



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

### **Town Council Values**

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

**AGENDA**  
**Town of Crested Butte**  
**Regular Town Council Meeting**  
**Tuesday, August 4, 2015**  
**Council Chambers, Crested Butte Town Hall**

**6:00** **WORK SESSION**

Presentation by Town Staff Regarding Deed Restricted Affordable Housing Units Existing Process/Regulations and Results of Recent Compliance Survey.

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

**7:02** **APPROVAL OF AGENDA**

**7:04** **CONSENT AGENDA**

- 1) Approval of July 20, 2015 Regular Town Council Meeting Minutes.
- 2) Approval of Resolution No. 18, Series 2015 – Resolutions of the Crested Butte Town Council Approving the Award of the Construction Contract Between the Town of Crested Butte and M.B. Builders, LLC in an Amount Not to Exceed \$240,052.00 for Phase III of the Historic Denver and Rio Grande Railroad Depot Restoration Project Located at 716 Elk Avenue.
- 3) Approval of Resolution No. 19, Series 2015 - Resolutions of the Crested Butte Town Council Approving the Intergovernmental Agreement between the Town of Crested Butte and Mt. Crested Butte Water and Sanitation District Regarding Storage Building Construction and Usage Located at the Town Public Works Yard Property.

**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.*

**7:10** **STAFF UPDATES**

**7:30** **PUBLIC HEARING**

- 1) Ordinance No. 5, Series 2015 - An Ordinance of the Crested Butte Town Council Granting a Ground Lease to Gunnison County Electric Association, Inc. for the Installation of an Electric Vehicle Charging Station on a 20' x 20' Portion in the Southeast Quadrant of Town Plaza as Identified in the Ground Lease.

**7:40** **NEW BUSINESS**

- 1) Update from the EPA on Standard Mine Activities.
- 7:55** 2) Discussion and Possible Decision in Consideration of a Request from the Gunnison Valley Regional Housing Authority to participate in a Regional Housing Needs Assessment in 2016.
- 8:15** 3) Update from the Coal Creek Watershed Coalition on the Upper Slate River Watershed.
- 8:25** 4) Ordinance No. 6, Series 2015 – An Ordinance of the Town Council of the Town of Crested Butte Submitting to the Registered Electors at an Election to Be Held on November 3, 2015, the Question of Whether Town of Crested Butte Taxes Shall be Increased by \$500,000 Annually Beginning on January 1, 2016, and by Whatever Amounts are Received Thereafter, with a Sales Tax and Use Tax of One-Half of a Percent (0.5%, or Five Cents on Each \$10.00 Purchase) to Provide Revenue for Parks and Recreation Facility Maintenance, Parks and Recreation Capital and Programs and Trails and Said Increase in Use Tax to be Applied as it Always Has Been under the Crested Butte Municipal Code; Setting forth the Ballot Title; Providing for the Conduct of

the Election; and Amending Certain Provisions of the Crested Butte Municipal Code if a Majority of the Registered Electors Approve the Ballot Issue.

**8:40** 5) Update, Discussion and Possible Direction Regarding SB – 152 and Related Ballot Measure to Allow the Town to Provide Telecommunications Services and Facilities Restricted by Title 29, Article 27, C.R.S.

**9:00** 6) Ordinance No. 7, Series 2015 – An Ordinance of the Town Council of the Town of Crested Butte Submitting to the Registered Electors at an Election to Be Held on November 3, 2015, the Question of Whether the Town of Crested Butte Shall Re-Establish its Rights, without Increasing Taxes by the Measure, to Restore Local Authority that has been Denied to Local Governments by the Colorado General Assembly, to Provide High-Speed Internet, Including Improved High Bandwidth Services Based on New Technologies, Telecommunications Services and/or Cable Television Services as Expressly Permitted by Article 27, Title 20, C.R.S.; Setting forth the Ballot Title; and Providing for the Conduct of the Election.

**9:10** 7) Resolution No. 20, Series 2015 – Resolutions of the Crested Butte Town Council Approving the Intergovernmental Agreement with the Gunnison County Clerk and Recorder Regarding the Implementation of the Confirmation Card Process Described in Title 1, C.R.S.

**9:50** **EXECUTIVE SESSION**

(a) 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)(e) relative to settlement discussions with Western Colorado Events, LLC regarding the costs and expenses of repairing Elk Avenue.

**10:20** **LEGAL MATTERS**

**10:30** **COUNCIL REPORTS AND COMMITTEE UPDATES**

**10:45** **OTHER BUSINESS TO COME BEFORE THE COUNCIL**

**11:00** **DISCUSSION OF SCHEDULING FUTURE WORK SESSION TOPICS AND COUNCIL MEETING SCHEDULE**

- Monday, August 17, 2015 – 7:00PM Work Session – 8:00PM Regular Council
- *Tuesday*, September 8, 2015 – 6:00PM Work Session – 7:00PM Regular Council
- Monday, September 21, 2015 – 6:00PM Work Session – 7:00PM Regular Council

**11:10** **ADJOURNMENT**



## Staff Report August 4, 2015

**To:** Mayor and Town Council  
**Thru:** Todd Crossett, Town Manager  
**From:** Bob Gillie, Building and Zoning Director  
**Subject:** **Deed Restricted Long-Term Rental Process and Compliance Survey Work Session**  
**Date:** July 30, 2015

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**Summary:** Attached you will find a power point presentation that explains how zoning and use categories generate deed restricted housing units.

The surveys from 2014 and the recent 2015 survey results are also reviewed with regard to compliance levels. They track fairly closely.

We have not gotten into the other types of deed restricted housing unit in Town that are owner occupied since they are controlled at the time of sale. We have also not surveyed the Town owned units since we know what is going on with them.

The purpose of this work session is to inform the Council about what our existing rule set and process is. We have not gotten into possible changes to procedures and the Town code to try and enhance compliance. This is because we have not had time to fully discuss options with our legal counsel. If the Council wishes to discuss this it should probably show up as a future agenda item.

Deed Restricted, Long term  
rentals [Accessory Dwelling  
Units (ADU)'s and  
Commercial Dwelling  
Units]:  
An Overview

# History

- Prior to 1990, the definition in the zoning code for “Accessory Dwelling” was: *An accessory building or portion thereof designed exclusively for occupancy by one family, which may be attached to the principal building subject to appropriate design guidelines.*
- In 1990 Ordinance No. 4, Series 1990, the definition of accessory dwelling was changed to read: *A detached accessory building or portion thereof, intended to be subordinate to an existing or planned and approved primary residential structure on the same site, provided that either or both accessory dwelling and principal residence are to be used exclusively as a long-term rental unit.*
- Also in this ordinance from 1990, the definition for “rental, long term” was added, which read: *The rental of any residential property for a term of not less than 6 months, which limitation of term of rental shall be recorded in the real property records of Gunnison County pursuant to Section 15-2-17 of this Article.*
- The individual *cannot have more than a 10% interest or ownership in the property.*
- Also, in Ordinance No. 16, Series 2013, it was added into the definition that the person *must reside in Gunnison County.*

# Goal/Intent

- In the ordinance from 1990, the first two “whereas” sections state:
  - The Town Council wishes to encourage the construction of new accessory buildings and remodeling of existing accessory buildings for use as accessory dwellings; and
  - The Town Council wishes to encourage the use of accessory dwellings as long-term rental units.
- To allow for increased density on the lots in town as a “bonus” for property owners, renting the units long term was the concession to achieve this.

# How the process works (ADU)

- An applicant applies in the Building Department for a conditional use permit for an accessory dwelling.
- Accessory dwellings are only allowed in these zones: R1, R1D, R1E, R1A, R1B, R1C, R2C, R3C, R2, R2A, R4, B3, B4
- Accessory dwellings are not a matter of right regarding the square footage on the site.
- This is then reviewed by the BOZAR using the criteria (i.e. size, density of buildings, amount of open space, scale, snow storage, snow removal, landscaping, similar land uses, etc.) in the zoning code section 16-8-30.
- Because this is a conditional use, neighbors have the opportunity to come to the public hearing and comment on concerns regarding the project and the Board weighs these concerns with the criteria mentioned above.

# How the process works (ADU)

- Accessory dwellings must be more than 400 square feet, but can be no larger than 1000 square feet.
- After approval by the Board, the applicant can pull a building permit to begin construction on this project. At which time, the individual is given a “Restrictive Covenant Agreement,” which explains what was granted at the BOZAR meeting and the conditions of that approval, one of which is that a long-term rental as defined by the code must be maintained on the property. The individual cannot obtain a Certificate of Occupancy until this document is executed.
- This document once complete is then recorded in the real property records. When a title search is done on a property, this is a document that then shows up.

# How the process works (commercial dwelling units)

- All of the above regarding BOZAR process and building permit process are the same for commercial dwelling units.
- Commercial dwelling units are allowed in the following zones: T, B1, B2, C
- Minimum floor area for residential units in these zones is 400 square feet. In the C zone, the maximum size for each unit is 600 square feet with a maximum of 3 units. Also, in the T and C zone there is a limitation that the residential use cannot comprise more than 50% of a building.
- In commercial dwelling units, the unit must be long term rented or owner occupied, only if the owner pays the full tap fee and conducts business in a nonresidential space in the building.

# Example of a Restrictive Covenant Agreement

117297 01/10/2002 01:00 480  
1 of 3 R 15.00 0.00 N 0.00 Gunnison County

**NOTICE OF AGREEMENT FOR LAND USE CONDITIONS AND RESTRICTIVE COVENANTS**

**THIS AGREEMENT AND INDENTURE**, made this 10<sup>th</sup> day of December, 2001, by and between the **PETER PHILTZER** and **HILARY K. PHILTZER** (hereinafter referred to as "Owner"), and the **TOWN OF CRESTED BUTTE, COLORADO**, a Colorado Home Rule Municipal Corporation (hereinafter referred to as the "Town"), is upon the following terms and conditions:

**WITNESSETH:**

WHEREAS, the Owner is the record owner of certain real property located in the Town of Crested Butte, County of Gunnison, and State of Colorado, more particularly described as follows:

Lot 9, Karastahn Subdivision  
Town of Crested Butte,

(hereafter "Property") which Property is subject to the Zoning and Land Use Ordinance of the Town of Crested Butte (hereafter "Ordinance"), and

WHEREAS, the Owner has applied to the Town for certain zoning and land use approvals; and

WHEREAS, said discretionary zoning and land use applications have been considered and approved by the Town's Board of Zoning and Architectural Review (hereafter "Board") as required by the Ordinance; and

WHEREAS, the Town's Board has placed certain conditions on these approvals pursuant to Section 15-2-4 of the Ordinance, which conditions have been agreed to by the Owner; and

WHEREAS, Section 15-2-17 of the Ordinance provides that all such conditions or covenants "shall be deemed to run with the land, and shall be binding upon the applicant (Owner), his successors and assigns;" and

WHEREAS, Section 15-2-17 of the Ordinance provides that conditions or restrictions relative to the use and/or occupancy of the Property which are made a condition of a discretionary zoning or land use approval, shall be recorded and executed by the Owner; and may be recorded by the Town in the real property records of Gunnison County, Colorado; and

WHEREAS, Section 15.2.17 of the Ordinance further provides that a violation of any such conditions or restrictions shall constitute an offense under Section 15.2.29 of the Ordinance.

**NOW, THEREFORE**, in consideration of the above stated recitations and the mutual covenants and conditions set forth hereafter, the Town and Owner agree as follows:

117297 01/10/2002 01:00 480  
2 of 3 R 15.00 0.00 N 0.00 Gunnison County

**Grant of Discretionary Land Use and/or Zoning Approval:** The Town, through the appropriate action of the Board and/or Town Council, hereby grants to the Owner, with respect to the Property, a ( ) VARIANCE, (X) CONDITIONAL USE, ( ) CONDITIONAL WAIVER, ( ) SPECIAL DEVELOPMENT PERMIT, ( ) PID APPROVAL, ( ) CONDITIONAL REZONING APPROVAL, and/or (X) ARCHITECTURAL APPROVAL, as follows:

A. Grant a conditional use permit to allow an accessory dwelling, as defined by the Crested Butte Municipal Code, in the R1 zone.

2. **Conditions of Approval:** In consideration of the above referred discretionary approval, the Owner hereby agrees to the following conditions and/or covenants on the use and/or occupancy of the Property by himself, his heirs, successors, and assigns, which conditions and/or restrictions shall be restrictive covenants granted by the Owner to run with the land, in perpetuity, to the benefit of the Town:

A. The improvements will be constructed as per the approved plan on file at town offices.  
B. A long term rental residential unit, as defined by the Crested Butte Municipal Code, must be maintained on the property.  
C. All approved parking will be maintained and accessible on a year-round basis.  
D. Snow must be stored on site or removed from the site. Snow may not be placed on the Town rights of way.

3. **Remedies:** In addition to other remedies provided by Section 15-2-29 of the Ordinance and by law for the enforcement of this Agreement, the Town shall be entitled to the remedies of specific performance and injunctive relief. All such remedies shall not be exclusive, but cumulative. Further, the Town shall be entitled to an award of reasonable attorney's fees if the substantially successful prosecution or defense of any action to enforce, interpret or enforce this Agreement.

4. **Nonwaiver:** No breach by the Owner, or his heirs, successors, and assigns, of any term or covenant of this Agreement, shall create a waiver by, or estoppel against the Town, as to future or continuing breaches, unless it is expressly understood by the parties that breach of this Agreement may be waived by written consent of the Town.

5. **Successors/Assigns:** Any provisions of this Agreement which it is intended or otherwise prohibited by law, will be treated as if it were never a part of this Agreement, and the validity of the remainder of this Agreement shall be unaffected.

**IN WITNESS WHEREOF, THE PARTIES EXECUTE THIS AGREEMENT AND GRANT OF RESTRICTIVE COVENANTS ON THIS DATE SET FORTH ABOVE.**

117297 01/10/2002 01:00 480  
3 of 3 R 15.00 0.00 N 0.00 Gunnison County

**TOWN OF CRESTED BUTTE**, a Colorado home rule municipal corporation.

**OWNER AND GRANTEE,**

By: Peter Philtzer  
Mayor

By: Hilary K. Philtzer  
Hilary K. Philtzer

(SEAL)

STATE OF Colorado,  
COUNTY OF Gunnison

The foregoing Agreement and Grant of Restrictive Covenants, styled as a Notice of Agreement for Land Use Conditions and Restrictive Covenants, was acknowledged before me this 10<sup>th</sup> day of December, 2001, by Peter Philtzer and Hilary K. Philtzer, Owner and Grantee.

(SEAL)

**STATE OF COLORADO** )  
  ) SS  
**COUNTY OF GUNNISON** )

The foregoing Agreement and Grant of Restrictive Covenants, was acknowledged before me this 10<sup>th</sup> day of December, 2001, by Peter Philtzer, Mayor, and Hilary K. Philtzer, Grantee, for the Town of Crested Butte, Colorado.

(SEAL) Denise S. Proffitt  
Notary Public  
Address: Box 39  
Crested Butte, CO 81224  
My Commission Expires: Aug 3, 2003

By: Denise S. Proffitt  
Notary Public  
Address: Box 39  
Crested Butte, CO 81224  
My Commission Expires: Aug 3, 2003

Print in the Right Margin, Annex B-Book, Town of Crested Butte, P.O. Box 38, Crested Butte, CO 81224

the benefit of the Town.

A. The improvements will be constructed as per the approved plan on file at town offices.

B. A long term rental residential unit, as defined by the Crested Butte Municipal Code, must be maintained on the property.

C. All approved parking will be maintained and accessible on a year-round basis.

D. Snow must be stored on site or removed from the site. Snow may not be placed on the Town rights of way.

# When a property transfers and there is a LTR, deed restricted unit

- Building Department staff writes a comment on the assessment to the affect of: “This property has been approved for an accessory dwelling unit. A long-term rental unit must be maintained on the property.”
- A copy of the recorded Restrictive Covenant Agreement is also included for the new owner’s information.

# Benefits to the homeowner for building an ADU

- Tap fees (EQR's) cost \$17,500 for one EQR and there is 1 EQR associated with 1875 square feet. ADU's require 1 EQR, but are only charged at 1/3 the rate for a fee of \$5,833. Town pays the additional 2/3 of this fee.
- Increased density on the lot, otherwise not permitted.
- Assistance with mortgage payment via rent collected.
- Increased height from 20 feet for accessory buildings to 24 feet for accessory dwellings, given that the main house is 24 feet in height.

# Survey – How it works

- For the every other year survey, a letter is sent to the owner of the property explaining:
  - The deed restriction itself, with the legal document attached
  - Our expectation per the zoning code
  - What benefit that they receive from this allowance
- Included with this letter is a survey asking questions about:
  - Amount of rent
  - Name/address of person that lives there
  - Number of persons living in the unit
  - Number of dogs living in the unit
  - How the unit is rented:
    - Long term
    - Owner occupied
    - Used for family and guests
    - Vacant

# 2014 Cover Letter Example

## Town of Crested Butte

P.O. Box 39  
Crested Butte, Colorado 81224  
-A National Historic District-

Phone: (970) 349-5338  
FAX: (970) 349-6626  
www.townofcrestedbutte.com

May 16, 2014

«Title» «Name»  
«Company Name»  
«Address Line 1», «Address Line 2»  
«City», «State» «ZIP Code»

Re: «Property»

Dear Crested Butte Property Owner:

The availability of rental and owner occupied housing for local workers and families has been a priority of the Town of Crested Butte for a number of years. To help satisfy this need the Town has granted property owners, who have applied, the right to increase density and create residential units on properties where they are not normally allowed as a matter of right. The Town also granted a reduced monetary sewer and water tap-in fee to encourage the creation of these units. In return, the Town requires that these units be utilized for long-term rentals (six month or longer leases) or owner occupied, depending on the restrictions. It is the Town's expectation that all such units will be rented or occupied in conformance with the deed restrictions in place. Our records show that you own such a unit.

Long-term as defined by the Crested Butte Municipal Code means the rental of any residential property by a person who resides in Gunnison County as the primary residence for a term not less than six (6) months. Also, the unit may not be rented to any person with greater than 10% ownership interest in any entity with ownership of the property unless the Restrictive Covenant Agreement on file allows for owner occupation.

The Town Council has instructed the staff to make sure that all deed restrictions are adhered to strictly. The municipal code allows the Town to periodically monitor the use of these units to determine compliance with the restrictions. This may include on-site visits, if warranted. The law also requires that property owners fill out the enclosed affidavit and return it to the Town within 30 days. Please take the time to do so. We'd appreciate it if you could return the form to the Crested Butte Housing Administrator by June 30, 2014 at the following address.

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

Please call Jessie Earley with the Building Department at (970) 349-5338, if you have any questions. Thanks for your cooperation.

Sincerely,



Bob Gillie  
Building and Zoning Director



# Status of units (as of the 2014 survey)

- Total number of restricted units: 204
  - 86 accessory dwelling units
  - 61 commercial dwelling units
    - 6 owner occupied units
    - 55 LTR units
  - 7 town owned units (i.e. town ranch 3-plex, town manager house and accessory dwelling, 812 Teo duplex)
  - 50 affordable housing units
    - 10 units Red Lady Estates
    - 10 units Poverty Gulch
    - 5 units Kapushion
    - 5 Verzuh units
    - 20 units Paradise Park
- 20 of these 147 units (84 + 63 ) were noncompliant and this assumes that regarding the other units owners answered honestly.

# Status of units - 2015

- Since the 2014 survey, other units have been completed to make a total of 208 units.
- 156 of these units are the deed restricted long term rentals (commercial units and ADU's, which includes town-owned units).
  - These are the only units surveyed. The other units noted on the previous slide are controlled at the time of sale or by ownership of the Town.
- The Town hired a woman (Caroline) to survey these 156 units.
- Caroline has surveyed these properties over the past 4 weeks at varying times throughout the day to try to speak with those living at the residence.

# Status of units - 2015

- Total number of restricted units: 208
  - 88 accessory dwelling units
  - 61 commercial dwelling units
    - 11 owner occupied units
    - 50 LTR units
  - 7 town owned units (i.e. town ranch 3-plex, town manager house and accessory dwelling, 812 Teo duplex)
  - 51 affordable housing
    - 10 units Red Lady Estates
    - 10 units Poverty Gulch
    - 5 units Kapushion
    - 5 Verzuh units
    - 20 units Paradise Park
- 21 units of these 149 units (88 +61) were noncompliant or questionably compliant.

# Compliance

- The 20 units from the 2014 survey and 21 units from the 2015 door-to-door survey were not compliant with the definition of long-term rental and therefore are not compliant with the zoning code.
- Examples of non-compliance are:
  - Use for family and guests (2014 = 6/20) (2015 = 6/21)
  - Saying that the unit is rented, but the person renting the unit does not have a local address (2014 = 5/20)
  - Saying that the unit is vacant and hasn't been able to be rented (2014 = 1/20) (2015 = 0)
  - Intentionally left vacant (2014 = 7/20) (2015 = 9/21)
  - VRBO (2014 = 0) (2015 = 1/21)
  - Month-to-month (2014 = 3/20) (2015 = 3/21)
- The definition for rental, long-term requires that the:
  - Person resides in Gunnison County not less than 6 months
  - Person cannot have more than 10% ownership in the property
  - Person cannot be an association, firm partnership, corporation or other entity

**MINUTES**  
**Town of Crested Butte**  
**Regular Town Council Meeting**  
**Monday, July 20, 2015**  
**Council Chambers, Crested Butte Town Hall**

Mayor Huckstep called the meeting to order at 6:59PM.

Council Members Present: Jim Schmidt, Glenn Michel, Roland Mason, and Skip Berkshire

Staff Present: Acting Town Manger/Town Planner Michael Yerman, Town Attorney John Belkin, and Town Clerk Lynelle Stanford

Building and Zoning Director Bob Gillie, Finance Director Lois Rozman, Public Works Director Rodney Due, and Parks and Recreation Director Janna Hansen (all for part of the meeting)

Town Manager, Todd Crossett, who was on vacation, attempted to connect to the meeting. Once the meeting began, during Public Comment, the Mayor indicated to the Town Clerk to cease attempts to call Crossett.

**APPROVAL OF THE AGENDA**

Michel moved and Mason seconded a motion to approve the agenda with the removal of #7, Update from the Coal Creek Watershed Coalition on the Upper Slate Watershed, from New Business. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

**CONSENT AGENDA**

- 1) Approval of July 6, 2015 Regular Town Council Meeting Minutes.**
- 2) Approval of the Authorization for the Mayor to Sign a Letter to the Colorado State Senators and Representatives Opposing the Transfer of Federal Lands to State Control.**

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

**PUBLIC COMMENT**

Anne Moore - 622 Teocalli A3

- Mentioned issues in which she felt Town was not paying enough attention.

- There was no signage until 1<sup>st</sup> Street for Kebler Pass, and secondly there was no signage directing people to the Visitors' Center. She felt everyone liked well-marked towns.
- Stated that attention was needed in the area around the Rec Path. Before the affordable housing construction began, it was a designated leash-free dog zone. She further explained that dogs were displaced on that end of town.
- She collected over 200 signatures from people who thought Town could benefit from a dog park.
- Also addressed the manner of construction in that area. She felt the construction fence had been pieced together. She suggested proper fencing be used.
- Specified that signage was needed to direct people to the Rec Path. People saw nothing but development.
- She wanted to stop issues from slipping through the cracks, and she said it would become upsetting if these issues were ignored. Huckstep said the discussion would continue under Other Business.

## **STAFF UPDATES**

### Bob Gillie

- They would be pouring concrete at Anthracite Place tomorrow.
- The ADU survey was coming along well. He expected there could be an update on August 4.
- 50 new permits were out.
- Schmidt questioned where they were on the Depot. Gillie said they would open bids this week. He anticipated they could be fully wrapped up next spring.

### Lois Rozman

- The Personnel Manual Review Committee started meeting.
- The budget would need to be finalized by November 2.

### Janna Hansen

- They hoped to be done with the shade structure at the tennis courts by Friday. Next, they would be piping for irrigation, putting in sod, and finalizing the landscape.
- They would be grading for a parking lot on the 6<sup>th</sup> Street side, which would create 15 additional parking spaces.
- There was bubbling on the surface of the new courts. She had engaged Renner and the U.S. Tennis Association, who had a tech specialist evaluating the situation.
- Becker repaired the dasher boards last week.
- They had the second DRC meeting this afternoon on the Big Mine Master Plan. The overall plan would be in front of BOZAR on July 28.
- There would be an irrigation audit going on this week.
- The tennis courts' grand opening would be on Saturday. There would be tournaments throughout the day.

- Schmidt wondered if there would be 15 parking spaces near the tennis courts with the spaces allotted for the vehicle charging station. Hansen said there would be 15 total parking spaces, so there would be 13 remaining considering the vehicle charging station.

#### Rodney Due

- Explained that since Sego resigned, the new company, Telluride Maid LLC, started tonight. There was a two-month contract in place with them. There would either need to be an individual on staff or a contract in place for the custodial work.
- Started working with DOLA and the USDA for funding of the wastewater treatment plant expansion. He expected the design in 2016 and construction in 2017.
- The construction started in Blocks 79 and 80.
- The request for bids for a five bay vehicle storage building would be in this week's paper.
- Crews would be working on the parking lot at the Baxter Gulch Trailhead this week.

#### Lynelle Stanford

- Mentioned upcoming special events including: Crested Butte Wine and Food Festival, the Arts Festival, and Big Mountain Enduro.
- Reminded the Council the next meeting was on a Tuesday.
- Provided an update on the plan for the voter rolls. Mentioned a process that had been discussed in conjunction with the County for mailing out voter confirmation cards. Also, the Town would do a public information campaign to encourage people to update their physical addresses. Stated the cost would be approximately \$5,800. Alternatively, the Town could potentially run a local election. Huckstep stated the discussion would be added to Other Business.

#### Michael Yerman

- There would be a trail day to assist the Youth Corp at Baxter Gulch on July 30. He invited the Council to the BBQ in the afternoon.
- Had been working to get more signs out at the trails. Mentioned that the Treasury Hill neighborhood was included for more signs.
- The County wanted a commitment from municipalities on the needs assessment.
- The annexors requested a special meeting, so he would be working to get one scheduled.
- Schmidt wondered when the Baxter Gulch Trail would be opened. Yerman said it would take another three years to complete, and they would have about 4.5 miles of trail left to finish after this year.
- Mason wondered if the Forest Service would be done by 2017. Yerman said they were starting this year.

## **PUBLIC HEARING**

### **1) Ordinance No. 3, Series 2015 - An Ordinance of the Crested Butte Town Council Approving the Telecommunications Facilities Space Lease Agreement with Internet Colorado, L.L.C. for 508 Maroon Avenue and 801 Butte Avenue, Crested Butte.**

Huckstep confirmed that proper public notice had been given. He referred to a staff report from Rozman with the recommendation to approve, and he confirmed there were no changes. There were no public comments or further Council discussion.

Berkshire moved and Schmidt seconded a motion to approve Ordinance No. 3, Series 2015. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

### **2) Ordinance No. 4, Series 2015 - An Ordinance of the Crested Butte Town Council Extending the Vested Property Rights for the Planned Unit Development for Sixth Street Station, LLC for Lots 1-5 and 28-32, Block 1 and Lots 1-5 and 28-32, Block 12, Town of Crested Butte.**

Huckstep confirmed that proper public notice was given. He mentioned the staff report from Gillie and Molly Minneman with their recommendation to adopt. Gillie confirmed there were no changes from the time it was written. Gary Hartman was present as a proponent. There were neither public comments nor questions for Hartman. The public hearing was closed.

Michel moved and Mason seconded a motion to adopt Ordinance No. 4, Series 2015. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

## **NEW BUSINESS**

### **1) Possible Direction from the Town Council in Connection with the Town's Involvement in Requesting that the Colorado Department of Health and Environment, Water Quality Control Division Require Surety in Connection with U.S. Energy Corp.'s Discharge Permit for the Mt. Emmons Industrial Water Treatment Plant, Permit No. CO-0035394.**

The work session, which included a presentation from Belkin, was related to this agenda item. Belkin referred to a memo that would instruct him to work with Barbara Green, Special Council for the Town and David Baumgarten, County Attorney. There were two letters, one to the Colorado Department of Health and Environment – Water Quality Control Division and one to the U.S. Forest Service, to be co-signed by the County Commissioners and the Town Council. No one on the Council voiced any objections.

Michel asked about approaching other stakeholders. Belkin said they hadn't thought about it. Berkshire felt the letters would carry more weight if every municipality in the valley were included. Belkin said they wouldn't be included on the letters, but he would

talk to them about participating. He would report back to the Council after discussing with Mt. Crested Butte.

Michel asked the question of what the government's response was when mines went bankrupt. Huckstep clarified that Town had no obligation, but some entity needed to pick up the obligation. Berkshire recognized with the antiquity of the facility, they had the obligation to keep it in a reasonable state of functionality because it would fail sooner or later. No one on the Council objected to including the above-mentioned points in the letters, and Belkin agreed to include them.

## **2) Discussion and Possible Decision on the Location of the Skate Park.**

Huckstep referenced a staff report from Hansen with the recommendation to relocate the Skate Park to the 8<sup>th</sup> Street Greenway. Huckstep reviewed the alternative locations listed in the staff report, which were Big Mine and Town Park. Huckstep confirmed with Hansen that the consensus from citizens was they didn't want to keep the Skate Park at Big Mine. There was a discussion concerning micro lots in relation to locating the Skate Park near Rainbow Park in the 8<sup>th</sup> Street Greenway. No one on the Council was in favor of giving up an affordable housing lot. Mason confirmed that even with micro lots the result would be net zero. Hansen wanted to look at the 8<sup>th</sup> Street Greenway as a whole. She explained that they consulted with Team Pain and identified constraints at Town Park. Huckstep said that the staff recommendation would meet public scrutiny. Mason was not in favor of the Skate Park at Big Mine. He would listen to public comment on the 8<sup>th</sup> Street Greenway, but he didn't want it to affect the neighborhood. He said public comment would be necessary on the change of use. Berkshire was in favor of moving the Skate Park to Town Park because it was already a park with other recreational features. He thought it would be less impactful to displace the volleyball courts and horseshoe pits to another location. He was not in favor of the 8<sup>th</sup> Street Greenway; the public would need a chance to weigh in. Michel asked why the Skate Park needed to move from Big Mine. Berkshire stated that the people directly impacted were in favor of moving it. Additionally, he heard compelling statements about the value of the sledding hill. He saw the opportunity to construct a win-win and make both quality venues, which were why he was in favor of moving the Skate Park. Michel felt it was important to recognize that both the Nordic Center and hockey could achieve their goals with the Skate Park remaining. Berkshire countered that the Nordic Center didn't have bearing; two quality venues were better than substandard cohabitation. Michel stated the Skate Park should remain in its current location. Schmidt preferred that it stayed at Big Mine if there was another place for the sledding hill. He had a real problem of losing the affordable housing lot (near Rainbow Park) even if they gained density through micro lots. He was fine to string it out along the 8<sup>th</sup> Street Corridor, and he could see moving volleyball and horseshoes from Town Park to Rainbow Park. Huckstep acknowledged that Staff had respected the public process, which determined the Skate Park should move from Big Mine. He confirmed with Hansen the strong recommendation to move the Skate Park from Big Mine. 8<sup>th</sup> Street was residential on both sides. Huckstep cited constraints with the sewer line in Town Park. He also said they had not discussed the size or the cost of the Skate Park. He thought the sewer line could keep the Skate Park within a reasonable

budget. They were going to the voters with the sales tax issue to fund these types of improvements. He was comfortable seeing the Skate Park at Town Park. Mason was comfortable with what Staff was recommending, and he was comfortable with moving the Skate Park to either location.

Michel moved and Schmidt seconded a motion to move the Skate Park to Town Park contingent upon moving volleyball and horseshoes to an alternative location and with no loss of affordable housing. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

### **3) Discussion and Possible Direction on the Creation of Micro Lots in Block 79.**

Michel explained that the Council directed Staff to create micro lots, and Staff had done an excellent job. Mason said they had not looked into the cost of extra engineering, which was about \$5K. Yerman said the cost was the reason the topic was on the agenda. Mason thought it was a really good solution, and he would authorize the expenditure of \$5K. Michel agreed with Mason. Schmidt wasn't sure when the decision was made to consider micro lots. The Council briefly discussed Schmidt's question. Schmidt didn't understand or believe in the concept of micro lots or mini homes. He stated duplexes were more efficient for heating and construction. The most successful project was Poverty Gulch, and he wanted to see them duplicate that type of homebuilding. Mini homes were too small, and duplexes worked perfectly well. Berkshire supported micro lots because they could provide a mix not currently available. They would allow more people the opportunities to build their own homes. They were not throwing away the duplexes; they were providing a broader menu. Huckstep was in favor. Michel said there were the votes to direct Staff to move forward. He suggested they might want to apply the zoning to the new annexation.

Huckstep read the direction from Yerman's staff report for Staff to pursue the creation of six micro lots in Block 79 and to begin the code amendment process to the R-2a zone district and platting process.

Berkshire moved and Michel seconded a motion to direct Staff as set forth in Yerman's staff report. A roll call vote was taken with all voting, "Yes," except for Schmidt, who voted, "No." **Motion passed.**

### **4) Resolution No. 16, Series 2015 - Resolutions of the Crested Butte Town Council Communicating with the Gunnison County Clerk and Recorder of the Town Council's Intention to Submit a Referred Ballot Measure to the Registered Electors for the Increase of Sales and Uses Taxes in the Amount of One-half of a Percent on Each \$10.00 Purchase Which Will not be Collected on the Sales of Energy, Food for Home Consumption and Prescription Drugs.**

Huckstep stated there was a staff report with the recommendation to approve. Michel questioned the last sentence in the resolution differing from the title on the agenda.

Belkin explained the agenda was published before the instruments were prepared, and it was not out of the ordinary.

Schmidt wondered if Resolution No. 16 could be pulled depending on the outcome with Resolution No. 17. Yerman said Resolution No. 16 was to notify the County that Town would have a measure on the ballot. Belkin said the resolution was unnecessary, but the Town Council directed Staff to draft a resolution at the last meeting. Staff would be coming back with an ordinance to approve the ballot language. Huckstep asked if the resolution would have a negative impact on Town if Council decided not to participate in the coordinated election. Belkin said it would not. Schmidt mentioned a fact sheet that said the average family spent \$22K in Town. He thought this number was high, and the tax increase was well worth it. Michel said that the statistic could be re-evaluated, because Town could be on the lower end of the bell curve.

Michel moved and Schmidt seconded a motion to approve Resolution No. 16, Series 2015. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

**5) Resolution No. 17, Series 2015 – Resolutions 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 3, 2015 and Authorizing the Town Clerk to Enter into an Intergovernmental Agreement with the Gunnison County Clerk and Recorder Concerning the Administration of Such Election.**

Huckstep confirmed with Belkin that Council could approve Resolution No. 17, Series 2015 contingent upon a decision that might come out of Other Business. There was further discussion of when the voter roll item, previously mentioned by Stanford under Staff Updates, should be considered. It was decided to open the discussion of the issue and how it related to Resolution No. 17, Series 2015.

Huckstep confirmed with Stanford that Town could do one of two things: engage in the postcard mailing process with the County or separate from the County and run a local election. Stanford explained that Town decided to do coordinated elections with the County a number of years ago. Essentially, they run the election. Alternatively, the election could be run locally. In that case, the Clerk's Office would run the election. There would be a polling place in Town, and people would come in to physically vote. Stanford estimated a local election would cost no less than \$40K because a consultant would need to be brought in to run the election. She cited other issues such as the Town would need to provide an ADA compliant polling place and confusion with people receiving two ballots and having two polling locations. The postcard mailing proposal would be more tenable from a budget perspective. The cost estimate was \$5,800. Stanford felt that pairing the mailing with a public information campaign would also help to gain more traction. It could be a longer process, but after "x" amount of time it could land in the same place. Huckstep confirmed that if Stanford had written a staff report she would recommend moving forward with the postcard concept and staying in the coordinated election.

Yerman expounded and said that the County was following the State statutes. Election law favored the voters, and the mail in system was implemented to make voting easier. He stated the publication in combination with the postcard mailing could get good results. Additionally, Crested Butte was not unique in the use of mailing and physical addresses. Berkshire questioned why Town should have to pay for the process. Belkin explained that in contracting with the County, they were the vendor. They also served another role by being involved in the voter rolls. Huckstep asked about sharing the cost, but Berkshire felt it was the County's responsibility. He recalled former County Clerk, Stella Dominguez, telling the Council at the time, that it was a new world, and they would save the Town money. Berkshire thought the assumption of responsibility would have embedded the obligation to ensure that the right people vote. Michel told Berkshire that State law mandated all mail in ballots. He said it would be problematic for the County to go above State law. Berkshire countered that the mail in ballots came about in the last few years.

Huckstep asked if anyone on Council thought it was a bad idea to coordinate in the election and use postcards. Berkshire was okay with Staff handling it. Schmidt said it was the responsibility of the County to conduct the election. He thought Town would be taking on something beyond what the County did if Town spent \$5,800. Michel said that voter enfranchisement was really important. He wanted to be sure to maintain accurate voter rolls in Crested Butte. Huckstep identified a risk was that they shined a light on an issue that may or may not be legitimate. However, if they took no action and the sales tax passed, someone could come in and question the outcome of the election. Michel stated that people were voting illegally and Town residents were being penalized. Votes were diluted from people outside the jurisdiction voting in Town elections. Berkshire said there was no argument there was an issue. People were committing crimes, and it was the Marshal's responsibility to take care of it. They should have to make a complaint, and the Marshals would look into it. It was the County's job. Paying the County for the postcard mailing was like paying the Marshals extra to do their jobs. Huckstep suggested the issue could have been overblown. He said there were two decisions. Mason said Town could stay in the coordinated election, but opts out of sending out postcards. Michel saw that Town was signing up to buy a service that they agreed was inferior. He didn't think that Town's election results were a true representation of the people of Crested Butte. Michel said that making the decision of who voted in the next election would affect the outcome of the election. Mason asked Michel if he was not in favor of sending out postcards and if he wanted a local election. Michel didn't have enough information to understand, but there were more registered voters than people in the Town of Crested Butte. Berkshire asked if Town should file a formal complaint with the County. Michel wondered if he was the only one alarmed; they knew there were too many voters who were voting illegally. They needed to deal with it. Schmidt said they knew there were more people on the rolls because people move in and out of Town. The State wanted to err on the side of keeping people on the rolls. He thought it seemed like the assumption was made that it was much worse in Crested Butte. Schmidt pointed out it was up to the voter to take responsibility to not cheat while voting. He preferred elections that people came in to vote, but statistics have shown there was higher turn out with mail in ballots. Huckstep told the Council they

needed to move towards a resolution. He thought he was hearing Town should not participate in the coordinated election. Rozman stated that election laws dictate a strict calendar, and in three weeks the County would be moving 100% forward with the election. They needed to know how much preparation would be required. Berkshire's only objection to the postcards was the cost. He wanted to move to approve Resolution No. 17. Huckstep wanted to make it clear to Staff. He said they could affirm they were participating in the coordinated election and could also follow through with the process Staff proposed. Michel said the voter roll question was brought up six months ago, and it was getting too late. They needed to act tonight. Yerman asked for direction on the postcard mailing and adding on advertising, which would incur a cost beyond the \$5,800.

Berkshire moved and Mason seconded a motion to approve Resolution No. 17, Series 2015 to affirm entering into the coordinated election and to direct Staff to pursue the postcard mailing validation and to request an IGA from the County. A roll call vote was taken with all voting, "Yes," except Schmidt voted, "No." **Motion passed.**

**6) Presentation from the Crested Butte Land Trust on Peanut Lake Riparian Restoration Project and Request for Written Consent to Proceed for Wetland and Water Quality Enhancement Project.**

Ann Johnston and Danielle Beamer were present from the Land Trust. Beamer said they had been working on a restoration plan since 2012, and they found Peanut Lake was the most affected and impaired in terms of ecology. Last year they focused on assessment, and they felt like they could move forward. They were looking at a quarter mile of restored river and a quarter mile of restored wetland. They applied for an Army Corp permit, and the plan was strong and clear. They needed written permission from Town. Berkshire asked if Peanut Lake's level was down. Beamer said it was leaking, which made the project timely. They felt a breach was likely in ten years.

Huckstep mentioned Yerman's staff report in which Council would direct Staff to prepare a letter to allow the Land Trust to proceed with the Peanut Lake Riparian Restoration Project on Conservation Easement Reception #468684. He also mentioned the report that was included in the packets from the Crested Butte Land Trust on the Wetland and Water Quality Enhancement Project.

Michel moved and Schmidt seconded a motion to direct Staff as set forth in the staff report. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

**7) Update from the Coal Creek Watershed Coalition on the Upper Slate Watershed.**

Removed from the agenda.

**8) Ordinance No. 5, Series 2015 - An Ordinance of the Crested Butte Town Council Granting a Ground Lease to Gunnison County Electric Association, Inc. for the**

**Installation of an Electric Vehicle Charging Station on a 20' x 20' Portion in the Southwest Quadrant of Town Plaza as Identified in the Ground Lease.**

Huckstep referred to a staff report from Gillie with the recommendation to set the ordinance for public hearing. Gillie mentioned a correction that the ordinance should read the “Southeast Quadrant,” rather than the “Southwest Quadrant.”

Berkshire moved and Schmidt seconded a motion to set Ordinance No. 5, Series 2015 for public hearing. **Motion passed.**

**9) Authorization for the Mayor to Sign a Letter of Support for Gunnison County Electric’s Vehicle Electric Charging Station.**

Schmidt moved and Michel seconded a motion to authorize the Mayor to sign the letter of support for the GCEA electric vehicle charging station. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

**LEGAL MATTERS**

None

**COUNCIL REPORTS AND COMMITTEE UPDATES**

Jim Schmidt

- The Cemetery Committee met. He was not able to attend, and he would provide an update at the next Council meeting.

Glenn Michel

- Attended a meeting for the One Valley Prosperity Project (OVPP).

Skip Berkshire

- The West Elk Scenic Byway meeting was last Friday in the Town Council Chambers. Five people attended. The Town of Marble did not want to be on the Byway.

Roland Mason

- The Mountain Express meeting was last Thursday. Ridership was up 13% from last June.
- Ridership on the Gothic bus was up 19% compared to last year.
- They discussed a run to CB South in coordination with the RTA.
- He was the new Chair of the Mountain Express Board.

Aaron Huckstep

- There would be open houses for the airport on Wednesday and Thursday.

- They had a good RTA meeting a couple of Fridays ago. Winter ended up pretty good, and summer flights were also doing well. They had increased inbound seats by 50%.
- QQ meeting was last Thursday.
- Notices he gave Council: 1) The Deadman's Bridge was now installed and in use. 2) A trail, on the Allens' land, that went beyond Long Lake to the west was closed.
- Attended the OVPP meeting last Wednesday. In general, they were coming out with how prosperity was defined.

Mason mentioned there were close to 75 private airplanes at the Gunnison airport over the (July) 4<sup>th</sup>. It was also mentioned that there was an astronomical number of people up the Slate River Valley. Michel said they had to make sure they forwarded complaints. Berkshire was also seeing more ATVs.

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

Schmidt said the plan was on old plan for Blocks 79 and 80. He said in looking at projects that had been successful in Town as far as getting homes built, projects similar to Poverty Gulch were a good way to do it. Poverty Gulch buildings had different advantages such as they fit into Town's landscape and they went up fast. He wanted to see them ask for bids for buildings like Poverty Gulch. There were a lot of single-family lots, and he would like to see a higher density there. He wanted to see Town be aggressive about getting buildings out of the ground. Yerman offered to meet with Schmidt to further discuss.

Huckstep referred to an email from Rosalind Cook and the picture she sent of her sculpture. She offered to give the sculpture to the Town. He would like to direct Staff to follow up and make it work. Berkshire had a problem with the process. Staff should have given a recommendation. He thought it was a great thing and was supportive, but the process was not right. Huckstep said he forwarded the email to Stanford to provide to the Council. Yerman said it was right up the alley of the Creative District. He recognized that a lot of places had a gifting policy, and there would be ongoing maintenance to the sculpture. Yerman said that Staff would look into it. Huckstep asked Staff to give Cook an answer in a reasonable time. Yerman said he would get back to Council. Schmidt wondered if the sculpture was on Town's land or Lacy's land. He thought there could be a problem with a Town sculpture on private land. Huckstep thought it was on Lacy's land, but Lacy could allow it to remain.

Huckstep mentioned an email from Dave Ochs, the Executive Director of the Chamber, on a status update regarding the bathrooms at the Chamber. Huckstep asked if the Council wanted to see a formal report from Ochs concerning the situation with the bathrooms. Berkshire thought negatively about the bathrooms. Yerman said that if Ochs presented, it would be a 2016 budget recommendation. He mentioned the new building maintenance staff member had accomplished a lot of projects. Huckstep asked if the Council wanted to do anything for 2015. He said the Chamber's lease obligated them to

take care of the bathrooms. Yerman strongly recommended that Ochs presented to Council. Mason agreed it would be nice to get a report from the Chamber to talk about various issues. Yerman said he would talk to Ochs.

Huckstep said that Ethan Mueller wanted to talk to Council about their work on Teocalli 2 and the expansion. He asked if Council thought it would be valuable. The objective would be to get the Council's support for the expansion proposal. Yerman said it would be about a month before it could be scheduled, and the Council was amenable.

Next, the Council discussed Anne Moore's request during Public Comment regarding a dog park and signage as people travel into Town. Berkshire didn't want to talk about dog parks. He wanted to look into dog owner responsibility. He would rather they spent time and money to make it better and easier for people to be responsible dog owners. He suggested providing bag dispensers with pots strategically located around Town. Huckstep asked if anyone wanted to hear about the dog park. Schmidt mentioned the area around Town Ranch. Yerman said they could put it on the parks initiative wish list. He apologized for the ugliness of the construction fencing in Blocks 79 and 80. The project wrapped up in October. They would need to increase the budget to change the fencing. He said he would put a sign for the Rec Path. He said a major project of the Creative District was the implementation of way-finding signage.

Mason referred to an email from Adge Marziano, and he asked for an update on the lease for the Pump House.

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

- Tuesday, August 4, 2015 – 7:00PM Work Session – 8:00PM Regular Council
- Monday, August 17, 2015 – 7:00PM Work Session – 8:00PM Regular Council
- Tuesday, September 8, 2015 – 6:00PM Work Session – 7:00PM Regular Meeting

### **ADJOURNMENT**

Mayor Huckstep adjourned the meeting at 9:23PM.

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Aaron Huckstep, Mayor

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Lynelle Stanford, Town Clerk (SEAL)



## Staff Report

August 4, 2015

**To: Mayor and Town Council**  
**Thru: Todd Crossett, Town Manager**  
**From: Molly Minneman**  
**Subject: Approve the Award of Construction Contract between the Town of Crested Butte and MB Builders, LLC for Phase III foundation work at the Historic Denver and Rio Grande Railroad Depot located at 716 Elk Avenue**

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### SUMMARY

The Town of Crested Butte received a grant from History Colorado's State Historical Fund (SHF) to partially fund Phase III foundation work on the Denver and Rio Grande Railroad Depot located at 716 Elk Avenue. A request for bids to perform the work was published in the Crested Butte News and the Town's web site. One bid was received by the Building Department from MB Builders, LLC. Award of the attached contract to pending Council approval.

### DISCUSSION

The bid amount is \$240,052. The SHF grant will fund \$162,387, sixty-eight percent of the project; Town will need to fund thirty-two percent amounting to \$77,665 as cash match.

Phase III is the final phase of the Depot's rehabilitation. It will install new foundation in a portion of the building, and address other problems with the foundation system, repoint the stone foundation walls, reconstruct all entry landings, and construct an ADA ramp into the Freight Room. Work is scheduled to commence in late August and be completed by July 4, 2016.

### RECOMMENDATION:

Make a motion to approve Resolution No. 18 Series 2015 for contract between the Town of Crested Butte and MB Builders, LLC in the amount of \$240,052 for Phase III foundation work on the Historic Denver and Rio Grande Railroad Depot, as part of the consent agenda.

**RESOLUTION NO. 18**

**SERIES 2015**

**RESOLUTIONS OF THE CRESTED BUTTE TOWN COUNCIL APPROVING THE AWARD OF THE CONSTRUCTION CONTRACT BETWEEN THE TOWN OF CRESTED BUTTE AND MB BUILDERS, LLC IN AN AMOUNT NOT TO EXCEED \$240,052.00 FOR PHASE III OF THE HISTORIC DENVER AND RIO GRANDE RAILROAD DEPOT RESTORATION PROJECT LOCATED AT 716 ELK AVENUE, CRESTED BUTTE**

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

WHEREAS, the Town staff recommends, after conducting a competitive bid process, to award the construction contract for Phase III of the Historic Denver and Rio Grande Railroad Depot (the “**Project**”) to MB Builders, LLC (the “**Contractor**”);

WHEREAS, following the Town staff recommendation, the Town Council desires to award the construction contract for the Project to Contractor pursuant to the terms and conditions for the performance of the Project set forth in the contract attached to these Resolutions; and

WHEREAS, the Town Council finds that it is in the best interests of the health, safety and general welfare of the citizens and visitors of the Crested Butte to award the construction contract for the Project to Contractor, and in connection therewith, adopt and execute the contract referenced herein.

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

1. **Findings.** The Town Council hereby finds that entering into a contract for the construction of the Project with Contractor is in the best interest of the Town.
2. **Approval; Authorization of Town Manager.** Based on the foregoing, the Town Council hereby approves the construction contract with Contractor in substantially the same form as attached hereto as **Exhibit “A.”** Any changes thereto shall be made only following approval by the Town Attorney. The Town Manager is hereby authorized to execute said Contract.
3. **Funding.** The Town Council has allocated \$77,665 in its 2015 General Capital Fund for the Project, with the remaining funds being allocated as part of a grant by the State of Colorado for the Department of Higher Learning, History Colorado, the Colorado Historical Society, the contract for which was approved by the Town Council by way Resolution 6, Series 2015.

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL THIS \_\_\_\_  
DAY OF \_\_\_\_\_, 2015.

TOWN OF CRESTED BUTTE, COLORADO

By: \_\_\_\_\_  
Aaron J. Huckstep, Mayor

ATTEST

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

(SEAL)

**EXHIBIT "A"**

**Construction Contract Documents**

[attach here]

**CONSTRUCTION CONTRACT (TOWN PROJECT MANAGER)  
FOR THE FOLLOWING PROJECT:**

Crested Butte Depot Foundation Rehabilitation  
State Historical Fund Grant No. 2015-02-030  
Project Manager: Molly Minneman

This Construction Contract, effective this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between **MB Builders, LLC** (hereinafter, "Contractor"), organized pursuant to the laws of the State of Colorado and located at P. Ob Box 2317, Crested Butte, CO 81224 and the **TOWN OF CRESTED BUTTE** (hereinafter, "Town" or "Owner"), a home-rule municipality organized pursuant to the laws of the State of Colorado, located at 507 Maroon Avenue, P.O. Box 39, Crested Butte, Colorado 81224, provides that the Contractor and Town, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**PART 1 – WORK; TIME**

1.01 The Contractor agrees to furnish all of the technical, administrative, professional, and other labor, all supplies and materials, equipment, printing, vehicles, local travel, office space and facilities, testing and analyses, calculations, and any other facilities or resources necessary to perform in a workmanlike manner all Work required by the Contract Documents.

1.02 The Contractor agrees to undertake the performance of the Work within ten (10) days after receipt of the Notice to Proceed and agrees that the Work will be completed within 12 calendar months of the date of the Notice to Proceed unless the contract time is extended by the Town as provided in the Contract Documents.

1.03 The Parties agree that, in any section in which the Contractor prepares any document for "the approval of the Town," such approval does not mean that Town is responsible for the accuracy, thoroughness, or judgment contained in the document. Town does not waive the right to hold the Contractor responsible for the accuracy, thoroughness, or judgment expressed in the document, as it is expressly agreed by the Parties that the Town is relying on the expertise of the Contractor.

**PART 2 - CONTRACT PRICE AND PAYMENT**

2.01 The Town shall pay the Contractor for performance of the Work in accordance with the Contract Documents the amount(s) shown on Contractor's Bid Proposal as amended, not to exceed Two Hundred Forty Thousand and Fifty-Two Dollars (\$242,052).

2.02 The Town shall make payments as set forth in Article 9 of the General Conditions, subject to the Town's obligation to retain a portion of the payments until final completion and acceptance by the Town of all Work included in the Contract Documents.

2.03 Prior to final payment, all Work specified by the Contract Documents must be completed. Payment shall be made only after the procedure specified by the General Conditions is completed.

2.04 The Town represents that either an appropriation for the price specified in this Construction Contract has been made by the Town Council or that sufficient funds have otherwise been made available for the payment of this Construction Contract.

### PART 3 - CONTRACTOR'S REPRESENTATIONS

3.01 In order to induce the Town to enter into this Construction Contract, the Contractor makes the following representations:

(a) The Contractor has familiarized himself with the nature and the extent of the Contract Documents, Scope of Work (Exhibit A), the location and site of the Work and all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.

(b) The Contractor is aware that all work must meet the Secretary of the Interior's Standards for the Treatment of Historic Properties.

(c) Contractor has carefully studied all physical conditions at the site and existing facilities affecting cost, progress or performance of the Work.

(d) Contractor has given the Town written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by the Town is acceptable to the Contractor.

3.02 Contractor agrees to remedy all defects appearing in the Work or developing in the materials furnished and the workmanship performed under this Construction Contract for a period of one (1) year or such other time that is specified in the Contract Documents after the date of acceptance of the Work by the Town, and further agrees to indemnify and save the Town harmless from any costs encountered in remedying such defects. Contractor shall provide a performance bond that shall remain in effect until all defects are corrected as required by this paragraph.

3.03 Contractor is an independent contractor and nothing herein contained shall constitute or designate the Contractor or any of its employees or agents as agents or employees of the Town.

### PART 4 - CONTRACT DOCUMENTS

4.01 The Contract Documents, which comprise the entire Construction Contract between the Town and the Contractor, are attached to this Construction Contract and made a part hereof, including:

Bid Packet, including but not limited to Bid Notice, Invitation to Bid, Instructions to Bidders, Bid Form, NonCollusion Affidavit of Prime Bidder, Bidder's Certification, Bid Bond, and any attachments and exhibits

Notice of Award

Notice to Proceed

Construction Contract

Construction Drawings

Performance Bond

Payment Bond

General Conditions, including table of contents

Special Conditions

Addendum

Project Specifications

Change Orders

Insurance Certificates

## Tax-Exempt Certificates

In the event of an inconsistency between any provisions of the Contract Documents, the more specific provisions shall govern the less specific provisions, and written addenda, change orders, or other modifications approved in writing by both parties shall govern the original documents.

4.02 There are no Contract Documents other than those listed above. The Contract Documents may only be altered, amended or repealed by a modification, in writing, executed by the Town and the Contractor.

## PART 5 - PROJECT MANAGER

5.01 The Project Manager, for the purposes of the Contract Documents, is the following, or such other person or firm as the Town may designate in writing:

Name: Molly Minneman  
Address: P. O. Box 39, Crested Butte, CO 81224  
Telephone: 970-349-5338

The Project Manager is authorized to represent and act as agent for the Town with respect to Town's rights and duties under the Contract Documents, provided, however, the Project Manager shall not have any authority to approve any Change Order or approve any amendment to the Construction Contract or Contract Documents, except for those minor Change Orders defined in paragraph 7.4.1 of the General Conditions, such authority being specifically reserved to the duly authorized official of the Town having such approval authority pursuant to the Town's Charter and ordinances. In the event of doubt as to such authority, the Contractor may request a written representation from the Town Manager resolving such doubt and designating the person with authority under the circumstances, which written representation shall be conclusive and binding upon the Town.

## PART 6 - ASSIGNMENT

6.01 No assignment by a party hereto of any rights under or interest in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents. This restriction on assignment includes, without limitation, assignment of the Contractor's right to payment to its surety or lender.

6.02 It is agreed that this Construction Contract shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, assigns and successors.

## PART 7 - GOVERNING LAW AND VENUE

7.01 This Construction Contract shall be governed by the laws of the State of Colorado and the Charter of the Town of Crested Butte and the Crested Butte Municipal Code.

7.02 This Construction Contract shall be deemed entered into in Gunnison County, State of Colorado.

The location for settlement of any and all claims, controversies and disputes arising out of or related to this Construction Contract or any breach thereof, whether by alternative dispute resolution or litigation, shall be proper only in Gunnison County.

#### PART 8 - LIQUIDATED DAMAGES

8.01 The Town and the Contractor recognize that time is of the essence in this Construction Contract and that the Town will suffer financial loss if the Work is not substantially completed within the time specified in paragraph 1.02 above, plus any extensions thereof allowed by the Town by written Change Order. They also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by the Town if the Work is not substantially complete on time. Accordingly, rather than requiring any such proof, the Town and the Contractor agree that as liquidated damages for delay (but not as a penalty) the Contractor shall pay the Town One hundred Dollars (\$100) for each day that expires after the time specified in paragraph 1.02 until the Work is complete. It is agreed that this is a reasonable estimate of the damages likely to be suffered by the Town for late completion of the Work. If the Contractor shall fail to pay such liquidated damages promptly upon demand therefor, the Surety on the Performance Bond shall pay such damages. Also, the Town may withhold all, or any part of, such liquidated damages from any payment due the Contractor.

#### PART 9 - MODIFICATIONS

This Construction Contract shall be modified only by written Change Orders or Addenda agreed upon by the parties hereto, duly issued in form approved by the Town Attorney and in conformance with the other Contract Documents.

#### PART 10 - AUTHORITY

The person or persons signing and executing this Construction Contract on behalf of each Party, do hereby warrant and guarantee that he/she or they have been fully authorized to execute this Construction Contract and to validly and legally bind such Party to all the terms, performances and provisions herein set forth.

#### PART 11 - CONTINGENCY

This Construction Contract is expressly contingent upon the approval of the Town of Crested Butte's Town Council of all of the terms set forth herein. In the event this Construction Contract is not approved in its entirety by the Town Council, neither Party shall be bound to the terms of this Construction Contract.

INSURANCE CERTIFICATES REQUIRED BY THE GENERAL CONDITIONS OF THIS CONTRACT SHALL BE SENT TO BUILDING DEPARTMENT, ATTENTION: Molly Minneman

SIGNATURE PAGE FOLLOWS.

IN WITNESS WHEREOF, the parties hereto have executed this Construction Contract in triplicate. Two counterparts have been delivered to the Town and one counterpart has been delivered to the Contractor. All portions of the Contract Documents have been signed or identified by the Town and the Contractor.

**CONTRACTOR : MB Builders, LLC**

**TOWN OF CRESTED BUTTE**

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

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

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

Printed Name: Aron Huckstep

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

Title: Mayor

Attest: \_\_\_\_\_

Secretary

Attest: \_\_\_\_\_

Town Clerk

(Corporate Seal,  
if applicable)

(Seal)

Address for giving notice:  
242 Blackstock Dr.  
P.O. Box 2317  
Crested Butte, Colorado 81224

Address for giving notice:  
507 Maroon Avenue  
P.O. Box 39  
Crested Butte, Colorado 81224

**EXHIBIT B TO REQUEST FOR BIDS**

Town Project No. Crested Butte Depot Foundation Rehabilitation

**GENERAL CONDITIONS TO THE CONSTRUCTION CONTRACT**

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## ARTICLE 1

### GENERAL PROVISIONS

**1.0 This Construction Contract is expressly contingent upon the approval of the Town of Crested Butte's Town Council of all of the terms set forth herein. In the event this Construction Contract is not approved in its entirety by Town Council neither Party shall be bound to the terms of this Construction Contract.**

#### 1.1 DEFINITIONS

1.1.1 "Application for Payment" means the Contractor's request for payment submitted to the Project Manager according to the process set forth in paragraphs 9.3.1- 9.3.4.

1.1.2 "Bidding Documents" means the Bid Packet including its Bid Notice, Invitation to Bid, Instructions to Bidders, Bid Form, Non-Collusion Affidavit of Prime Bidder, Bidder's Certification, Bid Bond, and any attachments and exhibits to the Bid Packet.

1.1.3 "Certificate for Payment" means the amount approved for payment by the Project Manager after the receipt of the Contractor's Application for Payment, as more fully defined in paragraph 9.4.1.

1.1.4 "Change Order" means a written order to the Contractor, signed by the Contractor and the Owner stating their agreement upon a change in the Work; the amount of the adjustment in the Contract Sum, if any; or the extent of the adjustment in the Contract Time, if any, as more fully defined in paragraph 7.2.

1.1.5 "Claim" means a demand or assertion by one of the parties seeking, as a matter of right, adjustment of contract terms, payment of money, extension of time, or other relief with respect to the terms of the Construction Contract, or other disputes between the Owner and Contractor arising out of or relating to the Construction Contract.

1.1.6 "Construction Change Directive" means a written order directed to the Contractor and signed by the Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both, as defined more fully in paragraphs 7.3.1-7.3.9.

1.1.7 "Construction Contract" or "Contract" means the entire and integrated agreement between the parties hereto, evidenced by the Contract Documents, which supersedes all prior negotiations, representations, or agreements, either written or oral, subject only to amendment or modification as permitted by Article 7.

1.1.8 "Contract Documents" means the Construction Contract, the Conditions of the Contract (General, Special, Supplementary and other Conditions), the Drawings, the Specifications, all Addenda issued prior to and all Modifications issued after execution of the Contract, and all other documents listed in the Contract, including the Bidding Documents, the Notice of Award, Notice to Proceed; Performance Bond; Payment Bond; Certificates of Insurance; and Tax-Exempt Certificates. Nothing contained in the Contract Documents creates any contractual relationship between the Owner any subcontractor, sub-subcontractor, or supplier of equipment or materials (except as provided in paragraph 5.4 hereof).

1.1.9 "Contract Sum" means the amount stated in paragraph 2.01 of the Construction Contract and, including authorized adjustments thereto, is the total amount payable by the Owner to the Contractor for

the performance of the Work under the Contract Documents.

1.1.10 "Contract Time" means the period of time allotted in the Contract Documents for Substantial Completion of the Work, including authorized adjustments thereto.

1.1.11 "Contractor" means the person or entity identified as such in the Construction Contract or an authorized representative thereof.

1.1.12 "Date of Commencement of the Work" is the date established in the Notice to Proceed. If there is no Notice to Proceed, it shall be the date of the Construction Contract or such other date as may be established therein.

1.1.13 The "Date of Substantial Completion" is the date certified by the Project Manager in accordance with paragraph 9.8.

1.1.14 "Day" as used in the Contract Documents shall mean calendar day unless otherwise specifically designated.

1.1.15 "Drawings" are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

1.1.16 "Final Completion" means the finding by the Project Manager that the final Certificate for Payment should be issued based on his knowledge, information and belief that the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate for Payment, is due and payable, as more fully defined in paragraph 9.10.1.

1.1.17 "Modification" means (1) a written amendment to the Construction Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written Order for a Minor Change in the Work approved by the Owner pursuant to paragraph 7.4.

1.1.18 "Notice to Proceed" means the form issued by the Town and accepted in writing by the Contractor that notifies Contractor to begin work on or before a date certain, establishes an end date, and returns bid security.

1.1.19 "Order for a Minor Change in the Work" means an order issued by the Project Manager adjusting the Contract Sum or extending the Contract Time as permitted by paragraph 7.4.1.

1.1.20 "Owner" means the person or entity identified as such in the Construction Contract or an authorized representative thereof. The term "Town" may be used interchangeably with the term "Owner."

1.1.21 "Project" means the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

1.1.22 "Project Manager" means the Town representative identified as such in Part 5 of the Contract.

1.1.23 "Project Manual" means the volume usually assembled for the Work which may include the bidding requirements, sample forms, conditions of the Contract, and Specifications.

1.1.24 "Specifications" or "Project Specifications" are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, and workmanship for the Work, and performance of related services.

1.1.25 "Subcontractor" means a person or entity who has a direct contract with the Contractor to perform any of the Work at the site or an authorized representative thereof. "Subcontractor" does not include any separate contractor or his subcontractor.

1.1.26 "Substantial Completion" means the stage in the progress of the Work when the Work (or designated portion thereof that the Owner agrees to accept separately) is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or use the Work for its intended use as more fully explained in paragraph 9.8.1.

1.1.27 "Sub-subcontractor" means a person or entity who has a direct or indirect contract with a subcontractor to perform any of the Work at the site or an authorized representative thereof.

1.1.28 "Underground Utilities" means any below ground line, structure, facility or installation used by a utility or service provider including, but not limited to, telephone company lines, cable and conduit; cable television lines, cable and conduit; internet lines, cable and conduit; sewer lines and water lines, including individual sewer and water service lines; stormwater lines; gas lines; electrical lines, cables and conduit; and traffic signal lines, cable and conduit.

1.1.29 "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations for the completed construction required by the Contract Documents. The Work may constitute the whole or a part of the Project.

## 1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Contract Documents shall be signed in not less than triplicate by the Owner and Contractor and shall be maintained by the Project Manager.

1.2.2 By executing the Contract, the Contractor represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents. In connection with the foregoing, and having carefully examined all Contract Documents, as aforesaid, and having visited the Site, and having familiarized himself with the site construction circumstances of the Project, the Contractor acknowledges and declares that it has no knowledge of any discrepancies, omissions, ambiguities, or conflicts in said Contract Documents and that if it becomes aware of any such discrepancies, omissions, ambiguities, or conflicts, it will promptly notify Owner and Project Manager of such fact.

1.2.3 The Contract Documents include all items necessary for the proper execution and completion of the Work by the Contractor. The Work shall consist of all items specifically included in the Contract Documents as well as all additional items of work which are reasonably inferable from that which is specified in order to complete the Work in accordance with the Contract Documents. The Contract Documents are complementary, and what is required by any one Contract Document shall be as binding as if required by all. Any differences between the requirements of the Drawings and the Specifications or any differences within the Drawings themselves or within the Specifications themselves have been referred to the Owner by Contractor prior to the submission of bids and have been clarified by an

Addendum issued to all Bidders. If any such differences or conflicts were not called to the Owner's attention prior to submission of bids, the Project Manager shall decide which of the conflicting requirements will govern based upon the most stringent of the requirements, and subject to the approval of the Owner, the Contractor shall perform the work at no additional cost or time to the Owner in accordance with the Project Manager's decision. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results.

1.2.4 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among subcontractors or in establishing the extent of Work to be performed by any trade.

1.2.5 Unless otherwise stated in the Contract Documents, words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.6 In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an." The fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

1.2.7 For purposes of interpretation of Contract Documents, masculine includes both the masculine and the feminine; singular includes the singular and the plural; headings are for reference only and are not substantive

### 1.3 OWNERSHIP AND USE OF DOCUMENTS

1.3.1 The Drawings, Specifications, and other similar or related documents and copies thereof are furnished to the Contractor for the purpose of performing the Work and are, and shall remain, the property of the Owner. The Contractor may retain one record set. Neither the Contractor nor any subcontractor, sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other similar or related documents, and Owner will retain all common law, statutory, and other reserved rights, in addition to the copyright (including, without limitation, the right to create derivative works therefrom). All copies of such documents shall be returned to the Owner upon completion of the Work. The Drawings, Specifications, and other similar or related documents and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any subcontractor, sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner. The Contractor, subcontractors, sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents appropriate to and solely for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of any copyright or other reserved rights.

## ARTICLE 2

### OWNER

#### 2.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.1.1 The Owner shall furnish surveys describing the physical characteristics, legal limitations and utility locations, if such utilities are the property of Owner, for the site of the Project, and a legal description of the site, if necessary. The Contractor shall undertake such further investigations and studies as may be necessary or useful to determine site characteristics and conditions. In connection with the foregoing, Contractor shall locate prior to performing any work, all Underground Utilities. If utility locate services are provided in the field by utility owners, Contractor nonetheless remains solely responsible to determine the actual location of all Underground Utilities.

2.1.2 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Such approvals and the like shall be provided by Owner within a time and in a manner as to avoid any unreasonable delays in the Work or schedule of Contractor and shall include only such approvals for permanent facilities which are necessary to perform the Work as set forth in the Contract Documents.

2.1.3 Information or services required to be furnished by Owner shall be furnished by the Owner with reasonable promptness to avoid unreasonable delay in the orderly progress of the Work.

2.1.4 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, all copies of Drawings and Specifications reasonably necessary for the execution of the Work.

2.1.5 The Owner shall forward all instructions to the Contractor through the Project Manager.

2.1.6 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Work by Owner or by Separate Contractors, Payments and Completion, and Insurance in Articles 6, 9, and 11 respectively.

## 2.2 OWNER'S RIGHT TO STOP THE WORK

2.2.1 If the Contractor fails to correct defective Work as required by Paragraph 12.2 or fails to carry out the Work in accordance with the Contract Documents, or fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, materials, or equipment so as to be able to complete the Work within the Contract Time, or fails to remove and discharge (within ten days) any lien filed upon Owner's property by anyone claiming by, through, or under Contractor, or disregards the instructions of the Project Manager or Owner when based on the requirements of the Contract Documents, the Owner or the Project Manager, by a written order, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner and the Project Manager to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

## 2.3 OWNER'S RIGHT TO CARRY OUT THE WORK

2.3.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, or fails within such seven-day period to eliminate (or diligently commence to eliminate) the cause of any stop work order issued under paragraph 2.3.1 hereof, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such

deficiencies, including compensation and additional services and expenses made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

### ARTICLE 3

#### CONTRACTOR

##### 3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.1.1 In addition to and not in derogation of Contractor's duties under paragraphs 1.2.2 and 1.2.3 hereof, Contractor shall carefully study and compare the Contract Documents and shall at once report to the Owner any error, inconsistency or omission discovered. The Contractor shall not be liable to the Owner for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents hereof unless the Contractor recognized or reasonably should have recognized such error, inconsistency or omission and failed to report it to the Owner. If the Contractor performs any construction activity involving an error, inconsistency or omissions in the Contract Documents that Contractor recognized or reasonably should have recognized, without such notice to the Owner, the Contractor shall assume complete responsibility for such performance and shall bear the full amount of the attributable costs for correction. The Contractor shall perform no portion of the Work at any time without Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work.

3.1.1.1 If any errors, inconsistencies, or omissions in Contract Documents are recognized or reasonably should have been recognized by the Contractor, any member of its organization, or any of its subcontractors, the Contractor shall be responsible for notifying the Owner in writing of such error, inconsistency, or omission before proceeding with the Work. The Owner will take such notice under advisement and within a reasonable time commensurate with job progress, render a decision. If Contractor fails to give such notice and proceeds with such work, it shall correct any such error, inconsistency, or omission at no additional cost to Owner.

3.1.2 In addition to and not in derogation of Contractor's duties under paragraphs 1.2.2 and 1.2.3 hereof, the Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Project Manager at once.

3.1.3 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to paragraph 3.12.

##### 3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 The Contractor shall supervise and direct the Work, using his best skill and attention. The Contractor shall be solely (subject to the terms and provisions of Article 4 hereof), responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters. The Contractor shall review any specified construction or installation procedure, including those recommended by manufacturers, and shall advise the Owner if the specified procedure deviates from good construction practice or if following the procedure will affect any warranties, and may propose any alternative procedure which the Contractor will warrant.

3.2.2 The Contractor shall be responsible to the Owner for the acts and omissions of his employees, subcontractors and their agents and employees, and other persons performing any of the Work under a contract or other arrangements with the Contractor. It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Contractor the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein.

3.2.3 The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Project Manager in his administration of the Contract, or by inspections, tests or approvals required or performed under Paragraph 13.7 by persons other than the Contractor.

3.2.4 The Contractor shall be solely responsible for locating all existing underground installations, including Underground Utilities and their service connections, in advance of excavating or trenching, by contacting the owners thereof and prospecting. Notwithstanding utility locate services that may be provided in the field by utility owners, Contractor remains ultimately responsible to determine the actual location of all Underground Utilities, facilities, structure, or installations. The Contractor shall use his own information and shall not rely upon any information shown or not shown on the plans or on field locates provided by the utility owner concerning existing Underground Utilities, facilities, structure, or installations. Any delay, additional work, or extra cost to the Contractor caused by existing Underground Utilities, facilities, structures or installations shall not constitute a claim for extra work, additional payment, or damage.

3.2.5 The Contractor has the responsibility to ensure that all equipment and material suppliers and subcontractors, their agents, and employees adhere to the Contract Documents, and that they order material and equipment on time, taking into account the current market and delivery conditions and that they provide equipment and materials on time. The Contractor shall coordinate its Work with that of all others on the Project, including deliveries, storage, installations, and construction utilities. The Contractor shall be responsible for the space requirements, locations, and routing of its equipment. In areas and locations where the proper and most effective space requirements, locations, and routing cannot be made as indicated, the Contractor shall meet with all others involved, before installation, to plan the most effective and efficient methods of overall installation.

3.2.6 The Contractor shall establish and maintain bench marks and all other grades, lines, and levels necessary for the Work, report errors or inconsistencies to the Owner before commencing work, and review the placement of the structure(s) and permanent facilities on the site with the Owner after all lines are staked out and before foundation work is started. Contractor shall provide access to the Work for the Owner, the Project Manager, other persons designated by Owner, and governmental inspectors. Any encroachments, as revealed by an improvement survey, made by Contractor or its subcontractors (of any tier) on adjacent properties due to construction, except for encroachments arising from errors or omissions not reasonably discoverable by Contractor in the Contract Documents, shall be the sole responsibility of the Contractor and Contractor shall correct such encroachments within thirty (30) days of the improvement survey (or as soon thereafter as reasonably possible), at Contractor's sole expense, either by the removal of the encroachment (and subsequent reconstruction on the project site) or agreement with the adjacent property owner(s) (in form and substance satisfactory to Owner in its sole discretion) allowing the encroachments to remain.

### 3.3 LABOR AND MATERIALS

3.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.3.2 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him.

3.4.3 Materials shall conform to manufacturer's standards in effect at the date of execution of the Construction Contract and shall be installed in strict accordance with manufacturer's directions. The Contractor shall, if required by the Owner, furnish satisfactory evidence as to the kind and quality of any materials. All packaged materials shall be shipped to the site in the original containers clearly labeled, and delivery slips shall be submitted with bulk materials identifying thereon the source, and warranting quality and compliance with Contract Documents.

3.3.4 When the Contract Documents require the Work, or any part of same, to be above the standards required by applicable laws, ordinances, rules, regulations, and other statutory provisions pertaining to the Work, such Work shall be performed and completed by the Contractor in accordance with the Contract Documents.

3.4 RESERVED

3.5 The Contractor shall honor all material warranties granted by materials supplier to the project and shall warrant workmanship for a period of two years from acceptance of the project.

3.5.1 The Contractor warrants to the Owner that all materials and equipment furnished under this Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.5.2 Experienced manufacturer's representatives shall be used to supervise the installation of equipment as may be required by the Owner. Any special tools or equipment which may be required for first class work shall be provided by the Contractor.

3.5.3 The acceptance at any time of materials or equipment by or on behalf of the Owner shall not be a bar to future rejection if they are subsequently found to be defective, inferior in quality or uniformity, to the material or equipment specified, or are not as represented to the Owner.

3.5.4 In the absence of detailed specifications, all materials shall conform to the latest standards of the American Society for Testing Materials (ASTM) available at the time notice inviting Contractors to bid is published unless otherwise indicated.

3.5.5 Any reference to standard specifications in any of the Contract Documents shall always imply the latest edition of such standard specifications or specifications available at the time notice inviting contractors to bid is published unless otherwise indicated.

3.5.6 Within one year after the date of Final Completion of the Work or within such longer period of

time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, the Contractor shall make all needed repairs arising out of defective workmanship or materials, or both, which in the judgment of the Owner shall become necessary during such period. If within ten (10) days after the mailing of a notice in writing to the Contractor or his agent, the Contractor shall neglect to make, or undertake with due diligence to make the aforesaid repairs, the Owner is hereby authorized to make such repairs at the Contractor's expense. In case of an emergency, the Contractor will be notified and shall correct and make repairs within the necessary time constraints. Failure of the Contractor to respond to the notification shall result in the Owner making the necessary repairs at the Contractor's expense. This obligation shall survive termination of the Contract.

3.5.7 Should the Owner claim by written communication before the warranty period expires that certain defects exist and that these require repair or replacement, the warranty period and applicable surety shall be automatically extended for as long as these defects remain unremedied.

### 3.6 TAXES

3.6.1 All sales of construction and building materials to contractors and subcontractors for use in the building, erection, alteration or repair of structures, highways, roads, streets and other public works owned and used by the Owner are exempt from State and other State-collected sales and use taxes and from Crested Butte sales and use taxes. However, such materials may be subject to sales and use taxes imposed by other local taxing authorities.

3.6.2 Prior to Town's issuance of the Notice to Proceed and start of work, the Contractor shall deliver to the Project Manager two copies of the completed and executed "Application for Exemption Certificate" with the approval of the Department of Revenue, State of Colorado, affixed. These certificates will serve as an indication to the Owner that the Contractor has acquired the necessary exemption for State and other State-collected sales and use taxes. The Contractor also agrees to make the same requirement, as contained above, of the material suppliers and subcontractors on this project.

3.6.3 Crested Butte use tax will be due on construction tools and equipment used on the Project if a legally imposed local sales or use tax was not paid on the full purchase price of these items. If such local sales or use tax was less than that of the Town of Crested Butte, Contractor, equipment suppliers, and subcontractors shall pay to Crested Butte the difference between such local sales or use tax and the tax imposed by Crested Butte. Any sales or use tax due Crested Butte may be prorated according to the time the tools or equipment are located within the Town, providing an equipment declaration form is properly filed with the Town.

3.6.4 All books and records pertaining to the Project that will allow the accurate determination of any tax due must be retained and be kept available for inspection by the Town for three years after the completion of the Project.

3.6.5 All applicable taxes are to be paid by Contractor and are to be included in appropriate bid items; except that, the Contractor shall not be reimbursed for any State or other sales or use taxes incurred as a result of failure to obtain an exemption certificate prior to Town's issuance of the Notice to Proceed.

3.6.6 A copy of the Construction Equipment Declaration for Proration of Municipal Use Tax form shall be obtained from the Town's Finance Department.

### 3.7 PERMITS, FEES AND NOTICES

3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall obtain any necessary

building permit and applicable inspections and shall secure and pay for all other permits and governmental fees, licenses and inspections by other jurisdictions necessary for the proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required.

3.7.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.

3.7.3 It is not the responsibility of the Contractor to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations. If the Contractor observes or in the exercise of due care should observe that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Project Manager in writing, and any suggested changes shall be made to the Owner. The Contractor shall notify the Project Manager of all conflicts between the Drawings and Specifications and any laws, ordinances, rules, regulations, or restrictions that come to the Contractor's attention or should have come to his attention in the exercise of due care.

3.7.4 It is the responsibility of the Contractor to make certain that all his Work is done in accordance with applicable laws, statutes, building codes and regulations, and the Contractor shall bear any costs related to his failure to do so.

3.7.5 If the Contractor performs Work, including without limitations, the installation of any materials or equipment that it knows, or reasonably should know, would be contrary to laws, statutes, ordinances, building codes, rules, and regulations, the Contractor shall assume full responsibility for such work and shall bear all costs attributable to the correction thereof or related thereto, including all fines and penalties.

### 3.8 ALLOWANCES

3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by these allowances shall be supplied for such amounts and by such persons as the Owner may direct, but the Contractor will not be required to employ persons against whom he makes a reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents:

- .1 materials and equipment under an allowance shall be selected promptly by the Owner to avoid unreasonable delay in the Work;
- .2 these allowances shall cover the cost to the Contractor, less any applicable trade discount, of the materials and equipment required by the allowance delivered at the site, and all applicable taxes;
- .3 the Contractor's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the original allowance shall be included in the Contract Sum and not in the allowance;
- .4 whenever the cost is more than or less than the allowance, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which will recognize changes, if any, in handling costs on the site, labor, installation costs, overhead, profit and other expenses.

### 3.9 SUPERINTENDENT

3.9.1 The Contractor shall be on site or employ a competent Superintendent if he will not and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The Superintendent shall represent the Contractor and all communications given to the Superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.

3.9.2 Contractor shall assign a person to be and remain the Superintendent to generally and directly supervise and coordinate the performance of the Work. The naming of such person is and was a material inducement to Owner to enter into the Contract. If such person is not the Superintendent or does not remain the Superintendent for any reason whatsoever, the Owner reserves the right to review and approve or disapprove said Superintendent's replacement, in Owner's sole discretion. If said replacement is disapproved, the Contract may, at Owner's option, be terminated for cause.

3.9.3 Owner shall have the right, upon notice, to demand that the Superintendent or other key personnel retained by Contractor be replaced by Contractor. In the event of such demand, Contractor shall, within seven (7) days after notification thereof, replace said individual(s) with an individual satisfactory to Owner, in Owner's sole discretion. If said replacement is disapproved, the Contract, may, at Owner's option, be terminated for cause.

### 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULE

3.10.1 A preconstruction conference shall be scheduled at the time the Notice of Award is issued. The Contractor, at the preconstruction conference, shall prepare and submit for the Owner's review and approval a Contractor's construction schedule for the Work, in such form and detail as Owner may require. The schedule shall not exceed time limits current under the Contract Documents, shall be revised as required herein and at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The schedule shall indicate the proposed starting and completion dates for the various subdivisions of the Work as well as the totality of the Work. The schedule shall be updated every thirty (30) days and submitted to the Project Manager with Contractor's applications for payment. Each schedule shall contain a comparison of actual progress with the estimated progress for such time stated in the original schedule. If any schedule submitted sets forth a date for Substantial Completion for the Work or any phase of the Work beyond the date(s) of Substantial Completion established in the Contract (as the same may be extended as provided in the Contract Documents), then Contractor shall submit to the Owner for its review and approval, a narrative description of the means and methods which Contractor intends to employ to expedite the progress of the Work to ensure timely completion of the various phases of the Work as well as the totality of the Work. To ensure such timely completion, Contractor shall take all necessary action including, without limitation, increasing the number of personnel and labor on the Project and implementing overtime and double shifts (with hours of work approved by the Project Manager). In that event, Contractor shall not be entitled to an adjustment in the Contract Sum or the Schedule.

3.10.2 The Contractor shall prepare and keep current, for the Project Manager's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Project Manager reasonable time to review submittals.

3.10.3 The Contractor shall conform to the most recent schedules.

### 3.11 DOCUMENTS AND SAMPLES AT THE SITE

3.11.1 The Contractor shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes and selections (all changes and selections to be approved by the Owner in advance) made during construction, and approved Shop Drawings, Product Data and Samples and similar required submittals. These shall be available to the Project Manager and shall be delivered to him for the Owner upon completion of the Work.

3.11.2 At the date of Substantial Completion and as a condition precedent to Final Payment, the Contractor shall furnish the following documents (unless directed otherwise by Owner) to the Project Manager for submittal to the Owner: record drawings showing the field changes and selections affecting the general construction, mechanical, electrical, plumbing, and all other work, and indicating the Work as actually installed. These shall consist of carefully drawn markings on a set of reproducible prints of the Drawings. The Contractor shall maintain at the job site one (1) set of Drawings and indicate thereon each field change as it occurs.

3.11.3 All documents and records required to be prepared or maintained by Contractor for eventual delivery to the Owner shall be maintained and delivered in hard copy and in an electronic/digital format acceptable to the Owner.

### 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specifically prepared for the Work by the Contractor or any subcontractor, sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.

3.12.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

3.12.4 The Contractor shall review, approve and submit to the Owner, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of the Owner or any separate contractor, all Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents. Submittals made by the Contractor that are not required by the Contract Documents may be returned without action.

3.12.5 The Contractor shall not perform any portion of the Work requiring submittal and review of shop drawings, product data, samples, or similar submittals until the respective submittal has been approved by the Owner. Such Work shall be in accordance with approved submittals.

3.12.6 By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.12.7 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Owner's or Project Manager's approval of Shop Drawings, Product Data,

Samples, or similar submittals unless the Contractor has specifically informed the Owner in writing of such deviation at the time of submission and the Owner has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data, Samples or similar submittals by the Owner's approval thereof.

3.12.8 The Contractor shall direct specific attention, in writing, on resubmitted Shop Drawings, Product Data, Samples, or similar submittals to revisions other than those required by the Owner on previous submittals.

3.12.9 When professional certification of performance criteria of materials, systems, or equipment is required of the Contractor by the Contract Documents, the Owner shall be entitled to rely in a reasonable and professional fashion upon the accuracy and completeness of such calculations and certifications. If any or all such calculations or certifications are found to be inaccurate or incomplete, Contractor shall assume full responsibility and bear all costs attributable or related thereto, including, without limitation, the expense of Owner's additional services associated with the verification of such calculations or certifications, and the expense of Owner's additional services made necessary by the failure of such calculations or certifications to be accurate or complete.

3.12.10 Contractor shall furnish Owner with copies of all operator's instructions, service and parts manuals, and all other literature received by Contractor from the manufacturer or supplier of equipment furnished under the Contract. All operator's instructions, service and parts manuals, and all other such literature shall be bound in permanent binders satisfactory to the Project Manager.

3.12.11 Copies of any manufacturer's guaranty or certificate as may be required by the Contract Documents or normally included with the product, shall be submitted to the Owner through the Project Manager prior to Substantial Completion of the Work issued by the Owner.

3.12.12 Throughout the progress of construction, the Contractor shall maintain a careful up-to-date record of all changes on the plans and drawings during actual construction. Upon completion of Work, and prior to Substantial Completion issued by the Owner, the Contractor shall file with the Project Manager one set of complete drawings with all changes and Contractor's field construction notes neatly and legibly recorded thereon. Such drawings shall indicate in part the exact routing, if changed from drawing location, of Underground Utilities, oxygen supply, condenser water lines, fuel oil tanks and lines, fire protection lines and any other major buried utility lines, and routing of conduit runs which are buried or concealed in concrete slabs. Such information may be used to prepare record drawings for the Owner.

3.12.13 All documents and records required to be prepared or maintained by Contractor for eventual delivery to the Owner shall be maintained and delivered in hard copy **and** in an electronic/digital format acceptable to the Owner.

### 3.13 USE OF SITE

3.13.1 The Contractor shall confine his construction operations to the immediate vicinity of the location shown on the plans and shall use due care in placing construction tools, equipment, excavated materials, materials and equipment for installation and supplies, so as to cause the least possible damage to property and interference with traffic. The placing of such tools, equipment, and materials shall be subject to the approval of the Project Manager. If it is necessary or desirable that the Contractor use land outside the Owner's right-of-way, the Contractor shall obtain consent from, and shall execute a written agreement with, the owner and tenant of the land and shall be responsible for all associated costs, including clean-up and restoration.

3.13.2 The Contractor shall protect, shore, brace, support and maintain all Underground Utilities, drains, and underground construction uncovered or otherwise affected by the construction work performed by him.

### 3.14 CUTTING AND PATCHING OF WORK

3.14.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly. It is the intent of the Contract Documents that all areas requiring cutting and patching shall be restored to a completely finished condition acceptable to the Owner.

3.14.2 The Contractor shall not damage or endanger any portion of the Work or the work of the Owner or any separate contractors by cutting, patching or otherwise altering such work, or by excavation. The Contractor shall not cut or otherwise alter the work of the Owner or any separate contractor except with the prior written consent of the Owner and of such separate contractor. The Contractor shall not unreasonably withhold from the Owner or any separate contractor his consent to cutting or otherwise altering the Work.

### 3.15 CLEANING UP

3.15.1 The Contractor at all times shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials.

3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

### 3.16 COMMUNICATIONS

3.16.1 The Contractor shall forward all communications to the Owner through the Owner's Project Manager, except as the Owner may otherwise direct in writing.

### 3.17 ROYALTIES AND PATENTS

3.17.1 The Contractor shall protect, defend, indemnify and save harmless the Owner, and each of Owner's officers, agents, servants and employees, including the Project Manager from liability of any nature or kind, including cost and expense for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the Owner, or the Owner's officers, agents, servants, or employees, unless otherwise specifically stipulated in the Contract Documents.

3.17.2 If the Contractor uses any design, device or materials covered by letters patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copyrighted design, device or material. It is mutually agreed and understood that, without exception, the Contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the Work. The Contractor or his Surety shall indemnify and save harmless the Owner from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with Work agreed to be performed under the Contract, and shall indemnify the Owner for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the Work or after completion of the Work.

3.17.3 The Contractor shall pay all royalty and license fees.

3.18 INDEMNIFICATION

3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner and the Project Manager and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, but only to the extent caused by the negligent act or omission of, or breach of contract by, the Contractor, any subcontractor, any sub-subcontractor, supplier of equipment or materials, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph 3.18.

3.18.2 In any and all claims against the Owner or any of Owner's agents or employees by any employee of the Contractor, any subcontractor, any sub-subcontractor, any supplier of equipment or materials, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 3.18 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor, sub-subcontractor, supplier of equipment or materials under the workers' compensation act, disability benefit acts or other employee benefit acts.

3.18.3 RESERVED

3.18.4 The Contractor's indemnification hereunder shall apply without regard to whether acts or omissions of one or more of the Indemnitees hereunder would otherwise have made them jointly or derivatively negligent or liable for such damage or injury, excepting only that the Contractor shall not be obligated to so protect, defend, indemnify, and save harmless if such damage or injury is due to the sole negligence of one or more of the Indemnitees.

3.19 ATTORNEYS FEES

3.19.1 In the event it becomes necessary for either party to bring an action against the other to enforce any provision of this Construction Contract, in addition to any other relief that may be granted, the prevailing party in such action shall be entitled to an award of its reasonable attorney fees as determined by the Court.

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 PROJECT MANAGER

4.1.1 Subject to the limitations set forth in paragraph 5.01 of the Construction Contract, the Project Manager is empowered to act for Owner during the construction of the Work.

4.1.2 In case of termination of employment of the Project Manager, Owner may at any time employ or retain any other person it may deem qualified to perform all or any part of the duties of the Project Manager hereunder or to exercise any of its rights hereunder. Owner shall notify all parties in writing, setting forth the scope of said replacement of Project Manager's duties and responsibilities, prior to making this change.

## 4.2 PROJECT MANAGER'S ADMINISTRATION OF THE CONTRACT

4.2.1 The Project Manager will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representative during construction and until final payment is due. The Owner's instructions to the Contractor shall be forwarded through the Project Manager. The Project Manager will have authority to act on behalf of the Owner only to the extent provided in the Contract, unless otherwise modified by written instrument in accordance with other provisions of the Contract.

### 4.2.2 OMITTED

4.2.3 The Project Manager will not have control or charge of safety precautions and programs or any construction means, methods or decision-making in connection with the Work.

4.2.4 The Project Manager shall at all times have access to the Work wherever it is in preparation and progress.

4.2.5 Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized by Owner, the Owner and Contractor shall endeavor to communicate through the Project Manager, provided, however, that Owner may instruct, correspond, or negotiate with Contractor directly. Communications by and with subcontractors and suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Project Manager.

4.2.6 Based on the progress and quality of the Work, an evaluation of the Contractor's Applications for Payment, and all other information available, the Project Manager will determine the amounts owing to the Contractor and will issue Certificates for Payment in such amounts as provided in paragraph 9.4.

4.2.7 The Project Manager will have the responsibility and authority to reject Work which does not conform to the Contract Documents. Whenever the Project Manager considers it necessary or advisable to insure the proper implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the Work in accordance with Paragraph 13.7 whether or not such Work has been fabricated, installed or completed.

4.2.8 The Project Manager will promptly review and approve or reject or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data, and Samples, for conformance with information given and the design concept expressed in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay in the Work or in the activities of the Contractor or separate contractors, while allowing sufficient time in the Project Manager's reasonable judgment to permit adequate review. The Project Manager's review of the Contractor's submittals shall not relieve the Contractor of any of Contractor's obligations under the Contract Documents. The Project Manager's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.9 The Project Manager will prepare Change Orders in accordance with Article 7, and will have authority to order Minor Changes in the Work as provided in paragraph 7.4.1. All Change Orders, Construction Change directives, and Field Directives shall require the approval of Owner in writing to be binding on Owner.

4.2.10 The Project Manager shall determine the date(s) of Substantial Completion and Final Completion, shall issue a Certificate of Substantial Completion when and as required by the Contract Documents, will receive, review, and maintain written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

#### 4.3 CLAIMS AND DISPUTES

4.3.1 Claims must be made by written notice to the Project Manager. The responsibility to substantiate claims shall rest with the party making the claim.

#### 4.3.2 OMITTED

4.3.3 Time limits on Claims. Claims by either party must be made within 21 days after occurrence of the event giving rise to such claim or within 21 days after the claimant first recognizes, or reasonably should have recognized, the condition giving rise to the claim, whichever is later. An additional claim made after the initial claim has been implemented by change order will not be considered unless submitted in a timely manner.

4.3.4 Continuing Contract Performance. Pending final resolution of a claim, including litigation, unless otherwise directed by Owner in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

4.3.5 Waiver of Claims: Final Payment. The making and acceptance of Final Payment shall constitute a waiver of claims by the Owner except those arising from:

- .1 Liens, claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 Failure of the Work to comply with the requirements of the Contract Documents;
- .3 Terms of special warranties required by the Contract Documents; or
- .4 Faulty or defective Work appearing after Substantial Completion.

4.3.6 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. Site conditions which an experienced and prudent contractor could have anticipated by visiting the site, familiarizing himself with the local conditions under which the Work is to be performed and correlating his observations with the requirements of the Contract Documents shall not be considered as claims for concealed or unknown conditions, nor shall the locations of utilities which differ from locations provided by the utility companies. If the Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Owner shall so notify the Contractor in writing, stating the reasons. Claims by the Contractor in opposition to such determination must be made within

twenty-one (21) days after the Owner has given notice of the decision. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be subject to further proceeding pursuant to paragraph 4.4.

4.3.7 Claims for Additional Cost. If the Contractor wishes to make claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Said notice shall itemize all claims and shall contain sufficient detail and substantiating data to permit evaluation of same by Owner. No such claim shall be valid unless so made. Prior notice is not required for claims relating to an emergency endangering life or property arising under Paragraph 10.3. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Owner, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Project Manager, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension, or (7) other reasonable grounds, claim shall be filed in accordance with the procedure established herein. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order or Construction Change Directive. Such claims shall be subject to Paragraph 8.3.

4.3.8 Claims for additional time. If the Contractor wishes to make claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one claim is necessary. Such claims shall be subject to Paragraph 8.3

4.3.9 Injury or damage to person or property. Subject to the Parties' obligations and responsibilities under the Contract Documents in general and Article 11 hereof in particular, if either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a claim for additional cost or time related to this claim is to be asserted, it shall be filed as provided in paragraphs 4.3.7 OR 4.3.8.

#### 4.4 RESOLUTION OF CLAIMS AND DISPUTES

4.4.1 The Project Manager will review all claims by the Contractor and take one or more of the following preliminary actions within ten days of receipt of a claim: (1) request additional supporting data from the Contractor, (2) submit a schedule to the Contractor indicating when the Owner expects to take action, (3) reject the claim in whole or in part, stating reasons for rejection, (4) recommend approval of the claim by the Owner, or (5) suggest a compromise. The Owner may also, but is not obligated to, notify the surety, if any, of the nature and amount of the claim.

4.4.2 If a claim has been resolved, the Project Manager will prepare or obtain appropriate documentation.

4.4.3 If a claim has not been resolved, the Contractor shall within ten (10) days after the Project Manager's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Project Manager, (2) modify the initial claim, or (3) notify the Project Manager that the initial claim stands.

4.4.4 If a claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Project Manager, the Project Manager will notify the Contractor in writing that the Project Manager's decision will be made within seven (7) days, which

decision shall be considered advisory only and not binding in the event of litigation in respect of the claim. Upon expiration of such time period, the Project Manager will render to the parties the Owner's written decision relative to the claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

## ARTICLE 5

### SUBCONTRACTORS

#### 5.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.1.1 Unless otherwise required by the Contract Documents or the Bidding Documents, the Contractor, as soon as practicable after the award of the Construction Contract, shall furnish to the Project Manager in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work. The Project Manager will promptly reply to the Contractor in writing stating whether or not the Owner has reasonable objection to any such proposed person or entity.

5.1.2 The Contractor shall not contract with any such proposed person or entity to whom the Owner has made reasonable and timely objection under the provisions of paragraph 5.2.1. The Contractor shall not be required to contract with anyone to whom he has a reasonable objection.

5.1.3 If the Owner has reasonable objection to any such proposed person or entity, the Contractor shall submit a substitute to whom the Owner has no reasonable objection, and the Contract Sum shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate change order shall be issued; however, no increase in the Contract Sum shall be allowed for any such substitution unless the Contractor has acted promptly and responsively in submitting names as required by paragraph 5.1.1.

5.1.4 The Contractor shall make no substitution for any subcontractor, person or entity previously selected if the Owner makes reasonable objection to such substitution.

#### 5.2 SUBCONTRACTUAL RELATIONS

5.2.1 By an appropriate written agreement, the Contractor shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Documents, has against the Owner. Where appropriate, the Contractor shall require each subcontractor to enter into similar agreements with his sub-subcontractors. The Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound by this paragraph 5.3, and, upon written request of the subcontractor, identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. Each subcontractor shall similarly make copies

of such documents available to his sub-subcontractors.

### 5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.3.1 Contractor hereby assigns to Owner (and Owner's assigns) all its interest in any subcontract agreements and purchase orders now existing or hereinafter entered into by Contractor for performance of any part of the Work, which assignment will be effective upon acceptance by Owner in writing and only as to those subcontract agreements and purchase orders that Owner designates in writing. It is agreed and understood that Owner may accept said assignment at any time during the course of construction prior to Final Completion. Upon such acceptance by Owner, (1) Contractor shall promptly furnish to Owner true and correct copies of the designated subcontract agreements and purchase orders, and (2) Owner shall be required to compensate the designated subcontractors or suppliers only for compensation accruing to such parties for work done or materials delivered from and after the date on which Owner determines to accept the subcontract agreements or purchase orders. All sums due and owing by Contractor to the designated subcontractors or suppliers for Work performed or material supplied prior to Owner's acceptance of the subcontract agreements or purchase orders shall constitute a debt between such parties and Contractor. It is further agreed that all subcontract agreements and purchase orders shall provide that they are freely assignable by Contractor to Owner and Owner's assigns under the terms and conditions stated hereinabove. It is further agreed and understood that such assignment is part of the consideration to Owner for entering into the Construction Contract with Contractor and may not be withdrawn prior to Final Completion. Contractor shall deliver or cause to be delivered to Owner a written acknowledgment in form and substance satisfactory to Owner from each of its subcontractors and suppliers of the contingent assignment described herein no later than ten (10) days after the date of execution of each subcontract agreement and purchase order with such parties.

## ARTICLE 6

### CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

#### 6.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform work related to the Project with his own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar conditions of the Construction Contract. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, he shall make such claim as provided elsewhere in the Contract Documents.

6.1.2 When separate contracts are awarded for different portions of the Project or other work on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Construction Contract.

6.1.3 The Owner will provide for the coordination of the work of his own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to its construction schedule as requested by the Owner. If the Contractor claims additional cost or time or both because of any such revisions, the Contractor shall make such claim as provided elsewhere in the Contract Documents. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the

Owner until subsequently revised.

## 6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner and separate contractors access to the site and all areas of the Work as may be reasonably necessary for the performance of their work, reasonable opportunity for the introduction and storage of their materials and equipment and for the execution of their work, and shall connect and coordinate his Work with theirs as required by the Contract Documents.

6.2.2 If any part of the Contractor's Work depends for proper execution or results upon the work of the Owner or any separate contractor, the Contractor shall, prior to proceeding with the Work, promptly report to the Project Manager any apparent discrepancies or defects in such other work that render it unsuitable for proper execution and results of Contractor's Work or render it incompatible with Contractor's Work. Failure of the Contractor so to report shall constitute an acceptance of the Owner's or separate contractor's work as fit and proper to receive his Work, except as to defects not then reasonably discoverable.

6.2.3 Subject to Paragraph 8.3 hereof, any costs caused by defective or ill-timed work shall be borne by the party responsible therefor.

6.2.4 Should the Contractor cause damage to the work or property of the Owner, or to other completed or partially completed construction or property on the site or to property of any adjoining owner or other party, the Contractor shall promptly remedy such damage as provided in paragraph 10.2.4.

6.2.5 Should the Contractor cause damage to the work or property of any separate contractor, or in the event of any other claim, dispute, or matter in question between the Contractor and any separate contractor, the Contractor shall promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. In any event, the Contractor shall indemnify, defend, and hold harmless the Owner, its officers, employees, and agents, to the full extent as agreed to under paragraph 3.18.

## 6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises between the Contractor, separate contractors, and the Owner as to their responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in paragraph 3.15, the Owner may clean up and allocate the cost thereof among the contractors responsible therefor.

# ARTICLE 7

## CHANGES IN THE WORK

### 7.1 CHANGES

7.1.1 Changes in the Work may be accomplished after execution of the Construction Contract, and without invalidating the Construction Contract, only by Change Order, Construction Change Directive, or Order for a Minor Change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement between the Owner and the Contractor; a Construction Change Directive may or may not be agreed to by the Contractor; an Order for a Minor Change in the Work may be issued by the Project Manager alone.

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive, or Order for a Minor Change in the Work.

7.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or the Contractor, the applicable unit prices shall be equitably adjusted; provided however, that Owner may increase the number of units without change in the unit price if reasonable.

## 7.2 CHANGE ORDERS

7.2.1 A Change Order is a written order to the Contractor, signed by the Contractor and the Owner stating their agreement upon all of the following:

- .1 a change in the Work;
- .2 the amount of the adjustment in the Contract Sum, if any;
- .3 the extent of the adjustment in the Contract Time, if any; and
- .4 in accordance with the specification document as issued by SLATERPAULL dated June 15, 2015 and subsequently amended by the Addendums.

The Contract Sum and the Contract Time may be changed only by Change Order.

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in paragraph 7.3.3.

## 7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1 A Construction Change Directive is a written order directed to the Contractor and signed by the Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, or Contractor-related Requests for Information when latent or other unforeseen conditions require clarifications or modifications to the Contract Documents, as contained in the Specifications, without invalidating the Construction Contract, order changes in the Work within the general scope of the Construction Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 by mutual acceptance of a lump sum properly itemized and supported by sufficient

substantiating data to permit evaluation;

- .2 by unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 by cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 by the method provided in paragraph 7.3.6.

7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

7.3.6 If the Contractor does not respond promptly to the Construction Change Directive or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a percentage fee for overhead and profit not to exceed five percent (5%) of such Work's actual cost for Contractor and ten percent (10%) of such Work's actual cost to be apportioned between any and all subcontractors and sub-subcontractors. For Work performed by Contractor's own forces, Contractor's mark-up shall be limited to actual cost plus a percentage fee for overhead and profit not to exceed ten percent (10%). In such case, and also under Clause 7.3.3.3, the Contractor shall keep and present, in such form as the Project Manager may prescribe, an itemized accounting of actual costs together with appropriate supporting data. For the purposes of this paragraph 7.3.6, actual costs shall be defined as and limited to the following:

- .1 costs of labor, including Social Security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 costs of materials, supplies, and equipment, including costs of transportation, whether incorporated or consumed;
- .3 reasonable rental costs of machinery and equipment, exclusive of hand tools, obtained and used specifically for such Work, whether rented from the Contractor or others; and
- .4 costs of premiums for all bonds (if any), permit fees, and sales, use or similar taxes directly attributable to such Work. Actual cost does not include any item which could be deemed to be a general conditions cost or overhead, such as but not limited to, the cost of Contractor and Subcontractor supervisory personnel assigned to the Work, and field office and related expenses.

7.3.7 Pending final determination of actual cost to the Owner, amounts not in dispute may be included in applications for payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Project Manager. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis

of net increase, if any, with respect to that change.

7.3.8 If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be determined in accordance with Paragraph 8.3 hereof.

7.3.9 When the adjustments in the Contract Sum and Contract Time are determined as provided herein, such determination shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

#### 7.4 MINOR CHANGES IN THE WORK

7.4.1 The Project Manager will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

### ARTICLE 8

#### TIME

##### 8.1 DATE OF COMMENCEMENT OF THE WORK

8.1.1 The Date of Commencement of the Work shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

##### 8.2 PROGRESS AND COMPLETION

8.2.1 All time limits stated in the Contract Documents are of the essence of the Construction Contract. By executing the Construction Contract, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

8.2.2 The Contractor shall begin the Work on the Date of Commencement of the Work. The Contractor shall not, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The Date of Commencement of the Work shall not be changed by the effective date of such insurance.

8.2.3 The Contractor shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

##### 8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If the Contractor is delayed, disrupted, or otherwise interfered with at any time, or from time to time, in the performance of the Work, the rights and obligations of the parties with respect to such delay shall be as set forth in this subsection 8.3. Contractor's exclusive remedy for any delay, disruption, or interference shall be as set forth in this subsection 8.3.

8.3.1.1 Any delay within the control of the Contractor or within the control of any subcontractor, agent or supplier thereof (including, without limitation, delay within the joint control of the Contractor or one or more of his subcontractors, agents or suppliers) shall be the sole responsibility of the Contractor, and the

Contractor shall not be entitled to any extension of time or to any increase in the Contract Sum as the result of any such delay.

8.3.1.2 Upon the occurrence of any delay which will affect the date of Substantial Completion caused by fire, flood, unusually severe weather or other act of God, or by court order, unforeseen, concealed, or differing condition related to the Work or other factors beyond the reasonable control of any party hereto or his agents, employees or subcontractors, then the period of performance specified herein shall be extended by Change Order or Construction Change Directive, on a day-for-day basis, but such extension shall not result in any increase in the Contract Sum, and provided that Contractor complies with subsection 8.3.1.4 below.

8.3.1.3 Upon the occurrence of any delay which will affect the date of Substantial Completion not concurrent with delays described under subsections 8.3.1.1 and 8.3.1.2 above, which is proximately caused by acts or omissions within the control of the Owner, his agents or employees, the period of performance specified herein shall be extended by Change Order or Construction Change Directive on a day-for-day basis and the Contractor shall be entitled to reimbursement of actual, proven costs reasonably and necessarily incurred as a direct consequence of such delay, but not in excess of the amount above the Contract Sum for each day of such delay as specified in the Contract Documents.

8.3.1.4 Any claim for an extension of time under subsections 8.3.1.2, and 8.3.1.3 above, and any claim for additional compensation authorized by subsection 8.3.1.3 above, shall be made as follows:

- .1 The Contractor shall, within five (5) days after the onset of any delay, notify the Project Manager in writing of the causes of delay, the facts relating thereto, and the requested time extension. In the case of a continuing delay, only one claim is necessary. Proof of any recoverable delay costs shall be submitted within fifteen (15) days after the end of any period of delay.
- .2 The Project Manager shall determine whether the cause for the claim for an extension of time is beyond the control of the Contractor pursuant to subsections 8.3.1.1, 8.3.1.2, AND 8.3.1.3 above. Owner shall either approve or disapprove the extension requested or claim made.
- .3 Should a time extension or delay cost claim be granted by the Owner, a Change Order or other notice, signed by the Owner, shall be issued to indicate the new date for completion, and/or the adjustment to the Contract Sum.
- .4 Failure by Contractor to timely provide, in writing, a request for time extension, claim for delay costs, or proof of such costs, shall constitute a waiver by Contractor of any time extension or reimbursement of delay costs which Contractor may have otherwise been granted pursuant to this subsection 8.3.
- .5 Nothing herein shall prevent Contractor from requesting, and Owner granting, an extension of time contingent upon payment by Contractor of an agreed amount of liquidated damages in consideration of the time extension.

8.3.2 Contractor expressly acknowledges and confirms his obligation to minimize the cost impact of any delay, delay charges being an unproductive expenditure of public funds. Therefore Contractor shall, to the best of his ability, re-assign personnel and equipment, commence or accelerate unaffected portions of the Work, and otherwise employ all prudent measures available to minimize delay costs. In no event shall the Owner be liable for payment of delay costs which could have been avoided or mitigated by any

means reasonably available to the Contractor.

## ARTICLE 9

### PAYMENTS AND COMPLETION

#### 9.1 CONTRACT SUM

9.1.1 The Contractor will not be allowed any claims for anticipated profits, for loss of profits, or for any damages or additional costs incurred because of a difference between the estimate of any item and the amount of the item actually required, or for the elimination of any part of the Work. Funds for construction of the Work herein contemplated are limited. The Owner reserves the right to eliminate or reduce the items of the proposal or any of the Work as may be required to bring the cost of the Work within the limits of available funds.

#### 9.2 SCHEDULE OF VALUES

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Project Manager a schedule of values allocated to the various portions of the Work, which in the aggregate equals the total Contract Sum, divided so as to facilitate payments to subcontractors, supported by such evidence of correctness as the Project Manager may direct. This Schedule, when approved by the Project Manager, shall be used to monitor the progress of the Work and as a basis for Certificates for Payment.

#### 9.3 APPLICATIONS FOR PAYMENT

9.3.1 At least ten days before the date for each progress payment established in the Construction Contract, the Contractor shall submit to the Project Manager an itemized Application for Payment for operations completed in accordance with the Schedule of Values. Such application shall incorporate data consistent with specifications and progress reporting for the State Historical Fund Grant 2015-02-030 and be supported by such data substantiating the Contractor's right to payment as the Project Manager may require, and reflecting retainage, if any, as provided elsewhere in the Contract Documents.

9.3.1.1 Such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in Change Orders.

9.3.1.2 Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a subcontractor or supplier because of a dispute or other reason.

9.3.2 Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site and, if approved in advance by the Owner, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing for subsequent incorporation in the Work. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance and transportation to the site for those materials and equipment stored off the site.

9.3.3 The Contractor warrants that title to all work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or

encumbrances, hereinafter referred to in this Article 9 as "liens"; and that no work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

9.3.4 When application for payment includes materials stored off the project site or stored on the project site but not incorporated in the Work, for which no previous payment has been requested, a complete description of such material shall be attached to the application. Suitable storage which is off the project site shall be a bonded warehouse or appropriate storage approved by Owner with the stored materials properly tagged and identifiable for this project and properly segregated from other materials. The Owner's written approval shall be obtained before the use of offsite storage is made. Such approval may be withheld in Owner's sole discretion.

#### 9.4 CERTIFICATES FOR PAYMENT

9.4.1 The Project Manager will, within seven (7) days after the receipt of the Contractor's Application for Payment, either issue a Certificate for Payment to the Contractor, for such amount as the Project Manager determines is properly due, or notify the Contractor in writing his reasons for withholding a certificate in whole or in part as provided in paragraph 9.5.1.

9.4.2 No Certificate for Payment shall be issued unless it appears to the Project Manager that the Work has progressed to the point indicated; that, to the best of the Project Manager's knowledge, information and belief, but without in any way waiving any of Owner's rights or claims under the Contract Documents, the quality of the Work is in accordance with the Contract Documents and that all certificates required under the Contract Documents have been furnished in proper form. However, the issuance of a Certificate for Payment will not be a representation that the Project Manager has made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### 9.5 DECISIONS TO WITHHOLD CERTIFICATION

9.5.1 The Project Manager may decline to certify payment and may withhold his certificate in whole or in part, to the extent reasonably necessary to protect the Owner, if in his opinion he is unable to make the determinations as provided in paragraph 9.4.2. If the Project Manager is unable to make such determinations as provided in paragraph 9.4.2 and to certify payment in the amount of the application, he will notify the Contractor as provided in paragraph 9.4.1. If the Contractor and the Project Manager cannot agree on a revised amount, the Project Manager will promptly issue a Certificate for Payment for the amount for which he is able to make such determinations. The Project Manager may also decline to certify payment or, because of subsequently discovered evidence or subsequent observations, he may nullify the whole or any part of any Certificate for Payment previously issued, to such extent as may be necessary in his opinion to protect the Owner from loss because of:

- .1 defective Work not remedied,
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims;
- .3 failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the

Contract Sum;

- .5 damage to the Owner or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, or that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure to carry out the Work in accordance with the Contract Documents; or
- .8 failure to maintain accurate and up-to-date as-built drawings.

9.5.2 When the above grounds are removed, Certificates for Payment shall be made by the Project Manager for amounts withheld because of them.

## 9.6 PROGRESS PAYMENTS

9.6.1 After the Project Manager has issued a Certificate for Payment, the Owner shall make payment in a timely manner not to exceed thirty (30) days from the time the Project Manager issued the Certificate for Payment. The Owner may refuse to make payment on any Certificate for Payment for any default of the Construction Contract, including, but not limited to those defaults set forth in Clauses 9.5.1.1 through 9.5.1.8. The Owner shall not be deemed in default by reason of withholding payment while any of such defaults remain uncured.

9.6.2 The Contractor shall promptly pay each subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such subcontractor's Work, the amount to which said subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such subcontractor's Work. The Contractor shall, by an appropriate agreement with each subcontractor, require each subcontractor to make payments to his sub-subcontractors in similar manner.

9.6.3 The Project Manager may, on request and at his discretion, furnish to any subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Project Manager on account of Work done by such subcontractor.

9.6.4 The Owner shall not have any obligation to pay or to see the payment of any monies to any subcontractor except as may otherwise be required by law.

9.6.5 Payment to suppliers shall be treated in a manner similar to that provided in paragraphs 9.6.2, 9.6.3, and 9.6.4.

9.6.6 No certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

## 9.6.7 RETAINAGE

9.6.7.1 In addition to any amounts withheld from payment pursuant to any other provision in this Construction Contract, and if the Contractor is satisfactorily performing the Construction Contract, Owner shall retain from progress payments, until payment is due under the terms and conditions

governing final payments, amounts as follows:

- .1 Owner shall retain ten percent (10%) of each progress payment until the Work is at least fifty percent (50%) complete.
- .2 After the Work is fifty percent (50%) complete, the Owner may, at its sole discretion, reduce retainage to five percent (5%) of each progress payment. A retainage of five percent (5%) of any progress payment shall not limit the Owner's discretion to retain ten percent (10%) of any subsequent progress payment.

9.6.7.2 In no event shall the amount retained pursuant to paragraph 9.6.7 be reduced to less than five percent (5%) of the Contract Sum until after final acceptance of the project by the Owner.

## 9.7 FAILURE OF PAYMENT

9.7.1 If the Project Manager does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not, for reasons other than a default of the Construction Contract, including, but not limited to those defaults set forth in Clauses 9.5.1.1 through 9.5.1.8, pay the Contractor within thirty (30) days after the date established in the Contract Documents any amount certified by the Project Manager, then the Contractor may, upon seven (7) additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which shall be effected by appropriate Change Order.

## 9.8 SUBSTANTIAL COMPLETION

9.8.1 The Work will not be considered suitable for Substantial Completion review until all project systems included in the Work are operational as designed and scheduled, all designated or required governmental inspections and certifications have been made and posted, designated instruction of Owner's personnel in the operation of systems has been completed, and all final finishes within the Construction Contract are in place. In general, the only remaining Work shall be minor in nature, so that the Owner could occupy the building or utilize the improvements on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal operations. As a further condition of Substantial Completion acceptance, the Contractor shall certify that all remaining Work will be completed within thirty (30) consecutive calendar days or as agreed upon following the date of Substantial Completion.

9.8.2 When the Contractor considers that the Work, or a designated portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Project Manager a list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Project Manager will make an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If the Project Manager's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such items upon notification by the Project Manager. The Contractor shall then submit a request for another inspection by the Project Manager to determine Substantial Completion. When the Work or designated portion thereof is Substantially Complete, the Project Manager will prepare a Certificate of Substantial Completion which shall establish the date of

Substantial Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein, which time shall be no longer than thirty (30) days after the scheduled completion date. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.

9.8.3 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Project Manager, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof, as provided in the Contract Documents.

## 9.9 PARTIAL OCCUPANCY OR USE

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage of construction regardless of whether the Contract Time has expired (hereinafter sometimes referred to as "partial occupancy"). Such partial occupancy may commence whether or not the applicable portion of the Work is Substantially Complete.

9.9.2 In the event of partial occupancy, the Contractor shall promptly secure endorsement from its insurance carriers and consent from its sureties, if any.

9.9.3 In the event of partial occupancy before Substantial Completion as provided above, the Contractor shall cooperate with the Owner in making available for the Owner's use and benefit such building services as heating, ventilating, cooling, water, lighting, telephone, elevators, and security for the portion or portions to be occupied, and if the Work required to furnish such services is not entirely completed at the time the Owner desires to occupy the aforesaid portion or portions, the Contractor shall make every reasonable effort to complete such Work or make temporary provisions for such Work as soon as possible so that the aforementioned building services may be put into operation and use. Similar provisions shall be made where the improvements or structures are not buildings so that the Owner may use or occupy such portions of the structure or improvement.

9.9.4 In the event of partial occupancy prior to Substantial Completion, mutually acceptable arrangements shall be made between the Owner and Contractor in respect of the operation and cost of necessary security, maintenance and utilities, including heating, ventilating, cooling, water, lighting, telephone services, and elevators. The Owner shall assume proportionate and reasonable responsibility for the cost of the above services, reduced by any savings to Contractor for such services realized by reason of partial occupancy. Further, mutually acceptable arrangements shall be made between the Owner and Contractor in respect of insurance and damage to the Work. Contractor's acceptance of arrangements proposed by Owner in respect of such matters shall not be unreasonably withheld, delayed, or conditioned. Similar provisions shall be made where the improvements or structures are not buildings so that the Owner may use or occupy such portions of the structure or improvement.

9.9.5 In each instance, when the Owner elects to exercise its right of partial occupancy as described herein, Owner will give Contractor advance written notice of its election to take the portion or portions involved, and immediately prior to partial occupancy, Contractor, and the Project Manager shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the conditions of the same.

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9.9.6 It shall be understood, however, that partial occupancy shall not: (1) constitute final acceptance of any Work, (2) relieve the Contractor for responsibility for loss or damage because of or arising out of defects in, or malfunctioning of, any Work, material, or equipment, nor from any other unfulfilled

obligations or responsibilities under the Contract Documents, or (3) commence any warranty period under the Contract Documents; provided that Contractor shall not be liable for ordinary wear and tear resulting from such partial occupancy.

9.9.7 Subject to the terms and conditions provided herein, if the Contractor claims that delay or additional cost is involved because of partial occupancy by the Owner, Contractor shall make such claim as provided elsewhere in the Contract Documents

## 9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final application for payment, the Project Manager will promptly make such inspection and, when he finds the Work acceptable under the Contract Documents and the Construction Contract fully performed, he will promptly issue a final Certificate for Payment stating that to the best of his knowledge, information and belief, and on the basis of his observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate, is due and payable. The Project Manager's final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in paragraph 9.10.2 have been fulfilled. Final Payment is also subject to all Town Charter and Town Code requirements. Warranties required by the Contract Documents shall commence on the date that the Project Manager issues a final Certificate of Payment to the Owner.

9.10.2 Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Project Manager:

9.10.2.1 Evidence of compliance with all requirements of the Contract Documents: notices, certificates, affidavits, other requirements to complete obligations under the Contract Documents, including but not limited to (a) instruction of Owner's representatives in the operation of mechanical, electrical, plumbing and other systems, (b) delivery of keys to Owner with keying schedules, sub-master and special keys, (c) delivery to Owner of Contractor's general warranty as described in Paragraph 3.5, and each written warranty and assignment thereof prepared in duplicate, certificates of inspections, and bonds for Project Manager's review and delivery to Owner, (d) delivery to Project Manager of printed or typewritten operating, servicing, maintenance and cleaning instructions for the Work; parts lists and special tools for mechanical and electrical work;

9.10.2.2 If required by the Owner, (a) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or his property might in any way be responsible have been paid or otherwise satisfied, (b) consent of surety, if any, to final payment, and (c) other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Construction Contract, to the extent and in such form as may be designated by the Owner, and (d) a final waiver of liens in a form satisfactory to Owner, covering all Work including that of all subcontractors, vendors, labor, materials and services, executed by an authorized officer and duly notarized;

9.10.2.3 In addition to the foregoing, all other submissions required by other articles and paragraphs of the specifications including final construction schedule shall be submitted to the Project Manager before approval of Final Payment;

9.10.2.4 If any Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against any such lien. If any such

lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all monies that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting final completion, and the Project Manager so confirms, the Owner shall, upon application by the Contractor and certification by the Project Manager, and without terminating the Construction Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Project Manager prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.10.4 The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

- .1 unsettled liens,
- .2 faulty or defective Work appearing after Substantial Completion,
- .3 failure of the Work to comply with the requirements of the Contract Documents,
- .4 terms of any special warranties required by the Contract Documents, or
- .5 replacement of material or equipment which is rejected if found, after the date of final payment, to be defective, or inferior in quality or uniformity, to the material or equipment specified, or is not as represented to the Project Manager and Owner.

9.10.5 The acceptance of final payment by the Contractor, a subcontractor, or supplier shall constitute a waiver of all claims by that payee.

## ARTICLE 10

### PROTECTION OF PERSONS AND PROPERTY

#### 10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.

10.1.2 Unless otherwise provided in the Contract Documents, in the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop work in the area affected and report the condition to the Owner in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor, if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB) or when it has been rendered harmless, upon written direction of Owner.

10.1.3 Unless otherwise provided in the Contract Documents, the Contractor shall not be required pursuant to Article 7 to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB).

## 10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take all necessary precautions for the safety of, and shall provide all necessary protection to prevent damage, injury or loss to:

- .1 all persons involved in or affected by the Work;
- .2 all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his subcontractors or sub-subcontractors; and
- .3 other property at the site or adjacent thereto, including but not limited to trees, shrubs, lawns, walks, pavements, roadways, structures, private property, and utilities not designated for removal, relocation or replacement in the course of construction.

10.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property for their protection from damage, injury or loss, including but not limited to the Occupational Safety and Health Act (OSHA), as applicable.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all necessary safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

10.2.4 The Contractor shall promptly remedy all damage or loss at its sole cost and expense (other than damage or loss insured under Paragraph 11.3) to any property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, any subcontractor, any sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to the acts or omissions of the Owner or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Contractor. Utility locate services provided in the field by the Owner shall not be deemed an act or omission that relieves Contractor of its responsibility hereunder. The foregoing obligations of the Contractor are in addition to his obligations under Paragraph 3.5.

10.2.5 The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner.

10.2.6 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

## 10.3 EMERGENCIES

10.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act, at his

discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency Work shall be determined as provided in Paragraph 4.3, Paragraph 8.3 and Article 7.

#### 10.4 USE OF EXPLOSIVES, DRIVING OR REMOVAL OF PILES, WRECKING, EXCAVATION WORK OR OTHER SIMILAR AND POTENTIALLY DANGEROUS WORK.

10.4.1 When the use of explosives, driving or removal of piles, wrecking, excavation work or other similarly potentially dangerous work is necessary for the prosecution of the Work, the Contractor shall exercise the utmost care so as not to endanger life or property and shall carry on such activities under the supervision of properly qualified personnel. The Contractor shall be fully responsible for, and shall save and hold Owner harmless from, any and all damages, claims, and for the defense of any actions against the Owner resulting from the prosecution of such Work in connection with or arising out of the Construction Contract.

10.4.2 The Contractor shall notify each public utility company or other owner of property having structures or improvements in proximity to the site of the Work, of his intent to perform potentially dangerous work. Such notice shall be given sufficiently in advance to enable the companies or other owners of property to take such steps as they may deem necessary to protect their property from injury. Such notice shall not relieve the Contractor of responsibility for any damages, claims, or the defense of any actions against the Owner resulting from the performance of such Work in connection with or arising out of the Construction Contract.

10.4.3 All explosives shall be stored in a secure manner and all storage places shall be marked clearly "EXPLOSIVES - KEEP OFF" and shall be in the care of competent watchmen at all times.

#### 10.5 UNDERGROUND UTILITIES

10.5.1 Known Underground Utilities and other underground structures are shown on the Drawings only to the extent such information has been made available to or discovered by the Owner. It is expected that there may be discrepancies and omissions in the location and quantities of actual Underground Utilities and other underground structures and those shown. This information is shown for the convenience of the Contractor, but is not guaranteed to be either correct or complete, and all responsibility for the accuracy and completeness thereof is expressly disclaimed by Owner. The Contractor shall, ahead of excavation, confirm the location of all Underground Utilities and other underground structures so that they will not be accidentally damaged by the construction operation. Contractor shall be responsible for contacting all utility owners concerning location of all above ground utilities and Underground Utilities before proceeding with the Work. Notwithstanding utility locate services that may be provided in the field by utility owners, Contractor shall verify actual location, and Contractor remains solely responsible for any claims or damage to Underground Utilities or other facilities or structures caused by excavating. Contractor is responsible for, at no additional cost to the owner, potholing all existing Underground Utilities to be crossed or that may otherwise affect their means and methods for constructing the Project prior to beginning any construction on the Project.

### ARTICLE 11

#### INSURANCE REQUIREMENTS

##### 11.1 CONTRACTOR'S INSURANCE

11.1.1 Workers' Compensation Insurance. The Contractors shall carry, at its own expense, valid Workers' Compensation Insurance throughout the entire term of its obligations to the Owner. A copy of the policy or signed certificate of insurance shall be on file with the Owner at all times.

11.1.1.1 The policy shall be appropriately endorsed to give a minimum of thirty (30) days notice of cancellation or intention of non-renewal to the Owner.

11.1.1.2 Limits of liability shall be in conformance with the statutory requirements of the Workers' Compensation Laws of the State of Colorado.

11.1.2 Commercial General Liability Insurance. The Contractor shall carry and maintain, at its own expense, Commercial General Liability Insurance throughout the entire term of its obligations to the Owner. A copy of the policy or a signed certificate of insurance shall be on file with the Owner at all times.

11.1.2.1 The policy shall be appropriately endorsed to give all named parties a minimum of thirty (30) days notice of cancellation or intention to non-renew coverage or any material change or restriction of coverage.

11.1.2.2 Limits of liability shall be a minimum of one million dollars (\$1,000,000) each occurrence; Bodily Injury and Property Damage combined, two million dollars (\$2,000,000) aggregate.

11.1.2.3 The following coverages shall be included in the policy:

- .1 Premises, operations and elevators, including work let or sublet, to cover all claims for bodily injury (including but not limited to death, disease or sickness) and damage or destruction or loss of use of any tangible property.
- .2 Products and completed operations.
- .3 Broad form blanket contractual liability with all exclusions deleted.
- .4 Personal injury liability.
- .5 Explosions, collapse, and underground hazards.
- .6 Broad form property damage endorsement.
- .7 Incidental malpractice.
- .8 Independent contractors.

11.1.2.4 The products and completed operations coverage shall be maintained in effect for a period of six (6) years after the date of final acceptance of the Work.

11.1.3 Comprehensive Automobile Liability Insurance. The Contractor shall carry and maintain, at its own expense, Comprehensive Automobile Liability Insurance. A copy of a certificate of insurance shall be on file with the Owner at all times.

11.1.3.1 The policy shall cover all owned or leased vehicles operated by the insured as well as coverage for all non-owned or hired vehicles used by the insured in the course of his operations.

11.1.3.2 The policy shall be appropriately endorsed to give a minimum of thirty (30) days notice of cancellation or intent to non-renew to Owner.

11.1.3.3 The limits of liability shall be a minimum of one million dollars (\$1,000,000) per occurrence and five hundred thousand dollars (\$500,000) per person.

11.1.4 Umbrella/Excess Liability Insurance. The Contractor shall carry and maintain, at its own expense, an Umbrella (excess) Liability policy throughout the entire term of its obligations to the Owner. A copy of the policy or a signed certificate of insurance shall be on file with the Owner at all times.

11.1.4.1 Policy shall be in excess of all underlying insurance including employer's liability.

11.1.4.2 Policy shall not contain any exclusions for hazards, or contractual hazards.

11.1.4.3 Limits of liability shall be a minimum of three million five hundred thousand dollars (\$3,500,000) in the aggregate.

11.1.5 Owner's Liability Insurance. The Contractor shall carry and maintain, at its own expense, an Owner's Liability policy in the name of the Owner.

11.1.5.1 Limits of liability shall be a minimum of two million dollars (\$2,000,000) in the aggregate.

## 11.2 ADDITIONAL NAMED INSURED

11.2.1 The Contractor's Automobile, Commercial General, and Umbrella Liability policies shall be endorsed to include the Owner as an additional insured and to otherwise comply with the Contract Documents. The Commercial General Liability additional insured coverage shall include products and completed operations coverage. The Contractor's Automobile, Commercial General, and Umbrella Liability additional insured coverage shall be primary with respect to claims made by the Town.

## 11.3 BUILDER'S RISK/PROPERTY INSURANCE

11.3.1 The Contractor shall purchase and maintain property insurance upon the entire Work at the site to the full insurable value thereof. Such insurance shall be in a company or companies against which the Owner has no reasonable objection. This insurance shall include the interests of the Owner, the Contractor, subcontractors and sub-subcontractors in the Work as additional insureds, providing that such insurance is primary with respect to claims made by the additional insureds, and be in the form of "all risk" insurance for physical loss or damage with all exclusions deleted. If not covered under all risk insurance or otherwise provided in the Contract Documents, the Contractor shall effect and maintain similar property insurance on portions of the Work stored off the site or in transit when such portions of the Work are to be included in a Request for Payment under paragraph 9.3.2.

11.3.1.1 The form of policy for this coverage shall be "Completed Value". The coverage under this policy shall include contemplated work and work in progress.

11.3.1.2 If by the terms of this insurance any mandatory deductibles are required, or if the Contractor should elect, with the concurrence of the Owner, to increase the mandatory deductible amounts or purchase this insurance with voluntary deductible amounts, the Contractor shall be responsible for payment of the amount of all deductibles in the event of a paid claim. If separate

contractors are added as insureds to be covered by this policy, the separate contractor shall be responsible for payment of appropriate parts of any deductibles in the event claims are paid on their part of the Project.

#### 11.4 GENERAL REQUIREMENTS

11.4.1 The Contractor shall file two certified copies of all policies with the Project Manager before exposure to loss may occur. If the Owner is damaged by the failure of the Contractor to maintain such insurance and to so notify the Owner, then the Contractor shall bear all reasonable costs properly attributable thereto.

11.4.2 All insurance policies and/or certificates of insurance required under the Contract Documents shall be issued subject to the following stipulations by the Insurer:

- .1 Underwriter shall have no right of recovery or subrogation against the Owner, it being the intent of the parties that the insurance policy so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
- .2 The clause entitled "Other Insurance Provisions" contained in any policy including the Owner as an additional insured shall not apply to the Owner.
- .3 The insurance companies issuing the policy or policies shall have no recourse against the Owner for payment of any premiums due or for any assessments under any form of any policy.
- .4 Any and all deductibles contained in any insurance policy shall be assumed by and shall be the sole liability of the Contractor.

11.4.3 Additional coverages or higher limits of liability may be required by the Owner should the scope or nature of the work change during the course of the Construction Contract. All liability insurance and builder's risk/property insurance policies required by this Article shall specifically provide that all coverage limits shall be exclusive of costs of defense, including attorneys' fees.

11.4.4 The Contractor shall be solely responsible for ensuring that all subcontractors obtain and maintain in force for the term of this Construction Contract insurance policies sufficient to meet the minimum coverages required under the Contract Documents.

11.4.5 Nothing contained in this Article 11 shall be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from his operations under the Construction Contract. Contractor agrees that he alone shall be completely responsible for procuring and maintaining full insurance coverage to adequately insure against the risk attendant to the performance of this Construction Contract. Any approvals of Contractor's insurance coverages by the Owner or the Project Manager shall not operate to the contrary.

11.4.6 The risk of loss to any property to be provided by Contractor to Owner pursuant to this Construction Contract shall be upon the Contractor until said property has been finally accepted by Owner.

11.4.7 Nothing in this Article 11 shall be deemed or construed as a waiver of any of the protections to which Owner may be entitled under the Constitution of the State of Colorado or pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended.

11.4.8 The Contractor shall provide the certificates of insurance required under the Contract Documents before commencing any Work. **It shall be an affirmative obligation of Contractor to provide written notice to the Owner within two (2) days of the cancellation of or substantive change to any of the policies required herein and failure to do so shall constitute a breach of the Contract.**

11.4.9 All insurance required under the Contract Documents shall be obtained from financially responsible insurance companies, licensed in the State of Colorado and approved by the Owner and shall be maintained until the Contractor's Work is accepted by the Owner. The Contractor shall provide the certificates of insurance required under the Contract Documents before commencing any Work. The Owner may, in writing, specifically indicate its approval or disapproval of each separate policy provided pursuant to the Contract Documents.

11.4.10 All policies under the Contract Documents that are scheduled to expire prior to the time the Contractor's Work is finally accepted by the Owner shall be renewed prior to the scheduled expiration date and evidence of such renewal shall be submitted to the Owner for approval.

11.4.11 If any of the policies required under the Contract Documents shall be or at any time become unsatisfactory to the Owner as to form or substance, or if a company issuing any such policy shall be or at any time become unsatisfactory to the Owner, Owner shall so advise Contractor who shall promptly obtain a new policy, submit the same to the Town for approval, and thereafter submit a certificate of insurance as hereinabove provided.

11.4.12 All liability insurance and builder's risk/property insurance policies required by this Article shall be occurrence-based policies.

## ARTICLE 12

### UNCOVERING AND CORRECTION OF WORK

#### 12.1 UNCOVERING OF WORK

12.1.1 If any portion of the Work should be covered contrary to the request of the Project Manager or Owner or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Project Manager, be uncovered for his observation and shall be replaced at the Contractor's expense without change in the Contract Time or Contract Sum.

12.1.2 If any other portion of the Work has been covered which the Owner or Project Manager has not specifically requested to observe prior to being covered, the Project Manager or Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for the payment of such costs.

#### 12.2 CORRECTION OF WORK

12.2.1 The Contractor shall promptly correct all Work rejected by the Project Manager as incomplete, defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of

correcting such rejected Work, including additional testing and inspections and compensation for any additional services made necessary thereby.

12.2.2 In addition to the Contractor's obligations under Paragraph 3.5, if, within one year after Final Completion of the Work or designated portion thereof or within one year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation shall survive acceptance of the Work and termination of the Construction Contract. The Owner shall give such notice promptly after discovery of the condition by the Owner.

12.2.3 The Contractor shall remove from the site all portions of the Work which are defective or non-conforming and which have not been corrected or accepted by the Owner.

12.2.4 If the Contractor fails to correct defective or nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.3.

12.2.5 If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time fixed by written notice from the Project Manager, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, the Owner may upon ten (10) additional days' written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for any additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

12.2.6 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused, in whole or in part, by the Contractor's correction or removal of Work which is defective or not in accordance with the requirements of the Contract Documents.

12.2.7 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 3.5 hereof, or under law or in equity. The establishment of the time period of one year after the Date of Final Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations other than specifically to correct the Work.

### 12.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

12.3.1. If the Owner prefers to accept defective or nonconforming Work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in

the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13

### MISCELLANEOUS PROVISIONS

#### 13.1 GOVERNING LAW

13.1.1 The Construction Contract shall be governed by the law of the State of Colorado. Those provisions of law applicable but discretionary because of the Owner's status as a home-rule municipality shall be binding at the Owner's election.

#### 13.2 SUCCESSORS AND ASSIGNS

13.2.1 The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Construction Contract shall assign, sublet, or transfer (by operation of law or otherwise) any interest in the Construction Contract without the prior written consent of the other. The Contractor shall not assign the whole or any part of the Construction Contract or any monies due or to become due thereunder without the prior written consent of the Owner and of the surety on the Contractor's bond. Any assignment without such written consent shall be void. A copy of such consent of surety, together with a copy of the assignment, shall be filed with the Project Manager. In case the Contractor assigns all or part of any monies due or to become due under the Construction Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to prior claims and liens of all persons, firms and corporations for services rendered; for the payment of all laborers and mechanics for labor performed; for the payment of all materials and equipment used or furnished and for payment of all materials and equipment used or rented in the performance of the Work called for in the Construction Contract; and for the payment of any liens, claims, or amounts due the Federal, State or local governments or any of their funds. This restriction on assignment includes, without limitation, assignment of the Contractor's right to payment to its surety or lender.

#### 13.3 WRITTEN NOTICE

13.3.1 All notices to be given hereunder shall be in writing, and may be given, served, or made by depositing the same in the United States mail addressed to the party to be notified, postpaid and registered or certified with return receipt requested, or by delivering the same in person. Notice deposited in the mail in accordance with the provisions hereof shall be effective unless otherwise stated in the Construction Contract from and after the fourth day next following the date deposited in the mail, or when actually received, whichever is earlier. Notice given in any other manner shall be effective only if and when received by the party to be notified. All notices to be given shall be sent to or made at the last business address known to the party giving notice.

#### 13.4 CLAIMS FOR DAMAGES

13.4.1 Should either party to the Construction Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within a reasonable time after

the first observance of such injury or damage. All claims by Contractor against Owner that are within the scope of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, shall be subject to, and brought in accordance with, the provisions of said Act.

### 13.5 PERFORMANCE AND PAYMENT BOND

13.5.1 The Contractor will be required, simultaneously with the execution of the Construction Contract, to furnish separate Performance and Payment Bonds, each in an amount equal to fifty percent (50%) of the Contract Sum. Said bonds shall be issued by a responsible surety approved by the Owner and shall guarantee the faithful performance of the Construction Contract and the terms and conditions herein contained and the maintenance of the proposed improvements in good repair according to the terms contained in the Construction Contract. Accompanying the bond form shall be a "Power of Attorney" authorizing the attorney in fact to bind the surety company and certified to include the date of the bond. Such bonds shall be on forms provided by the Owner.

13.5.2 The Contractor shall deliver said bonds to the Project Manager no later than the date of execution of the Construction Contract. If the Contractor fails or neglects to deliver the bonds, as specified, he shall be considered to have abandoned the Construction Contract and his bid security will be forfeited.

### 13.6 RIGHTS AND REMEDIES

13.6.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. Such rights and remedies shall survive the acceptance of the Work or any termination of the Contract Documents.

13.6.2 No action or failure to act by the Owner, Project Manager or Contractor shall constitute a waiver of any right or duty afforded any of them under the Construction Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

13.6.3 In all actions by the Owner to enforce its rights and remedies hereunder, whether at law or equity, the Owner, in addition to all other remedies, shall be entitled to recovery of its reasonable attorneys fees and costs.

13.6.4 The Contractor agrees that the economic loss rule as set forth in the *Town of Alma v. Azco Construction, Inc.*, 10 P.3d 1256 (Colo. 2000), shall not serve as a limitation on the Owner's right to pursue tort remedies in addition to other remedies it may have against the Contractor. Such rights and remedies shall survive the acceptance of the Work or any termination of the Contract Documents. Contractor further specifically waives all the provisions of Chapter 8 of Article 20 of Title 13, Colorado Revised Statutes, regarding defects in the Work under the Construction Contract.

### 13.7 TESTS AND INSPECTIONS

13.7.1 Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority. The Contractor shall give the Project Manager and the Owner timely notice of its readiness so the Project Manager and the Owner may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals.

13.7.2 If the Project Manager or public authority having jurisdiction determines that any Work requires additional or special inspection, testing, or approval which paragraph 13.7.1 does not include, the Project Manager may instruct the Contractor to order such additional or special inspection, testing or approval, and the Contractor shall give notice as provided in paragraph 13.7.1. If such additional or special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, or if the necessity of any such testing, inspection, or approval procedures arises out of the fault, neglect, or omission of Contractor, the Contractor shall bear all costs of such testing, inspection, and approval procedures, including compensation for any additional services made necessary by such failure; otherwise the Owner shall bear such costs, and an appropriate Change Order shall be issued.

13.7.3 Required certificates of inspection, testing or approval, unless otherwise required by Contract Documents, shall be secured by the Contractor and promptly delivered by him to the Project Manager.

13.7.4 If the Project Manager is to observe the inspections, tests or approvals required by the Contract Documents, he will do so promptly and, where practicable, at the normal place of testing.

13.7.5 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid delay in the Work.

#### 13.8 LITIGATION AND WORK PROGRESS

13.8.1 Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any litigation proceedings, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents.

#### 13.9 EQUAL EMPLOYMENT OPPORTUNITY

13.9.1 In connection with the execution of this Construction Contract, the Contractor shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, age, sex, handicap, or national origin, if otherwise qualified. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation; and selection for training including apprenticeship. Contractor represents that it will require a similar affirmation of nondiscrimination in all contracts it enters into with subcontractors as part of the execution of this Construction Contract.

#### 13.10 COMMERCIAL DRIVER'S LICENSE SUBSTANCE SCREENING

13.10.1 The contractor shall provide written assurance to the Town that each driver that provides services requiring a commercial driver's license pursuant to this Construction Contract participates in an alcohol and controlled substances testing program that meets the requirements of the Federal Motor Carrier Safety Regulations found at 49 C.F.R. Part 382.

### ARTICLE 14

#### TERMINATION OF THE CONTRACT

##### 14.1 TERMINATION BY THE CONTRACTOR

14.1.1 The Contractor may terminate the Construction Contract if the Work is stopped for a continuous period of sixty (60) days through no act or fault of the Contractor or a subcontractor, sub-subcontractor, or their agents or employees, or any other persons performing portions of the Work under contract with the Contractor, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction;
- .2 an act of government, such as a declaration of national emergency, making material unavailable;
- .3 because the Project Manager has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in paragraph 9.4.1, or because the Owner has not made payment on a Certificate for Payment (without cause) within the time stated in the Contract Documents; or
- .4 if repeated suspensions, delays, or interruptions by the Owner as described in paragraph 14.3 constitute in the aggregate more than 100 percent (100%) of the total number of days scheduled for completion, or one hundred twenty (120) days in any three hundred sixty-five (365) day period, whichever is less.

14.1.2 If one of the above reasons exists, the Contractor may, upon fourteen (14) days' written notice to the Owner, terminate the Construction Contract, unless this reason is cured prior to the expiration of the notice period. Contractor may recover from the Owner payment for Work properly executed in accordance with Contract Documents (the basis for such payment shall be as provided in the Construction Contract) and payment for costs directly related to work thereafter performed by Contractor in terminating such work, including reasonable demobilization and cancellation charges. The Owner shall not be responsible for damages for loss of anticipated profits on work not performed on account of any termination described in paragraphs 14.1.1 and 14.1.2.

## 14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 The Owner may terminate the Construction Contract if the Contractor:

- .1 refuses or fails to supply, in a timely manner, enough properly skilled workers or proper materials or equipment;
- .2 fails to make payment to subcontractors or suppliers for materials, equipment, or labor in accordance with the respective agreements between the Contractor and the subcontractors or suppliers;
- .3 disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;
- .4 disregards the instructions of Owner when such instructions are based on the requirements of the Contract Documents;
- .5 is adjudged a bankrupt or insolvent, or makes a general assignment for the benefit of Contractor's creditors, or a trustee or receiver is appointed for Contractor or for any of its property, or files a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar law; or
- .6 otherwise does not fully comply with the Contract Documents.

14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and Contractor's surety, if any, seven (7) days' written notice, (except in cases of emergency as reasonably determined by Owner), terminate the services

of the Contractor and may:

- .1 take possession of the site and project and of all materials, equipment, tools, and construction equipment and machinery thereon owned, rented, or leased by the Contractor; and
- .2 finish the Work by whatever method the Owner may deem expedient.

14.2.3 When the Owner terminates the Construction Contract for one of the reasons stated in paragraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

14.2.4 To the extent the costs of completing the Work, including compensation for additional professional services and expenses, exceed those costs which would have been payable to Contractor to complete the Work except for Contractor's default, Contractor will pay the difference to Owner, and this obligation for payment shall survive termination of the Construction Contract.

14.2.5 In addition to Owner's right to remove Contractor from any part of the Work pursuant to the Contract Documents, Owner may, at any time, at will and without cause, terminate any part of the Work or any subcontract or all remaining Work for any reason whatsoever by giving written notice to Contractor specifying the part of the Work or subcontract to be terminated and the effective date of termination. Contractor shall continue to prosecute the part of the Work not terminated, if any. For the remainder of the Work, the Contract Documents shall remain in full force and effect.

14.2.6 In the event of termination pursuant to paragraph 14.2.5, Owner shall pay as the sole amount due to Contractor in connection with the Construction Contract, (i) sums due for Work properly executed in accordance with Contract Documents to date, including allowable profit and overhead (except retainage sums shall not be paid prior to one hundred twenty (120) days following the date of termination); (ii) reasonable cost of demobilization and cancellation charges; and as additional and special consideration for this provision; (iii) a profit for underperformed work equal to one-half percent (0.5%) of the cost of the Work actually performed to date.

14.2.7 Upon a determination by a court of competent jurisdiction that the termination of Contractor pursuant to paragraph 14.2.1 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to paragraph 14.2.5 and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in paragraph 14.2.6.

### 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

14.3.1 In addition to Owner's right to suspend, delay, or interrupt Contractor from any part of the Work pursuant to the Contract Documents, Owner may, at any time, at will and without cause, suspend, delay, or interrupt any part of the Work or any subcontract or all Work for any reason whatsoever for such period of time as the Owner may determine by giving written notice to Contractor specifying the part of the Work or subcontract to be suspended, delayed, or interrupted and the effective date of such suspension, delay, or interruption. Contractor shall continue to prosecute the part of the Work not suspended, delayed, or interrupted and shall properly protect and secure the part of the Work so suspended, delayed, or interrupted. If any part of the Work or subcontract is so suspended, delayed, or interrupted, Contractor shall be entitled to payment of reasonable standby fees (or at Owner's option, payment for demobilization and subsequent remobilization) and of costs directly associated with protecting and securing the affected Work. No payment shall be made by Owner, however, to the extent that such Work or subcontract is, was, or could have been suspended, delayed, or interrupted under the

Contract Documents or an equitable adjustment is made or denied under another provision of the Construction Contract. In case of such suspension, delay, or interruption, Owner will issue a Construction Change Directive or authorize a Change Order making any required adjustment to the date of Substantial Completion or the Contract Sum. For the remainder of the Work, the Contract Documents shall remain in full force and effect.

14.3.2 The rights and remedies of Owner under this Section shall be non-exclusive, and shall be in addition to all the other remedies available to Owner at law or in equity.

*Rev. 3/2014*

## EXHIBIT A

### **SCOPE OF WORK**

Crested Butte Denver & Rio Grande Railroad Depot

SHF: Grant No. 2015-02-030

#### A. Foundation Rehabilitation

- i. Repair main level beams at north office area and freight room
- ii. Repair or provide additional support for rotted ends of joists in freight room.
- iii. Replace timber foundation system with new foundation system at the south end of the building
- iv. Install foundation insulation
- v. Repoint masonry foundation system
- vi. Provide and install mechanical ventilation in crawl spaces
- vii. Provide and install damp-proofing membrane in the crawl spaces
- viii. Install supporting structure at the south section of the building's foundation.
- ix. Repair deteriorated lower north wood wall framing.
- x. Site re-grading to improve drainage away from building.

#### B. Site Rehabilitation

- i. Replace decks and platforms removed for foundation access
- ii. Construct ADA compliant access at freight room doors

#### C. Geotechnical engineer observation during construction (separate contract)

**EXHIBIT B \* - Specifications and Associated Plans**

**Town of Crested Butte**

**CRESTED BUTTE DENVER and RIO GRANDE DEPOT**

**FOUNDATION RESTORATION**

**SHF Project No. 2015-02-030**

**SP/HCM Project No 11543.000**

**Dated June 15, 2015**

**SLATERPAULL**

**Hord/ coplal/ macht**

\* Any conflicts between this document and the contract shall be resolved in favor of the contract

**EXHIBIT C TO REQUEST FOR BIDS  
SPECIAL CONDITIONS TO THE CONSTRUCTION CONTRACT**

**EXHIBIT D TO REQUEST FOR BIDS**  
**FORM OF PERFORMANCE AND PAYMENT BONDS**  
**(TO BE COMPLETED UPON AWARD)**

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS, that we, \_\_\_\_\_  
\_\_\_\_\_ ("Principal") and \_\_\_\_\_  
\_\_\_\_\_ ("Surety"), hereby jointly and severally bind ourselves, our respective  
heirs, executors, administrators, successors and assigns, to pay the Town of Crested Butte, State of  
Colorado ("Owner") the sum of  
\_\_\_\_\_  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_), in United States currency.

WIHEREAS, Principal has, by means of a written agreement dated \_\_\_\_\_,  
entered into a contract with Owner for the construction of HISTORIC DENVER AND RIO GRANDE  
RAILROAD DEPOT FOUNDATION REHABILITATION,  
which contract is by reference made a part hereof the same as though fully set forth herein (the  
"Contract");

NOW, THEREFORE, the conditions of this obligation are as follows:

FIRST. Principal shall: (1) faithfully perform each and every term and condition of said  
Contract on Principal's part; (2) fully indemnify and save harmless the Owner from all costs and damages  
which Owner may suffer by reason of Principal's failure to do so; and (3) fully reimburse and repay  
Owner all outlay and expenses which Owner may incur in making good any default.

SECOND. For a period of one year from Owner's final acceptance of the work performed  
pursuant to said Contract, the material furnished and used and the workmanship employed in the  
construction of the improvements described in the Contract shall be free from all defects. The Principal  
shall make such repairs as required to remedy any defects of which the Owner has given the Principal  
written notice prior to the expiration of the one-year warranty period hereby provided.

THIRD. Provided the Owner has given written notice to the Principal of defects in the Principal's  
performance of the Contract prior to the expiration of the one-year warranty period provided for above,  
this bond will remain in effect until defects have been remedied in accordance with the Owner's plans and  
specifications to the Owner's satisfaction.

FOURTH. If Principal or any of Principal's subcontractors fail to duly pay for any labor,  
materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by Principal  
or Principal's subcontractor in performance of the Contract, or fails to pay any person who supplies rental  
machinery, tools, or equipment, in the prosecution of the Contract, Surety will pay the same in an amount  
not exceeding the sum specified in this bond together with interest at the rate allowed by statute.

FIFTH. The Owner shall not be joined in any action against the Principal or Surety on this bond  
to enforce payment for amounts lawfully due from the Principal or Principal's subcontractors for work  
performed under the Contract, nor shall the Owner be liable for the payment of any costs or expenses of  
such action.

SIXTH. In addition to all other conditions hereof, this bond includes all provisions set forth in  
section 38-26-106, Colorado Revised Statutes.

If all the above conditions are fully satisfied, this obligation shall be null and void; otherwise it  
shall remain in full force and effect.

For value received, Surety further agrees that, any Contract provision to the contrary notwithstanding, Surety's obligations hereunder shall not be affected in any way by any of the following and expressly waives notice of the same:

1. Any extension of time granted to Principal in which to perform the Contract.
2. Any change in the Plans, Drawings, Specifications, Contract or other Contract Documents.

An action on the performance provisions of this bond may be brought by the Owner or any person entitled to the benefits of this bond within five years from the time the cause of action arises.

Principal and Surety are jointly and severally liable under the provisions hereof and actions against either or both may proceed without prior action against the other, and both may be joined in one action.

SIGNED AND SEALED THIS \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

PRINCIPAL

SURETY

\_\_\_\_\_  
(Name of Company)

\_\_\_\_\_  
(Name of Company)

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

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

Address:

Address:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS, that we, \_\_\_\_\_  
\_\_\_\_\_ ("Principal"), and \_\_\_\_\_  
\_\_\_\_\_ ("Surety"), hereby bind ourselves, our respective heirs,  
executors, administrators, successors and assigns jointly and severally to pay the Town of Crested Butte,  
State of Colorado ("Owner"), the sum of \_\_\_\_\_  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_), in United States currency.

WHEREAS, the Principal has, by means of a written agreement dated \_\_\_\_\_,  
entered into a contract with the Owner for the construction of HISTORIC DENVER AND RIO GRANDE  
RAILROAD DEPOT FOUNDATION REHABILITATION, which contract is by reference made a part  
hereof the same as though fully set forth herein ("Contract");

NOW, THEREFORE, the conditions of this obligation are as follows:

FIRST. The principal shall at all times promptly make payments of all amounts lawfully due to  
all persons supplying or furnishing him or his subcontractors with labor, materials, rental machinery,  
tools, or equipment used or performed in the prosecution of the Contract and, further, shall indemnify and  
save harmless the Owner to the extent of any payments in connection with the carrying out of any such  
contract which the Owner may be required to make under the law.

SECOND. If the Principal or its subcontractor fails to duly make such payments, the Surety shall  
pay the same together with interest at the rate allowed by statute.

THIRD. The Owner shall not be joined in any action by a claimant against the Principal and the  
Surety on this bond nor shall the Owner be liable for payment of any costs or expenses of such suit.

FOURTH. In addition to all other conditions hereof, this bond includes all provisions set forth in  
section 38-26-105, Colorado Revised Statutes.

If these conditions are fully satisfied, this obligation shall be null and void; otherwise it shall  
remain in full force and effect.

For value received, Surety further agrees that, any Contract to the contrary notwithstanding,  
Surety's obligations hereunder shall not be affected in any way by any of the following and expressly  
waives notice of the same:

1. Any extension of time granted to Principal in which to perform the Contract.
2. Any change in the Plans, Drawings, Specifications, Contract or other Contract Documents.

An action on the payment provisions of this bond may be brought by the Owner or any person  
entitled to the benefits of this bond at any time within five years from date of final settlement of the  
Contract.

Principal and Surety are jointly and severally liable under the provisions hereof and actions  
against either or both may proceed without prior action against the other, and both may be joined in one  
action.

SIGNED AND SEALED THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

IN PRESENCE OF:

\_\_\_\_\_

ATTEST: (As to Corporation)

\_\_\_\_\_  
Secretary

(CORPORATE SEAL)

COUNTERSIGNED:

(  )Resident Agent

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City and State

\_\_\_\_\_  
Principal

By: \_\_\_\_\_  
(Name) (Title)

\_\_\_\_\_  
Surety

By: \_\_\_\_\_  
Attorney-in-fact

Give local address and phone  
number:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(SEAL OF SURETY)



## Staff Report

August 4, 2015

**To:** Mayor and Town Council

**Thru:** Todd Crossett, Town Manager

**From:** Rodney E Due, Director of Public Works

**Subject:** IGA between the Town of Crested Butte and Mt. Crested Butte Water and Sanitation District reference Vehicle Storage Building Construction and Usage

**Attachments:** 1. Town of Crested Butte Intergovernmental Agreement  
2. Resolution NO. 19

**Date:** July 30, 2015

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**Summary:** With the continual rising cost of landfill application, and more stringent CDPHE regulations, the wastewater plant was forced to look for more effective and efficient ways to dispose of its bio-solids. The most cost effective way to accomplish this was to utilize the existing ATAD Bio-Solids building for composting. The building was being underutilized for equipment and vehicle storage.

This entailed the need to construct a new vehicle storage building, which was more cost effective than building a new building for composting operations. There is an opportunity to share the cost and use of the building with Mt. CB Water and Sanitation. The Staff has been working closely with Mt. CB Water and Sanitation Staff to establish our composting operations and to create this IGA for construction of a shared new building. The building is included in the 2015 budget passed by the Council.

**Recommendation:** Staff recommends council to approve Resolution No. 19 approving the Intergovernmental agreement between the Town of Crested Butte and Mt. Crested Butte Water and Sanitation District reference the storage building construction and usage located at the Town's Public Works Yard located at 801 Butte Avenue, Crested Butte, CO 81224 as part of the consent agenda.



**RESOLUTION NO. 19**

**SERIES 2015**

**RESOLUTIONS OF THE CRESTED BUTTE TOWN COUNCIL APPROVING THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF CRESTED BUTTE AND MT. CRESTED BUTTE WATER AND SANITATION DISTRICT REGARDING STORAGE BUILDING CONSTRUCTION AND USAGE LOCATED AT THE TOWN PUBLIC WORKS YARD**

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, Colorado Revised Statutes §29-1-201 et seq. authorize local governments to cooperate or contract with other units of government to make the most efficient and effective use of their powers and responsibilities;

WHEREAS, the Town is constructing a storage building located in the Town Public Works Yard (the “**Project**”) and has requested that Mt. Crested Butte Water and Sanitation District (the “**District**”) partner with the Town in such construction effort, including sharing the costs therefor;

WHEREAS, in conjunction with the Town and the District partnering in the Project, the parties desire to share the ongoing use of the storage building once complete;

WHEREAS, the Town and the District desire to enter into an intergovernmental agreement memorializing the terms of their partnership in connection with the storage building construction and ongoing use; and

WHEREAS, the Town Council finds that it is in the best interests of the health, safety and general welfare of the citizens and visitors of the Crested Butte to adopt and execute the intergovernmental agreement referenced herein.

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

1. **Findings.** The Town Council hereby finds that entering into an intergovernmental agreement with the District for the purposes of sharing the construction costs for the Project and sharing the ongoing use of the storage building is in the best interest of the Town.
2. **Approval; Authorization of Town Manager.** Based on the foregoing, the Town Council hereby approves the intergovernmental agreement (“**IGA**”) with District in substantially

the same form as attached hereto as **Exhibit "A."** The Town Manager is hereby authorized to execute the IGA.

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2015.

TOWN OF CRESTED BUTTE, COLORADO

By: \_\_\_\_\_  
Aaron J. Huckstep, Mayor

ATTEST

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

(SEAL)

**EXHIBIT “A”**

**Storage Building Intergovernmental Agreement**

[attach form here]

**INTERGOVERNMENTAL AGREEMENT**

**BETWEEN**

**TOWN OF CRESTED BUTTE  
AND  
MT. CRESTED BUTTE WATER AND SANITATION**

**RE:  
STORAGE BUILDING CONSTRUCTION AND USAGE**

**THIS AGREEMENT** (“**Agreement**”) is entered into in Gunnison County, Colorado this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, as follows:

1. **PARTIES**. The parties to this Agreement are:

**TOWN OF CRESTED BUTTE** (“**Town**”), a Colorado home rule municipality

and

**MT. CRESTED BUTTE WATER AND SANITATION DISTRICT**, a Colorado special district (“**District**”; together with the Town, collectively the “**Parties**”, each sometimes individually referred to as a “**Party**”).

2. **RECITALS**. The following recitals apply to this Agreement:

2.1 The Town is a home rule municipality duly and regularly organized and validly existing as a body corporate and politic by virtue of the constitution and laws of the State of Colorado.

2.2 The District is a duly organized special district existing under and by virtue of the statutes of the State of Colorado.

2.3 The Town provides sanitation services and maintains and operates a waste water treatment plant to provide such services to the Town and its contractually designated service area.

2.4 The District provides sanitation services and maintains and operates a waste water treatment plant to provide services within its boundaries and its contractually designated service area.

2.5 Both parties are in need of additional storage space for their vehicles and equipment.

2.6. In accordance with C.R.S. § 29-1-203, the Parties desire to partner on the construction of a five-bay storage building (the “**Improvements**”) to be located in the Town’s public works yard located at 801 Butte Avenue, Crested Butte, CO 81224.

2.7 Both Parties have budgeted funds equal to or in excess of the estimated for the construction costs of the Improvements, and have received authorization from their respective governing boards..

2.8 The Parties desire, following the construction of the Improvements, to share in the usage of the Improvements.

2.9 The Parties now desire to enter into this Agreement in order to set forth their rights and obligations respecting the Improvements, including, without limitation, their ongoing use thereof.

3. **IMPROVEMENTS.** The Parties desire to have constructed the Improvements as described in **Exhibit “A”** attached hereto. The Improvements shall be constructed by Town’s contractor and materialman selected following an open bidding process and after entering into a contract for the construction of the Improvements (“**Construction Contract**”). The Town may perform some of the construction work utilizing its own employees.

4. **COSTS OF CONSTRUCTION OF IMPROVEMENTS.** The cost of the construction of the Improvements (“**Construction Costs**”) shall be borne equally by the Parties. The estimated Construction Costs are \$150,000.00. \$75,000.00 shall be paid by the Town and \$75,000.00 shall be paid by the District. The Town shall submit copies of all pay applications from the Town’s Contractor for the District’s review. The District shall pay to the Town its proportionate share of the Construction Costs within ten days after the District’s actual receipt from the Town of any payment application as presented by the Town’s Contractor. The District may inspect the progress of the construction before submitting payment and make objection to any portion of the Contractor’s payment application if the District in good faith disputes any charge or cost contained therein.

5. **USE RIGHTS; COOPERATION.** The Parties shall share the use of the Improvements and coordinate their respective usage so that neither Party adversely affects the other Party’s usage. Each Party shall be entitled to the exclusive use of two (2) storage bays. The third storage bay shall be shared equally by the Town and the District. Each Party shall cooperate with the other as to the ongoing use of the third storage bay and the Improvements.

6. **MAINTENANCE COSTS.** During the shared use of the Improvements, the Parties shall share equally the maintenance and repair expenses associated with the Improvements. Each Party shall keep the other Party informed of any damage or needed repairs to the Improvements. If one Party damages the Improvements, said Party shall be solely responsible for the repair of such damage and the costs incurred resulting therefrom. The Parties shall cooperate and coordinate efforts in regards to all maintenance and repair efforts. The requested Party shall pay its share of expenses to the

requesting Party within thirty (30) days after receiving an invoice for such expenses. Each Party agrees to budget no less than \$1,000.00 each year for expenses and repairs.

7. **OPERATION COSTS.** Each Party assumes responsibility for half the costs and expenses associated with operating the Improvements including utilities, and insurance.

8. **STORAGE.** Each Party may store its equipment and other personal property ("**Personal Property**") in the Improvements in a manner so as not to interfere with the other Party's Personal Property and operations.

9. **USE BY OTHERS.** The Improvements may not be used by a third party.

10. **TERMINATION.** If the District determines in the future that it no longer wishes to utilize the Improvements, it shall give the Town no less than 60 days' prior written notice of the date it intends to cease using the Improvements and thereafter, this Agreement shall be deemed terminated ("**Termination Date**"). The District shall nevertheless remain responsible for its share of the costs and expenses incurred under this Agreement prior to such termination.

11. **BUYOUT.** If, after five (5) years from the effective date of this Agreement the District elects to terminate this Agreement and ceases using the Improvements, the District may elect to require the Town to buy its interest in the Improvements ("**Buyout**"). The District's interest in the Improvements shall be equal to 50% of the then current value of the Improvements. In the event the parties cannot agree on a value for the Improvements, the value shall be determined by a real estate appraiser licensed in the State of Colorado to be engaged by the District ("**Determined Value**"). If the Town disagrees with the Determined Value, the Town may engage its own licensed real estate appraiser to prepare an appraisal of the Improvements ("**Town Value**"). The Determined Value and the Town Value shall be averaged to reach a final value for the Improvements for purposes of the Buyout ("**Final Value**").

The Town shall pay to the District 50% of the Final Value no later than one year after the Termination Date.

12. **ANNUAL REVIEW.** The Parties shall review the use of the Improvements annually and amend the provisions of this Agreement as and when needed.

13. **NOTICES.** All notices and other communications required or permitted under this Agreement shall be in writing and shall be, as determined by the person giving such notice, either hand delivered, mailed by registered or certified mail, return receipt requested, or by telecopier or telegraphic communication to the required Party at the following addresses:

TOWN: P.O. Box 39  
Crested Butte, CO 81224-0187  
Attn: Town Manager

DISTRICT: P.O. Box 5740

Mt. Crested Butte, CO 81225  
Attn: District Manager

Notice shall be deemed delivered at the time of personal delivery, telecopier or telegraphic communication or when mailed to the required Party. Either Party may change its address by giving written notice of a change of address to the other Party in the manner above provided.

14. **ENTIRE AGREEMENT.** This Agreement constitutes the entire and only agreement between the Parties. All prior negotiations, agreements, representations and understandings, whether written or oral, are merged into and superseded by this Agreement and shall be of no further force or effect.

15. **AMENDMENT.** This Agreement cannot be modified, amended or changed in any manner except by an agreement in writing signed by the Parties hereto.

16. **APPLICABLE LAW.** This Agreement is executed in Gunnison County, Colorado, and shall be interpreted, construed and governed by the laws of the State of Colorado. Any dispute shall be brought in the District Court for Gunnison County, State of Colorado.

16. **JURISDICTION AND VENUE.** Jurisdiction and venue in any action as to this Agreement and the interpretation, enforcement or the determination of the rights and duties of the Parties hereto shall be in the District Court of Gunnison County, Colorado.

17. **ATTORNEYS' FEES.** If any legal action is commenced or maintained in court, whether in law or in equity, by either party to this Agreement as to the interpretation, enforcement, construction or the determination of the rights and duties of the Parties to this Agreement or any document provided for herein, the substantially prevailing Party in any such action shall be awarded its reasonable attorneys' fees together with all reasonable costs and expenses incurred in such action.

17. **TERMINATION.** This Agreement and the terms and conditions hereof shall remain in full force and effect until fully performed by the Parties, and it is understood and agreed that the terms and conditions of this Agreement shall not be merged nor extinguished by any instrument of conveyance or assignment.

18. **BINDING AGREEMENT.** This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, assigns and legal representatives.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;

WHEREFORE, the Parties have entered into this Agreement effective as of the date first written above.

TOWN:

DISTRICT:

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

By: \_\_\_\_\_  
Aaron J. Huckstep, Mayor

Attest:

\_\_\_\_\_  
Town Clerk

**MT. CRESTED BUTTE WATER AND  
SANITATION DISTRICT,**  
a Colorado special district

By: \_\_\_\_\_  
Frank Glick, District Manager

Attest:

\_\_\_\_\_  
Secretary

**EXHIBIT "A"**

**Improvements**

[attach here]

1. Description.
2. Drawings.



## Staff Report August 4, 2015

**To:** Mayor and Town Council  
**Thru:** Todd Crossett, Town Manager  
**From:** Bob Gillie, Building and Zoning Director  
**Subject:** GCEA electric vehicle charging station, Ordinance #5, Series 2015  
**Date:** July 27, 2015

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**Summary:** Gunnison County Electric Association has approached the Town of Crested Butte to allocate space on Town property to accommodate an electric vehicle charging station. In order to do this a ground lease for two parking spaces that is authorized under Ordinance #, Series 2015 is requested.

**Previous Council Action:**

On April 20, 2015 Mike McBride introduced the concept of the Town donating some parking space for a level II charging station. The Council considered the options for placement and decided that a spot next to the tennis courts in the new parking area would be optimum. GCEA was requested to go back and look if a Level III quick charge station was feasible.

On May 18, 2015 Mike McBride appeared back before the Council with regard to the Level III charging station. He indicated it was not feasible because it required 3 phase power which was not in the vicinity, it would be prohibit ably expensive to install and take up significant space. There is currently no standardized plug design for Level III stations and the number of cars that could utilize it is severely limited. The Council made a motion to direct the staff to work with GCEA to move the Level II project forward.

On July 20, 2015 the Town Council set Ordinance #5, Series 2015 for hearing on August 4<sup>th</sup> and authorized the Mayor to sign a letter of support for GCEA's grant submittal.

**Background:** One issue brought up previously was the applicability of the facilities over time as technology changes. There is a clause in the lease that requires GCEA to work with Town to assure that the facilities are relevant on an ongoing basis. GCEA also will sign and advertise the location appropriately. GCEA will install the facilities and will build any containment required by Bozar. The lease will be for 10 years.

**Discussion:**

Pros- The charging station may encourage people who own electric cars to pick C.B. as a destination.

The time to charge a vehicle (2-4 hours) assures they will have time to spend in Town. The creation of the station is consistent with the Town stated goals and agreement with GCEA and with an increased number of charging stations nationally the sale of electric vehicles becomes more likely.

Cons: The spaces may not be utilized as often as regular parking spaces given the number of electric vehicles currently on the road.

**Legal Implications:** The ground lease attached requires GCEA to insure the facility and indemnify the Town.

**Financial Implications:** There should be no implications for the Town. GCEA will pay for the installation and at least initially the electric. The Town will plow the area in conjunction with the rest of the parking lot.

**Recommendation:** Staff recommends that ordinance #5, series 2015 be adopted.

**Proposed Motion:** I move to adopt ordinance #5, Series 2015.

**ORDINANCE NO. 5**

**SERIES NO. 2015**

**AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL GRANTING A GROUND LEASE TO GUNNISON COUNTY ELECTRIC ASSOCIATION, INC. FOR THE INSTALLATION OF AN ELECTRIC VEHICLE CHARGING STATION ON A 20 FOOT BY 20 FOOT PORTION OF THE SOUTHWEST QUADRANT OF TOWN PLAZA**

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

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

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

WHEREAS, the Town Staff has recommended allowing Gunnison County Electric Association, Inc. ("GCEA") to lease certain space in Town Plaza (the "Town Property") for the purpose of installing, operating, repairing, maintaining and upgrading an electric vehicle charging station and associated facilities (the "Facilities") on Town property so that GCEA can provide electric vehicle charging services to the Town, its residents and visitors; and

WHEREAS, the Town Council hereby finds that allowing GCEA to lease certain space on the Town Property for the purposes of installing, operating, repairing, maintaining and upgrading the Facilities is in the best interest of the Town and the health, safety and welfare of the residents and visitors of Crested Butte.

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

**Section 1.** **Findings.** The Town Council hereby finds that granting a lease to certain space on the Town Property for purposes of GCEA installing, operating, repairing, maintaining and upgrading the Facilities is in the best interest of the Town and the health, safety and welfare of the residents and visitors of Crested Butte, the Town Council desiring to promote the use of electric vehicles in order to promote energy efficiency and energy conservation.

**Section 2. Authorization of Town Manager.** The Town Council hereby authorizes the Town Manager to execute the Ground Lease with GCEA in the same form as attached hereto as **Exhibit “A.”**

**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 that is in conflict with this Ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS \_\_ DAY OF \_\_\_\_\_, 2015.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS \_\_ DAY OF \_\_\_\_\_, 2015.

TOWN OF CRESTED BUTTE, COLORADO

By: \_\_\_\_\_  
Aaron J. Huckstep, Mayor

ATTEST

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

(SEAL)

**EXHIBIT "A"**

**Ground Lease**

[attach form ground lease here]

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# **Standard Mine Superfund Site Remedial Action Adit Rehabilitation Level 1 and 3**

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**United States  
Environmental Protection Agency  
Contract No.: EP-W-09-009**

## **SITE MANAGEMENT PLAN**

USEPA Region 8  
Gunnison County, Colorado

**July 17, 2015**





SITE MANAGEMENT PLAN  
STANDARD MINE SUPERFUND SITE  
REMEDIAL ACTION  
ADIT REHABILITATION LEVEL 1 AND 3  
GUNNISON COUNTY, COLORADO

EPA WORK ASSIGNMENT NUMBER: 030-RARA-08JM  
EPA CONTRACT NUMBER: EP-W-09-009

Prepared by: HDR ENGINEERING INC.

JULY 17, 2015

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
James Hanley, Remedial Project Manager, EPA Region 8

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
Jim Lewis, Project Manager, Colorado Department of Public Health and  
Environment

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
Brad Williams, Program Manager, HDR

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
John Ballegeer, Project Manager, HDR

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
Melissa LaMacchia, QA Coordinator, HDR

This document has been prepared for the U.S. Environmental Protection Agency under Contract No. EP-W-09-009. The material contained herein is not to be disclosed to, discussed with, or made available to any person or persons for any reason without prior express approval of a responsible officer of the U.S. Environmental Protection Agency. In the interest of conserving natural resources, this document is printed on recycled paper and double-sided as appropriate.



### DISTRIBUTION LIST

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\*Updates to this SMP will be distributed (email or mail) immediately upon approval to replace previous versions



## ACRONYMS AND ABBREVIATIONS

CDPHE	Colorado Department of Public Health and Environment
CFRMR	Colorado Front Range Mine Rescue
DRMS	Department of Reclamation and Mine Safety
EPA	Environmental Protection Agency
ERRS	Emergency and Rapid Response Services
FDR	Forest Development Road
FS	Feasibility Study
HASP	Health and Safety Plan
HWCC	Harrison Western Construction Corp
NPL	National Priorities List
O&M	Operations and Maintenance
CQAPP	Construction Quality Assurance Project Plan
O&M	Operations and Maintenance
RA	Remedial Action
RAC	Redial Action Contracts
RAO	Remedial Action Objectives
RD	Remedial Design
RI	Remedial Investigation
ROD	Record of Decision
RPR	Resident Project Representative
RPM	Remedial Project Manager
SMP	Site Management Plan
WMP	Waste Management Plan
USFS	United States Forestry Service



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Figure 1 Site Location

Figure 2 Directions to Hospital



# 1 Introduction

## 1.1 General

This Site Management Plan (SMP) describes interim site management procedures for the Standard Mine NPL Site during field activities for partial completion of the selected remedy. The SMP was prepared to manage site access, security, health and safety, and contingency procedures, during construction of the RA. This SMP was prepared in conjunction with the following site-specific plans prepared by HDR:

- Construction Quality Assurance Project Plan (CQAPP) – Describes the methods and procedures that will be implemented by HDR to ensure that the remedies for the Standard Mine Superfund Site (referred to herein as the “Standard Mine Site”) are constructed in accordance the design plans and specifications for Standard Mine NPL Site Remedial Action Adit Rehabilitation Level 1 And 3 (HDR, 2014).
- The Health and Safety Plan (HASP) – Discusses the task-specific health and safety requirements and contingency procedures, including emergency procedures.
- The Waste Management Plan (WMP) – Outlines how wastes that are encountered during the RA will be managed and disposed of. This plan specifies the procedures to be followed for waste handling, temporary storage, characterization, treatment and final disposal when wastes will be transported off-site.

This SMP also supplements the following construction specifications sections and associated submittals prepared by HDR and HWCC:

- 013531 HEALTH, SAFETY AND EMERGENCY RESPONSE PROCEDURES
- 015000 TEMPORARY FACILITIES AND CONTROLS
- 028113 DISPOSAL OF EXCAVATED MATERIALS
- 31 23 16 EXCAVATION
- 312500 EROSION PROTECTION AND SEDIMENTATION CONTROL

## 1.2 Revisions

The SMP will be revised to address implementation of monitoring and operation and maintenance of completed phases of the selected remedy. Revisions also will be prepared to address modifications, or changes in monitoring, operation and maintenance



to existing or future phases of the selected remedy, or shut-down of completed phases of the remedy.

### **1.3 Notifications**

Notifications will be submitted, as needed, in accordance with this SMP and other site-specific plans. Notifications include the following:

In the case of any medical emergency, requiring immediate medical attention or evacuation, call the Crested Butte Fire Department.

Notice within 1 hour of any indication of significant changes in pH, or visible changes in turbidity, color, or odor of water in Elk Creek downstream of field activities. Notify the On-call Water Plant Operator, Crested Butte Water Systems Manager, Project Engineer, Remedial Project Manager, and HWCC Project Manager.

Notice within 24 hours of evidence of raveling or instability of temporary slopes, underground excavations, ground support systems, or other unsafe conditions. Notify Project Engineer, Remedial Project Manager, and HWCC Project Manager.

Notice within 24 hours of any major spill, emergency, natural hazard, fire, flood, or earthquake that has the potential to impact the environment or the public. Notify all names in Table 1.

Notice within 2 days of evidence of possible scientific, prehistorical, historical, or archeological data, artifacts or fossils. Notify Project Engineer, Remedial Project Manager, and HWCC Project Manager.

Notice within 5 days of identification of any condition that appears substantially different than those indicated in the construction documents and that has the potential to impact the environment or the public, or has the potential to change the cost or schedule of the field activities for the RA. Notify all names in Table 1.

Table 1 includes the contact information for the notifications described above. The information on the table will be updated as necessary to provide accurate contact information.



**Table 1-1 Notifications**

<b>Name:</b>	<b>Title, Organization:</b>	<b>Telephone:</b>	<b>Email Address:</b>
James Hanley	Remedial Project Manager EPA Region 8	m: 720.584.2579 o: 303.312.6725	<a href="mailto:hanley.james@epa.gov">hanley.james@epa.gov</a>
Christina Prograss	Project Manager EPA Region 8	m:720-951-0961 o:303-312-6009	<a href="mailto:prograss.christina@epa.gov">prograss.christina@epa.gov</a>
John Ballegeer	Project Engineer HDR	m:720-987-6623 o:303-323-9859	<a href="mailto:john.ballaeger@hdrinc.com">john.ballaeger@hdrinc.com</a>
Chris Hassel	Project Manager HWCC	m:720-312-0270 o:303-302-2976	<a href="mailto:Chassel@harwest.com">Chassel@harwest.com</a>
Jim Lewis	Project Manager CDPHE	M:303.257.0840 o:303-692-3390	<a href="mailto:jim.lewis@cdphe.state.co.us">jim.lewis@cdphe.state.co.us</a>
Jeff Graves	State Rep DRMS	m:303-618-0850 o:303-866-3567	<a href="mailto:jeff.graves@state.co.us">jeff.graves@state.co.us</a>
Linda Lanham	Project Manager USFS	o: (970) 874-6600	<a href="mailto:llanham@fs.fed.us">llanham@fs.fed.us</a>
David Jelinek	Water Systems Manager Crested Butte Water Plant	m:970-209-0829 o:970-349-0885	
	On-Call Operator Crested Butte Water Plant	m:970-209-1439	
	Crested Butte Fire Department Dispatch	911 o:970-349-5333	
	Gunnison County Dispatch	970-641-8201	



## 2 Site History

### 2.1 Site Location and Description

The Standard Mine Site is located in Gunnison County, Colorado, approximately 5 miles west of the town of Crested Butte (Figure 1). The site is an abandoned hard rock mine located in west central Colorado at an elevation of approximately 10,900 to 11,600 feet above mean sea level. It is located within the boundaries of the Gunnison National Forest and includes approximately 10 acres situated on a combination of both U.S. Forest Service (USFS) land and private mining claims.

One sitewide operable unit includes all contaminated media present at or discharging from the site. A more complete description of the site can be found in ROD, the Remedial Investigation (RI), and the Feasibility Study (FS) Report.

Contaminated media include waste rock, tailings, surface water, groundwater (limited contamination), and acid rock drainage emanating from the mine workings. Elevated concentrations of cadmium, copper, lead, manganese, zinc, and other metals are present in site soil, mine discharges, and downstream surface water. The site releases contaminated discharge from the abandoned mine workings into Elk Creek with peak flow rates from May to July exceeding 100 gallons per minute (gpm) in some years and low flow rates between August and April that are less than 10 gpm.

### 2.2 Investigation and Remedial History

The Standard Mine was listed on the National Priorities List (NPL) as a Superfund site in 2005. EPA Region 8 is the lead agency for the cleanup of the site and CDPHE is the support agency. Because the site is partially located on USFS property, EPA and CDPHE are coordinating with the USFS on all cleanup activities.

The Colorado Division of Reclamation, Mining, and Safety (DRMS) investigated and mapped over 1800 feet of the Level 2, Level 3, and Level 5 underground mine workings during 2006 and 2009. The investigations identified sources of water flowing into the workings, flow of water through the workings, and sources of contamination within the workings.

Between 2006 and 2009, EPA's Emergency Response Unit removed a tailings impoundment and several waste rock piles. In 2007, EPA installed a pilot-scale passive treatment system at the site. The system was designed to treat 1gpm of adit discharge. The system proved reliable in treating water with 97 percent to 99 percent removal efficiencies of target metals.

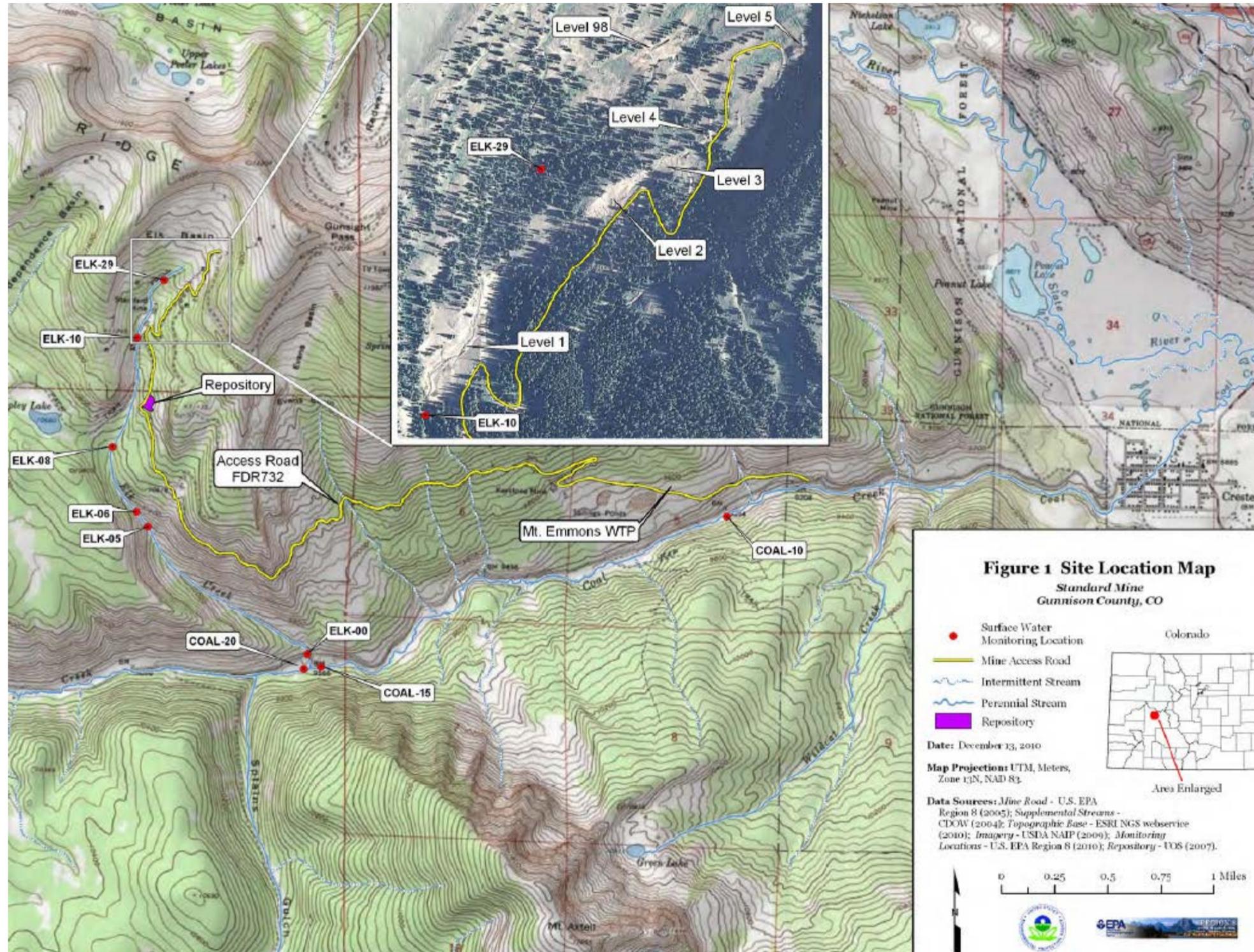


Figure 1 Site Location Map



On September 30th 2011, the Final Standard Mine Record of Decision (ROD) was issued presenting the selected remedy for the Site. The ROD called for implementation of the remedial action (RA) in two phases. Phase 1 involved source control that included sealing openings in Level 3 and installing a flow-through bulkhead in Level 1. Phase 2 involved water treatment that would depend on the Phase 1 monitoring data. There are no source materials that constitute principal threats at the site and no additional remedial actions are anticipated following the implementation of the selected remedy.

In 2012, EPA's Emergency and Rapid Response Services (ERRS) contractor constructed several water treatment and settling zones with a total storage capacity of roughly 115,000 gallons. ERRS and an EPA mining subcontractor removed the Level 1 adit's wooden portal, which was unstable and in danger of collapse, and began underground work to rehabilitate the adit. The Level 1 adit was cleared and stabilized approximately 200 feet. However, an estimated 650 to 800 cubic yards of debris still remain in a second blockage. The remaining blockage is roughly 80' long, 15' wide and ranges in height between 7 and 15 feet. There also appears to be roughly 3 feet of water trapped behind the blockage.

### **2.3 Remedial Action Objectives**

The selected remedy called for two phases of the remedy, with monitoring performed after the first phase to determine the success of the first phase and the need for the second phase. However, before constructing either phase of the remedy, the underground openings must be stabilized and made safe.

The Remedial Action Objective (RAO) of this portion of the Phase 1 RA includes rehabilitation and stabilization of portions of the Level 1 and Level 3 adits to provide safe access for construction of the remedy elements. The remedy elements include sealing openings from Level 3 to Levels 4 and 2, channelizing the Level 3 adit discharge to the Level 3 portal, and investigating the bulkhead target area in Level 1 to provide information for bulkhead design.

## **3 Site Access and Staging**

### **3.1 Site Access**

Access to the site is shown on Figure 1 and may be obtained from Crested Butte via Gunnison County Road 12 and 9, then through the gated access road to the US Energy Mt. Emmons Project Water Treatment Plant, then to the Site via Forest Development Road (FDR) 732.

### **3.2 Site Staging**

Construction Specification section 015000 TEMPORARY FACILITIES AND CONTROLS submittal for staging areas shows parking and field office trailers located behind the



Water Treatment Plant. Equipment parking, material laydown and storage areas are shown at the next switchback above the Water Treatment Plant.

Construction Specification section 02 81 13 DISPOSAL OF EXCAVATED MATERIALS calls for excavated earth materials to be deposited at the on-site repository located along FDR 732 about 0.5 miles below the Level 1 portal.

## 4 Site Security

Construction Specification section 01 50 00 TEMPORARY FACILITIES AND CONTROLS submittal for the use of the existing gates and locks to provide for protection of property, equipment, and facilities, and allowing only authorized personnel access to the work areas. The gates remain locked when RA activities are not being conducted.

## 5 Site Safety

All site activities will be conducted in accordance with the site-specific HASP and Specification Section 01 35 31 HEALTH, SAFETY AND EMERGENCY RESPONSE PROCEDURES. The HASP will be kept with the team during field operations and will be updated on a regular basis to account for changes in scope, personnel, and subcontractor requirements.

### 5.1 First Aid and Medical Emergency Information

The planned project work will be remote (e.g., more than 15 minutes away from the nearest medical facility). At least one person working on the Site will have current training (within the past 2 years) in first aid/CPR. HDR will have one or possibly two persons on Site and HWCC will have several employees with First aid and CPR training.

The nearest medical facility to the project location is identified below and directions shown on Figure 2:

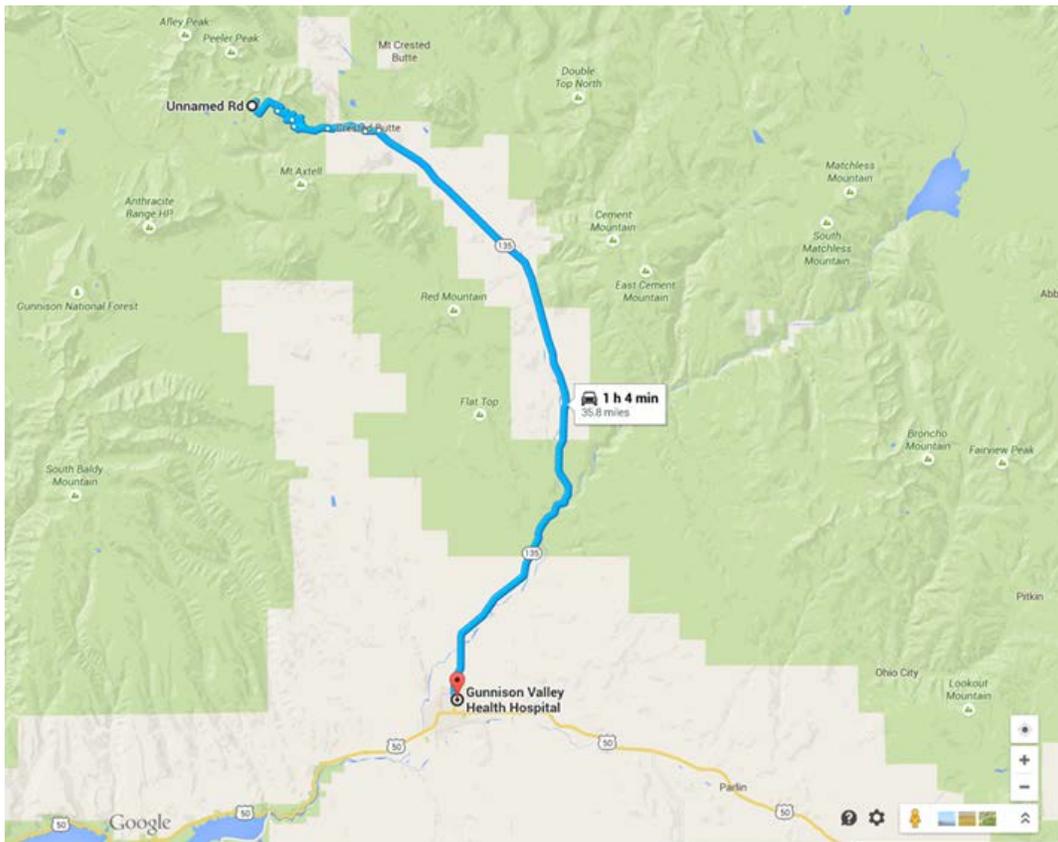
#### **Gunnison Valley Hospital**

711 N. Taylor Street,  
Gunnison, CO 81230  
Telephone: 970-641-1456  
Emergency Room is open 24-7

**Note:** The hospital is ~35 miles from the Site. However, due to the remote location of the Site, the travel time to the hospital is estimated to be 70 minutes.

**Directions to the Gunnison Valley Hospital are as follows:**

- Follow Access Road FDR 732 out to Route 12.
- Take Route 12 east into Crested Butte
- Make a right at the T in Crested Butte and follow 6<sup>th</sup> Street south
- 6<sup>th</sup> Street becomes Route 135 after leaving Crested Butte; follow into Gunnison
- Route 135 becomes N. Main Street in Gunnison; follow N. Main St. south to E. Denver Ave.
- Make a left onto E. Denver Ave and then make a left onto N. Taylor St.
- Hospital will be on the left



**Figure 2 Directions to Hospital** (from <http://maps.google.com/> 06/16/2015)



## 5.2 Medical Evacuation;

HWCC has an agreement in place with Colorado Front Range Mine Rescue (CFRMR) to call on in the event of an emergency. CFRMR is located in Idaho Springs and can quickly be mobilized with the aid of Flight for Life. Flight for Life has the coordinates for the Standard Mine Location and will be on Standby Alert status during work activities at the Site.

### **Colorado Front Range Mine Rescue**

365 8th Ave.  
Idaho Springs, CO 80452  
Contact: Tom Treadwell  
Telephone: 303-249-1705

**Flight for Life** contact information  
Telephone: 720-321-3900

## 5.3 Mine and Rope Rescue Teams

Construction Specification section 01 35 31 HEALTH, SAFETY AND EMERGENCY RESPONSE PROCEDURES calls for mine and rope rescue teams. HWCC will have a designated 5-person mine rescue team on-site comprised of selected on-site staff for the initial response in the event of an emergency situation in the mine. HWCC will also have a rope rescue team qualified in rope rescue procedures with the proper equipment to extricate an injured person from the mine.

## 5.4 Blasting

Construction Specification section 31 23 16 EXCAVATION submittals for blasting safety include a description of clearing and guarding procedures employed to ensure personnel, staff, visitors, and all other persons are at safe locations during blasting, visible and audible warning signals, how explosives will be transported and stored on site, inventoried, secured and guarded to prevent theft or unauthorized use.

The blast report submittals will provide details of controlled blasting techniques, hole locations, spacing, diameter, depth and loading details, explosive types, amounts, priming method, initiator types, delay periods, and locations, charge firing times, stemming type and quantities, and typical charge weights.

# 6 Engineering Controls

## 6.1 Abatement of Water Pollution

Construction Specification section 01 50 00 TEMPORARY FACILITIES AND CONTROLS calls for the abatement of water pollution, associated with adit discharge during the field activities, through the use of sedimentation ponds at the Level 1 and 3



portals. The sedimentation ponds will have adequate capacity for expected discharge and use straw waddles, hay bales or plywood to dissipate energy and settle sediments and heavy metals from the adit discharge. Sodium hydroxide will be used to raise the pH to approximately 10 prior to discharge to sediment pond for precipitation of heavy metals and citric acid will be used to lower the pH to 7 prior to release to the drainage.

## **6.2 Erosion Protection and Sedimentation Control**

Construction Specification section 31 25 00 EROSION PROTECTION AND SEDIMENTATION CONTROL calls for an Erosion Protection and Sediment Control Plan that includes design, installation, maintenance, and removal of erosion protection and sedimentation controls for work involving site clearing, stripping and stockpiling topsoil, excavation, and earthwork. The controls include silt barriers, sedimentation and evaporation ponds and drainage channels that are to be maintained and repaired throughout the course of construction.

## **7 Monitoring and Sampling Plans**

The temporary sedimentation ponds at Level 1 and 3 portals will be monitored by pH measurements and visual observations of the discharge color and turbidity. Other than monitoring of the temporary sedimentation ponds, there are no monitoring or sampling plans in place for the current field activities associated with this first portion of the first phase of the RA. A Monitoring and Sampling Plan will be prepared to monitor adit discharge from Levels 1 and 3, as part of the RA, to be incorporated in the Remedial Design of the flow through bulkhead and discharge conveyance between Levels 3 and 1, if needed.

## **8 Operation and Maintenance Plans**

There are no Operation and Maintenance (O&M) plans in place for the current field activities associated with this first portion of the first phase of the RA. An O&M plan will be prepared as the part of the RA for the operation and maintenance of the constructed components of the RA for an interim period until the flow through bulkhead is constructed.

## **9 Reporting Requirements**

All site management activities will be documented and reported as part of the construction quality assurance documentation and will be included in the Daily Activity Reports, Weekly Summary Reports, and Monthly Progress Reports.



## Staff Report

August 4, 2015

**To:** Mayor and Town Council

**From:** Michael Yerman, Town Planner

**Thru:** Todd Crossett, Town Manger

**Subject:** 2016 Funding Request for Regional Affordable Housing Needs Assessment

**Date:** August 4, 2015

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### **BACKGROUND:**

The Gunnison Valley Regional Housing Authority (“GVRHA”) is organizing a regional effort to create a new Regional Housing Needs Assessment. The aim is to begin a regional approach to tackle affordable housing. The request from the GVRHA is for the Town to participate with a \$10,000-\$15,000 match in 2016 from each municipality. GVRHA will be submitting a DOLA planning grant which may help fund this study and reduce the match to \$10,000.

With commitments from the other municipalities, the study is hope to begin this year with GVRHA paying up front costs to allow the study to proceed in this fiscal year. An updated needs assessment will allow the entire County and each of the municipalities to seek grant funds for future projects. Grant funded affordable housing projects need an updated study for future funding.

Staff recommends the Council engage in a regional collaborative process for identifying solutions for the Valley’s affordable housing programs. The hope is this study will allow the Town and the other 3 municipalities to create a regional housing plan for the valley.

### **RECOMMENDED ACTION:**

Staff recommends a motion “to approve the Town supporting the GVRHA efforts to conduct a regional housing needs assessment with matching funds from the affordable housing fund not to exceed \$15,000 in 2016.”



July 30, 2015

TO: Crested Butte Mayor & Town Council  
FROM: Karl Fulmer, Executive Director  
GVRHA  
RE: **Funds for New Housing Needs Assessment**

Dear Mayor and Council Members:

All of us, I believe, are aware that affordable housing for our community's employees and lower-income families has become a critical issue. Composing lasting and meaningful solutions cannot be accomplished in any one part of our valley. A region-wide housing policy can only be formulated with current and accurate data. A new Needs Assessment would provide all of us with the tools necessary to formulate this housing policy.

REASON for NEEDS ASSESSMENT: The last Housing Needs Assessment conducted in Gunnison County was released in 2009. This Assessment utilized data from 2008. Much has happened since this time. The economy and real estate markets have gone through a recession and are now in a recovery cycle. In order to formulate adequate long-range planning for affordable housing, new and detailed information should be gathered.

SCOPE of WORK: I have been in conversation with Melanie Rees of Rees Consulting to determine the proper scope of work for a new Needs Assessment. Essentially, we are in agreement that data collected from a new Needs Assessment must provide area-specific segregation of data. For example, this will allow the City of Gunnison, Town of Crested Butte or Mt Crested Butte to use the Needs Assessment to more effectively gauge what segments of housing development best serve their short and long-term housing needs. By adding more area-specific detail to the Needs Assessment, the cost would go up.

COST: The estimated cost for the Needs Assessment described above is between \$75-85,000. For the first time we have two housing organizations that will be buying into the production of a new Needs Assessment. Earlier this year both the Housing Authority and Housing Foundation Boards of Directors voted to allocate between \$10-15,000 of each organization's monies to help pay for a new Needs Assessment.

Ultimately, each municipality and Gunnison County will be asked to contribute \$10-15,000 to assist in paying for the Needs Assessment. The GVRHA asks that these funds be made available in January of 2016.

This is represented in the chart below:

GVRHA	10-15,000	City of Gunnison	10-15,000
GVHF	10-15,000	Town of Crested Butte	10-15,000
Gunnison County	10-15,000	Town of Mt. Crested Butte	10-15,000
<b>Total Funds Raised</b>	<b>\$60-90,000</b>		

DOLA GRANT: The GVRHA intends to apply to DOLA for a Planning Grant to help pay for the production of the new Housing Needs Assessment. In all probability, DOLA will be asked to provide between \$20-25,000 to assist in paying for the Needs Assessment. This type of study seems to fit with DOLA's grant requirements, but there is no certainty that we would receive an award. If an award were received, there is the possibility that each participant's buy-in would then be \$10,000 or slightly less.

The GVRHA is asking the Town of Crested Butte to pledge \$10-15,000 for use to assist in paying for a new Housing Needs Assessment. In all likelihood, this report would be produced during the Summer of 2016.

Thank you for your time and consideration of this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Karl Fulmer', with a long horizontal flourish extending to the right.

Karl Fulmer  
Executive Director



July 24, 2015

Crested Butte Town Council  
507 Maroon Ave  
Crested Butte, CO 81224

**Attn: CCWC Update Town Council Meeting – Monday, August 4<sup>th</sup> 2015**

To the Crested Butte Town Council Members and Town Staff:

Since 2003, the Coal Creek Watershed Coalition (CCWC) has served Crested Butte as experts in watershed protection and restoration associated with watershed stewardship and water quality monitoring. In previous years, the Town of Crested Butte has graciously supported our annual water quality monitoring program through the Community Grant Program in the amount of \$5,000. We thank the Town for its ongoing support. CCWC is respectfully requesting that the Town Council consider our request for additional funding of the following organizational tasks and objectives this season and in 2016:

*Portable Toilet in Upper Slate River Watershed*

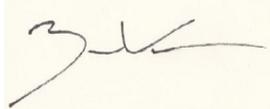
In 2014, CCWC, in partnership with the U.S. Forest Service (USFS), installed a temporary portable toilet in the Upper Slate River watershed at 'Musicians Camp' dispersed camping area (at MM 6.2 on Slate River Road) to mitigate impacts associated with water quality from human waste, notably eColi and fecal coliform. Data collected by CCWC indicates that this is not a current water quality impairment issue in the Upper Slate; however, if human waste is not proactively addressed, that could change. During a six week period during the 2014 summer season, the portable toilets at Musicians Camp collected approximately 400 gallons of human waste.

For 2015, the CCWC has again funded a single portable toilet at this site for over nine weeks during this year's busy summer season. In the year prior, the USFS contributed additional funding to this CCWC initiative, and had verbally committed to committing additional funds in 2015. Due to unforeseen circumstances those committed funds had to be withdrawn and the CCWC is now the sole funder. We are respectfully asking that the Town Council and Town Staff consider our request of \$500.00 for this year's portable toilet at 'Musicians Camp' to mitigate water quality contaminants associated with extensive dispersed camping at this location without adequate facilities.

Due to the intense, and increased, recreational demand on the Upper Slate, CCWC is requesting an additional \$1,000.00 to supplement additional funding sources for the 2016 summer season to install a second portable toilet at another dispersed camping site in the Upper Slate (location to be determined).

These programs and goals effectively support our organizational mission to protect and enhance Crested Butte's local watersheds, vibrant surrounding environment, and community. Thank you for your time, consideration, and continued support of our organization. We are available to answer any further questions you may have.

Sincerely,

A handwritten signature in black ink on a light yellow background. The signature is stylized and appears to read 'Zach Vaughter'.

Zach Vaughter – Executive Director  
on behalf of the CCWC Board of Directors  
Coal Creek Watershed Coalition  
[director@coalcreek.org](mailto:director@coalcreek.org) /  
615-594-4676  
[www.coalcreek.org](http://www.coalcreek.org)  
PO Box 39  
Crested Butte, CO 81224



## Staff Report

August 4, 2015

**To:** Mayor and Town Council  
**From:** Todd Crossett, Town Manager

**Subject: Ordinance No. 6, Series 2015 – An Ordinance of the Town Council of the Town of Crested Butte submitting to the registered electors at an election to be held on November 3, 2015, the question of whether Town of Crested Butte Taxes shall be increased by \$500,000 annually beginning on January 1, 2016 and by whatever amounts are received thereafter with a sales tax and use tax of on half of a percent (.5%, or five cents on each \$10.00 purchase) to provide revenue for Parks and Recreation facility maintenance, Parks and Recreation capital programs and trails and said increase in use tax to be applied as it always has been under the Crested Butte Use Tax and to be applied as it always has been under the Crested Butte Municipal Code; setting forth the Ballot Title; providing for the conduct of the election; and amending certain provisions of the Crested Butte Municipal Code if a majority of the registered electors approve the ballot issue.**

**Date:** August 4, 2015

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### **Summary:**

At the regular Town Council Meeting on July 20, 2015, Council approved Resolution 16, Series 2015, notifying the County of the Town's intent to place a sales tax initiative of .5% on the November ballot.

Ordinance 6, Series 2015 sets the ballot language for this initiative which must be submitted to the County for inclusion on the ballot by September 4, 2015.

### **Staff Recommendation:**

Set Ordinance 6 for hearing at the Council's August 24<sup>th</sup> Regular Meeting.

### **Recommended Motion:**

Motion to set Ordinance 6 for hearing at the Council's August 24<sup>th</sup> Regular Meeting.



**ORDINANCE NO. 6**

**SERIES 2015**

**AN ORDINANCE OF THE TOWN COUNCIL OF CRESTED BUTTE SUBMITTING TO THE REGISTERED ELECTORS AT AN ELECTION TO BE HELD ON NOVEMBER 3, 2015, THE QUESTION OF WHETHER THE TOWN OF CRESTED BUTTE TAXES SHALL BE INCREASED BY \$500,000 ANNUALLY BEGINNING ON JANUARY 1, 2016, AND BY WHATEVER AMOUNTS ARE RECEIVED THEREAFTER, WITH A SALES TAX AND USE TAX OF ONE-HALF OF A PERCENT (0.5%, OR FIVE CENTS ON EACH \$10.00 PURCHASE) TO PROVIDE REVENUE FOR PARKS AND RECREATION FACILITY MAINTENANCE, PARKS AND RECREATION CAPITAL AND PROGRAMS AND TRAILS AND SAID INCREASE IN USE TAX TO BE APPLIED AS IT ALWAYS HAS BEEN UNDER THE CRESTED BUTTE MUNICIPAL CODE; SETTING FORTH THE BALLOT TITLE; PROVIDING FOR THE CONDUCT OF THE ELECTION; AND AMENDING CERTAIN PROVISIONS OF THE MUNICIPAL CODE IF A MAJORITY OF VOTERS APPROVE THE BALLOT ISSUE.**

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 electors of the Town adopted the Home Rule Charter of the Town of Crested Butte, Colorado (the “Charter”) on November 5, 1974;

WHEREAS, Section 12.1 of the Charter provides that the Town Council may levy and collect taxes, including, without limitation, sales taxes and use taxes for municipal purposes by ordinance after approval by a majority of the registered electors of the Town voting at a regular or special election;

WHEREAS, under Section 5.7 of the Charter, the Town Council shall have the power to submit at a general or special election any ordinance or question to a vote of the registered electors of the Town;

WHEREAS, Section 1-41-103, C.R.S. provides that a local government question under Article X, Section 20 of the Colorado Constitution, commonly known as the “TABOR Amendment,” including, but not limited to, approval of a new tax, may be submitted to the registered electors of the Town at an election to be held on the first Tuesday of November in each odd-numbered year;

WHEREAS, pursuant to Section 2.2 of the Charter, the Town Council finds and determines that there should be submitted to the registered electors of the Town, at an election to be held on November 3, 2015, in conjunction with the coordinated election to be held on that date, as a referred measure, the question of whether effective January 1, 2016, the Town should adopt a new 0.5% increase to the Town's sales tax and use tax; and

WHEREAS, Section 31-11-111(2), C.R.S., provides that the Town Council or its designee shall fix a ballot title for the referred measure set forth in this ordinance.

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

**Section 1. Amendments to the Municipal Code.**

1.1 **Amending the Sales Tax Rate in Section 4-2-40.** The sales tax rate of "4.0%" contained in Section 4-2-40(a) of the Code is hereby amended to read "4.5%."

1.2 **Amending the Distribution Requirements Contained in Section 4-2-40.** Subsection (c) of Section 4-2-40 of the Code is hereby deleted and replaced with a new subsection that shall read as follows:

"(c) Distribution.

(1) Except as specified in this Subsection, the Town shall distribute the proceeds generated from 4% of the 4.5% sales tax on a formula allocating twenty-five percent (25%) thereof to local transportation services, and allocating the remaining seventy five percent (75%) thereof to the Town's General Fund and Capital Fund at the discretion of the Town Council, based on the projected operational and capital needs of the Town for the ensuing year. Such allocation shall occur as a part of the Town's annual budget process, subject to public hearing, and adopted by resolution on or before the final day for the certification of the ensuing year's property tax levy to the County. Sales tax revenues may also be reallocated during the budget year at the discretion of the Town Council in accordance with the Town's budget policy addressing recessionary circumstances or other unanticipated revenue shortfalls.

(2) Except as specified in this Subsection, the Town shall distribute proceeds from the 0.5% parks and recreation sales tax on a formula allocating one hundred percent (100%) thereof to parks and recreation facility maintenance and parks and recreation capital programs and trails. Allocation within such areas shall occur as a part of the Town's annual budget process, subject to public hearing, and adopted by resolution on or before the final day for the certification of the ensuing year's property tax levy to the County. Sales tax revenues may also be reallocated in such areas during the budget year at the discretion of the Town Council in accordance with the Town's budget policy addressing recessionary circumstances or other unanticipated revenue shortfalls."

1.3 **Amending the Use Tax Rate in Section 4-3-40.** The use tax rate of "4.0%" contained in Section 4-3-40(a) of the Code is hereby amended to read "4.5%."

1.4 **Severability.** If any section, sentence, clause, phrase, word or other provision of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this ordinance, or the validity of this ordinance as an entirety, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

1.5 **Savings Clause.** Except as hereby amended, the Crested Butte Municipal Code, as previously amended, shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town Council that is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

**Section 2. Notice of Election.** A general municipal election shall be held on Tuesday, November 3, 2015 in connection with the coordinated election that is to be held that day. At the election there shall be submitted to the vote of the registered electors of the Town, as a referred measure under Article X, Section 20 of the Colorado Constitution and Section 31-11-111(2), C.R.S., the ballot issue hereinafter set forth (the "**Ballot Issue**"). At the election, the official ballot, including early voters' ballots shall state the substance of the Ballot Issue to be voted upon and, as so stated, shall constitute the ballot title, designation, and submission clause. At such election each registered elector of the Town voting at the election shall be given the opportunity to indicate his or her choice on the Ballot Issue, which shall include the following form:

PARKS, RECREATION AND TRAILS BALLOT ISSUE:

SHALL THE TOWN OF CRESTED BUTTE TAXES BE INCREASED BY \$500,000 ANNUALLY BEGINNING ON JANUARY 1, 2016, AND BY WHATEVER AMOUNTS RECEIVED THEREAFTER, WITH A SALES TAX AND USE TAX OF ONE-HALF OF A PERCENT (0.5%, OR FIVE CENTS ON EACH \$10.00 PURCHASE) FOR THE PURPOSES OF PROTECTING AND ENHANCING QUALITY OF LIFE BY:

- IMPROVING, MANAGING AND MAINTAINING PARKS SUCH AS TOWN PARK; RECREATIONAL FACILITIES SUCH AS BIG MINE ICE ARENA; AND BIKING, HIKING AND WALKING TRAILS;
- PROVIDING RECREATIONAL PROGRAMMING FOR YOUTH AND ADULT SPORTS LIKE SOCCER, HOCKEY, SOFTBALL AND BASEBALL, AND
- PLANNING AND CREATING NEW PARKS, CAMPGROUNDS, RECREATIONAL FACILITIES AND TRAILS

WITH ALL EXPENDITURES SUBJECT TO AN INDEPENDENT AUDIT, WITH ALL USE TAX CONFORMING TO THE CRESTED BUTTE MUNICIPAL CODE; AND SHALL THE TOWN BE AUTHORIZED TO COLLECT, RETAIN AND SPEND SUCH REVENUE AND ANY EARNINGS

THEREON WITHOUT LIMITATION OR CONDITION AS A VOTER-APPROVED REVENUE CHANGE UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION?

- YES - IN FAVOR OF THE INCREASE
- NO – OPPOSED TO THE INCREASE

**Section 3.** In connection with the fixing of the ballot title for the Ballot Issue, the Town Council finds and determines:

- (1) the Town Council has considered the public confusion that might be caused by misleading ballot titles;
- (2) the general understanding of the effect of a “yes” of “no” vote on the Ballot Issue will be clear to the electors;
- (3) the ballot title for the Ballot Issue will not conflict with those titles selected for any other measure that will appear on the ballot at the November 3, 2015 general municipal Town election; and
- (4) the ballot title for the Ballot Issue correctly and fairly expresses the true intent and meaning of the measure.

**Section 4.** If a majority of the votes cast at the election shall be for the Ballot Issue set forth in Section 2 of this ordinance, the amendments to the Code set forth in Section 1 of this ordinance shall be deemed to have been adopted and shall become effective on January 1, 2016, and on such date the Town shall be authorized to collect, retain and expend the full amount of the tax revenues collected by the Town as a result of the new sales tax and new use tax rates approved by the Ballot Issue separate and apart from any other expenditures of the Town that may be limited pursuant to Article X, Section 20 of the Colorado Constitution, any other law or any other state restriction on the Town’s fiscal year spending, and the increased tax revenues authorized for collection, retention and expenditure by the passage of the Ballot Issue shall not be counted in any such spending limitation. If a majority of the votes cast at the election shall be against the Ballot Issue, the amendments to the Code set forth in Section 1 of this ordinance shall be deemed to have been defeated and such amendments to the Code shall be void *ab inito*.

**Section 5.** The election on November 3, 2015 to consider the Ballot Issue shall be conducted as a coordinated election with Gunnison County. The Gunnison County Clerk and Recorder shall conduct the election on behalf of the Town. Pursuant to Section 2.1 of the Charter, the election shall be conducted under the Uniform Election Code of 1992. The cost of the election with respect to the Ballot Issue shall be paid for from the Town’s general fund.

**Section 6.** The Town Clerk shall serve as the designated election official of the Town for purposes of performing acts required or permitted by law in connection with the election on the Ballot Issue and shall take such action as may be required to comply with all applicable laws pertaining to the conduct of the election.

**Section 7.** The Town Council finds, determines and declares that this ordinance is necessary and proper for the safety, health, welfare, order, comfort and convenience of Crested Butte and its inhabitants.

**Section 8.** The Town Council finds, determines and declares that it has the power to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX of the Colorado Constitution and the powers contained in the Charter.

**Section 9.** Pursuant to Section 5.1(b) of the Charter, this ordinance is not subject to the registered electors' reserved power of referendum.

**Section 10.** Any election contest arising out of the Ballot Issue or the election concerning the order of the ballot or the form or content of the ballot title shall be commenced pursuant to Section 1-11-203.5, C.R.S.

**Section 11.** The Town Clerk, or the coordinated election official if so provided by intergovernmental agreement, shall give or cause to be given the notice of election required by Section 1-5-205, C.R.S. Additionally, the Town Clerk shall cause the notice required by Section 20(3)(b) of Article X of the Colorado Constitution to be prepared and delivered in accordance with the requirements of applicable law.

**Section 12.** The officers of the Town are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this ordinance. All actions previously taken by the officers of the Town with respect to the Ballot Issue are hereby ratified, confirmed and approved.

**Section 13.** This ordinance shall become effective in accordance with the provisions of the Charter.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS \_\_\_\_ DAY  
OF \_\_\_\_\_, 2015.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC  
HEARING THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2015.

TOWN OF CRESTED BUTTE, COLORADO

By: \_\_\_\_\_  
Aaron J. Huckstep, Mayor

ATTEST:

\_\_\_\_\_  
Lynelle Stanford, Town Clerk (SEAL)



## Staff Report

August 4, 2015

**To:** Mayor and Town Council

**From:** Todd Crossett, Town Manager

**Subject:** **Update, Discussion and Possible Direction Regarding SB – 152 and related ballot measure to allow the Town to provide telecommunications services and facilities restricted by Title 29, Article 27, C.R.S.**

**Ordinance No. 7, Series 2015 an Ordinance of the Town Council of the Town of Crested Butte submitting to the registered electors at an election to be held on November 3, 2015, the question of whether the Town of Crested Butte shall re-establish its rights, without increasing taxes by the measure, to restore local authority that has been denied to local governments by the Colorado General Assembly, to provide high speed internet, including improved high bandwidth services based on new technologies, telecommunications and/or cable television services as expressly permitted by Article 27, Title 29, C.R.S.; setting forth the ballot title; and providing for the conduct of the election.**

**Date:** August 4, 2015

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### **Background and Summary:**

The Town has been working with the County, the Town of Mt. Crested Butte and Region 10, with the aide of DOLA funding, to identify ways to enhance broadband service within Region 10 and to the Gunnison Valley. Improving broadband infrastructure, service and redundancy is important to the economic vitality and sustainability of the Valley. Region 10, with the assistance of consultants, is actively examining options for improving broadband infrastructure to Gunnison and then to Crested Butte and Mt. Crested Butte as part of a potential Phase 2 DOLA grant funding request at year's end. Although an infrastructure mechanism is still not nailed down, options have been identified, and it is being pursued. The leading option at this time is to use space on the WAPA line from Montrose to Gunnison. However, legal issues have not been ironed out, and WAPA, at this time, is unsure that it can grant such a request until further process has been conducted. The possibility of the Town participating in a potential DOLA submittal will be discussed further at budget and as options are firmed up.

In 2005, the Colorado State Legislature passed Senate Bill 152 (SB 152). This bill significantly hinders efforts of rural communities to improve broadband services by prohibiting most uses of municipal or county money for infrastructure to improve local broadband service, without first going to a vote of the people.

Improving broadband services is problematic for many rural communities, including much of the West Slope, as population is too sparse to attract priority investment by the major providers. By restricting the ability of local governments to engage in identifying solutions through partnerships and other means, SB 152 limits the ability of rural communities to identify and implement solutions.

SB 152 requires that a local election be held to before a local government may engage or offer to engage in providing or partnering to provide various telecommunications services. Numerous communities are now passing local legislation exempting themselves from SB 152 (see attached memo from the Colorado Municipal League for a list). Success rate is very high.

On July 24, the Town received a request from the County to jointly pursue an SB-152 ballot initiative – at both county and municipal levels. The Town was unaware that the County had an interest in initiating an SB-152 ballot initiative at this time. However, participation would increase the options at the disposal of the County and the municipalities to seek solutions in the future as broadband efforts move forward.

Please see attached memo from CML further explaining SB-152.

**Financial Considerations:**

It is the understanding of Staff at this time that the County would bear the cost of placing the initiative on the ballot.

**Pros:**

Passage of a SB-152 initiative would increase options for the County and the Town to identify, pursue and eventually implement enhanced broadband service delivery in the future.

**Cons:**

Staff sees no cons other than the abbreviated timeline.

**Staff Recommendation:**

Set Ordinance 7 for hearing at the Council's August 24<sup>th</sup> Regular Meeting.

**Recommended Motion:**

Motion to set Ordinance 7 for hearing at the Council's August 24<sup>th</sup> Regular Meeting.





To: County Commissioners, Municipal Elected Officials, and Staff

From: Geoff Wilson, General Counsel, CML  
Eric Bergman, Policy Director, CCI

Date: July 2, 2015

Re: Materials on SB 152 elections

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### Introduction

In order to compete in today's economy, communities across the state have become increasingly dependent on broad bandwidth Internet access ("broadband") for business development and operations. The availability of broadband also enhances the quality of life and desirability of a community by providing residents access to things like online education and distance learning opportunities, telemedicine and entertainment content (movies, music, etc.). Broadband has become so critical, in fact, that many now regard it as a basic infrastructure need - on par with roads, water systems and energy grids.

Unfortunately, numerous communities across Colorado still lack adequate broadband service. The reasons vary, but more often than not these areas are too sparsely populated, too remote or in regions where the topography (mountainous terrain, etc.) makes expanding service difficult and expensive for telecommunication providers. These communities are "upside down" from a business model standpoint, and providers are unable or unwilling to connect these areas, leaving them at an economic disadvantage from their more urbanized neighbors.

While local governments often play a direct role in economic development efforts, cities and counties historically have not been directly involved in the delivery of retail telecommunication services. However, the increasing demand for broadband service – often driven by economic development concerns - has forced many local government officials to reexamine their role in the provision of broadband services.

In the last few years, a growing number of local governments have started looking at investing public dollars in broadband infrastructure improvements (usually fiber optic cable lines or cell towers) in order to attract Internet providers and enhance economic development efforts in their region. The Department of Local Affairs has also heard these community concerns, and this year expanded its existing broadband planning grant program to include funds for local government investments in "middle mile" broadband infrastructure.

## SB 152 and Statutory Prohibitions on Local Government Broadband Infrastructure

One of the biggest impediments to local governments enhancing broadband infrastructure is a law passed in 2005, which has since been commonly referred to as “Senate Bill (SB) 152” (SB05-152, attached to this memorandum and codified at sections 29-27-101-304, C.R.S.). SB 152 prohibits most uses of municipal or county money for infrastructure to improve local broadband service, without first going to a vote of the people. The hurdles put in place by this statute are not insurmountable; indeed, in the past few years ten municipalities and three counties have placed measures on the ballot to override the prohibitions in SB 152. These measures have passed handily in virtually every jurisdiction - with the support of citizens who are frustrated and want timely action on broadband service in their communities.

Continued dissatisfaction over a lack of adequate broadband is resulting in more and more jurisdictions considering going to the ballot with SB 152 questions. Late in 2014, CML and CCI began meeting with local government officials, economic development professionals and telecommunication experts from jurisdictions whose voters had approved SB 152 questions at the ballot. One outcome of these conversations is the development of this memorandum and materials designed to help interested local government officials and staff to frame the issue and consider the impacts of preparing their own ballot questions.

## SB 152 Frequently Asked Questions (FAQ's)

### **What does a SB 152 election accomplish?**

SB 152 requires that an election be held before a local government may “engage or offer to engage in providing” various telecommunication services. The term “providing” is given an expansive definition in the statute, which restricts both the direct and “indirect” provision of service (“indirect”, in turn, is given its own, broadly restrictive definition). Fortunately, through a successful SB 152 election, a local community can clear away this legal impediment to a wide variety of local broadband initiatives.

It is important to point out that the vast majority of local governments who have passed SB 152 questions (or are considering going to the ballot in the near future) are **not** interested in hooking up homes and businesses and providing actual broadband services themselves. By and large, these jurisdictions are working to enhance local broadband infrastructure in order to *attract* service providers who would otherwise be unwilling or unable to serve their communities. The local broadband initiatives in the jurisdictions passing SB 152 questions to date usually involve some form of public-private partnerships between local governments, economic development agencies and the industry.

### **Is referring a SB 152 question to the ballot expensive?**

No more so than any other referred measure. Most jurisdictions have referred their questions when the municipality or county was *already* having an election. Accordingly, the addition of the SB 152 issue did not significantly increase costs. In a coordinated election, a particular jurisdiction’s costs would be affected by the terms of the IGA regarding election cost allocation between the county and participating local governments.

### **What sort of election specifics does SB 152 require?**

Not many. SB 152 specifies four requirements for ballot questions in a SB 152 election. (See: C.R.S. § 29-27-201(2))

The ballot:

- (1) Shall pose the question as a “single subject”,
- (2) Shall include a description of the “nature of the proposed service,”
- (3) Shall include a description of “the role that the local government will have in the provision of the service,” and
- (4) Shall include a description of the “intended subscribers of such service.”

### **How have other jurisdictions addressed these requirements?**

A review of the ballot questions put forth by local governments so far (included below) shows a clear preference for broad “anything and everything” type authority. Industry representatives have complained from time to time that such local ballot language has lacked the specificity required by the statute. This notion has never been tested in court. One might also argue that a “broad authority” question that describes the nature of the service proposed, along with potential future build-outs or applications, is not fatally flawed by its inclusion of the latter. Furthermore, courts have been traditionally hesitant to reverse the will of the voters, if evident. Obviously, the development of local SB 152 ballot language should be done in close consultation with legal counsel.

### **What about the “single subject” requirement?**

The term “single subject” is not defined in SB 152. Nonetheless, the ballot questions submitted by local governments thus far seem comfortably within the single subject standard applied to statewide *ballot initiatives*, in cases such as In the Matter Of The Ballot Title and Submission Clause for 2013-2014 #129, 333 P.3d 101 (Colo. 2014). Local government officials are urged to consult with legal counsel.

### **Are there any additional election requirements that distinguish a SB 152 question from other matters routinely referred to the ballot by a county or municipality?**

No (but again, please confer with your legal counsel). As always, attention should be paid to the requirements of the Fair Campaign Practices Act (Section 1-45-117, C.R.S.), which forbids use of public funds for advocacy in elections. This restriction is a prudent consideration in planning any campaign for a successful SB 152 election.

### **Does voter approval of a county SB 152 ballot question have the effect of authorizing the provision of such services by municipalities within that county?**

No. SB 152 requires voter approval by each jurisdiction participating in the provision of covered services.

**Does a jurisdiction need to approve a SB 152 ballot question in order to qualify for broadband infrastructure grant funds from the Department of Local Affairs (DOLA)?**

It depends. DOLA's broadband grant program provides funding for regional planning and "middle mile" infrastructure projects (i.e., projects that do not provide "last mile" connections to customers). The guidance in DOLA's broadband grant policies suggests that each jurisdiction must determine whether it is in compliance with the statutory restrictions set forth in SB 152. DOLA requires any grantee to be in compliance with any applicable laws and regulations. DOLA itself will not make that determination, nor does the awarding of a grant confer any certainty or acknowledgment of compliance on DOLA's part to the grantee. DOLA's broadband grant policy guidelines can be found at:

<http://dola.colorado.gov/demog-cms/content/dola-broadband-program>.

The broadband landscape in Colorado is changing rapidly, and local government policies regarding broadband and economic development will need to evolve to keep pace with this change. CCI and CML will be providing additional research and guidance over the course of the year on this important policy issue. If your jurisdiction is moving forward on a SB 152 ballot question, please notify either CCI or CML. If you have additional questions or comments, please contact Geoff Wilson at CML at 303.831.6411 (e-mail: [gwilson@cml.org](mailto:gwilson@cml.org)) or Eric Bergman at CCI at 303.861.4076 (e-mail: [ebergman@ccionline.org](mailto:ebergman@ccionline.org)).

**Sample Local Government Ballot Language for SB 152 Elections**

**County Questions**

**Rio Blanco County (Passed Fall 2014)**

“Without increasing taxes, shall the citizens of Rio Blanco County, Colorado, authorize the Board of County Commissioners of Rio Blanco County, Colorado, to provide to potential subscribers including telecommunications service providers, residential and commercial users within Rio Blanco County, all services restricted since 2005 by Title 29, article 27 of the Colorado Revised Statutes, including “telecommunication services,” “cable television services,” and “advanced services” which is defined as high speed internet access capability in excess of two hundred fifty six kilobits per second both upstream and downstream (known as “broadband”) including any new and improved bandwidth services based on future technologies, utilizing the existing community owned fiber optic network and/or developing additional infrastructure, either directly or indirectly with public or private sector partners?”

**San Miguel County (Passed Fall 2014)**

“Without increasing taxes, shall San Miguel County, Colorado, have the legal ability to provide any or all services currently restricted by Title 29, article 27, Part 1, of the Colorado Revised Statutes, specifically described as “advanced services,” “telecommunication services,” and “cable television services,” as defined by the statute, including, but not limited to, any new and improved high bandwidth services based on future technologies, utilizing community owned infrastructure including but not limited to any existing fiber optic network, either directly, or indirectly with public or private sector service providers, to potential subscribers that may include telecommunications service providers, and residential or commercial users within San Miguel County?”

**Yuma County (Passed Fall 2014)**

“Without increasing taxes, shall the citizens of Yuma County Colorado re-establish their counties’ right to provide all services and facilities restricted since 2005 by Title 29, Article 27 of the Colorado Revised Statutes, described as “Advanced Services,” “Telecommunication Services,” and “Cable Television Services,” including providing any new and improved broadband services and facilities based on future technologies, utilizing existing or new community owned infrastructure including but not limited to the existing fiber optic network, either directly or indirectly with public or private sector partners, to potential subscribers that may include telecommunications service providers, residential or commercial users within the boundaries of Yuma County?”

**Municipal Questions**

SPRING 2015		
GRAND JUNCTION	CITY OF GRAND JUNCTION REFERRED MEASURE 2A SHALL THE CITY OF GRAND JUNCTION, WITHOUT INCREASING TAXES BY THIS MEASURE, BE AUTHORIZED TO PROVIDE, EITHER DIRECTLY OR INDIRECTLY WITH PUBLIC OR PRIVATE SECTOR PARTNER(S), HIGH-SPEED INTERNET SERVICES (ADVANCED SERVICE), TELECOMMUNICATIONS SERVICES AND/OR CABLE TELEVISION SERVICES AS DEFINED BY § 29-27-101 TO 304 OF THE COLORADO REVISED STATUTES, INCLUDING BUT NOT LIMITED TO ANY NEW AND IMPROVED HIGH BANDWIDTH SERVICE(S) BASED ON FUTURE TECHNOLOGIES, TO RESIDENTS, BUSINESSES, SCHOOLS, LIBRARIES, NONPROFIT ENTITIES AND OTHER USERS OF SUCH SERVICES, WITHOUT LIMITING ITS HOME RULE AUTHORITY?	PASS, 75%- 22%

ESTES PARK	WITHOUT INCREASING TAXES, SHALL THE TOWN OF ESTES PARK REESTABLISH THE TOWN'S RIGHT TO PROVIDE ALL SERVICES RESTRICTED SINCE 2005 BY TITLE 29, ARTICLE 27 OF THE COLORADO REVISED STATUTES, DESCRIBED AS "ADVANCED SERVICES," "TELECOMMUNICATIONS SERVICES" AND "CABLE TELEVISION SERVICES," INCLUDING ANY NEW AND IMPROVED HIGH BANDWIDTH SERVICES BASED ON FUTURE TECHNOLOGIES, UTILIZING COMMUNITY OWNED INFRASTRUCTURE INCLUDING, BUT NOT LIMITED TO THE EXISTING FIBER OPTIC NETWORK, EITHER DIRECTLY OR INDIRECTLY WITH PUBLIC OR PRIVATE SECTOR PARTNERS TO POTENTIAL SUBSCRIBERS THAT MAY INCLUDE TELECOMMUNICATIONS SERVICE PROVIDERS, RESIDENTIAL OR COMMERCIAL USERS WITHIN THE TOWN AND THE SERVICE AREA OF THE TOWN'S LIGHT AND POWER ENTERPRISE?	PASS, YES: 1652 NO: 136
FALL 2014		
BOULDER	SHALL THE CITY OF BOULDER BE AUTHORIZED TO PROVIDE HIGH-SPEED INTERNET SERVICES (ADVANCED SERVICES), TELECOMMUNICATIONS SERVICES, AND/OR CABLE TELEVISION SERVICES TO RESIDENTS, BUSINESSES, SCHOOLS, LIBRARIES, NONPROFIT ENTITIES AND OTHER USERS OF SUCH SERVICES, EITHER DIRECTLY OR INDIRECTLY WITH PUBLIC OR PRIVATE SECTOR PARTNERS, AS EXPRESSLY PERMITTED BY §§ 29-27-101 TO 304, "COMPETITION IN UTILITY AND ENTERTAINMENT SERVICES," OF THE COLORADO REVISED STATUTES, WITHOUT LIMITING ITS HOME RULE AUTHORITY?	PASS, 17512- 3551
CHERRY HILLS VILLAGE	SHALL THE CITY OF CHERRY HILLS VILLAGE, WITHOUT INCREASING TAXES BY THIS MEASURE, AND TO RESTORE LOCAL AUTHORITY THAT WAS DENIED TO LOCAL GOVERNMENTS BY THE COLORADO GENERAL ASSEMBLY AND FOSTER A MORE COMPETITIVE MARKETPLACE, BE AUTHORIZED TO PROVIDE HIGH-SPEED INTERNET, INCLUDING IMPROVED HIGH BANDWIDTH SERVICES BASED ON NEW TECHNOLOGIES, TELECOMMUNICATIONS SERVICES, AND/OR CABLE TELEVISION SERVICES TO RESIDENTS, BUSINESSES, SCHOOLS, LIBRARIES, NON-PROFIT ENTITIES AND OTHER USERS OF SUCH SERVICES EITHER DIRECTLY OR INDIRECTLY WITH PUBLIC OR PRIVATE SECTOR PARTNERS, AS EXPRESSLY PERMITTED BY ARTICLE 27, TITLE 29 OF THE COLORADO REVISED STATUTES?	PASS, 2362- 613
RED CLIFF	SHALL THE TOWN OF RED CLIFF BE AUTHORIZED TO PROVIDE CABLE TELEVISION, TELECOMMUNICATIONS AND/OR HI-SPEED INTERNET SERVICES TO RESIDENTS, BUSINESSES, SCHOOLS, LIBRARIES, NONPROFIT ENTITIES AND OTHER USERS OF SUCH SERVICES, EITHER DIRECTLY OR INDIRECTLY THROUGH PUBLIC OR PRIVATE SECTOR PARTNERS?	PASS, 56-24
WRAY	WITHOUT INCREASING TAXES, SHALL TH CITIZENS OF WRAY, COLORADO RE-ESTABLISH THEIR CITY'S RIGHTS TO PROVIDE ALL SERVICES AND FACILITIES RESTRICTED SINCE 2005 BY TITLE 29, ARTICLE 27 OF THE COLORADO REVISED STATUTES, DESCRIBED AS 'ADVANCED SERVICES,' TELECOMMUNICATIONS SERVICES' AND 'CABLE TELEVISION SERVICES,' INCLUDNG PROVIDING ANY NEW AND IMPROVED BROADBAND SERVICES AND FACILITIES BASED ON FUTURE TECHONOLOGIES, UTILIZING EXISTING OR NEW COMMUNITIY OWNED INFRASTRUCTURE INCLUDING BUT NOT LIMITED TO THE EXISTING FIBER OPTIC NETWORK, EITHER DIRECTLY OR INDIRECTLY WITH PUBLIC OR PRIVATE SECTOR PARTNERS, TO POTENTIAL SUBSCRIBERS THAT MAY INCLUDE TELECOMMUNICATIONS SERVICE PROVIDERS, RESIDENTIAL OR COMMERICAL USERS WITHIN THE CITY?	PASS 3167- 2461

YUMA	<p>WITHOUT INCREASING TAXES, SHALL TH CITIZENS OF YUMA, COLORADO RE-ESTABLISH THEIR CITY'S RIGHTS TO PROVIDE ALL SERVICES AND FACILITIES RESTRICTED SINCE 2005 BY TITLE 29, ARTICLE 27 OF THE COLORADO REVISED STATUTES, DESCRIBED AS "ADVANCED SERVICES,' TELECOMMUNICATIONS SERVICES' AND 'CABLE TELEVISION SERVICES,' INCLUDNG PROVIDING ANY NEW AND IMPROVED BROADBAND SERVICES AND FACILITIES BASED ON FUTURE TECHONOLOGIES, UTILIZING EXISTING OR NEW COMMUNITY OWNED INFRASTRUCTURE INCLUDING BUT NOT LIMITED TO THE EXISTING FIBER OPTIC NETWORK, EITHER DIRECTLY OR INDIRECTLY WITH PUBLIC OR PRIVATE SECTOR PARTNERS, TO POTENTIAL SUBSCRIBERS THAT MAY INCLUDE TELECOMMUNICATIONS SERVICE PROVIDERS, RESIDENTIAL OR COMMERICAL USERS WITHIN THE CITY'S UTILITY SERVICE AREA?</p>	PASS, 71%- 29%
SPRING 2014		
MONTROSE	<p>REFERRED MEASURE "A"</p> <p>WITHOUT INCREASING TAXES, SHALL THE CITIZENS OFTHE CITY OF MONTROSE, COLORADO, RE-ESTABLISH THEIR CITY'S RIGHT TO PROVIDE ALL SERVICES RESTRICTED SINCE 2005 BY TITLE 29, ARTICLE 27 OFTHE COLORADO REVISED STATUTES, DESCRIBED AS "ADVANCED SERVICES," "TELECOMMUNICATIONS SERVICES" AND "CABLE TELEVISION SERVICES," INCLUDING ANY NEW AND IMPROVED HIGH BANDWIDTH SERVICES BASED ON FUTURE TECHNOLOGIES, UTILIZING COMMUNITY OWNED INFRASTRUCTURE INCLUDING BUT NOT LIMITED TO THE EXISTING FIBER OPTIC NETWORK, EITHER DIRECTLY OR INDIRECTLY WITH PUBLIC OR PRIVATE SECTOR PARTNERS, TO POTENTIAL SUBSCRIBERS THAT MAY INCLUDE TELECOMMUNICATIONS SERVICE PROVIDERS, RESIDENTIAL OR COMMERCIAL USERS WITHIN THE CITY?</p>	PASS 3969- 1396
FALL 2013		
CENTENNIAL	<p>BALLOT QUESTION 2G</p> <p>SHALL THE CITY OF CENTENNIAL, WITHOUT INCREASING TAXES, AND TO RESTORE LOCAL AUTHORITY THAT WAS DENIED TO ALL LOCAL GOVERNMENTS BY THE STATE LEGISLATURE, AND TO FOSTER A MORE COMPETITIVE MARKETPLACE, BE AUTHORIZED TO INDIRECTLY PROVIDE HIGHSPEED INTERNET (ADVANCED SERVICES), TELECOMMUNICATIONS SERVICES, AND/OR CABLE TELEVISION SERVICES TO RESIDENTS, BUSINESSES, SCHOOLS, LIBRARIES, NONPROFIT ENTITIES AND OTHER USERS OF SUCH SERVICES, THROUGH COMPETITIVE AND NON-EXCLUSIVE PARTNERSHIPS WITH PRIVATE BUSINESSES, AS EXPRESSLY PERMITTED BY ARTICLE 29, TITLE 27 OF THE COLORADO REVISED STATUTES?</p>	PASS 76%- 24%
FALL 2011		
LONGMONT	<p>BALLOT QUESTION 2A: WITHOUT INCREASING TAXES, SHALL THE CITIZENS OF THE CITY OF LONGMONT, COLORADO, RE-ESTABLISH THEIR CITY'S RIGHT TO PROVIDE ALLSERVICES RESTRICTED SINCE 2005 BY TITLE 29, ARTICLE 27 OF THE COLORADO REVISED STATUTES, DESCRIBED AS "ADVANCES SERVICES," "TELECOMMUNICATIONS SERVICES" AND "CABLE TELEVISION SERVICES," INCLUDING ANY NEW AND IMPROVED HIGH BANDWIDTH SERVICES BASED ON FUTURE TECHNOLOGIES, UTILIZING COMMUNITY OWNED INFRASTRUCTURE INCLUDING BUT NOT LIMITED TO THE EXISTING FIBER OPTIC NETWORK, EITHER DIRECTLY OR INDIRECTLY WITH PUBLIC OR PRIVATE SECTOR PARTNERS, TO PROTENTIAL SUBSCRIBERS THAT MAY INCLUDE TELECOMMUNICATIONS SERVICE PROVIDERS, RESIDENTIAL OR COMMERCIAL USERS WITHIN THE CITY AND THE SERVICE AREA OF THE CITY'S ELECTIC UTILITY ENTERPRISE? Y/N</p>	PASS: YES 60.82% (13238), NO 39.18% (8529)

FALL 2009		
LONGMONT	BALLOT ISSUE 2C-- AUTHORIZATION TO ALLOW THE CITY TO PROVIDE TELECOMMUNICATIONS SERVICES, ADVANCED SERVICES AND CABLE TELEVISION SERVICES TO RESIDENTIAL AND COMMERCIAL USERS WITHIN THE SERVICE AREA OF THE CITY'S ELECTRIC UTILITY ENTERPRISE	FAIL, YES 44%, NO 56%

**NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.**



SENATE BILL 05-152

BY SENATOR(S) Veiga, and Mitchell;  
also REPRESENTATIVE(S) Jahn, Crane, Harvey, Kerr, and Sullivan.

CONCERNING LOCAL GOVERNMENT COMPETITION IN THE PROVISION OF  
SPECIFIED COMMUNICATIONS SERVICES.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** Title 29, Colorado Revised Statutes, is amended BY  
THE ADDITION OF A NEW ARTICLE to read:

**ARTICLE 27**  
**Competition in Utility and Entertainment Services**

PART 1  
COMPETITION IN UTILITY  
AND ENTERTAINMENT SERVICES

**29-27-101. Legislative declaration.** (1) THE GENERAL ASSEMBLY  
HEREBY FINDS AND DECLARES THAT IT IS THE POLICY OF THIS STATE TO  
ENSURE THAT CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE,  
AND HIGH SPEED INTERNET ACCESS, OTHERWISE KNOWN AS ADVANCED  
SERVICE, ARE EACH PROVIDED WITHIN A CONSISTENT, COMPREHENSIVE, AND

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

NONDISCRIMINATORY FEDERAL, STATE, AND LOCAL GOVERNMENT FRAMEWORK.

(2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT:

(a) THERE IS A NEED FOR STATEWIDE UNIFORMITY IN THE REGULATION OF ALL PUBLIC AND PRIVATE ENTITIES THAT PROVIDE CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, AND ADVANCED SERVICE.

(b) MUNICIPAL ORDINANCES, RULES, AND OTHER REGULATIONS GOVERNING THE PROVISION OF CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, AND ADVANCED SERVICE BY A LOCAL GOVERNMENT IMPACT PERSONS LIVING OUTSIDE THE MUNICIPALITY.

(c) REGULATING THE PROVISION OF CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, AND ADVANCED SERVICE BY A LOCAL GOVERNMENT IS A MATTER OF STATEWIDE CONCERN.

**29-27-102. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ADVANCED SERVICE" MEANS HIGH-SPEED INTERNET ACCESS CAPABILITY IN EXCESS OF TWO HUNDRED FIFTY-SIX KILOBITS PER SECOND BOTH UPSTREAM AND DOWNSTREAM.

(2) "CABLE TELEVISION SERVICE" MEANS THE ONE-WAY TRANSMISSION TO SUBSCRIBERS OF VIDEO PROGRAMMING OR OTHER PROGRAMMING SERVICE, AS WELL AS SUBSCRIBER INTERACTION, IF ANY, THAT IS REQUIRED FOR THE SELECTION OR USE OF THE VIDEO PROGRAMMING OR OTHER PROGRAMMING SERVICE.

(3) "LOCAL GOVERNMENT" MEANS ANY CITY, COUNTY, CITY AND COUNTY, SPECIAL DISTRICT, OR OTHER POLITICAL SUBDIVISION OF THIS STATE.

(4) "PRIVATE PROVIDER" MEANS A PRIVATE ENTITY THAT PROVIDES CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE.

(5) "SUBSCRIBER" MEANS A PERSON THAT LAWFULLY RECEIVES

CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE. A PERSON THAT UTILIZES CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE PROVIDED BY A LOCAL GOVERNMENT FOR LOCAL GOVERNMENTAL OR INTERGOVERNMENTAL PURPOSES AND IS USED BY PERSONS ACCESSING GOVERNMENT SERVICES IS NOT A SUBSCRIBER FOR PURPOSES OF THIS ARTICLE.

(6) "TELECOMMUNICATIONS SERVICE" HAS THE SAME MEANING AS SET FORTH IN SECTION 40-15-102 (29), C.R.S.

**29-27-103. Limitations on providing cable television, telecommunications, and advanced services.** (1) EXCEPT AS PROVIDED IN THIS ARTICLE, A LOCAL GOVERNMENT SHALL NOT:

(a) PROVIDE TO ONE OR MORE SUBSCRIBERS CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE; OR

(b) PURCHASE, LEASE, CONSTRUCT, MAINTAIN, OR OPERATE ANY FACILITY FOR THE PURPOSE OF PROVIDING CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE TO ONE OR MORE SUBSCRIBERS.

(2) FOR PURPOSES OF THIS ARTICLE, A LOCAL GOVERNMENT PROVIDES CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE IF THE LOCAL GOVERNMENT PROVIDES THE CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE TO ONE OR MORE SUBSCRIBERS:

(a) DIRECTLY;

(b) INDIRECTLY BY MEANS THAT INCLUDE BUT ARE NOT LIMITED TO THE FOLLOWING:

(I) THROUGH AN AUTHORITY OR INSTRUMENTALITY ACTING ON BEHALF OF THE LOCAL GOVERNMENT OR FOR THE BENEFIT OF THE LOCAL GOVERNMENT BY ITSELF;

(II) THROUGH A PARTNERSHIP OR JOINT VENTURE;

(III) THROUGH A SALE AND LEASEBACK ARRANGEMENT;

(c) BY CONTRACT, INCLUDING A CONTRACT WHEREBY THE LOCAL GOVERNMENT LEASES, SELLS CAPACITY IN, OR GRANTS OTHER SIMILAR RIGHTS TO A PRIVATE PROVIDER TO USE LOCAL GOVERNMENTAL FACILITIES DESIGNED OR CONSTRUCTED TO PROVIDE CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE FOR INTERNAL LOCAL GOVERNMENT PURPOSES IN CONNECTION WITH A PRIVATE PROVIDER'S OFFERING OF CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE; OR

(d) THROUGH SALE OR PURCHASE OF RESALE OR WHOLESALE CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE FOR THE PURPOSE OF PROVIDING CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE TO ONE OR MORE SUBSCRIBERS.

(3) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO LIMIT THE AUTHORITY OF A LOCAL GOVERNMENT TO LEASE TO A PRIVATE PROVIDER PHYSICAL SPACE IN OR ON ITS PROPERTY FOR THE PLACEMENT OF EQUIPMENT OR FACILITIES THE PRIVATE PROVIDER USES TO PROVIDE CABLE TELEVISION, TELECOMMUNICATIONS, OR ADVANCED SERVICES.

## PART 2 CONDITIONS FOR PROVIDING SERVICES

**29-27-201. Vote - referendum.** (1) BEFORE A LOCAL GOVERNMENT MAY ENGAGE OR OFFER TO ENGAGE IN PROVIDING CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE, AN ELECTION SHALL BE CALLED ON WHETHER OR NOT THE LOCAL GOVERNMENT SHALL PROVIDE THE PROPOSED CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE.

(2) THE BALLOT AT AN ELECTION CONDUCTED PURSUANT TO THIS SECTION SHALL POSE THE QUESTION AS A SINGLE SUBJECT AND SHALL INCLUDE A DESCRIPTION OF THE NATURE OF THE PROPOSED SERVICE, THE ROLE THAT THE LOCAL GOVERNMENT WILL HAVE IN PROVISION OF THE SERVICE, AND THE INTENDED SUBSCRIBERS OF SUCH SERVICE. THE BALLOT PROPOSITION SHALL NOT TAKE EFFECT UNTIL SUBMITTED TO THE ELECTORS AND APPROVED BY THE MAJORITY OF THOSE VOTING ON THE BALLOT.

**29-27-202. Exemption for unserved areas.** (1) A LOCAL GOVERNMENT SHALL BE EXEMPT FROM THE REQUIREMENTS OF THIS PART 2

AND MAY ENGAGE OR OFFER TO ENGAGE IN PROVIDING CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCE SERVICE IF:

(a) NO PRIVATE PROVIDER OF CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE PROVIDES THE SERVICE ANYWHERE WITHIN THE BOUNDARIES OF THE LOCAL GOVERNMENT;

(b) THE GOVERNING BODY OF THE LOCAL GOVERNMENT HAS SUBMITTED A WRITTEN REQUEST TO PROVIDE THE SERVICE TO ANY INCUMBENT PROVIDER OF CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE WITHIN THE BOUNDARIES OF THE LOCAL GOVERNMENT; AND

(c) THE INCUMBENT PROVIDER HAS NOT AGREED WITHIN SIXTY DAYS OF THE RECEIPT OF A REQUEST SUBMITTED PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (1) TO PROVIDE THE SERVICE OR, IF THE PROVIDER HAS AGREED, IT HAS NOT COMMENCED PROVIDING THE SERVICE WITHIN FOURTEEN MONTHS OF THE RECEIPT OF THE REQUEST.

PART 3  
COMPLIANCE WITH LOCAL, STATE,  
AND FEDERAL REGULATIONS

**29-27-301. General operating limitations.** (1) A LOCAL GOVERNMENT THAT PROVIDES CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE UNDER THIS ARTICLE SHALL COMPLY WITH ALL STATE AND FEDERAL LAWS, RULES, AND REGULATIONS GOVERNING PROVISION OF SUCH SERVICE BY A PRIVATE PROVIDER; EXCEPT THAT NOTHING HEREIN SHALL BE CONSTRUED TO AFFECT THE JURISDICTION OF THE PUBLIC UTILITIES COMMISSION WITH RESPECT TO MUNICIPAL UTILITIES.

(2) (a) A LOCAL GOVERNMENT SHALL NOT MAKE OR GRANT ANY UNDUE OR UNREASONABLE PREFERENCE OR ADVANTAGE TO ITSELF OR TO ANY PRIVATE PROVIDER OF CABLE TELEVISION SERVICES, TELECOMMUNICATIONS SERVICES, OR ADVANCED SERVICES.

(b) A LOCAL GOVERNMENT SHALL APPLY WITHOUT DISCRIMINATION AS TO ITSELF AND TO ANY PRIVATE PROVIDER THE LOCAL GOVERNMENT'S ORDINANCES, RULES, AND POLICIES, INCLUDING THOSE RELATING TO:

(I) OBLIGATION TO SERVE;

(II) ACCESS TO PUBLIC RIGHTS-OF-WAY;

(III) PERMITTING;

(IV) PERFORMANCE BONDING WHERE AN ENTITY OTHER THAN THE LOCAL GOVERNMENT IS PERFORMING THE WORK;

(V) REPORTING; AND

(VI) QUALITY OF SERVICE.

**29-27-302. Scope of article.** (1) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO AUTHORIZE ANY LOCAL GOVERNMENT TO:

(a) PROVIDE, DIRECTLY OR INDIRECTLY, CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE; OR

(b) PURCHASE, LEASE, CONSTRUCT, MAINTAIN, OR OPERATE A FACILITY FOR THE PURPOSE OF PROVIDING, DIRECTLY OR INDIRECTLY, CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE.

(2) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO APPLY TO A LOCAL GOVERNMENT PURCHASING, LEASING, CONSTRUCTING, MAINTAINING, OR OPERATING FACILITIES THAT ARE DESIGNED TO PROVIDE CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE THAT THE LOCAL GOVERNMENT USES FOR INTERNAL OR INTERGOVERNMENTAL PURPOSES.

(3) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO APPLY TO THE SALE OR LEASE BY A LOCAL GOVERNMENT TO PRIVATE PROVIDERS OF EXCESS CAPACITY, PROVIDED:

(a) SUCH EXCESS CAPACITY IS INSUBSTANTIAL IN RELATION TO THE CAPACITY UTILIZED BY THE LOCAL GOVERNMENT FOR ITS OWN PURPOSES; AND

(b) THE OPPORTUNITY TO PURCHASE AND THE OPPORTUNITY TO USE SUCH EXCESS CAPACITY IS MADE AVAILABLE TO ANY PRIVATE PROVIDER IN

A NONDISCRIMINATORY, NONEXCLUSIVE, AND COMPETITIVELY NEUTRAL MANNER.

(4) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO LIMIT EITHER THE AUTHORITY OF THE STATEWIDE INTERNET PORTAL AUTHORITY CREATED IN SECTION 24-37.7-102, C.R.S., TO CARRY OUT ITS MISSION OR TO INTEGRATE THE ELECTRONIC INFORMATION DELIVERY SYSTEMS OF LOCAL GOVERNMENTS INTO THE STATEWIDE INTERNET PORTAL AS DEFINED IN ARTICLE 37.7 OF TITLE 24, C.R.S.

**29-27-303. Enforcement and appeal.** (1) BEFORE AN INDIVIDUAL SUBSCRIBER OR A PRIVATE PROVIDER THAT COMPETES WITH A LOCAL GOVERNMENT IN THE GEOGRAPHIC BOUNDARIES OF THE LOCAL GOVERNMENT MAY FILE AN ACTION IN DISTRICT COURT FOR VIOLATION OF THIS ARTICLE, THAT PERSON SHALL FILE A WRITTEN COMPLAINT WITH THE LOCAL GOVERNMENT. THE FAILURE BY THE LOCAL GOVERNMENT TO ISSUE A FINAL DECISION REGARDING THE COMPLAINT WITHIN FORTY-FIVE DAYS SHALL BE TREATED AS AN ADVERSE DECISION FOR PURPOSES OF APPEAL.

(2) AN APPEAL OF AN ADVERSE DECISION FROM THE LOCAL GOVERNMENT MAY BE TAKEN TO THE DISTRICT COURT FOR A DE NOVO PROCEEDING.

**29-27-304. Applicability.** THIS ARTICLE SHALL APPLY TO CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, AND ADVANCED SERVICE AND TO THE PURCHASE, LEASE, CONSTRUCTION, MAINTENANCE, OR OPERATION OF ANY FACILITY FOR THE PURPOSE OF PROVIDING SUCH SERVICE, FOR WHICH A LOCAL GOVERNMENT HAS NOT ENTERED INTO AN AGREEMENT OR OTHERWISE TAKEN ANY SUBSTANTIAL ACTION PRIOR TO MARCH 1, 2005, TO PROVIDE SUCH SERVICE OR PURCHASE, LEASE, CONSTRUCT, MAINTAIN, OR OPERATE SUCH FACILITIES.

**SECTION 2. Safety clause.** The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

---

Joan Fitz-Gerald  
PRESIDENT OF  
THE SENATE

---

Andrew Romanoff  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

---

Karen Goldman  
SECRETARY OF  
THE SENATE

---

Marilyn Eddins  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

APPROVED \_\_\_\_\_

---

Bill Owens  
GOVERNOR OF THE STATE OF COLORADO

# Town of Crested Butte

P.O. Box 39 Crested Butte, Colorado 81224

*-National Trust for Historic Preservation's 2008 Dozen Distinctive Destinations Award Recipient-*

*-A National Historic District-*

Phone: (970) 349-5338  
FAX: (970) 349-6626  
www.townofcrestedbutte.com

July 24, 2015

**VIA E-MAIL DELIVERY**

Ms. Kathy Simillion  
Gunnison County Clerk and Recorder  
221 North Wisconsin Street, Suite C  
Gunnison, CO 81230

**Re: Fall 2015 Election, SB 05-152**

Dear Ms. Simillion:

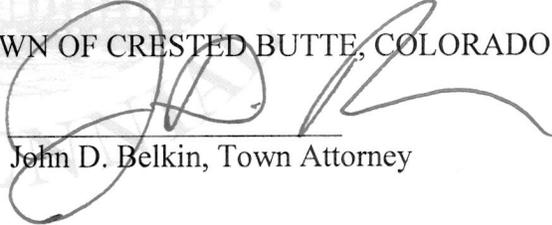
Please allow this correspondence to serve as formal notice from the Town of Crested Butte, Colorado that it is the current intention of the Crested Butte Town Council to initiate and participate in a Fall, 2015 coordinated election regarding SB 05-152 to determine whether the Town shall have the legal authority to provide, directly or indirectly, any or all services and/or facilities restricted by Title 29 Article 27, C.R.S.

The Town reserves the right to not proceed further hereto without prejudice.

Town Manager, Todd Crossett is the contact person in this matter. Mr. Crossett is available to you to ensure that each further and necessary action in connection with this matter is timely accomplished, etc.

Sincerely,

TOWN OF CRESTED BUTTE, COLORADO

By:   
John D. Belkin, Town Attorney

cc: Town Council  
Todd Crossett, Town Manager

**ORDINANCE NO. 7**

**SERIES 2015**

**AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL SUBMITTING TO THE REGISTERED ELECTORS AT AN ELECTION TO BE HELD ON NOVEMBER 3, 2015, THE QUESTION OF WHETHER THE TOWN OF CRESTED BUTTE SHALL RE-ESTABLISH ITS RIGHTS, WITHOUT INCREASING TAXES BY THE MEASURE, TO RESTORE LOCAL AUTHORITY THAT HAS BEEN DENIED TO LOCAL GOVERNMENTS BY THE COLORADO GENERAL ASSEMBLY, TO PROVIDE HIGH-SPEED INTERNET, INCLUDING IMPROVED HIGH BANDWIDTH SERVICES BASED ON NEW TECHNOLOGIES, TELECOMMUNICATIONS AND/OR CABLE TELEVISION SERVICES AS EXPRESSLY PERMITTED BY ARTICLE 27, TITLE 29, C.R.S.; SETTING FORTH THE BALLOT TITLE; AND PROVIDING FOR THE CONDUCT OF THE ELECTION**

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 electors of the Town adopted the Home Rule Charter of the Town of Crested Butte, Colorado (the "**Charter**") on November 5, 1974;

WHEREAS, under Section 5.7 of the Charter, the Town Council shall have the power to submit at a general or special election any ordinance or question to a vote of the registered electors of the Town;

WHEREAS, until 2005, municipalities throughout Colorado enjoyed the right and authority to use municipal fiber optic infrastructure to provide high speed Internet, advanced telecommunications and cable television services to their residents and businesses;

WHEREAS, in 2005, the State Legislature enacted Senate Bill 05-152 (codified in Article 27, Title 29, C.R.S.) to revoke and deny all Colorado municipalities the right of using municipal facilities, improvements and fiber optic infrastructure to provide directly or indirectly high-speed Internet, advanced telecommunication and cable television services to residents and businesses;

WHEREAS, Senate Bill 05-152 expressly authorizes every local government to submit a ballot question to the local voters to reauthorize and reclaim the local right to use the municipal fiber optic infrastructure to provide high-speed Internet, advanced telecommunications and cable television services to their residents and businesses;

WHEREAS, although the Town does not currently own any municipal fiber optic infrastructure, future construction and use of such infrastructure would likely increase competition and potentially decrease costs of services to residents and businesses by providing opportunities to private service providers to partner with the Town to use the Town's fiber optic infrastructure to deliver services to residents and businesses;

WHEREAS, pursuant to Section 2.2 of the Charter, the Town Council finds and determines that it is in the best interest and welfare of the Town, its residents and visitors that there should be submitted to the registered electors of the Town, at an election to be held on November 3, 2015, in conjunction with the coordinated election to be held on such date, as a referred measure, the question of whether the Town of Crested Butte shall re-establish its rights to restore local authority that has been denied to local governments by the State Legislature to provide high-speed Internet, including improved high bandwidth services based on new technologies, telecommunications services and/or cable television services as expressly permitted by Article 27, Title 29, C.R.S; and

WHEREAS, Section 31-11-111(2), C.R.S., provides that the Town Council or its designee shall fix a ballot title for the referred measure set forth in this ordinance.

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

**Section 1. Notice of Election.** A general municipal election shall be held on Tuesday, November 3, 2015 in connection with the coordinated election that is to be held that day. At the election there shall be submitted to the vote of the registered electors of the Town, as a referred measure, the ballot issue hereinafter set forth (the "**Ballot Issue**"). At the election, the official ballot, including early voters' ballots shall state the substance of the Ballot Issue to be voted upon and, as so stated, shall constitute the ballot title, designation, and submission clause. At such election each registered elector of the Town voting at the election shall be given the opportunity to indicate his or her choice on the Ballot Issue, which shall include the following form:

SHALL THE TOWN OF CRESTED BUTTE, WITHOUT INCREASING TAXES BY THIS MEASURE, AND TO RESTORE LOCAL AUTHORITY THAT WAS DENIED TO LOCAL GOVERNMENTS BY THE COLORADO GENERAL ASSEMBLY AND TO FOSTER A MORE COMPETITIVE MARKETPLACE, BE AUTHORIZED TO PROVIDE HIGH-SPEED INTERNET, INCLUDING IMPROVED HIGH BANDWIDTH SERVICES BASED ON NEW TECHNOLOGIES, TELECOMMUNICATIONS SERVICES AND/OR CABLE TELEVISION SERVICES TO RESIDENTS, BUSINESSES, SCHOOLS, LIBRARIES, NON-PROFIT ENTITIES AND OTHER USERS OF SUCH SERVICES EITHER DIRECTLY OR INDIRECTLY WITH PUBLIC OR PRIVATE SECTOR PARTNERS, AS EXPRESSLY PERMITTED BY ARTICLE 27, TITLE 29 OF THE COLORADO REVISED STATUTES?

[ ] YES

[ ] NO

**Section 2.** In connection with the fixing of the ballot title for the Ballot Issue, the Town Council finds and determines:

(a) the Town Council has considered the public confusion that might be caused by misleading ballot titles;

(b) the general understanding of the effect of a “yes” of “no” vote on the Ballot Issue will be clear to the electors;

(c) the ballot title for the Ballot Issue will not conflict with those titles selected for any other measure that will appear on the ballot at the November 3, 2015 general municipal Town election; and

(4) the ballot title for the Ballot Issue correctly and fairly expresses the true intent and meaning of the measure.

**Section 3.** If a majority of the votes cast at the election shall be for the Ballot Issue, the measure shall be deemed approved. If a majority of the votes cast at the election shall be against the Ballot Issue, the measure shall fail.

**Section 4.** The election on November 3, 2015 to consider the Ballot Issue shall be conducted as a coordinated election with Gunnison County. The Gunnison County Clerk and Recorder shall conduct the election on behalf of the Town. Pursuant to Section 2.1 of the Charter, the election shall be conducted under the Uniform Election Code of 1992. The cost of the election with respect to the Ballot Issue shall be paid for from the Town’s general fund.

**Section 5.** The Town Clerk shall serve as the designated election official of the Town for purposes of performing acts required or permitted by law in connection with the election on the Ballot Issue and shall take such action as may be required to comply with all applicable laws pertaining to the conduct of the election.

**Section 6.** The Town Council finds, determines and declares that this ordinance is necessary and proper for the safety, health, welfare, order, comfort and convenience of Crested Butte and its inhabitants.

**Section 7.** The Town Council finds, determines and declares that it has the power to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX of the Colorado Constitution and the powers contained in the Charter.

**Section 8.** Pursuant to Section 5.1(b) of the Charter, this ordinance is not subject to the registered electors’ reserved power of referendum.

**Section 9.** Any election contest arising out of the Ballot Issue or the election concerning the order of the ballot or the form or content of the ballot title shall be commenced pursuant to

Section 1-11-203.5, C.R.S.

**Section 10.** The Town Clerk, or the coordinated election official if so provided by intergovernmental agreement, shall give or cause to be given the notice of election required by Section 1-5-205, C.R.S.

**Section 11.** The officers of the Town are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this ordinance. All actions previously taken by the officers of the Town with respect to the Ballot Issue are hereby ratified, confirmed and approved.

**Section 12.** This ordinance shall become effective in accordance with the provisions of the Charter.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS \_\_\_\_ DAY  
OF \_\_\_\_\_, 2015.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC  
HEARING THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2015.

TOWN OF CRESTED BUTTE, COLORADO

By: \_\_\_\_\_  
Aaron J. Huckstep, Mayor

ATTEST:

\_\_\_\_\_  
Lynelle Stanford, Town Clerk (SEAL)



## Staff Report

August 4, 2015

**To:** Mayor and Town Council

**Thru:** Todd Crossett, Town Manager

**From:** Lynelle Stanford, Town Clerk

**Subject: Resolution No. 20, Series 2015 – Resolutions of the Crested Butte Town Council Approving the Intergovernmental Agreement with the Gunnison County Clerk and Recorder Regarding the Implementation of the Confirmation Card Process Described in Title 1, C.R.S.**

**Date:** July 28, 2015

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### Summary:

At the Town Council meeting on July 20, 2015, Council directed Staff to bring forth an IGA with the Gunnison County Clerk and Recorder to engage in the voter confirmation card process.

### Background:

When citizens register to vote, they are required to provide both physical and mailing addresses. It is common for a person to relocate to a different physical address, while his/her mailing address with the Post Office remains the same. As a result, there could be people who registered to vote using physical addresses within the Town of Crested Butte that have since relocated out of Town. There are multiple methods available to voters to update their physical addresses, including online through the Colorado Secretary of State and directly through the Gunnison County Elections Office. Likewise, if a person updates his/her physical address on his/her driver's license, the person's voter registration address on record is subsequently updated. A person's physical address determines which ballot he/she receives and the issues on which he/she is entitled to vote.

Staff discussed with the Gunnison Clerk and Recorder's Office to engage in a process of sending out confirmation cards to registered voters in Precincts 3, 4, and 5 with Post Office boxes. Below is an outline of the proposed process:

1. Determine the number of active registered voters in Precincts 3, 4, and 5 who have been identified as having a mailing address as a Post Office Box within the 81224 zip code.
2. Export the list (identified in step #1) from SCORE, the statewide voter registration system.
3. A mailing, via First Class Forwardable mail, will be sent. The mailing will include a confirmation letter drafted in consultation with staff in the Colorado Secretary of State's office and

agreed upon by the Town of Crested Butte. The front side will have name, street address and mailing address, giving the voter the opportunity to update any information which is incorrect. Also, included will be a postage paid envelope addressed to the office of the Gunnison County Elections Division.

4. Any updated addresses will be corrected in the SCORE system.

5. As letters are returned to the Elections Division marked “undeliverable”, these records will be flagged in the SCORE system as Inactive Returned mail. Next, from this process, a second mailing will be initiated to the same voter attempting again to locate them. This mailing will be mailed First Class Forwardable mail. This step meets the National Voter Registration Act (NVRA) requirements for beginning the cancellation process if the voter fails to update the record and fails to vote in the next two General Elections.

The Gunnison Clerk and Recorder’s Office has identified approximately 3,100 active registered voters in Precincts 3, 4, and 5 with Post Office boxes in the 81224 zip code.

As part of the effort, the Town will actively promote the effort through print, radio and internet in to encourage voters to update their registration information. The County is in agreement with this approach.

**Financial Implications:** The County will charge \$5,800 for this service

**Staff Recommendation:** Approve Resolution No. 20, Series 2015.

**Recommended Motion:** Motion to approve Resolution No. 20, Series 2015.

**RESOLUTION NO. 20**

**SERIES 2015**

**RESOLUTIONS OF THE CRESTED BUTTE TOWN COUNCIL APPROVING THE INTERGOVERNMENTAL AGREEMENT WITH THE GUNNISON COUNTY CLERK AND RECORDER REGARDING THE IMPLEMENTATION OF THE CONFIRMATION CARD PROCESS IN TITLE 1, C.R.S.**

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 Charter provides in Section 2.1 that Town elections shall be governed by the Colorado Municipal Election Laws;

WHEREAS, Section 31-10-1-2.7, C.R.S provides that a municipality may provide by resolutions that it will utilize the requirements and procedures of the Uniform Election Code of 1992 in lieu of the Colorado Municipal Election Code;

WHEREAS, by Resolution 17, Series 2015, the Town Council resolved to utilize the requirements and procedures of the Uniform Election Code of 1992 in lieu of the Colorado Municipal Election Code for the November 3, 2015 general election;

WHEREAS, pursuant to the Crested Butte Municipal Code, and Section 29-1-201 et seq., C.R.S., the Town is authorized and empowered to contract with another governmental entity to provide any function, service or facility lawfully authorized to be provided by either of the cooperating or contracting units of government; and

WHEREAS, the Town and the Gunnison County Clerk and Recorder wish to enter into an intergovernmental agreement for the purpose of performing a certain post card registered voter notification process pursuant to the Uniform Election Code of 1992, such intergovernmental agreement being in the best interest of the general health, safety and welfare of the residents and visitors of Crested Butte.

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

1. **Findings.** The Town Council hereby finds that it is in the best interest of the general health, safety and welfare of the residents and visitors of Crested Butte that the Town enter into an intergovernmental agreement with the Gunnison County Clerk and Recorder for the purpose of performing a certain post card registered voter notification process pursuant to the Uniform Election Code of 1992.

2. **Approval; Authorization of Town Manager.** Based on the foregoing, the Town Council hereby approves the intergovernmental agreement (“**IGA**”) with the Gunnison County Clerk and Recorder in substantially the same form as attached hereto as **Exhibit “A.”** The Town Manager is hereby authorized to execute the IGA in such form.

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL  
THIS \_\_\_ DAY OF \_\_\_\_\_, 2015.

TOWN OF CRESTED BUTTE, COLORADO

By: \_\_\_\_\_  
Aaron J. Huckstep, Mayor

ATTEST

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

(SEAL)

**EXHIBIT “A”**

**Post Card Process Intergovernmental Agreement**

[attach form here]

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015 by and between the Gunnison County Clerk and Recorder whose address is 221 North Wisconsin, Gunnison, Colorado 81230 (“Gunnison County”) and the Town of Crested Butte whose address is PO Box 39, Crested Butte, Colorado 81224 (“Crested Butte”).

RECITALS

WHEREAS, Crested Butte has requested assistance from Gunnison County in determining the number of active registered voters in Gunnison County Precincts 3, 4 and 5; and

WHEREAS, mailing of Official Voter Confirmation Cards may assist in the determination of registered active voters in Precincts 3, 4 and 5; and

WHEREAS, in support of cooperative election efforts, Gunnison County is available to assist Crested Butte in determining the number of active voters in Precincts 3, 4 and 5 by mailing Official Voter Confirmation Cards.

AGREEMENT

NOW THEREFORE, in consideration of the Recitals and the mutual covenants and obligations hereinafter set forth, the parties agree as follows:

1. TERM.

The term of this Agreement shall commence on the date first set forth above and shall terminate on December 31, 2015 unless extended by mutual written agreement of the parties 30 days prior to the expiration date or otherwise terminated or replaced as provided herein.

2. SERVICES.

Gunnison County agrees to assist Crested Butte in determining the number of registered voters in Gunnison County Precincts 3, 4 and 5 by providing the following services:

- A. Determine the number of active registered voters in Precincts 3, 4 and 5 who have been identified as having a mailing address of a post office box in the 81224 zip code.
- B. Export the list of registered voters identified in the above referenced paragraph 2.A from the SCORE - Statewide Voter Registration System.

- C. By no later than September 15, 2015 prepare and mail letters via First Class Forwardable Mail. The mailing shall include a confirmation letter drafted in consultation with staff in the Colorado Secretary of State's Office; front side will have name, street address and mailing address, giving the recipient the opportunity to update any information which is incorrect. Also, included will be a postage paid envelope addressed to the office of the Gunnison County Election's Division.
- D. Any letters returned to the Gunnison County Election's Division marked "Undeliverable", will be flagged in the SCORE system, as "Inactive Returned Mail".
- E. After completion of above paragraph 2.D, a second mailing will be mailed to the same voter attempting again to locate the voter. This second mailing will be mailed First Class Forwardable Mail. (While this step is intended to meet the National Voter Registration Act ("NVRA") requirements for beginning the cancellation process if the voter fails to update the record and fails to vote in the next two General Elections, action pursuant to the NVRA is beyond the scope of this Agreement).

### 3. CONSIDERATION.

In consideration for the services identified in above referenced paragraph 2, Crested Butte shall pay Gunnison County FIVE THOUSAND EIGHT HUNDRED AND NO/100 U.S. Dollars (\$5,800.00) within 30 days of full execution of this Agreement. Funds shall be made payable to the Gunnison County Clerk and Recorder and forwarded to 221 North Wisconsin, Gunnison, CO 81230.

### 4. NO OUTCOME GUARANTEED.

It is the clear understanding and agreement of the parties that no result or outcome is intended, warranted or guaranteed other than performance of the specific services identified herein.

### 5. INDEMNIFICATION.

- (a) Crested Butte agrees to indemnify, defend by an attorney of the choice of Gunnison County at the cost of Crested Butte, and hold harmless the Gunnison County Clerk and Recorder, Gunnison County, its Commissioners, and its and their agents and employees of and from any and all liability, claims, liens, demands, actions and causes of action whatsoever (including reasonable attorney's and expert's fees and costs) arising out of or related to any loss, cost, damage or injury, including

death, of any person or damage to property of any kind, brought by any person or entity.

- (b) This provision shall survive any termination or expiration of this Agreement with respect to any liability, injury or damage occurring prior to such termination.
- (c) Nothing in this agreement shall be construed to be a waiver by Gunnison County or Crested Butte of the provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et. seq.

#### 6. MISCELLANEOUS.

- (a) SEVERABILITY. If any clause or provision of this Agreement shall be held to be invalid in whole or in part, then the remaining clauses and provisions, or portions thereof, shall nevertheless be and remain in full force and effect.
- (b) AMENDMENT. No amendment, alteration, modification of or addition to this Agreement shall be valid or binding unless expressed in writing and signed by the parties to be bound thereby.

#### 7. DELEGATION AND ASSIGNMENT.

Gunnison County shall not delegate or assign its duties under this Agreement without the prior written consent of Crested Butte which consent Crested Butte may withhold in its discretion. Subject to the foregoing, the terms, covenants and conditions of this Agreement shall be binding on the successors and assigns of either party.

#### 8. TERMINATION.

Either party shall have the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days prior written notice to the other.

#### 9. NOTICES.

Any notice, demand or communication which either party may desire or be required to give to the other party shall be in writing and shall be deemed sufficiently given or rendered if delivered personally or sent by certified first class U.S. mail, postage prepaid, addressed as follows:

Gunnison County: Gunnison County Clerk and Recorder  
221 North Wisconsin  
Gunnison, CO 81230

Crested Butte: Town of Crested Butte

PO Box 39  
Crested Butte, CO 81224

Either party has the right to designate in writing, served as provided above, a different address to which any notice, demand or communication is to be mailed.

10. COUNTERPARTS: FACSIMILE TRANSMISSION.

This Agreement may be executed by facsimile and/or in any number of counterparts, any or all of which may contain the signatures of less than all the parties, and all of which shall be construed together as but a single instrument and shall be binding on the parties as though originally executed on one originally executed document. All facsimile counterparts shall be promptly followed with delivery of original executed counterparts.

11. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes any and all prior agreements, proposals, negotiations and representations pertaining to the obligations to be performed hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

GUNNISON COUNTY CLERK AND RECORDER

By: \_\_\_\_\_  
Kathy Simillion, Clerk

ATTEST:

\_\_\_\_\_  
Deputy County Clerk

TOWN OF CRESTED BUTTE

By: \_\_\_\_\_  
Aaron Huckstep, Mayor

ATTEST:

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Town Clerk

## Lynelle Stanford

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**From:** Aaron Huckstep  
**Sent:** Wednesday, July 22, 2015 9:00 AM  
**To:** runswithelk1 .  
**Cc:** Todd Crossett; Michael Yerman; Lynelle Stanford  
**Subject:** RE: Affordable Housing Idea

Hi Marc,

Thank you for your comments regarding the Ore Bucket building in Crested Butte. I appreciate your input. Town Clerk Lynelle Stanford is being copied on this email along with Town Planner Michael Yerman and Town Manager Todd Crossett.

Best Regards,

Aaron J. Huckstep ("Huck")  
Mayor, Town of Crested Butte  
Direct: (970) 349-2009  
Town Hall: (970) 349-5338

**From:** runswithelk1 . [mailto:marcsolari@gmail.com]  
**Sent:** Wednesday, July 22, 2015 8:01 AM  
**To:** Aaron Huckstep; Walker Berkshire; Shaun; J Schmidt; Chris Ladoulis; R Mason; Glenn Michel  
**Subject:** Affordable Housing Idea

Good Morning Mr. Mayor and Town Council Members,

I saw on the Crested Butte Real Estate MLS that the Ore Bucket Building just came back on the market for \$895,000. I'm wondering what you think about the town purchasing this building and then selling the 8 units as condominiums for a little over \$100,000 per unit. I think locals would be psyched to pay \$120,000 for a condo in town. \$120,000 multiplied by 8 is \$960,000. That's a \$65,000 profit over asking price for improvements.

Just a thought...

Thanks for your time and your hard work.

Marc J. Solari  
970 349 9108  
117 Teocalli Ave,  
Upper West Side, CB, CO

## Lynelle Stanford

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**From:** runswithek1 . <marcsolari@gmail.com>  
**Sent:** Wednesday, July 22, 2015 9:11 AM  
**To:** Aaron Huckstep  
**Cc:** Todd Crossett; Michael Yerman; Lynelle Stanford  
**Subject:** Re: Affordable Housing Idea

Good Morning Aaron,

Thank you for your response and for forwarding the information on. I'm happy to hear that you found this information helpful. The Ore Bucket listing was brought to my attention by my real estate professional, Mindy Sturm of Premier Mountain Properties. Together we brainstormed about the possibility of affordable local housing. Maybe it'll work. Thanks again.

Marc

On Wed, Jul 22, 2015 at 9:00 AM, Aaron Huckstep <[huck@crestedbutte-co.gov](mailto:huck@crestedbutte-co.gov)> wrote:

Hi Marc,

Thank you for your comments regarding the Ore Bucket building in Crested Butte. I appreciate your input. Town Clerk Lynelle Stanford is being copied on this email along with Town Planner Michael Yerman and Town Manager Todd Crossett.

Best Regards,

Aaron J. Huckstep ("Huck")

Mayor, Town of Crested Butte

Direct: [\(970\) 349-2009](tel:9703492009)

Town Hall: [\(970\) 349-5338](tel:9703495338)

**From:** runswithek1 . [<mailto:marcsolari@gmail.com>]  
**Sent:** Wednesday, July 22, 2015 8:01 AM  
**To:** Aaron Huckstep; Walker Berkshire; Shaun; J Schmidt; Chris Ladoulis; R Mason; Glenn Michel  
**Subject:** Affordable Housing Idea

Good Morning Mr. Mayor and Town Council Members,

I saw on the Crested Butte Real Estate MLS that the Ore Bucket Building just came back on the market for \$895,000. I'm wondering what you think about the town purchasing this building and then selling the 8 units as condominiums for a little over \$100,000 per unit. I think locals would be psyched to pay \$120,000 for a condo in town. \$120,000 multiplied by 8 is \$960,000. That's a \$65,000 profit over asking price for improvements.

Just a thought...

Thanks for your time and your hard work.

Marc J. Solari

970 349 9108

117 Teocalli Ave,

Upper West Side, CB, CO

## Lynelle Stanford

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**From:** Aaron Huckstep  
**Sent:** Tuesday, July 21, 2015 9:36 AM  
**To:** lauramitchell68@yahoo.com  
**Cc:** Lynelle Stanford; Michael Yerman; Todd Crossett  
**Subject:** RE:

Hi Laura,

Thank you for your comments regarding transportation issues in Crested Butte. I appreciate your input. Town Clerk Lynelle Stanford is being copied on this email along with Town Planner Michael Yerman. Lynelle will make sure your email is shared with all members of Council.

Best Regards,

Aaron J. Huckstep ("Huck")  
Mayor, Town of Crested Butte  
Direct: (970) 349-2009  
Town Hall: (970) 349-5338

-----Original Message-----

**From:** lauramitchell68@yahoo.com [mailto:lauramitchell68@yahoo.com]  
**Sent:** Monday, July 20, 2015 9:40 PM  
**To:** Aaron Huckstep  
**Subject:**

Dear Crested Butte Town Council,

After two years of living in town I've noticed a few things that truly need to be addressed. While most people are complaining about affordable housing and how much does the town need to contribute to the new arts center we as a community have a real problem and that is access across 6th street. It is unconscionable that as town we are dedicating 1 million dollars to a new arts center and we don't have safe access for our children to cross Sixth street. At a minimum there should be a sign with a flashing light above a pedestrians walking notice. Ideally, you build either an over the street bridge or a tunnel that bikes can also access. There should no money excuse here and if there is sell Avalanche Acres to make it happen.

The next problem I have observed is poor signage all about town. How about a slightly larger sign as you come into town that is located before True Value? Do you realize how many people pour into True Value because of a poorly situated signage? Also this sign is too small. This only exacerbates the entire Sixth street dangers again to our children and all bikers and pedestrians. Also, let's get a sign that indicates where Kebler Pass is! Not everyone has or uses a smart phone and I visit with people weekly headed out Peanut looking for Kebler.

And last but not least the intersection at 2nd and Whiterock and Third and Maroon both need attention. Why can't there be a three way sign under the stop sign on Whiterock? Or make this intersection a four way stop excluding buses? Third and Maroon is also dangerous and should be rethought.

We can't wait five years for this traffic plan to come to fruition. I urge all of Crested Butte town council to make access across Sixth Street safer.

Sincerely,  
Laura Mitchell  
122 Butte Ave  
Sent from my iPad