

RESOLUTION NO. 37

SERIES NO. 2017

**RESOLUTION OF THE CRESTED BUTTE TOWN COUNCIL APPROVING THE OPEN SPACE FUNDING AGREEMENT WITH THE TRUST FOR PUBLIC LAND AND AUTHORIZING THE EXPENDITURE OF UP TO \$1,000,000.00 FROM THE TOWN'S OPEN SPACE FUND FOR THE PURCHASE AND CONSERVATION OF APPROXIMATELY 2,647 ACRES LOCATED AT UPPER EAST RIVER VALLEY/FARRIS CREEK GUNNISON COUNTY, STATE OF COLORADO.**

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

WHEREAS, The Town staff has recommended that the Town Council provide funds for the Trust for Public Land's ("TPL") purchase of a conservation easement on approximately 2,647 acres of real property located in the Upper East River Valley/Farris Creek in Gunnison County, Colorado (the "Subject Property");

WHEREAS, the Town staff has, in support of such recommendation, presented to the Town Council that the Subject Property will be encumbered by a conservation easement, to be held by TPL or TPL's project partner, The Nature Conservancy, restricting the development of the Subject Property; and

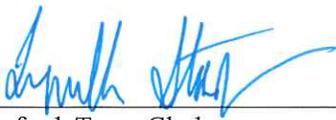
WHEREAS, The Town Council finds hereby that providing up to \$1,000,000.00 to TPL to purchase and conserve the Subject Property is in the best interest of conserving lands from development, and, therefore in the best interests of the Town and the public.

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

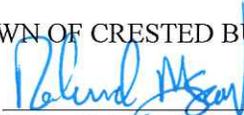
1. **Findings.** The Town Council hereby authorizes the expenditure of up to \$1,000,000.00 from the Town's Open Space Fund for the purchase of a conservation easement on approximately 2,647 acres of real property located in the Upper East River Valley/Farris Creek in Gunnison County, Colorado.
2. **Funding Agreement; Authorization.** Pursuant to the above findings, the Town Council hereby approves the delivery of such funds to TPL pursuant to the terms and conditions of the "**Funding Agreement**" attached hereto as **Exhibit "A."** In furtherance thereof, the Town Council hereby authorizes the Mayor to execute the Funding Agreement.

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL THIS 19<sup>th</sup> DAY OF \_\_\_\_\_ JUNE 2017.

ATTEST

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

TOWN OF CRESTED BUTTE

By:   
\_\_\_\_\_  
Roland Mason, Mayor Pro Tem

(SEAL)



## OPEN SPACE FUNDING AGREEMENT

**THIS OPEN SPACE FUNDING AGREEMENT** (the "**Agreement**") is entered into effective this 27 day of June, 2017 (the "**Effective Date**") by and between the TOWN OF CRESTED BUTTE, a Colorado home rule municipality with an address of 507 Maroon Avenue, P.O. Box 39, Crested Butte, Colorado 81224 (the "**Town**") and The Trust for Public Land, a Colorado nonprofit corporation, with an address of 1410 Grant Street, Suite D210, Denver, Colorado 80203 ("**Grantee**"). The Town and Grantee are sometimes individually referred to herein as a "**party**," collectively as the "**parties**."

### RECITALS:

A. Pursuant to §4-4-90(b), as amended, of the Crested Butte Municipal Code, the Town may, in pertinent part, fund the purchase of interests in real property to be conserved from development outside of Crested Butte and designate such other entities as it deems appropriate to acquire such interests in real property in place of the Town.

B. The Town Council, by Resolution No. 37, Series 2017, has appropriated \$1,000,000.00 in funding to be used for Grantee's purchase of a conservation easement (the "**Conservation Easement**") encumbering the real property described on **Exhibit "A"** attached hereto (the "**Subject Property**").

C. The Town and Grantee desire herein to memorialize the terms and conditions upon which the Town will fund and Grantee will complete the purchase of the Conservation Easement.

### AGREEMENT:

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

1. **Incorporation of Recitals.** The Recitals set forth above are material terms and conditions of this Agreement and are supported by the same consideration as the other terms and conditions hereof.

2. **Grant Funds; Payment Obligation.**

A. The Town hereby grants \$1,000,000.00 (the "**Grant Funds**") to Grantee subject to the terms and conditions set forth in this Agreement.

B. The Grant Funds shall be paid in one lump sum to Grantee (or deposited into escrow with closing company Alpine Title) at or prior to closing for the benefit of Grantee (the "**Closing**") on the Conservation Easement; provided that, Closing shall occur on or before December 31, 2017. If Closing does not occur on or before December 31, 2017, this Agreement

and the grant made herein shall terminate and be void *ab initio*, unless the Town agrees to continue this Agreement based upon a Closing after December 31, 2017.

C. Notwithstanding anything in this Agreement to the contrary, (i) nothing contained in this Agreement shall constitute a pledge of the full faith and credit of the general tax revenues, funds or moneys of the Town except the amount appropriated for the purpose of making payments hereunder during the current fiscal year, (ii) the Town is not obligated hereby to make any payments in any fiscal year beyond the fiscal year for which funds are appropriated for the payment thereof or to make payments from any funds of the Town other than funds appropriated for the payment of current expenditures, (iii) all payment obligations of the Town under this Agreement, including, without limitation, the Town's obligation to pay the Grant Funds, are from year-to-year only and do not constitute a multiple fiscal-year direct or indirect financial obligation of the Town, (iv) the agreement hereunder to pay the Grant Funds is subject to annual renewal and such agreement to pay shall be terminated upon the occurrence of an event of non-appropriation and, in such event, (x) all payments from the Town under this agreement shall terminate, and (y) Grantee expressly waives hereby all remedies and claims against the Town.

D. The Grant Funds shall be used by Grantee solely to acquire the Conservation Easement.

3. **Purchase Money Loan; Conservation Easement.**

A. The Grant Funds shall be used by Grantee at Closing as partial payment of the purchase price to acquire the Conservation Easement. The remaining amount of the purchase price for the Conservation Easement will be paid from funds received from various sources including The State Board of the Great Outdoors Colorado Trust Fund (GOCO).

B. As part of the Grantee's purchase of the Conservation Easement, Grantee shall acquire the Conservation Easement that will be subject to review and approval by the Town's attorney. If any substantial changes occur to the draft form of the Conservation Easement, Grantee will review those change with the Town before acquiring the Conservation Easement. The Deed of Conservation Easement will provide that that if the Conservation Easement is ever extinguished in the future and funds are paid, the Town and the other funding agencies will be entitled to receive a share of the funds so paid in proportion to the amount the Town and each other funding agency contributed to the Conservation Easement, up to the amount each funding agency originally contributed.

C. Neither Grantee nor the holder of fee title in the Subject Project may sell, assign, transfer or otherwise pledge, hypothecate, lien or mortgage the Conservation Easement or any interest therein without the express written approval of the Grantor. Notwithstanding the foregoing, Town acknowledges that Grantee intends to transfer the Conservation Easement to The Nature Conservancy to act as long-term holder of the Conservation Easement, and consents to such transfer, whether accomplished by an assignment at or after Closing, or by causing the owner of the Subject Property to deed the Conservation Easement directly to The Nature

Conservancy at Closing as Grantee's nominee. If Grantee assigns the Conservation Easement, Grantee will concurrently assign this Agreement to the transferee.

4. **Signage.** In the event that any signage is installed respecting the funding for the acquisition of the Conservation Easement the Town shall be listed on such signage as the grantor of the Grant Funds. Such signage shall be approved in advance by the Town, such approval to not be unreasonably withheld, conditioned or delayed.

5. **Liability.**

A. **Indemnity.** To the extent allowed by law, Grantee shall be responsible for, indemnify, defend and hold harmless the Town, its elected officials, officers, agents, employees, insurers, insurance pools and attorneys (collectively, the "**Town Parties**") from any and all liabilities, claims, demands, damages or costs (including reasonable attorneys' fees) resulting from, growing out of, or in any way connected with or incident to Grantee's receipt of the Grant Funds and any of Grantee's acts or omissions pursuant to this Agreement. Grantee hereby waives any and all rights to any type of express or implied indemnity or right of contribution from the Town Parties, for any liability resulting from, growing out of, or in any way connected with or incident to this Agreement.

B. **No CGIA Waiver.** The parties understand and agree that the parties are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (currently \$350,000 per person and \$990,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101, *et seq.*, C.R.S., as from time to time amended, or otherwise available to the parties, their elected officials, officers, agents, employees, insurers, insurance pools and attorneys officers.

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

D. **Nondiscrimination.** During the performance of this Agreement, Grantee and its contractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age or sex, and shall comply with any other applicable laws prohibiting discrimination. Grantee and its contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination.

6. **Audit and Accounting Records.** Grantee shall maintain standard financial accounts, document, and records relating to the acquisition, monitoring and enforcement of the Conservation Easement. The accounts, documents, and records related to acquisition of the

Conservation Easement shall be retained by Grantee for five (5) years following the date of disbursement by the Town of the Grant Funds, and shall be subject to examination and audit by the Town or its designated agent during this period. All accounts, documents, and records described in this paragraph shall be kept in accordance with generally accepted accounting principles.

7. **Breach**. In addition to such other remedies as shall be available at law or in equity, in the event that Grantee breaches any of the terms or conditions of this Agreement and fails to correct the same within thirty (30) days of receipt of notice from the Town of such breach, the Town reserves the right to seek equitable relief and/or all other remedies as available to it under applicable law, including but not limited to, the return of all or a portion of the Grant Funds.

8. **Miscellaneous Provisions.**

A. ***Good Faith***. Both parties have an obligation of good faith, including the obligation to make timely communication of information that may reasonably be believed to be of interest to the other party.

B. ***Assignment***. Grantee may not assign its rights or delegate its obligations under this Agreement without the express written consent of the Town.

C. ***Applicable Law***. Colorado law applies to the interpretation and enforcement of this Agreement.

D. ***Status of Grantee***. The parties acknowledge that the Town lacks the power and right to direct the actions of Grantee. Grantee acts in its separate capacity and not as an officer, employee or agent of the Town.

E. ***Survival***. The terms and provisions of this Agreement and Grantee's obligations hereunder shall survive the funding of the Grant Funds and the acquisition of, and any future conveyance of, the Conservation Easement.

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

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

H. ***Notice***. Any notice, demand, request, consent, approval or communication that either party desires or is required to give the other shall be in writing and either served personally or sent by first class mail, postage prepaid, to the addresses first shown in this Agreement.

I. **Construction; Severability.** Each party hereto has reviewed and revised (or requested revisions of) this Agreement, and therefore, any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Agreement. If any provision in this Agreement is found to be ambiguous, an interpretation consistent with the purpose of this Agreement that would render the provision valid shall be favored over any interpretation that would render it invalid. If any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement, and the balance of this Agreement shall otherwise remain in full force and effect. At any time when this Agreement refers to a party's ability to act or make determinations or decisions with discretion, this Agreement shall be construed to permit such party to act and to make such determinations and/or decisions in its sole discretion.

J. **Entire Agreement.** Except for the Conservation Easement, this Agreement constitutes the entire agreement of the parties. No oral understanding or agreement not incorporated in this Agreement shall be binding upon the parties. No changes in this Agreement shall be valid unless made in writing and signed by the parties to this Agreement.

K. **Authority.** The parties represent and warrant to the other that each is duly authorized and existing business entity; each is qualified to do business Colorado; each has full right and authority to enter into this Agreement; the person signing on behalf of each party is duly authorized to do so and has obtained any and all approvals necessary to enter into and perform the obligations contained in this Agreement; and each party's compliance with the terms hereof do not violate any agreement or other obligation of such party.

L. **Prevailing Party.** In the event of any dispute arising from or related to this Agreement, the prevailing party will be entitled to recovery of all reasonable costs incurred in connection therewith, including, without limitation, court costs, attorneys' fees and other related expenses.

M. **Record Memorandum.** A record memorandum of this Agreement may be recorded by the Town in the official real property records of the Clerk and Recorder of Gunnison County, Colorado.

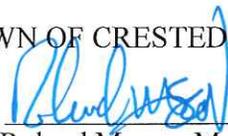
IN WITNESS WHEREOF, the parties by signature below of their authorized representatives execute this Agreement as of the Effective Date set forth above.

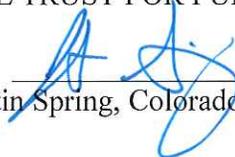
TOWN:

GRANTEE:

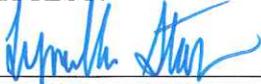
TOWN OF CRESTED BUTTE, COLORADO

THE TRUST FOR PUBLIC LAND

By:  \_\_\_\_\_  
Roland Mason, Mayor Pro Tem

By:  \_\_\_\_\_  
Justin Spring, Colorado Director for Land Protection

ATTEST:



Lynelle Stanford, Town Clerk



**EXHIBIT "A"**

Real property in Gunnison County, Colorado comprising five (5) parcels:

Parcel A: (Gothic Parcel)

Township 13 South, Range 86 West, 6th P.M.  
Section 3: E½SE¼

Parcel B: (Thomas Place)

Township 13 South, Range 86 West, 6th P.M.

Any and all of Grantor's interest in Homestead Entry No. 267, embracing a portion of Sections 2, 11 and 12, Township 13 South, Range 86 West, 6th P.M., being more particularly described as follows: Beginning at Corner No. 1 from which the Southeast corner of Section 12, Township 13 South, Range 86 West, 6th P.M., bears South 53°54' East 90.37 chains distant; thence South 42°29' West 39.89 chains to Corner No. 2; thence North 47°48' West 39.98 chains to Corner No. 3; thence North 42°5' East 39.84 chains to Corner No. 4; thence South 47°55' East 40.27 chains to Corner No. 1, the place of beginning;

SAVING, EXCEPTING AND RESERVING from the land above described a tract of land particularly described as follows: Beginning at Corner No. 1, the same being identical with the Southwest corner of said Homestead Entry No. 267; thence North 42°5' East along the Westerly boundary line of said Homestead Entry No. 267 a distance of 300 feet to Corner No. 2; thence South 47°48' East and parallel to the Southerly boundary line of said Homestead Entry No. 267 a distance of 1,452 feet to Corner No. 3; thence South 42°5' West and parallel to the Westerly boundary line of said Homestead Entry No. 267 a distance of 300 feet to the Southerly boundary line thereof to Corner No. 4; thence North 47°48' West along the Southerly boundary line of said Homestead Entry No. 267 a distance of 1,452 feet to Corner No. 1, the place of beginning.

Parcel C: (Perry Place)

Township 13 South, Range 86 West, 6th P.M.

Any and all of Grantor's interest in H.E. Survey No. 265 embracing a portion of Sections 12 and 13, Township 13 South of Range 86 West of the 6th Principal Meridian, Colorado, more particularly bounded and described as follows: Beginning at Corner No. 1, from which the east quarter corner to said Section Thirteen bears North 12°24' East 5.71 chains distant; thence South 52°28' West 6.09 chains to Corner No. 2; thence North 44°42' West 82.70 chains to Corner No. 3; thence North 51°55' East 20.85 chains to Corner No. 4; thence South 44°55' East 65.96 chains to Corner No. 5; thence South 21.18 chains to Corner No. 1, the place of beginning.

Parcel D: (Jarvis Place)

Township 13 South, Range 85 West, 6th P.M.

Section 18: SW $\frac{1}{4}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ , Lot 6

Section 19: N $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$

Section 20: NW $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ SE $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , Lots 2, 3, 6, 8, and 10

Section 21: Lot 2

Section 28: W $\frac{1}{2}$ W $\frac{1}{2}$ , Lots 2 and 3

Section 29: E $\frac{1}{2}$ NE $\frac{1}{4}$ , Lots 1, 3, and 7

Section 33: W $\frac{1}{2}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ , Lot 2

Subject to the Boundary Agreement dated December 16, 2011 and recorded in the records of the Gunnison County Clerk and Recorder on January 18, 2012 at No. 610800.

EXCEPTING the property described in the General Warranty Deed conveying seven tracts of land to the United States of America, recorded November 18, 1998 at Reception No. 488724.

Parcel E: (Stubbs Place)

Township 14 South, Range 85 West, 6th P.M.

Section 4: S $\frac{1}{2}$

Section 5: SE $\frac{1}{4}$ SE $\frac{1}{4}$

Subject to the Boundary Agreement dated December 16, 2011 and recorded in the records of the Gunnison County Clerk and Recorder on January 18, 2012 at No. 610800.

Section 8: SE $\frac{1}{4}$ , E $\frac{1}{2}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ , all of that portion of the E $\frac{1}{2}$ SW $\frac{1}{4}$  lying East of the Easterly bank of the East River

Section 9: All

Section 17: N $\frac{1}{2}$ NE $\frac{1}{4}$

County of Gunnison, State of Colorado.