibit A** as the “Area of Parcel A south of the centerline of Slate River Road” referred to herein as the “**Property**”.

C. The Property possesses natural wildlife habitat, open space, agricultural, scenic and recreational values (collectively, “**Conservation Values**”) of great importance to Grantor, the people of Gunnison County, and the people of the State of Colorado. In particular, the Property contains an elk migration corridor identified by the Colorado Division of Wildlife, some wetlands, sage brush, aspen and conifer groves, summer grazing, multiple seeps and springs, terrain suitable for hiking and cross-country skiing, and important views of Paradise Divide and the upper Slate River Valley.

D. Grantor intends that the Conservation Values of the Property be preserved and protected, and that any uses be prohibited that would substantially diminish or impair the Conservation Values or that otherwise would be inconsistent with the purpose of this easement. The parties acknowledge and agree that the current land use patterns, including, without limitation, those relating to ranching existing at the time of this grant, and the use of the Property for Public Access as described herein, do not significantly impair or interfere with the Property’s Conservation Values and are consistent with purpose of this Easement.

E. Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity.

F. Grantee is a Colorado home rule municipal corporation established pursuant to

the Constitution and laws of the State of Colorado more than two years prior to the grant of this Easement as required by C.R.S. § 38-30.5-101 et seq., which provides for conservation easements to maintain land and water in a natural, scenic or open condition, for wildlife habitat, or for agricultural and other uses or conditions consistent with the protection of open land in Colorado.

G. Grantee agrees by accepting this Easement to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this and future generations.

**NOW, THEREFORE**, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Colorado, and in particular C.R.S. § 38-30.5-101 et seq., Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth (“**Easement**”).

1. **Purpose.** The purpose of this Easement is to preserve and protect the Conservation Values of the Property in perpetuity. This purpose is in accordance with §170(h) of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted pursuant thereto. To achieve this Purpose, Grantor intends to convey this Deed of Conservation Easement to Grantee to ensure that the Conservation Values of the Property will be preserved and protected forever. Subject to the purpose of this Easement, Grantor and Grantee intend to permit only uses of the Property which do not substantially diminish or impair the Property’s Conservation Values and to prevent any use of the Property that will substantially impair or interfere with protecting the Property’s Conservation Values. It is the intent of the Grantor to preserve the Property in its natural, scenic, agriculturally productive, forested, and open space condition to preserve the open space character, wildlife habitat, recreational, and scenic qualities of the Property. Notwithstanding the foregoing, nothing in this Easement is intended to compel a specific use of the Property, such as agriculture, other than the preservation and protection of the Property’s Conservation Values. Public Access is permitted on the Property, subject to the provisions of Paragraph 6, herein.

2. **Baseline Documentation Report.** The parties acknowledge that a written report will be prepared, reviewed, and approved by both parties within six months of the date of this Easement (the “**Baseline Documentation Report**”). A copy of the Baseline Documentation Report will be put on file with both parties and by this reference made a part hereof. The parties acknowledge that the Baseline Documentation Report is intended to establish the condition of the Property subject to the Easement as of the date written above, and that both parties will acknowledge in a signed statement, a copy of which will be put on file with both parties, that the Baseline Documentation Report accurately represents the condition of the Property at the time of the conveyance.

The parties further agree that, in the event a controversy arises with respect to the condition of the Property as of the conveyance date of the Easement, or compliance with or violation of any term or provision of this Easement, the parties may use the Baseline Documentation Report and

any other relevant material documents, surveys, reports, and other information to assist in resolving the controversy.

3. **Rights of Grantee.** To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:

- a. To preserve and protect the Conservation Values of the Property;
- b. To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property;
- c. To prevent or stop any activity on or use of the Property that is inconsistent with the purpose of this Easement; and
- d. To require the restoration of such areas or features of the Property that may be damaged by any inconsistent use.

4. **Reserved Rights.** Grantor reserves to itself, and to its successors and assigns, all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited or restricted herein and that do not substantially diminish or impair the Property's Conservation Values. Without limiting the generality of the foregoing, the Grantor reserves the right to engage in non-commercial, non-motorized passive recreational activities, such as horseback riding, hiking, cross-country skiing, and other similar low-impact recreational uses, to be enjoyed by the public. Specifically, without limiting other recreational uses, the parties anticipate that Grantor may allow the Crested Butte Nordic Council, a Colorado nonprofit, federally tax-exempt corporation, to use the Property for Nordic skiing for its fee paying members.

5. **Prohibited and Restricted Uses.** Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Subject to the foregoing, but without limiting the generality of the foregoing, Grantor and Grantee hereby acknowledge and agree:

a. **Development Rights.** Grantor hereby grants to Grantee all development rights except as otherwise expressly reserved by Grantor herein. The parties agree that such rights are hereby released, terminated and extinguished, and may not be used on or transferred off of the Property to any other property, adjacent or otherwise. Under no circumstances shall any portion of the Property be used for the purpose of calculating or giving credits, which result in additional density of development, or in this Easement, on or off of the Property.

b. **Construction of Buildings and Other Structures.** The construction of any building, structure or other improvement is prohibited except in accordance with Paragraphs (c), (d), and (h) below.

c. **Building Envelope.** The Grantor may designate a single one half (1/2 acre) building envelope (“**Building Envelope**”) on the Property by surveying such area, providing a copy of the survey to Grantee for its review and approval which approval shall not be unreasonably withheld, and pinning the corners of the Building Envelope.

d. **New Structures and Improvements.** After designation and approval of the Building Envelope, the Grantor may construct a residence (cabin), outbuildings and public restroom facilities within the Building Envelope which in aggregate shall ~~occupy~~ be no more than 2,000 square feet- of floor area ~~of ground area~~. Grantor shall notify Grantee at least thirty (30) days prior to any construction, and provide plans and information to Grantee to confirm that such structures comply with the terms of this Easement. In the event of the construction of a residence cabin, the Town shall transfer a payment of \$80,000 to the Town’s Open Space Real Estate Transfer Tax fund to accommodate the use of this cabin in accordance with its open space policy. The cabin shall be used only for housing, visitor information center, and open space stewardship for use by Town of Crested Butte, agents, employees, volunteers, associated with other nonprofits, or public agencies focused on open space stewardship. The design of any structures will strive to be carbon neutral. The septic system for permitted structures may be located outside of the Building Envelope. Under no circumstances shall any other building, structure or improvement, except for trails, be built on the Property, including but not limited to, athletic fields, golf courses or ranges, race tracks, airstrips, helicopter pads, or shooting ranges.

e. **Parking.** A gravel road and parking area with no winter maintenance with up to 10 -total parking spaces for the public is permitted on the Property. A parking area for the housing or use as determined by Gunnison County shall be adequate to ensure the occupancy of the structure meets any code parking requirements.

f. ~~—~~ **Stewardship Volunteer Camping.** Camping will only be allowed in the Building Envelope by volunteers or organizations involved in open space stewardship activities, provided that suitable waste and sanitary facilities are provided. No camping is allowed for the public at large.

g. **Fences.** The construction or reconstruction of any fence, except to repair or replace existing fences, the construction of new fences for purposes of reasonable and customary management of livestock and wildlife, or for separation of ownership and uses, may occur with the advance written permission of Grantee. Grantee shall give such permission within a reasonable time, unless Grantee determines that the fencing will substantially diminish or impair the Conservation Values of the Property, or unduly hinder public access, or is otherwise inconsistent with the purpose of this Easement, in which case permission shall be denied.

h. **Subdivision.** Any partition, legal or de facto division or subdivision of the Property, or title to the Property, whether by physical or legal process, is prohibited.

i. **Timber Harvesting.** Timber harvesting on the Property is prohibited. Notwithstanding the foregoing, trees may be cut to control insects and disease, to control invasive non-native species, and to prevent personal injury and property damage. Dead trees may

also be cut for firewood and other uses on the Property.

j. Mining. The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel, or any other mineral substance of any kind or description, is prohibited.

k. Paving and Road and Trail Construction. No portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other paving material. In addition, hiking, biking, equestrian and cross-country ski trails and ski-skating tracks may be constructed and maintained on the Property by Grantor or its designee after receiving the prior written consent of Grantee which consent shall not be unreasonably withheld. The approvals described in this Section 4.k. shall be given within a reasonable time, unless it is determined that the proposed activity, or the location of any trails, will substantially diminish or impair the Conservation Values of the Property or is otherwise inconsistent with the purpose of this Easement, in which case permission shall be denied.

l. Trash. The dumping or uncontained accumulation of any kind of trash or refuse on the Property, including but not limited to household trash and hazardous chemicals, is strictly prohibited.

m. Water Rights Included. There are currently no decreed water rights appurtenant to the Property. The Property includes any and all water and water rights beneficially used on the Property that are now, or in the future may be, owned by the Grantor, and all springs, reservoirs, water allotments, water shares and wells associated therewith (the "Water Rights"). The Water Rights include surface water rights and groundwater rights, whether tributary, nontributary or not-nontributary, decreed or undecreed. The parties agree that it is appropriate to include the Water Rights in this Easement pursuant to C.R.S. § 38-30.5-102. Grantor shall retain and reserve the right to use the Water Rights or that portion sufficient to maintain and improve the Conservation Values of the Property, and shall not transfer, encumber, lease, sell or otherwise separate water rights necessary and sufficient to maintain and improve the Conservation Values of the Property from title to the Property itself.

In the event that Grantor fails, after written notice from Grantee, to defend or protect the Water Rights or any portion thereof against injury or risk of abandonment, the Grantee may, but shall not be required to, assert such defenses, seek to change such Water Rights, or take any other reasonable actions at Grantee's sole cost and expense to avoid their loss or diminution or to maintain their historic use. No loss of any or all of the Water Rights through injury or abandonment, or conversion of the Water Rights as set forth above, shall be considered a severance or other transfer of the title to the Water Rights from the Property for federal or state tax or other purposes.

n. Motorized Vehicles. Motorized vehicles may be used on the Property only on the Slate River Road, or for Nordic track setting purposes, and only in a manner that does not substantially diminish or impair the Conservation Values of the Property. Off road vehicle courses for snowmobiles, all-terrain vehicles, motorcycles, or other motorized vehicles are prohibited.

o. Commercial or Industrial Activity. No commercial or industrial uses or activities shall be allowed on the Property, other than grazing or low-impact non-motorized recreational commercial uses, as long as they are consistent with the purpose of this Easement, and do not substantially diminish or impair the Property's Conservation Values. Without limiting other potential recreational commercial uses that meet the foregoing criteria, the following uses are allowed:

- 1) grazing livestock, such as cattle or horses and/or leasing pasture to third parties for grazing livestock; and
- 2) Nordic skiing or other low-impact non-motorized recreational purposes.

The foregoing descriptions of allowed commercial uses notwithstanding, feed lots and other intensive growth livestock farms, such as dairy, swine, or poultry farms, are inconsistent with the purpose of this Easement and are prohibited.

p. Signage or Billboards. No commercial signs, billboards, awnings, or advertisements shall be displayed or placed on the Property, except for appropriate and customary ranch or pasture identification signs, "for sale" or "for lease" signs alerting the public to the availability of the Property for purchase or lease, "no trespassing" signs, signs regarding the use of the Property for low impact recreational uses, and signs informing the public of the status of ownership. No signs shall significantly diminish or impair the Conservation Values of the Property.

6. Public Access. Grantor may allow the general public to have access to the Property for non-commercial, non-motorized passive recreational activities, such as horseback riding, hiking, cross-country skiing, and other similar low-impact recreational uses, as reasonably determined by the Grantor and Grantee, provided that such access and the use incident thereto do not substantially diminish or impair the Conservation Values of the Property and provided that no fee shall be paid to the Grantor for such use ("**Public Access**").

a. Recreational Purpose; Limitation on Liability. The parties expressly acknowledge that the Public Access is granted for a "recreational purpose" under C.R.S. Section 33-41-101, et. seq., and that Grantor and the Grantee are entitled to the benefits, protections and limitations on liability afforded by Colorado law governing recreational public access, including without limitation said Section 33-41-101, et. seq. By granting and permitting the Public Access, Grantor and Grantee shall have no obligation to repair, clear or otherwise maintain the Property or to insure or indemnify Grantor or Grantee or the public for any injury, claim or damage to any person or property, whether alleged to have occurred as a result of use of the Public Access for public non-motorized travel or otherwise, or due to the condition of the Public Access.

b. Insurance. Grantor agrees to add Grantee (and its successors and assigns in the ownership) as additional named insureds on any comprehensive general liability insurance policy that Grantor has, which insurance shall be maintained by the Grantor to provide protection against liability from claims arising out of the use of the Public Access. Such insurance shall be carried in amounts not less than the liability limits specified in Section 24-10-114(l) C.R.S, as it may be amended from time to time, and shall provide Grantor and Grantee, and their successors

and assigns with thirty (30) days advance written notice prior to cancellation or termination. Grantor shall, upon written request therefor from Grantee or any successor or assign, provide a Certificate of Insurance as verification of compliance with these requirements. No provisions of this Easement shall be construed or interpreted as a waiver, either express or implied, of any of the immunities, rights, benefits or protection provided to the Grantor or the Grantee under the Colorado Governmental Immunity Act Section 24-10-101, *et seq.* C.R.S. No provisions of this Easement shall be construed to limit the protections provided, as applicable, to Grantor or Grantee under Section 13-21-115 C.R.S., as it may be amended from time to time.

7. **Land Management.** To facilitate periodic communication between Grantor and Grantee about management issues that may impact the Property's Conservation Values, the Property shall be operated and managed in accordance with a land management plan prepared by Grantor and provided to Grantee, which plan shall be initially agreed upon within one year of the date of this Easement and shall be updated at least every five years.

8. **Notice of Intention to Undertake Certain Permitted Actions.** The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Easement. Whenever notice is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.

9. **Grantee's Approval.** Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantors' written request therefore. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement or would substantially diminish or impair the Conservation Values of the Property.

10. **Enforcement.** If Grantee finds what it believes is a violation of this Easement, Grantee shall immediately notify Grantor in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantor shall either: (a) restore the Property to its condition prior to the violation; or (b) provide a written explanation to Grantee of the reason why the alleged violation should be permitted. If the condition described in clause (b) above occurs, both parties agree to meet as soon as possible to resolve this difference. If a resolution of this difference cannot be achieved at the meeting, both parties agree to meet with a mutually acceptable mediator to attempt to resolve the dispute. When, in Grantee's opinion, an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values of the Property, Grantee may, at its discretion, take appropriate legal action. Grantor shall discontinue any activity that could increase or expand the alleged violation during the mediation process. Should mediation fail to resolve the dispute, Grantee may, at its discretion, take appropriate legal action. If a court with jurisdiction determines that a violation is imminent, exists, or has occurred, Grantee may get an injunction to stop it, temporarily or permanently. A court may also issue an injunction to require Grantor to restore the Property to its condition prior to the violation.

11. **Costs of Enforcement.** Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement, shall be borne by Grantor. If Grantor substantially prevails in any action to enforce the terms of this Easement, Grantor's costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantee.

12. **Grantee's Discretion.** Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

13. **Waiver of Certain Defenses.** Grantor hereby waives any defense of laches, estoppel, or prescription, including any defenses available under C.R.S. § 38-41-119, et seq.

14. **Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate injury to the Property resulting from such causes.

15. **Costs and Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including weed control and eradication and including the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

16. **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantee is authorized but in no event obligated to make or advance any payment of taxes, upon three (3) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by Grantor at the lesser of eight (8) percentage points over the prime rate of interest from time to time charged by a bank selected by Grantee or the maximum rate allowed by law.

17. **Hold Harmless.** Grantor shall hold harmless, indemnify, and defend Grantee and its elected officials, members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages,

expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the obligations specified in Paragraph 3 herein; and (3) the presence or release of hazardous or toxic substances on, under or about the Property. For the purpose of this Easement, hazardous or toxic substances shall mean any hazardous or toxic substance that is regulated under any federal, state or local law. Without limiting the foregoing, nothing in this Easement shall be construed as giving rise to any right or ability in Grantee nor shall Grantee or have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as it may be amended or recodified.

18. **Real Property Interest.** This Easement constitutes a real property interest immediately vested in Grantee. The parties stipulate that this Easement has a fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the full fair market value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of the grant. For the purposes of this Easement, the ratio of the value of the Easement to the value of the Property as unencumbered by the Easement is twenty-five percent (25%) and shall remain constant.

19. **Condemnation or Other Extinguishment.** If this Easement is taken, in whole or in part, by exercise of the power of eminent domain, or if circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Each party shall promptly notify the other party in writing when it first learns of such circumstances. Grantee shall be entitled to compensation in accordance with applicable law, after the satisfaction of prior claims, from any sale, exchange, condemnation, or other involuntary or voluntary conversion of all or any portion of the Property subsequent to such termination or extinguishment. Grantee's compensation shall be an amount equal to the Easement value as determined pursuant to Paragraph 18 above, multiplied by the amount of the full proceeds from any sale, exchange, condemnation, or other involuntary or voluntary conversion of all or a portion of the Property. Grantee shall use its proceeds in a manner consistent with its conservation purposes.

20. **Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that (a) is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, (b) is authorized to acquire and hold conservation easements under Colorado law and (c) agrees to assume the responsibility imposed on Grantee by this Easement.

21. **Subsequent transfers.** Grantor shall incorporate the terms and conditions of this

Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, except conveyance of a leasehold interest that is no longer than three years in duration and is otherwise consistent with the terms of this Easement. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least forty-five (45) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

22. **Notices.** Any notice, demand, request, consent, approval, or communication that either party is required to give to the other in writing shall be either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

Executive Director  
Crested Butte Land Trust  
P.O. Box 2224  
Crested Butte, CO 81224

To Grantee:

Town Manager  
Town of Crested Butte  
P.O. Box 39  
Crested Butte, CO 81224

or to such other address as either party from time to time shall designate by written notice to the other.

23. **Grantor's Title Warranty.** Grantor warrants that Grantor has good and sufficient title and access to the Property and hereby promises to defend the same against all claims from persons claiming by, through, or under Grantor.

24. **Subsequent Liens on the Property.** No provisions of this Easement shall be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing would be subordinated to this Easement.

25. **Recording.** Grantee shall record this instrument in a timely fashion in the official records of Gunnison County, and may re-record it at any time as may be required to preserve its rights in this Easement.

26. **General Provisions.**

a. **Controlling Law.** The interpretation and performance of this Easement

shall be governed by the laws of the State of Colorado.

b. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of C.R.S. §38-30.5-101, et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

c. Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

d. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

e. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f. Joint Obligation. If more than one owner owns the Property at any time, the obligations imposed by this Easement shall be joint and several upon each of the owners.

g. Non-Merger. No merger shall be deemed to have occurred hereunder or under any documents executed in the future affecting this Easement, unless the parties expressly state that they intend a merger of estates or interests to occur.

h. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns and shall continue as a servitude running in perpetuity with the Property.

i. Termination of Rights and Obligations. Provided a transfer is permitted by this Deed, a party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

j. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

k. No Third Party Beneficiaries. This Easement is entered into by and between Grantor and Grantee, and is solely for the benefit of Grantor, Grantee, and their respective successors and assigns for the purposes set forth herein, and does not create rights or responsibilities in any third parties beyond Grantor and Grantee.

l. Amendment. If circumstances arise under which an amendment to or modification of this instrument would be appropriate, Grantor and Grantee are free to jointly amend this instrument; provided that no amendment shall be allowed that will affect the qualifications of this Easement under any applicable laws. Any amendment must be consistent with the purpose of this Easement and shall not affect its perpetual duration. Any amendment must be in writing, signed by both parties, and recorded in the official records of Gunnison County.

m. Change of Conditions. A change in the potential economic value of any use that is prohibited by or inconsistent with this Easement, or a change in any current or future uses of neighboring properties, shall not constitute a change in conditions that makes it impossible or impractical for continued use of the Property for conservation purposes and shall not constitute grounds for terminating the Easement.

n. Authority to Execute. Each party represents to the other that such party has full power and authority to execute, deliver, and perform this Easement, that the individual executing this Easement on behalf of said party is fully empowered and authorized to do so, and that this Easement constitutes a valid and legally binding obligation of said party enforceable against said party in accordance with its terms.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF Grantor and Grantee have executed this Deed of Conservation Easement on the day and year first written above.

**GRANTOR:**

CRESTED BUTTE LAND TRUST,  
a Colorado nonprofit corporation

By:\_\_\_\_\_

Its:\_\_\_\_\_

**ATTEST:**

\_\_\_\_\_

\_\_\_\_\_, Secretary

STATE OF COLORADO    )  
  ) ss.  
County of Gunnison    )

The foregoing Deed of Conservation Easement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by \_\_\_\_\_ as \_\_\_\_\_ and \_\_\_\_\_ as Secretary of the Crested Butte Land Trust, a Colorado nonprofit corporation.

Witness my hand and official seal.

[SEAL]

\_\_\_\_\_  
Notary Public  
My commission expires:\_\_\_\_\_



EXHIBIT A  
Plat of Property  
(attach)

**ASSIGNMENT OF INTEREST IN  
DEED OF CONSERVATION EASEMENT**

Kikel/Town-CBLT

THIS ASSIGNMENT OF INTEREST IN DEED OF CONSERVATION EASEMENT (the “**Assignment**”) is entered into this \_\_\_\_ day of August, 2019, by and between:

- (i) **TOWN OF CRESTED BUTTE**, a Colorado home rule municipality, the address of which is P.O. Box 39, Crested Butte, Colorado 81224 (the “**Town**” or the “**Assignor**”); and
- (ii) **CRESTED BUTTE LAND TRUST**, a Colorado nonprofit corporation, the address of which is P. O. Box 2224, Crested Butte, Colorado 81224 (“**CBLT**” or the “**Assignee**”).

**RECITALS**

- A. CBLT conveyed to the Town the Deed of Conservation Easement recorded December 19, 2008 as Reception No. 588208 of the records of the Clerk and Recorder of Gunnison County, Colorado (the “**Conservation Easement**”), encumbering the real property described on **Exhibit A** attached hereto and incorporated herein (“**Property**”).
- B. Assignment of Assignor’s interest is permitted in Paragraph 20 of the Conservation Easement specifically “to the Crested Butte Land Trust, a Colorado nonprofit corporation, provided that is not the owner of the Property at the time of such assignment”.
- C. Immediately prior to this Assignment of Interest in Conservation Easement, CBLT has sold its fee interest in the Property encumbered under the Conservation Easement to the Town.
- D. The Town, as the Assignor, now wishes to assign its interest in the Conservation Easement to CBLT, as the Assignee, so that the Town becomes the Grantor under the Conservation Easement and CBLT becomes the Grantee under the Conservation Easement.
- E. Assignee (1) is a qualified organization under Section 170(h) of the Internal Revenue Code of 1986, as amended; (2) is authorized to acquire and hold conservation easements under Colorado law; (3) agrees to assume the responsibility imposed on Grantee by the Conservation Easement.
- F. Assignee has executed this Assignment as Assignee of the interest of Assignor under the Conservation Easement and, by this Assignment, accepts the assignment of the interest of Assignor in the Conservation Easement.

## AGREEMENT

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00), the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment. Assignor hereby assigns and transfers all of its rights and obligations as Grantee under the terms of the Conservation Easement to Assignee.
2. Acceptance of Assignment. Assignee hereby accepts the assignment of the rights and obligations of Assignor as Grantee under the Conservation Easement and agrees to carry out the conservation purposes that the Conservation Easement was originally intended to advance.
3. Release. Assignor is hereby released from any and all obligations and liability as Grantee under the terms of the Conservation Easement for all events arising after this Assignment. Assignee is hereby released from any and all obligations and liability as Grantee under the terms of the Conservation Easement for events arising prior to the date of this Assignment.
4. Recitals. The Recitals above are an integral part of this Agreement and incorporated into this Agreement.
5. Notices. Any notice to be provided under Paragraph 22 of the Conservation Easement shall be provided as follows:

To the Grantor:

Town Manager  
Town of Crested Butte  
P.O. Box 39; Crested Butte, CO 81224

To the Grantee:

Executive Director  
Crested Butte Land Trust  
P.O. Box 2224, Crested Butte, CO 81224

To the Board:

Executive Director  
State Board of the Great Outdoors Colorado Trust Fund  
1900 Grant St., Suite 725, Denver, CO 80203





**EXHIBIT A**

Parcel A, Crested Butte Land Trust, Kikel Property, according to the Plat recorded September 25, 2008 as Reception No. 586761, County of Gunnison, State of Colorado, excluding the 5-acre home site tract shown in Exhibit A of the Conservation Easement as the “Area of Parcel A south of the centerline of Slate River Road” (the “Five-Acre Area”).

## TERMINATION OF COVENANT TO LIMIT DEVELOPMENT

Kikel/Town-CBLT

THIS TERMINATION OF COVENANT TO LIMIT DEVELOPMENT (the “**Termination**”) is made and entered into this \_\_\_\_ day of August, 2019, by and between **CRESTED BUTTE LAND TRUST**, a Colorado nonprofit corporation, the address of which is P. O. Box 2224, Crested Butte, Colorado 81224 (“**CBLT**”) and the **TOWN OF CRESTED BUTTE**, a Colorado home rule municipality, the address of which is P.O. Box 39, Crested Butte, Colorado 81224 (the “**Town**”).

### RECITALS

- A. CBLT is the owner of Parcel A, Crested Butte Land Trust, Kikel Property, according to the Plat recorded September 25, 2008 as Reception No. 586761, County of Gunnison, State of Colorado (“**Parcel A**”)
- B. The Covenant to Limit Development was granted by CBLT as the owner of Parcel A for the benefit of the Town, and was recorded December 19, 2008 as Reception No. 588210 (the “**Covenant**”). The Covenant encumbers the five acre portion of Parcel A that lies south of the centerline of Slate River Road (the “**Five Acre Area**”),
- C. CBLT and the Town have entered into a contract for the sale of all of Parcel A from CBLT to the Town. As part of this agreement, CBLT and the Town have agreed to (i) terminate the Covenant encumbering the Five Acre Area, and (ii) permanently protect the Five Acre Area by a Deed of Conservation Easement to be granted from the Town to CBLT immediately upon completion of the conveyance of Parcel A from CBLT to the Town.
- D. CBLT, as the owner of Parcel A and the Grantor of the Covenant, and the Town, as the Grantee of the Covenant, now wish to terminate the Covenant.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The Covenant is hereby terminated and is of no further force and effect.
2. The Recitals above are an integral part of this Agreement and incorporated into this Termination agreement.

**CBLT:**

CRESTED BUTTE LAND TRUST,  
a Colorado nonprofit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF GUNNISON        )

The foregoing document was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_ as \_\_\_\_\_ of Crested Butte Land Trust, a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public



## SPECIAL WARRANTY DEED

(Kikel Parcel A/ CBLT-Town)

**CRESTED BUTTE LAND TRUST**, a Colorado nonprofit corporation (“**Grantor**”), the address of which is P. O. Box 2224, Crested Butte, Colorado 81224, for and in consideration of Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants, bargains, sells and conveys to the **TOWN OF CRESTED BUTTE**, a Colorado home rule municipality (“**Grantee**”), the address of which is P.O. Box 39, Crested Butte, Colorado 81224, all of that certain real property, together with improvements, if any, situate, lying and being made in Gunnison County, State of Colorado, described as follows (the “**Property**”):

Parcel A, Crested Butte Land Trust, Kikel Property, according to the Plat recorded September 25, 2008 as Reception No. 586761, County of Gunnison, State of Colorado,

together with all of its appurtenances, and warrants title against all and persons claiming under the Grantor, subject to the following:

- (1) Reservations contained in the United States Patent recorded April 13, 1905 in Book 101 at Page 343 and in the United States Patent recorded April 15, 1905 in Book 101 at Page 344;
- (2) An undivided 1/2 interest in all coal, oil, gas and other minerals underlying the surface as reserved in Warranty Deed recorded January 26, 1973 in Book 449 at Page 102 and any assignments thereof or interests therein;
- (3) All matters shown on the Plat of Kikel Land recorded November 2, 2006 as Reception No. 570597, Ratification and Amendment of Plat recorded November 17, 2006 as Reception No. 571071 and Second Amendment to Plat recorded May 23, 2007 as Reception No. 575523;
- (4) All matters shown on the Plat of Crested Butte Land Trust Land, Kikel Property recorded September 25, 2008 as Reception No. 586761, Ratification of Plat recorded December 19, 2008 as Reception No. 588207;
- (5) Deed of Conservation Easement recorded December 19, 2008 as Reception No. 588208, and any and all assignments thereof or interests therein;
- (6) Ordinance by the Town of Crested Butte authorizing the Town to hold two Deeds of Conservation Easement recorded December 23, 2008 as Reception No. 588261;
- (7) Easement and right of way for County Road 734;
- (8) Matters which a correct survey would disclose; and
- (9) Real property taxes for 2019, a lien not yet due and payable.





## Staff Report

August 19, 2019

**To:** Mayor and Town Council  
**From:** Dara MacDonald, Town Manager  
**Subject:** Draft 2019 Intergovernmental Agreement between the Town of Crested Butte and Gunnison Watershed School District RE-1J

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**Summary:** The Town and School District are close to finalizing an updated Intergovernmental Agreement.

**Background:** The Town and School District first entered into an IGA in 1996 when the Town transferred land to the school district where the current CBCS campus is located. The 1996 IGA was replaced with the 2009 IGA at the time the Town transferred additional lands to the School District to accommodate the additions to the campus that were subsequently constructed. Both IGAs required BOZAR review and approval of any improvements to the campus. The 2009 IGA has a term of 30 years.

The School District notified the Town in November of 2018 that they wanted to invoke the review provision in the 2009 IGA. Staff quickly determined that it would be appropriate to create a new IGA rather than try and make extensive amendments to the 2009 IGA. This is largely due to the extent of content in the 2009 IGA devoted to the school addition pending at that time and the relocation of Tommy V field. Since both of these projects have been completed it made sense to move on and operate under an IGA that specifically addresses current issues while acknowledging the past cooperative efforts.

In June, 2019 the Town cooperatively with the School District invoked the dispute resolution provision of the 2009 IGA. This was primarily to address the concerns of both parties with BOZAR review of projects on the CBCS campus along with a few more minor issues like parking lot maintenance. The dispute resolution subcommittee held two meetings and reached consensus on recommendations for both the School Board and the Town Council. The attached document is a close to final version that staff would recommend for approval.

There are still a few details being worked through between legal counsel which the Town Attorney can review if Council would like at the meeting. Unfortunately, due to vacations John has not been able to connect completely with the school's counsel in advance of the packet deadline. The outstanding issues are noted as follows:

First, in paragraph 7.B.4, is the intent here not to allow "any camping or recreational vehicles" at any time of day? Or, is the intent to prohibit such vehicles from parking overnight in this parking lot? If it is the latter, then we should probably just say that.

Second, the language of Paragraph 18 states that the Agreement shall be "terminated" in the event funds are not appropriated in the current fiscal year for a financial obligation. The primary payments of funds I see happening in the future would have to do with parking lot maintenance costs. I am wondering if it is really a good idea to terminate the Agreement in such circumstances, or whether it is better to state that such party will not have to make a payment of such until funds are available in the ensuing fiscal year.

Third, in Paragraph 24.K., do you think it makes sense to add e-mails to the other forms of giving notice? I added language to Paragraph 24.T. to allow for e-mail reproductions of the Agreement to be binding on the parties just like facsimile reproductions. So, it seemed to make sense to allow for e-mail notices as well.

Otherwise staff finds that the proposed IGA is ready for public and Council consideration. After Council discussion on August 19<sup>th</sup>, if Council is comfortable with the agreement it would be on the September 3<sup>rd</sup> agenda for adoption.

The School District met and reviewed this draft on August 12<sup>th</sup>. They had a favorable review with some minor edits. Unfortunately, due to the district's internet and email issues this week, they have not been able to provide those minor changes for inclusion in the Council packet. They plan to schedule adoption of the IGA for consideration at their meeting on September 9<sup>th</sup>.

**Recommendation:** Staff recommends the Council review the proposed agreement and address and questions for staff and the Town Attorney at the meeting on August 19<sup>th</sup>. Once the Council has reviewed and suggested changes direct that it be included on the Sept 3<sup>rd</sup> agenda for consideration of adoption.

## INTERGOVERNMENTAL AGREEMENT

This **INTERGOVERNMENTAL AGREEMENT** (“**Agreement**”) is entered into by and between the **TOWN OF CRESTED BUTTE, COLORADO** (the “**Town**”), a Colorado home rule municipality, and the **GUNNISON WATERSHED SCHOOL DISTRICT RE-1J** (the “**School District**”), a Colorado public school district. This Agreement shall be effective as of [DATE], 2019 (the “**Effective Date**”) and replace and supersede the Parties’ “Intergovernmental Agreement” dated May 11, 2009 (the “**2009 Agreement**”).

### RECITALS:

WHEREAS, the School District owns certain real property located in the Town at 818 Red Lady Avenue, Crested Butte, Colorado 81224, and more particularly described on **Exhibit A**, attached hereto, on which it operates the Crested Butte Community School, a public school and related facilities for the residents of the Town, Gunnison County, and adjacent counties (the “**School Site**”); and

WHEREAS, the Town is a home rule municipality that owns and operates a system of parks and recreational facilities for residents of and visitors to the Town and Gunnison County; and

WHEREAS, the School District obtained the School Site through two previous Intergovernmental Agreements dated May 21, 1996 and May 11, 2009 under which the Town conveyed certain real property to the School District, the School District conveyed certain real property to the Town, the School District constructed a K-12 school facility now known as the Crested Butte Community School, the School District relocated the Tommy Villanueva Field to accommodate an expansion of the Crested Butte Community School and, among other things, the parties agreed upon terms and conditions for the ongoing maintenance and coordinated joint use of the building and grounds at the School Site;

WHEREAS, to better serve the residents of and visitors to the Town and Gunnison County, the Town and the School District desire to continue their partnership in the joint maintenance and use of their respective facilities; and

WHEREAS, the Town and the School District are authorized by C.R.S. § 29-1-203 to cooperate or contract with each other to provide any function, service, or facility.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants, agreements, conditions and obligations contained herein, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### AGREEMENT:

1. **Incorporation of Recitals.** The Recitals are incorporated herein by this reference.
2. **Termination.** The 2009 Agreement is hereby terminated as of the Effective Date and shall be of no further force and effect.
3. **Definitions.**
  - A. **“District Designee”** means the Superintendent of the School District or designee.
  - B. **“Town”** has the meaning set forth in the Recitals and includes the Town’s employees, agents, guests, invitees, citizens, and residents.
  - C. **“School District”** has the meaning set forth in the Recitals and includes the School District’s employees, agents, guests, invitees, and students.
  - D. **“Town Designee”** means the Town Manager or designee.
  - E. **“School Facilities”** means the following facilities located at the School Site.
    - (1) The two gymnasiums (the **“Gymnasium”**).
    - (2) Multi-purpose room (the **“MPR”**).
    - (3) Playground (the **“Playground”**).
    - (4) Soccer field (the **“Soccer Field”**).
  - F. **“School Parking Lot”** means the parking area located south of Red Lady Avenue at the School Site as depicted on **Exhibit “B”**, attached hereto and incorporated by this reference.
  - G. **“School Site”** has the meaning set forth in the Recitals.
  - H. **“Town Facilities”** means the real property and related facilities located in the Town at the following addresses:
    - (1) Rainbow Park, 300 8<sup>th</sup> Street (**“Rainbow Park”**)
    - (2) Town Park, between 6<sup>th</sup> and 7<sup>th</sup> Street from Elk Avenue to Red Lady Avenue (**“Town Park”**)
    - (3) Gothic Field, 522 Gothic Avenue (**“Gothic Field”**)

- (4) Big Mine Park, 620 2<sup>nd</sup> Street (“**Big Mine Park**”)
- (5) Town Hall, 507 Maroon Avenue (“**Town Hall**”)
- (6) Tommy Villanueva Field, (“**Tommy V Field**”)

I. “**Pond License Area**” means the pond area depicted on **Exhibit “C”**, attached hereto and incorporated by this reference.

#### 4. Use and Maintenance of School Facilities.

A. Subject to Section 4(B), the School District grants to the Town a non-exclusive license to use the School Facilities for Town-sponsored programs and activities (the “**School Facilities License**”) during the term of this Agreement. The Town’s use of the School Facilities shall be in accordance with applicable law and School District rules.

B. The School District shall have priority use of the School Facilities. The District Designee and the Town Designee shall coordinate regularly and in good faith to schedule the use of the School Facilities. The School District shall make the School Facilities available to the Town for its recreational programs or other activities at no cost or expense to the Town except as provided in this Agreement. To the extent possible, fall schedules shall be completed on or before August 1, winter schedules shall be completed on or before October 1, spring schedules shall be completed on or before February 1, and summer schedules shall be completed on or before April 15 of each calendar year. Requested schedule changes to Town use of School Facilities after the above stated dates shall be agreed upon in writing by both parties.

C. The School District, at School District’s cost and expense, shall maintain the School Facilities in accordance with applicable law and School District policy; provided, however, that the School District shall not be obligated to prepare School Facilities for Town use, conduct special snow removal operations for Town events, or otherwise conduct maintenance activities at times outside of those regularly scheduled for school operations and activities.

D. The Town assumes full responsibility for the acts and conduct of all persons admitted to the School Facilities by the Town or by or with consent of any person acting for or on behalf of the Town.

E. The School District agrees to make the School Facilities available to the public and community groups in accordance with the School District's Community Use Policy attached hereto as **Exhibit “D”**. The School District’s Community Use Policy may be modified and amended from time to time.

#### 5. Use and Maintenance of Town Facilities.

A. Subject to Section 5(B), the Town grants to the School District a non-exclusive license to use the Town Facilities for School-sponsored programs and activities, and for

emergency evacuations, shelter, and reunifications (the “**Town Facilities License**”). The School District’s use of the Town Facilities shall be in accordance with applicable law and Town rules.

**B.** The Town shall have priority use of the Town Facilities.

**C.** The Town, at Town’s cost and expense, shall maintain the Town Facilities in accordance with applicable law and Town rules; provided, however, that the Town shall not be obligated to prepare facilities for School District’s use or conduct special snow removal operations for School District activities or otherwise conduct maintenance activities at times outside of those regularly scheduled for Town operations and activities. The Town shall make the Town Facilities available to the School District for the uses stated herein at no cost or expense to the School District except as provided in this Agreement. The District Designee and the Town Designee shall coordinate regularly and in good faith to schedule the use of the Town Facilities. To the extent possible, fall schedules shall be completed on or before August 1, winter schedules shall be completed on or before October 1, spring schedules shall be completed on or before February 1, and summer schedules shall be completed on or before April 15 of each calendar year. Requested schedule changes to Town use of School Facilities after the above stated dates shall be agreed upon in writing by both parties.

**D.** The School District assumes full responsibility for the acts and conduct of all persons admitted to the Town Facilities by the School District or by or with consent of any person acting for or on behalf of the School District.

#### **6. Use of Town Pond; Snow Storage.**

**A.** The Town hereby grants to the School District a revocable license (the “**Pond License**”) to allow the School District to use, operate and maintain the water pond on the Pond License Area. The Pond License shall include a license for ingress and egress to the Pond License Area for purposes of maintenance, operation and use. The Town may revoke the Pond License at any time for any reason upon sixty (60) days’ written notice to the School District; provided that if the Town so revokes the Pond License, the Town shall (i) find an alternate location for the pond on Town property, (ii) the Town either by itself or through contract shall so relocate the pond, (iii) all costs and expenses associated with such pond relocation shall be borne by the Town, and (iv) the Town shall see to it that any such relocation of the pond shall retain the viability of LEED points associated with said pond. Any relocation of the pond will minimize to the greatest extent possible any interruption of use of the pond.

**B.** The Town hereby grants to the School District a revocable license (the “**Snow Storage License**”) to allow the School District to store snow on the real property described on **Exhibit “E”** (the “**Snow Storage License Area**”) attached hereto. The Town may revoke the Snow Storage License on sixty (60) days’ written notice to the School District at any time after the Town has entered into a contract to construct structures on such location as part of the construction of recreation facilities on such location; provided that if the Town so revokes the

Snow Storage License, then the parties shall cooperate in good faith to find another area suitable for the School District's snow storage.

## 7. Use and Maintenance of School Parking Lot.

A. Subject to Section 7(B), the School District grants to the Town a non-exclusive license to use the Parking Lot for (i) Town permitted special events and activities taking place at Town Park or the Center for the Arts and (ii) public parking (the "**Parking License**").

B. The School District shall have priority use of the School Parking Lot at all times. The District Designee and the Town Designee shall coordinate regularly and in good faith to schedule the Town's use of the Parking Lot. The Town's use of the Parking Lot pursuant to this Parking License shall be subject to the following additional restrictions:

- (1) No overnight parking by Town users shall be allowed.
- (2) Town users shall park on a "first come, first served" basis.
- (3) Vehicles determined by the School District to be abandoned shall be towed at the owner's expense.
- (4) No camping or recreational vehicles shall be allowed.

C. The School District shall not be obligated to prepare the School Parking Lot or conduct special snow removal operations for Town events or use or otherwise conduct maintenance activities at times outside of those regularly scheduled for school operations and activities. If the Town schedules use of the lots during weekends or school breaks during the winter, the Town shall be responsible for snow removal if such removal is warranted. Otherwise the Town is not responsible for snow removal on the School Parking Lot.

D. The Town, at Town cost and expense, shall conduct annual sweeping and routine crack sealing of the School Parking Lot ("**Town Maintenance**"). Crack sealing of the School Parking Lot will take place at such times as the Town is performing this maintenance on Town streets. Subject to Section 7.C, the School District, at School District cost and expense, shall remove snow from the School Parking Lot ("**School Maintenance**"). Except for the Town Maintenance and School Maintenance, the School District and the Town shall share in the annual maintenance of the School Parking Lot, which shall be performed by the School District and shall include, but not be limited to, paving and resurfacing the School Parking Lot ("**Joint Maintenance**"). The School District shall be responsible for seventy percent (70%) of the Joint Maintenance costs and the Town shall be responsible for the remaining thirty percent (30%) of such costs. This allocation of costs may be revisited on an annual basis to ensure that it is commensurate with the burdens and quantity of use placed upon the School Parking Lot by the Town and the School District.

**E.** The School District will use reasonable efforts to schedule maintenance and upkeep in a manner that does not unreasonably interfere with the Town's use of the School Parking Lot; provided, however, that Town acknowledges and agrees that maintenance and upkeep will primarily take place during the School District's summer break.

**F.** On or before June 30 of each year, the School District shall invoice the Town for the Town's portion of the Parking Lot Maintenance Costs in accordance with Section 21.

**8. Access to Wetlands.** The parties agree that the School District shall have limited access to the wetlands which lie to the north of the School Site for educational purposes only and that such access shall be by Town designated access only.

**9. Halazon Ditch.** The Town shall supply raw water from the Halazon Ditch for the school's irrigation of the playing field located between the school and SH 135. The Town shall remain responsible for the Halazon Ditch and the School District is responsible for all distribution and irrigation infrastructure from the point of discharge from the Ditch. This does not constitute the conveyance of a water right from the Town to the School District.

**10. Control of Facilities Use.** Each party shall be responsible for adopting and implementing use policies and/or rules and regulations for its own facilities and for providing a copy of relevant use policies to the other party. When violations of use policies and/or rules and regulations occur, the facility owner shall immediately notify the other party in writing. Either party, upon formal action by its governing board, may cease or modify the use of one or more of the facilities that are subject to this Agreement. The parties acknowledge and agree that failure to abide by existing use policies may result in termination of the license to use the particular facility.

**11. Supervision of User Programs.** Each party is responsible for establishing its own programs and activities and for providing qualified staff to supervise such programs or activities in the facilities licensed under this Agreement.

**12. Insurance.**

**A.** The School District shall procure and maintain general liability insurance, including property damage liability, with a single combined liability limit of \$1,000,000, insuring against all liability of the School District and its directors, officers, employees, and agents arising out of or in connection with the School District's use of the Town Facilities and the Town Pond or the acts or omissions of the School District or its employees or agents at the Town Facilities or the Town Pond. The Town shall be named as an additional insured on the policy.

**B.** The Town shall procure and maintain general liability insurance, including property damage liability, with a single combined liability limit of \$1,000,000, insuring against all

liability of the Town and its directors, officers, employees, and agents arising out of or in connection with the Town's use of the School Facilities and the Parking Lot or the acts or omissions of the School District or its employees or agents at the School Facilities or the Parking Lot. The School District shall be named as an additional insured on the policy.

**13. Ski Route.** The School District shall, at its sole cost and expense, and after good faith consultation with the Crested Butte Nordic Center (the "**Nordic Center**"), designate and mark for public use a cross country ski route (the "**Ski Route**") across the School Site. This Section 13 shall not obligate the School District to maintain or groom a ski track or trail along the Ski Route at its expense. The School District shall consult with the Nordic Center annually during the term hereof regarding any changes in location and use of the Ski Route and the allocation of responsibilities for the regulation, grooming and maintenance of a ski track or trail along such designated Ski Route.

**14. School Site Redevelopment.** The School District acknowledges and agrees that the Town, acting through the Board of Zoning and Architectural Review ("**BOZAR**") has a legitimate interest in ensuring that development within the Town proceeds in an orderly manner that preserves the historical features and character of the Town. The Town acknowledges and agrees that the Board of Education of the School District has a fiduciary responsibility to use public funds to provide, among other things, safe, secure, and functional educational facilities that maximize educational programming for the benefit of the school community. Though the School District has the right to redevelop the School Site in accordance with C.R.S. § 22-32-124, the School District agrees to apply to BOZAR in accordance with the Town Municipal Code prior to the construction of any structure or building on the School Site.

All new improvements shall be subject to the architectural and design review and approval process of BOZAR. The Town shall not charge application fees to the School District for costs or expenses associated with BOZAR approvals including, without limitation, the costs of any subdivision, re-zoning, architectural and building review, and any other land and development planning and approvals or otherwise in connection with any improvements. The Town accepts that in 2019 the School District has made a substantial investment in affordable housing through the purchase of two housing units at 919 and 921 Teocalli Ave. During the initial 10-year term of this Agreement, the 2019 purchase shall satisfy any requirement for additional payment or units that would otherwise be required by the Town under its Resident-Occupied Affordable Housing Regulations. To the extent practicable, BOZAR shall expedite the application review process.

**15. Coordination of Construction Activities.** For any future improvements on the School Site work shall be closely coordinated with the Town in order to minimize the disruption of pedestrian and vehicular ingress and egress to Tommy V. Field, the Town Bike Park, the Town gravel pit, the "Deli Trail" and other Town property caused by the improvements work. All staging, mobilization, demobilization and storage for any improvements, including, without

limitation, any demolition or renovations, to the existing CBCS School Site, shall be located entirely on the School Site and not on Town property unless otherwise permitted by the Town in writing.

**16. Traffic Mitigation.**

**A. Future Improvements at Intersection of SH 135 and Red Lady.** If at some future date the Town elects to address traffic and pedestrian issues on SH 135 (including the interchange with Red Lady Avenue) and/or on Red Lady Avenue, the School District shall work in good faith and cooperatively with the Town to assist the Town in such endeavors. If at some future date the School District elects to redevelop the School Site and such redevelopment plans result in the Colorado Department of Transportation requiring improvements at the interchange of SH 135 and Red Lady Avenue, the Town shall work in good faith and cooperatively with the School District to assist the School District in such endeavors. All such efforts shall be coordinated between the parties.

**B. Pedestrian, Bicycle and Vehicle Circulation.** The parties are committed to ensuring a safe environment for the surrounding neighborhood and for all users to access the School Site. The Town and School District will continue to coordinate in good faith and cooperative efforts to improve safety and access.

**17. Term.** The term of this agreement (the “Term”) shall commence upon the Effective Date and shall terminate ten (10) years from such date, unless earlier terminated by mutual agreement of the Parties. Every five (5) years commencing on the fifth (5<sup>th</sup>) anniversary of the Effective Date, the parties shall jointly review the terms of this Agreement and the parties’ performance in connection herewith during such period and to the extent that a party has good faith concerns regarding any such terms or performance, the parties shall work cooperatively in good faith to address such party’s concerns, whether through modification, extension or amendment of this Agreement or otherwise. This Agreement shall automatically renew for successive five-year terms unless one party notifies the other party of its intent to non-renew this Agreement no later than one hundred eight (180) days prior to expiration, of the current term.

**18. Nonappropriation.** Any 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 the event funds are not appropriated, budgeted or otherwise made available, this Agreement shall be terminated on the last day of the period for which funds were appropriated or monies made available for such purposes.

**19. Compliance with Law.** Each party shall abide by all laws, ordinances, rules, regulations, and orders of all governmental agencies or authorities having jurisdiction over the facilities that are the subject of this Agreement. Each party shall abide by the other party’s policies and procedures, including without limitation, those related to the prohibited use and/or possession of alcohol, tobacco or firearms, applicable to the facilities that are the subject of this

Agreement.

**20. Dispute Resolution.** Without limiting any other the right and remedy of the Town or the District under this Agreement, in the event that the Town and the School District are unable to agree upon the rights and obligations of the parties with respect to any matter of this Agreement, the matter in dispute shall be submitted to the Town Council, through the Town Manager, and the School District's Board of Education through the Superintendent of Schools, who shall attempt to negotiate a resolution of the differences between the parties in such a manner as they may deem appropriate. If the Town and the School District are unable to reach a settlement within a reasonable amount of time, not to exceed sixty (60) days from the date a party first submits a request to the other party to initiate negotiations as to any dispute, either or both of the parties may pursue the matter at issue in a court of competent jurisdiction.

**21. Payment and Audit.** In the event that there are any amounts that are reimbursable or that become due and owing to either party to the other under this Agreement, all such amounts shall be set forth in an invoice to the party owing such amount in accordance with the terms and conditions set forth herein. All invoices submitted pursuant to this Section shall detail the items for which a reimbursable amount is attributable and shall include all reasonably necessary supporting documentation. Unless otherwise agreed to by the Town and the School District, all amounts owed under this Agreement shall be payable in U.S. Dollars. Undisputed invoices submitted shall be paid by the party receiving same within twenty (30) calendar days of receipt of the invoice. Invoices not paid within such twenty (30) days shall incur interest at an annual rate of twelve percent (12%) for each day such amounts remain unpaid. Invoices shall be sent to a party at the address set forth for such party in the notice provision below or to such other address as may be specified by such party by written notice. Notwithstanding the foregoing, the parties shall each at all times maintain a system of accounting in accordance with its normal procedures, together with supporting documentation, for all reimbursable costs and expenses incurred. For two (2) years following any payment that has been made pursuant to this Section 21, each party shall make available for audit and reproduction by the other party at reasonable times during regular business hours all records, in whatever form, related to any reimbursable expenses contemplated in this Agreement.

**22. Indemnification.**

**A.** Except and only to the extent that coverage is available and being applied by the indemnifying party's insurer pursuant to Section 12 of this Agreement, and to the extent permitted by applicable law, each party shall defend, indemnify and hold harmless the other from and against any and all third party actions, claims, suits, liabilities and losses, including all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such third party claim or action or proceeding (collectively "**Claims**") arising from or related to the negligent or intentional acts or omissions of the indemnifying party in its activities and programs upon the licensed facilities or otherwise attributable to its use of the licensed contemplated under this Agreement.

**B.** Except and only to the extent that coverage is available and being applied by the indemnifying party's insurer, and to the extent permitted by applicable law, each party shall defend, indemnify and hold harmless the other party from and against any and all Claims suffered or incurred on account of any breach by such party, or any of its contractors, subcontractors, independent contractors, suppliers, officers, agents, employees, elected officials or servants of any covenant, agreement, term or condition set forth in this Agreement.

**C.** Nothing contained herein shall limit the parties' protections under and by virtue of the Colorado Governmental Immunity Act, § 24-10-101, *et. seq.*, C.R.S., or any other rights, protections, immunities, defenses or limitations on liability afforded under law or principles of equity.

**23. Memorandum of Agreement.** The Town may, at its expense, record this Agreement or a mutually acceptable memorandum of this Agreement in the official real property records of the Clerk and Recorder of Gunnison County, Colorado.

**24. Miscellaneous.**

**A. Further Assurances; Cooperative Arrangement.** The Town and the School District shall execute and deliver all other appropriate supplemental agreements and other instruments, and take any other action necessary to make this Agreement and any of the transactions contemplated herein fully and legally effective, binding and enforceable as between them and as against third parties. The parties agree that as respects all transactions contemplated in this Agreement they shall use best good faith efforts to work cooperatively together.

**B. No Third Party Beneficiary.** This Agreement is intended only to benefit the parties hereto. There shall be no third party beneficiaries to this Agreement.

**C. No Waiver.** The waiver of any of the terms and conditions of this Agreement on any occasion or occasions shall not be deemed a waiver of such terms and conditions on any future occasion.

**D. Successors and Assigns.** This Agreement shall be binding on and inure to the benefit of the Town and the School District and their respective successors and permitted assigns.

**E. No Assignment.** Neither party may assign all or any portion of this Agreement without the prior written approval of the other party. Any such attempted assignment without such prior approval shall be void *ab initio*.

**F. Governing Law; Venue.** This Agreement is executed pursuant to, and shall be construed under and governed exclusively by, the internal laws of the State of Colorado. Venue in any dispute that proceeds to litigation shall be the District Court for the State of Colorado located in Gunnison County, Colorado.





**P. Time of the Essence.** Time is of the essence in this Agreement and the parties' performance of the obligations and transactions contemplated in this Agreement and the parties shall work diligently and in good faith to conclude the same as contemplated herein.

**Q. Survival.** Any rights, remedies, covenants, conditions, representations, warranties and agreements contained in this Agreement of an ongoing nature and/or which, by their nature and context, should reasonably be expected to survive the expiration or earlier termination of this Agreement, shall so survive such expiration or termination hereof. Any provisions that are expressly stated to survive the expiration or termination of this Agreement shall be enforced accordingly.

**R. Authority.** The execution of this Agreement has been duly authorized, executed and delivered and constitutes the legal, valid, and binding obligation of the parties enforceable in accordance with the terms hereof.

**S. No Conflict.** Neither the consummation of the transactions contemplated by this Agreement to be performed by either party, nor the fulfillment of the terms and conditions of this Agreement, conflict with or will result in the breach of any of the terms or conditions of, or constitutes a default under, any agreement, indenture, instrument, undertaking, law, ordinance, regulation or other legal requirement to which either is a party or by which either or its assets is bound.

**T. Counterparts; Facsimile.** This Agreement 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 this Agreement and any terms and conditions contained herein, facsimile or e-mail reproductions shall be deemed to be original documents.

**U. Force Majeure.** Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, acts of war or terrorism, inability to obtain services, labor, or materials or reasonable substitutes therefor, civil commotions, fire or other casualty, or other causes or events beyond the reasonable control of the party obligated to perform (other than denial or withholding of approval by a party having the right to deny or withhold approval under this Agreement) (individually and collectively, "Force Majeure") shall, notwithstanding anything to the contrary contained in this Agreement, excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Agreement specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by Force Majeure. For purposes hereto, a cause shall not be deemed beyond a party's control if it is within the reasonable control or expectation (or should have been expected) of such party's elected officials, directors, partners, officers, agents, employees, contractors, independent contractors, subcontractors or representatives.

**[Signature Page(s) To Follow]**

**IN WITNESS WHEREOF**, the Town and the School District, acting by and through their proper and duly authorized elected officials, directors, partners, officers or other representatives, have each duly executed this Agreement as of the date first written above.

**TOWN OF CRESTED BUTTE, COLORADO,**  
a Colorado home rule municipality

By: \_\_\_\_\_  
James A. Schmidt, Mayor

**ATTEST:**

By: \_\_\_\_\_  
Lynelle Stanford, Town Clerk

**GUNNISON WATERSHED SCHOOL DISTRICT RE1J,**  
a Colorado school district

By: \_\_\_\_\_  
LeeAnn Mick  
President, Board of Education

**ATTEST:**

By: \_\_\_\_\_  
Lisa Starkebaum  
Secretary, Board of Education

**EXHIBIT "A"**

**School Site**

**EXHIBIT “B”**

**Parking Lot**

[attach diagram here]

**EXHIBIT “C”**

**Pond License Area**

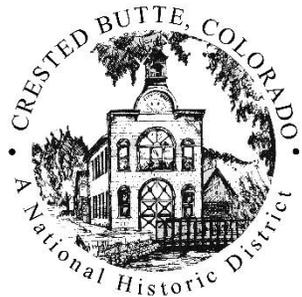
**EXHIBIT “D”**

**School District Facility Use Policy**

**EXHIBIT “E”**

**Snow Storage License Area**

[attach diagram here]



**To:** Mayor Schmidt and Town Council

**From:** Michael Yerman, Community Development Director

**Thru:** Dara Mac Donald, Town Manger

**Subject:** **Discussion on Town Affordable Housing Guidelines for Employer Rentals Units and Phase 2 Update**

**Date:** August 19, 2019

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**Background:**

The Council requested this item be brought forward for additional discussion at the August 6, 2019 Council.

The Town and Gunnison Valley Regional Housing Authority (GVRHA) began accepting applications on March 21<sup>st</sup> for the first 15 units (Phase 1) located on Block 76. This lottery was held on June 20<sup>th</sup> with 21 applicants for the 15 available units. The Town anticipated at least 40 applicants, however, only 21 applicants applied for the 15 units. Due to the lack of applicants, the staff recommended the delay of the construction of the 10 units in Phase 2 for homeownership.

However, at the June 3<sup>rd</sup> meeting the Council authorized Bywater and the Town staff to gauge the interest of the business community on purchasing the units for rentals for their employees. Bywater was instructed that only units reserved by local businesses by the July 2<sup>nd</sup> Council meeting would be constructed in Phase 2. The financial risk for building Phase 2 units without buyer reservations was determined to be too big of a risk to proceed without financial assurance the units would be sold and occupied once constructed. Phase 2 is currently on hold until Bywater comes forward with a bond or the project is rebid in the spring.

On Tuesday June 11<sup>th</sup> an open house was held from 4-7pm sponsored by the Chamber and Bywater to market and talk to local businesses about this opportunity. There were two stories covering the opportunity for businesses in the CB News before and after the event as well as an advertisement in the paper. After this meeting, 10% deposit were made by interested businesses to reserve a unit. As of today seven of the 10 Phase 2 units have deposits on them. The remaining units remain available. At this time, 3 other businesses have expressed interest but only 1 has indicated they have the financial capacity to acquire a unit if one becomes available. Therefore, the Town staff is not recommending a lottery be held at this time. In lieu of a lottery, if a unit becomes available the staff is recommending a waiting list be started. Businesses on the waiting list will have an opportunity to purchase if any units become available in the Phase 1 lottery or if a business owner decides to back out of the purchase.

**Summary of New Guidelines:**

The Town adopted the Affordable Housing Guidelines in 2016. Since these business rentals were not originally contemplated at the time of the adoption of the guidelines, additional regulations need to be added to Part III Purchasing Affordable Housing. The attached Section 8 Regulations for Employer Rental Units, sets the terms for eligibility of qualified renters and regulates the sale, occupancy, compliance, and resale regulations for these units.

After hearing from several businesses that not every potential employee or tenant would fit neatly under the guidelines, number 7 was added under “Qualified Occupants” to allow for employers to make an appeal on their employee’s behalf to the Grievance Committee. The Grievance Committee could grant occupancy if special circumstances are warranted.

There are several safeguards that will ensure these units are being occupied by qualified renters. The approach of the guidelines is “trust but verify” and ensure the ramifications are such that if the guidelines or deed restriction are violated the business will have 30 days to come into compliance or be forced to sell. The long-term affordability of the units is also protected with a max sales price appreciation cap.

**Recommendation:**

A Council members provide feedback on any additional ideas or input on the guidelines. The guidelines will come back before the Council in September for their consideration after tonight’s input.

## SECTION 8 REGULATIONS FOR EMPLOYER RENTAL UNITS

Town Council has approved the ability of Gunnison County Employers to purchase certain deed restricted housing for use as employee rental housing. These units are to be occupied by employees of the Gunnison County Employer who owns the unit, or other employees working in the Gunnison Valley. In the event of a discrepancy between the Guidelines and the Master Deed Restriction Reception No. 659099, the Master Deed Restriction shall supersede. Initial sales of units shall be offered at the Town Council's sole discretion and Gunnison County Employers shall meet the standards contained in these guidelines.

***NOTE: A business, non-profit, or individual purchasing these units must sign the deed restriction acknowledgement and ensure that qualified renters occupy the unit at all times in accordance to the occupancy restrictions contain in these guidelines.***

### **Qualified Gunnison County Employer Buyers**

1. Gunnison County Employer is defined as: A business whose business address is located within Gunnison County, employs persons within Gunnison County, employees perform work in Gunnison County, and/or whose business taxes are paid in Gunnison County.

### **Qualified Occupants**

1. Qualified renters must make 80% of their income in Gunnison County and work a minimum of 30 hours a week.
2. Leases to qualified renters must be a "long-term rental" as defined by the Town Code as amended, which includes a minimum of 6 months lease term.
3. Qualified renters working for the owner of the business should have first priority on renting the unit.
4. In the event that the business does not have an employee as a qualified renter, the unit may be leased to another qualified renter making less than 200% AMI.
5. A Qualified Renter may not own any developed residential property in Gunnison County.
6. A Business Owner owning more than 25% of the business interests in the entity holding title may not occupy the unit.
7. If a potential occupant is deemed unqualified by the guidelines, the employer may appeal to the Grievance Committee to allow for the occupancy. The employer is responsible for identifying why the occupant should be granted a variance and the special circumstances for allowing occupancy of the future tenant.

### **Compliance and verification of rental qualifications**

1. From time to time, the Town or its agent may request that the Owner of the unit provide verification that occupants of the unit are Qualified Occupants. Owners and occupants must respond within 30 days of this request and provide sufficient evidence that the unit is being occupied by a qualified renter. This could include but is not limited to pay stubs of occupants, leases, or tax returns.
2. Any unit not occupied for a duration of over three months will be deemed to be not complaint with the guidelines. Vacancies of over three months caused by unforeseen circumstances must be approved by the Town in writing.
3. Any Owner found in violation of the deed restriction must come into compliance within 30 days of the

notice of violation. Continued non-compliance will result in forced resale of the unit to a Qualified Buyer as defined in Guidelines. An Owner may file an appeal of the notice of violation within 10 business days to the Grievance Committee. The time and date of the hearing shall be provided to the owner. The decision and any terms to bring the property into compliance determined by the Grievance Committee shall be final.

4. Vacation Rentals or Short term as defined by the Town Code rentals are prohibited. Any owner short-term renting a unit will be found in violation of the Master Deed Restriction and will be required to sell the unit per the Resale Guidelines.

#### **Purchase and Resale of Units**

1. When Gunnison County Employers purchase units, title may be held by the business, a limited liability corporation, an individual, or other entity approved by the Town.
2. Any Gunnison County Employer wishing to sell the unit must notify the Town or its agent in writing regarding intent to sell. The maximum resale price will be calculated per the Master Deed Restriction and these Guidelines. A lottery for the unit will be held by the GVRHA as outlined in the Guidelines. A 2% transaction fee shall be paid to the GVRHA and will be split between the buyer and seller of the unit. If there are no applicants for the lottery, the GVRHA will list and market the unit on behalf of the seller. The max sales price will be calculated per the Master Deed Restriction and the Guidelines. The unit must be sold to another Gunnison County Employer or Qualified Buyer making less than 200% AMI as determined by the Town.
3. In the event a business sells or transfers ownership, the unit may be transferred as part of the transaction as an asset of the business. The sale or transfer of the unit's ownership must be approved by the Town. In no event may the unit be sold or valued for more than its maximum sales price.

**Agenda**  
**Design Review Committee**  
**Monday**  
**August 12, 2019**

- 4:00 Consideration of the application of **9 Gothic Avenue LLC** to demolish the front sunroom on the South elevation and construct a new entry to the existing single family residence located at 9 Gothic Avenue, Block 7, Lots 21-22 in the R1 zone. *Original approval for other portions of the home was at the June 25, 2019 BOZAR meeting.* (Palhava)  
- **Architectural approval is required.**  
- **Permission to demolish less than 25% of a non-historic single family residence is required.**
- 5:00 Consideration of the application of **Tara Hiteman** to construct a single family residence to be located at 905 Teocalli Avenue, Block 79, Lot 13 in the R2A zone. (Hiteman/Diem)  
- **Architectural approval is required.**
- 6:00 **Site Visit** and consideration of the application of **Vaquera House, LLC a Texas limited liability company**, to make changes to windows, siding and the deck at the building located at 510 Whiterock Avenue associated with the existing PUD, Block 37, Lots 10-14 in the T zone. (Weber/Coburn)  
- **Architectural approval is required.**  
- **Concept Plan, General Plan and Building Permit Review to alter an existing Planned Unit Development (P.U.D.) are required.**
- 7:00 Consideration of the application of **Kathryn Huish Hubert and Brett Douglas Hubert** to demolish an existing second floor deck on the rear (South) of the home and construct a garage addition attached to the home to be located at 104 Whiterock Avenue, Block 41, North 100 feet of Lots 15-16 in the R2C zone. (Hadley)  
- **Architectural approval is required.**  
- **Permission to demolish a portion of a non-historic single family residence is required.**

*The above times are only tentative. The meeting may move more quickly or slowly than scheduled*

**Agenda**  
**Design Guideline Committee - Work Session**  
**Wednesday**  
**August 14, 2019**

- 2:30 Call to order.
- 2:31 Continue to review remainder of Chapter 4/begin on Chapter 5.
- 4:00 Discuss comments from full Board on list of questions/clarifications.
- 4:45 Adjourn.

*The Design Review Committee is a sub-committee of the Board of Zoning and Architectural Review.  
The above times are only tentative. The meeting may move more quickly or slowly than scheduled*



## AGENDA

### Regular Town Council Meeting

6:00 PM - Tuesday, August 20, 2019

Council Chambers

1. **WORK SESSION - 5 P.M.**  
**Community Housing Guidelines – Willa Williford**
2. **CALL TO ORDER**
3. **ROLL CALL**
4. **PUBLIC COMMENT**  
Citizens may make comments on items **NOT** scheduled on the agenda. Per Colorado Open Meetings Law, no Council discussion or action will take place until a later date, if necessary. You must sign in with the Town Clerk before speaking. Comments are limited to three minutes.
5. **APPROVAL OF MINUTES**
  - 5.1. Approval of the July 16, 2019 Regular Town Council Meeting Minutes
6. **REPORTS**
  - 6.1. **Town Manager's Report**
  - 6.2. **Department Head Reports**
    - 6.2.1. Community Development Report
    - 6.2.2. Finance
    - 6.2.3. Police Department
    - 6.2.4. Public Works
  - 6.3. **Town Council Reports**
  - 6.4. **Other Reports**
    - 6.4.1. Gunnison County Noxious Weed Program - Jason Evanko
7. **CORRESPONDENCE**
8. **OLD BUSINESS**
  - 8.1. Discussion and Possible Consideration of the Ballot Language for the 2.9% Excise Lodging Tax Question on the November 2019 Ballot – Kathy Fogo  
**Please note that the Town Council will accept public comment regarding this agenda item. Comments are limited to three minutes. Written comments are encouraged. Please email comments to [toconnell@mtcrestedbuttecolorado.us](mailto:toconnell@mtcrestedbuttecolorado.us).**
9. **NEW BUSINESS**
  - 9.1. Discussion and Possible Consideration of the Intergovernmental Agreement with Gunnison County for a Mail Ballot Election on November 5, 2019.

**10. OTHER BUSINESS****11. ADJOURNMENT**

If you require any special accommodations in order to attend this meeting, please call the Town Hall at 970-349-6632 at least 48 hours in advance of the meeting.

**GUNNISON COUNCIL AGENDA**  
**MEETING IS HELD AT CITY HALL, 201 WEST VIRGINIA AVENUE**  
**GUNNISON, COLORADO; IN THE 2<sup>ND</sup> FLOOR**  
**COUNCIL CHAMBERS**

Approximate meeting time: 3.5 hours

**TUESDAY**

**AUGUST 13, 2019**

**REGULAR SESSION**

**5:30 P.M.**

*City of Gunnison Councilmembers gather for a light meal at 5:00 P.M. in Council Chambers.*

*No City Council activity takes place.*

**I. Presiding Officer Call Regular Session to Order: (silent roll call by City Clerk):**

**II. Citizen Input: (estimated time 3 minutes)**

*At this agenda time, non-agenda scheduled citizens may present issues of City concern to Council on topics on are not to be considered later in the meeting. Per Colorado Open Meetings Law, no Council discussion or action will take place until a later date; unless an emergency situation is deemed to exist by the City Attorney. Each speaker has a time limit of 3 minutes to facilitate efficiency in the conduct of the meeting and to allow an equal opportunity for everyone wishing to speak.*

**III. Council Action Items**

**A. Approval of the July 23, 2019 Regular Session meeting minutes.**

Background: per City Charter, the City Clerk produces minutes of the Council actions for all regular and special session meetings. Minutes are approved or amended at the following regular session meetings and become a permanent city record. If a city councilor was not present at the meeting, they must abstain in the vote and action on approval of the minutes.

Staff contact: City Clerk Erica Boucher

**Action Requested of Council:** A motion, second and vote to approve the minutes of the July 23, 2019 Regular Session meeting.

Estimated time: 2 minutes

**B. Discussion on addition of Artisan Maker's Space.**

Background: The Land Development Code Diagnosis recommended a broader range of uses within the Central Business District and Professional Business (B-1) zone district to include production space to support entrepreneurial businesses that create or produce goods. Artisan Maker's Spaces are small-scale operations that would add additional character and activity to retail storefronts with unique displays and/or retail areas.

Staff contact: Community Development Director Anton Sinkewich

**Action Requested of Council:** No action requested – discussion item only.

Estimated time: 15 minutes

**C. Update of Comprehensive Plan Process.**

Background: Participants in the six topical focus groups worked to formulate vision statements, goals, and strategies intended to provide clear direction to the comp plan. Additional outreach for comment was conducted at the weekend Farmer's Market and through email distribution. Our consultant team then expanded this content, and staff re-convened the workshop focus group participants on July 30th to provide a second

review and additional feedback.

Staff contact: Community Development Director Anton Sinkewich

**Action Requested of Council:** No action requested – discussion item only.

Estimated time: 15 minutes

**D. Discussion on CDOT Grant-West Gunnison**

Background: The City of Gunnison received TAP funds in 2016 to implement an engineering design process to improve non-motorized transportation facilities and related infrastructure along US 50 West Gunnison. Given the uncertainty with public and private developments in the West Gunnison area, recent developments regarding the Lazy K property, and recent momentum shifts in private/public developments on the north side of the City, it is more desirable to work with CDOT in developing a HWY 50 & HWY 135 Highway Control Access Plan in concert with the ongoing Comprehensive Plan. These plans will expand upon the City's existing Highway Access Plan conducted on the east side of the City (Gunnison Rising). Completion of this Access Plan would lead to more efficient land use and highway access.

Staff contact: Public Works Director David Gardner

**Action Requested of Council:** A motion to give permission to City staff to return unused TAP funds from CDOT, which were originally allocated for non-motorized transportation and related infrastructure along HWY 50 West Gunnison.

Estimated time: 10 minutes

**E. Resolution No. 8, Series 2019: a resolution of the City Council of the City of Gunnison, Colorado, supporting the grant application for a planning grant from the Colorado State Recreational Trails Grant Program-2020 non-motorized trails grant for the Ohio Avenue Safe Walk project; and**

Background: The City intends to a planning grant application this fall. A resolution of support is required for the application. This resolution displays support for the grant application to the Colorado State Recreational Trails Grant Program, administered by Colorado Parks & Wildlife to obtain funds for planning for the Ohio Avenue Safe Walk Project.

Staff contact: Public Works Director David Gardner

**Actions Requested of Council:** 1) Introduce, read by title, motion and vote to pass and adopt Resolution No. 8, Series 2019.

Estimated time: 5 minutes

**F. Resolution No. 9, Series 2019: a resolution of the City Council of the City of Gunnison, Colorado, supporting the grant application for a construction grant from the Colorado State Recreational Trails Grant Program-2020 non-motorized trails grant for the Ohio Avenue Safe Walk project.**

Background: The City intends to submit a construction grant application this fall. A resolution of support is required for the application. This resolution displays support for grant application to the Colorado State Recreational Trails Grant Program, administered by Colorado Parks & Wildlife to obtain funds for construction of Ohio Avenue Safe Walk Project.

Staff contact: Public Works Director David Gardner

**Actions Requested of Council:** Introduce, read by title, motion and vote to pass and adopt Resolution No. 9, Series 2019.

Estimated time: 5 minutes

- G. Authorization for Mayor to sign an IGA with Gunnison County for a coordinated election.**  
 Background: At the July 9, 2019, Regular Session meeting, Council passed Resolution No. 7, Series 2019, directing the City Clerk to coordinate a Regular Election with Gunnison County for the election of three councilmembers. The City must enter into an intergovernmental agreement (IGA) with Gunnison County to participate in a coordinated election in November.  
 Staff contact: City Clerk Erica Boucher  
**Action Requested of Council:** To authorize the mayor to sign an IGA between the City of Gunnison and Gunnison County regarding the City's participation in a coordinated election on November 5, 2019.  
 Estimated time: 5 minutes
- H. Set a public hearing for a Retail Marijuana Store Establishment NuVue Pharma.**  
 Background: On June 23, 2015, City Council passed Ordinance No. 5, Series 2015, establishing the regulations and process for approving medical and retail marijuana establishments in Gunnison. The State Marijuana Enforcement Division (MED) has approved a Conditional Retail Marijuana Store License and for the above-sited application that has been reviewed/processed by City Staff.  
 Staff contact: City Clerk Erica Boucher  
**Action Requested of Council:** A motion to set a Public Hearing for a Retail Marijuana Store Establishment application from NuVue Pharma LLC; 1003 W. Tomichi Avenue, Gunnison for Tuesday, August 27, 2019 at 5:30 p.m. in the City Chambers of City Hall, 201 W. Virginia Avenue in Gunnison, CO.  
 Estimated time: 5 minutes
- I. Discussion on the City Setting Public Hearings on Retail Marijuana Establishment Licenses.**  
 Background: In an effort to streamline and increase administrative efficiency regarding setting public hearings for retail marijuana establishment licenses, the City Clerk suggests receiving authority from Council to set them administratively.  
 Staff contact: City Clerk Erica Boucher  
**Action Requested of Council:** This is an informational item only-no action required. In the future, the city shall set a public hearing before city council on retail marijuana establishment licenses. Staff will no longer ask council to set retail marijuana establishment public hearings.  
 Estimated time: 10 minutes
- J. Ordinance No. 11, Series 2019: *An ordinance of the City Council of the City of Gunnison, Colorado amending Chapter 2, Article 1, Section 1, of the City Code of the City of Gunnison, Colorado, Providing an increase in salaries for the mayor and Councilmembers.***  
 Background: The last time council compensation was adjusted to its current Amount was in 2005 (Ordinance No. 5, Series 2005). Council directed staff to create an ad-hoc committee to review council compensation data from similar municipalities to determine if an increase in council compensation is appropriate. The external committee based on a review of comparable salary wages and time and committee commitments of Council recommended a one-time adjustment to be reviewed every two years.  
 Staff contact: City Clerk Erica Boucher

**Action Requested of Council:** Introduce, read by title only by the City Attorney, motion, second and vote to pass and order to publish Ordinance No. 11, Series 2019 on first reading.

Estimated time: 5 minutes

**K. Discussion with City Attorney on Spectrum Cable TV Franchise Agreement.**

Background: The City's cable franchise expires December 22, 2019, and a draft renewal document has been provided to the City for review and negotiation.

Staff contact: City Attorney Kathy Fogo

**Action Requested of Council:** Discussion and direction to staff on next steps for contract negotiation on Spectrum Cable TV Franchise.

Estimated time: 10 minutes

**V. Reports:**

Parks and Rec Semi-Annual Report

City Attorney Report

City Clerk Schedule Update

City Manager Strategic Projects Update and Report

City Councilors with City-related meeting reports; discussion items for future Council meetings

**VI. Meeting Adjournment**

The City Council Meetings agenda is subject to change. The City Manager and City Attorney reports may include administrative items not listed. Regular Meetings and Special Meetings are recorded and action can be taken. Minutes are posted at City Hall and on the City website at [www.gunnisonco.gov](http://www.gunnisonco.gov).

Discussion Sessions are recorded; however, minutes are not produced. For further information, contact the City Clerk's office at 970.641.8140. **TO COMPLY WITH ADA REGULATIONS, PEOPLE**

**WITH SPECIAL NEEDS ARE REQUESTED TO CONTACT THE CITY CLERK 24 HOURS BEFORE ALL MEETINGS AT 970.641.8140.**

**GUNNISON COUNTY BOARD OF COMMISSIONERS**  
**REGULAR MEETING AGENDA**

134

**DATE:** Tuesday, August 6, 2019

**Page 1 of 2**

**PLACE:** Board of County Commissioners' Meeting Room at the Gunnison County Courthouse

**GUNNISON COUNTY BOARD OF COUNTY COMMISSIONERS REGULAR MEETING:**

- 8:30 am
- Call to Order
  - Agenda Review
  - Minutes Approval:
    1. 7/02/19 Regular Meeting
    2. 7/16/19 Regular Meeting
  - Consent Agenda: These items will not be discussed unless requested by a Commissioner or citizen. Items removed from consent agenda for discussion may be rescheduled later in this meeting, or at a future meeting.
    1. Agreement; West Regional Healthcare Coalition
    2. Grant Award Approval; Community Foundation of the Gunnison Valley; Juvenile Services – Family Advocacy Support Team (FAST); \$1,450.00
    3. Provider Agreement; Katherine Melland; Data Analysis & Report Construction for Juvenile Services
    4. Request for Approval; Colorado Division of Criminal Justice – Change in Project Officials; Juvenile Services Diversion Program
    5. Request for Approval of Funding Allocations; Western Regional Medical & Trauma Advisory Council (WRETAC); Gunnison Valley Health - Emergency Medical Services; Pediatric & Neonatal Critical Care Transport Program Training
    6. Ratification of BOCC Signature; Proclamation; Janet Reinman Retirement
    7. Acknowledgment of County Manager's Signature; Grant Amendment #1; Department of Public Safety, Division of Criminal Justice; Juvenile Diversion – Year 3
    8. Intergovernmental Agreement; 2019 Undesirable Plant Management
    9. Acknowledgment of County Manager's Signature; Agreement; Eco-Right Solutions; Noxious Weed Management
    10. Ratification of Commissioner Signature; U.S. Department of Housing & Urban Development; Previous Participant Certification
    11. Contract; Region 10; Human & Human Services Senior Resources
    12. Grant Application; Colorado Health Institute; Advancing Breastfeeding in Colorado (ABC); Early Childhood Council
    13. Resolution; A Resolution Establishing the Policy for Appointments to Gunnison County Boards and Commissions
    14. Funding Agreement; Gunnison County Metropolitan Recreation District & Gunnison County Public Works; \$3,721.00
    15. BOCC Letter of Support; History Colorado State Historical Fund; Alpine Tunnel
    16. Agreement; Release of Landscaping Improvements; Discount Self-Storage
    17. Agreement; Release of Developmental Improvements; Discount Self-Storage; Parking Lot Expansion
    18. Addendum; Landscaping Improvements Agreement; Swiss Holdings, LLC
    19. Addendum; Development Improvements Agreement; Whetstone Industrial Park
    20. Agreement; Release of Development Improvements; Gunnison Secure Storage Phases 1 & 2A
    21. Liquor License Renewal; Roberts Corporation dba Harmel's Ranch Resort; June 17, 2019 – June 17, 2020
    22. Liquor License Renewal; Tre Amici Corp dba Garlic Mike's; September 14, 2019 – September 14, 2020
    23. Special Event Liquor License; Rocky Mountain Biological Laboratory; August 20, 2019
    24. Hangar Lease Reassignment; Gunnison-Crested Butte Airport; Hangar 13

*NOTE: This agenda is subject to change, including the addition of items up to 24 hours in advance or the deletion of items at any time. All times are approximate. The County Manager and Deputy County Manager's reports may include administrative items not listed. Regular Meetings, Public Hearings, and Special Meetings are recorded and **ACTION MAY BE TAKEN ON ANY ITEM**. Work Sessions are not recorded and formal action cannot be taken. For further information, contact the County Administration office at 641-0248. If special accommodations are necessary per ADA, contact 641-0248 or TTY 641-3061 prior to the meeting.*

**GUNNISON COUNTY BOARD OF COMMISSIONERS**  
**REGULAR MEETING AGENDA**

135

**DATE:** Tuesday, August 6, 2019

**Page 2 of 2**

**PLACE:** Board of County Commissioners' Meeting Room at the Gunnison County Courthouse

- Scheduling
- 8:40 • Deputy County Manager's Report  
1. Request for Training Approval; Natural Gas Vehicle Institute
- 8:50 • BOCC Supplemental Comments Re: GMUG Draft Forest Plan
- 9:00 • Public Hearing; Adoption of 2019 Gunnison County Primary & Secondary Road Maps
- 9:10 • Replat; Aperture Lots 3, 8, 9, 23 & Open Space 2
- 9:15 • Elk Valley Townhomes; Buckhorn Ranch Filing 2B
- 9:20 • Lot Cluster Request; Robert Carver; Lots 8 – 15, Block 11, Town of Ohio City
- 9:25 • Request for Extension of Preliminary Plan; Corner at Brush Creek LUC-17-00034
- 9:50 • Break
- 10:00 • 2018 Audit Presentation; McMahan & Associates, LLC
- 10:30 • Colorado Open Meeting Review; Possible Executive Session Pursuant to C.R.S. 24-6-402 (4)(b)  
Conference with the County Attorney & Deputy County Attorney to Receive Legal Advice
- Unscheduled Citizens: Limit to 5 minutes per item. No formal action can be taken at this meeting.
- Commissioner Items: Commissioners will discuss among themselves activities that they have recently participated in that they believe other Commissioners and/or members of the public may be interested in hearing about.
- Adjourn

Please Note: Packet materials for the above discussions will be available on the Gunnison County website at <http://www.gunnisoncounty.org/meetings> no later than 6:00 pm on the Friday prior to the meeting.

**GUNNISON COUNTY BOARD OF COMMISSIONERS  
WORK SESSION & SPECIAL MEETING AGENDA**

136

**DATE:** Tuesday, August 13, 2019

**Page 1 of 1**

**PLACE:** Board of County Commissioners' Meeting Room at the Gunnison County Courthouse

**GUNNISON COUNTY BOARD OF COUNTY COMMISSIONERS WORK SESSION:**

- 8:30 am • Colorado River Water Conservation District Report
- 8:45 • HB 1177 Roundtable Report
- 8:50 • Discussion; Gunnison County Recycling
- Adjourn

**GUNNISON COUNTY BOARD OF COUNTY COMMISSIONERS SPECIAL MEETING:**

- 9:05 • Call to Order
- 9:05 • Direction to Colorado Parks & Wildlife regarding Prairie Dog Relocation Request (ADDITION)
- 9:10 • Direction to County Attorney Regarding Proposed Draft Comments on NEPA Regulations (ADDITION)
- 9:15 • Possible Executive Session Pursuant to C.R.S. 24-6-402 (4)(b) Conference with the County Attorney and Deputy County Attorney to receive legal advice; and C.R.S. 24-6-402 (4) (e) (I) determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators (ADDITION)
- 9:45 • Possible Executive Session Pursuant to C.R.S. 24-6-402 (4)(f)(I) Personnel Matters; Conference with the Deputy County Attorney and County Manager (REVISED)
- 10:00 • Possible Executive Session Pursuant to C.R.S. 24-6-402 (4)(f)(I) Personnel Matters; Conference with the County Attorney and County Manager (ADDITION)
- 10:15 • Possible Executive Session Pursuant to C.R.S. 24-6-402 (4)(f)(I) Personnel Matters; Conference with the County Attorney, Deputy County Attorney and County Manager (ADDITION)
- 10:30 • Possible Executive Session Pursuant to C.R.S. 24-6-402 (4)(b) Conference with the County Attorney and Deputy County Attorney to receive legal advice on specific legal questions (REVISED)
- Adjourn

Please Note: Packet materials for the above discussions will be available on the Gunnison County website at <http://www.gunnisoncounty.org/meetings> no later than 6:00 pm on the Friday prior to the meeting.

**Tuesday, August 20, 2019**

Demolition Work Session

**Tuesday, August 27, 2019**

Joint Meeting with Mr. Crested Butte to Discuss Brush Creek

**Tuesday, September 3, 2019****Work Session**

Quarterly Update from BOCC - John Messner  
 Matt McCombs - Dispersed/Designated Camping

**Consent Agenda**

Vinotok Special Event Application and Special Event Liquor Permit for the Harvest Feast  
 Closing the 100 Block of Elk Avenue on September 20<sup>th</sup>, 2019, the 200 Block of Elk Avenue on  
 September 21<sup>st</sup> with a Rolling Closure of Elk Avenue from the 200 Block to the Four Way, and  
 the Four Way Lot from September 20<sup>th</sup> to September 23<sup>rd</sup>.

**Public Hearing**

Continuation of Slate River Annexation

**Old Business**

Brush Creek

**New Business**

Late Night Town Taxi Update  
 Ordinance - New Demolition Regulations  
 Resolution No. 12, Series 2019 - Amending Affordable Housing Guidelines and Business  
 Owned Units  
 The Center for the Arts Lease  
 Letter to USFS Regarding Mt. Emmons  
 Ordinance - Adoption of 2017 NEC  
 Affirm 2020 Goals

**Monday, September 16, 2019****Work Session**

Budget

**Consent Agenda**

Appointment of Election Commission  
 Approval of Comment Letter to Congressman Scott Tipton Regarding Colorado REC Act.

**Presentation by Chamber Executive Director Ashley UpChurch****Old Business**

Brush Creek

**New Business**

Ordinance - Creating a Public Arts Commission

**Intergovernmental Meeting - Date TBD, possible location, Center for the Arts**

Logging up Kebler & Route

Census 2020

**October 7, 2019****Work Session**

Budget

**Old Business**

Brush Creek

**New Business**

Presentation of 2020 Budget

Discuss Sidewalk Seating and ADA Compliance

Creative District Annual Report

**October 21, 2019****Work Session**

Annual Update from CB Nordic

Update on Data Collection - Silent Tracks???

**Old Business**

Brush Creek

**New Business**

Annual Review of the Snow Plan

2020 Budget Adoption???

**Future Items**

- Quarterly Financial Reports
- Deadline for Presentation of Annual Budget - October 15<sup>th</sup>
- Annual Report by the Chair of the Weed Advisory Board on Weed Management in the Town of Crested Butte - November
- Funding Agreement with the Chamber - December
- Ordinance - CO Model Traffic Code 2018
- Briefing of the Legal Implications of Vested Rights
- Presentation on the Audit
- Ordinance - Creative District Restructuring