

## INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement (“Agreement”) is entered into by and between the Town of Crested Butte, a home rule municipality (“Crested Butte” or “Town”); the Crested Butte Fire Protection District, a Colorado special district (“CBFPD”), and Crested Butte Search and Rescue, a Colorado nonprofit corporation (“CBSAR”).

### RECITALS

**A.** The Town and CBFPD are parties to a Lease Agreement dated April 15, 1982, and an amendment thereto dated July 5, 1986, under which the CBFPD has leased certain Town-owned property at 306 Maroon Avenue, Crested Butte, Colorado 81224, for a period of 99 years for the purposes of providing fire protection and emergency services to the Town and other areas within the CBFPD Fire District; and

**B.** The Town and CBFPD are also parties to a Lease dated December 5, 2017, under which CBFPD currently leases property from the Town for use as the CBFPD offices at 308 3<sup>rd</sup> Street, Crested Butte, Colorado 81224; and

**C.** The Town and CBSAR are parties to a year-to-year Lease from December, 2000 under which CBSAR currently leases property from the Town for use as the CBSAR offices at 800 Butte Avenue, Crested Butte, Colorado 81224; and

**D.** Crested Butte recently completed the annexation of approximately 14.1 acres of land to the Town, which include a parcel identified as “Town Parcel 1” (or parcel) that the annexor, Cypress Foothills, LP, has conveyed to the Town as part of the annexation; and

**E.** Town Parcel 1 is zoned “P” under which the Parcel may be used for emergency services by right and publicly owned housing with conditions; and

**F.** The deed of conveyance from Cypress Foothills to the Town also allows for Town Parcel 1 to be used for emergency services by right and used for publicly owned affordable housing with conditions; and

**G.** The Town and the CBFPD jointly hired, financed, and agreed with the outcome of a property appraisal of Town Parcel 1 by Chandler Consulting, Inc., where the Parcel’s appraised value was \$810,000 (A copy of the Parcel’s appraisal is attached hereto as **Exhibit 1**); and

**H.** The Town is willing to convey Town Parcel 1 to CBFPD at no cost so long as the property is used as a fire station, with four (4) publicly owned deed restricted affordable housing units with a minimum of eight (8) bedrooms (“Affordable Housing”), and for other emergency services, where CBFPD enters into a long term lease with CBSAR for siting CBSAR’s emergency services facilities on part of Town Parcel 1, and CBFPD and CBSAR agree to the other terms and conditions in this Agreement; and

**I.** CBFPD and CBSAR have evaluated Town Parcel 1 and determined the full buildout of the facilities would require approximately two (2) additional acres of land north of TP#1 to fulfill the desired buildout for the fire station and the Affordable Housing.

**J.** In January 2021, CBFPD informed the Town that CBFPD needs to annex approximately 2 acres of land adjacent to Town Parcel 1 that is not within the Town’s boundaries in order build its new emergency service facilities and the Affordable Housing; and

**K.** The land CBFPD wants to annex to the Town consists of approximately 2 acres of a 7.84 acre parcel that is located on County Road 317 adjacent to the western boundary of the Crested Butte Cemetery, identified as Parcel No. 3177-350-3-306 in the Gunnison County real property records (the “Annexation Parcel”); and

**L.** Parcel No. 3177-350-3-306 is bisected by the Slate River and is currently owned by Spann Virgil & Lee Ranches, Inc. (“Spann”) and is used for agricultural purposes; and

**M.** Spann has indicated to CBFPD that Spann is willing to sell the 2-acre Annexation Parcel to CBFPD, provided CBFPD gains voter approval to purchase the land, fund the construction of the facilities and Affordable Housing, and obtains the necessary land use approvals from Gunnison County to subdivide the 2 acres from the remainder of Parcel No. 3177-350-3-306.; and

**O.** CBFPD also intends to submit a Concept Annexation Request to the Town, pursuant to Section 15-1-50 of the Town Code, to obtain an informal response from the Town to the general elements of this proposed annexation; and,

**P.** CBFPD intends to issue bonds to purchase the Annexation Parcel and finance the construction of a new fire station and related facilities and Affordable Housing on Town Parcel 1 and the Annexation Parcel following an annexation of the adjacent parcel and development approval of such facilities by the Town; and

**Q.** Within 60 days of issuance of a certificate of occupancy for the newly constructed facilities on Town Parcel 1 and the Annexation Parcel, the existing leases between the Town and CBFPD and CBSAR will be terminated, and the title and control of leased properties will be returned to the Town fee and clear of all liens and encumbrances.

NOW THEREFORE, Crested Butte, CBFPD and CBSAR agree as follows:

**1. Suitability Determination and RFP.** CBFPD has secured an architect and design team, through a competitive Request for Proposals (“RFP”) process, to assess and design the new facilities to be constructed on Town Parcel 1 and Annexation Parcel. CBFPD and CBSAR did involve the Town in the selection of the architect and design team pursuant to that RFP. CBSAR and CBFPD have completed their investigations of Town Parcel 1 in order to determine whether the Parcel is suitable for construction and development of a new emergency services facilities and publicly owned Affordable Housing.

**2. County Subdivision Process.** Upon voter approval of the construction bonds, CBFPD agrees to submit its land use application to Gunnison County to subdivide the Annexation Parcel from the remainder of Parcel No. 3177-350-3-306 and file a petition for annexation for this land with the Town.

**3. Concept Annexation Process.** CBFPD also agrees that it will submit its Concept Annexation Request consistent with the Plan shown in Exhibit 2 to the Town upon voter approval

of the construction bonds. The Town and CBFPD agree that the conditions of the annexation will include restrictive covenants on the Annexation Parcel that match the restrictions in the Town's Agreement with Cypress Foothills, Limited and the deed from Cypress Foothills that currently encumber Town Parcel 1. In addition, if CBFPD obtains land use approval from Gunnison County, then CBFPD will agree to construct the site consistent with Exhibit 2. The Town and CBFPD further agree that CBFPD will grant the Town easements for a utility corridor and recreation path/multi-use trail across the Annexation Parcel. The Town and CBFPD will enter into a separate Pre-Annexation Agreement that specifies the inclusion of these conditions and other terms prior to the time that CBFPD files its formal annexation petition pursuant to Town Code Section 15-1-60.

**4. Town and County Approvals.** CBSAR and CBFPD agree that development of Town Parcel 1 and the Annexation Parcel will require them to engage Crested Butte Town Council in the Annexation request and in the development review process with Crested Butte's Board of Zoning and Review ("BOZAR"), and other Town and County departments that will issue permits or approvals for the proposed new facilities. Nothing in this Agreement is a predetermination by Crested Butte that any of these permits and approvals can be issued. To the extent the Town has not already done so, Crested Butte will provide CBSAR and CBFPD with copies of existing reports and studies that might aid in the anticipated construction and development of emergency services facilities, and the Town is willing to meet and discuss issues regarding requirements and procedures to gain development approval of Town Parcel 1 and the Annexation Parcel for CBFPD Fire Station and facilities, Affordable Housing, and CBSAR's emergency service facilities.

**5. Transfer of Title to Town Parcel 1 by Town.** Crested Butte agrees to convey title of Town Parcel 1 to CBFPD at no cost for the construction and operation of emergency service facilities uses and Affordable Housing consisting of four (4) publicly owned deed restricted affordable housing units with a minimum of eight (8) bedrooms, as further set forth below:

5.1 Title Restrictions. The Town agrees to transfer title of Town Parcel 1 to CBFPD, subject to the deed restrictions for use of this Parcel in the Town's deed from Cypress Foothills, and other encumbrances of public record. A copy of the Town's Deed from Cypress Foothills is attached hereto as **Exhibit 3**.

5.2 CBSAR Long Term Lease. As part of the conveyance of Town Parcel 1 from the Town to CBFPD, CBFPD agrees that it will enter into a long-term lease with CBSAR with a term of 99 years. CBFPD and CBSAR agree to work together in good faith to execute a long-term lease for a portion of Town Parcel 1 to suit CBSAR's desired uses of a portion of Town Parcel 1.

5.3 Deed Restricted Affordable Housing.  
As part of the conveyance of Town Parcel 1 from the Town to CBFPD, CBFPD agrees to construct the Affordable Housing in the first phase of the project. These units shall be primarily used for rental to CBFPD employees, volunteer members, or contractors as determined by CBFPD policy. Should there be insufficient interest for CBFPD use these units shall only be rented to residents of Gunnison County with a priority for local public sector employees.

5.4 Time of Conveyance. The Town and CBFPD agree that the transfer of title to Town Parcel 1 will not be conveyed until after CBFPD has obtained all BOZAR approvals and approvals from Gunnison County, as required by applicable law, and CBFPD has obtained voter

approval of the bonds CBFPD intends to issue to pay for costs to construct emergency services facilities on Town Parcel 1 and the Annexation Parcel.

**6. Development Requirements, Site Design and Operations.** The Town, CBFPD and CBSAR agree that the development of Town Parcel 1 and the Annexation Parcel will be subject to the following requirements:

6.1 Affordable Housing Units. Four (4) Affordable Housing units, with a minimum of eight (8) bedrooms, shall be constructed on the site in the first phase of construction and located along Pyramid Avenue, consistent with what is shown on Exhibit 2.

6.2 Access. The Town agrees to support primary vehicle access and egress from Pyramid Street and Gothic Road from Town Parcel 1 and the Annexation Parcel, consistent with what is shown on Exhibit 2. Final permit is contingent upon Gunnison County approval, as required by applicable law.

6.3 Zoning, Yard and Bulk. All zoning and other approvals from the Town will be consistent with the restrictions in the Town’s deed from Cypress Foothills. The uses permitted in the Town’s P-Zone and limited by the deed restrictions shall govern the allowed uses on Town Parcel 1 and the Annexation Parcel.

6.4 Shift Housing. Temporary housing for use by emergency service personnel of CBFPD and CBSAR while on shift will be permitted on the site.

6.5 Burn Building. No burning of Class A (ordinary combustible) materials will be permitted within buildings on the site. Concrete, non-charring buildings utilizing Class B (liquid fuel or gas) will be permitted subject to BOZAR approval. Non-toxic artificial smoke generators may be permitted upon review and approval by BOZAR. The parties agree that burn building will be constructed on Town Parcel 1, consistent with what is shown on Exhibit 2.

**7. Existing Leases Between Town and CBSAR and CBFPD.** After the development of Town Parcel 1 and the Annexation Parcel has been completed for use and occupancy by CBSAR and CBFPD, and the Town has issued of certificates of occupancy for buildings on the Town Parcel 1 and the Annexation Parcel, the Town’s existing lease(s) with CBSAR and CBFPD, as identified below, shall be terminated within 60 days and the property burdened by the leases will revert to the Town free of encumbrances. CBFPD and CBSAR will remove all furniture, fixtures and equipment, however, no additional work, repairs or remediation will occur prior to reversion.

7.1 Town lease(s) with CBSAR: a) year to year lease for the old bus stop building formally used by Mountain Express, located on City property along Butte Avenue.

7.2 Town lease(s) with CBFPD: a) 99 Year Lease for 306 Maroon Avenue; b) 5 Year Lease for offices at 308 3<sup>rd</sup> Street

**8. No appropriation.** This Agreement does not create debt or fiscal obligations of the parties beyond the current fiscal year. Any financial obligations of the parties payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. In the event funds are not appropriated, budgeted, or otherwise made

available, this Agreement may be terminated on the last day of the period for which funds were appropriated or monies made available for such purposes.

**9. Compliance with Law.** Each party shall abide by all laws, ordinances, rules, regulations, and orders of all governmental agencies or authorities having jurisdiction over the facilities that are the subject of this Agreement.

**10. Termination.** The Town or CBFPD or CBSAR may terminate this Agreement in the event that the bond issuance that CBFPD intends use to finance construction of the facilities on Town Parcel 1 is not approved by the voters within the CBFPD. CBFPD may terminate this Agreement in the event that it determines that Town Parcel 1 is not suitable for new emergency service facilities. Any party may terminate this Agreement if the conditions of Section 5.4 of this Agreement are not met on or before January 1, 2024.

**11. Miscellaneous.**

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

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

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

11.4 Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the Town, CBFPD, and CBSAR and their respective successors and permitted assigns.

11.5 No Assignment. No party may assign all or any portion of this Agreement without the prior written approval of the other parties. Any such attempted assignment without such prior approval shall be void *ab initio*.

11.6 Governing Law; Venue. This Agreement is executed pursuant to, and shall be construed under and governed exclusively by, the internal laws of the State of Colorado. Venue in any dispute that proceeds to litigation shall be the District Court for the State of Colorado located in Gunnison County, Colorado. That parties agree to mediate any dispute in good faith prior to initiating litigation. Such mediation shall commence within sixty (60) days of any party's request therefor. Any such mediation shall be administered under the auspices of the Judicial Arbiter Group of Denver, Colorado ("JAG"), unless JAG no longer exists, or the parties agree otherwise.

11.7 Amendments. This Agreement may not be modified, amended, surrendered, or changed, except by a written instrument executed by the parties.

11.8 Partial Invalidity. If any of the provisions in this Agreement shall be declared invalid by a final and non-appealable order, decree or judgment of any court of competent jurisdiction, then this Agreement shall be construed as if such provision(s) had not been inserted, unless such construction would materially destroy the benefit of the bargain of such agreement to the Town, CBFDP, and CBSAR.

11.9 Relationship of Parties. In the performance of this Agreement, there shall be no agency relationship between the parties. Neither this Agreement nor any agreements, instruments, documents, or transactions contemplated hereby shall in any respect be interpreted, deemed, or construed as making any party a partner or joint venturer with another party, or vice versa, or as creating any similar relationship between the parties.

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

11.11 Notices. Any notice, statement or demand required to be given under this Agreement shall be in writing and shall be, and at the option of the party giving notice, (i) personally delivered, (ii) transmitted by certified or registered mail, return receipt requested, postage prepaid, (iii) by FedEx or other recognizable overnight courier, or (iv) by confirmed facsimile (provided, that a confirmatory copy is thereafter sent by certified or registered mail or recognizable overnight courier), addressed:

If to the Town:           Town of Crested Butte  
                                  P.O. Box 39  
                                  507 Maroon Avenue  
                                  Crested Butte, CO 81224  
                                  Phone: (970) 349-5338  
                                  Facsimile: (970) 349-6626  
                                  Attn: Town Manager

with a copy to:           Town of Crested Butte  
                                  P.O. Box 39  
                                  507 Maroon Avenue  
                                  Crested Butte, CO 81224  
                                  Phone: (970) 349-5338  
                                  Facsimile: (970) 349-6626  
                                  Attn: Town Attorney

If to CBFDP:               Crested Butte Fire Protection District  
                                  P.O. Box 1009  
                                  Crested Butte, CO 81224  
                                  Phone: (970) 349-5333  
  
                                  Attn: Sean Caffrey

If to CBSAR:              Crested Butte Search and Rescue

P.O. Box 485  
Crested Butte, CO 81224  
Phone: (970) 641-8201

Attn: President \_\_\_\_\_

or to such other addresses as the Town, CBFDP or CBSAR may designate in the manner herein provided. Any such notice shall be deemed to have been given on the date of receipt if delivered personally, or the date that the return receipt, overnight courier's records or confirmed facsimile indicates that delivery to the addressee was received. The parties agree that on giving of any notice, it shall use its reasonable efforts to advise the other by telephone or e-mail that a notice has been sent hereunder. Such telephonic advice or e-mail shall not, however, be a condition to the effectiveness of notice hereunder.

11.12 Terminology. All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all genders; the singular shall include the plural and the plural shall include the singular. References to days, months and years are to calendar days, calendar months and calendar years, respectively, unless the context clearly otherwise requires. The word "include" and similar terms such as "included" and "including" shall be terms of enlargement or example and shall not imply any restriction or limitation unless the context clearly requires otherwise. The word "or" shall not indicate exclusivity and shall be interpreted to mean both "and" and "or" unless the context clearly requires otherwise. The table of contents and titles of articles or sections and paragraphs in this Agreement are for convenience only and neither limit nor amplify the provisions of this Agreement, and all references in this Agreement to articles, sections, paragraphs, clauses, exhibits, addenda or riders shall refer to the corresponding article, section, paragraph, clause, exhibit, addendum or rider attached to this Agreement, unless otherwise specified.

11.13 Incorporation. All exhibits, addenda and riders attached hereto, if any, are by reference hereby incorporated herein and made a part hereof.

11.14 Prevailing Party. In the event of any legal action arising from or related to the transactions contemplated under this Agreement, the prevailing party shall be entitled to recovery of all reasonable costs incurred, including, without limitation, staff time, court costs, reasonable attorneys' fees, and other related expenses.

11.15 Entire Agreement; Merger. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and the transactions contemplated herein, superseding all prior agreements or undertakings, oral or written, the same being merged herein.

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

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

accordingly.

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

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

11.20 Counterparts; E-mail or Facsimile. This Agreement may be executed in one or more counterparts, each of which, when taken together, shall constitute one and the same instrument. For purposes of enforcement of this Agreement and any terms and conditions contained herein, facsimile or e-mail reproductions shall be deemed to be original documents.

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

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

**CBFPD**

Crested Butte Fire Protection District

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

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

Date: \_\_\_\_\_



**CRESTED BUTTE**

Town of Crested Butte Colorado

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

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

Date: \_\_\_\_\_

**CBSAR**

Crested Butte Search and Rescue

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

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

Date: \_\_\_\_\_

DRAFT