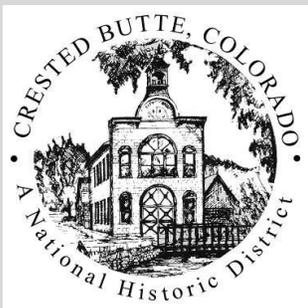


**AGENDA**  
**Town of Crested Butte**  
**Regular Town Council Meeting**  
*Tuesday, August 6, 2019*  
**Council Chambers, Crested Butte Town Hall**



*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*

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

**6:00 WORK SESSION**

“Role and Authority of Town Council” Discussion with Town Attorney.

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

**7:02 APPROVAL OF AGENDA**

**7:04 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.

*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. 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.

**7:40** 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.

**7:45** 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.

**7:50 NEW BUSINESS**

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

**8:10** 2) Proposal for 2020 CBCS Student Led Affordable Housing Build.

**8:30** 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.

- 8:50** 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.
- 9:00** 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.
- 9:10** 6) Discussion on The Corner at Brush Creek.

**9:25** LEGAL MATTERS

**9:30** COUNCIL REPORTS AND COMMITTEE UPDATES

**9:45** OTHER BUSINESS TO COME BEFORE THE COUNCIL

**9:55** 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

**10:00** 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.

**10:30** ADJOURNMENT

**MINUTES**  
**Town of Crested Butte**  
**Regular Town Council Meeting**  
**Monday, July 15, 2019**  
**Council Chambers, Crested Butte Town Hall**

Mayor Schmidt called the meeting to order at 7:00PM.

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

Staff Present: Town Manager Dara MacDonald, Town Attorney John Sullivan, and Community Development Director Michael Yerman

Town Clerk Lynelle Stanford, Finance Director Rob Zillioux, and Public Works Director Shea Earley (for part of the meeting)

Schmidt expressed condolences, deep sadness, and thoughts for the loss of Diner.

**APPROVAL OF AGENDA**

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

Merck arrived at the meeting after the motion and did not vote. He voted on all motions after approval of the agenda.

**EXECUTIVE SESSION**

Schmidt read the reason for the Executive Session: for a conference with the Town Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b) having to do with Block 76 and affordable housing.

Haver moved and Magner seconded a motion to go into Executive Session for that purpose. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

The Council went into Executive Session at 7:04PM. They returned to open meeting at 7:48PM. Mayor Schmidt made the required announcement upon returning to open meeting.

**CONSENT AGENDA**

- 1) July 2, 2019 Regular Town Council Meeting Minutes.**
- 2) Approval of Contract for Old Town Hall Elevator Project.**

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

### **PUBLIC COMMENT**

Leslie Nichols - Superintendent of the School District

- The school board met tonight and reviewed the language recommendations (in the IGA). The board as a whole felt really good.
- The Town waiving ROAH on their unit was much appreciated by the school board.
- They hoped to reach a complete draft of the IGA soon.
- They would keep the positive relationship going.
- She confirmed they started digging up the track.

Leah Williams

- She thanked the Council for the time they put in.
- As Town was becoming more crowded, she raised concerns about bikes on the sidewalks.
- She provided a picture from Durango showing an example of a dismount zone.

Kent Cowherd - 901Teocalli

- He offered praise for the construction progress in Block 76.

### **STAFF UPDATES**

- Stanford announced candidate packets would be available July 29<sup>th</sup>, could be circulated beginning August 7<sup>th</sup>, and were due August 30<sup>th</sup>.
- Schmidt mentioned that it was good to see the pirate park going up.
- Schmidt suggested September 24<sup>th</sup> or 30<sup>th</sup> for the next intergovernmental dinner.
- He reminded the Council of the Standard Mine update on July 17<sup>th</sup> at 2PM and the GMUG forest plan revision public meeting on Thursday in Gunnison.

### **PUBLIC HEARING**

**1) Ordinance No. 30, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned Property Legally Described as Plat of Jebez Townhouses Lot 6, Block 79, Replat of Blocks 79 and 80 Paradise Park, Town of Crested Butte, County of Gunnison, State of Colorado Reception No. 659963 Unit B to Jeff Koether for the Sale Price of \$275,000.00.**

Schmidt read the title of the ordinance. Yerman explained that the first buyer was unable to close and Koether was the alternate. Schmidt confirmed proper public notice had been given. He opened the public hearing.

Jeff Koether

- He introduced himself and reviewed his history in the area.

No one else from the public commented, and the public hearing was closed.

Merck moved and Dujardin seconded a motion to pass Ordinance No. 30, Series 2019. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

**2) Ordinance No. 31, Series 2019 - An Ordinance of the Crested Butte Town Council Amending Ordinance No. 1-2019 to Add an Exception to the Temporary Moratorium for the Demolition of Any Non-Historic Multi-Family Structure of Three or More Units, All Non-Historic Commercial Structures, and the Partial Demolition of Less Than 25% of Any Non-Historic Structure Within the Town of Crested Butte.**

Schmidt confirmed proper public notice had been given, and he read the title of the ordinance. Yerman stated the ordinance was to lessen the moratorium. He reviewed the exceptions made by the ordinance and the reasons. Staff would set up another work session to vet what came from the work session last week. Merck wondered why non-historic structures in general were being considered for demolition. Yerman spoke regarding commercial structures.

Schmidt opened the public hearing.

Kent Cowherd

- He wondered if the moratorium was being rescinded by the ordinance. Yerman explained the ordinance was an amendment to the moratorium.

Schmidt closed the public hearing. There was no further Council discussion.

Mitchell moved and Merck seconded a motion to approve Ordinance No. 31, Series 2019. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

**NEW BUSINESS**

**1) Resolution No. 13, Series 2019 - A Resolution of the Crested Butte Town Council Repealing Resolution No. 11 and Submitting to the Electorate of the Town Of Crested Butte a Question Seeking Authority to Increase Taxes on the Sale of Cigarettes and Other Tobacco and Nicotine Products.**

Zillioux explained the changes this resolution made from the previously passed resolution. This resolution eliminated the tax on delivery devices. Products that contained tobacco and nicotine would be taxed. MacDonald recognized this resolution as a compromise. Schmidt reminded it was up to the voters. Dujardin supported the previous resolution, but he thought it was worth passing this one if it helped other Council members support the tax. Haver asked what the problem was they were trying to solve. Schmidt stated tobacco caused health problems. He thought it could do some good. Dujardin identified they were trying to discourage the use of tobacco and nicotine

products by youth. Magner agreed with Dujardin, and she appreciated the compromise. Haver learned that vaping was the issue with youth. Haver presented solutions that could come from a vote of the Council, such as raising the age and banning vaping products. He recommended going to the students. Haver was not in favor of the tax.

Emily Mirza - Representing GCSAPP

- They supported a multi-prong approach.

John Penn

- He thought 18-year-olds were adults.
- He would not be able to survive with the rules and laws being proposed.

Robin Lakoski

- She worked in the school for the last two years.
- She saw behavior changes from hour to hour and scary stuff with undeveloped brains.
- She was on track with any help they could get in taking it away from young kids.

Emily Mirza - Representing GCSAPP

- They used the lens of positive youth development.

Magner thought it was great to involve the youth. The data was irrefutable and clear that nicotine was harmful. She was on board with the resolution and with the public outreach proposed by Haver. Schmidt acknowledged this resolution excluded taxing delivery systems. MacDonald defined tobacco products as presented in the resolution.

Haver made a motion to amend the resolution to solely tax nicotine vaping related products but no other tobacco products. The motion failed for lack of second.

Dujardin moved and Merck seconded a motion to approve Resolution No. 13, Series 2019. A roll call vote was taken with Dujardin, Merck, Mitchell, Magner, Schmidt, and Bradley voting, “Yes,” and Haver voting, “No.” **Motion passed.**

## **2) Authorization of the Crested Butte Town Council to Allow the Mayor to Sign a Letter Providing Comments on the GMUG Forest Plan to the United State Forest Service.**

Yemma explained the Forest Service released their working draft of the forest plan, which provided a first glimpse of how the forests would be managed. She outlined past actions on which the Town had already engaged. Schmidt had a problem with when they said no and did not give people an option of what to do. He thought they needed a sentence that would provide positive solutions. Yemma stated they were asking to be a part of discussions. MacDonald did not think the letter was saying no to anything. Dujardin thought it should be mentioned in the beginning of the letter that Town was a cooperating agency. Yemma suggested language for the letter in response to Dujardin’s

point. The Council agreed with Yemma's edit. It was the only amendment to the letter as presented in the packet.

Mitchell moved and Merck seconded a motion to authorize the Mayor to sign the attached comment letter with the suggested amendment on the GMUG's Forest Plan Revision. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

**3) 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.**

Yerman stated the ordinance was for Phase 2 to release the property to Bywater LLC. However, there was not adequate bond in place based on what was required by the contract. Staff recommended Town put the project out to bid again, which would delay it for at least a year. He recommended they continue down the path with Phase 1.

Schmidt questioned Wisian regarding the bond. Schmidt asked what happened to the checks put down by businesses. He also wondered when they could expect the bond. Wisian listed issues with getting the bond. They were not in a normal place of business. Merck appreciated the vigor and pace demonstrated so far. Sullivan agreed with Yerman regarding not moving forward with Phase 2 at this time.

Dujardin asked whether the market would open up if Town required bond for 100% of the value rather than 120%. Wisian said the natural arrangement was the problem; it was a relationship that did not exist in the bond market. Schmidt questioned the implications to Phase 2, which were explained by Yerman and Wisian. Dujardin said they had to maintain fairness. He thought it was heartbreaking, and Schmidt and Merck agreed. Sullivan stated that everything indicated there would not be a bond in two weeks. Yerman concurred with Sullivan and added that it would not be in the amount that would be satisfactory. MacDonald reminded the Council that Town was a public entity. She was not comfortable proceeding with Phase 2 unprotected. She did not recommend the Council set the ordinance for public hearing.

Magner made a motion that Ordinance No. 29 not be set for public hearing. Schmidt seconded the motion, which after discussion he later withdrew.

A member of the public suggested that businesses could raise funds. The discussion continued with possible solutions for the bond. The Council decided to set the ordinance for public hearing to provide more time to work out the issue pertaining to the lack of a bond.

Merck moved and Dujardin seconded a motion to set Ordinance No. 29, Series 2019 to public hearing on August 6<sup>th</sup>. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

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

Zillioux summarized the circumstances that led to the unit becoming available.

Merck moved and Dujardin seconded a motion to set Ordinance No. 32, Series 2019 for public hearing at the August 6<sup>th</sup> meeting. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

**5) 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.**

Yerman reviewed the reasoning for the ordinance. He identified it as a clean-up item that legally described the actual location of the trail. Attorney David Leinsdorf affirmed the hope was that the ordinance would be set for public hearing.

Dujardin moved and Mitchell seconded a motion to set Ordinance No. 33, Series 2019 for public hearing on August 6<sup>th</sup>. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

**6) 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 the Council continue the resolution to August 6<sup>th</sup>. The Town and Housing Authority were considering a comprehensive update to the guidelines. Schmidt asked how the guidelines would pertain to the school build. Yerman stated they were creating their own policies. Dujardin thought they should open up the conversation more on the guidelines. He heard concerns on protections for the employees. Yerman agreed they wanted to hear from the business community.

Mitchell moved and Dujardin seconded a motion to continue Resolution No. 12, Series 2019 to the August 6<sup>th</sup> meeting. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

**7) Resolution No. 14, Series 2019 - A Resolution of the Crested Butte Town Council Adopting the Applicable Provisions of the Uniform Election Code of 1992 for the Coordinated Election to be Held on November 5, 2019 and Authorizing the Town Clerk to Enter Into an Intergovernmental Agreement with the Gunnison County Clerk and Recorder Concerning the Administration of Such Election.**

Schmidt described the resolution as housekeeping.

Mitchell moved and Merck seconded a motion to approve Resolution No. 14, Series 2019. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

### **8) Appointments to Boards and Committees.**

MacDonald wondered if anyone heard from Coldharbour. Merck said he would attempt to communicate. Magner and Haver discussed the Chamber meetings, and Magner agreed to take Haver’s position on the Chamber Board. Dujardin said that CC4CA was looking for more involvement with the policy committee. Dujardin recommended Mel Yemma be appointed. MacDonald affirmed her appointment. Magner assumed Petito’s positions on the Valley Housing Fund and Proclamation Committee.

Merck moved and Dujardin seconded a motion to appoint Mel Yemma to the CC4CA policy committee and to appoint Mallika to the Valley Housing Fund and the Chamber and the Proclamation Committee. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

### **9) Discussion and Possible Action Regarding Gatesco’s Extension Request to the Board of County Commissioners for Submittal of a Preliminary Plan Application.**

MacDonald updated that the Town learned last week that Gatesco submitted an application for an extension for the preliminary plan. The Crested Butte and Mt. Crested Butte Councils came to some consensus on three additional conditions imposed on approval of the preliminary plan. She summarized points from the letter in the packet from Gatesco’s attorneys. Consideration of the extension was scheduled before the Board of County Commissioners prior to the next Council meeting. Schmidt had questions regarding the water testing. Magner identified the main reason cited was they wanted to develop their Gunnison project first. Dujardin thought they should meet with Gatesco. Haver was disappointed there had been six months of silence. Schmidt questioned the duration of the extension. He thought the most important thing was the water testing.

David Leinsdorf

- It made no sense to give Gates another year after he had done nothing.

Kent Cowherd

- There had been no water testing or progress.
- Gary Gates said they could not develop a project that contained less than 180 units.
- This extension was an unnecessary delay.
- He thought Town should write a letter to discourage the extension.

George Gibson - 31 Powderview Drive

- He commented on the timeline. With an extension, Gates would have two years for the preliminary plan. They were looking at a minimum of four years from now to have a residence.
- It was madness he had not yet drilled a well or done the first basic water test.

#### Ashley UpChurch

- She was not representing an organization.
- She did not see that Gates had not done anything. It was not his fault that the project had stalled.
- She was confused why no one was in support of the project.
- She would love to see 180 units out there.

Merck was in favor of process. Schmidt recognized that 156 units would be the largest project approved in the County. MacDonald summarized the issue. They should take some time before issuing another RFP. She recommended the MOA parties have a public outreach project to provide more defined parameters to the developer. Magner acknowledged the community did not want the proposal as proposed. The need for affordable rental housing could not wait. They needed to move on property sooner rather than later. They wanted to support the business community. She did not see how an extension would benefit the community. Dujardin did not think they needed to comment on the County process. He thought that commenting would make the rift deeper. They needed to trust the process. Mitchell assumed the County would approve the extension. She agreed they should not stir the hornets' nest. Schmidt would want to send a letter communicating not to extend beyond the end of February.

#### David Leinsdorf - 3 Treasury Hill Road

- A compromise made no sense at all.
- He had done zilch since the consensus reached with Mt. Crested Butte.
- They hoped Town would write a letter of opposition.
- Gates had not shown good faith or any progress at all.

#### Robert McCarter - 1251 Skyland Drive

- Gates was basically asking for a mulligan, and he had not taken the first swing. He did not deserve a mulligan.
- He had not done one single water test.
- An extension would delay the deal for years.
- Starting over would make it happen faster.

The Council discussed sending a letter to the County. Haver did not feel 100% about sending a letter. He did not know what it would do. Dujardin cited an example of animosity between Town and the County. Schmidt was willing to send a letter asking the County to deny the extension. Magner and Mitchell agreed, but no one else did. No one wanted to send a letter supporting the extension. The Council took no action.

### **LEGAL MATTERS**

Sullivan asked the Council if there was anything they wanted to discuss. Bradley revisited the bond situation with Bywater. She questioned what the Town's loss would be if something catastrophic happened and the bond amount had been lowered. MacDonald reviewed options and scenarios. After consideration, Sullivan thought the businesses could provide collateral, as suggested by a member of the public. Magner recognized the bond amount was to cover Phase 1 and Phase 2. Yerman identified the issue of mobilization. MacDonald said it was almost inconceivable Wisian could pull the bond together before the public hearing.

## **COUNCIL REPORTS AND COMMITTEE UPDATES**

### Will Dujardin

- He met with Carl Castillo, which was productive. They wanted to figure out how to find a balance regarding CC4CA. There was room for them to keep pushing awareness.

### Candice Bradley

- She did not have Center or Creative District meetings. The Center meeting was postponed.

### Chris Haver

- He went with OVLC to present to Health and Human Services on how to better communicate with the OVLC pillars. It was a good overview of what they were doing. Housing was involved in providing an update. They were going to set them up to work with the economic pillar as well. One group present was Project Hope.

### Mallika Magner

- She was intrigued by Norton's notion of a bike share program. She described logistics of the program as they could be applied in Crested Butte. She asked if anyone was interested in Staff exploring the idea.
- She suggested energy be happening to get the bike path to CB South.
- She said affordable rental housing was a huge need. She suggested they look at affordable rental housing in Town and planning for the annexation.

### Jim Schmidt

- Discussion at the housing meeting was focused on two projects in the County.
- Went to mayor/managers meeting in Pitkin. Blue Mesa was within three feet of full.
- The Little Blue Canyon project would be put off a year.
- Myles Rademan was in Town. He would be bringing 60 to 70 people from Park City on a leadership trip. Schmidt had two calendar items: Wednesday night, September 4<sup>th</sup>, ten restaurants were booked for meals with Council members and speakers and Thursday morning there would be multiple presentations at The Center for the Arts. Then, there would be break out groups and a historical tour along with a picnic.

Will Dujardin

- Attended Upper Gunnison River Water Conservancy District public meeting on the economic impacts of drought land management.

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

None

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

- *Tuesday*, August 6, 2019 - 6:00PM Work Session - 7:00PM Regular Council
- *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

Schmidt reminded of the meeting on the Standard Mine clean-up.

### **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 the IGA with the school and the Kikel Parcel.

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 11:02PM. They returned to open meeting at 11:33PM. Mayor Schmidt made the required announcement upon returning to open meeting.

**ADJOURNMENT**

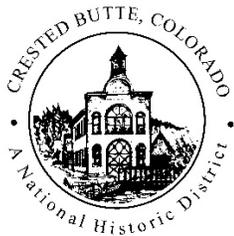
Mayor Schmidt adjourned the meeting at 11:34PM.

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James A. Schmidt, Mayor

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Lynelle Stanford, Town Clerk (SEAL)



## Staff Report

August 6, 2019

**To:** Mayor Schmidt and Town Council

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

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

**Subject:** **Execution of Contract with Energy Services Company for Investment Grade Audit Report and Energy Performance Contracting Project Proposal**

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**Background:** The Colorado Energy Performance Contracting (EPC) program is a way to pay for energy efficiency upgrades for today's facilities with tomorrow's utility cost savings. Since Colorado established its EPC program in the mid-1990s, 152 public jurisdictions have worked with an energy services company (ESCO) to identify nearly \$35 million in annual utility savings through a technical energy audit.

The Colorado Energy Office (CEO) provides guidance and support throughout their 6 part process for this program, which is as follows:

- (1) The Town would contract with a pre-qualified ESCO to analyze utility bills and conduct an investment grade audit (IGA).
- (2) The ESCO creates an IGA report and project proposal of facility improvement measures with associated utility cost savings (the ESCO guarantees energy, water and operational cost savings after implementing the proposed facility improvements). Projects can range from HVAC improvements, boiler replacements and lighting fixtures to renewable energy installations and more.
- (3) Once the Town approves the project proposal and secure funding, the Town will enter into an EPC with the ESCO to begin construction.
- (4) After construction, measurement and verification of the energy project ensures the guaranteed savings are being realized.
- (5) During the performance period, utility cost savings pay for the capital improvements.
- (6) After the performance period, all subsequent utility cost savings accrue to the Town.

**ESCO Selection:** On June 10, 2019, the Town initiated step 1 and released a request for proposals (RFP) for Energy Performance Contracting Services: Investment Grade Audit and EPC Project Proposal. The Town sent the RFP to all pre-qualified ESCOs and hosted a pre-proposal site visit on June 25, 2019. On July 5, 2019, the Town received 6 proposals which all identified similar approaches to the investment grade audit as well as ideas and technologies to analyze for energy efficiency improvements and renewable energy generation. Because each ESCO utilizes the standard IGA pricing per square footage that the CEO provides, each proposed budget for the Town's facilities was the same.

On July 9, 2019, a selection committee comprised of Mel Yemma, Dara MacDonald, Michael Yerman, Shea Earley and Dale Hoots convened to review the proposals. The committee unanimously agreed to pursue a contract with Johnson Controls to conduct the IGA and propose an EPC project. Johnson Controls is currently working with Gunnison County on their EPC project and has a genuine understanding of the Town's greenhouse gas emissions reduction goals. Johnson Controls proposed analyzing many different interesting energy efficiency and renewable energy generation options and proposed a solid project approach consisting of staff workshops as learning opportunities during each phase of this process.

The total not-to-exceed budget for this project is \$75,000, which is the remaining sustainability projects budget from the 2019 capital budget. In the IGA contract, the scope of the project is as follows:

- (1) Investment Grade Audit of 25 town-owned buildings (plus a lighting upgrades evaluation of the Big Mine Ice Arena) for \$29,865.03 (based on the Colorado Energy Office's pricing tool of \$00.30 per square foot of building)
- (2) Evaluation of Solar Photovoltaics on 7 sites in the Town for \$14,500
- (3) Evaluation of Mountain Express and Town vehicle fleet conversion to electrical (or CNG where economically feasible) for \$10,000
- (4) Water Treatment/Wastewater Treatment Process Improvements Evaluation (UV system and solids process) for \$20,000.

Based on the results from the IGA and energy savings projects proposed by the ESCO, the Town will then have the option to decide to either pay for the audit from the remaining sustainability projects capital budget or to enter into an EPC with the ESCO. If the Town chooses to enter an EPC with the ESCO, the cost of the audit can be rolled in the EPC and financed through a variety of options.

**Recommendation:** A council member make a motion to execute the attached IGA contract with Johnson Controls for investment grade audit report and energy performance contracting project proposal, as part of the consent agenda.

**STATE OF COLORADO  
COLORADO ENERGY OFFICE – ENERGY PERFORMANCE CONTRACTING PROGRAM**



**COLORADO**

**Energy Office**

Energy Performance Contracting

**INVESTMENT GRADE AUDIT REPORT AND ENERGY PERFORMANCE CONTRACTING PROJECT  
PROPOSAL CONTRACT**

**FOR COLORADO POLITICAL SUBDIVISIONS** (municipality, county, special district, or school district **(§29-12.5-101 (5) C.R.S.)**)

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POLITICAL SUBDIVISION:	<u>Town of Crested Butte, CO</u>
ENERGY SERVICE COMPANY (STATE REGISTERED NAME):	<u>Johnson Controls, Inc.</u>
PROJECT NAME:	<u>Town of Crested Butte Investment Grade Audit and Energy Performance Project Proposal</u>

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## PARTIES

This Investment Grade Audit Report and Energy Performance Contracting Project Proposal Contract (this “Contract” or this “IGA,” as defined below in Article I) is entered into by and between Johnson Controls, Inc., having its offices at 10289 W Centennial Rd, Littleton, CO 80127 (the “Contractor” or the “ESCO,” as defined below in the Definitions), and the Town of Crested Butte (the “Political Subdivision”), being a Political Subdivision as defined below in Article 1.

## RECITALS

**WHEREAS**, authority for the Political Subdivision to enter into this Contract exists in the law, including **§29-12.5-101, C.R.S.** and other applicable state statutes and charter and code provisions, and funds have been budgeted, appropriated and otherwise made available, and a sufficient unencumbered balance thereof remains available for payment of the amounts due hereunder, all within applicable constitutional, statutory, charter, code or other limitations applicable to the Political Subdivision; and

**WHEREAS**, required authorizations, approvals, clearance and coordination have been accomplished by the Political Subdivision; and

**WHEREAS**, the Political Subdivision is entering into this Contract in order to (a) engage the Contractor to identify utility cost-savings measures and facility improvement measures, including operation and maintenance cost savings and vehicle fleet operational or fuel cost savings in facilities owned or leased by the Political Subdivision, as set forth in **§29-12.5-101(3), C.R.S.**, and (b) if the savings exceed “annual contract payments” as set forth in **§29-12.5-101(3)(b), C.R.S.** and the Governing Body (as defined below) of the Political Subdivision determines to do so, to negotiate an Energy Performance Contract; and

**WHEREAS**, this Contract was adapted by the Colorado Energy Office (CEO) for use by Colorado “Political Subdivisions,” as defined in **§29-12.5-101, C.R.S.**, based on a contract created jointly by CEO and the Office of the State Architect (OSA), in order to obtain an Investment Grade Audit report and a proposal for an Energy Performance Contracting project for a Facility (as defined below) from a CEO pre-approved energy service company (ESCO), the purpose of the IGA being to perform the Work set forth in **Article 3** below; and

**WHEREAS**, the Contractor was selected and determined to be the most qualified, and fees were negotiated in accordance with the procurement rules of the Political Subdivision; and

**NOW THEREFORE**, in consideration of the premises and mutual agreements and covenants hereinafter set forth, and intending to be legally bound, the Political Subdivision and the Contractor hereby agree to the terms and conditions in this Contract.

## EFFECTIVE DATE AND NOTICE OF NON-LIABILITY

This Contract shall not be valid or enforceable until it is authorized and approved by the Governing Body (defined below in Article 1) of the Political Subdivision, by applicable resolution, ordinance or other authorizing action of the Governing Body, and executed by a duly authorized representative of the Political Subdivision, as set forth in such resolution, ordinance or other authorizing action (defined below as the “Principal Representative”), on the date set forth in **Section 19** hereof in the signature block of the Political Subdivision (the “Effective Date”). The Political Subdivision shall not be bound by any provision of this Contract before the Effective Date, and shall have no obligation to pay the Contractor for any Work performed or expense incurred before the Effective Date or after the expiration or sooner termination of this Contract.

All references in this Contract to “Article,” “Section,” “Subsections,” “Exhibits” or other “attachments,” whether spelled out or using the **§** symbol, are references to Articles, Sections, Subsections, Exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

## ARTICLE 1 DEFINITIONS

### A. Business Day

"Business Day" means any day in which the Political Subdivision is open and conducting business, but shall not include Saturday, Sunday or any holidays observed by the Political Subdivision.

### B. Contract

"Contract" means this Contract, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Contract, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to applicable laws, charter and code provisions and policies and procedures of the Political Subdivision.

### C. Contract Funds

"Contract Funds" means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the Political Subdivision to the Contractor for the performance of the Work under this Contract.

### D. Contractor's Intellectual Property

"Contractor's Intellectual Property" means the items purchased, licensed or developed by the Contractor prior to or outside of the Contract or purchased, licensed or developed by the Contractor or its Subcontractors as a tool for their use in performing the Services, plus any modifications or enhancements thereto and derivative works based thereon.

### E. Colorado Open Records Act (CORA)

"CORA" means the Colorado Open Records Act, **§§24-72-200.1 et seq., C.R.S.**

### F. C.R.S.

"C.R.S." means the Colorado Revised Statutes, as amended.

### G. Exhibits and other Attachments

The following "Exhibits and other Attachments" are attached hereto and incorporated by reference herein: IGA **Exhibit A** - Scope of Work, IGA **Exhibit B** - Location of Energy Audit, and IGA **Exhibit C** - Cost and Pricing Elements.

### H. Facility

"Facility" or "Facilities" means any building or utility owned or operated by the Political Subdivision, as set forth on **Exhibit B** - Location of Energy Audit.

### I. Fiscal Year

"Fiscal Year" means a 12-month period beginning on January 1 of each calendar year and ending on December 31.

### J. Goods:

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

### K. Governing Body

"Governing Body" means the governing body of the Political Subdivision, a governing body (city or town council, board of trustees, etc.) of any municipality or home rule county, a board of county commissioners of any county, a board of directors of any special district, or a board of education of any school district as defined in **§29-12.5-101(1), C.R.S.**

### L. Incident

"Incident" means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, pursuant to **§§24-37.5-401 et. seq. C.R.S.** Incidents include, without limitation (i) successful attempts to gain unauthorized access to a State system or State Records regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State's knowledge, instruction, or consent.

**M. Investment Grade Audit Contract**

“Investment Grade Audit Contract” (IGA) means that certain contract between the Contractor and the Political Subdivision and entered into pursuant to **§29-12.5-102, C.R.S.**, and pursuant to which the Contractor conducted the IGA. The IGA Contract shall determine the feasibility of whether to enter into an Energy Performance Contract to provide for the implementation of Utility Cost Savings Measures, Facility Improvement Measures, and Operation and Maintenance Cost Savings Measures in Facilities owned or leased by the Political Subdivision and vehicle fleet operational and fuel cost saving measures at the Premises of the Political Subdivision.

**N. Investment Grade Audit Report**

“Investment Grade Audit” or “IGA” means a detailed audit of Political Subdivision Premises, conducted by Contractor] pursuant to the IGA Contract, pursuant to **§29-12.5-102, C.R.S.**, which may serve as the basis for an Energy Performance Contract.

**O. Party or Parties**

“Party” means the Political Subdivision or the Contractor and “Parties” means both the Political Subdivision and the Contractor.

**P. Political Subdivision**

“Political Subdivision” means the Political Subdivision set forth above as a Party to this Contract, being a municipality, county, special district or school district as defined in **§29-12.5-101(5), C.R.S.**

**Q. Political Subdivision Confidential Information**

“Political Subdivision Confidential Information” means any and all Political Subdivision Records not subject to disclosure under CORA. Political Subdivision Confidential Information shall include, but is not limited to PII, Tax Information, and Political Subdivision personnel records not subject to disclosure under CORA.

**R. Political Subdivision Records**

“Political Subdivision Records” means any and all data, information, and records, regardless of physical form.

**S. Premises**

“Premises” means the Facilities owned or controlled by the Political Subdivision as identified on **Exhibit B - Location of Energy Audit**.

**T. Principal Representative**

“Principal Representative” means the person or persons designated by the Governing Body of the Political Subdivision to act as the Principal Representative of the Political Subdivision under the terms of and as set forth in this Contract. The Principal Representative may delegate his or her authority hereunder, in writing, if authorized to do so pursuant to the related authorizing resolution or ordinance of the Governing Body. The Contractor shall have the right to inquire regarding the delegated authority of any of the Principal Representative’s designees under the terms of this Contract and shall be provided with a response in writing when requested.

**U. Services**

“Services” means the required services to be performed by the Contractor pursuant to this Contract.

**V. Subcontractor**

“Subcontractor” means third parties, if any, engaged by Contractor to aid in performance of the Work.

**W. Tax Information**

“Tax Information” means federal and State of Colorado tax information including, without limitation, federal and state tax returns, return information, and such other tax-related information as may be protected by federal and state law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.

**X. Work**

“Work” means the tasks and activities the Contractor is required to perform to fulfill its obligations under this Contract and **Exhibit A**, including the performance of the Services and delivery of the Goods.

**Y. Work Product**

“Work Product” means the tangible or intangible results of the Contractor’s Work, including, but not limited to, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type (but not including software), including drafts. Work Product does not include the Contractor’s Intellectual Property.

*Any other term used in this Contract that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.*

**ARTICLE 2 TERM and EARLY TERMINATION****A. Initial Term-Work Commencement**

The Parties’ respective performances under this Contract shall commence on the later of either the Effective Date or August 7, 2019. This Contract shall terminate on August 7, 2020 unless sooner terminated or further extended as specified elsewhere herein.

**B. Early Termination in the Public Interest**

The Political Subdivision is entering into this Contract for the purpose of carrying out the public policy of the Political Subdivision as determined by the Governing Body. If this Contract ceases to further the public policy of the Political Subdivision, the Governing Body, in its sole discretion, may terminate this Contract in whole or in part. Exercise by the Governing Body of this right shall not constitute a breach of the Political Subdivision’s obligations hereunder. This subsection shall not apply to a termination of this Contract by the Political Subdivision for cause or breach by the Contractor, which shall be governed by **Article 10(A)** or as otherwise specifically provided for herein.

**i. Method and Content**

The Principal Representative shall notify the Contractor of such termination in accordance with **Article 13**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract.

**ii. Obligations and Rights**

Upon receipt of a termination notice, the Contractor shall be subject to and comply with the same obligations and rights set forth in **Article 11(A)(i)**.

**iii. Payments**

If this Contract is terminated by the Governing Body pursuant to this **Article 2B**, the Contractor shall be paid an amount that bears the same ratio to the total reimbursement under this Contract as Contractor’s obligations that were satisfactorily performed bear to the total obligations set forth in this Contract, less payments previously made. Additionally, if this Contract is less than 60% completed, the Political Subdivision may, but is not obligated to, reimburse the Contractor for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by Contractor which are directly attributable to the uncompleted portion of Contractor’s obligations hereunder. The sum of any and all reimbursements under this **Article 2B** shall not exceed the maximum amount payable to the Contractor hereunder and any and all such reimbursements shall be payable only from funds that have been budgeted, appropriated and otherwise made available and in respect of which a sufficient unencumbered balance thereof remains available for payment of such reimbursements, all within applicable constitutional, statutory, charter, code or other limitations applicable to the Political Subdivision.

**ARTICLE 3 STATEMENT OF WORK****A. Work**

Contractor shall perform an Investment Grade Audit in accordance with **IGA Exhibit A – Scope of Work**. The Investment Grade Audit shall be performed at the location(s) listed in **IGA Exhibit B – Location of Audit**. If the Governing Body, in its sole discretion, desires to accept the Contractor’s Investment Grade Audit Report and the EPC Project Proposal, which acceptance, if made, shall be made within [60] days of the Principal Representative’s receipt of such proposal in the form of the Notice of Acceptance of the Investment Grade Audit Report and EPC Project Proposal set forth below in **Article 3(E)**. The Parties may, but are not obligated

to, enter into a new contract, entitled “Energy Performance Contract,” based on such proposal, the form of which shall be supplied by the Political Subdivision and shall comply with **§29-12.5-101, C.R.S., et seq.**

**B. Time of Performance**

The Work under this Contract shall be completed during the initial term, which is set forth in **Article 2**, or any extension thereof.

**C. Goods and Services**

Contractor shall procure Goods and Services necessary to complete the Work. Such procurement shall be paid from the Contract Funds and shall not increase the maximum amount payable hereunder by the Political Subdivision.

**D. Employees or Agents**

All persons employed by the Contractor or Subcontractors to perform Work under this Contract shall be the Contractor’s or Subcontractors’ employee(s) or agents for all purposes hereunder and shall not be employees or agents of the Political Subdivision for any purpose as a result of this Contract.

**E. Acceptance**

Once the Contractor has signed the draft “Notice of Acceptance” for the Investment Grade Audit Report and EPC Project Proposal, it shall submit that draft Notice of Acceptance to the Principal Representative for review and approval by the Governing Body. If the IGA Report and EPC Project Proposal meet the statutory requirements set forth in **§29-12.5-101, C.R.S., et seq.**, and upon receipt of a completed IGA Record of Review from CEO, the Governing Body may, in its discretion, authorize the Principal Representative to issue the Notice of Acceptance.

**ARTICLE 4 PAYMENTS TO CONTRACTOR**

The Political Subdivision shall, in accordance with the provisions of this **Article 4**, pay the Contractor in the amounts and using the methods set forth below:

**A. Project with Insufficient Cost Savings**

If the Contractor determines at any time during the Investment Grade Audit that savings cannot be attained to meet the Political Subdivision’s statutory requirements set forth in **§29-12.5-101, C.R.S., et seq.**, the Investment Grade Audit shall be terminated in accordance with **Article 11(B)** and **Article 13**.

**B. Maximum IGA Payment Amount**

Except as provided for below in subsections (i) and (ii), and (iii) of this **Article 4**, within [45] days after the Notice of Acceptance is issued by the Governing Body, which indicates the completion of the Investment Grade Audit Report and the related proposal for the Energy Performance Contract Project, Principal Representative shall pay to the Contractor a sum not to exceed \$75,000 in accordance with IGA **Exhibits B and C** to this Contract.

**i. Payment Without Financing of Energy Performance Contract**

After the Notice of Acceptance has been issued, at the Governing Body’s sole discretion, the Governing Body may exercise one of the two options set forth below, if the Governing Body of the Political Subdivision determines to pay out of available funds specifically appropriated for the purpose of performance of this Contract:

**a. Payment for performance of IGA only without authorization of Energy Performance Contract**

If the Governing Body decides not to proceed with an Energy Performance Contract, the Political Subdivision shall pay the Contractor for the due performance of the IGA from available funds which have been specifically appropriated for this purpose by the Governing Body in the ordinance or resolution authorizing the Political Subdivision to enter into this Contract. The Political Subdivision reserves the right to use such information from the Investment Grade Audit Report as it deems appropriate. Any unilateral use by the Political Subdivision of the Investment Grade Audit Report and any related underlying data for completing, using, maintaining or adding to any facilities of the Political Subdivision shall be at the sole risk of the Political Subdivision and without liability to the Contractor or Contractor consultants.

**b. Payment Without Financing Arranged Under Energy Performance Contract**

If the Governing Body authorizes the Political Subdivision to enter into an Energy Performance Contract with the Contractor, the Governing Body may determine to pay the Contractor for the

due performance of the IGA from available funds specifically appropriated for this purpose or from separate lease purchase rather than finance the related project from the lease purchase or enterprise revenue bond financing provided through the Energy Performance Contract. The Political Subdivision will pay the Contractor within 90 days after the Notice of Acceptance is issued.

**ii. Payment with Financing Arranged Under Energy Performance Contract**

If the Governing Body authorizes the Political Subdivision to enter into (a) an Energy Performance Contract with the Contractor and (b) the financing of the IGA cost and the costs of the related project from the lease purchase financing provided through the Energy Performance Contract, the Political Subdivision will have no direct payment obligations to the Contractor under this Contract, provided that the Contractor and the Political Subdivision execute an Energy Performance Contract and enter into such financing within 90 days after the issuance of the Notice of Acceptance. The above stated cost of the completed Investment Grade Audit shall be incorporated into the Contractor's total project costs and paid from the lease purchase provided through the Energy Performance Contract.

**iii. Payment Without the issuance of the Notice of Acceptance**

Within 60 days after the date on which the Contractor submits the draft Notice of Acceptance to the Principal Representative, the Principal Representative shall review and may object and propose revisions, in writing, to the Contractor regarding the Investment Grade Audit Report and EPC Project Proposal. If the Political Subdivision has received the completed IGA Record of Review from CEO and such IGA Record of Review and the analysis of the Principal Representative reflect that the IGA Report and the EPC Project Proposal each meet the statutory requirements set forth in **§29-12.5-101, C.R.S., et seq.**, but the Political Subdivision does not issue the Notice of Acceptance, the Notice of Acceptance will be deemed issued as of the [61<sup>st</sup>] day after the Contractor's submission of the draft Notice of Acceptance. If the Notice of Acceptance is deemed issued, the Political Subdivision shall be obligated to pay the Contractor for its performance hereunder as set forth in **Article 4(B)(i)**, and the Contractor shall provide the complete Investment Grade Audit Report and any related underlying data including building, infrastructure, and equipment specifications, blueprints, etc., to the Political Subdivision for its records and use.

**C. Payment**

**i. Payments**

Contractor shall initiate any payment requests by submitting invoices to the Principal Representative in the form and manner set forth and approved by the Principal Representative.

**ii. Interest**

The Political Subdivision shall fully pay each invoice within the payment terms of the Political Subdivision and within 45 days in accordance with of receipt thereof if the amount invoiced represents performance by the Contractor previously accepted by the Principal Representative. Uncontested amounts not paid by the Political Subdivision within 45 days shall bear interest on the unpaid balance beginning on the following day at a rate not to exceed 8% percent per month until paid in full, provided that such interest amounts have been duly appropriated by the Governing Body; provided, however, that interest shall not accrue on unpaid amounts that the Principal Representative disputes. The Contractor shall invoice the Political Subdivision separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of days interest to be paid and the interest rate.

**iii. Available Funds-Contingency-Termination**

The Political Subdivision is prohibited by law from making financial commitments beyond the term of the current Fiscal Year. This Contract shall not constitute a debt or a multiple Fiscal Year financial obligation under any Colorado constitutional or statutory provisions or limitations. Payment to the Contractor beyond the current Fiscal Year is contingent on the appropriation and continuing availability of Contract Funds in any subsequent year. If federal funds or funds from any other source not from the Political Subdivision constitute all or some of the Contract Funds, the obligation of the Political Subdivision to pay the Contractor shall be contingent upon such funding continuing to be made available for payment. Payments to be made pursuant to this Contract shall be made only from Contract Funds, and the Political Subdivision's liability for such payments shall be limited to the

amount remaining of such Contract Funds. If other funds are not appropriated, or otherwise become unavailable to fund this Contract, the Political Subdivision may, upon written notice, terminate this Contract, in whole or in part, without incurring further liability in accordance with the provisions hereof.

**iv. Erroneous Payments**

At the Governing Body's sole discretion, payments made to the Contractor in error for any reason, including, but not limited to overpayments or improper payments and unexpended or excess funds received by the Contractor, the Political Subdivision may recover from the Contractor by deduction from subsequent payments under this Contract or other contracts, grants or agreements between the Political Subdivision and the Contractor or by other appropriate methods and collected as a payment due to the Political Subdivision. Such payments shall not be made to any party other than the Political Subdivision.

**D. Use of Funds**

Contract Funds shall be used only for eligible costs identified herein.

**ARTICLE 5 REPORTING - NOTIFICATION**

Reports, Evaluations, and Reviews required under this **Article 5** shall be in accordance with the procedures of and in such form as prescribed by the Political Subdivision and in accordance with **Article 13**, if applicable.

**A. Litigation Reporting**

If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision-making body, and such pleading or document relates to this Contract or may affect Contractor's ability to perform its obligations under this Contract, Contractor shall, within 10 days after being served, notify the Political Subdivision of such action and deliver copies of such pleading or document to the Principal Representative of the Political Subdivision identified in **Article 13**.

**B. Performance Outside the State of Colorado and/or the United States**

*[This §5.B shall not apply if the Contract Funds include any Federal funds]* Following the Effective Date, Contractor shall provide written notice to the Political Subdivision by notice to the Principal Representative, in accordance with **Article 13**, within twenty (20) days of the earlier to occur of Contractor's decision to perform, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado and/or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado and/or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations. Knowing failure by Contractor to provide notice to the Political Subdivision under this **Article 5(B)** shall constitute a material breach of this Contract.

**C. Noncompliance**

Contractor's failure to provide reports and notify the Principal Representative of the Political Subdivision in a timely manner in accordance with this **Article 5** may result in the delay of payment of funds and/or termination as provided under this Contract.

**ARTICLE 6 CONTRACTOR RECORDS**

**A. Maintenance**

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "Contractor Records"). Contractor Records shall include all documents, records, communications, notes and other materials maintained by Contractor that relate to any Work performed by Subcontractors, and Contractor shall maintain all records related to the Work performed by Subcontractors required to ensure proper performance of that Work. Contractor shall maintain Contractor Records until the last to occur of: **(i)** the date [3] years after the date this Contract expires or is terminated, **(ii)** final payment under this Contract is made, **(iii)** the resolution of any pending Contract matters, or **(iv)** if a Contract audit is occurring, or Contractor has received notice that a Contract audit is pending, the date such Contract audit is completed and its findings have been resolved (the "Record Retention Period").

**B. Inspection**

Contractor shall permit the Political Subdivision to audit, inspect, examine, excerpt, copy and transcribe Contractor Records during the Record Retention Period. Contractor shall make Contractor Records available

during normal business hours at Contractor's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than [2] Business Days' notice from the Principal Representative, unless the Principal Representative determines that a shorter period of notice, or no notice, is necessary to protect the interests of the Political Subdivision.

**C. Monitoring**

The Principal Representative, in its discretion, may monitor Contractor's performance of its obligations under this Contract using procedures as determined by the Political Subdivision. The Principal Representative shall monitor Contractor's performance in a manner that does not unduly interfere with Contractor's performance of the Work.

**D. Final Contract Audit Report**

Contractor shall promptly submit to the Political Subdivision a copy of any final Contract audit report of a Contract audit performed on Contractor's records that relates to or affects this Contract or the Work, whether the audit is conducted by Contractor or a third party.

**ARTICLE 7 CONFIDENTIAL INFORMATION AND POLITICAL SUBDIVISION RECORDS**

Contractor shall comply with the provisions of this **Article 7** if it becomes privy to confidential information in connection with its performance hereunder. Confidential information includes, but is not necessarily limited to, any Political Subdivision records, personnel records, and information concerning individuals. Such information shall not include information required to be disclosed pursuant to CORA.

**A. Confidentiality**

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all Political Subdivision Records, unless those Records are publicly available. Contractor shall not, without prior written approval of the Governing Body, use, publish, copy, disclose to any third party, or permit the use by any third party of any Political Subdivision Records, except as otherwise stated in this Contract, permitted by law, or approved in writing by the Governing Body. Contractor shall provide for the security of all Political Subdivision Confidential Information in accordance with all applicable laws, rules, policies, publications, and guidelines. Contractor shall immediately forward any request or demand for Political Subdivision Records to the Principal Representative.

**B. Other Entity Access and Nondisclosure Agreements**

Contractor may provide Political Subdivision Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to Political Subdivision Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Contract. Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Contract, and that the nondisclosure provisions are in force at all times that the agent, employee, assign or Subcontractor has access to any Political Subdivision Confidential Information. Contractor shall provide copies of those signed nondisclosure provisions to the Principal Representative upon execution of the nondisclosure provisions if requested by the Principal Representative.

**C. Use, Security, and Retention**

Contractor shall use, hold and maintain Political Subdivision Confidential Information in compliance with any and all applicable laws and regulations only in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all Political Subdivision Confidential Information. Contractor shall provide the Principal Representative with access, subject to Contractor's reasonable security requirements, for purposes of inspecting and monitoring access and use of Political Subdivision Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Contract, Contractor shall return Political Subdivision Records provided to Contractor or destroy such Political Subdivision Records and certify to the Governing Body that it has done so, as directed by the Principal Representative. If Contractor is prevented by law or regulation from returning or destroying Political Subdivision Confidential Information, Contractor warrants that it will guarantee the confidentiality of, and cease to use, such Political Subdivision Confidential Information.

**D. Incident Notice and Remediation**

If Contractor becomes aware of any Incident, it shall notify the Principal Representative immediately and cooperate with the Political Subdivision regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the Principal Representative. Unless Contractor can establish that Contractor and its Subcontractors are not the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the Principal Representative, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the Governing Body at no additional cost to the Political Subdivision. The Governing Body may adjust or direct modifications to this plan in its sole discretion, and Contractor shall make all modifications as directed by the Principal Representative. If Contractor cannot produce its analysis and plan within the allotted time, the Principal Representative, in its sole discretion, may perform such analysis and produce a remediation plan, and Contractor shall reimburse the Political Subdivision for the actual costs thereof.

**E. Data Protection and Handling**

Contractor shall ensure that all Political Subdivision Records and Work Product in the possession of Contractor or any Subcontractors are protected and handled in accordance with the requirements of this Contract at all times.

**F. Safeguarding PII**

If Contractor or any of its Subcontractors will or may receive PII under this Contract, Contractor shall provide for the security of such PII, in a manner and form acceptable to the Principal Representative, including, without limitation, Political Subdivision non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits.

**ARTICLE 8 CONFLICTS OF INTEREST****A. Actual Conflicts of Interest**

Contractor shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Contractor under this Contract. Such a conflict of interest would arise when a Contractor or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the Political Subdivision, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Contract.

**B. Apparent Conflicts of Interest**

Contractor acknowledges that, with respect to this Contract, even the appearance of a conflict of interest shall be harmful to the Political Subdivision's interests. Absent the Governing Body's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations under this Contract.

**C. Disclosure to the Political Subdivision**

If a conflict or the appearance of a conflict arises, or if Contractor is uncertain whether a conflict or the appearance of a conflict has arisen, Contractor shall submit to the Principal Representative a disclosure statement setting forth the relevant details for the Political Subdivision's consideration. Failure to promptly submit a disclosure statement or to follow the Principal Representative's direction in regard to the actual or apparent conflict constitutes a breach of this Contract.

**ARTICLE 9 INSURANCE**

Contractor shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Contract. All insurance policies required by this Contract shall be issued by insurance companies with an AM Best rating of A-VIII or better.

**A. Workers' Compensation**

Workers' compensation insurance as required by State statute and any other requirements of the Political Subdivision, and employers' liability insurance covering all Contractor or Subcontractor employees acting within the course and scope of their employment.

**B. General Liability**

Commercial general liability insurance written on an Insurance Services Office occurrence form, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

\$1,000,000 each occurrence;

\$1,000,000 general aggregate;

\$1,000,000 products and completed operations aggregate; and

\$50,000 any 1 fire.

**C. Automobile Liability**

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

**D. Professional Liability Insurance**

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

\$1,000,000 each occurrence; and

\$1,000,000 general aggregate.

**E. Crime Insurance**

Crime insurance including employee dishonesty coverage with minimum limits as follows:

\$1,000,000 each occurrence; and

\$1,000,000 general aggregate.

**F. Additional Insured**

The Political Subdivision shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Contractor and Subcontractors.

**G. Primacy of Coverage**

Coverage required of Contractor and each Subcontractor shall be primary over any insurance or self-insurance program carried by Contractor or the Political Subdivision.

**H. Cancellation**

The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the Principal Representative in accordance with **Article 13** within 7 days of Contractor's receipt of such notice.

**I. Subrogation Waiver**

All insurance policies secured or maintained by Contractor or its Subcontractors in relation to this Contract shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or the Political Subdivision, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

**J. Public Entities**

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, **§24-10-101, et seq., C.R.S.** (the GIA), Contractor shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Contractor shall ensure that the Subcontractor maintains at all times during the terms of this Contract, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

**K. Certificates**

Contractor shall provide to the Principal Representative, for the records of the Political Subdivision, certificates evidencing Contractor's insurance coverage required in this Contract within 7 Business Days following the Effective Date. Contractor shall provide to the Principal Representative, for the records of the Political Subdivision, certificates evidencing Subcontractor insurance coverage required under this Contract within 7 Business Days following the Effective Date; except that, if Contractor's subcontract is not in effect

as of the Effective Date, Contractor shall provide to the Principal Representative certificates showing Subcontractor insurance coverage required under this Contract within 7 Business Days following Contractor's execution of the subcontract. No later than 15 days before the expiration date of Contractor's or any Subcontractor's coverage, Contractor shall deliver to the Principal Representative certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by the Principal Representative, Contractor shall, within 7 Business Days following the request by the Principal Representative, supply to the Principal Representative evidence satisfactory to the Principal Representative of compliance with the provisions of this **Article 9**.

#### **ARTICLE 10. BREACH**

##### **A. Defined**

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

##### **B. Notice and Cure Period**

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in **§13**. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the Political Subdivision may exercise any of the remedies set forth in **§11**. Notwithstanding anything to the contrary herein, the Governing Body, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Contract in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

#### **ARTICLE 11. REMEDIES**

If Contractor is in breach under any provision of this Contract, the Political Subdivision shall have all of the remedies listed in this **Article 11** in addition to all other remedies set forth in other sections of this Contract following the notice and cure period set forth in **Article 10(B)**. The Political Subdivision may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

##### **A. Termination for Cause and/or Breach**

The Political Subdivision may terminate this entire Contract or any part of this Contract. Exercise by the Political Subdivision of this right shall not be a breach of its obligations hereunder. Contractor shall continue performance of this Contract to the extent not terminated, if any.

##### **i. Obligations and Rights**

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver to the Principal Representative all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Contract's terms. At the sole discretion of the Governing Body, Contractor shall assign to the Political Subdivision all of Contractor's right, title, and interest under such terminated orders or subcontracts; provided that Contractor's obligations with respect to Contractor's Intellectual Property are set forth in **Article 14** below. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the Political Subdivision has an interest. All materials owned by the Political Subdivision in the possession of Contractor shall be immediately returned to the Political Subdivision. All Work Product, at the option of the Political Subdivision, shall be delivered by Contractor to the Principal Representative and shall become the Political Subdivision's personal property.

##### **ii. Payments**

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

**iii. Damages and Withholding**

Notwithstanding any other remedial action by the Political Subdivision, Contractor shall remain liable to the Political Subdivision for any damages sustained by the Political Subdivision by virtue of any breach under this Contract by Contractor and the Political Subdivision may withhold any payment to Contractor for the purpose of mitigating the Political Subdivision's damages, until such time as the exact amount of damages due to the Political Subdivision from Contractor is determined. The Principal Representative may withhold any amount that may be due Contractor as the Governing Body deems necessary to protect the Political Subdivision against loss, including loss as a result of outstanding liens, claims of former lien holders, or for the excess costs incurred in procuring similar goods or services. Contractor shall be liable for excess costs incurred by the Political Subdivision in procuring from third parties replacement Work, Services or substitute Goods as cover.

**B. Early Termination for Insufficient Cost Savings**

The Contractor is entering into this Contract for the purpose of carrying out an Investment Grade Audit and Energy Performance Contract Project Proposal. The Contractor may terminate this Contract in accordance with **Article 4(A)(iii)** prior or subsequent to the completion of the Investment Grade Audit. The Contractor shall notify the Governing Body in writing that Contractor is unable to guarantee savings which exceeds the costs associated with performing the audit, installing the improvements, and related maintenance and monitoring services as required and set forth in **§29-12.5-101, C.R.S., et seq.** Exercise by the Contractor of this Early Termination for Insufficient Cost Savings, shall not be deemed a breach of the Contractor's obligations hereunder.

**i. Method and Content**

The Contractor shall notify Governing Body of such termination in accordance with **Article 13**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract.

**ii. Obligations and Rights**

Upon receipt of a termination notice, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the Political Subdivision has an interest. All materials owned by the Political Subdivision in the possession of Contractor shall be immediately returned to the Political Subdivision.

**iii. Payments**

In this event this Contract shall be terminated and the Political Subdivision shall not be liable to pay Contractor, in whole or part, the amount specified in **Article 4(A)**.

**C. Remedies Not Involving Termination**

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

**i. Suspend Performance**

Suspend Contractor's performance with respect to all or any portion of this Contract pending necessary corrective action as specified by the Principal Representative of the Governing Body of the Political Subdivision without entitling Contractor to an adjustment in price/cost or performance schedule. Contractor shall promptly cease performance and incurring costs in accordance with the Principal Representative's directive and the Political Subdivision shall not be liable for costs incurred by Contractor after the suspension of performance under this provision.

**ii. Withhold Payment**

Withhold payment to Contractor until corrections in Contractor's performance are satisfactorily made and completed.

**iii. Deny Payment**

Deny payment for those obligations not performed, that due to Contractor’s actions or inactions, cannot be performed or, if performed, would be of no value to the Political Subdivision; provided, that any denial of payment shall be reasonably related to the value to the Political Subdivision of the obligations not performed.

**iv. Removal**

Notwithstanding any other provision herein, the Principal Representative of the Governing Body of the Political Subdivision may demand immediate removal of any of Contractor’s employees, agents, or subcontractors whom the Principal Representative deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Contract is deemed to be contrary to the public interest or the Political Subdivision’s best interest.

**v. Intellectual Property**

If Contractor infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Contract, Contractor shall, at the Governing Body’s option (a) obtain for the Political Subdivision or Contractor the right to use such products and services; (b) replace any Goods, Services or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services or products and refund to the Political Subdivision the amounts paid by the Political Subdivision for any such infringing Goods, Services or products.

**D. Contractor’s Remedies**

If the Political Subdivision is in breach of any provision of this Contract and does not cure such breach, Contractor, following the notice and cure period in **Article10.B** and the dispute resolution process in **Article12**, shall have all remedies available at law and equity.

**ARTICLE 12 DISPUTE RESOLUTION**

**A. Initial Resolution**

Except as herein specifically provided otherwise, disputes concerning the performance of this Contract which cannot be resolved by the designated Contract representatives shall be referred in writing to Town of Crested Butte Town Manager designated by the Political Subdivision and a senior manager designated by Contractor for resolution.

**B. Resolution of Controversies**

If the initial resolution described in **Article12.A** fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the Political Subdivision to the District Court of Gunnison County, State of Colorado.

**ARTICLE 13 NOTICES and REPRESENTATIVES**

Each individual identified below shall be the principal representative of the designating Party. All notices required or permitted to be given under this Contract shall be in writing, and shall be delivered **(i)** by hand with receipt required, **(ii)** by certified or registered mail to such Party’s principal representative at the address set forth below or **(iii)** as an email with read receipt requested to the principal representative at the email address or **(iv)** by overnight courier to the address set forth below, if any, set forth below. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party’s principal representative at the address set forth below. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this **Article13** without a formal amendment to this Contract. Unless otherwise provided in this Contract, notices shall be effective upon delivery of the written notice.

**A. Political Subdivision Designee:**

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

dmacdonald@crestedbutte-co.gov
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**B. Contractor:**

Rowena Adams PE, Account Executive
Performance Infrastructure; Colorado Building Technologies & Solutions
Johnson Controls, Inc.
10289 W Centennial Rd.
Littleton, CO 80127
Rowena.Patawaran@jci.com

**ARTICLE 14 RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE**

Except for Contractor's Intellectual Property, any research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Contractor in the performance of its obligations under this Contract shall be the nonexclusive personal property of the Political Subdivision and all Work Product shall be delivered to the Principal Representative, for the records of the Political Subdivision, by Contractor upon completion or termination hereof. The Political Subdivision's nonexclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer and prepare derivative works.

**ARTICLE 15 GOVERNMENTAL IMMUNITY**

Liability for claims for injuries to persons or property arising from the negligence of the Political Subdivision and its departments, institutions, agencies, boards, officials, and employees, including the members of the Governing Body and the Principal Representative, is controlled and limited by the provisions of the Governmental Immunity Act **§24-10-101, C.R.S., et seq.**

**ARTICLE 16 GENERAL PROVISIONS****A. Assignment**

Contractor's rights and obligations under this Contract are personal and may not be transferred or assigned without the prior, written consent of the Governing Body. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Contractor's rights and obligations approved by the Governing Body shall be subject to the provisions of this Contract.

**B. Subcontracts**

Contractor shall not enter into any subcontract in connection with its obligations under this Contract without the prior, written approval of the Governing Body of the Political Subdivision. Contractor shall submit to the Principal Representative a copy of each such subcontract upon request by the Principal Representative. All subcontracts entered into by Contractor in connection with this Contract shall comply with all applicable federal, state and Political Subdivision laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Contract.

**C. Binding Effect**

Except as otherwise provided in **Article 17(A)**, all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

**D. Authority**

Each Party represents and warrants to the other that the execution and delivery of this Contract and the performance of such Party's obligations have been duly authorized.

**E. Captions and References**

The captions and headings in this Contract are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Contract to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

**F. Counterparts**

This Contract may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

**G. Entire Understanding**

This Contract represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Contract. Prior or contemporaneous additions, deletions, or other changes to this Contract shall not have any force or affect whatsoever, unless embodied herein.

**H. Jurisdiction and Venue**

All suits or actions related to this Contract shall be filed and proceedings held in the District Court of Gunnison County, State of Colorado.

**I. Modification**

Except as otherwise provided in this Contract, any modification to this Contract shall only be effective if agreed to in a formal amendment to this Contract, properly executed and approved in accordance with applicable laws and the fiscal rules and policies of the Political Subdivision. Modifications permitted under this Contract, other than contract amendments, shall conform to the policies promulgated by the Political Subdivision.

**J. Statutes, Regulations, Fiscal Rules and Other Authority.**

Any reference in this Contract to a statute, regulation, Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Contract.

**K. Order of Precedence**

In the event of conflicts or inconsistencies between this Contract and any Exhibits or attachments such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. Political Subdivision General Provisions in the main body of this Contract,
- ii. The provisions of the other sections of the main body of this Contract,
- iii. IGA Exhibit A - Scope of Work,
- iv. IGA Exhibit B - Location of Audit and
- v. IGA Exhibit C - Cost and Pricing Elements.

**L. Severability**

The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Contract in accordance with the intent of the Contract.

**M. Survival of Certain Contract Terms**

Any provision of this Contract that imposes an obligation on a Party after termination or expiration of the Contract shall survive the termination or expiration of the Contract and shall be enforceable by the other Party.

**N. Taxes**

The Political Subdivision is exempt from all federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from Colorado state and local government sales and use taxes under **§§39-26-704(1), et seq. C.R.S.** The Political Subdivision shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the State of Colorado imposes such taxes on Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales, or use taxes that Contractor may wish to have in place in connection with this Contract.

**O. Third Party Beneficiaries**

Except for the Parties' respective successors and assigns described in Article 17, this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any

services or benefits which third parties receive as a result of this Contract are incidental to the Contract, and do not create any rights for such third parties.

**P. Waiver**

A Party's failure or delay in exercising any right, power, or privilege under this Contract, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

**Q. CORA Disclosure**

To the extent not prohibited by federal law, this Contract and the performance measures and standards are subject to public release through CORA.

**R. Standard and Manner of Performance**

Contractor shall perform its obligations under this Contract in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession.

**S. Licenses, Permits, and Other Authorizations.**

Contractor shall secure, prior to the Effective Date, and maintain at all times during the term of this Contract, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Contract, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Contract.

**T. Indemnification**

i. General Indemnification

Contractor shall indemnify, save, and hold harmless the Political Subdivision, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees in connection with this Contract.

ii. Confidential Information Indemnification

Disclosure or use of Political Subdivision Confidential Information by Contractor in violation of **Article 7** may be cause for legal action by third parties against Contractor, the Political Subdivision, or their respective agents. Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the Political Subdivision in relation to any act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of **Article 7**.

iii. Intellectual Property Indemnification

Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

**ARTICLE 17 COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-1)**

**A. APPROVAL**

This Contract shall not be valid until it has been approved by a resolution of the Crested Butte Town Council.

**B. FUNDS AVAILABILITY**

Financial obligations of the Political Subdivision payable after the current Fiscal Year are contingent upon funds for that purpose being budgeted, appropriated and encumbered for the purposes of this Contract as given in **§24-30-202(5.5), C.R.S.**

**C. GOVERNMENTAL IMMUNITY.**

No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental

Immunity Act, **§24-10-101, et seq. C.R.S.** or the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b).

**D. INDEPENDENT CONTRACTOR**

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

**E. COMPLIANCE WITH LAW.**

Contractor shall strictly comply with all applicable federal, State and local laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

**F. CHOICE OF LAW.**

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

**G. BINDING ARBITRATION PROHIBITED.**

The Political Subdivision does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Contract or incorporated herein by reference shall be null and void.

**H. SOFTWARE PIRACY PROHIBITION** Political Subdivision or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the Political Subdivision determines that Contractor is in violation of this provision, the Political Subdivision may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST**

The signatories aver that to their knowledge, no employee of the Political Subdivision has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

**J. VENDOR OFFSET**

The Political Subdivision's Controller may withhold payment for: **(i)** unpaid child support debts or child support arrearages; **(ii)** unpaid balances of tax, accrued interest, or other charges; **(iii)** amounts required to

be paid to the Unemployment Compensation Fund; and **(v)** other unpaid debts owing to the Political Subdivision as a result of final agency determination or judicial action.

**K. PUBLIC CONTRACTS FOR SERVICES**

Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program established under Pub. L. 104-208 or the State verification program established pursuant to **§8-17.5-102(5)(c), C.R.S.**, Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor **(i)** shall not use E-Verify Program to undertake pre-employment screening of job applicants while this Contract is being performed, **(ii)** shall notify the Subcontractor and the Principal Representative within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, **(iii)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to **§8-17.5-102(5), C.R.S.**, by the Colorado Department of Labor and Employment. If Contractor participates in the State program, Contractor shall deliver to the Principal Representative, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Contractor fails to comply with any requirement of this provision or **§§8-17.5-101, et seq., C.R.S.**, the Political Subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

**L. PUBLIC CONTRACTS WITH NATURAL PERSONS**

Contractor, if a natural person 18 years of age or older, hereby swears and affirms under penalty of perjury that he or she **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of **§§24-76.5-101, et seq., C.R.S.**, and **(iii)** has produced one form of identification required by **§24-76.5-103, C.R.S.** prior to the Effective Date of this Contract.

**THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK**

**ARTICLE 18. SIGNATURE PAGE**

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

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

<p style="text-align: center;"><b>CONTRACTOR</b> <b>Johnson Controls, Inc.</b></p> <p>By: Maureen Blase Title: Regional Vice President</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	<p style="text-align: center;"><b>POLITICAL SUBDIVISION</b> <b>Town of Crested Butte</b></p> <p>By: Dara MacDonald Title: Town Manager</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>
	<p style="text-align: center;"><b>LEGAL REVIEW</b></p> <p>By: John Sullivan Title: Town Attorney</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>

## IGA Exhibit A Scope of Work

- [SECTION 1. Energy Performance Contract Definitions and Terms](#)
- [SECTION 2. Pre-Audit Conference](#)
- [SECTION 3. Data Collection and Building/Equipment Schedules](#)
- [SECTION 4. Establish Baseline Period Consumption](#)
- [SECTION 5. Preliminary Analysis and Discussion of Utility Cost-Savings Measures and FIMs and other ESCO Services](#)
- [SECTION 6. Detailed Analysis of Utility Cost-Savings Measures and FIMs and other ESCO Services](#)
- [SECTION 7. Draft Investment Grade Audit Report](#)
- [SECTION 8. Post Draft Investment Grade Audit Report Conference](#)
- [SECTION 9. Final Investment Grade Audit Report and Energy Performance Contract Project Proposal](#)

### **Purpose of the Investment Grade Audit and this Scope of Work Exhibit**

The purpose of the Investment Grade Audit (IGA) is to review the Political Subdivision’s facilities and infrastructure with the intent to present an IGA audit report and an Energy Performance Contract (EPC) Project Proposal. The Scope of Work exhibit is a general outline of the process from the initial Pre-Audit Conference to an accepted IGA report and an EPC Project Proposal. The Scope of Work outlines the information collected, how it is analyzed, the methodology used for calculations, an initial but not exclusive list of Utility Cost-Savings Measures and FIMs to consider, a proposed financing performance, and a format for the report. The EPC Project Proposal should include proposed equipment (or equal) to be installed, proposed facility modifications, expected utility savings, expected project costs, proposed project design and construction schedule, a measurement and verification plan, and long-term Energy Service Company (ESCO) and Political Subdivision maintenance requirements.

The ESCO shall conduct all necessary conference(s) and produce associated documentation to initiate and complete Work under the IGA Contract. The ESCO will facilitate all reviews and collect all the comments starting with the Pre-Audit Conference (reference this **Section 2**) through the Post-Audit Conference (reference **Section 8**). The ESCO will develop the draft and final Investment Grade Audit report and develop the Energy Performance Contract Project Proposal.

If the Political Subdivision (Municipality, County, School District, or Special District) and the ESCO (with CEO review) determine that any of the following services detailed below are not required for a given project, the Scope of Work can be modified by the Political Subdivision by striking through the identified services.

### **SECTION 1. Energy Performance Contract Definitions and Terms**

The following terms are used in the Investment Grade Audit and Project Proposal Contract. The Energy Performance Contract shall be construed and interpreted as follows:

- A. Adjusted-Baseline Energy**  
“Adjusted-Baseline Energy” means the energy use of the baseline period, adjusted to a different set of operating conditions.
- B. American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE)**  
“American Society of Heating, Refrigeration, and Air Conditioning Engineers” or “ASHRAE” means the recognized professional organization with standards and guidelines that may be referenced for additional definitions, procedures, and technical information as necessary in this Scope of Work and the IGA Project Proposal Report.
- C. Baseline Energy**  
“Baseline Energy” means the energy use (units) occurring during the Baseline Period without adjustments.
- D. Baseline Period**

## IGA Exhibit A Scope of Work

“Baseline Period” means the period of time chosen to represent operation of the facility or system before implementation of a Utility Cost-Savings Measure or any applicable FIM, as defined herein. This period may be as short as the time required for an instantaneous measurement of a constant quantity, or long enough to reflect one full operating cycle of a system or facility with variable operations.

**E. Baseline**

“Baseline” means and pertains to the baseline period.

**F. Commissioning**

“Commissioning” means a process for achieving, verifying and documenting the performance of equipment to meet the operational needs of the facility within the capabilities of the design, and to meet the design documentation and the Political Subdivision’s functional criteria, including preparation of operating personnel. Retro-commissioning is the application of the Commissioning process to existing buildings.

**G. Cost-Weighted Average Service Life**

“Cost-Weighted Average Service Life” means the calculation is based upon the service life of the equipment (ASHRAE Handbook - HVAC Applications or other approved source), the cost of each Utility Cost-Savings Measure or FIM (excluding the audit cost and Political Subdivision’s contingency), and the total cost of all the measures. The formula is the sum of each measure cost divided by the total cost multiplied by its service life. Cost-Weighted Average Service Life =  $\sum$  each measure  $\div$  total cost  $\times$  service life.

**H. Energy**

“Energy” means electricity (both usage and demand), natural gas, steam, water (potable or non-potable), or any other Utility-charged service.

**I. Energy Conservation Measure (ECM)**

“Energy Conservation Measure” or “ECM” means an Energy Saving Measure or Utility Cost-Savings Measure as defined in **§29-12.5-101(4) and §29-12.5-101(9), C.R.S.**, respectively. An ECM is an activity or set of activities designed to increase the efficiency (energy, water, or other utility) of a facility, system or piece of equipment. ECMs may also conserve energy without changing efficiency. An ECM may involve one or more of: physical changes to facility equipment, revisions to operating and maintenance procedures, software changes, or new means of training or managing users of the space or operations and maintenance staff. An ECM may be applied as a retrofit to an existing system or facility, or as a modification to a design before construction of a new system or facility. Within this Contract, Utility Cost-Savings Measures, Energy Saving Measures, Energy Cost-Saving Measures, Energy Conservation Measures (ECMs) and Facility Improvement Measures (FIMs) shall be interchangeable as necessary and may include vehicle fleet operational and fuel cost savings measures.

**J. Energy Cost-Savings Contract**

“Energy Cost-Savings Contract” means a Utility Cost-Savings Contract or a Vehicle Fleet Operational and Fuel Cost-Savings Contract as defined in **§29-12.5-101(2.5), C.R.S.**

**K. Energy Cost-Savings Measure**

“Energy Cost-Savings Measure” means a Utility Cost-Savings Measure or a Vehicle Fleet Operational and Fuel Cost-Savings Measure. Within this Contract, Utility Cost-Savings Measures, Energy Saving Measures, Energy Cost-Saving Measures, Energy Conservation Measures (ECMs) and Facility Improvement Measures (FIMs) shall be interchangeable as necessary and may include vehicle fleet operational and fuel cost savings measures.

**L. Energy Performance Contract**

“Energy Performance Contract” (“EPC”) as defined in **§29-12.5-101(3), C.R.S.**, is a contract for evaluations, recommendations or implementation of one or more Utility Cost-Savings Measures designed to produce Utility Cost-Savings, Operation and Maintenance Cost Savings, or Vehicle Fleet Operational and Fuel Cost-Savings, which:

- i. Sets forth savings attributable to calculated Utility Cost-Savings or Operation and Maintenance Cost Savings for each year during the Contract Term;
- ii. Provides that the amount of actual savings for each year during the Contract Term shall exceed annual contract payments, including maintenance costs, to be made during such year by the Political Subdivision contracting for the Energy Cost-Savings Measures;
- iii. Requires the party entering into the Energy Performance Contract with the Political Subdivision to provide a written guarantee that the sum of Energy Cost-Savings and Operation and Maintenance Cost

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Savings for each year during the first three years of the Contract period shall not be less than the calculated savings for that year;

- iv. Requires a minimum of one-tenth of payments by the Political Subdivision to be made within the first two years. Requires remaining payments by the Political Subdivision to be made within 12 years after the date of the execution of the contract, except that the maximum term of the payments shall be less than the Cost-Weighted Average Service Life of energy cost-savings equipment for which the contract is made, not to exceed 25 years.

**M. Energy Service Company**

“Energy Service Company” or “ESCO” means the energy service company entity entering into a contract to design and construct the Project with the Political Subdivision. The Energy Service Company may also be referred to as “Contractor” in this Contract or in related schedules, exhibits, attachments, contract modification or procedural documents. The ESCO may be the architect/engineer for the Utility Cost-Savings Measures or may contract out these professional services with approval of the Governing Body.

**N. Facility Improvement Measure**

“Facility Improvement Measure” or “FIMS” is an activity or set of activities designed to improve the structural or operational conditions of a facility, system or piece of equipment. A FIM may be an activity associated with an Energy Cost-Savings Measure and funded as part of an EPC. A FIM may be an activity requested by the Political Subdivision, but is not an Energy Cost-Savings Measure, but funds have been budgeted, appropriated and otherwise made available to be included in an EPC. Within this Contract, Utility Cost-Savings Measures, Energy Saving Measures, Energy Cost-Saving Measures, Energy Conservation Measures (ECMs) and Facility Improvement Measures (FIMs) shall be interchangeable as necessary and may include vehicle fleet operational and fuel cost savings measures.

**O. Federal Energy Management Program (FEMP) Measurement & Verification Guidelines**

“Federal Energy Management Program (“FEMP”) Measurement and Verification (M&V) Guidelines” means the current M&V Guidelines prepared by the U.S. Department of Energy. The FEMP M&V Guidelines contains specific procedures for applying concepts originating in the IPMVP (definition below). The FEMP M&V Guidelines represents a specific application of the IPMVP to EPC projects. It outlines procedures for determining M&V approaches, evaluating M&V plans and reports, and establishing the basis of payment for energy savings during the contract. These procedures are intended to be fully compatible and consistent with the IPMVP.

**P. Finance Agreement Term**

“Finance Agreement Term” means the original term and all renewal terms of any Lease-Purchase Agreement or any other financing or funding agreement of the Political Subdivision for the costs of this contract.

**Q. Guarantee Period**

“Guarantee Period” means a period of time commencing upon M&V Commencement Date and terminating on the termination of the M&V Term. The Guarantee Period is a mutually agreed to time period after the M&V Commencement Date, during which Guaranteed Annual Cost Savings resulting from the Project are measured and verified by the ESCO set forth in **EPC Schedule D**.

**R. International Performance Measurement and Verification Protocol**

“International Performance Measurement and Verification Protocol” or “IPMVP” means the current document prepared by the Efficiency Valuation Organization on the Effective Date of the IGA contract. It is the industry standard for current best practice techniques available for verifying results of energy efficiency, water efficiency, and renewable energy projects associated with the Investment Grade Audit Report and Energy Performance Contract Project Proposal (**reference Section 7**).

**S. kW**

“kW” is Kilowatt (abbreviation)

**T. kWh**

“kWh” is Kilowatt-hour (abbreviation)

**U. Measurement and Verification**

“Measurement and Verification” or “M&V” means the process of using measurements to reliably determine and verify the actual savings created within buildings, infrastructure, or systems resulting from an energy management program. Savings cannot be directly measured, since they represent the absence of energy

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use. Instead, savings are determined by comparing measured use before and after implementation of a project, making appropriate adjustments for changes in conditions. M&V follows the standards and definitions in the current International Performance Measurement and Verification Protocol (“IPMVP”), as may be amended by the Efficiency Valuation Organization on the Effective Date of this contract. The CEO Measurement and Verification Policy may allow alternative verification standards as appropriate for select Utility Cost-Savings Measures or FIMs.

**V. M&V Commencement Date**

“M&V Commencement Date” means the first day of the month following the completion by ESCO and acceptance by the Governing Body of the Political Subdivision of the Project.

**W. M&V Fee**

“M&V Fee” means an annual fee paid to ESCO by the Political Subdivision for ESCO’s satisfactory performance of the M&V Services, as set forth in **EPC contract Article 13**. The M&V Fee is included as a part of the EPC Maximum Contract Price.

**X. M&V Plan**

“M&V Plan” defines how savings will be calculated and specifies any ongoing activities that will occur during the Contract Term. The details of the M&V Plan are in **EPC Contract Schedule D**.

**Y. M&V Services**

“M&V Services” means Services or activities relating to the measurement and verification by ESCO of the efficiency and effectiveness of the Project, pursuant to this Contract and the CEO Measurement and Verification Policy as applied.

**Z. M&V Term**

“M&V Term” has the meaning as described to it in **EPC Contract Article 13**.

**AA. MMBtu**

“MMBtu” means 1 Million British thermal unit (abbreviation).

**BB. O&M**

“O&M” means Operations and Maintenance (abbreviation).

**CC. Operations and Maintenance Cost Savings**

“Operation and Maintenance Cost Savings” as defined in **§29-12.5-101 (4.5), C.R.S.**, means the measurable decrease in operation and maintenance (O&M) costs that is a direct result of the implementation of one or more Utility Cost-Savings Measures. Such savings shall be calculated in comparison with an established baseline of operation and maintenance costs.

**DD. Rebate**

“Rebate” means moneys used for ESCO’s compensation that are not the moneys of the Political Subdivision [or moneys from a Third-Party Lessor], including solar RECs and utility rebates, all as described in **Schedule B** and on **Schedule G**.

**EE. Repair or Replace**

“Repair or Replace” means to repair or replace equipment or components as necessary based upon the age, usage, O&M cost, potential efficiency improvement, etc.

**FF. Savings Calculations**

“Savings Calculations” means the manner in which Savings is calculated, as set forth in **EPC contract Schedule C**.

**GG. Simple Payback**

“Simple Payback” means the length of time, typically presented in years, required to recover the cost of a measure or project.

**HH. Third-Party Lessor**

“Third-Party Lessor” means a third-party entity entering into a Lease Purchase Agreement, as lessor, with the Political Subdivision, as lessee, for the lease purchase financing of the Equipment and the Services pursuant to this Contract.

**II. Utility or Utilities**

“Utility” or “Utilities” means the water, sewer services, electricity payments to energy service companies, purchase of energy conservation equipment, and all heating fuels. Utility may include compressed air, chilled water, or other systems or services as agreed to with the Governing Body of the Political Subdivision.

**JJ. Utility Cost Savings**

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“Utility Cost Savings” means the definition set forth in **§29-12.5-101(7), C.R.S.**, is the combination of either or both of the following:

- i. A cost savings caused by a reduction in metered or measured physical quantities of a bulk fuel or Utility resulting from the implementation of one or more Utility Cost-Savings Measures or FIMs when compared with an established baseline of usage; or
- ii. A decrease in utility costs as a result of changes in applicable utility rates or utility service suppliers. The savings shall be calculated in comparison with an established baseline of utility costs.

### **KK. Utility Cost-Savings Contract**

“Utility Cost-Savings Contract” means an Energy Performance Contract or any other agreement in which Utility Cost Savings are used to pay for services or equipment set forth in **§29-12.5-101(8), C.R.S.**

### **LL. Utility Cost-Savings Measure**

“Utility Cost-Savings Measure” means the definition set forth in **§29-12.5-101(9), C.R.S.**, is the installation, modification or service that is designed to reduce energy and water consumption and related operating costs in buildings and other facilities and includes, but is not limited to, the following:

- i. Insulation in walls, roof, floors and foundations, and in heating and cooling distribution systems;
- ii. Storm windows and doors, multiglazed windows and doors, heat absorbing or heat reflective glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;
- iii. Automatic energy control systems;
- iv. Heating, ventilating or air conditioning and distribution system modifications or replacements in buildings or central plants;
- v. Caulking or weather stripping;
- vi. Replacement or modification of lighting fixtures to increase the energy efficiency of the system without increasing the overall illumination of a facility unless such increase in illumination is necessary to conform to the applicable building code for the proposed lighting system;
- vii. Energy recovery systems;
- viii. Renewable energy and alternate energy systems;
- ix. Cogeneration systems that produce steam or forms of energy, such as heat or electricity, for use primarily within a building or complex of buildings;
- x. Devices that reduce water consumption or sewer charges;
- xi. Changes in operation and maintenance practices;
- xii. Procurement of low-cost energy supplies of all types, including electricity, natural gas and other fuel sources, and water;
- xiii. Indoor air quality improvements that conform to applicable building code requirements;
- xiv. Daylighting systems;
- xv. Building operation programs that reduce utility and operating costs including computerized energy management and consumption tracking programs, staff and occupant training, and other similar activities;
- xvi. Services to reduce utility costs by identifying utility errors and optimizing existing rate schedules;
- xvii. Any other location, orientation, or design choice related to, or installation, modification of installation or remodeling of, building infrastructure improvements that produce utility or operational cost savings for their appointed functions in compliance with applicable state and local building codes;
- xviii. Vehicle fleet operational and fuel cost savings;
- xix.** When an energy saving measure involves a cogeneration system, the sale of excess cogenerated energy shall be subject to the same state and federal regulatory requirements as the sale of all other cogenerated energy, as set forth in **§29-12.5-103(3), C.R.S.**

Within this Contract, Utility Cost-Savings Measures, Energy Saving Measures, Energy Cost-Saving Measures, Energy Conservation Measures (ECMs) and Facility Improvement Measures (FIMs) shall be interchangeable as necessary and may include vehicle fleet operational and fuel cost savings measures.

### **MM. Vehicle Fleet Operational and Fuel Cost Savings**

“Vehicle Fleet Operational and Fuel Cost Savings” means a measurable decrease in the operation and maintenance costs of Political Subdivision vehicles that is associated with fuel or maintenance based on higher efficiency ratings or alternative fueling methods, including but not limited to savings from the

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reduction in maintenance requirements and a reduction in or the elimination of projected fuel purchase expenses as a direct result of investment in higher efficiency or alternative fuel vehicles or vehicle or charging infrastructure.

### **NN. Vehicle Fleet Operational and Fuel Cost-Savings Contract**

“Vehicle Fleet Operational and Fuel Cost-Savings Contract” means the definition set forth in **§29-12.5-101(11), C.R.S.**, means an Energy Performance Contract or any other agreement in which Vehicle Fleet Operational and Fuel Cost Savings are used to pay for the cost of the vehicle or associated capital investments.

### **OO. Vehicle Fleet Operational and Fuel Cost-Savings Measure**

“Vehicle Fleet Operational and Fuel Cost-Savings Measure” is defined in **§29-12.5-101(12), C.R.S.**, means any installation, modification, or service that is designed to reduce energy consumption and related operating costs in vehicles and includes, but is not limited to, the following:

- i. Vehicle purchase or lease costs either in full or in part;
- ii. Charging or fueling infrastructure to appropriately charge or fuel alternative fuel vehicles included in an energy performance contract.

## **SECTION 2. Pre-Audit Conference**

The Pre-Audit Conference is the initial meeting including the Political Subdivision’s key staff, the Colorado Energy Office (CEO) representative, and all critical ESCO staff to present and discuss the Investment Grade Audit (IGA) approach, its activities, individual and mutual responsibilities, and proposed schedule.

ESCO shall prepare an agenda and conference record to include, but not be limited to, the following agenda outline and topics:

### **A. Introductions/Roles**

- i. Roles of key representatives
- ii. Preferred means of communication and protocols
- iii. Contact Information

### **B. Objectives and Goals**

- i. Political Subdivision’s interests, goals, objectives and priorities (Owner/Political Subdivision project requirements)
- ii. Level of management, facility, and staff support
- iii. Discussion by ESCO of their approach to the project
- iv. Review of CEO program support documents, process, forms (CEO IGA/EPC Review Matrix, Record of Review, M&V Policy, other items)

### **C. Technical Expectations**

- i. General discussion on EPC scope, buildings and potential Utility Cost-Savings Measures or FIMS to be considered
- ii. Discussion of any Federal, State, Local, or Political Subdivision environmental, occupancy, construction specifications, performance or other reporting or certification requirements
- iii. Long-term plans at the facilities including additional capacity, demolition, new construction
- iv. Operations and maintenance, training and educational needs and expectations
- v. Commissioning (Cx) and Retro-Commissioning (RCx) priorities for EPC scope and the existing facilities
- vi. Deferred maintenance project priorities of the facilities
- vii. Code Compliance: State and local jurisdiction building code requirements, as applicable
- viii. Hazardous materials and other considerations/issues
- ix. Other studies, reports information available

### **D. Project Financial Parameters**

- i. Simple payback, contract term, utility escalation rates, inflation rate, capital and other financial contributions, and other investment parameters
- ii. Potential cost of Political Subdivision’s Maintenance Responsibilities (as indicated in an **EPC Schedule**) or any other long-term Operation and Maintenance (O&M) services as applicable, and the Political Subdivision’s desire or ability to support these costs
- iii. M&V savings verification options and extent

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- iv. Rebates and other financial incentives
- E. Investment Grade Audit Process and Schedule**
  - i. Logistics and access; testing/metering to be accomplished
  - ii. Security and access requirements to restricted areas, escorts, tool control, etc.
  - iii. Safety requirements, training, hazards
- F. Schedule/timeline with significant milestones**
  - i. Action Items & Next Steps
  - ii. Recap of action items including directives from the Political Subdivision
  - iii. Set next meeting or conference call time.

### **SECTION 3. Data Collection and Building/Equipment Schedules**

ESCO shall coordinate collection of Political Subdivision-provided facility data and additional information with the goal of developing the existing conditions, operating schedules and utility usage/cost to determine the Political Subdivision's accepted baselines. The Political Subdivision shall provide the necessary and available information referenced in this **Section 3** or as required for ESCO to perform Work under the IGA Contract, concerning facility operation and energy use.

- A. Building Data** (by Building/infrastructure as listed in IGA Exhibit B):
  - i. Construction date(s) of buildings and major additions including building envelope.
  - ii. Infrastructure information as necessary (tunnels, steam lines, chiller water lines, water treatment plants, etc.).
  - iii. Inventory and description of the existing facilities and their major mechanical, electrical, water systems and any other systems as necessary (itemized by energy source, equipment type, capacity, services years, and condition).
  - iv. Building operation/occupancy schedules, equipment operation schedules (including weekly and seasonal use schedules, unoccupied buildings and areas).
  - v. Drawings of mechanical, plumbing, electrical, building automation and temperature controls, structural, architectural, infrastructure, modifications and remodels, etc., as available.
  - vi. Original construction submittals and factory data such as equipment specifications, pump curves, etc., as available.
  - vii. Operating engineer logs, maintenance work orders, etc., as available.
  - viii. Records of maintenance expenditures on energy-using equipment, including service contracts.
  - ix. Prior energy audits or studies.
- B. Utility Data:**

Political Subdivision shall provide, at a minimum, one year of actual historical utility invoices, and provide access to utility service providers for historical energy and water use (by energy source provider and master, sub-metered areas), for the designated three years (last three years or selected number of years by mutual agreement, as available).
- C. Energy Management:**
  - i. Description of energy management program
  - ii. Description of any building automation systems and other control systems/procedures
  - iii. Description of any energy or water-related improvement projects, completed or in progress
  - iv. Description of any changes in the facility or energy-using or water-using equipment
- D. Capital Construction Projects:**
  - i. Description of existing capital construction projects
  - ii. Description of future plans regarding building modifications, renovations, repairs, decommissioning, or equipment modifications, replacements
- E. Interviews:**

ESCO shall coordinate and conduct, in conjunction with the Political Subdivision, the interviews. The Political Subdivision shall make available individuals with knowledge of the facility such as the facility or plant manager, maintenance staff, and occupants of each building regarding:

  - i. Facility operation, including energy management systems and procedures
  - ii. Equipment maintenance problems including deferred and un-scheduled maintenance
  - iii. Occupant comfort problems and standards of comfort requirements

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- iv. Equipment reliability including frequency of unscheduled or emergency maintenance and potential loss-of-use of facility, building, or portions thereof
- v. Projected equipment needs including upgrade, replacement, and/or repairs
- vi. Occupancy and weekly use schedules for the facility and specific equipment
- vii. Facility improvements – past, planned and desired

### F. Systems Survey:

Political Subdivision shall provide site-knowledgeable escorts and facility access to ESCO who shall identify major utility-impacting components, which may include, but is not limited to, lighting, both indoor and outdoor; heating and heat distribution systems, cooling systems and related equipment, central plants, automatic temperature control systems and equipment, air distribution systems and equipment, outdoor ventilation systems and equipment; exhaust systems and equipment; hot water generation and distribution systems, electric motors, transmission and drive systems, special systems such as kitchen/dining equipment, laundry equipment, renewable energy systems, other energy using systems, water consuming systems, such as restroom fixtures, water treatment plant, wastewater treatment plant, water features and irrigation systems; and building envelope.

### SECTION 4. Establish Baseline Period Consumption

Establish appropriate baseline period consumption by evaluation of appropriate utility meter data, and utility bills (reference **Section 3**) for electricity, natural gas, propane, steam, water, and any other applicable utilities. Compile baseline period consumption in terms of:

#### A. Utility provider accounts:

Prepare summary of all utility bills for all fuel types and water. Develop description and itemization of current accounts, billing rates, schedules, riders, and related terms or agreements that affect consumption and energy costs. Consult with Political Subdivision to account for any anomalous schedule or operating conditions on billings that could skew the Baseline. ESCO shall account for periods of time when equipment was broken or malfunctioning in calculating the Baseline Period, provided this information is available from the Political Subdivision's representative.

- i. Energy and Water Units: Units of energy in kWh, kW, ccf, "Therms", thousand gallons, or other units used in bills. List appropriate, supplier-verified conversion factors and convert natural gas, methane, fuel oil, biomass, and propane to MMBtu; show electricity in both kW and kWh and the MMBtu equivalent. Units of water (kgal).
- ii. Energy and Water Units per building square foot per year
- iii. Energy Cost (in dollars) per building square foot per year

#### B. Describe the process used to determine the baseline period and baseline energy

#### C. Describe the process to reconcile the proposed utility baseline information with the actual consumption

### SECTION 5. Preliminary Analysis and Discussion of Utility Cost-Savings Measures and FIMs and other ESCO Services

ESCO shall prepare and present a preliminary analysis of all Utility Cost-Savings Measures or FIMs considered, initial construction cost estimates and schedule, initial utility and other savings, initial measurement and verification plan, initial training, initial operation and maintenance cost impacts, and other items as requested (mutual agreement between Political Subdivision and ESCO) to determine prioritization of measures for the draft EPC Project Proposal. A draft financial package should be reviewed that includes potential interest rates and potential financing terms, grants, rebates, Political Subdivision capital contributions (one-time or annually), and other potential project funding sources.

#### A. Preliminary Utility Cost-Savings Measures and FIMs List

- i. Consider technologies in a comprehensive approach including, but not limited to: lighting systems, heating/ventilating/air conditioning equipment and distribution systems, controls systems, building envelope, motors, kitchen equipment, pools, renewable energy systems, other special equipment, irrigation systems, other infrastructure systems (steam, chilled water, compressed air, etc), and water saving devices

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- ii. Consider services that modify existing equipment/systems/procedures through programs including, but not limited to: commissioning, deep retrofits, ENERGY STAR rating, an existing buildings registration/certification program, or another verification or certification program
- iii. Include services to complete applications/forms for compliance with State statute or policies, for compliance with applicable executive orders, or any other Political Subdivision reporting requirements (if requested by Political Subdivision)

#### **B. Review the Project Financial Parameters**

At this stage in the development of the Investment Grade Audit, the project financial parameters need review and updates prior to refining the list of Utility Cost-Savings Measures and FIMs for further analysis. To keep the project on schedule and control the number of re-analyses of the project's financial performance, it is to the benefit of the project that the financial parameters be refined. To sufficiently change the project financial parameters after the detailed analysis is presented by the ESCO could add sufficient time to the delivery of an acceptable report.

- i. Discuss the capability of Political Subdivision to make capital contributions to the project to improve the Project's Financial Performance. Capital contribution could be from a one-time addition of appropriated funds
- ii. Discuss an acceptable range on the financial term and interest rate
- iii. Discuss an acceptable escalation rate for each utility for each year. Reference the CEO/OSA Escalation Policy
- iv. Discuss an acceptance of any operation or maintenance savings. Discuss how these would be determined, escalated, and the maximum number of years allowed
- v. List any known utility rebates, grants, or other financial incentives that affect cost of installation or final maximum project cost

#### **C. Preliminary Measurement and Verification Plan Discussion**

The goal of measurement and verification is to reduce the risk to Political Subdivisions by providing a mechanism to evaluate the performance of a project throughout the term of the contract. The challenge of M&V is to balance M&V costs with the value of increased certainty in the cost savings from the conservation measure. At the heart of a performance contract is a guarantee of a specified level of cost savings and performance. One of the primary purposes of M&V is to reduce the risk of non-performance to an acceptable level, which is a subjective judgment based on the Political Subdivision's priorities and preferences.

- i. ESCO should provide a presentation on measurement and verification. The presentation should cover important project risks, assess their potential impacts, and clarify the party responsible for managing the risk. The presentation should discuss the CEO Measurement and Verification Policy. The presentation should cover the four IPMVP M&V options and their advantages and disadvantages.
- ii. For each potential Utility Cost-Savings Measure or FIM, the ESCO shall present the initial M&V options. The ESCO shall provide sufficient information to understand the risk, cost, and responsibilities for each M&V option.
- iii. ESCO shall record for the final M&V plan and post construction M&V discussion, the Political Subdivision's and ESCO's M&V initial responsibilities.

#### **D. Develop a list of recommended measures for further analysis.**

Describe how the projected project economics meet the Political Subdivision's Project Financial Goals for completing the final Investment Grade Audit report and the Energy Performance Contract Project Proposal. Discuss assessment of energy use, savings potential, project opportunities, and potential for developing an energy performance contract. The Political Subdivision shall at its discretion have the option to reject any presented calculation of savings; potential savings allowed or project recommendations.

### **SECTION 6. Detailed Analysis of Utility Cost-Savings Measures and FIMs and other ESCO Services**

ESCO shall conduct detailed analysis of recommended measures for further analysis, including construction cost and schedule, utility and other savings, code compliance estimate and permit costs (reference section 2, C, vii), measurement and verification plan, training, operation and maintenance cost impacts, and other items as requested (mutual agreement between Political Subdivision and ESCO) to complete the final Investment Grade Audit report and the negotiated Energy Performance Contract Project Proposal. A financial package should be prepared that

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includes potential interest rates and financing terms, grants, rebates, Political Subdivision capital contributions (one time or annual), and other potential project funding sources. The ESCO may need to work with the Colorado Department of the Treasury to verify financial options.

ESCO shall evaluate facility and equipment schedules and baseline utility use and costs relative to Work and EPC Project Proposed associated with this IGA Contract including, but not limited to:

**A. Weekly Use and Operational Schedule:**

ESCO to perform "late-night," weekend trend monitoring devices, and field surveys outside of normal business hours or on weekends to confirm building system and occupancy schedules "impacting measures for further analysis."

**B. Evaluate actual operation schedules, conditions for the facilities, equipment and buildings (hours, temperatures, air flows, humidity, etc.):**

- i. Estimate loads as necessary and applicable. Equipment loads can change over time. Changes in load can show up as increases or decreases in "savings," depending on the M&V Services. Clarify whether equipment loads are to be measured or stipulated and what the impact will be if they change.
- ii. Where loading or usage is highly uncertain (including variable loads such as cooling), ESCO will use its best judgment, spot measurements or short-term monitoring. ESCO should not assume that equipment run hours equal the operating hours of the building(s) or facility staff estimates.

**C. Description of Utility Cost-Savings Measures and FIMs:**

Provide a technical description for each Utility Cost-Savings Measure and FIM. Consider the following parameters for each system, component, and associated conservation measure:

- i. Comfort and maintenance problems
- ii. Energy or water source, use, loads, proper sizing, efficiencies and hours of operation
- iii. Current existing systems, controls, and operating condition
- iv. Remaining service life
- v. Feasibility of system replacement
- vi. Hazardous materials and other environmental concerns
- vii. Political Subdivision's future plans for equipment replacement or building renovations
- viii. Facility operation and maintenance procedures that could be affected
- ix. Procedure to measure and verify savings (M&V) (necessary M&V equipment including meters, sub-meters, data-loggers, and control system monitoring/reporting capabilities)

**D. Cost Estimate Analysis:**

ESCO shall identify and perform next-level analysis on measures which appear potentially cost-effective. The analysis shall include itemized costs of design, engineering, equipment, materials, installation, maintenance, repairs and estimates of vehicle fleet operational and fuel cost measures, as set forth in **§29-12.5-102(2), C.R.S.** The analysis may consider the following sources of data for design and construction cost, potential operation and maintenance costs or other categories as identified by ESCO or Political Subdivision:

- i. Political Subdivision's representative list of acceptable/preferred manufacturers or vendors
- ii. Political Subdivision's construction specifications, requirements, standards
- iii. ESCO's Subcontractor material and labor cost estimates
- iv. ESCO's Subcontractor professional design firm's cost estimates
- v. ESCO's pricing information from historical projects
- vi. ESCO's product specification information
- vii. ESCO's or Political Subdivision's pricing information for hazardous/environmental work

**E. Cost Savings Analysis:**

For each potentially cost-effective measure, prepare an estimate of utility cost savings, operation and maintenance cost savings and vehicle fleet operational and fuel cost savings. Analysis shall include the description of analysis methodology and supporting calculations and assumptions used to estimate savings. Include itemized costs of design, engineering, equipment, materials, installation, maintenance, repairs, all costs of vehicle operational and fuel cost savings measures, and debt service as required under **§29-12.5-102(2), C.R.S.**

- i. Follow the methodology of the American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) or other nationally-recognized authorities following the engineering principle(s) identified for each retrofit option

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- ii. Utilize assumptions, projections and the baseline period energy consumption and/or the mutually agreed-upon adjusted baseline energy, whichever best represents the value of future energy or operational savings
  - iii. Include accurate energy unit costs at the time the analysis is performed, documentation of material and labor cost savings, adjustments to the baseline to reflect current conditions at the facility, and calculations which account for the interactive effects of the recommended measures
  - iv. Use best judgment regarding the employment of instrumentation and recording durations so as to achieve an accurate and faithful characterization of energy use
  - v. Develop a preliminary measurement and verification plan for each measure
- F. Finalize Project Financial Parameters**
- i. Discuss the willingness and capability of Political Subdivision to make capital contributions to the project to improve the Project's Financial Performance. Capital contribution could be from a one-time addition of funds, monetized value of capital cost avoidance from equipment replacement, or any other Political Subdivision acceptable contribution.
  - ii. Discuss an acceptable financial term and interest rate or a range on term and interest rate.
  - iii. Discuss an acceptable escalation rate for each utility for each year. The escalation rates may be different each year. Reference the CEO/OSA Escalation Policy.
  - iv. Discuss an acceptance of any operation or maintenance savings. Discuss how these would be determined, escalated, and the maximum number of years allowed.
  - v. List any known utility rebates, grants, or other financial incentives that effect cost of insulation or final maximum project cost.

### SECTION 7. Draft Investment Grade Audit Report

ESCO shall prepare a draft IGA Report. The Draft and Final IGA Report shall follow this outline format including, but not limited to:

- A. Executive Summary:**
- i. Project Background and Introduction
  - ii. Political Subdivision's Project Requirements (accepted changes to original)
  - iii. Summary of Recommended Facility Improvement Measures
  - iv. Summary of Total Savings (energy, (units and cost by utility) water, maintenance or other Political Subdivision approved items)
  - v. Summary of Project Financials including initial total project cost, potential interest rates (from recent projects or current industry rates), capital contributions (projected or identified), and financing term (per Political Subdivision's requirements). Total project cost is the maximum, not-to-exceed amount Political Subdivision shall pay for the project and ESCO's services.
  - vi. Conclusions and Recommendations
- B. Facility and Building Data:**
- For each facility identified in Exhibit B, the ESCO shall provide a brief building description, including the use, square footage, hours of operation and lighting, mechanical and water systems and building envelope/construction;
- C. Baseline Period Utility Consumption:**
- Compile and provide a concise and well organized analysis and written report of the data gathered and necessary to provide baseline utility consumption pursuant to the baseline period consumption **Section 4** of this **Exhibit A** which may include, but not limited to:
- i. Description and itemization of current billing rates, including schedules and riders
  - ii. Summary of all utility bills for all energy types
  - iii. Identification and definition of baseline energy and period and description of how established
  - iv. Reconciliation of estimated end use consumption (i.e. lighting, cooling, heating, fans, plug loads, etc.) with base year (include discussion of any unusual findings)
- D. Utility Cost-Savings Measures and FIMs:**

## IGA Exhibit A Scope of Work

Update, compile, and provide comprehensive analysis of recommended Utility Cost-Savings Measures and FIMs for consideration, review and comments by the Political Subdivision which include, but are not limited to the following:

**Conservation Measure List** – Prepare a summary, in table format, of recommended Utility Cost-Savings Measures and FIMs as referenced in **Section 6** of this **Exhibit A**. The summary shall include an itemization for each measure of total design and construction cost, annual operation and maintenance costs, the first year savings (cost avoidance), (in dollars and appropriate utility units), Simple Payback and major equipment service life. The summary shall further include tabulated utility consumption savings per system, building, or facility separated out by contributing Utility Cost-Savings Measure or FIM. For each recommended energy and utility saving conservation measures, provide a summary of the following:

- a. **Existing Conditions** Describe existing conditions, systems, etc. to be affected by the proposed utility conservation measures, and the specific benefits of each to modify each condition, including but not limited to, energy, water or resource conservation, capital improvement, deferred maintenance, long-term performance and reduction of operating costs, etc.
- b. **Project Scope of Work:** Description of improvements, equipment, etc. to be installed and how it shall function
- c. **O&M Procedures:** Include discussion of facility operations and maintenance procedures that shall be affected by installation or implementation
- d. **Implementation Plan:** Present a conceptual plan for the proposed EPC project indicating design and construction timeframes for the Utility Cost-Savings Measure or FIM. Indicate any potential installation time constraints or critical start/completion dates
- e. **Utility Savings Calculations:**
  - a) **Base -Year Consumption:** base year utility use and cost
  - b) **End-Use Consumption Estimate:** Post-retrofit utility use and cost
  - c) **Annual Savings Estimates:** The Utility Cost Savings and Operation and Maintenance Cost Savings shall be determined for each year during the contract period. Savings shall be achieved by the implementation of such measures on an annual basis. Savings shall be limited to savings allowed by the State Statute or Governing Body of the Political Subdivision
  - d) **O&M Savings:** Operation and maintenance savings, including detailed calculations and description. Ensure that maintenance savings are only applied in the applicable years and only during the lifetime of the particular equipment. Operation and Maintenance Cost Savings if considered in the EPC Project Proposal will require Political Subdivision approval and signature on the Record of Reviews
  - e) **Methodology for Savings Estimates:**
    1. Savings estimates including the methodology used in analysis, supporting calculations and assumptions used. Analysis and methodology shall also include description and calculations for any proposed rate changes. Analysis shall further include an explanation of how savings between retrofit options are accounted for in calculations
    2. If computer simulation is used, include a short description and indicate key input data. If requested by Political Subdivision, access shall be provided to the program and all assumptions and inputs used. Printouts shall also be provided of all input files and important output files and included in the Investment Grade Audit with documentation that explains how the final savings figures are derived from the simulation program output printouts
    3. If manual calculations are employed, formulas, assumptions and key data shall be stated
  - f. **Conclusions and Analysis: Provide other observations, caveats, etc.**

**E. M&V Plan:**

Summary of the Measurement and Verification Plan. Cost of the M&V services per year through the financing term.

**F. Cost Estimate Analysis:**

Summary and update of cost assessment initiated under **Section 6.D** of this **Exhibit A**.

**G. Cost Savings Analysis:**

## IGA Exhibit A Scope of Work

Summary and update of analysis initiated under **Section 6.E** of this **Exhibit A**, including calculation of cost savings expected if all recommended measures are implemented and total percentage savings of total facility utility cost.

**G. Excluded Measures:**

List all Utility Cost-Savings Measures or FIMs considered but not recommended with a short paragraph on why it was not included.

**H. Political Subdivision Review, Comments, and Prioritization:**

Summary of documentation or conference records of Political Subdivision priorities, stipulations, and designated compliance with statute, requirements and policies.

**I. Draft Investment Grade Audit Report:**

Pursuant to **Section 9** of this **Exhibit A** the Draft IGA Report shall be prepared in the format of the final IGA Report (as required in the IGA Contract and **Section 7** of this **Exhibit A**). The ESCO shall comply with the following items:

- i. Draft IGA Report shall be submitted in a format acceptable to the Political Subdivision labeled to include the project title "Investment Grade Audit report and Energy Performance Contract Project Proposal," the Political Subdivision facility name, name of the ESCO, and date of issuance or revision. Provide additional sets of these documents as requested or required by the Project Representative.
- ii. Contents shall be formatted and tabbed in the exact form and alphanumeric sequence of the outline of **Section 7.A. – Section 7.H** of this **Exhibit A**, with additional outlined formats for other referenced sections of this **Exhibit A**. Content elements not otherwise referenced or required in this **Exhibit A**, if provided, shall appear at the end of the IGA Report under its own tab(s) or in separate document(s).
- iii. Contents contained in the IGA Report shall be complete. ESCOs are encouraged to respond in a concise manner. The use of charts and spreadsheets to summarize certain information is especially encouraged; said information may be accompanied by an explanatory narrative.
- iv. An electronic version of the draft IGA Report and any additional provided or requested information shall be submitted with the written report.

### **SECTION 8. Post Draft Investment Grade Audit Report Conference**

- A.** The ESCO shall prepare an agenda consistent with the format of the Pre-Audit Conference in **Section 2** of this **Exhibit A**, including any modifications as a result of the Pre-Audit Conference. ESCO shall conduct all necessary conference(s) and produce associated documentation to engage the Political Subdivision to review the recommendations, savings calculations and impact of the measures on the operations of the facility. Describe how the projected project economics meet the Political Subdivision's terms for completing the IGA Report. Revise audit as directed by Political Subdivision.
- B. Political Subdivision Review and Comments**
  - i. ESCO shall provide all services and deliverables to include, but not be limited to, draft, project proposal(s), supplemental documents and ESCO's responses, etc. necessary to support written acceptance by Political Subdivision.
  - ii. The Political Subdivision and CEO shall perform concurrent reviews and all comments are shared by all parties, including CEO third party reviews.
  - iii. The Political Subdivision and CEO may submit written comments at any time during the IGA Contract and the ESCO shall provide supplemental responses.
- C. Finalize Political Subdivision Financial Targets:** Capital contribution, maximum financial term and interest rate, utility escalation rates, and operation and maintenance information.
- D. Responses to Political Subdivision Comments –** Revise IGA Report as directed by Political Subdivision which shall be included in the final Energy Performance Contract Proposal.

### **SECTION 9. Final Investment Grade Audit Report and Energy Performance Contract Project Proposal**

- A. Present Final IGA Report.** ESCO to complete and deliver final documents defined in this **Section 7** to Political Subdivision for approval.
- B. EPC Project Proposal.** Pending approval of the Final IGA Report, and the execution of the Notice of Acceptance, prepare an Energy Performance Contract using CEO's Energy Performance Contract documents, subject to IGA Contract terms and provisions, and subject to negotiation and agreement

## IGA Exhibit A Scope of Work

between the Parties pursuant to applicable Federal and State regulatory requirements and the CEO Standards for Success. ESCO shall prepare the applicable schedules to be incorporated in an Energy Performance Contract that includes the following:

- i. Total Project Cost Proposal: the maximum, not-to-exceed amount Political Subdivision shall pay for the project and ESCO's services. Costs shall be consistent with mutually agreed on markups and fees established in IGA **Exhibit C**.
- ii. Cost Estimate: Include all information required under Cost Savings Analysis in **Section 6** above, as well as a detailed scope of the construction work suitable for cost estimating. Include all anticipated costs associated with installation, implementation, and categories outlined in **IGA Exhibit C**. Provide preliminary specifications for major mechanical components as well as detailed lighting and water fixture counts. The following shall also be included:
  - a. Engineering/design costs
  - b. ESCO/vendor estimates for labor, materials, and equipment; include special provisions, overtime, and all other appropriate items, as needed to accomplish the work with minimum disruption to the operations of the facilities
  - c. Code compliance estimate and permit costs (reference section 2, C, vii)
  - d. Costs (disposal, avoided emissions, handling of hazardous materials, and any other related costs) as relates to handling and disposal of hazardous lighting materials, but not as relates to remediation or abatement work
- iii. Base-Year Consumption: Disclose baseline basis for cost savings. Summary of annual utility use by type and costs of existing or base year condition.
- iv. Cost Savings Calculations: Calculation of cost savings expected if all recommended utility conservation measures are implemented and total percentage savings of total facility utility cost.
- v. End-Use Consumption Estimate: Outline the proposed utility use reduction and end use consumption for the system or facility.
- vi. Contract Term: Years of the Energy Performance Contract.
- vii. Utility Rate Escalation Factor: Escalation or decline based on historical trends, utility provider rate forecasts, and economic forces of supply and demand (global, national, local or regional), natural resource availability, technology, utility capital investment, and environmental requirements. (Consistent with CEO/OSA Utility Escalation Policy).
- viii. Financial Terms: Description of how the project may be financed, including available indicative interest rates and potential financing terms, based on interest rates likely available to Political Subdivision at this time and based on interest rate lock options available. Analysis of annual cash flow for Political Subdivision during the contract term.
- ix. Weather Adjustments: If applicable, proposed modification to how the savings shall be calculated and adjusted due to weather (such as heating and cooling degree days), occupancy or other factors.
- x. Measurement and Verification: Proposal consistent with the CEO Measurement and Verification Policy at time this contract is made:
- xi. Commissioning Plan: Preliminary Commissioning plan
- xii. Operations and Maintenance Plan
- xiii. Implementation Plan and Schedule
 

The ESCO shall propose a milestone schedule with activity durations of all Energy Performance Contract phases, including, but not limited to, ESCO services, commissioning, M&V activities, etc. to include written acceptance by the Political Subdivision, as follows:

  - a. The ESCOs shall submit an implementation plan for all Utility Savings and Cost Savings measures with a narrative describing design-build and bidding strategies and recommended delivery options;
  - b. Training, operation and maintenance activities, interim and milestone responsibilities for maintenance, etc.

### END OF EXHIBIT A – SCOPE OF WORK

## IGA Exhibit B Location of Audit

### Buildings and Infrastructure Included in Scope of Work

Political Subdivision Name: Town of Crested Butte, Colorado

The following tables list the buildings included in the Investment Grade Audit (IGA) Scope of Work. Add additional rows as necessary to list all buildings and non-typical facilities. Since building names may change over time, a unique agency building shall be included.

**EXHIBIT B, TABLE 1 - BASE COST TABLE**

Building Name	Physical Address	Building Age	Facility Use	Square Footage	Building Total Audit \$
<b>TOWN BUILDINGS</b>					
Town Hall	507 Maroon Avenue	1927	Office	16,268	\$ 4,880.40
Fire Station	306 Maroon Avenue	1974	Office	8,750	\$ 2,625.00
308 Third Street	308 Third Street	1930	Office	3,422	\$ 1,026.60
Marshal/KBUT	508 Maroon Avenue	1991	Office	3,000	\$ 900.00
Old Rock Library	504 Maroon Avenue	1991	Recreation	2,300	\$ 690.00
Nordic Center Warming House	620 Second Street	1994	Office/Recreation	2,758	\$ 827.40
Nordic Cat Barn	615 Second Street	2011	Utility/ Storage	1,382	\$ 414.60
Center for the Arts	606 Sixth Street	1984/ 2019	Recreation	6,955	\$ 2,086.50
Town Ranch Triplex	902 Red Lady Avenue	1979	Residential	2,216	\$ 664.80
The Depot	716 Elk Avenue	1881	Recreation	2,936	\$ 880.80
Town Manager House	17 Ninth Street	2007	Residential	2,160	\$ 648.00
Town Manager ADU	19 Ninth Street	2007	Residential	1,069	\$ 320.70
Chamber of Commerce	601 Elk Avenue	1996	Visitor Center, Office	2,650	\$ 795.00
Stepping Stones	705 Seventh Street	1	School	5,361	\$ 1,608.30
School Build House	906 Butte Avenue	2018	Residential	1,008	\$ 302.40
<b>WT &amp; WWTP BUILDINGS</b>					
Headworks	801 Butte Avenue A	1996	Wastewater intake	1,655	\$ 496.42
Vehicle Storage	801 Butte Avenue B	2017	Utility/ Storage	2,650	\$ 795.00
Office	801 Butte Avenue C	1983	Office	2,524	\$ 757.20
Clarifier	801 Butte Avenue D	2011	Wastewater treatment	2,994	\$ 898.20
Solids	801 Butte Avenue F	1996	Compost	8,557	\$ 2,567.21

ATAD	801 Butte Avenue E	2009	Wastewater treatment	2,460	\$ 738.00
WTP BUILDINGS	500 Reservoir Road	1965	Water Treatment	2,250	\$ 675.00
PUBLIC WORKS BUILDINGS					
Vehicle Storage	2 Eighth Street A	2000	Utility/ Storage	3,200	\$ 960.00
Dyer Shop	2 Eighth Street B	1978	Office/ Maintenance	4,545	\$ 1,363.50
Mountain Express/Bus Barn	2 Eighth Street D	2008	Utility/ Storage	6,480	\$ 1,944.00
<i>Big Mine Ice Arena** (Lighting upgrades only)</i>	<i>620 1/2 Second Street</i>	<i>2011</i>	<i>Recreation</i>	<i>24,510</i>	<i>TBD</i>
<b>TYPICAL FACILITY COST TOTAL</b>					<b>\$29,865.03</b>

**EXHIBIT B, TABLE 2 - NON-TYPICAL FACILITY COST TABLE**

Building or Infrastructure	Scope	Facility Total Audit \$
Solar Photovoltaics	Solar Photovoltaics on 7 sites including floating solar if applicable ( <i>solar PV sites are assumed to be: Fire Station, Big Mine Ice Arena*, Nordic Cat Barn, Center for the Arts, Stepping Stones, Headworks, WTP buildings including potentially floating solar</i> ) ( <i>Public Works or WWTP buildings may be evaluated instead of Big Mine Ice Arena based on conversations at kick-off meeting.</i> )	\$14,500.00
Fleet Conversion to Electrical or CNG	Town vehicle and Mountain Express Bus fleets evaluation to Electrical (or CNG where economically feasible)	\$10,000.00
WTP/WWTP Improvements	UV System process evaluation, Solids process evaluation	\$20,000
<b>NON-TYPICAL FACILITY COST TOTAL</b>		<b>\$44,500</b>

**TOTAL COST OF IGA: \$74,365.03**

## IGA Exhibit C

### COST AND PRICING ELEMENTS

#### COST AND PRICING

The cost of the IGA is calculated from the Base Cost plus the cost for any Non-Typical Facilities. The Base Cost is established by the Colorado Energy Performance Contracting Program for participating ESCOs and is determined by the sum of the cost associated with each building's total square footage and location. The Non-Typical Facilities cost for infrastructure and other non-building projects is negotiated prior to signing the IGA contract. The Pricing for the Project Percentages and Annual Cost are calculated based upon the specific project scope of Work and the information each ESCO submitted in the proposal/renewal provided to the Colorado Energy Office (CEO). The calculated cost is equal to or less than the ESCO's maximum established percentages submitted to CEO.

#### IGA Costs (base cost plus non-typical facilities cost)

The proposal includes the initial list of buildings with their square footage and the distance from the CEO office.

The Base cost of the IGA is determined by the CEO-established table similar to the table below. All ESCOs shall use the CEO-developed IGA costs in their proposal.

<b>Standard IGA Pricing Table</b>				
<b>Tiered Pricing (\$/sq ft)</b>		<b>Total Facility Square Footage</b>		
		Under 250K	250 – 500K	500K +
<b>Distance from CEO at 1580 Logan St., Denver</b>	Under 75 miles	\$ 0.250	\$ 0.225	\$ 0.200
	75 – 150 miles	\$ 0.275	\$ 0.250	\$ 0.225
	Over 150 miles	\$ 0.300	\$ 0.275	\$ 0.250

Political Subdivisions with Non-Typical Facilities (e.g. waste water treatment, irrigation systems, pools, street lighting, etc.) should incorporate information about these types of facilities and infrastructure in their proposal. The additional costs for performing the IGA on these Non-Typical Facilities shall be negotiated with the selected ESCO as part of finalizing the IGA contract. The final, negotiated cost of the IGA is indicated on an updated IGA Exhibit B.

<b>The Base Cost (from Exhibit B, Table 1) is</b>	\$29,865.03
<b>The Non-Typical Facility Cost (from Exhibit B, Table 2) is</b>	\$44,500
<b>Total Investment Grade Audit Cost is</b>	\$74,365.03

**Project Percentages**

Percentages of the total project for each line item shall be calculated and should not exceed what is stated for the duration of the project. Use only the categories shown. Supplying ranges for the percentages is acceptable.

A	B	C	D	E	F	G	H	I
		Project Costing Categories	IGA Contract Maximum % of Total Project Cost	Actual Final IGA Calculated % of Total Project Cost	Actual Final IGA Cost	Sub-Totals	Totals	Notes
1		Investment Grade Audit (IGA)						
2		Total Facility Area	136,560					Unique for each project
3		\$ / Sq Ft	0.30					See Standard IGA Pricing Table tab.
4		Investment Grade Audit Total Cost				\$ -		G4 = F2*F3
5								
6		Implementation Costs						
7		Pre-Construction Costs*						
8		Design and Other Engineering	10.00%	0.00%				% in column E is calculated from estimated project amount
9		Pre-Construction Services	4.00%	0.00%				% in column E is calculated from estimated project amount
10		Other Pre-Construction Costs	2.00%	0.00%				% in column E is calculated from estimated project amount
11		Pre-Construction Cost Subtotal		0.00%		\$ -		G11 = sum (F8:F10)
12		Construction Costs*						
13		Trade Subcontracts		0.00%				% in column E is calculated from estimated project amount
14		Design/Build Subcontracts		0.00%				% in column E is calculated from estimated project amount
15		Direct Purchase Equipment		0.00%				% in column E is calculated from estimated project amount
16		Construction Management	10.00%	0.00%				% in column E is calculated from estimated project amount
17		Project Engineering	5.00%	0.00%				% in column E is calculated from estimated project amount
18		General Conditions	8.00%	0.00%				% in column E is calculated from estimated project amount
19		Construction Completion	6.00%	0.00%				% in column E is calculated from estimated project amount
20		Other Construction Costs	6.00%	0.00%				% in column E is calculated from estimated project amount
21		Construction Cost Subtotal		0.00%		\$ -		G21 = SUM(F13:F20)
22		Implementation Costs Subtotal*				\$ -		H22 = SUM(G11+G21)
23								
24		Profit*	22.00%			\$ -		Value in column H is calculated from estimated project amount
25								
26		Estimated Project Amount*				\$ -		H26 = SUM(H22 + H24)
27								
28		Contingency*	5.00%			\$ -		Value in column H is calculated from estimated project amount
29								
30		Total Funded Amount*				\$ -		H30 = SUM(G4+H26+H28)

Note the following:

- The submitted percentages are **max** % submitted to the CEO, and may remain the same or are subject to change to lower % as the project scope develops.
- The profit in the above table includes overhead and profit.

### Annual Costs

Use only the categories shown. Proper cost determination and expected length of service should be noted for all services.

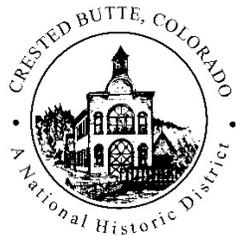
Category of Annual Cost	Total Annual Cost	How Price is Determined	Years Applied (One-time, Annual, etc.)
Warranty	TBD	See Below	One time but extensions can be offered
Measurement and Verification	TBD	See Below	Annual required for 3 years per State statute, but may be extended up to the term of the project
Other:	TBD	See Below	Variable

Note the following:

Warranty period is subject to project scope, and is typically not an annual cost. Typical warranties for equipment are manufacturer warranties including but not limited to labor and equipment.

Measurement and Verification (M&V) is based on project scope and determination of Option A, B, C, or D through IPMVP for M&V for each measure. Johnson Controls will provide an M&V workshop that outlines all improvements, their corresponding M&V approach, and cost

Planned Service Agreements may be developed and offered per Town desire as part of the project for equipment and controls support.



## Staff Report

August 6, 2019

**To:** Mayor Schmidt and Town Council

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

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

**Subject:** **Ratification of CC4CA 2019 Policy Statement**

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**Background:** Colorado Communities for Climate Action (CC4CA) is a coalition of local governments advocating for stronger state and federal climate policy. CC4CA's policy priorities for 2019-2020 reflect unanimous agreement among the coalition members on steps that should be taken at the state and federal level, often in partnership with local governments, to enable Colorado and its communities to lead in protecting the climate.

**CC4CA 2019 Policy Statement:** The attached policy statement, approved by the CC4CA steering committee, requires ratification from each member jurisdiction of CC4CA. CC4CA utilizes unanimous consent for the policy statement, meaning that every member jurisdiction supports the statement. The policy statement guides CC4CA's efforts on legislative, regulatory and administrative action, by supporting efforts that advance the general policy principles in the statement and opposing efforts that would weaken or undermine these policy positions.

**Recommendation:** A Town Council member makes a motion to ratify the 2019 CC4CA policy statement as part of the consent agenda.

## **CC4CA Policy Statement Effective July 1, 2019**

### **Adopted by the CC4CA Steering Committee on June 27, 2019 for Final Member Sign-Off**

Colorado Communities for Climate Action is a coalition of local governments advocating for stronger state and federal climate policy. CC4CA's policy priorities for 2019-2020 reflect unanimous agreement among the coalition members on steps that should be taken at the state and federal level, often in partnership with local governments, to enable Colorado and its communities to lead in protecting the climate.

CC4CA generally focuses on legislative, regulatory, and administrative action, supporting efforts that advance the general policy principles and the detailed policy positions described below, and opposing efforts that would weaken or undermine these principles and positions.

### **General Policy Principles**

The following general principles guide the specific policies that Colorado Communities for Climate Action advocates for:

Supports collaboration between state and federal government agencies and Colorado's local governments to advance local climate protection.

Supports state and federal programs to reduce carbon pollution, including adequate and ongoing funding of those programs.

Supports analyses, financial incentives, and enabling policies for the development and deployment of clean energy technologies.

Supports locally driven and designed programs to support communities impacted by the clean energy transformation.

Supports prioritizing policies that put people at the center of decision-making, do not exacerbate or create disparities in growing the green economy, and enhance equitable outcomes for all.

## Policy Positions

Colorado Communities for Climate Action supports the following policy positions:

### *Statewide Climate Strategies*

- 1. Reducing statewide carbon emissions consistent with or greater than the State of Colorado's 2019 codified goals.**
- 2. Securing accurate, frequent greenhouse gas inventories and forecasts for Colorado.**
- 3. Adopting a comprehensive market-based approach to reduce Colorado's greenhouse gas emissions.**
- 4. Expanding the consideration of the environmental and health costs associated with the use of fossil fuels.**

### *Local Climate Strategies*

- 5. Removing barriers and promoting opportunities that allow counties and municipalities to maximize the deployment of local clean energy and climate options.**
- 6. Enabling local governments to obtain the energy use and other data they need to effectively address climate change.**
- 7. Supporting a public process for evaluating retail energy choice options for local jurisdictions.**
- 8. Supporting policies that promote energy efficient buildings.**
- 9. Providing for equitable strategies to enable and accelerate beneficial electrification.**

### *Energy Generation*

- 10. Accelerating retirement of existing fossil fuel generation facilities and their replacement with cost-effective and reliable clean energy supplies, through means that protect both utilities and consumers.**

**11. Expanding the ability of electric cooperatives to independently purchase local renewable electricity and take other steps to reduce carbon pollution.**

**12. Expanding distributed generation, energy storage, high levels of renewable energy generation (distributed and utility-scale), and appropriate technologies through grid modernization.**

#### *Energy Efficiency*

**13. Expanding demand side savings from efficiency and conservation for all energy types.**

**14. Supporting ongoing and sustainable funding for weatherization and renewable energy assistance to low-income households so that all Coloradans have access to comfortable and affordable homes.**

**15. Providing counties and statutory cities and towns with the same authority held by home rule cities to implement local energy conservation policies and programs.**

#### *Transportation*

**16. Ensuring effective implementation of Colorado's vehicle emissions standards and other regulatory activities designed to reduce carbon emissions from vehicles.**

**17. Implementing the 2018 Colorado Electric Vehicle Plan and other efforts to increase electrification of all motor vehicles.**

**18. Increasing multimodal transportation funding.**

**19. Incentivizing and selecting mobility alternatives, including movement of both people and goods, based on energy efficiency and environmental costs and benefits.**

#### *Fossil Fuel Extraction Activities*

**20. Expanding monitoring of and reducing the full life cycle emissions from fossil fuel extractive industry activities.**

#### *Solid Waste Reduction*

**21. Granting CDPHE the authority to implement a plan for meeting Colorado's statewide and regional solid waste diversion goals.**

**22. Reducing the use of disposable/single-use products and promoting the reuse of materials.**

**23. Fostering infrastructure, policies, incentives, and programs for recycling and composting.**

*General*

**24. Promoting proactive programs and efforts that improve the resilience and adaptability of Colorado communities in the face of natural disasters and other major challenges associated with climate change.**

**25. Optimizing the potential for carbon sequestration through regenerative agriculture, improved soil health, and forest management.**

**26. Incorporating equity, accessibility, and just transition considerations into climate policies and actions.**

**27. Encouraging investments that achieve climate-positive solutions.**

**28. Maintaining protections and authorities currently provided under environmental laws like the Clean Air Act and the Clean Water Act.**



**To:** Mayor Schmidt and Town Council

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

**Subject:** Final Payment to High Mountain Concepts, LLC for Paradise Park Duplex Build

**Date:** August 6, 2019

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**Background:**

Notice of final payment to High Mountain Concepts has been published in the Crested Butte News for 30 days in the Crested Butte News. A final payment of \$29,600.73 is requested to be authorized by the Council. The Paradise Park Duplex Build has been completed and the 1-year warranty period has begun. High Mountain Concepts completed the project 3 months ahead of schedule and the craftsmanship of the 3 structures exceeded the Town's staff expectations. The Town staff would like to extend our gratitude to High Mountain Concepts on a job well done.

**Recommendation:**

A Council member followed by a second make a motion to approve the consent agenda.



## Memorandum

**To:** Town Council  
**From:** Dara MacDonald, Town Manager  
**Subject:** Manager's Report  
**Date:** August 6, 2019

### Town Manager

- 1) Verizon tower – Verizon has reemerged and is now interested in looking at the Town Shops as an alternative to placing a tower on the elementary school. You will recall that the school district did previously enter into a contract with Verizon which allows them to install a tower on the roof.

When this all became a public concern last winter/spring the Town did offer that Verizon could take a look at Avalanche Park or the Town Shops as a possible alternative location. GCEA also offered their substation as a possibility. From the notes below, Verizon has rejected the substation and Avalanche Park as possible alternatives.

The consultant, Colleen Nebel, will be visiting the Town Shops on August 12<sup>th</sup> as part of her investigation of the site. It seems they are looking for about 200 square feet of dirt and would install a 55' tall mono pole tower. I will let you know as we learn more.

- 2) Mt Emmons work session and site visit – David Gosen, Manager for Remediation Projects for Mt. Emmons Mining Co., will be presenting to the Council at your next work session on remediation projects at the Keystone mine site. He will also be able to discuss progress towards solutions to address ongoing water treatment at the mine. In addition, he is planning a site visit for invited elected officials in late September.
- 3) Mountain Towns 2030 conference – Attached is some information about an upcoming climate action conference in Park City in October. Several members of the staff are planning to attend. It would be great if some Council members who are remaining on Council or planning to run for re-election could also attend. Please let me know if you would be interested in attending.
- 4) OVLC Update – The July 30<sup>th</sup> One Valley Leadership Coalition meeting was focused on the State Division of Housing's current stakeholder engagement process. Please see the attached for notes from the meeting and a link to take the survey yourself.

“2019 was a historic legislative session for affordable housing in Colorado. With the passage of HB19-1245 and HB19-1322, the Department of Local Affairs, Division of Housing (DOH) will receive over \$7 million in additional funding for the next two fiscal years, and then, starting in July 2021, roughly \$77 million more per year for three years to address the state's housing needs. Community engagement and advocacy, local leadership, and dynamic partnerships are vital elements in realizing the potential of the state's new investment in housing. Your input is essential! We are requesting stakeholder feedback via survey. The process will close on October 18, 2019.”

### Public Works

- 1) Sold old 4-way bus stop – A resident of the community has expressed a great desire to purchase the old 4 way bus stop. He is in the process of obtaining all the necessary permitting to move and install the structure on his property. He is scheduled to move the bus stop at the end of August or the beginning of September.
- 2) Update on Kapushion project
  - JCI is continuing to work on the sidewalk, curb returns, and crosswalks at the intersection of 6<sup>th</sup> and Teocalli.
  - JCI is currently installing the sanitary sewer main within the 500 block of Teocalli.
- 3) Removal of the track at CBCS was completed on July 19<sup>th</sup>. The school is handling grading and seeding the site.
- 4) Block 76 water line – Construction of the water main in block 76 is commencing with preconstruction meeting on August 1<sup>st</sup> and a tentative ground breaking date of the week of August 5<sup>th</sup>. Lacy Construction won the contract and will be performing the work.

### Marshals

- 1) Bears in Town - We are grateful this year seems like a late start for the bears in town but, there is at least one causing a bit of damage. Sounds like he/she is about 350-400 pounds and light colored. In addition to getting into unsecured garbage containers, which is always a problem, it sounds like this one is mastering the art of popping open bear resistant cans by jumping on them. Not only does this make a mess it also damages the can. People are reminded to leave all garbage cans in a secured spot until 6am on the day of scheduled pickup. This will prevent potential damage to cans and reduce access to garbage by bears which always endangers their survival.

### Parks & Rec

- 1) Town Park Playground update – Weigh anchor, hoist the mizzen, and set sail for the Mary Yelenick Playground GRAND OPENING at Town Park in September! The grand opening will be Friday Sept 6<sup>th</sup> or 20<sup>th</sup> from 4-6pm. The date will be confirmed in August. Wear a pirate costume!
- 2) Big Mine Ice Arena –
  - a. Two courts have been striped for Pickleball on the rink and are getting a lot of use. Staff is happy to have more summer activity at Big Mine and a wider variety of user groups present.
  - b. WEHA plans to offer drop-in hockey starting in August with small plastic sheets of ice that kids can stand on and shoot at the nets.
  - c. Due to complications obtaining construction documents in time for construction before the 19/20 hockey season, the hockey Changing Rooms Project will likely be pushed to 2020.

## Community Development

- 1) STOR Committee update - You may have noticed new signage along Peanut Lake road recently. The Peanut Lake road subcommittee of STOR (comprised of the Land Trust, Nordic, Gunnison County, and Town representatives), utilized a community-based approach based on public feedback to enhance recreation management in that corridor. The north lower loop trailhead is now only signed for restricted parking (ADA and families with small children only) and through outreach efforts and signage, the subcommittee is encouraging recreationists to start their journey on the Woods Walk and Lower Loop trails from Town. The Land Trust and Town are also working with landowners on the Woods Walk to improve signage on the trail. The next step of the subcommittee is to discuss potential parking improvements this fall.
- 2) A friendly reminder to businesses located on Elk Avenue is being sent out to notify them of the regulations regarding signage and merchandise on the public rights-of-way. Additional enforcement is likely once the reminders have been sent out.
- 3) The Paradise Park Duplex build is complete and 6 additional units have been added to the Town's affordable housing inventory. The last unit is set to close on August 16<sup>th</sup>. Final payment is on the council agenda for High Mountain Concepts. A big thank you to John and Karen Stock on their performance on the project and delivering the project several months ahead of schedule.
- 4) The Slate River Trail and public works wall are currently under construction. It's estimated to take 2 months for the construction to be completed. The final portion of the sewer infrastructure will be installed from mid-August through October.
- 5) Town Staff met with representatives from DOLA and CHFA about affordable housing funding. Under new housing initiatives from Governor Polis approximately an additional \$60 million in funding will be made available in the state fiscal years 2021-2023. The staff is reaching out to our partners in the valley to begin discussions on how to plan for a project that would be eligible for the funding.



## Town Clerk

- 1) Crested Butte Investments LLC has filed for a transfer of the dispensary license from Pure Industries LLC DBA SOMA Wellness Center. The public hearing will be set once the State has approved the transfer.
- 2) 2019 Election - Candidate packets are available for pick up. Petitions may be circulated beginning August 7. They are due no later than 5PM on August 30<sup>th</sup> to the Clerk's Office.
- 3) 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.

## Finance

- 1) Preliminary Town sales tax collections for June show an 8% decrease versus 2018. YTD sales tax is up 2%. Roughly on budget for 1H19. The YTD chart below displays Town tax collections by business type. May and June 2019 are tough to compare with 2018 given weather and trail condition differences.

<b>Business Type</b>	<b>2019</b>	<b>2018</b>	<b>% Diff</b>
BARS/REST	\$556,363	\$570,538	-2%
GROCERY	\$215,084	\$203,311	6%
RETAIL	\$407,920	\$424,734	-4%
RETAIL:MMJ	\$54,026	\$68,917	-22%
LODGING	\$188,351	\$174,902	8%
CONST/HRDWR/AUTO	\$178,228	\$146,939	21%
SERVICE	\$82,074	\$88,328	-7%
OTHER	\$133,559	\$106,280	26%
<b>Total</b>	<b>\$1,815,871</b>	<b>\$1,783,950</b>	<b>2%</b>

June STR excise tax collections were down 24% versus 2018. YTD STR excise tax collections total \$122,698, which is up 10% YOY.

#### Intergovernmental

Crested Butte is scheduled to host the next Intergovernmental dinner with all of the municipalities and the County on September 24<sup>th</sup> or 30<sup>th</sup>.

#### Upcoming Meetings or Events

August 13<sup>th</sup> 4:00 – 6:00 p.m. – 2020 Budget work session

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.



## INVITATION TO MOUNTAIN TOWNS 2030

To Key Mountain Town Leader:

My name is Andy Beerman and I am honored to be representing my community as the Mayor of Park City, Utah. Mountain communities are iconic places defined by passionate people with a deep connection to the natural environment. However, the places we love are under attack. We are witnessing the growing effects of climate change on our communities. Fires, unreliable snowpack, flooding, and declining forest health are just some of the examples. It might feel like we're too small to have impact, but in the face of inaction, we have a unique opportunity to lead.

**October 2-4 Park City is hosting Mountain Towns 2030.** The goal is simple: join forces to tackle the biggest challenge to face our communities. Together we can achieve carbon neutrality, grow our economy, and prove to the world that ambitious goals fuel passion and action.

This won't be your typical conference. Jane Goodall will address the group, stirring emotion and inspiration. Paul Hawken will discuss solutions that we can implement today. A utility CEO will share insight how to approach your utility to get to 100% renewable by 2030. Hear from your peers about how elected officials can lead globally with local action. Together we are smarter, so we will provide a forum for towns to share knowledge, best practices and successes.

I can relate that your role never has many demands and not nearly enough time to get everything done. However, with over 40 communities coming together, we can exchange ideas and have the greatest impact together. Space is very limited. For more information, go to [www.mt2030.org](http://www.mt2030.org). If you have any questions, please do not hesitate to reach out.

Regards,

A handwritten signature in black ink that reads "Andy Beerman".

Andy Beerman  
Park City Mayor  
[Andy@parkcity.org](mailto:Andy@parkcity.org)  
435.731.8366

## **DOLA – Division of Housing**

### **Addressing Local Needs Through Creative Affordable Housing Solutions in Rural Areas**

Colorado increased the vendor fee to 4% and capped the amount an entity can keep at \$1,000 per month. The amount over \$1,000 will now go to the Division of Housing. Should add \$40M per year beginning FY22 and going forward.

Unclaimed property fund will add an additional \$30M per year in FY 22, 23 & 24

#### **Where most of the money will go:**

- Housing Development Grants – Single Family homes, Modular/manufactured new construction and rehabilitation
- Housing Development Loans – Land Acquisition/Banking, Single family home construction, Down payment assistance loans, Modular/manufactured new construction and rehabilitation
- State Affordable Housing Tax Credits

Gaps and Needs Identified by OVLC participants and John Messner/Michael Yerman/Jennifer Kermode:

- Infrastructure - Competitive grant process each year with smaller match of around 25% with rural emphasis
- Planning grants should be larger – increase from \$75K
- Down payment assistance for local developers so they can borrow from down payment assistance to fill gap between
- Develop a program for businesses to access down payment assistance to purchase rental housing for employees
- Funding for local authorities – give local authority autonomy to meet local needs
- Funding some type of enforcement fund – assist with ability to enforce regulations (temporarily relocate residents in substandard housing, step in and make repairs)
- Uniform deed restriction for homeownership. Working on statewide format that banks would accept and subordinate loans to.
- Providing more latitude to address broader range/higher range of income levels. Has been increased to 80% for rental and 120% of AMI for ownership.
- Develop grant/loan programs that cater specifically to the needs of rural resort communities.

Survey to provide additional feedback: <https://www.colorado.gov/pacific/dola/housing-stakeholder-engagement>



## Rural Resort Region



### Community Housing Opportunity Profile

Highlighting needs so that you can identify opportunities

### Overview

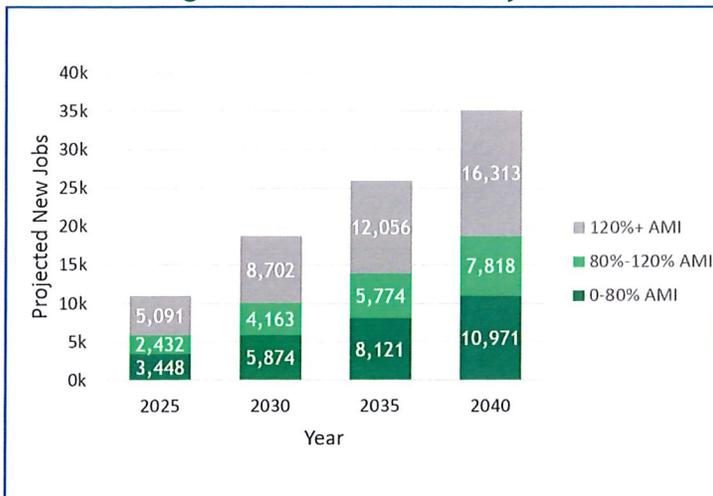
Currently, an estimated 10,314 households in the Rural Resort Region are severely housing cost burdened, meaning that they pay more than 50% of their income towards housing, this is 69% of all households at the lowest income bracket. Demand for affordable housing will increase in the future with a projected 15,100 new jobs below the area median income (AMI) by 2040.

### Max Regional Affordable Rents by Income

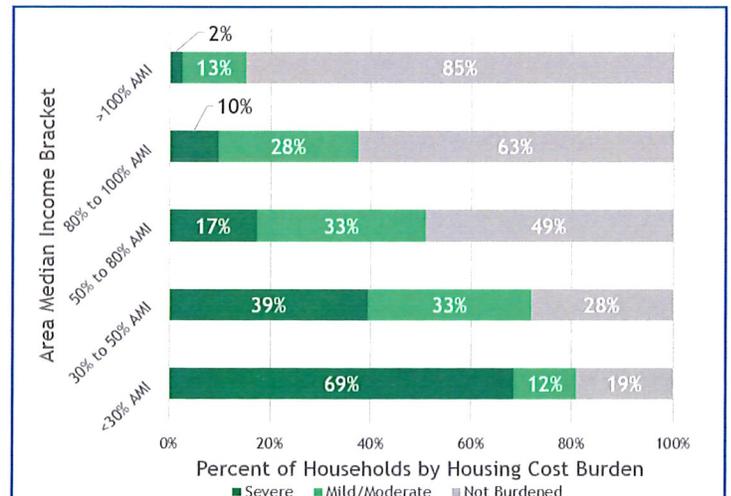
Income as % of Area Median	Max Income	Affordable Rent
30%	\$23,883	\$597
80%	\$63,689	\$1,592
100%	\$79,611	\$1,990
120%	\$95,533	\$2,388

Income and rent limits for a household of three

### Projected New Jobs in the Region from 2025-2040 by AMI

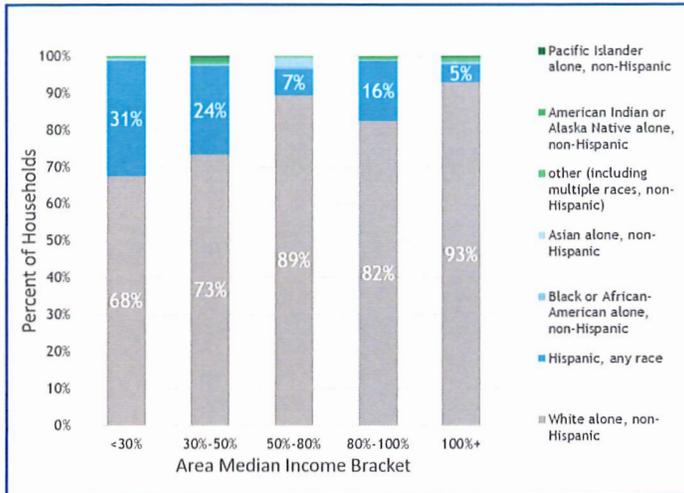


### % of Households by Cost Burden Status & AMI

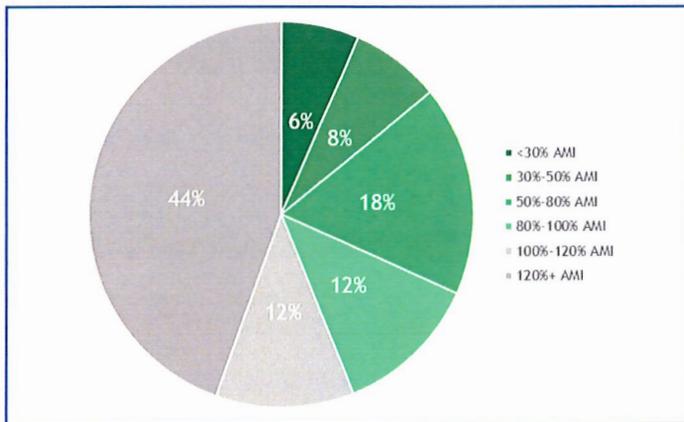


# Demography

## AMI Composition by Race and Ethnicity



## Portion of Employees by Area Median Income of Their Household



# Citations & Notes

Employment projections are derived from the State Demography Office's Jobs Forecast and the U.S. Bureau of Labor Statistics Employment Projections with employment sectors cross-referenced with households by AMI and Colorado region from the American Community Survey (ACS).

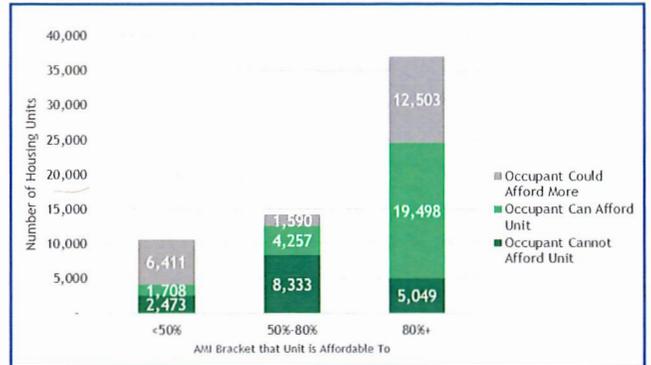
Household cost burden, housing stock, and AMI composition data is provided by the HUD/Census Bureau Comprehensive Housing Affordability Strategy. The portion of employees by AMI is from a DOH tabulation of ACS microdata.

Zillow provides information on rental and home purchase listings for 45 counties, DOH estimated rental and home values in remaining counties by cross-referencing Zillow data with ACS data. The U.S. Consumer Finance Protection Bureau makes data on originated home loans for purchase through the Home Mortgage Disclosure Act dataset.

All datapoints are weighted on appropriate measures to make geographical areas representative of their region.

# Housing Stock <sup>69</sup>

## Units Affordable by AMI and What Their Occupants Can Afford

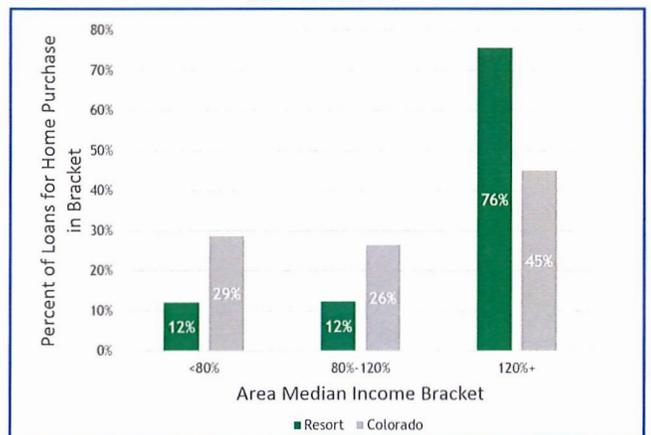


This chart illustrates both rental and for sale units, the shading of the bar illustrates whether the occupant of the unit can actually afford to live in their housing. It shows how households rent/buy up or down in the market.

# Housing Markets

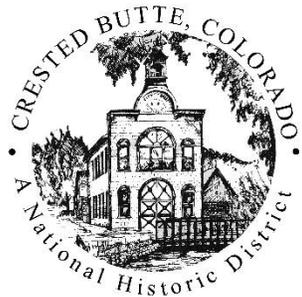
The estimated median rental rate for a newly listed apartment is \$2,914 in 2019, this would take an income of \$116,600 to afford, compared to the median income of \$79,611. In 2019, the median home list price was \$1,025,888 it would take an income of \$268,000 to afford such a home.

## Home Loans by AMI 2015-2017



To explore interactive housing data customized for your community, visit:

[colorado.gov/pacific/dola/publications-reporting](http://colorado.gov/pacific/dola/publications-reporting)



**To:** Mayor Schmidt and Town Council

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

**Thru:** Dara MacDonald, Town Manager

**Subject:** **Ordinance 29, Series 2019- Transfer of Block 76 Lots 1-6 and Block 77 Lot 10 to Bywater for the construction of affordable housing**

**Date:** August 6, 2019

**Background:**

On July 15<sup>th</sup>, Town staff informed Council that Bywater, LLC did not secure the required performance bond as contractually required for Phase 1 and Phase 2. Staff recommended not proceeding with the transfer of the Phase 2 lots to Bywater due to lack of bonding. However, in an effort to keep Phase 2 moving forward, Council elected to set Ordinance 5, Series 2019 to a public hearing on August 6, 2019. Council's intention was to provide Bywater additional time to secure an adequate surety to allow Phase 2 break ground.

Phase 2 consists of 10 additional units, which were offered to local businesses to serve as employee rentals. Seven of the ten units are currently under contract by local businesses. Several other businesses have expressed interest. Plans have been approved and are ready for construction. If Phase 2 does not proceed under the current contract with Bywater, the plans can be reused and the project rebid.

During the past two weeks, Staff has worked with Bywater to secure a \$2.4 million performance bond and/or letter of credit. Performance bond(s) secure completion of the project should a contractor fail to complete. A performance bond would allow Town to step in and complete the project, in the event of a default, without dipping into Town reserves. A performance bond would protect Town and potential buyers by ensuring the project would be completed.

In the worst case scenario, without a performance bond, Town could potentially lose the deed restrictions for the ten units in Phase 2. The construction loan bank could foreclose and sell the units at market rate. Thus, the ten units would not be deed restricted or "affordable."

At this time, Bywater has only a verbal commitment from a bond company for an "overage bond." This type of bond only protects against project cost overruns. It does not provide any relief up to the \$2.4mm project cost. This does not provide Town coverage or assurance to complete the affordable housing project. Town does not have sufficient Affordable Housing reserves to complete Phase 2 should Bywater default, with no performance bond in place. Due to these reasons, Staff does not

recommend proceeding on Phase 2 with Bywater. The financial risk, and risk to affordable housing, is too great.

**Recommendation:**

A Council person make a motion followed by a second to deny Ordinance 29, Series 2019.

**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**

**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 the laws of the State of Colorado; and

**WHEREAS**, the Town Council is authorized pursuant to § 14.4 of the Town Charter to sell and convey Town-owned property; and

**WHEREAS**, the Town Council entered into a Contract with Bywater, LLC for the construction of affordable housing to be sold to Qualified Applicants as defined in the Town of Crested Butte Affordable Housing Guidelines in 2019 and 2020 in Paradise Park; and

**WHEREAS**, per the contract the Town will transfer land to Bywater in two Phases with Lot 6, Block 78 and Lots 4, 10, and 11 Block 79 being the second phase; and

**WHEREAS**, the Lots being transferred to Bywater, LLC are encumbered by a Master Deed Restriction Reception No. 659099 to ensure the housing created will house the Town’s citizens; and

**WHEREAS**, the Town Council has directed the Town staff to transfer the above-described property to Bywater, LLC; and

**WHEREAS**, the Town Council hereby finds that it is necessary and suitable, and in the best interest of the Town and the health, safety and welfare of the residents and visitors of Crested Butte, that the above-described property be sold as set forth hereinbelow.

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

**Section 1. Authorization to Sell Town-owned Property.** The Town Council, pursuant to the Crested Butte Town Charter and the laws of the State of Colorado, hereby authorizes the transfer by the Town, for the construction of affordable housing, the real 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 and use for affordable housing, and authorizes and directs the Town Manager and Town Clerk to appropriately execute any and all documents necessary and appropriate to consummate said sale following approval thereof by the Town Attorney.

**Section 2. Appropriation of Funds.** The Town Council hereby appropriates all customary closing costs and fees for the transfer of the above-described real property out of the Town’s affordable housing fund, and authorizes the expenditure of said sum for such purpose.

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

**Section 4. 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 is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

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

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

TOWN OF CRESTED BUTTE, COLORADO

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

ATTEST:

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

[SEAL]



## Staff Report

August 6, 2019

**To:** Mayor and Town Council

**From:** Rob Zillioux, Finance and HR Director

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

**Summary:** 808 9<sup>th</sup> St. Unit 1 is a small one-bedroom unit that has been rented to Town employees. This unit is part of a triplex located adjacent to the Community School and Tommy V ball park. The current occupant will be moving into another Town owned rental unit. Staff recommends entering into a new lease with Chris Wiig.

**Discussion:** The 808 9<sup>th</sup> St. Unit 1 unit is approximately 700 sq. ft., with one bedroom and one bathroom. Current monthly rent is \$510. Town has performed maintenance on the building. Lessee pays for electricity. Town pays for gas, water, sewer, and weekly refuse collection. Lessee also pays all charges for telephone, internet, television and other such services. The monthly lease rate proposed is as follows:

2019 \$515

The rental term is for 1 year with an automatic 1 year renewal, unless either party provides termination notice. Upon automatic renewal every year the rental rate will increase by \$10 per month.

**Legal Implications:** It is in the best interest of both the Town and its tenants to have a clear lease acknowledging the terms under which the tenant is permitted to use the property ensuring adequate insurance is in place and laying out the maintenance responsibilities.

**Recommendation:** Staff recommends the Town enter into a lease with Chris Wiig.

**Proposed Motion:** Motion and a second to approve Ordinance No. 32, Series 2019 at the August 6th Council meeting.

**ORDINANCE NO. 32**

**SERIES NO. 2019**

**An Ordinance of the Crested Butte Town Council Approving the Lease of 808 9<sup>th</sup> St Unit 1 (A Town Owned Building) to Chris Wiig.**

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; and

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; and

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

WHEREAS, the Town Council and Chris Wiig wish to enter into Lease attached hereto as Exhibit A; and

WHEREAS the Town Council finds hereby that approving leases of various Town properties for use by certain entities is in the best interest of the Town.

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

1. **Findings**. The foregoing recitals are hereby fully incorporated herein.
2. **Authorization of Town Manager or Mayor**. Based on the foregoing, the Town Council hereby authorizes the Town Manager or Mayor to execute a lease in substantially the same form as attached hereto as **Exhibit "A"**.

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

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

TOWN OF CRESTED BUTTE, COLORADO

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

ATTEST:

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

(SEAL)

## LEASEHOLD AGREEMENT

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the TOWN OF CRESTED BUTTE, a Colorado Home Rule Municipal Corporation (hereafter referred to as the “Town”) and Chris Wiig, an employee of the Town of Crested Butte (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 and RENEWAL:** This agreement shall commence as of the 1<sup>st</sup> day of August, 2019, for a period of one year, ending on the 31<sup>st</sup> day of July, 2020 at midnight. Thereafter, this agreement shall automatically renew annually from year to year. During the term of this Lease, Lessee must remain in the employment of the Town. Should Lessee’s employment with the Town end for any reason during the term of this Lease, Lessee, and any additional room-mate(s) or temporary visitor(s) must vacate the premises within 60 days from the end date of employment. Any extension of the vacation date must be mutually agreed upon in writing by both parties. Should the Lessee desire to move out prior to the expiration of the Lease, Lessee will give the Town no less than a 30 day notice of intention to move out.
  
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, situated in the County of Gunnison and State of Colorado, to wit:
 

808 9<sup>th</sup> St Unit 1, Crested Butte, Colorado (a one bedroom residential dwelling that is a Town owned property)
  
3. **RENT/OCCUPANTS:** The Lessee agrees to pay to Town as rent for the premises listed above the sum of \$510.00 per month, due and payable no later than the 5<sup>th</sup> day of each month during the term of this lease;
  - a. Upon automatic renewal every year the rental rate shall increase by \$10 per month.
  
4. **UTILITIES:** Unless otherwise specified, the Lessee shall pay for electricity. The Town will pay for gas, water, sewer, and weekly refuse collection. Lessee shall also pay all charges for telephone, internet, television and other such services.
  
5. **CHARACTER OF OCCUPANCY:** The premises shall be occupied by the Lessee as a residential dwelling. Any commercial activity not in connection with Lessee’s employment with the Town is prohibited unless agreed upon in writing by both parties. Further, Lessee shall:
  - a. Properly maintain the premises, fixtures, and furnishings located therein, to include the changing of light bulbs, cleaning, mowing and weeding, snow removal upon

and around entrances and parking areas, yard cleanliness and maintenance, and other such minor work.

- b. At its sole cost and labor make all necessary day to day repairs needed to preserve the quality of the interior walls, floor, ceiling, and doors of the premises, and maintain the fixtures and furnishings in good working order and condition. Any and all such repairs or replacements shall be of a like kind and quality, and shall be done in a good and thorough workmanlike manner.
- c. Make no alterations, repairs, or improvements to the premises without prior written permission of the Town. Lessee shall secure the premises with a lock, and insure that the Town has a key to said lock. Lessee shall return the premises to the Town clean and in good order and condition including any carpets, wood flooring, paint, furnishings and appliances, and plumbing facilities at the termination of this Lease, ordinary wear and tear excepted.
- d. Not use the premises in any fashion that would increase the risk of fire, explosion, or any physical damage or destruction to the premises, or create hazardous conditions for other tenants or neighbors. Not use the premise in any fashion contrary to the laws of the Town, the State of Colorado, or the United States government. Except by prior arrangement and written permission from the Town, limitations on the use of the premises includes a prohibition on smoking tobacco products, and the unlawful storage, consumption, or transfer of alcoholic beverages and/or controlled substances.
- e. Lessee shall not use the premises to further any discriminatory or derogatory practices based on race, sex religious belief, sexual orientation or national origin.
- f. Lessee understands and agrees that the leased premise is a part of a triplex building, the adjacent portion of which is a similar rental unit occupied by an employee of the Town. Lessee agrees that the tenant(s) in the other portion of the building are entitled to the quiet enjoyment of their residence, and the Lessee agrees to refrain from behaviors or practices that may un-necessarily disturb or damage the adjacent Lease-holder.

6. **ANIMALS:** Lessee is allowed to have pets such as a dog or cat subject to approval by the Town Manager.
7. **CLEANING:** 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 cleaning 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 animal resistant container provided by the Town on the premises for eventual removal during the weekly trash pick-up. Trash, refuse, and other such discarded materials may not be allowed to accumulate in or on the property. All cleaning supplies and equipment must be provided by Lessee. Premises are subject to periodic inspection for the purposes of insuring cleanliness, and proper repair and maintenance of the premises by the Town upon 24 hour notice to the Lessee.
8. **PARKING:** Vehicles owned or operated by the Lessee must be parked in available spaces designed for such purposes or the Town right of way in accordance with the Town's parking regulations. Vehicles may not be parked on landscaped areas, abandoned on the premises, or otherwise left in disrepair on or adjacent to the premises.

9. **LIENS:** Lessee agrees to keep the premises free and clear of liens of any kind caused by the action or inaction of Lessee.
10. **SECURITY AND DAMAGE DEPOSIT:** Lessee shall pay the Town the sum of \$250.00 to be used as security for the faithful performance of the terms and obligations of this Lease. This deposit shall be held by the Town for the term of this Lease. The Town may apply any or all of the security deposit to the repair of damages caused to the premises by Lessee or Lessee's use thereof, and/or to pay for cleaning of the premises upon the Lessee's vacation of the premises. In the event the town deems that it is reasonable and necessary to have the premises cleaned or repaired during or after the term of this Lease, it shall be done at Lessee's expense. Any amount paid out of the deposit shall be reimbursed to the Town within ten (10) days by the Lessee to again cause a full deposit of \$250.00 to be available at all times. This deposit shall not be deemed to be of the total amount for which the Lessee shall be responsible in the event of damages. Lessee shall not be entitled to credit any amount of the deposit toward payment of any other obligation owed to the Town.
11. **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 the Lessee.
12. **INSURANCE AND INDEMNIFICATION:** Lessee agrees to indemnify and hold the Town harmless against any and all claims or judgments for loss, liability, damage, or injury to persons or property of any kind, including reasonable attorney's fees arising out of or in connection with Lessee's use of the premises, and those caused by the negligent and intentional acts of the Lessee and/or visitors in furtherance of the Lessee's occupation. The Town shall maintain in effect fire and extended coverage on the building in which the premises is located during the term of this Agreement. The Town shall also maintain in effect public liability insurance on the building in at least the minimum amount of its exposure under the Statutes of the State of Colorado.  
  
Lessee may obtain, at its own expense, any contents insurance and public liability insurance it may wish to purchase, provided however, that if Lessee places equipment, communications devices, or other such material with a cash value in excess of \$10,000, contents insurance is required of the Lessee, at his own expense, as a condition of occupying the premises upon execution of this Lease.
13. **ASSIGNMENT:** Lessee shall not assign this Lease, nor sublet or rent the premises described herein to other users in any fashion, or encumber this lease or the premises in whole or in part, without the prior written consent of the Town.
14. **INSPECTION OF PREMISES:** Lessee shall allow the Town or its authorized representatives to enter upon the premises upon 24 hours notice, without intruding into Lessee's personal effects, to inspect the premises or to make repairs thereon.
15. **DEFAULT OF THE AGREEMENT:** Neither party shall have the right to terminate this Lease upon default in any covenant or condition unless such default remains uncured for five (5) days following the provision of written notice of the default to the defaulting party.

If this Lease is so terminated, it is agreed that the Town may retake possession of the premises upon an additional five (5) days written notice to Lessee, without terminating the Lease. If the Town retakes possession of the premises in such fashion, Lessee shall remain liable for rental payments, and the cost of cleaning and repair, less any amount received from a new tenant during the remainder of the term of this Lease.

16. **SURRENDER OF PREMISES:** If Lessee wishes to renew this Lease, it shall notify the Town no less than 30 days prior to the expiration date. Lessee shall quit and surrender the premises in the condition upon which it was received, except for normal wear and tear, upon the expiration of this Lease, or any extension hereof. Except by prior negotiation and agreement with the Town, it shall be Lessee's responsibility to remove all personal property, personal fixtures, or approved improvements located on the premises at the time of expiration, or upon termination of this Lease. In the event of removal of said personal property, fixtures, or improvements located on the premises, Lessee shall restore the premises to its original condition.
17. **TERMINATION FOR CONVENIENCE:** Either the Town or Lessee may terminate this agreement and the tenancy hereunder at any time for any reason or no reason at all on 60 days' written notice to the other party.
18. **TOWN'S REPAIR AND MAINTENANCE OBLIGATION:** Except by prior negotiation and agreement expressed and added herein, the Town shall keep the remainder of the building in which the premises is located in good repair. The Town shall make such structural repairs as may be necessary, and repair all plumbing, electrical, heating, ventilating, and other facilities as may be existing, unless caused by the negligent or intentional acts of the Lessee, and visitors, in which case Lessee shall pay or reimburse the Town for such repairs.
19. **NOTICES:** All notices required hereby shall be in writing and shall be hand delivered or sent by certified mail, return receipt requested, to the following addresses:

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

LESSEE:       Chris Wiig  
                     Crested Butte, CO 81224

Notices 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.

20. **APPLICABLE LAW:** 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 be in the County of Gunnison, State of Colorado.

- 21. **ATTORNEY FEES:** It is agreed that if any action is brought in a court of law by either party to this Lease as to its enforcement, interpretation or construction of this Lease or any document provided for herein, the prevailing party in such action shall be entitled to reasonable attorney fees, as well as all costs incurred in the prosecution or defense of such action.
- 22. **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 contained herein, or the failure of the Town in any one or more instances to exercise any option, privilege, or right contained herein shall in no way be construed as constituting a waiver of such default or option by the Town.
- 23. **CAPTIONS:** The captions are inserted only as a matter of convenience and reference. They in no way define, limit, or describe the scope of the Lease nor the intent of any provision herein.
- 24. **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, or agreements, or the validity of the Lease as a whole.
- 25. **BENEFIT:** This Lease shall bind and benefit alike the successors and assigns of the parties hereto.

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

TOWN OF CRESTED BUTTE, COLORADO

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

ATTEST:

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

LESSEE:

By: \_\_\_\_\_  
Chris Wiig



## Staff Report

August 6, 2019

**To:** Mayor Schmidt and Town Council

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

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

**Subject: 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**

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**Background:** In May 2019, David Leinsdorf, on behalf of Jeff R. Serra, whose limited liability company owns Lot 6 of McCormick Ranch, requested to execute a new easement agreement with the Town of Crested Butte by which the Town would abandon the recreation trail easement depicted on McCormick Ranch plat in exchange for a new easement describing the recreation trail easement in its actual location.

On the original McCormick Ranch Lot 6 plat, there is easement for the Town recreation path and bridge across the Slate River. However, neither the bridge nor the recreation trail were constructed in this location on Lot 6, rather the bridge was constructed on the Verzuh Ranch property. The new easement legally describes the actual portion of the trail as it exists today.

Ordinance No. 33, Series 2019 would terminate the original trail easement and bridge easement as shown on the McCormick Ranch lot 6 in exchange for a new easement describing the recreation trail easement in its actual location. The first reading of Ordinance No. 33, Series 2019 was approved on July 15, 2019 with a public hearing date set for August 6, 2019.

**Recommendation:** Staff recommends that the Council make a motion, followed by a second, to approve and adopt the second reading of Ordinance No. 33, Series 2019.

**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**

**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 the Constitution and the laws of the State of Colorado;

**WHEREAS**, the Town Council is authorized pursuant to § 14.4 of the Town Charter to sell and convey Town-owned property;

**WHEREAS**, the Town owns an interest in a 15’ Wide Public Trail Easement for Pedestrian, Equestrian, Bicycling and Nordic Ski Purposes (“Trail Easement”) and a Public Easement for Bridge Construction and Maintenance (“Bridge Easement”) on Lot 6 of the McCormick Ranch according to the McCormick Ranch Plat recorded August 18, 2000, at reception No. 504295 of the Gunnison County Clerk and Recorder;

**WHEREAS**, the public recreational trail that actually crosses Lot 6 is not located within the Trail Easement shown on the McCormick Ranch Plat;

**WHEREAS**, the Bridge Easement on Lot 6 has never been used because the bridge was constructed upon the Verzuh Ranch Open Space located to the west of Lot 6, and the Bridge Easement is no longer necessary;

**WHEREAS**, the owner of Lot 6, MR Land LLC and the Town have agreed to enter into a new Easement Agreement that grants the Town a new 15’ Wide Public Trail Easement for Pedestrian, Equestrian, Bicycling and Nordic Ski Purposes across Lot 6 in the location where the public recreational trail actually crosses Lot 6, and in exchange the Town will agree to release the Trail Easement and the Bridge Easement on Lot 6 per the McCormick Ranch Plat;

**WHEREAS**, a copy of the new Easement Agreement between the Town and MR Land LLC is attached as **Exhibit A**; and

**WHEREAS**, the Town Council hereby finds that it is necessary and suitable, and in the best interest of the Town and the health, safety and welfare of the residents and visitors of Crested Butte, that the existing Trail Easement and Bridge Easement upon Lot 6 in exchange for the new Easement Agreement attached as **Exhibit A**, as set forth below.

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

**Section 1. Authorization to Release Town-owned Trail Easement and Bridge Easement.** The Town Council, pursuant to the Crested Butte Town Charter and the laws of the

State of Colorado, hereby authorizes the Town to release the Trail Easement and the Bridge Easement on Lot 6 of the McCormick Ranch according to the McCormick Ranch Plat recorded August 18, 2000, at reception No. 504295 of the Gunnison County Clerk and Recorder, and to enter into the new Easement Agreement attached 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 release of the Trail Easement and the Bridge Easement, and to enter into the new Easement Agreement with MR Land, LLC for the new 15' Wide Public Trail Easement for Pedestrian, Equestrian, Bicycling and Nordic Ski Purposes across Lot 6 in the location where the public recreational trail actually crosses Lot 6, 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 \_\_\_\_\_, 2019.**

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

**TOWN OF CRESTED BUTTE, COLORADO**

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

**ATTEST:**

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

**[SEAL]**

**EASEMENT AGREEMENT**

**This Easement Agreement**, dated the \_\_\_\_ day of \_\_\_\_\_, 2019, is by and between MR Land LLC, a Texas limited liability company, whose address is 835 W. 6<sup>th</sup> Street, #1400, Austin, TX 78703 (“MR Land”), and the Town of Crested Butte, a Colorado home rule municipality, whose address is P. O. Box 39, Crested Butte, Colorado 81224 (“Town”).

**1. Facts and Purposes.** The following facts and purposes apply to this Easement Agreement:

1.1. The Plat of the McCormick Ranch recorded August 18, 2000 as Reception No. 504295 in the office of the Gunnison County Clerk and Recorder (“Plat”) granted Town a “15’ WIDE PUBLIC TRAIL EASEMENT FOR PEDESTRIAN, EQUESTRIAN, BICYCLING AND NORDIC SKI PURPOSES” (“Trail Easement”) and a “PUBLIC EASEMENT FOR BRIDGE CONSTRUCTION AND MAINTENANCE” (“Bridge Easement”) on Lot 6 of The McCormick Ranch, as shown on the Plat (“Lot 6”).

1.2 MR Land owns Lot 6.

1.3 The trail is not located in the Trail Easement and the bridge is not located in the Bridge Easement.

1.4 The purpose of this Easement Agreement is to terminate the Trail Easement and the Bridge Easement and to grant a new easement for a public trail in the actual location of the trail.

**Now, therefore**, in consideration of the foregoing facts and purposes and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MR Land and Town hereby agree as follows:

**2. Termination of Trail Easement and Bridge Easement.** The Trail Easement and the Bridge Easement as shown on the Plat are hereby terminated and declared to be null and void.

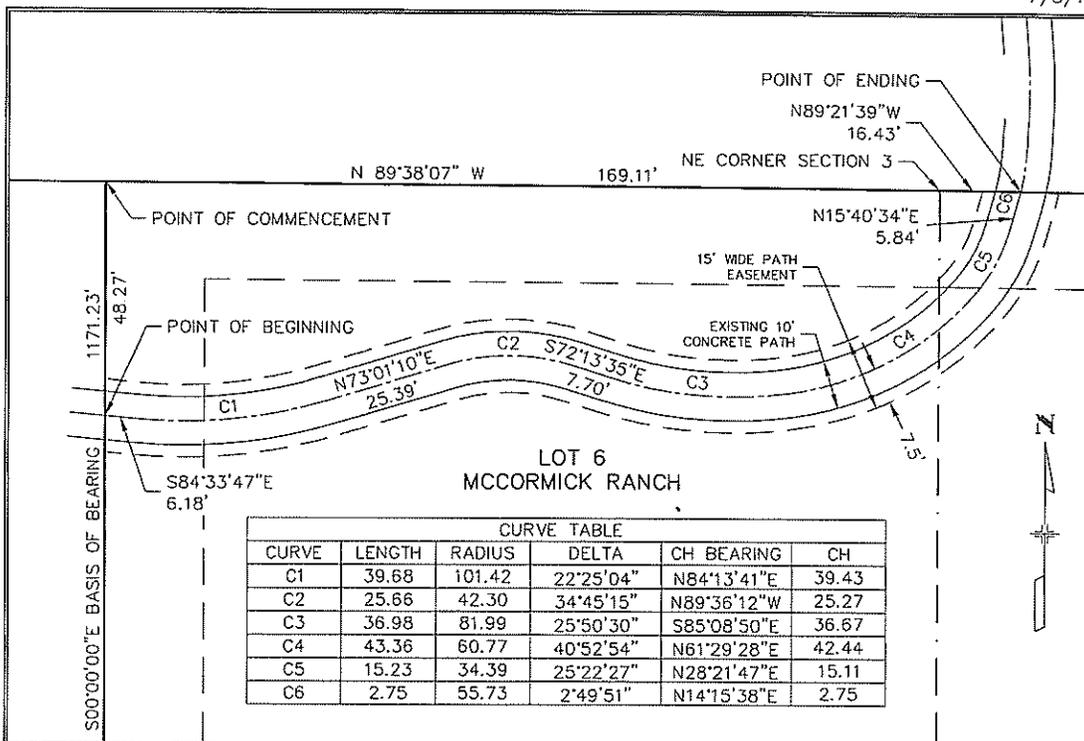
**3. Grant of New Trail Easement.** MR Land hereby grants to Town a 15’ wide public trail easement for pedestrian, equestrian, bicycling and Nordic ski purposes across Lot 6 over the 15’ WIDE PATH EASEMENT, as depicted on attached **Exhibit A**.

**4. Binding Agreement.** This Easement Agreement and all of its provisions shall be binding upon and inure to the benefit of the parties and



**EXHIBIT A**

7/8/19

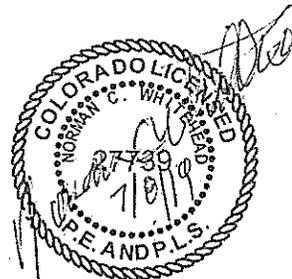


**DESCRIPTION**

An easement being located in the NW corner of Lot 6, McCormick Ranch and within the NW1/4 NW1/4 Section 2, NE1/4 NE1/4 Section 3, Township 86 West, Range 14 South of the 6th Principal Meridian, County of Gunnison, State of Colorado, being described as follows:

Commencing at a the NW corner of McCormick Ranch; thence S00°00'00"E along the west line of McCormick ranch a distance of 48.27 feet to the POINT OF BEGINNING; thence along the center line of an existing concrete path the following 9 courses: 1) S84°33'47"E a distance of 6.18 feet to a point of curve; 2) 39.68 feet along said curve to the left, said curve has a central angle of 22°25'04", a radius of 101.42 feet and a chord of N84°13'41"E a distance of 39.43 feet; 3) N73°01'10"E a distance of 25.39 feet to a point of curve; 4) 25.66 feet along said curve to the right, said curve has a central angle of 34°45'15", a radius of 42.30 feet and a chord of S89°36'12"E a distance of 25.27 feet; 5) S72°13'35"E a distance of 7.70 feet to a point of curve; 6) 36.98 feet along said curve to the left, said curve has a central angle of 25°50'30", a radius of 81.99 feet and a chord of S85°08'50"E a distance of 36.67 feet to a point of compound curve to the left; 7) 43.36 feet along said curve, said curve having a central angle of 40°52'54", a radius of 60.77 feet and a chord of N61°29'28"E a distance of 42.44 feet to a point of compound curve to the left; 8) 15.23 feet along said curve, said curve having a central angle of 25°22'27", a radius of 34.39 feet and a chord of N28°21'47"E a distance of 15.11 feet; 9) N15°40'34"E a distance of 5.84 feet to a point of curve; thence 2.75 feet along said curve to the left, said curve has a central angle of 02°49'51", a radius of 55.73 feet and a chord of N14°15'38"E a distance of 2.75 feet to a point on the north line of McCormick Ranch and the POINT OF ENDING from which the NW corner of McCormick Ranch is N89°21'39"W a distance of 16.43 feet; thence N89°38'07"W a distance of 169.11 feet.

BASIS OF BEARING: S00°00'00"E between found monuments (LS No. 33647) located at the NW corner and the SW corner of Lot 6.



**NCW & Associates, Inc.**

P.O. Box 3688  
 Crested Butte, Colorado 81224  
 Tel. (970) 349-6384

BY: **NORMAN C. WHITEHEAD**  
 REGISTERED LAND SURVEYOR  
 COLORADO NO. 27739



## Staff Report

August 6, 2019

**To:** Mayor and Town Council

**Thru:** Dara MacDonald, Town Manager

**From:** Shea D Earley, Director of Public Works

**Subject:** Discussion and Possible Action Regarding Upcoming Construction Activity on Block 80 and Associated Noise.

### Summary:

As part of the sanitary sewer installation for the Slate River Development, a new lift station, man-hole and sanitary sewer main need to be installed east of the intersection at Teocali and 10<sup>th</sup>. This construction would complete the installation of the sanitary sewer system for the Slate River Development and connect it into the Town's collection system. The infrastructure will become part of the Town's collection system, once accepted by the Town. In order to perform the installation of the infrastructure and due to the subsurface groundwater conditions, temporary dewatering wells will be installed to maintain groundwater infiltration during the construction process. The proposed pumps, which will be installed in the dewatering wells, will have to run 24/7 for approximately 3 to 4 weeks.

### Background:

The installation of the lift station will require an excavation of approximately 25' deep. At this depth, the construction contractor, Lacy Construction, has anticipated encountering a significant amount of groundwater. Due to the potential volume of water, the contractor has proposed mobilizing a diesel powered generator to power four three-phase pumps.

Upon notification from the contractor regarding the proposed plan, Town Staff instructed the contractor to post notices to residents in Blocks 79 and 80. Staff further requested that the contractor set up a specified day and time to perform a demonstration of the generator for the residents in the effected blocks. On July 26<sup>th</sup>, 2019, Lacy construction performed the requested demonstration. Representatives from the Marshals Department were present to take decibel readings at various distances from the generator. The results are as follows:

25 feet	63 decibels
50 feet	60 decibels
75 feet	56 decibels
100 feet	54 decibels
125 feet	51 decibels

The Town did not receive any negative comments after the demonstration.

The Town of Crested Butte Municipal Code does not afford a contractor the ability to operate a generator for construction purposes outside of the hours outlined in Section 10-9-40 which states:

***Prohibited noise.***

*It shall be unlawful for any person to create, cause or allow the continuance of any unreasonably loud, disturbing, unusual, frightening or unnecessary noise which interferes with a neighboring resident's reasonable use of his or her property. Such noise may include, but is not limited to, the following:*

*(11) Construction between the hours of 7:00 p.m. and 7:00 a.m., Monday through Saturday, and before 8:00 a.m. and after 5:00 p.m. on Sundays.*

**Discussion:**

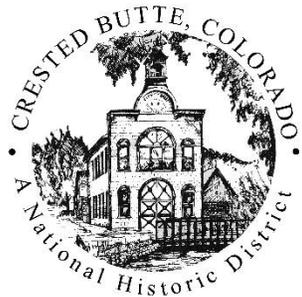
There is an alternative to utilizing the diesel powered generator. A temporary electrical pedestal could be installed; however, the main issue with this alternative is that the electrical power source is a single phase system. This would require the use of single phase pumps instead of three phase pumps, which would decrease pumping efficiency significantly. The contractor expressed concerns that using a single phase power source may not be adequate to maintain dewatering operations.

Since the Town code does not contemplate a situation such as this one, Town Staff is requesting that Town Council determine whether or not to allow the use of a generator to power the dewatering activities that are to occur as part of the construction of the sanitary sewer infrastructure.

Beyond this immediate discussion, Town Staff would like to explore modifications to the current Code to address specific situations such as this one moving forward in the future.

**Recommendation:** Staff recommends to allow the use of the generator by Lacy Construction for the purposes of the construction of the sanitary sewer infrastructure at 10<sup>th</sup> and Teocali.

**Proposed Motion:** I move to approve the use of the generator for the construction of the sanitary sewer infrastructure at 10<sup>th</sup> and Teocali.



**To:** Mayor Schmidt and Town Council

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

**Thru:** Dara MacDonald

**Subject:** **Community School SOAR Affordable Housing Design/Build Project**

**Date:** August 6, 2019

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**Background:**

In 2016, the Town, John Stock, and the Community School came together to develop the Student Organization Achieving Results (SOAR) to have the Community School students design and build an affordable housing unit that would become a rental unit for Town employees. After a first successful build, the SOAR program took off and built two additional homes in Crested Butte South. The program has been a success and is close to its funding goal that would allow the program to be sustainable for years to come.

At this time, the SOAR program would like to reengage the Town and assist with the design and construction of another Town rental unit in Paradise Park. There are two potential sites that would be perfect for the continued success of the SOAR program.

This year the Nordic Center also approached the Town on the need for cat storage on the east side of their trail network. There are several reasons for the need, which are outlined in the attached memo from Executive Director Christie Hicks. Mainly this storage would allow the Nordic Center to reduce the crossing of SH 135 at Journey's End, as well as reduce the need for a future expansion of the Cat Barn at Big Mine Park.

With the explosion of stand up paddling on the Slate River and the expansion of the perimeter trail along the Slate River, there is a need for a public restroom. The need for a restroom is year round as this area has also become a trailhead for the eastern portion of the Nordic trails in the winter.

Finally, Lot 1, Block 80, is located in the FEMA 100 year flood plain. The flood plain renders this lot unsellable as an affordable housing unit because the insurance requirements would create a major financial burden for any owner.

**Option 1:**

The first option for the SOAR program would require the Town to rezone Lot 1, Block 80 to "P" Public. The build would include an affordable housing rental unit on 10<sup>th</sup> Street to ensure the new structure would keep the residential context of the neighborhood. Behind this unit would be an

oversized garage that would serve as cat storage for the Nordic Center. There would also be a public restroom located on the rear, adjacent to the new river trail, Rec Path, Slate River and east side winter Nordic trailhead.

If this option is chosen, the Nordic Center has committed to providing a \$40,000 match for their portion of the build. They will also assist with up to 4 work days to bring in volunteers to expedite construction including items such framing, drywall, siding, and other items that will significantly reduce labor costs. The Nordic Center would be responsible for any interior finishes of their space past drywall. If additional costs are incurred, the Town will be able to recoup these costs over a 10-year lease.

The Town anticipates the rental unit would be approximately 800-1,000 square feet. Dependent on the design it would be either a one or two-bedroom unit. The budget impact is anticipated to be \$250,000. The public restroom on the rear would be a single stall ADA restroom.

As part of the proposed budget SOAR would receive a donation from the Town to allow for the program to continue to build the reserves to allow for its continued success.

### **Option 2:**

This option would be similar to the original 2016 town rental build. A single-family home would be built on Lot 2, Block 79 which is a micro lot. The anticipated budget would be \$300,000. There are two options for how the unit could be owned. The Town could keep the unit as a rental or sell the unit to a Town employee. If sold to an employee the deed restriction would require if the unit is resold it would either be sold to a Town employee or the Town would have first right of refusal to buy it back as a Town rental.

If this option is selected the staff will bring back the ownership recommendation with the 2020 budget. There would also be a donation to the SOAR program as part of this build.

### **Staff Recommendation:**

At this time, the SOAR program and Town staff need direction whether the Council is interested in seeing the project proceed and if so, which option the Council would like to pursue. The design and potential rezoning would need to begin this fall with a ground breaking in the spring. Given the support and commitments of the by the Nordic Center to the project, the staff is recommending Option 1. The additional labor that will be provided Nordic Center would also likely result in the project being completed in the 10-week window of the SOAR summer program.

**CB Nordic**  
**Facilities Update**  
**July 31, 2019**



**Background:**

CB Nordic and the Town of Crested Butte enjoy a cooperative public/private partnership where our organizations support and enhance each others' missions. CB Nordic has been seeing nearly 10% growth, annually, over the last 10 years. Our budget has swelled from just over \$250,000 ten years ago to over a million dollars last year. We have gone from a couple hundred season passholders to over 1,000 adult season passholders. We hosted over 10,000 visitors and event participants last season, and estimated over 30,000 user days on our trails. In this time, we have also gone from one year-round employee (the Executive Director), to six: four full-time and two part-time employees, in addition to over 40 more seasonal staff. This type of growth has created stability and sustainability in the organization. I hope to give a more comprehensive update to Council on the economic and social impact of CB Nordic this fall, but these numbers should help you understand the tremendous demand for our programs, events, and services. This growth has put increasing pressure on our facilities at Big Mine Park, and the CB Nordic Board of Directors has adopted a three-step plan to address these needs into the future. After the Town's decision to utilize Whatever USA funds to construct changing rooms at rink level in the ice arena, CB Nordic decided to also address some of our programmatic needs, outside of the Warming House proper. This way future Warming House renovation projects might be simpler and more cost effective for the multiple user groups involved.

**CB Nordic Facilities Plan:**

**Step 1:** Address equipment storage needs: our grooming equipment has outgrown our existing cat barn. See details below.

**Step 2:** Construct a Team Room as an addition to the Cat Barn. Our proposed plans will include year-round office space upstairs for administrative staff. We will still retain seasonal use of the Warming House as public rental/retail space, and continue to staff the Warming House during Hockey games per our long-standing agreement with the Town of Crested Butte.

**Step 3:** Work with the Town, hockey, and other users to renovate the Warming House to be a welcoming destination for nordic users and hockey spectators, as well as other seasonal uses that may be identified.

**Nordic Equipment Storage Needs:**

**Equipment and Vehicles:** When the barn was originally constructed, we only owned one cat and did not own the Grand Traverse. Yurt operations were minimal and we only had one van. We now have 2 snow cats, three vehicles, five snowmobiles, and all the associated trailers and grooming implements. These vehicles and trailers take up space around Big Mine during the winter, and in the summer we are always scrambling for storage around the valley. We have worked with the Town to identify a number of possible solutions, including a storage facility out Peanut Lake Road or on Beckwith. The Peanut Lake Road location on our trails is an ideal

location, but access is difficult as it is still a restoration area, so access would be severely limited seasonally. There are also avalanche concerns along the access road. The Beckwith location has conflicts with snow storage and wetland areas. Given these constraints, the Town suggested a new possible solution: a garage on Lot 1, Block 80.

This project addresses a number of Town's problems, as well as CB Nordic's storage needs. The lot has a portion in a floodplain, which makes it difficult to sell. If the garage is on this portion of the lot, CB Nordic can manage any water-related issues that might arise in ways a residence cannot. There is also a need for a public restroom facility near the Rec Path bridge and river put-in. Constructing these two structures, the restroom and CB Nordic storage, in conjunction with an affordable housing unit, allows for cost efficiencies on all three projects. It also allows the SOAR program to gain experience with a creative partnership, with rezoning, and with the civic process that is so important for today's builders to understand. The Town still gets an affordable housing unit on a lot in a flood plain. It also allows for a collaboration between the Town with the Nordic community to recruit volunteers for a build.

**Proximity to trails:** It is very important that any new storage facility is adjacent to our trails. Our snowcats have aluminum tracks to aid in grooming icy surfaces, but these tracks wear out quickly on asphalt roads. Having a storage facility adjacent to our trails minimizes time spent on roads. If we could stage one cat on the East side of our trails, in the proposed lot, it would not only reduce time spent on roads, but it would reduce (and hopefully, eventually eliminate) the crossing of highway 135 at Journey's End road. As highway traffic has increased over the years, this crossing has become more problematic, and we are looking for other ways to get our cats to the East side trails. This facility would be a part of that solution. The next step would be to create a path or route through the annexation to groom the sled hill, create a winter perimeter trail, and utilize a new crossing at Butte avenue, where traffic is more controlled.

### **Potential Impacts:**

The impacts to the community would be minimal. We would only use this structure for storage and no maintenance would be conducted on site. Access would typically be once per day during the winter months: the snow cat would start up, drive out, and join the regular trail route through the alley. The snow cats already groom the Rec Path trail in close proximity to the neighborhood, so lights and noise would be the equivalent of what they are now. We would be grooming the same number of hours in the same neighborhood. We are proposing a heated slab so that the cats would not need to idle inside the garage, further reducing impacts. Either at the beginning or end of the shift, the cat would back up into the garage. This does require backup alarms, similar to what the town plows utilize. We always try to minimize this noise. For example, if we were regularly leaving during the day, and returning late at night, we would pull in at night so that we would back out during the day, when the alarm has less impact. Our current cat barn is in a P zone immediately adjacent to a residential neighborhood, and we have successfully worked with these residents and mitigated similar noise/light impacts as necessary. A snow cat is arguably much quieter than a plow, as it is not scraping or frequently backing up. While we prefer not to have set hours because of the changing demands of the winter and storm cycles, we plan on working with the Town to establish appropriate uses and

minimize residential impacts. We also hope to bring benefit to the residents of Block 80 by plowing the eastern alley during our months of operation and creating a connector to the Rec Path in the winter.

**In Conclusion:**

CB Nordic appreciates the opportunity to work with the town, its residents, and the school to address multiple needs with one project. We are ready to commit \$40,000 to the project, and we will either pay for additional costs or pay over-time through a lease agreement with the Town. We are also prepared to harness our considerable volunteer power to make this project a success. We are excited about the possibility of housing a snow cat on the East side of town, and we hope that you will see the importance of supporting this innovative, collaborative effort that solves problems for all parties involved.

Christie Hicks  
Executive Director  
CB Nordic



**COMMUNITY SCHOOL AND NORDIC COMBINED BUILD  
Block 80 Tract 1**

-  FEMA 2013 Flood Zone AE - Base Flood Elevations determined
-  Block 80 Tract 1
-  Paradise Park Residential Lots
-  Sidewalk



Town of Crested Butte  
 P.O. Box 39  
 507 Maroon Ave.  
 Crested Butte, Colorado 81224  
 (970) 349-5338 (FAX 349-6626)  
 email: [myerman@crestedbutte-co.gov](mailto:myerman@crestedbutte-co.gov)

Date: August 1, 2019  
 Filename: ~town-projects\AH\PPark\_FEMA2013.mxd

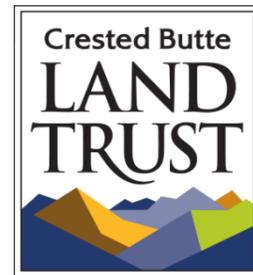
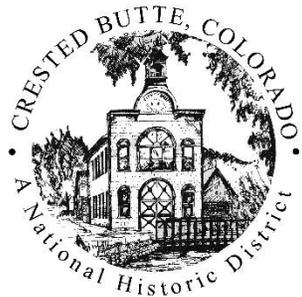


**COMMUNITY SCHOOL BUILD**  
**Block 79 Tract 2**

-  FEMA 2013 Flood Zone AE - Base Flood Elevations determined
-  Block 79 Tract 2
-  Paradise Park Residential Lots
-  Sidewalk



Town of Crested Butte  
 P.O. Box 39  
 507 Maroon Ave.  
 Crested Butte, Colorado 81224  
 (970) 349-5338 (FAX 349-6626)  
 email: [myerman@crestedbutte-co.gov](mailto:myerman@crestedbutte-co.gov)



**To:** Mayor Schmidt and Town Council

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

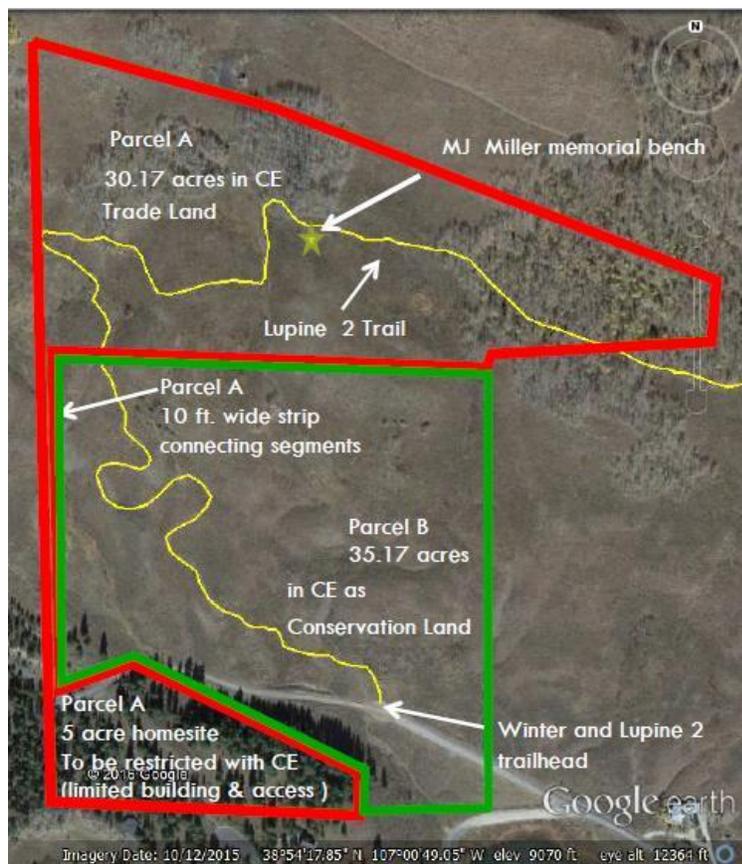
**Subject: Ordinance 28, Series 2019- Purchase and Transfer of Conservation Easement of Kikel Parcel A between the Town of Crested Butte and Crested Butte Land Trust**

**Date:** August 6, 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 July 2<sup>nd</sup> Council meeting:**

At the July 2<sup>nd</sup> Council meeting a question was raised on whether the use of RETT funding was allowed if a cabin would be constructed on the site. After discussing this issue with legal Counsel and looking back at how previous open space purchases were treated in similar situations, a provision has been 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.

During the month of July, several discussions with our local partners occurred including the US Forest Service discussion regarding the closure of dispersed camping in Federal lands surrounding. After this discussion, the Town and Land Trust investigate how a potential walk-in campground could be accommodated on this site. The attached map shows a possible layout for a campground. However, while the need for a campground is pressing, both staff's do not feel there is adequate space to accommodate this use on the 5-acres. The staff will be presenting the Council this option but the current draft of the CE has omitted this as an option.

**Recommendation:**

A Council person followed by a second set Ordinance 28, Series 2019 to a public hearing on August 19, 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**

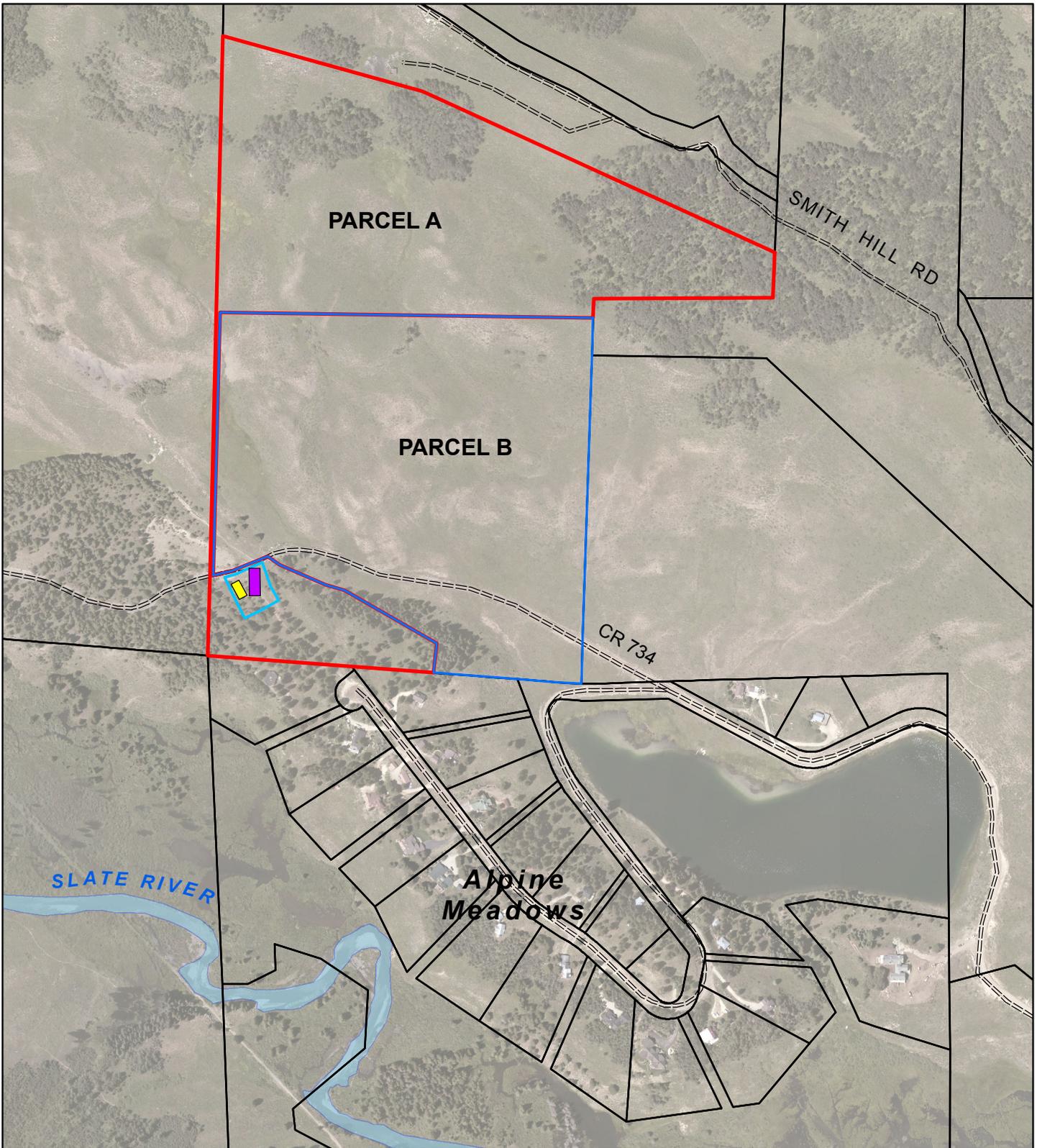
\_\_\_\_\_  
James A. Schmidt, Mayor

**ATTEST:**

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

[SEAL]

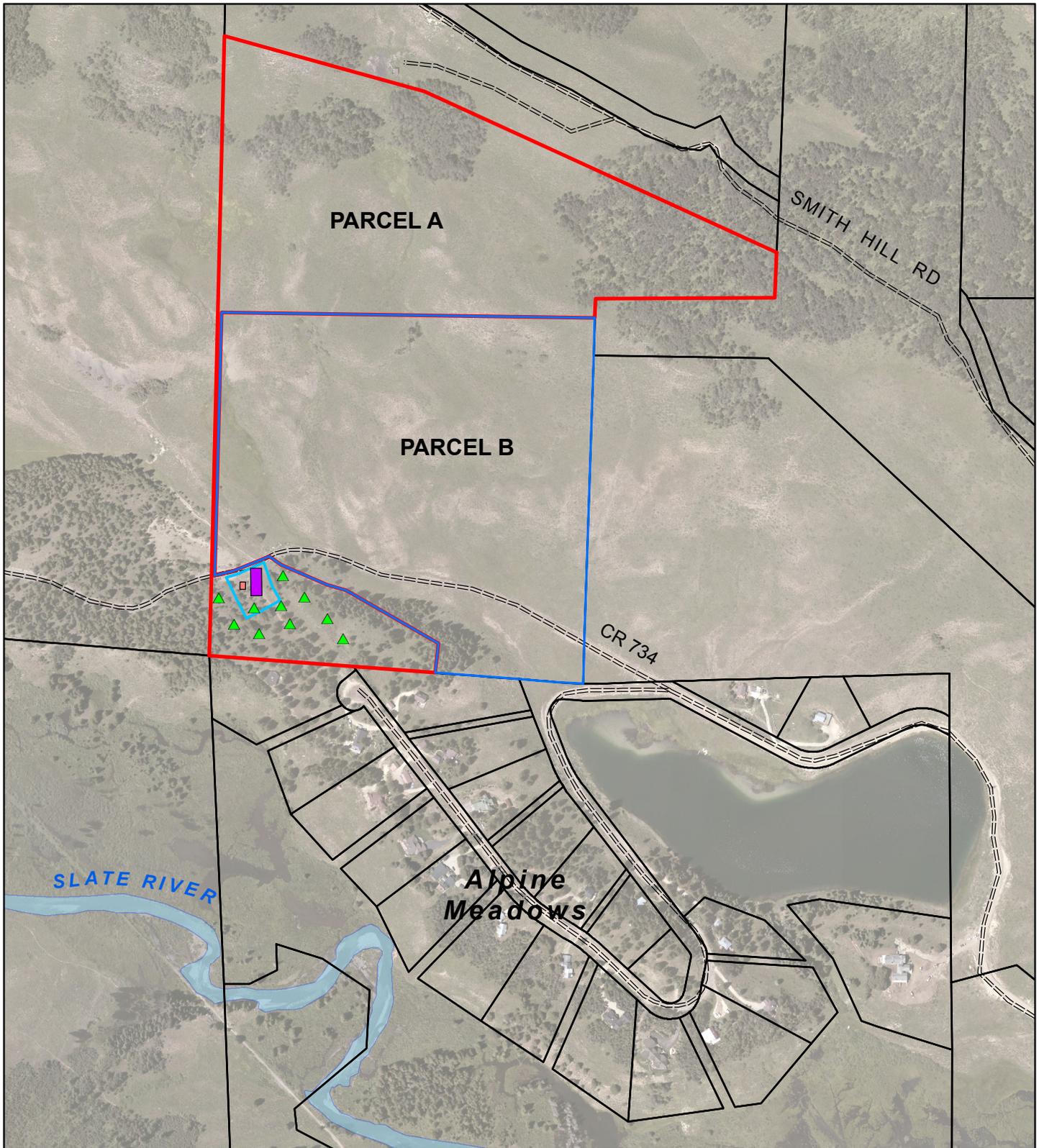
Exhibit A  
**DEED OF CONSERVATION EASEMENT, SPECIAL WARRANTY DEED,**  
**TERMINATION OF COVENANT TO LIMIT DEVELOPMENT, and ASSIGNMENT OF**  
**INTEREST IN**  
**DEED OF CONSERVATION EASEMENT**



**OPTION A - Kikel Parcels with Stewardship Cabin**

- Kikel Parcel A
- Kikel Parcel B
- Parcel Boundaries
- Unpaved Road
- 1/2 Acre Building Envelope
- Cabin (2,000 sf)
- Parking Lot (10 vehicles)





**OPTION B - Kikel Parcels with Dispersed Camping**

- Kikel Parcel A
- Kikel Parcel B
- Parcel Boundaries
- Unpaved Road
- 1/2 Acre Building Envelope
- Parking Lot (10 vehicles)
- ▲ Campsites
- Restroom



**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. Grantor 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 no more than 2,000 square feet of floor 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 or associated with other nonprofits 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.

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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.

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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.

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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

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 Grantee:

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

To Grantor:

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.

**GRANTEE:**

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)



**To:** Mayor Schmidt and Town Council

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

**Thru:** Dara MacDonald, Town Manager

**Subject:** **Amendment to Contract with Bywater for the Development of Affordable**

**Date:** August 6, 2019

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**Background:**

The original contract with Bywater, LLC required a \$6mm performance bond. Bywater was unable to obtain the performance bond for Phase 1 and only able to secure an overage bond for Phase 2. As discussed in the staff report for the transfer of property, the staff does not support moving forward with this bond option as it does not adequately protect the Town's interests.

There are two proposed amendments attached to this staff report. The first amendment addresses not proceeding with Phase 2 as recommended by the staff. The second amendment addresses proceeding with Phase 2 which is not being recommended by the staff. Below summarizes the amendments to the original contract.

**Delaying Phase 2 (Recommended):**

- Removes the requirement for Bywater to bond on Phase 1
- Removes proceeding with Phase 2 this fall
- Reduces the payment from the Town to Bywater for the architectural, engineering and structural plans for Phase 2 from \$120,000 to \$37,000 compensation for not providing a bond for Phase 1
- Releases the final payment of \$52,500 for the sprinklers in 3<sup>rd</sup> triplex in Phase 1 once the contract is executed

**Proceeding with Phase 2 (Not recommended):**

- Removes the requirement for Bywater to bond on Phase 1
- Requires a \$2,400,000 performance bond for Phase 2
- Requires a payment of \$83,000 from Bywater as compensation for not providing a bond for Phase 1

**Recommendation:**

A council member followed by a second make a motion to approve the amendment to the Bywater Contract and not to proceed with Phase 2 at this time.

**AMENDMENT TO CONTRACT TO BUY, SELL AND DEVELOP DEED RESTRICTED HOUSING IN THE TOWN OF CRESTED BUTTE'S PARADISE PARK SUBDIVISION**

This Amendment to Contract ("Amendment") is entered into on this \_\_\_ day of August, 2019, between the Town of Crested Butte, Colorado ("Town"), a Colorado home rule municipal corporation, and Bywater, LLC, an Oklahoma limited liability company ("Bywater"), together ("the Parties").

**RECITALS:**

**A.** On February 28, 2019, the Parties entered into a Contract to Buy, Sell and Develop Deed Restricted Housing in the Town of Crested Butte's Paradise Park Subdivision ("Contract").

**B.** Pursuant to the Contract, the Town conveyed a total of seven lots to Bywater for the construction of 17 units of affordable housing as part of Phase 1 legally described as follows:

Block 76, Lots 1, 2, 3, 4, 5, and 6  
 Block 77, Lot 10  
 Paradise Park Subdivision,  
 Town of Crested Butte  
 Gunnison County, State of Colorado (the "Phase 1 Property")

**C.** Bywater has broken ground and commenced construction of the affordable housing units on the Phase 1 Property.

**D.** Pursuant to Paragraph 11 of the Contract, Bywater agreed to provide a Performance Bond to the Town in the amount of \$6,000,000 prior to June 1, 2019.

**E.** Bywater is in default under the Contract because Bywater has not provided the Performance Bond to the Town as required by Paragraph 11, even though Bywater has commenced construction of the affordable housing units on the Phase 1 Property.

**F.** The Town has not yet approved the conveyance of the 4 additional lots to Bywater for the construction of 10 units of affordable housing as part of Phase 2 under the Contract.

**G.** The Parties desire to amend the Contract as set forth below.

In consideration of the foregoing Recitals and the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and Bywater agree to amend the Contract as follows:

**1.** The Town will agree to reduce the current performance bond requirement of \$6,000,000 to a new bond amount of \$2,400,000 for Phase 2. The performance bond must be issued prior to the time that the Town Council approves the conveyance of the 4 lots in Phase 2 for the construction

of the 10 additional affordable housing units in Phase 2. The Town will also accept a letter of credit for \$2,400,000 as a substitute for the performance bond if Bywater cannot obtain a bond in the amount of \$2,400,000. Bywater agrees to provide the \$2,400,000 bond or letter of credit to the Town, or a written commitment from Bywater's bank or surety to provide a \$2,400,000 bond or letter of credit that is satisfactory to the Town, by August 1, 2019.

2. Bywater agrees to compensate the Town in the amount of \$83,000 for not obtaining the Performance Bond as required by Paragraph 11 of the Contract. If the Town does not proceed with Phase 2, Bywater may satisfy its obligation to compensate the Town in the amount of \$83,000 by releasing the Town from its obligation to pay Bywater up to \$120,000 for full electronic copies of all architectural and engineering drawings for the affordable housing units to be built in Phase 1 and Phase 2 under Paragraph 2n of the Contract and providing these drawings to the Town. If the Town does choose to proceed with Phase 2, Bywater will pay the Town \$83,000 prior to conveyance of the land for Phase 2, and the Town will be released from its obligation to pay Bywater \$120,000 under Paragraph 2n of the Contract.

3. Bywater agrees that the Town will delay the payment of Bywater's recent request of \$52,500 for the sprinklers in the units on Lot 5, Block 76 until the parties execute this Amendment to the Contract, or the Town Council decides not to approve the conveyance of the additional lots in Phase 2.

4. The Town has no obligation to convey the additional lots that comprise Phase 2 under the Contract unless Bywater provides the Performance Bond or Letter of Credit in the amount of \$2,400,000 and compensates the Town in the amount of \$83,000 before the Town conveys the additional lots in Phase 2.

5. Except as amended herein, all of the other terms and conditions of the Contract will remain binding upon the Parties.

IN WITNESS WHEREOF, the parties have executed this Agreement the date first above written.

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

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

ATTEST:

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

BYWATER, LLC, an Oklahoma limited liability company

By: \_\_\_\_\_  
Joel Wisian, Managing Member

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**C.** Bywater has broken ground and commenced construction of the affordable housing units on the Phase 1 Property.

**D.** Pursuant to Paragraph 11 of the Contract, Bywater agreed to provide a Performance Bond to the Town in the amount of \$6,000,000 prior to June 1, 2019.

**E.** Bywater is in default under the Contract because Bywater has not provided the Performance Bond to the Town as required by Paragraph 11, even though Bywater has commenced construction of the affordable housing units on the Phase 1 Property.

**F.** The Town has not yet approved the conveyance of the 4 additional lots to Bywater for the construction of 10 units of affordable housing as part of Phase 2 under the Contract.

**G.** The Parties desire to amend the Contract as set forth below.

In consideration of the foregoing Recitals and the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and Bywater agree to amend the Contract as follows:

**1.** The Town will not convey to Bywater the 4 lots in Phase 2 for the construction of the 10 additional affordable housing units in Phase 2.

2. Bywater agrees to compensate the Town in the amount of \$83,000 for not obtaining the Performance Bond as required by Paragraph 11 of the Contract. Since the Town will not proceed with Phase 2, Bywater may satisfy its obligation to compensate the Town in the amount of \$83,000 by releasing the Town from its obligation to pay Bywater up to \$120,000 for full electronic copies of all architectural and engineering drawings for the affordable housing units to be built in Phase 1 and Phase 2 under Paragraph 2n of the Contract and providing these drawings to the Town.

3. Bywater agrees that the Town will delay the payment of Bywater’s recent request of \$52,500 for the sprinklers in the units on Lot 5, Block 76 until the parties execute this Amendment to the Contract.

4. Except as amended herein, all of the other terms and conditions of the Contract will remain binding upon the Parties.

IN WITNESS WHEREOF, the parties have executed this Agreement the date first above written.

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

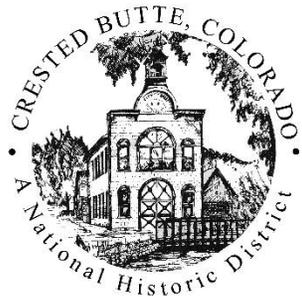
By: \_\_\_\_\_  
James A. Schmidt, Mayor

ATTEST:

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

BYWATER, LLC, an Oklahoma limited liability company

By: \_\_\_\_\_  
Joel Wisian, Managing Member



**To:** Mayor Schmidt and Town Council

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

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

**Subject:** **Resolution 12, Series 2019 Adding Section 8 to Town Affordable Housing Guidelines for Employer Rentals Units and Phase 2 Update**

**Date:** August 6, 2019

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**Background:**

This item was continued from the July 2, 2019 and July 15, 2019 Council meeting to allow additional review time for the business community to comment.

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.

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 9 of the 10 Phase 2 units have deposits on them. The remaining 1-bedroom unit remains 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.

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 member make a motion followed by a second to approve Resolution 12, Series 2019 amending the Town of Crested Butte Affordable Housing Guidelines adding Section 8 Regulations for Employer Rental Units.

**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**

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; and

WHEREAS, pursuant to Article XX of the Colorado Constitution and Title 20, Article 29, C.R.S., the Local Government Land Use Control Enabling Act of 1974, the Town has the authority to enact and enforce land use regulations, including, without limitation, requirements for affordable housing; and

WHEREAS, the Town Council has and continues to implement strategies for the development of affordable housing for lower income families and employees; and

WHEREAS, the provision of affordable housing is critical to the Town, local employers and the health of the community; and

WHEREAS, the Town Council adopted Resolution 2, Series 2016 adopting new Town-wide affordable housing guidelines; and

WHEREAS, the Town Council has determined that additional regulations for employer rentals are necessary and appropriate to implement rental opportunities for employees of the Gunnison Valley; and

WHEREAS, the Town Council finds that new Town-wide affordable housing guidelines are in the best interests of the health, safety and welfare of the residents and visitors of the Crested Butte.

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

1. **Findings**. The Town Council hereby finds that amending Part III Purchasing Affordable Housing by adding Section 8 Regulations for Employer Rentals attached hereto as **Exhibit "A"** are in the best interest of fostering the development of affordable housing rentals in Crested Butte and therefore in the best interest of the health, safety and welfare of the Town and the residents and visitors of the Crested Butte.

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL THIS 2<sup>nd</sup> DAY OF JULY, 2019.

TOWN OF CRESTED BUTTE, COLORADO

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

ATTEST:

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

Lynelle Stanford, Town Clerk

EXHIBIT "A"

(Part III Purchasing Affordable

Housing Section 8 Regulations for

Employer Rentals)

[attach here]

## 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.

### **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 fill 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.

**From:** [Diana Graves](#)  
**To:** [Chris Haver](#); [Will Dujardin](#); [J Schmidt](#); [Paul Merck](#); [Lynelle Stanford](#); [Laura Mitchell](#); [Candice Bradley](#); [Mallika Magner](#)  
**Subject:** Alley Paving  
**Date:** Tuesday, July 30, 2019 11:14:42 AM

---

I am concerned about the impact on our water drainage infrastructure from paving alleys.

Paving alleys would take away a lot of exposed dirt that currently absorbs some or much (??) of the rain and snow that falls in Town. Have you looked at how much moisture would have to be added to our storm drainage system???? Is there currently capacity in the storm drainage system to accommodate the increase? Will we have to enlarge our drainage system?? Underground pipes etc.????

I live on the east side of Town, and regularly see the output from the Town storm drainage ditches and pipes. The pictures below were on a dry day. On wet days the output is greater. I am concerned about too much more dirt being paved over throughout Town, concerned that if that happens we might have to redo pipes and ditches, reconfigure the whole system????

Just wanted to check to be sure that you have the calculations of the impact on the storm drainage system while you are discussing paving the alleys.

Thank you all for serving our community. It is a comfort to know that CB is in good hands.

Diana Graves  
718 9th Street

These two pipes can spew water straight out when there is a rain:





This is the ditch by Rainbow Park, close to overflowing on a dry day.



This is the pond by Rainbow Park. More drainage added to it would mean more overflow which comes out the pipe in the second picture. The flow in the picture is about 1/2 of the diameter of the pipe on this day.





## Logging Letter

Howdy Neighbor,

**The Forest Service wants to send 600-700 logging trucks down Whiterock Ave.** They are selling 2,000 acres of timber to be cut from the Ohio Pass area, starting in 2021 or 2022, for 3 years. The much more obvious travel route would be to send the trucks directly down Ohio Pass Rd to Gunnison, a route 11 miles shorter than coming through Crested Butte. Instead, the logging company wants to come right through the middle of town using our street. The Gunnison District Ranger has asked our town manager to give input on this plan. **I'm hoping you will join me and tell them to use Ohio Pass Road instead.**

The logging company doesn't want to use Ohio Pass Road due to concerns with "narrow width, tight switchbacks, heavy traffic, rough road, encroaching aspens, and steep terrain" (CB News). The other likely reason is because the logging company has to maintain and repair the road they use, and Ohio Pass Rd would likely need more maintenance.

It's outrageous that the forest service and the logging company seem completely indifferent to the concerns of sending 700 logging trucks through the residential streets of Crested Butte. On my block alone, there are 6 kids who live here and they ride bikes on Whiterock almost every day of logging season. Whiterock is their bike route to school, the school bus route, and the town bus route. **I don't want my 6-year-old to wind up under the wheels of one of these trucks.** The forest service needs to prioritize these concerns too. I know three people killed by trucks while riding their bikes - one was my friends son under the rear wheels of a commercial truck - this is a real risk.

Is Ohio Pass "too narrow" as they say? Our roads are narrow too - when you consider parked cars, people on bikes, people walking, and the busy summer traffic. We may not have switchbacks, but we have seven stop signs on that route, a sharp turn onto Gothic/135, the entrance to the arts center, and the entrance to the Community School on that truck route. "Heavy Traffic"? It is just insulting to say Ohio Pass Rd has heavy traffic compared to our town. Consider too the traffic these trucks will create all the way down 135 to Gunnison. Ohio Pass Rd may be "rough", but better to have washboard under their wheels than kids. Encroaching aspens? We have encroaching cars, bikes, people, animals, and little ones. If they say they can't avoid aspen trees, how will they avoid *the people* here in town? Steep terrain? Ohio Pass isn't very steep. Last I heard, the term "Logging Road" means - by definition - a horribly steep rough road. Using a road like Ohio Pass is absolutely routine for a logging company. Driving through our town might seem *convenient* to them, but **our safety is far more important.**

This 2,000 acre sale is part of larger plans to sell 135,000 acres of timber in the greater area, which, if the truck burdens are similar, would amount to over 43,000 trips by logging trucks. Good forest management, loggers, and truck drivers are all welcome here, but their logging trucks are not.

**Please join me in strongly suggesting the logging trucks stay off our residential streets, and use Ohio Pass to get their logs to Montrose.**

### **What you can do:**

1. Sign this sheet of paper, and drop it by my house: 132 Whiterock on the corner of 2nd and Whiterock. I will deliver it to the town.

**OR** 2. Sign this letter and mail/email it to the town and Forest Service.

3. Voice your concerns directly to the town council and the town manager.

P.O. Box 39; 507 Maroon Ave, Crested Butte

970-349-5338

3. Voice your concerns directly to Matt McCombs, Gunnison District Ranger: 216 N Colorado St, Gunnison, CO 81230

(970) 641-0471.

Thanks a bunch,

Alan Peterson (and Tory, age 6), 132 Whiterock Ave, 970 389-5393, mail.alan.alan@gmail.com

JAMES ; CAROLYN SPAHN 316 WHITEROCK

970-209-5111

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*yes we agree with this* *Geo Bullock* *Ginny Bullock*  
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BRUCE ECKEL  
132 Whiterock

Bruce Eckel

**CRESTED BUTTE MTN. HERITAGE MUSEUM, INC.**

Located at 331 Elk Avenue  
in Historic Tony's Conoco  
Box 2480 • Crested Butte, Colorado 81224  
(970) 349-1880  
[www.crestedbuttemuseum.com](http://www.crestedbuttemuseum.com)

July 19, 2019

Crested Butte Town Council  
PO Box 39  
Crested Butte, CO 81224

Dear Members of the Crested Butte Town Council,

On behalf of the Crested Butte Mountain Heritage Museum, thank you very much to the Crested Butte Town Council for awarding us a \$1,000 grant to develop our Rotating Exhibit Display Infrastructure and hang the infamous Princess Movie Theater Curtain in conjunction with our Crested Butte in the 1970s exhibit. Your support allows us to actively advance our mission: "To preserve and share the uniquely diverse cultural history of the Gunnison Valley. We make the past a living part of the future." We do this by preserving our iconic building and collection; sharing our local history through exhibits, field trips, tours and events; and seeking out new ways to engage with our community and guests.

Thank you again for your generous support and for the important work that you do every day for our community! Together, we make the past a living part of the future.

Sincerely,

Shelley Popke  
Executive Director

**Agenda  
Design Review Committee  
Monday  
July 15, 2019**

- 4:00 **Site visit** and consideration of the application of **423 Gothic CB Partners LLC** to construct a single family residence and accessory building to be located at 423 Gothic Avenue, Block 11, Lots 27-29 in the R1 zone. (Sante)  
**- Architectural approval is required.**  
**- A conditional use permit for a non-residential, heated and/or plumbed accessory building in the R1 zone is required.**
- 5:15 **Site visit** and consideration of the application of **Michael Sampliner** to construct a single family residence to be located at 7 Aspen Hill Road, Lot 13 Treasury Hill in the R1B zone. (Weber/Coburn)  
**- Architectural approval is required.**
- 6:30 Consideration of the application of **Gunnison Watershed School District RE1J** to site one modular classroom on the northeast side of the existing building located at 818 Red Lady Avenue in the P zone (Nichols).  
**- Architectural approval is required**
- 7:00 Consideration of the application of **Clarks Crested Butte LLC** to make changes to a previously approved plan to site two ROAH units instead of four for the expansions to the Arbor P.U.D. to construct additions to the existing commercial building located at 500 Belleview Avenue, Unit A and B, Empire Condominiums, Block 48, Lots 1-16 in the T/B2 zone. *Original approval at the June 26, 2018 BOZAR meeting.* (Reeser)  
**- A change to the PUD General Plan and Building Permit Review from the June 26, 2018 approval involving the expansion of the Arbor PUD in the T/B2 zone as follows:**  
**- A revision of the conditional use permit to reduce the long-term residential units from four (4) units to two (2) units in the T/B2 zone is required.**  
**- Architectural approval 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**  
**July 17, 2019**

- 2:30 Call to order.
- 2:31 Continue to review remainder of Chapter 4.
- 4:00 Discuss changes to Chapters 2, 3 and 4 GL, if time allows.
- 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  
Design Review Committee  
Monday  
July 22, 2019**

- 4:00 Consideration of the application of **Michael Sampliner** to construct a single family residence to be located at 7 Aspen Hill Road, Lot 13 Treasury Hill in the R1B zone. (Weber/Coburn)  
**- Architectural approval is required.**

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

**Agenda**  
**BOARD OF ZONING and ARCHITECTURAL REVIEW**  
**Tuesday**  
**July 30, 2019**

- 6:00 Call to Order.
- 6:02 Review and approve the minutes from the **June 25, 2019** BOZAR meeting.
- 6:04 Consideration of the application of **Gunnison Watershed School District RE1J** to site one modular classroom on the northeast side of the existing building located at 818 Red Lady Avenue in the P zone (Nichols).  
**- Architectural approval is required**
- 6:25 Informal review requested by the **Town of Crested Butte** to discuss the proposal for the Henderson Park located at 229 Whiterock Avenue, Block 33, part of Lot 32 in the P zone. (Hansen/Nevins)
- 7:00 BREAK**
- 7:10 Consideration of the application of **Clarks Crested Butte LLC** to make changes to a previously approved plan to site two ROAH units instead of four for the expansions to the Arbor P.U.D. to construct additions to the existing commercial building located at 500 Belleview Avenue, Unit A and B, Empire Condominiums, Block 48, Lots 1-16 in the T/B2 zone. *Original approval at the June 26, 2018 BOZAR meeting.* (Reeser)  
**- A change to the PUD General Plan and Building Permit Review from the June 26, 2018 approval involving the expansion of the Arbor PUD in the T/B2 zone as follows:**  
**- A revision of the conditional use permit to reduce the long-term residential units from four (4) units to two (2) units in the T/B2 zone is required.**  
**- Architectural approval is required.**
- 8:00 Consideration of the application of **Michael Sampliner** to construct a single family residence to be located at 7 Aspen Hill Road, Lot 13 Treasury Hill in the R1B zone. (Weber/Coburn)  
**- Architectural approval is required.**
- 9:30 Overview of progress on Guidelines and explanation of a list of clarifications from the committee that the Board will receive.
- 9:45 Miscellaneous:  
 ○ DRC for August 12 and 19: Davol and Ellis (BOZAR – August 27<sup>th</sup>)  
 ○ DRC for September 9 and 16: \_\_\_\_\_ (BOZAR – September 24<sup>th</sup>)  
 ○ Insubstantial:  
 ○ David Owen (323/325/327 Whiterock Avenue): Addition of window in hay loft door.
- 10:00 Adjourn

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

**Agenda**  
**Design Guideline Committee - Work Session**  
**Wednesday**  
**July 31, 2019**

- 2:30 Call to order.
- 2:31 Continue to review remainder of Chapter 4.
- 4:00 Discuss list of GL/questions to be given to the full Board
- 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 6, 2019

Council Chambers

**1. CALL TO ORDER**

**2. ROLL CALL**

**3. 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.

**4. APPROVAL OF MINUTES**

4.1. Approval of the July 16, 2019 Regular Town Council Meeting Minutes

**5. REPORTS**

**5.1. Town Council Reports**

**5.2. Other Reports**

5.2.1. Tourism and Prosperity Partnership "TAPP" Update – John Norton

**6. CORRESPONDENCE**

**7. OLD BUSINESS**

7.1. Discussion and Possible Consideration of the Ballot Language for the 2.9% Excise Lodging Tax Question on the November 2019 Ballot – Kathy Fogo

7.2. Discussion and Possible Consideration of the Updated Admissions Tax Grant Application and Guidelines – Roman Kolodziej

**8. NEW BUSINESS**

8.1. Discussion and Possible Consideration of a Special Event Liquor License Submitted by Crested Butte Nordic Council for an event to be held on September 1, 2019 from 11:00 AM to 5:00 PM at 12 Snowmass Road, Red Lady Stage – Andrew Arell

8.2. Discussion and Possible Consideration of a Special Event Liquor License Submitted by Crested Butte / Mt. Crested Butte Chamber of Commerce for an event to be held on September 7, 2019 from 7:30 AM to 6:00 PM at 12 Snowmass Road, Rd. Lady Stage – Brittany Coutts

8.3. Discussion and Possible Consideration of Ordinance No. 5, Series 2019 an Ordinance of the Town Council of the Town of Mt. Crested Butte, Colorado, Approving a Major Alteration to the Prospect Homestead Subdivision, Lots 9-28 and Common Area – First Reading - Carlos Velado

**9. OTHER BUSINESS**

**10. 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: 2.5 hours

**TUESDAY**

**JULY 23, 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. Consent Agenda:** *The consent agenda allows City Council to approve, by a single motion, second and vote, matters that have already been discussed by the entire Council or matters that are considered routine or non-controversial. The agenda items will not be separately discussed unless a councilor, City staff, or a citizen requests and item be removed and discussed separately. Items removed from the consent agenda will then be considered after consideration of the consent agenda.*

○ **Approval of the July 9, 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

○ **Excuse Councilor Morrison from the July 9, 2019 Regular Session meeting.**

Background: Councilors are allowed to be formally excused from a Regular, Special or Reorganization Session meeting by a quorum vote of the City Council per Section 4.4 (F) of the Gunnison Municipal Home Rule Charter.

Staff contact: City Clerk Erica Boucher

**Action Requested of Council:** A motion, second and vote to approve the Consent Agenda as presented with the following items:

Approve the minutes of the July 9, 2019 Regular Session meeting; and Excuse Councilor Morrison from the July 9, 2019 Regular Session meeting.

Estimated time: 2 minutes

**B. Parks and Rec Advisory Committee and Senior Advisory Committee Discussion**

Background: There is a recommendation from staff and the Boomers & Beyond to create a Senior Center Advisory Committee. This would, as proposed, be a City run

advisory committee to provide guidance on senior programs. In conjunction with this recommendation, the Mayor and the City Manager believe Council should also review the current structure of the Parks and Recreation Advisory Committee (PRAC) to ensure that there is not an overlap or any conflict between these two groups.

Staff contact: City Manager Russ Forrest

**Action Requested of Council:** This is a discussion item only. No action is requested.

Estimated time: 20 minutes

**C. Council Compensation Discussion**

Background: The last time council compensation was adjusted to its current rates was in 2005 (Ordinance No. 5, Series 2005). As the election for three council members approaches, 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.

Committee contact: Lisa Holland, Zen for Business and City Clerk Erica Boucher

**Action Requested of Council:** To consider the committee's recommendation regarding council compensation. If desired, direct staff to draft an ordinance to make a one-time adjustment of 25% to Council's compensation, which will be internally reviewed every two years, and include that councilmembers are eligible to participate in the City's health care policy at 100% cost to the councilmember.

Estimated time: 15 minutes

**D. Planning DOLA Grant for a Renewable Energy Project**

Background: The City of Gunnison desires to develop a renewable energy project with MEAN participation. This project could be a 640 KW solar project, and could possibly partner with or through others stakeholders, such as Western, Gunnison County, or GCEA). This project would generate an additional 640 KW of renewable energy to be used for the City of Gunnison customers in the valley. If implemented, the program would bring the City of Gunnison to its 2% cap for generation allowed by our MEAN contract. The Department of Local Affairs (DOLA) is launching a Renewable/Clean Energy Challenge grant program, to spark efforts in reaching Colorado's 2040 100% renewable energy goal. Grants are being accepted for planning and implementation projects. Notice of Funds Available opened July 1, 2019 and closes August 1, 2019.

Staff Contact: Public Works Director David Gardner and Electric Superintendent Will Dowis

**Action Requested of Council:** To direct staff to submit a DOLA planning grant application to plan a renewable energy project via a third-party consultant in an amount not to exceed \$200,000. Staff is requesting a matching 25% fund be pulled from Electric reserve fund and request that the Mayor review the grant request, and sign the necessary authorization to pursue the grant for the City of Gunnison.

Estimated time: 20 minutes

**E. Memorial Bench Policy**

Background: Multiple inquiries have been made to place memorial benches in our park system. We have identified several areas where we believe that these benches can be accommodated. These available areas will serve both the customer and the Department by placing seating in locations at little or no cost to Parks and Rec.

Staff Contact: Parks and Recreation Director Dan Ampietro

**Action Requested of Council:** Staff is requesting direction from Council on whether

they would like to move forward with the proposed program.  
Estimated time: 15 minutes

**F. Authorization for Police Department to purchase three vehicles.**

Background: The police department has been pricing vehicles and related equipment provided for in the 2019 budget. In addition to budgeting for two patrol vehicles, a third vehicle was totaled in 2018. This year also marks the decision to establish a K9 program. The combined cost of vehicles and equipment this year have been calculated. The costs are over \$50,000; therefore, Council approval is needed.

Staff contact: Police Chief Keith Robinson

**Action Requested of Council:** Authorization to purchase three marked police vehicles and equipment for \$154,187.

**V. Reports:**

Police Department 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**

148

**DATE:** Tuesday, July 16, 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. 6/18/19 Special & 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. Public Service Grant; City of Gunnison; Early Childhood Council; \$3,500
    2. Public Service Grant; City of Gunnison; Multicultural Resource Services; \$8,000
    3. Affiliate Airline Operating Agreement; Mesa Airlines
    4. Grant Award Approval (2); Community Foundation of the Gunnison Valley; Early Childhood Council; \$2264.00 & \$1760.00
    5. Contractor Agreement; Bethany Montlary; Janitorial Services; Blackstock Government Center
    6. Liquor License Renewal; Tassinong Farms LLC dba Tassinong Farms Food & Wine; October 3, 2019 – October 3, 2020
    7. Liquor License Transfer; SkyHigh Colorado LLC dba Taylor Park Trading Post; July 1, 2019 – July 1, 2020
  - Scheduling
- 8:40
- County Manager's Report
    1. Lot 22 Workforce Housing Delegation of Authority
    2. Gunnison Valley Hospital; Elk Crest Condominium Real Property Purchase; Delegation of Authority
    3. Stallion Park Workforce Housing Project Delegation of Authority
- 8:50
- Deputy County Manager's Report
- 9:00
- Resolution; A Resolution Approving the Referral of a Ballot Issue for the November 5, 2019 Coordinated General Election that would Impose an Ad Valorem Property Tax for the Gunnison County Library District of 1.9 Mills, Such Increase in Taxes to be Used for Capital Construction and General Operating Purposes, and for Any Other Purpose Allowable by Law
- 9:15
- Resolution; A Resolution Authorizing the Board to Purchase Real Property
- 9:20
- 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; 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; and C.R.S. 24-6-402 (4) Personnel Matters
  - 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

*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**

149

**DATE:** Tuesday, July 16, 2019

Page 2 of 2

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

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.

*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  
WORK SESSION & SPECIAL MEETING AGENDA**

150

**DATE:** Tuesday, July 23, 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
- Discussion; BOCC Scheduling & Marble Visit
  
  - Gunnison County Boards and Commissions Interviews  
8:45 am; Board of Adjustments & Appeals – Bill Wallace  
9:00 am; Library Board of Trustees – Kim Sherman  
9:15 am; Watershed Weed Commission – Thomas Walker  
9:30 am; Historical Preservation Commission – Elinda Card
- 9:45
- Adjourn

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

- 10:00
- Call to Order
  
  - 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. Special Event; Liquor License; Gunnison Valley Mentors; September 12<sup>th</sup>, 2019
- 10:05
- Vouchers & Transfers
  
  - Sales Tax & Local Marketing District Reports
  
  - Treasurer's Reports
- 10:10
- Resolution; A Resolution Canceling Certain Uncollectable Taxes
- 10:15
- Discussion; BOCC Comments Re: Protest of the Proposed Resource Management Plan & Final Environmental Impact Statement for the Uncompahgre Field Office
- 10:30
- Discussion; BOCC Comments Re: Revised Land Management Plan for the Grand Mesa, Uncompahgre and Gunnison National Forests
  
  - 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 13, 2019**

Budget Retreat - 4PM to 6PM

**Monday, August 19, 2019****Work Session**

Keystone Mine Update on Reclamation Activities and Possible Plans for Wastewater Treatment  
– Dave Gosen  
Henderson Park Design Presentation

**Consent Agenda**

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  
Presentation on the Audit

**New Business**

Review Center for the Arts Draft Lease  
Discuss Youth Anti-Vaping Campaign; Banning Vaping; Raising Age, etc  
Review of 2019 School District IGA  
Resolution - Schutt Trail License Agreement  
Clark's Development Improvement Agreement  
Clark's Parking  
Late Night Town Tax Update

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

Demolition Moratorium

**Public Hearing**

Continuation of Slate River Annexation

**New Business**

Ordinance - New Demolition Regulations

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

Logging up Kebler & Route  
Census 2020

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

Budget

**Consent Agenda**

Appointment of Election Commission

**New Business**

Ordinance - Slate River Annexation Agreement  
 Ordinance - Slate River Annexation  
 Ordinance - Amending the Code to Create a New Zone District  
 Ordinance - Zoning the Slate River Annexation  
 Ordinance - Reading Slate River Subdivision Improvements Agreement

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

Budget

**Public Hearing**

Resolution on Findings of Fact RE Slate River Annexation  
 Ordinance - Slate River Annexation Agreement  
 Ordinance - Slate River Annexation  
 Ordinance - Amending the Code to Create a New Zone District  
 Ordinance - Zoning the Slate River Annexation  
 Ordinance - Slate River Subdivision Improvements Agreement  
 Slate River Subdivision Final Plan Approval (Review as Planning Commission)

**New Business**

Presentation of 2020 Budget

**Future Items**

- Quarterly Financial Reports
- Annual Report from the Creative District Commission - October
- Snow Plan - October
- 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
- Ordinance - Creative District Restructuring
- Briefing of the Legal Implications of Vested Rights