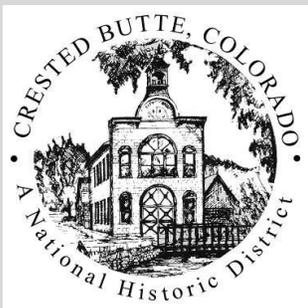


AGENDA
Town of Crested Butte
Regular Town Council Meeting
Monday, April 15, 2019
Council Chambers, Crested Butte Town Hall



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

Town Council Values

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

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

6:00 WORK SESSION

1) Coal Creek Coalition Update.

6:30 2) Snow Shed on Rights of Way.

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

7:02 APPROVAL OF AGENDA

7:04 CONSENT AGENDA

1) April 1, 2019 Regular Town Council Meeting Minutes.

2) ARTumn Festival Special Event Application Closing the Zero Block of Elk Avenue on September 14 and 15, 2019.

The listing under Consent Agenda is a group of items to be acted on with a single motion. The Consent Agenda is designed to expedite Council business. The Mayor will ask if any citizen or council member wishes to have any specific item discussed. You may request that an item be removed from Consent Agenda at that time, prior to the Council's vote. Items removed from the Consent Agenda will be considered under New Business.

7:06 PUBLIC COMMENT

Citizens may make comments on item not scheduled on the agenda. Those commenting should state their name and physical address for the record. Comments may be limited to five minutes.

7:12 STAFF UPDATES

7:20 BOZAR INTERVIEWS AND APPOINTMENT

7:40 PUBLIC HEARING

1) Ordinance No. 12, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Release of Deed Restrictions on Block 77, Lot 3, Unit B Peeler Townhouses in the Paradise Park Subdivision, Town of Crested Butte, Gunnison County, State of Colorado Reception No. 543195 and Replacement with New Deed Restriction.

7:50 2) Ordinance No. 18, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned property Legally Described as Lot 5, Block 79, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Brice and Karen Hoskin for the Sale Price of \$40,000.00.

7:55 3) Ordinance No. 19, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned property Legally Described as Lot 13, Block 79, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Tara Hiteman for the Sale Price of \$30,000.00.

8:00 4) Ordinance No. 20, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned Property Legally Described as Lot 2, Block 80, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Benjamin Blackwood for the Sale Price of \$65,000.00.

8:05 5) Ordinance No. 21, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Amendment of Land Use Conditions and Restrictive Covenants.

8:10 6) Public Hearing for the Slate River Annexation.

9:10 NEW BUSINESS

2

1) Discussion and Possible Approval of Community Grants.

9:20 2) Authorization of the Crested Butte Town Council for the Mayor to Execute Party Wall Agreements for Duplexes Located in Paradise Park Subdivision, Town of Crested Butte, for Block 79, Lots 6 and 14.

9:30 3) Ordinance No. 22, Series 2019 - An Ordinance of the Crested Butte Town Council Raising the Payment of Compensation to Members of the Town Council and the Mayor.

9:40 LEGAL MATTERS

9:45 COUNCIL REPORTS AND COMMITTEE UPDATES

9:55 OTHER BUSINESS TO COME BEFORE THE COUNCIL

10:05 DISCUSSION OF SCHEDULING FUTURE WORK SESSION TOPICS AND COUNCIL MEETING SCHEDULE

- Monday, May 6, 2019 - 6:00PM Work Session - 7:00PM Regular Council
- Monday, May 20, 2019 - 6:00PM Work Session - 7:00PM Regular Council
- Monday, June 3, 2019 - 6:00PM Work Session - 7:00PM Regular Council

10:10 EXECUTIVE SESSION

For a conference with the Town Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b).

10:40 ADJOURNMENT



Staff Report

April 15, 2019

To: Mayor and Town Council
Thru: Dara MacDonald, Town Manager
From: Michael Reily, Chief Marshal
Subject: Snow shed issue work session

Summary:

Concerns have been expressed regarding winter public safety, parking and sidewalk maintenance related to snow loading and snow shedding onto public rights of way from buildings adjacent to roads, parking, sidewalks and public areas. The problem of snow progressively shedding and encroaching onto the Town's right-of-way seems to be less of a public safety concern than heavy snow loads which suddenly cause an urban avalanche. Both slow accumulations, and sudden releases, which end up in the right-of-way, are nonetheless a winter safety concern. Additionally, snow which sheds onto maintained roads, sidewalks and parking eventually must be cleared by Public Works or Parks and Recreation at the Town's expense.

In looking comprehensively at the problem, there appears to be a limited number of current buildings which have potential right-of-way shedding issues and a slightly larger number of buildings which eventually progressively shed onto public rights-of-way. Potentially, all of these building could be remediated through the use of snow retention system systems such as snow fences, snow bars or snow guards or through regular and ongoing mitigation. Future building projects can and should be addressed through the BOZAR process to ensure they do not shed onto public rights-of-way.

With potential areas of concern identified, the issue seems to be what the Town should do to address buildings which shed onto public rights-of-way.

Discussion:

As part of the Council's discussion on this topic, the following areas could be considered when looking to provide direction to Staff.

1. Address specific one-time and recurring issues as the town becomes aware of them.
2. Enforce municipal and state legislation already on the books.
 - a. See ordinances and statutes referenced in Legal Implications below.
 - b. Potentially address any buildings which may have revocable licenses with the Town which also have roof overhangs over public rights-of-way.
3. Lawyer letter addressed to specific building owners making them aware of the problem and the possible criminal and civil liabilities.
4. Create new legislation to address snow shed remediation and require property owners to take care of the problem or face financial/legal ramifications.

Background:

The following buildings (there may be more) have historically posed problems with regard to their snow shedding onto the right-of-way.

330 Elk - Donitas building: The metal corrugated main roof to the business collects snow which then sheds at a direct angle onto the Elk Avenue sidewalk. There are no snow retention devices to prevent avalanche. Snow from the 2018-2019 winter slid completely blocking the Elk Avenue sidewalk to a height of nearly 8 feet. Had anyone been on the sidewalk they would have been buried by the urban avalanche and probably killed.

229 Elk - Grubstake building: The metal corrugated main roof of the building collects snow on the east side which then sheds onto Town parking on Third Street. There are signs warning of the potential danger so the building owners are aware of this occurrence.

303 Elk - Company store: The metal corrugated shed roofs on the side of the building collect snow on the west side which then sheds onto Town parking on Third Street. There are signs warning of the potential danger so the building owners are aware of this occurrence.

226 Elk - Elk Avenue Prime: Elk Avenue facing shake/shingle shed roof collects large amounts of snow without sliding which then overhangs the pedestrian sidewalk.

331 Elk - CB Mountain Heritage Museum: The metal corrugated main roof of the building collects snow on the east side which then sheds onto Town parking on Fourth Street.

429 Elk – Crested Butte Emporium and Old Trading Post: The metal corrugated main roof of the building collects snow on the east side which then sheds onto Town parking on Fifth Street.

The following are Town owned/related buildings which many need to be remediated in the same way if we are to hold others responsible for their snow shed issues on the public right-of-way:

Center for the Arts
Old Town Hall
Visitor Center
4-Way Transit Center

Legal Implications:

1. **BOZAR** regulations give limited direction with regard to snow shedding onto public rights-of-way; instead the guidelines provide for roof design limitation and address drainage and on-site storage needs.

Design Guidelines Town of Crested Butte, Chapter 2 DRAINAGE / SNOW SHEDDING

Crested Butte's alpine environment means a relatively wet climate for the west, with high accumulations of snow in the winter and rain in the summer. Precipitation must be adequately addressed in the design of buildings and site work.

2.7 Provide snow storage on site.

a. Generally, snow storage areas should be one third the size of all areas to be plowed.

b. Snow should not shed or be stored on adjacent properties.

2.8 Minimize drainage onto adjacent properties.

- a. To prevent moisture damage, drain away from structures.
- b. Avoid increasing runoff onto adjacent properties.

2. The following direction and legal remedies can be found under the **Crested Butte Municipal Code** with regard to snow. These are currently enforceable and being enforced as needed.

Sec. 11-1-10 Ordinary and normal maintenance of sidewalks.

(a) The owner or other person in charge of or having the control or supervision of any premises shall perform ordinary and normal maintenance on the sidewalks adjoining such premises, keep such sidewalks in good and clean condition and remove all weeds, trash, leaves and any other debris from such sidewalks as necessary in order to provide safe, efficient and clean passage to pedestrian traffic. It shall be unlawful for any person to fail or refuse to comply with this requirement.

(b) Sidewalk definition. For purposes of this Article, *sidewalk* shall include only the concrete portion of a pedestrian way fronting or adjacent to any private property.

(c) Owner or other person in charge definition. For purposes of this Article, an *owner or other person in charge of or having the control and supervision of the premises* shall include, without limitation, an owner, tenant, occupant, lessee or other owner of a beneficial interest in the premises.

(Ord. 3 §2, 2007)

Sec. 11-1-50 Failure to comply with snow removal requirements.

In the event of the failure of any owner or other person in charge of or having the control and supervision of any premises to clear away snow and ice from any adjacent sidewalk as required in [Section 11-1-40](#) above, the Town Manager may, at his or her election, cause such work to be performed by day's work or contract. Where any owner or other person in charge of or having control and supervision of any premises fails to clear away snow and ice from any sidewalk as required by [Section 11-1-40](#), such person shall be guilty of a misdemeanor and subject to a maximum fine of one hundred dollars (\$100.00) for each offense. Nothing contained in [Section 11-1-40](#) or this Section shall affect or otherwise alter the liability of any owner or other person in charge of or having the control and supervision of any premises adjacent to any sidewalk or the Town as it exists under state law, as amended. Notwithstanding the Town's undertaking to clear away snow and ice from any sidewalk, neither the Town's election to perform such work nor the Town's actual undertaking to perform such work shall limit the responsibility of the owner or other person in charge or having the control and supervision of the premises adjoining such sidewalks to clear away snow and ice from any sidewalk as required under [Section 11-1-40](#).

(Ord. 3 §2, 2007; Ord. 4 §1, 2009)

Sec. 10-3-60 Depositing of snow, ice and building materials.

It is unlawful for any person, without permission from the Town, to deposit, move so as to obstruct reasonable access, place, store or leave any materials or objects, including snow, ice and building or construction materials, on public property, within Coal Creek or against any fire hydrant or public building.

(Prior code 9-4-10; Ord. 17 §1, 1992; Ord. 4 §1, 2009)

3. Under **Colorado Revised Statutes** we are unaware of any criminal code which deals directly with snow but, should a building owner recklessly (after being advised of the situation) fail to mitigate a dangerous snow load situation or one in which their action/inaction was to cause

serious bodily injury or death they could potentially face criminal sanctions in addition to the ever present civil sanctions.

CRS 18-3-208 Reckless endangerment

A person who recklessly engages in conduct which creates a substantial risk of serious bodily injury to another person commits reckless endangerment, which is a class 3 misdemeanor.

18-3-105 Criminally negligent homicide

Any person who causes the death of another person by conduct amounting to criminal negligence commits criminally negligent homicide which is a class 5 felony.

18-3-104 Manslaughter

(1) A person commits the crime of manslaughter if:

- (a) Such person recklessly causes the death of another person; or
- (b) Such person intentionally causes or aids another person to commit suicide.
- (c) (Deleted by amendment, L. 96, p. 1844, § 13, effective July 1, 1996.)

(2) Manslaughter is a class 4 felony.

4. Additional ordinance?

The Town could also adopt additional legislation in the Town Code to address current and future roof shed issues. The following ordinance was copied from the Mountain Village code and could be a model for additional legislation.

17.7.21 SNOW AND ICE REMOVAL REGULATIONS

A. Purposes. The purposes of the Snow and Ice Removal Regulations are to:

- 1. Protect the public health, safety and welfare by preventing falling snow and/or ice from the roofs of buildings within, adjacent to, or near plaza areas, public areas around buildings by requiring that the owners of such buildings engage in the installation or supplementation of roof-top snow-shed protection systems and regular snow and/or ice build-up inspection activities, and, if necessary, snow and ice removal activities;
- 2. Safeguard the Town-owned plazas and overall plaza areas;
- 3. Establish procedures under which snow and ice removal activities will occur;
- 4. Ensure that a building's roof is not unsafe due to snow or icefall hazard as regulated by Section 116 of the IBC;
- 5. Ensure a building does not become unsafe to due roof snow and ice buildup; and,
- 6. Set forth rules for the enforcement of such requirements.

B. Applicability. These Snow and Ice Removal Regulations shall apply to all multi-family or mixed use buildings.

C. Roof Snow and Ice Management. The owner of each building shall ensure that each roof plane of a building does not shed snow or ice onto public area, plaza area sidewalk, or right-of-way.

Each roof shall be constructed and maintained as follows:

- 1. Each roof-plane shall contain a snow guard system that is supplemented by a wire mesh retention system, all of which is designed and stamped by a qualified structural engineer which prevents the roof plane from shedding snow and/or ice to areas below the roof plane; or In the event that it is demonstrated by a qualified structural engineer that a snow guard system is not a viable option for preventing snow and ice from shedding into areas below the roof plane, each roof plane shall contain heat tape or other heating system that is designed by a qualified engineer which prevents the roof plane from shedding snow and/or ice to areas below the roof plane.

3. If the Town determines that additional snow fences or other snow maintenance controls are required to protect a public area or a public plaza, the Town will require a building owner to arrange for the installation of the additional snow maintenance controls.

D. Requirements for Snow Inspection and Removal. During months that snow accumulates, the owner and any building manager of each building shall ensure that there are regular (not less than weekly) inspections of all eaves and other roof areas of the building that could result in the discharge of snow, and/or ice, and/or roof tiles, to public area, plaza area sidewalk, or right-of-way.

1. Upon identification of an overhead snow/ice safety removal issue as a result of such inspections, or upon being informed by a representative of the Town that an overhead snow/ice safety removal issue exists on a building, the owner or building manager shall proceed in accordance with the requirements set forth herein.

2. Upon identification of an overhead snow/ice safety removal issue, or upon being informed by a representative of the Town that an overhead snow/ice safety removal issue exists on a building, the owner or building manager of the building shall:

a. Immediately cordon off the hazard area and notify the Community Development Department of the issue and cordoned off area...

i. The hazard area shall be cordoned off using only appropriate fencing and/or Town approved barriers.

ii. In the event that the cordoned off area is an entrance or egress, the building manager shall provide appropriate signage to direct users to alternative entrances or egress areas.

b. Immediately schedule appropriate work crews to remove the identified hazard and ensure that diligent and reasonable efforts are being made to complete the snow removal activity within 24 hours of the identification of the hazard, or reasonable judgment of the Building Official or other appropriate Town department, but in no event more than 72 hours.

c. Ensure that all such removal activities are safely completed, including but not limited to ensuring that at all times during the removal activities there is at least one worker posted at ground level to monitor pedestrian safety.

d. Snow and ice removal workers shall use appropriate safety devices as required by OSHA.

e. Snow and ice removal techniques should not damage the roof of buildings or infrastructure surrounding buildings, such as the use of a heavy hammer directly onto the roofing surface or dropping ice blocks onto electric transformers.

f. To the extent practical, snow removal should be planned for times when there is the least activity in public areas and public plazas. This could include early mornings (7am-9 am) and weekdays when the presence of pedestrians is at a minimum.

3. Landscaped areas below a roof plane that can slide shall be blocked off by fencing installed pursuant to the Design Regulations, with appropriate permanent signage warning of the hazard. All signage shall comply with the Sign Regulations.

E. Snow and Ice Removal From Town and Private Property. A building owners or its property manager shall make arrangements to haul snow and ice removed from a roof or deck onto a plaza area, sidewalk or right-of-way immediately upon the conclusion of removal.

1. Absolutely no snow is allowed to be stored for any length of time on public plazas and public areas.

2. A building owner is liable for any damages caused to Town property, private property or pedestrians from snow and ice falling off your roof.

3. A plaza vehicle access permit is required from the Town Plazas and Environmental Service Department for any equipment needed to access the public plazas for snow removal.

4. Snow and ice may not be stored in a planter located on a public plaza or in planters where the required landscaping may be damaged or destroyed.
5. No vehicles over 10,000 pounds will be allowed in a plaza area. The Town shall require that haul trucks are staged at the perimeter of a plaza area to prevent paver damage. The plaza vehicle access permit will identify exact locations where your vehicles are approved for operation.
6. If your snow is not removed from plaza area in a timely manner, the Town Plazas and Environmental Service Department will remove it for you at a cost of \$200 per hour or the then-in-effect rate as adopted in the fee resolution, to be billed directly to the business or property as applicable.
7. Any damage to Town property (including Plazas, planters, trees, landscaping) or private property resulting from roof snow and ice removal operation is the building owner's responsibility to repair at such owner's sole cost and expense. Care shall be taken to not disturb town property with a snow and ice removal program.

Financial Implications: While the Town does address snow shed on our buildings, if we were to place excessively restrictive requirements (i.e. all snow must be cleared from a roof which sheds into a public right-of-way within 15 minutes) the Town would need to plan financially for similar snow removal. The Town should act in an exemplary manner with regard to shedding snow which could present additional cost in high snow years.

Recommendation: Staff recommends a discussion with the Council regarding the above issues and potential direction to Town Staff prior to the 2019-2020 snow season.

MINUTES
Town of Crested Butte
Regular Town Council Meeting
Monday, April 1, 2019
Council Chambers, Crested Butte Town Hall

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

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

Staff Present: Town Manager Dara MacDonald, Town Attorney John Sullivan, and Town Clerk Lynelle Stanford

Community Development Director Michael Yerman, Town Planner Bob Nevins, Parks and Recreation Director Janna Hansen, Chief Marshal Mike Reily, and Finance Director Rob Zillioux (for part of the meeting)

Schmidt thanked Todd Barnes for his service to Mt. Crested Butte.

APPROVAL OF AGENDA

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

CONSENT AGENDA

1) March 18, 2019 Regular Town Council Meeting Minutes.

2) Restaurant/Bar Seating on Public Sidewalks for: Brick Oven LTD DBA Brick Oven Pizzeria Located at 223 Elk Avenue; B & C Restaurants LLC DBA Elk Avenue Prime Located at 226 Elk Avenue; Vertigo Ventures LLC DBA The Secret Stash Located at 303 Elk Avenue; Teocalli Tamale Company DBA Teocalli Tamale Located at 311½ Elk Avenue; Public House LLC DBA Public House Located at 202 Elk Avenue; and Ladybug LTD DBA Talk of the Town Located at 230 Elk Avenue.

3) Approval of the Updated Noxious Weed List.

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

PUBLIC COMMENT

Kent Cowherd - 901 Teocalli Avenue

- Commended the work done by the public works crews.

- He acknowledged the ADU settlement agreement, and he suggested Town should get at least one unit with the money.

STAFF UPDATES

- Schmidt identified decision points in MacDonald's staff report.
- One question posed concerned parking plan implementation. Dujardin had not heard from constituents that the parking plan was needed immediately. Mitchell, Merck, and Haver voiced agreement. Haver said they could open the discussion with the public. Merck suggested enforcement on two hour parking and parking at the post office. Schmidt agreed with Dujardin. He heard mostly negative comments on the parking plan. The Council would revisit in the fall.
- Schmidt pointed out that MacDonald recommended Rob Zillioux be appointed as Town Manager in her absence.

Mitchell moved and Haver seconded a motion to appoint Rob Zillioux, Finance Director, to cover the Town Manager position from April 10th to May 3rd. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

- Schmidt and Dujardin both confirmed they were interested in attending the summit on aggressive carbon reduction goals in Park City.
- MacDonald reported that sales tax was up 2.3% in February.
- The Council agreed that Big Mine Park or Crank's Plaza would be an acceptable location for the Thursday night farmers market.
- Dujardin brought up the fact that Bridges of the Butte was proposed to be 12 hours rather than 24 hours. He wanted to allow the Marshals to staff overtime to cover the 24-hour version of the event. He suggested that Adaptive might instead do a 24-hour event with the support of the Town. MacDonald clarified the role of the Town was to make sure the event was as safe as possible. Schmidt cited concerns he had observed in the past. Mitchell recommended that the nighttime volunteers be paid. There was discussion on the line item for the overtime cost. The Council would consider the application as presented by the event organizers.
- There was discussion on quorums for upcoming meetings.

PUBLIC HEARING

1) Ordinance No. 8, Series 2019 - An Ordinance of the Crested Butte Town Council Adding Code Section 10-6-60 Prohibiting the Possession of Tobacco/Nicotine Products by Persons Under the Age of Eighteen to the General Offenses Section of the Crested Butte Municipal Code; And Providing Penalties for Violation Thereof.

Schmidt read the title of the ordinance. Sullivan outlined changes and additions made from the original ordinance, including that he made updates in the recitals to reference C.R.S. Section 25-14-301. The amendments were in response to the Council not wanting to make a violation a criminal offense for a minor in the criminal justice system. Petito recognized there needed to be a change in wording, in the first redlined whereas clause,

which was to change a “to” to a “by”. Schmidt confirmed proper public notice had been given. He opened the public hearing. There were no comments from the public, and the public hearing was closed.

Dujardin moved and Merck seconded a motion to approve Ordinance No. 8, Series 2019 with the change mentioned by Jackson. A roll call vote was taken with all voting, “Yes,” except Mitchell voted, “No.” **Motion passed.**

2) Ordinance No. 10, Series 2019 - An Ordinance of the Crested Butte Town Council Approving the Lease of Unit A (Located in the Upper Level of the Chamber of Commerce Visitors Center - A Town Owned Building) Located at 601 Elk Avenue to Nautilus Sailing, LLC.

Zillioux stated Town wanted to proceed, and he outlined the details of the lease. Schmidt confirmed proper public notice had been given. No one from the public chose to comment. The public hearing was closed.

Merck moved and Mitchell seconded a motion to pass Ordinance No. 10, Series 2019. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

3) Ordinance No. 11, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Repeal of Section 4-2-90(b)(1) of the Town Code Concerning a Credit for the 1.5% Vendor’s Fee Against Taxes Due from Gross Sales.

Schmidt confirmed proper public notice had been given. Zillioux explained what the vendor fee was. He said that more and more home rule municipalities were removing the fee. He stated it would help the Town balance the budget without raising taxes, and he estimated Town could gain \$61,500.

Schmidt opened the public hearing.

Sean Hartigan - Owner of the Last Steep located at 208 Elk Avenue

- He stated that business was hard enough.
- He did not think it was right or fair to take the vendor fee away.

Drew Henry - Owner of The Dogwood located at 309 3rd Street

- He agreed with Hartigan that it put a tax on business owners.

Sarah Jane Lubeley - Owner of The Dogwood

- She agreed with Henry and Hartigan.
- She was not in support of removing the vendor fee.

Richard Machemehl - Owner of Niky’s Mini Donuts located at 327 Elk Avenue

- He agreed with the other business owners.
- The vendor fee was a way to recoup costs, including credit card fees.

Joshua Futterman, President of the Board of Directors of the Crested Butte/Mt. Crested Butte Chamber of Commerce

- He agreed with comments made.
- It seemed like an additional burden.

Ashley UpChurch, Executive Director of the Crested Butte/Mt. Crested Butte Chamber of Commerce

- She agreed with comments made by the business owners.
- Her members had been busy. She thought more people would have come out to voice opposition if they had paid attention.
- She backed up what business owners were saying.

Schmidt closed the public hearing and opened the meeting to Council discussion. Mitchell thought the ordinance would be a whack to mom and pops. Bradley acknowledged they should cultivate the relationship with small business owners. Merck agreed with the business owners and the Chamber. Petito was swayed because he paid credit card fees. Haver voiced opposition to the ordinance.

There was no motion, so the ordinance died for lack of motion.

4) Ordinance No. 12, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Release of Deed Restrictions on Block 77, Lot 3, Unit B Peeler Townhouses in the Paradise Park Subdivision, Town of Crested Butte, Gunnison County, State of Colorado Reception No. 543195 and Replacement with New Deed Restriction.

Yerman explained there had confusion with the lender and another deed restriction in Mt. Crested Butte. He asked the Council to continue the public hearing to April 15th to allow them to sort through underwriting.

Schmidt read the title of the ordinance. He confirmed proper public notice had been given. He opened the public hearing. No one chose to speak. The public hearing was closed.

Mitchell moved and Bradley seconded a motion to continue Ordinance No. 12, Series 2019 to the April 15th meeting. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

5) Ordinance No. 13, Series 2019 - An Ordinance of the Crested Butte Town Council Deleting and Re-Codifying Chapter 16, Article 12 Condominiums and Townhouses, and Amending Chapter 17, Articles 1-General Provisions and Article 3-Major and Minor Subdivisions Generally.

Schmidt read the title of the ordinance, and he confirmed proper public notice had been given. Nevins clarified revisions from the last meeting, and he reviewed the proposed changes. He explained the reasoning for technical review. Nevins outlined changes to

the exemptions. MacDonald recommended that the Council strike, “by Town Council,” from Section 6, in the Town of Crested Butte approval, on page 166 of the packet, if the Council decided to approve the ordinance. Yerman confirmed that BOZAR approved the plat.

Schmidt opened the meeting to public comment. There were no comments from the public. The public hearing was closed.

Haver moved and Dujardin seconded a motion to approve Ordinance No. 13, Series 2019 with the amendment of striking “by Town Council” in Section 6. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

6) Ordinance No. 14, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned Property Legally Described as Lot 6, Block 79 Unit A, 914 Butte Avenue, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Joseph Carpenter and Katherine Cooke for the Sale Price of \$275,000.00.

Schmidt read the title of the ordinance, and he confirmed proper public notice had been given. Yerman reviewed work done in each unit. He thanked John Stock.

The public hearing was opened. No one chose to comment. The public hearing was closed.

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

7) Ordinance No. 15, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned Property Legally Described as Lot 6, Block 79 Unit B, 916 Butte Avenue, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Guy Ciulla for the Sale Price of \$275,000.00.

Schmidt read the title of the ordinance. He confirmed proper public notice had been given. Guy Ciulla was present at the meeting. The public hearing was closed.

Merck moved and Dujardin seconded a motion to approve Ordinance No. 15, Series 2019. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

8) Ordinance No. 16, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned Property Legally Described as Lot 14, Block 79, Unit A, 909 Teocalli Avenue, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Elizabeth Philbin for the Sale Price of \$275,000.00.

Schmidt read the title of the ordinance. He confirmed proper public notice had been given. Philbin thanked the Council for the opportunity. Schmidt closed the public hearing.

Dujardin moved and Petito seconded a motion to approve Ordinance No. 16, Series 2019. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

9) Ordinance No. 17, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned Property Legally Described as Lot 14, Block 79 Unit B, 911 Teocalli Avenue, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Chelsea Dalporto- McDowell for the Sale Price of \$275,000.00.

Schmidt read the title of the ordinance, and he confirmed proper public notice had been given. Dalporto-McDowell thanked the Council. The public hearing was closed.

Petito moved and Bradley seconded a motion to approve Ordinance No. 17, Series 2019. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

NEW BUSINESS

1) Ordinance No. 18, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned property Legally Described as Lot 5, Block 79, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Brice and Karen Hoskin for the Sale Price of \$40,000.00.

Schmidt read the title of the ordinance. Yerman updated that the next three ordinances reflected the results of the lot lotteries. Ben Blackwood was present, and he thanked the Council.

Mitchell moved and Petito seconded a motion to set Ordinance No. 18, Series 2019 to public hearing on April 15th, 2019. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

2) Ordinance No. 19, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned property Legally Described as Lot 13, Block 79, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Tara Hiteman for the Sale Price of \$30,000.00.

Schmidt read the title of the ordinance.

Dujardin moved and Haver seconded a motion to set Ordinance No. 19, Series 2019 to public hearing on April 15th. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

3) Ordinance No. 20, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned Property Legally Described as Lot 2, Block 80, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Benjamin Blackwood for the Sale Price of \$65,000.00.

Schmidt read the title of the ordinance. Yerman described the location of the lot.

Petito moved and Dujardin seconded a motion to set Ordinance No. 20, Series 2019 to public hearing at the April 15th meeting. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

4) Purchase Agreement for the Kikel Parcel A from the Crested Butte Land Trust for a Purchase Price of \$530,000.00.

Yerman reported the agreement was for the purchase of Kikel Parcel A. There would be a secondary ordinance that would involve the transfer of the covenant on the thirty acres that were currently encumbered by the conservation easement. The easement would stay in place, but it would need to be transferred. The purchase price would be funded from the real estate transfer tax.

Noel Durant, Executive Director of the Land Trust, provided background on the parcel. He reviewed the intent behind Kikel A and information on the financing. There had been an increase in recreation and a decrease in funding for management. The parcel was critical to managing recreational use in the corridor. Yerman summarized that Town would own the land, and the Land Trust would hold the easement. He referenced an email from John Hess. Yerman affirmed the importance of reserving the opportunity for presence in the valley to help with management in the future.

Honeydew Murray - Neighbor to the parcel since 1972

- She was concerned about the access to a stated guardhouse.
- Her idea was to think about the possibility of someone commuting daily.
- She was concerned about the road and electricity.
- Durant responded to Murray’s points.

The discussion became detailed around what building might exist on the parcel. Schmidt asked Durant about the \$530,000 used for the Long Lake Parcel. Durant described the plan for the current budget. Schmidt related the expenditure of the money to affordable housing.

Dujardin moved and Mitchell seconded a motion to approve the purchase agreement for the Kikel Parcel A from the Crested Butte Land Trust for a purchase price of \$530,000. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

5) Purchase Agreement with Bywater LLC for a Duplex Located on Lot 6, Block 76 for a Purchase Price of \$671,000.00.

Yerman summarized the purpose of the agenda item. He explained that if the units did not sell after nine months, the Town would have the opportunity to purchase. They were not seeing a huge influx of desire for this lottery. Ashley UpChurch was curious whether people were more interested in renting than buying.

Dujardin moved and Mitchell seconded a motion to approve the purchase contract for a duplex located on Lot 6, Block 76 for a sales price of \$671,000 and authorizing the Town Manager to execute the contract and any subsequent changes to be approved by the Town Attorney. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

6) Ordinance No. 21, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Amendment of Land Use Conditions and Restrictive Covenants.

Schmidt read the title of the ordinance. Yerman explained there was a restrictive covenant from the 80s on an ADU. Yerman outlined the compromise that would allow a unit to be occupied by the business owner.

Dujardin moved and Petito seconded a motion to set Ordinance No. 21, Series 2019 for public hearing on April 15th. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

7) Discussion of Proposed Rule Regarding Waters of the United States.

Sullivan informed the Council there was rulemaking to change the definition of waters of the United States (WOTUS) under Federal law. He reviewed the components, including the elimination of the significant nexus test. QQ did not approve of the change; they wanted to keep the significant nexus test. Sullivan then defined ephemeral waters. Sullivan reported on the topic of irrigation ditches. He explained the points made by Waterlaw related to irrigation ditches. Sullivan said Town could rely on QQ for representation. Also, Waterlaw asked their clients to sign off on their letter. He said Town could actively support one or the other, or the Town could write a letter directly. Sullivan stated they did not necessarily need to do anything. Dujardin reported on QQ’s position. MacDonald pointed out that HCCA supported QQ’s position. The Council decided not to take action.

8) Discussion of Mayor and Council Compensation.

Schmidt recognized the existing Council would not receive a pay raise for which they voted. He explained any compensation changes would come before the Council as an ordinance. The Council discussed numbers to propose. Dujardin suggested an increase of \$150 per month across the board. Kent Cowherd felt the position was grossly underpaid and that invited low effort. Dujardin agreed with Cowherd. Mitchell thought Town should get closer to the average. The Council agreed to consider \$150 across the board in an ordinance at the next meeting.

LEGAL MATTERS

Sullivan mentioned the Trailhead Children's Museum. The owner of the building, where the museum was located, refused to sign a restrictive covenant that memorialized BOZAR's approval from last year, and the owner would not allow the director of the Museum to sign the restrictive covenant. Sullivan sent an email indicating the Town would have to take some kind of action.

COUNCIL REPORTS AND COMMITTEE UPDATES

Will Dujardin

- He covered for Haver at the Chamber meeting. They were still looking for Ride the Rockies volunteers, and snow would affect parking. The Fat Bike Worlds event was a success. Crafted was under budget. The Chamber would not put on the Fat Tire 40 for Bike Week. They were looking into a healthcare partnership.
- He went to a Mountain Express meeting. They picked four new bus designs, which he listed. They were experiencing holiday numbers, on average, every Saturday. Mountain Express would still provide service to Judd Falls.
- Attended Upper Gunnison River Water Conservancy District meeting. The area not in a drought anymore. Blue Mesa could be filled up to 7/8's full. Drought contingency planning had been agreed upon. They approved \$150,000 in grants, including grants to the Slate River Working Group and Shady Island Park. They would have a new website. Ian Billick updated on weather stations. Their water management planning committee would be moving into Phase 2.
- CC4CA asked for endorsement of HB1261. No one on the Council voiced disagreement to support.

Candice Bradley

- Went to Creative District meeting. Local artists made good points on how the Creative District, under the Center, would open up opportunities for grants and community artwork.

Chris Haver

- Attended Gunnison Valley Regional Housing Authority meeting. They were working on the wording of deed restrictions in Mt. Crested Butte. The County chose Gatesco for a build in Gunnison. The housing plan had not yet been adopted.
- Regarding RTA, the mechanic had been a benefit. TAPP would be marketing the Houston flight. Two new busses would be arriving.

Paul Merck

- Cathie Pagano nominated the STOR Committee for a planning award. They could run into conflicts of whom needed the money and when.
- He would have a TA meeting on the 11th, and he would call into the meeting.

Laura Mitchell

- Met with Scott Truex about RTA, and she attended the RTA meeting. Truex pointed out RTA was moving 1,000 people a day.
- Met with Kent Myers about airline load factors. Spring and summer were trending the same as last year.
- Mountain Express moved 2,121 passengers from CB South, which was up 30% from last year.

Jackson Petito

- Went to Housing Foundation meeting last Wednesday. They did housecleaning work. There were exciting opportunities, mostly in Gunnison. They were considering changing their name because they were confused with the Housing Authority.

Jim Schmidt

- Went to the housing meeting with Haver. It was really good to see the jurisdictions in the county doing housing.
- Met with Tim Baker and Erica Mueller. He asked if they would do anything different for summer. They did not have any big plans. They would be taking Twister down.
- He had dinner with the County Attorney.

OTHER BUSINESS TO COME BEFORE THE COUNCIL

As follow up to the work session, the Council was considering going ahead with the \$197,000 left from Whatever USA. MacDonald clarified Staff was looking for direction moving forward with pursuing bids. Haver acknowledged they were in an upturn financially, and expenses were outpacing income. Hansen described the locker room solution in Telluride. Merck recognized they needed changing rooms at a minimum. Petito agreed with Merck and wanted to see the option that would include second floor seating. Haver affirmed he was in favor of the project. Merck wanted to see the numbers. He did not think they had to stay within rigid parameters. MacDonald cautioned the Council they were adding costs. Hansen identified that they wanted to address the need.

Schmidt and Dujardin volunteered for the advisory committee to choose the consultant on the Climate Action Plan.

Petito would be moving to CB South and would be eligible for Council through May. The Council determined Petito should serve as long as possible.

MacDonald brought up food waste on snacks and called attention to the effort to eliminate Styrofoam and plastic plates. Hummus, cheese, grapes, and chocolate were all suggested snack items.

DISCUSSION OF SCHEDULING FUTURE WORK SESSION TOPICS AND COUNCIL MEETING SCHEDULE

- Monday, April 8, 2019 - 6:00PM Council Meets as Planning Commission
- Monday, April 15, 2019 - 6:00PM Work Session - 7:00PM Regular Council
- Monday, May 6, 2019 - 6:00PM Work Session - 7:00PM Regular Council
- Monday, May 20, 2019 - 6:00PM Work Session - 7:00PM Regular Council

ADJOURNMENT

Mayor Schmidt adjourned the meeting at 10:06PM.

James A. Schmidt, Mayor

Lynelle Stanford, Town Clerk (SEAL)



Staff Report

April 15, 2019

To: Mayor and Town Council
Thru: Dara MacDonald, Town Manager
From: Lynelle Stanford, Town Clerk
Subject: ARTumn Festival Special Event Application
Date: April 1, 2019

Summary:

Steven Wallis of Colorado Events proposed the ARTumn Festival for the sixth consecutive year. The event would take place in the Zero Block of Elk Avenue from Saturday, September 14th to Sunday, September 15th, 2019. The event hours are from 10AM to 6PM on Saturday and from 10AM to 5PM on Sunday. Set up would begin on Saturday at 7:30AM. Breakdown and clean up would be completed by 7PM on Sunday.

The ARTumn Festival is an open air showcase of visual art and handcrafted goods introducing the works of emerging artists and designers. Vendor tents would line both sides of Elk Avenue in the Zero Block. Only merchandise would be sold. There would be no food served nor a special event liquor permit. Wallis intends to set up trash and recycling receptacles and would remove all of the trash and recyclables generated from the event.

Recommendation:

To approve the ARTumn Festival special event application as part of the Consent Agenda.



TOWN OF CRESTED BUTTE SPECIAL EVENT APPLICATION

1. EVENT INFORMATION:

Name of Event: ARTumn Festival

Date(s) of Event: September 14 & 15, 2019

Location(s) of Event: Zero block of Elk Ave

Map Attached Showing Location of Event *Attach map showing location of event*

Diagram Attached Detailing Event *Attach 8 1/2" X 11" diagram detailing the event showing tents, vendors, security, toilets, tables, signage, fencing, booths, ingress and egress, stage, etc.:*

Event Schedule and Description of Event Attached

Name of Organization Holding the Event ("Permittee"): Colorado Events

Note: The permittee of an event must be the same "Entity Name" as the named insured on the insurance certificate and the Secretary of State Certificate of Good Standing.

Event Time(s) (start time of scheduled event to end time of scheduled event each day):

Date	<u>9/14/2019</u>	Time: From	<u>10am</u>	To	<u>6pm</u>
Date	<u>9/15/2019</u>	Time: From	<u>10am</u>	To	<u>5pm</u>
Date	_____	Time: From	_____	To	_____
Date	_____	Time: From	_____	To	_____

Total Time (including setup, scheduled event, breakdown, and clean up):

Date	<u>9/14/2019</u>	Time: From	<u>7:30am</u>	To	<u>10pm</u>
Date	<u>9/15/2019</u>	Time: From	<u>5pm</u>	To	<u>7pm</u>
Date	_____	Time: From	_____	To	_____
Date	_____	Time: From	_____	To	_____

Expected Numbers: Participants: 30 Spectators: 1600
Colorado Events / Steven Wallis

Name of Event Organizer: _____

Phone: 720-272-7467 Cell Phone: 720-272-7467

E-Mail: coloradoevents@gmail.com Fax Number: _____

Name of Assistant or Co-Organizer (if applicable): _____

Phone: _____ Cell Phone: _____ E-Mail: _____

Mailing Address of Organization Holding the Event: 2525 Arapahoe Ave, E4-720, Boulder CO 80302

Email Address of Organization: coloradoevents@gmail.com Phone Number: 720-272-7467

2. INSURANCE, LIQUOR PERMITS, SECURITY PLANS:

(a) Do You Intend to Sell or Serve Alcohol? Yes No

If Yes, a Special Event Liquor License is Required. You must submit a separate application for a Special Event Liquor License to the Town Clerk at least 30 days prior to the event to ensure adequate time to comply with state regulations.

Special Event Liquor Permit Application is Attached with Appropriate Fees and Diagram

Describe Plan for Security and Include with Diagram: (All major impact events, as well as events that receive a Special Event Liquor License, are required to have a security plan):

We will hire overnight security to watch the vendor booths on Saturday night.

(b) Proof of General Commercial Liability Insurance naming the Town of Crested Butte as Additional Insured, with coverage of no less than \$1,000,000 is required for all special events. If your event is in the Big Mine Ice Arena with over 299 people, you will also need to add the Crested Butte Fire Protection District as Additional Insured. Events selling alcohol also require Liquor Liability Insurance on the Insurance Certificate. (Note: Your application cannot be approved until we receive proof of insurance) **Contact the Clerk's Office if you would like to receive an insurance quote through the Town's Insurance Provider.**

Is Proof of Insurance Attached? Yes No

3. ROAD CLOSURES, PARKING/HANDICAPPED PARKING, BUS SERVICE:

Will Your Event Require Any Road Closures? Yes No

If Yes, Explain in Detail Streets Closures and Times of Closures:

Streets: Zero Block of Elk Ave Date 9/14/19 Time: From 7:00 am To _____

Streets: Zero Block of Elk Ave Date 9/15/19 Time: From _____ To 7:00 pm

Streets: _____ Date _____ Time: From _____ To _____

Streets: _____ Date _____ Time: From _____ To _____

Streets: _____ Date _____ Time: From _____ To _____

Streets: _____ Date _____ Time: From _____ To _____

Will Your Event Impact Mt. Express Bus Service and/or Routes? Yes No

If Yes, Explain Impact (include times): _____

Will Your Event Affect Any Handicapped Parking Spaces? Yes No

If yes, you must work with the Marshal's Department to create temporary handicapped parking spaces for the duration of your event.

Describe Plan for Parking:

We will have the vendors park in the public parking near the Big Mine Ice Arena or in the nearby street parking. The event should have no impact on Downtown parking.

Is Your Event Requesting Any Additional Services from the Town of Crested Butte (such as barricades, utility irrigation locates, traffic control, snow removal, electrical power, trash removal, additional police etc.)? Yes No

If Yes, explain request for services in detail (attach additional page if necessary):

The only Town service requested, is the use of the barricade for the street closure at 1st and Elk.

Does Your Event Include a Parade? Yes No

If yes, you must read and sign the following: I understand that if items are to be distributed during the parade (i.e. candy, beads, brochures, etc.), individuals will do so exclusively by foot from along-side the vehicles/floats to minimize the likelihood of spectators running up to the vehicles/floats. I understand and agree that items will not be thrown from any vehicle/float.

Signature of Event Coordinator

4. AMPLIFIED SOUND AND NOTIFICATION:

Will There Be Amplified Sound at This Event? Yes No

If Yes, Describe:

Note: If there will be amplified sound during your event, the rules and requirements of Crested Butte Municipal Code Section 10-9-50 must be followed. Residents and businesses within 250' of the proposed event must receive written notification (7) days prior to the start of the event.

Describe Plan for Notifying Businesses and Residents Impacted by Your Event: Door to Door

Notification

5. TRASH, RECYCLING, PORTABLE TOILETS AND RESTROOMS:

How much trash do you anticipate generating at the event? 1 Trash Bag per day – Hauled off each day

What recyclable products will be generated at the event? There will only be merchandise for sale and there will not be any food or beverages sold at the event, so there will be a minimal amount of trash generated.

Describe your DETAILED plan for trash, recycling and clean up. (All events are required to have a plan for handling recycling and garbage during the event and the removal of recycling and garbage after the event.) Please note that any plan should emphasize increased recycling and decreased waste production. If you feel that your event will require assistance from Waste Management, please contact them directly at (970) 641-1986. Note: Any event application without a detailed recycling and refuse plan will not be accepted as a complete application:

Will have a 2 bin zero waste station set up throughout the event hours. We will haul off the trash and recyclables at the end of each event day and all of recyclable items will be brought to a recycling facility.

Describe Plan for Portable Toilets and/or Restrooms. (Include number of portable toilets and plan to restore bathrooms to their original state following your event): (Required: 1 portable toilet to every 40 attendees)

We plan on directing the participating vendors to use the public restroom at 2nd and Elk. We can also provide a portable restroom if required.

6. SALES TAX:

Have you paid sales tax from your event last year? Yes No
If No, you must pay delinquent sales tax before your special event application will be considered.

Will You Be Selling Products (food, drink, or merchandise) At Your Event? Yes No
If yes, you must collect sales tax and attach a completed Town of Crested Butte Sales Tax License Application with a List of Vendors to the Clerk's Office.

- Town of Crested Butte Sales Tax Application is Attached.
- List of Vendors with your Crested Butte Sales Tax Application.

7. BANNER PERMITS:

Do you plan to apply for a banner permit to erect a banner at the Pitsker Outfield Fence? Yes No
If Yes, you must apply for a banner permit separately through the Front Desk at Town Hall.

Are you requesting Town Manager approval for a 1-day banner at the event location for the hours of the event? Yes No We would like to hang a banner on the barricade.

Town Manager Approval: 

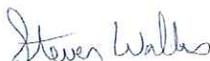
Please review your application and make sure all questions are answered. Read, sign, and date the following prior to submitting your application.

8. PLEASE REVIEW, SIGN, AND DATE:

In consideration for being permitted by the Town to engage in the permitted event, the Permittee, its heirs, successors, executors, assigns, transferees, employees, officers, directors, members, managers, representatives, contractors, subcontractors, agents, assigns, guests and invitees (collectively, the "Releasor/Indemnitor") hereby acknowledge and agree to the following: (i) Releasor/Indemnitor assume all risk of injury, loss or damage to Releasor/Indemnitor, any of them, arising out of or in any way related to the permitted event, whether or not caused by the act or omission, negligence or other fault of the Town, or by any other cause; (ii) Releasor/Indemnitor waive and release the Town from any and all claims, demands and actions for injury, loss or damage arising out of or in any way related to the permitted event, whether or not caused by the act or omission, negligence or other fault of the Town, or by any other cause; (iii) Releasor/Indemnitor agree to defend, indemnify and hold harmless the Town from and against any and all liability, claims, damages and demands, including any third party claim asserted against the Town, on account of injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, arising out of or in any way related to the permitted use, whether or not caused by the act or omission, negligence or other fault of the Town, or by any other cause. For purposes hereof, the term "Town" shall include, individually and collectively, its officers, employees, agents, insurers, insurance pools, contractors and subcontractors. By signing this Special Event Application, the Permittee acknowledges and agrees that this assumption of risk, waiver and indemnity extends to all acts, omissions, negligence or other fault of the Town and that said assumption of risk, waiver and indemnity is intended to be as broad and inclusive as is permitted by the laws of the State of Colorado. If any portion hereof is held invalid, it is further agreed that the balance shall, notwithstanding such invalidity, continue in full legal force and effect.

The undersigned Permittee certifies that all the statements and answers to the above questions are true without any reservations or evasions. The undersigned also understands that the Town of Crested Butte reserves the right to require payment for additional services for major impact events.

Steven Wallis



12/18/2019

Print Name Clearly / Signature of Applicant (Permittee)

Date

ARTumn Festival

September 14 & 15, 2019

10am – 6pm on Saturday and 10am – 5pm on Sunday

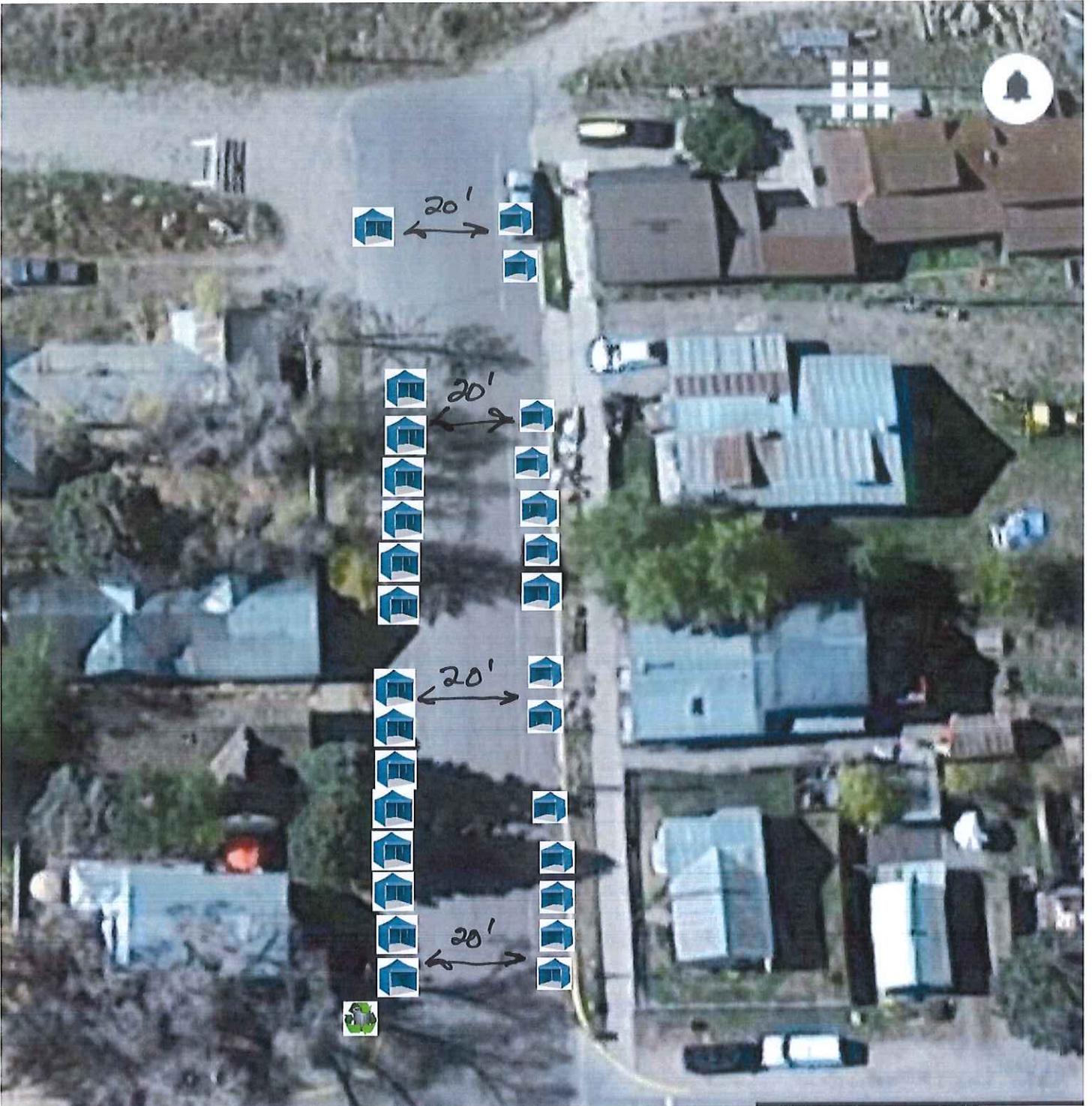
West end of Elk Avenue in Downtown Crested Butte

Lovers of fine arts and crafts will find a vast array of artisans and crafters displaying and selling their unique creations in pottery, sculpture, glass, jewelry, fashion, home décor, furniture, home accessories, and photography. The annual celebration of the Fall Solstice, will introduce new and emerging artists showcasing the latest trends in handmade crafts and fine art. This event is located in the heart of Beautiful Downtown Crested Butte on the west side of Elk Avenue. The show is happening on during the height of the Autumn Fall colors in a beautiful mountain setting. The ARTumn Festival is also raising funds for the Adaptive Sports Center of Crested Butte, which has been providing year-round therapeutic recreation programs in the community since 1987.

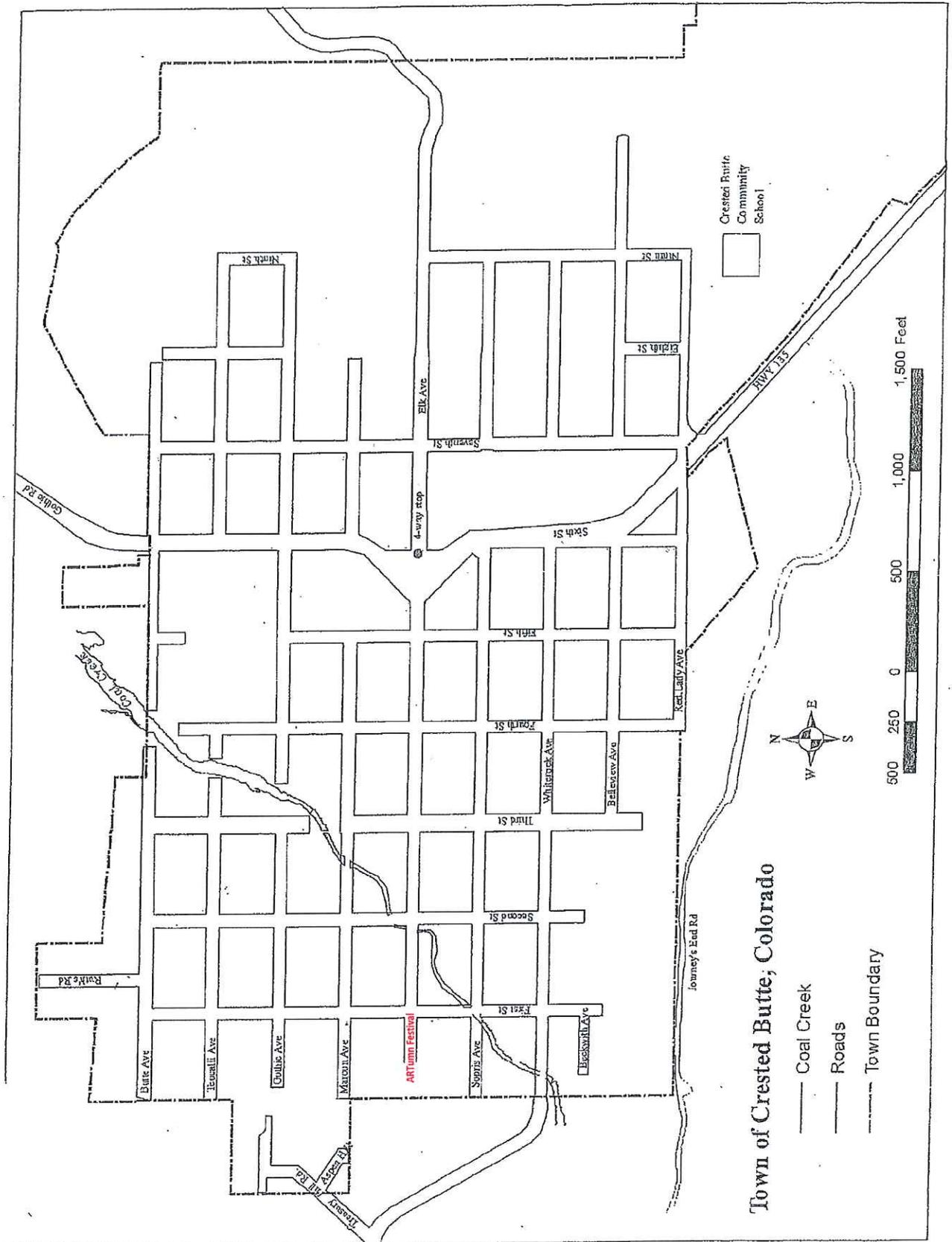
Details at: www.artfestivalsincolorado.com or www.coloradocraftfestivals.com



Event Map for the ARTumn Festival

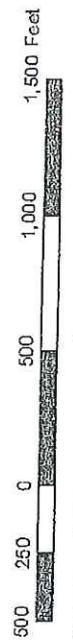
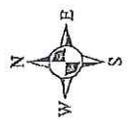


-  - Properly weighted down 10' x 10' Canopy tent
-  - Trash receptacle



Town of Crested Butte, Colorado

- Coal Creek
- Roads
- - - Town Boundary



OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

I, Wayne W. Williams, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

Colorado Events

is a

Nonprofit Corporation

formed or registered on 10/14/2004 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20041359754 .

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 11/27/2018 that have been posted, and by documents delivered to this office electronically through 11/28/2018 @ 17:38:02 .

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 11/28/2018 @ 17:38:02 in accordance with applicable law. This certificate is assigned Confirmation Number 11249072 .



Wayne W. Williams

Secretary of State of the State of Colorado

*****End of Certificate*****

Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's Web site, <http://www.sos.state.co.us/biz/CertificateSearchCriteria.do> entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, <http://www.sos.state.co.us/> click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/28/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Charles Smith(071328K) 1707 Main St Ste 304 Longmont CO 80501-7403		CONTACT NAME: PHONE (A/C, NO, EXT): 303-442-0943 FAX (A/C, NO): 303-834-9404 E-MAIL ADDRESS: csmith5@farmersagent.com	
INSURED COLORADO EVENTS 2625 ARAPAHOE E-4, 720 BOULDER CO 80302		INSURER(S) AFFORDING COVERAGE	
		INSURER A: Truck Insurance Exchange	NAIC # 21709
		INSURER B: Farmers Insurance Exchange	21652
		INSURER C: Mid Century Insurance Company	21687
		INSURER D:	
		INSURER E:	
		INSURER F:	

COVERAGES: _____ CERTIFICATE NUMBER: _____ REVISION NUMBER: _____

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAME ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDTL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
C	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			604882631	05/01/2018	05/01/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea Occurrence) \$ 75,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OPAGG \$ 1,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED: _____ RETENTION \$: _____						
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below			N/A			PER STATUTE <input type="checkbox"/> OTHER <input type="checkbox"/> \$ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Town of Crested Butte is listed as an additional insured

CERTIFICATE HOLDER Town of Crested Butte 507 Maroon Ave Crested Butte CO 81224	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Charles Smith</i>
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SPECIAL EVENT: ARTumn Festival (September 14-15, 2019)

DEPARTMENT APPROVALS *(For Official Use Only)*

Note: Please clearly state in your comment area what requested services your department will/will not provide for the event.

MARSHALS:

Conditions/Restrictions/Comments:

Ok per CBMO

Michael Reily

3/4/2019

Signature

Date

PUBLIC WORKS:

Conditions/Restrictions/Comments:

Event Staff to remove barricades and place on corner of 1st/Elk right of way

Shea Earley

1/30/2019

Signature

Date

PARKS AND RECREATION:

Conditions/Restrictions/Comments:

Elk Ave. permit attached

Janna Hansen

1/28/2019

Signature

Date

DEPARTMENT APPROVALS *(For Official Use Only)*

Note: Please clearly state in your comment area what requested services your department will/will not provide for the event.

TOWN CLERK:

Conditions/Restrictions/Comments:

Lynelle Stanford	4/1/2019
_____	_____
Signature	Date

TOWN MANAGER:

Conditions/Restrictions/Comments:

Application
One Day Banner

Dara MacDonald	4/5/19
_____	_____
Signature	Date

CRESTED BUTTE FIRE PROTECTION DISTRICT:

Conditions/Restrictions/Comments:

No awnings can protrude into fire lanes
not ten tie downs can protrude into fire lanes

Ric Ems	3/1/2019
_____	_____
Signature	Date

DEPARTMENT APPROVALS (*For Official Use Only*)

Note: Please clearly state in your comment area what requested services your department will/will not provide for the event.

MT. EXPRESS BUS SERVICE:

Conditions/Restrictions/Comments:

Ok.

Chris Larsen

1/24/2019

Signature

Date



Memorandum

To: Town Council
From: Rob Zillioux, Finance Director and acting Town Manager
Subject: Manager's Report
Date: April 15, 2019

Town Manager

1. **CIRSA Audit** – CIRSA is Town's insurance underwriter for property / casualty insurance and workers compensation. Annually, they audit loss control standards for the Town. At the conclusion of their audit, CIRSA awarded scores of 93 for PC and 97 for WC. Both are quite good and will help Town mitigate premium increases. CIRSA made a few suggestions to further improve Town's Safety Action Plan, on which our Safety Committee will immediately begin working to implement.
2. **Ohio Pass Logging** – Matt McCombs, District Ranger, notified Town that the Gunnison Ranger District is planning to initiate preparation of a timber sale in the Ohio Pass area. This sale was environmentally analyzed under the Spruce Beetle Epidemic Aspen Decline Management Response (SBEADMR) project EIS completed in 2014. The District identified that the most appropriate haul route for the sale is on the Kebler Pass road to Hwy 135 down to Hwy 50. The sale is estimated to generate between 600 and 700 log trucks. The earliest the District would advertise the sale would be fiscal year 2021. Hauling operations would commence at a time of the operator's choosing once the sale is purchased but conservatively would not begin until late 2021 early 2022. Matt wanted to get this on our radar as soon as possible so we can provide feedback that would inform the development of the contract. Matt and his staff are available to answer specific questions on the sale. For the Town of Crested Butte, this would result in a lot of log trucks rolling down Whiterock when and/if the logging begins in 2021 and/or 2022.

Public Works

Marshals

Parks & Rec

Community Development

1) **Avalanche Park – mistletoe and pine beetle**

- Town staff have been working closely with the CO State Forest Service since last fall to address management of the trees in Avalanche Park. They assisted with developing the RFP for tree removal and will supervise the work at Avalanche Park. They are also providing a grant to the Town to reimburse 50% of the cost of the project this year.
- The main priority is removing the trees that have pine beetle before the beetles spread, but the Forest Service indicated that they are interested in helping us come up with management plans for this property and other similar properties (Red Lady Open Space) that are experiencing problems with Mistletoe, deadfall, etc. However the campground discussion evolves will probably affect their recommendations for this specific property.

- 2) **BOZAR Design Guidelines** – BOZAR began their review of the update to the design guidelines. At the March 26th BOZAR meeting, all members returned copies of the Guidelines with comments and/or highlighted areas to address. The review committee of three consisting of three BOZAR members were also selected to draft potential changes to the Guidelines. Staff is compiling this information and at the April 30th BOZAR meeting will do an overview for the Board. For a Guideline to be considered, two or more of the members need to identify it as needing revisions. The committee will begin meeting May 1st and will most likely meet through July prior to making recommendations on revisions to the full Board. A public meeting on the process will then most likely take place in August or September.

Town Clerk

Finance

1) **2019 Budget Amendment Items – YTD actual and potential:**

- a. Big Mine Ice Rink changing rooms. This was not approved as part of the 2019 budget, but we do have \$197,000 reserves associated with the “Whatever USA” event.
- b. Community Grants. The grant committee has recommended spending \$8,625 more than budgeted. Staff would like Council direction / clarity on providing awards for ongoing operating costs. Town’s guidelines indicate the grant requesters should not rely on grant awards for ongoing operating costs. Community organizations, such as KBUT, do their own fundraising for operation costs.

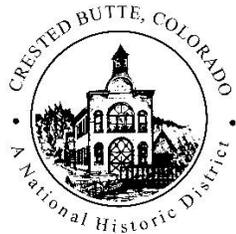
- c. Triplex Sprinkler Systems - \$262,000 expense that Town has agreed to not pass along to the buyers. This was not included in the 2019 budget, but will be offset by the \$550,000 ADU settlement received late 2018.
 - d. Purchase Agreement for the Kikel Parcel A from the Crested Butte Land Trust for a Purchase Price of \$530,000. The 2019 budget forecasted year ending Open Space reserves of \$600,748 the Kikel purchase will reduce year end reserves to \$70,748.
 - e. Snow clearing and removal. The 2019 budget contemplated \$134,000 in snow related expense. During the first quarter, actual expenses were \$211,978. Budget overage of \$77,978.
 - f. Total actual and potential budget amendments = \$1,075,603
- Budget amendments must be filed with the State of Colorado.

Intergovernmental

Upcoming Meetings or Events

1. Town Picnic – Friday June 7
2. Town Cleanup – Saturday May 18

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



Staff Report

April 15, 2019

To: Mayor and Town Council

From: Molly Minneman, Design Review and Historic Preservation Coordinator

Thru: Michael Yerman, Community Development Director

Subject: **Appointment of Board and Architectural Review Commissioner**

Background:

The Board of Zoning and Architectural Review (BOZAR) has vacancy on the seven-member board following the resignation of Crockett Farnell after serving two, three year terms. He was an excellent Board member and Town Staff appreciates his service.

Two individuals, Heather Allyn Seekatz and Paul Mack contacted staff regarding a BOZAR vacancy upon seeing an ad posted in the classified section of the Crested Butte News and the Town's website. They each submitted applications.

For applicants to be eligible for the position, they must reside in Town of Crested Butte for at least one year. They are also encouraged to have interest or experience in historic preservation, construction trades, landscape design, architecture, or planning.

Allyn-Seekatz has resided in Town for 16 months (since January 2018), and prior to that time lived in Mt. Crested Butte since 2013. She has education and experience in drafting and interior design. Her application is attached.

Mack has resided as a full time resident for over two (2) years, and part-time resident twenty (20) years prior. He has been a professional architect for forty-five (45) years. His application is attached.

After conducting interviews at the meeting, the Council will be given paper ballots to vote.

Recommendation:

Staff recommends that the Council makes a motion followed by a second to approve the appointment either Heather Allyn Seekatz or Paul Mack to the Board of Zoning and Architectural Review for three-year term expiring on April 15, 2022.

APPLICATION
BOARD OF ZONING AND ARCHITECTURAL REVIEW
(BOZAR)
Town of Crested Butte, Colorado

Name: Paul L Mack

Address: 109 Maroon Ave 1613
Physical PO Box

Phone: _____ 303-589-6795
Home Work Cell

E-mail: paul@plmarchitecture.com

For Office use only

Length of Term _____

Date Appointed _____

Date completed _____

How long have you been a resident of the Town of Crested Butte? 2 years full time, 20 years part time
(one year is required)

What kind of experience do you have in reading building plans? Extensive: 45 year architecture career

What kind of experiences do you have that relating to the design or construction fields that will help you in fulfilling the duties as a BOZAR member?

See above. I have extensive experience in writing and reviewing development criteria and reviewing submittals for retail and mixed use projects. I work with architects, graphic and environmental designers, developers and government entities. I also have significant field and shop experience with fabricators, contractors and owners.

Why are you interested in being on BOZAR? To give back to the town that means so much to me, to help CB retain its character.

What do you feel are important issues facing the Town of Crested Butte that can be addressed through the BOZAR process?

The loss of the eclectic individuality that the residential and commercial architecture in CB represents as a whole. There is robust building occurring here but a seeming lack of consideration of the importance of place, human scale and community, especially in residential construction. Another issue is maintaining the vibrancy of the local population. Replacing valuable housing stock with 4000 SF "cabins" will continue to have a detrimental effect on Crested Butte.

Identify one to two of the most effective projects of the last several years, and why:

The Public House (commercial development) at 1st and Elk. This project saved an historic building that was in bad shape and provides a valuable mixed-use venue: bar, restaurant, entertainment and lodging.
224 Gothic Ave. Accessory dwelling unit. We need more of these. One or more separate ADUs on the same lot breaks up the scale of the maximized square footage. An ADU can also provide much-needed rental opportunities for local residents. This should be required of all new construction or perhaps a credit given.

Identify one or two of the least effective building projects of the last several years, and why:

120 Maroon. A more or less original CB miner's home that was a painted, wood-sided house of modest size was destroyed and replaced by a fake log cabin with artificial heavy timber detailing.
11 Butte. This large box lacks human scale and street presence. Combined with the office park landscaping, this project is a cold, disconnected structure with no contribution to the neighborhood. Of particular note are the large, poorly designed street-facing windows that appear to be flat sheets of glass.
On a general note, there are too many houses going up with a design aesthetic that seems to be informed by the underside of railroad bridges. The design and details appear heavy-handed and not representative of Crested Butte's architectural fabric.

Paul L Mack
Signature

February 26, 2019
Date

APPLICATION
BOARD OF ZONING AND ARCHITECTURAL REVIEW
(BOZAR)
Town of Crested Butte, Colorado

Name: Heather Allyn Seekatz

Address: 926 Butte Ave.
Physical CB, CO 81224 PO Box 2112

Phone: N/A N/A 860-248-1242
Home Work Cell

E-mail: igrowthis@gmail.com

<i>For Office use only</i>	
Length of Term	_____
Date Appointed	_____
Date completed	_____

IN TOWN PROPER:

How long have you been a resident of the Town of Crested Butte? 14 months as of 2/15/19
(one year is required)

What kind of experience do you have in reading building plans? PLS SEE EMAIL DATED 3/23/17 w/ updates noted here:
NO LONGER WORKING FOR KPD STUDIOS

What kind of experiences do you have that relating to the design or construction fields that will help you in fulfilling the duties as a BOZAR member?

Why are you interested in being on BOZAR? _____

What do you feel are important issues facing the Town of Crested Butte that can be addressed through the BOZAR process?

Identify one to two of the most effective projects of the last several years, and why:

Identify one or two of the least effective building projects of the last several years, and why:

Signature Heather Allyn

Date 2/5/19

How long have you been a resident of the Town of Crested Butte?

October 2013 full time, winters only since 2010/11 season.

What kind of experience do you have reading building plans?

I became fascinated with building and plans in 1996, when I taught myself drafting for a school project (my dad was carpenter and I watched him build houses growing up.) I continued on to attend the School of Building Arts at SCAD, which included classes in architectural history, historic preservation, architecture and I.D. - graduated with a BFA in Interior Design. Moved directly to NYC and got a job drafting the construction plans for an exhibit at the Cooper Hewitt National Design Museum, then landed a full time gig at a design/build studio (Caliper Studio) doing takeoffs/estimates, shop drawings, and project management. Currently work for kPd Studios and Somrak Concept + Structure.

What experiences do you have that relate to the design or construction fields that will help you in fulfilling the duties as a BOZAR member?

I went through the process myself recently :) which really got me interested in the guidelines. I'm familiar with them from our project, but would be fully invested in knowing the guidelines for all zones, inside and out, if I were to be part of the board. I have a deeply rooted interest in design, architecture, historic preservation and construction. My education and work experiences provide me with solid background knowledge of the architectural world in general, which can be honed and applied to the very specific vernacular of Crested Butte and the overall vision for the town.

Why are you interested in being on BOZAR?

It always piqued my interest when I would see a listing for a BOZAR opening in the paper over the last few years, but after going through the process for my own home I decided that the next time I heard of an available seat that I would apply! I think it is a great way for me to contribute to the community and I love the idea of getting to see all the prospective projects. I know I will be able to use my knowledge to help drive successful, well designed growth. It's exciting to me to think I could be contributing to Crested Butte's future - where we are planning on living for a long time.

What do you feel are important issues facing the Town of Crested Butte that can be addressed through the BOZAR process?

Maintaining the character, charm, authenticity and history of Crested Butte through growth and affordable housing needs while staying progressive with current technology and not becoming negatively antiquated.

Identify one or two of the most effective projects of the last several years, and why:

313 Sopris Ave was an amazing project. It makes me so happy to see someone willing to invest in preserving/restoring an historic building and I think it was done beautifully... Except for the toilet in the upstairs window!! YIKES! However, it is a great example because it is such an iconic building and its original structure and materials were honored.

I also love the home on the corner of Elk Ave. and 7th that was recently "renovated" (you would hardly recognize it from its former dilapidated blue ski bum self.) The finished building came out charming, with all over proper proportions, scale, and good use of materials.

Identify one or two of the least effective building projects of the last several years and why:

Well I think the board has done a good job managing the "building boom" that's taken place recently. There a few along Butte that I wonder about, many with front facing garages, odd shaped windows, and definite "no's" - but they were probably built in the 70s and 80s. Maybe not recent enough, but 614 9th seems off, too massive, and the front door is an eyesore. One house that I know was built in the past year or two, and gives me pause, is 829 Sopris. I don't think it's terrible and in theory it seems to meet the guidelines, but it is not successful in appearing quite residential. It feels too tall overall and the side "tower" reminds me of grain elevator. The siding application reinforces the almost barn like industrial feel and is too variegated from board to board. The windows are squat and the modules are forced. The way the entry roof and truss is split in half by exterior wall, corner, and "hall" to front door, makes no sense. I understand why it was approved, but to me it's lacking authenticity. I would have liked to see the windows with a more vertical proportion and with more substantial mullions. On the face closest to Sopris, maybe separate the windows into two, to be more interesting and historically similar. The roof pitch could be steeper. And not part of the building, but get rid of the antennae and satellite in the front.



To: Mayor Schmidt and Town Council

From: Michael Yerman, Community Development Director

Thru: Dara MacDonald, Town Manager

Subject: Ordinance 12, Series 2019- Release and Replace of Master Deed Restriction

Date: April 15, 2019

Background:

A home owner in Paradise Park has begun the process to refi his unit located at Block 77, Lot 3 Unit B or 824 Unit B Teocalli Avenue. After receiving a full title commitment, the option agreement was not executed or recorded with the original loan. The bank has agreed to execute the option at the closing of the refi. So at this time there is no need to release and replace the old deed restriction.

Recommendation:

Staff recommends the Council withdraw Ordinance 12, Series 2019 releasing and replacing the Master Deed Restriction at 824 Teocalli Avenue.

ORDINANCE NO. 12

SERIES 2019

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AUTHORIZING THE RELEASE OF DEED RESTRICTIONS ON BLOCK 77, LOT 3, UNIT B, PEELER TOWNHOUSES IN THE PARADISE PARK SUBDIVISION, TOWN OF CRESTED BUTTE, GUNNISON COUNTY, STATE OF COLORADO RECEPTION NO. 543195, AND REPLACEMENT WITH NEW DEED RESTRICTION

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

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

WHEREAS, the Town owns an interest in certain deed restrictions upon Block 77, Lot 3, Unit B, Peeler Town Houses, Paradise Park Subdivision, Town of Crested Butte, Gunnison County, State of Colorado, according to the plat recorded at Reception No. 543195 of the records of the Gunnison County Clerk and Recorder (the “Property”), pursuant to that certain Master Deed Restriction recorded at Reception No. 641510 of the records of the Gunnison County Clerk and Recorder; and,

WHEREAS, Joshua Schumacher (“Owner”) is the current fee simple owner of the Property; and,

WHEREAS, Owner desires to refinance the existing mortgage on the Property, and Owner and Owner’s lender have requested the Town to release the Master Deed Restriction recorded at Reception No. 641510 as it pertains to the Property and replace it with a new Master Deed Restriction; and,

WHEREAS, Owner’s lender, Community Bank, have agreed to subordinate its interest in the Property under the deed of trust that will secure the Owner’s refinancing loan to the Town’s new replacement Master Deed Restriction; and

WHEREAS, the Town Council hereby finds that it is necessary and suitable, and in the best interest of the Town and the health, safety and welfare of the residents and visitors of Crested Butte, that the Deed Restrictions upon the Unit should be released and replaced, as set forth herein.

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

Section 1. **Authorization to Release Town-owned Deed Restrictions.** The Town Council, pursuant to the Crested Butte Town Charter and the laws of the State of Colorado,

hereby authorizes the Town to release the following described property from the Deed Restrictions recorded at Reception No. 641510, of the Gunnison County Clerk and Recorder, to wit:

Block 77, Lot 3,
Unit B, Peeler Park Town Houses,
Paradise Park Subdivision,
Town of Crested Butte, Gunnison County, Colorado

according to the plat recorded at Reception No. 543195 of the records of the Gunnison County Clerk and Recorder (the "Property").

The Town Council further authorizes and directs the Town Manager and Town Clerk to appropriately execute any additional documents necessary and appropriate to consummate the release of the Deed Restrictions and the replacement of such Deed Restrictions with land use conditions and deed restrictions that apply to the current uses on the Property, following approval thereof by the Town Attorney.

Section 2. **New Deed Restrictions.** The Town Council hereby approves the new deed restrictions in the form attached hereto as **Exhibit A** that will replace the Deed Restrictions that are being released and hereby authorizes the Town Manager and the Town Clerk to record these new deed restrictions against the Property following approval thereof by the Town Attorney.

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

Section 4. **Savings Clause.** Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town which conflicts with this ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS __ DAY OF _____, 2019.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS __ DAY OF _____, 2019.

TOWN OF CRESTED BUTTE, COLORADO

By: _____
James A. Schmidt, Mayor

ATTEST:

Lynelle Stanford, Town Clerk

[SEAL]

RECORDING REQUESTED BY: WHEN RECORDED RETURN TO:

Town of Crested Butte
 Attn: Town Clerk
 P.O. Box 39
 507 Maroon Avenue
 Crested Butte, CO 81224

MASTER DEED RESTRICTION

Block 77, Lot 3, Unit B

THIS MASTER DEED RESTRICTION (this "**Deed Restriction**") is made this ____ day of April 2019 (the "**Effective Date**") by the **TOWN OF CRESTED BUTTE, COLORADO** (the "**Town**"), a Colorado home rule municipal corporation with an address of 507 Maroon Avenue, P.O. Box 39, Crested Butte, Colorado 81224.

RECITALS:

A. The Town is the owner of an option and interest in and option to purchase the real property legally described in **Exhibit "A"** (the "**Property**") attached hereto under that certain Master Deed Restriction recorded at Reception No. 641510 of the records of the Gunnison County Clerk and Recorder.

B. Joshua Schumacher ("Owner") is the current fee simple owner of the real property legally described as Block 77, Lot 3, Unit B Peeler Town Houses, Town of Crested Butte, Gunnison County, State of Colorado, according to the plat recorded at Reception No. 543195 of the Gunnison County

C. Owner desires to refinance the existing mortgage on the Property, and Owner and Owner's lender have requested the Town to release the Master Deed Restriction recorded at Reception No. 641510 as it pertains to the Property and replace it with this Master Deed Restriction

D. An individual lot, and the dwellings, structures, appurtenances, improvements and fixtures located thereon and located within the Property is defined herein as a "**Unit**."

E. "**Qualified Buyers**" are natural persons meeting the income, residency and other qualifications set forth in the Town of Crested Butte's Affordable Housing Guidelines, adopted by Resolution No. 2, Series 2016, as may be amended and modified by the Town from time to time (the "**Affordable Housing Guidelines**").

F. The Town hereby restricts the acquisition, transfer, use and occupancy of the Units to Qualified Buyers who fall within the income categories established in the Affordable Housing Guidelines.

G. This Deed Restriction shall constitute a resale agreement setting forth the

maximum resale price (the "**Maximum Resale Price**") for which the Units may be sold and the terms and provisions controlling such resale.

H. The Town Council approved Ordinance 12, Series 2019 releasing the Option to Purchase Deed Housing in the deed restriction recorded at Reception No. 641510 from the Property and replacing it with this Master Deed Restriction.

RESTRICTIONS:

1. Use and Occupancy.

- a. The use and occupancy of the Property, and each of the Units thereon, shall be limited exclusively to Owners who meet the definition of Qualified Buyers and their families, the requirements of this Deed Restriction and the Affordable Housing Guidelines. For purposes hereof, an "**Owner**" is a person(s) who is a Qualified Buyer who acquires an ownership interest in a Unit in compliance with the terms and provisions of this Deed Restriction and the Affordable Housing Guidelines, it being understood that such person(s) shall be deemed an "Owner" hereunder only during the period of his ownership interest in the Unit, and shall be obligated hereunder for the full and complete performance and observance of all of the covenants, conditions and restrictions contained in this Deed Restriction and the Affordable Housing Guidelines during such period.
- b. An Owner, in connection with the purchase of a Unit, must:
 - i. occupy the Unit as his sole place of residence during the period that such Unit is owned by him;
 - ii. not own, directly or indirectly through a legal entity, any interest alone or in conjunction with others, in any developed residential property or dwelling units in accordance with the limitations established by the Affordable Housing Guidelines;
 - iii. not engage in any business activity in the Unit, other than as permitted by the Affordable Housing Guidelines and the Crested Butte Municipal Code (the "**Code**");
 - iv. not permit any junior lienholder encumbrance to be recorded against the Unit without the Town's prior written approval;
 - v. not sell or otherwise transfer the Unit other than in accordance with this Deed Restriction and the Affordable Housing Guidelines;

- vi. not permit any use or occupancy of the Unit except in compliance with this Deed Restriction and the Affordable Housing Guidelines;
 - vii. continue to meet the residency, employment, and other requirements of a Qualified Buyer established by the Affordable Housing Guidelines; and
 - viii. be subject to recertification of employment, residency and ownership of the Unit shall be required as set forth in the Affordable Housing Guidelines; and/or
2. **Maximum Resale Price.** In no event shall the Unit be sold by Owner for an amount in excess of the Maximum Resale Price. On purchase, resale, transfer and issuance of a certificate of occupancy for the Unit as permitted under this Deed Restriction and the Affordable Housing Guidelines, at closing, Owner shall execute an "Acknowledgement of Deed Restriction and Maximum Resale Price" (the "**DR Acknowledgement**") in substantially the same form as attached hereto as **Exhibit "B"**. The DR Acknowledgement shall be recorded in the real property records of the Clerk and Recorder of Gunnison County, Colorado immediately after the recording of the vesting deed for the Unit and before the recording of any deed of trust. Failure to so record the DR Acknowledgment before any deed of trust shall void the transfer of the Unit under the vesting deed *ab initio* (from the beginning).
3. **Sale of the Unit.** In the event that the Owner seeks to sell the Unit, she shall offer the unit for sale per the process defined in the Affordable Housing Guidelines. The sale of the Unit shall not exceed the Maximum Sales Price.
4. **Non-Qualified Transferees.** In the event that title to the Unit vests by descent in, or is otherwise acquired by any persons(s) who are not a Qualified Buyer (a "**Non-Qualified Transferee**"), the Unit shall immediately be listed for sale as provided herein, for the highest bid by a Qualified Buyer, for not less than ninety-five percent (95%) of the Maximum Resale Price or the appraised market value, whichever is less. If all bids are below ninety-five percent (95%) of the Maximum Resale Price or the appraised market value, the Non-Qualified Transferee may elect to sell the unit for a lower price or list the Unit for sale until a bid in accordance with this section is made. The cost of an appraisal shall be paid by the Non-Qualified Transferee.
- a. Non-Qualified Transferees shall consent to any sale, conveyance or transfer of the Unit to a Qualified Buyer and shall execute any and all documents necessary to do so. Non-Qualified Transferees agree not to: (a) occupy the Unit; (b) rent all or any part of the Unit, except in compliance with this Deed Restriction and the Affordable Housing Guidelines; (c) engage in any other

business activity in the Unit; (d) sell or otherwise transfer the Unit except in accordance with this Deed Restriction and the Affordable Housing Guidelines; or (e) sell or otherwise transfer the Unit for use in a trade or business.

- b. The Town shall have the right and option to purchase the Unit, exercisable within a period of fifteen (15) calendar days after receipt of any sales offer submitted to the Town by a Non-Qualified Transferee, and in the event of exercising its right and option, the Town shall purchase the Unit from the Non-Qualified Transferee for a price of ninety-five percent (95%) of the Maximum Resale Price, some other mutually agreed upon price, or the appraised market value, whichever is less. The offer to purchase shall be made by the Non- Qualified Transferee within fifteen (15) days of acquisition of the Unit.
 - c. Where the provisions of this Section 4 apply, the Town may require Owner to rent the Unit in accordance with the requirements hereof in Section 6.
5. **Owner Residence, Employment and Continuing Compliance.** The Unit shall be utilized only as the sole and exclusive place of residence of an Owner. In the event that Owner changes his place of residence or ceases to utilize the Unit as his sole and exclusive place of residence, ceases to be a full-time employee in accordance with the Affordable Housing Guidelines, or otherwise ceases to be in compliance as a Qualified Buyer, the Unit must be offered for sale pursuant to the provisions of this Deed Restriction and the Affordable Housing Guidelines. An Owner shall be deemed to have changed his place of residence by becoming a resident elsewhere or accepting employment outside of Gunnison County, or residing in the Unit for fewer than nine (9) months per calendar year without the express written approval of the Town, or by ceasing to be a full-time employee as required by the Affordable Housing Guidelines. The Town may require Owner to rent the Unit in accordance with the requirements hereof. If at any time Owner also owns directly or indirectly through a legal entity any interest alone or in conjunction with others in any developed residential property or dwelling units as described in the Affordable Housing Guidelines, Owner shall immediately list such other property for sale and shall sell his interest in such property in accordance with this Deed Restriction and the Affordable Housing Guidelines. In the event that such other property has not been sold by Owner within one (1) year of its listing, Owner hereby agrees to immediately list the Unit for sale pursuant to this Deed Restriction and Affordable Housing Guidelines. Should Owner not receive a full-price bid on the Unit, Owner must accept the first reasonable offer for the Unit as deemed appropriate by the Town.
6. **Owner Rentals.** An Owner may not, except with prior written approval of the Town, rent the Unit for any period of time. Prior to occupancy, any tenant must be approved by the Town in accordance with the income, occupancy and other qualifications established in the Affordable Housing Guidelines. The Town shall

not approve any rental if such rental is being made by Owner to utilize the Unit as an income producing asset, except as provided below, and shall not approve a lease with a rental term in excess of twelve (12) months. A signed copy of the lease must be provided to the Town prior to occupancy. Any such lease approved by Town shall state the lease term and the monthly rent. The monthly rent cannot exceed Owner's costs, including monthly expenses of the cost any mortgage principal and interest payments, taxes, property insurance, condominium or homeowners' assessments and utilities in Owner's name, plus any additional amount as permitted by the Affordable Housing Guidelines and a reasonable security deposit. The requirements hereof shall not preclude Owner from sharing occupancy of the Unit with non-owners on a rental basis provided that Owner continues to meet the requirements contained in this Deed Restriction and the Affordable Housing Guidelines. In no event shall Owner create an additional dwelling unit in the Unit as defined in the Code. Nothing herein or in the Affordable Housing Guidelines shall be construed to create any liability for the Town attributable to the rental of the Unit or require the Town to provide a tenant for the Unit, the same being expressly disclaimed hereby.

7. **Compliance Review: Remedies for Breach.** Owner shall promptly provide to the Town all such information as the Town shall reasonably require as necessary to verify compliance with this Deed Restriction and the Affordable Housing Guidelines. The Town shall maintain the confidentiality of any financial data provided by Owner, except for such disclosures as are necessary with respect to any litigation, enforcement or other legal proceedings. In the event that the Town has reasonable cause to believe that Owner is violating this Deed Restriction and the Affordable Housing Guidelines, the Town shall have the right to inspect the Unit at reasonable times on at least 24 hours' written notice. In the event that a violation of this Deed Restriction or the Affordable Housing Guidelines is discovered, the Town shall send a notice of such violation to Owner describing the nature of the violation and all owing Owner fifteen (15) days to cure such violation. Said notice shall state that Owner may request a hearing before the Town within fifteen (15) days to dispute the merits of the allegations. If no hearing is requested and the violation is not cured within the fifteen (15) day period, the violation shall be considered final and Owner shall immediately list the Unit for sale in accordance with this Deed Restriction. The failure to request a hearing shall constitute an exhaustion of administrative remedies for the purpose of judicial review. If a hearing is, (i) the decision of the Town based on the record of such hearing shall be final for the purpose of determining if a violation has occurred, and (ii) the Town shall have absolute discretion to determine the appropriate action to be taken to either remedy the violation or require Owner to list the Unit for sale in accordance with this Deed Restriction.
8. **Notice Obligation.** Owner and any beneficiary of any deed of trust or other encumbrance affecting the Unit shall give immediate notice to the Town of any instance of (a) Owner's receipt of notice of foreclosure or legal proceedings relative to the Unit, (b) any uncured delinquency of ten (10) days or more in Owner's

payment of any amounts in connection with the Unit, (c) Owner's uncured default under any deed of trust or other encumbrance affecting the Unit, and (d) any transfer, encumbrance or conveyance of all or part of the Unit.

9. **Default.** Any breach of the terms and conditions set forth herein, including, without limitation, a transfer, encumbrance or conveyance in violation of the terms hereof shall constitute a "**default**" hereunder. Default by Owner of the terms of any deed of trust or other encumbrance affecting the Unit shall also constitute a default hereunder. In the event of a default, following notice and an opportunity to cure as provided for herein, the Town shall have all rights and remedies set forth herein and available at law and in equity.
10. **Remedies.**
 - a. In the event that Owner fails to timely cure any default, the Town may resort to any lawful means to protect its interest in this Deed Restriction, including, without limitation, curing such default and pursuing an action against Owner and any beneficiary of any deed of trust or other encumbrance affecting the Unit for damages. Any amounts paid by the Town shall accrue interest at the rate of 18% per annum and the Town shall be entitled to recover all costs and expenses to recover any amounts paid by the Town including reasonable attorneys' fees.
 - b. This Deed Restriction shall be administered by the Town or its designee and shall be enforceable by appropriate legal or equitable action, including, but not limited, to specific performance, injunction, abatement or eviction of non-complying owners or occupants or such other remedies and penalties as may be deemed appropriate by the Town. All such remedies shall be cumulative and concurrent.
 - c. Owner appoints the Town as its attorney in fact for purposes of curing any default under this Deed Restriction. Owner shall give and execute an instrument of authorization reflecting such appointment when required by the Town.
11. **Town Option to Purchase.** In the event of a default of any deed of trust or other encumbrance affecting the Unit that remains uncured by Owner, the Town shall have an option (the "**Option**") to purchase the Unit. The Town shall have forty-five (45) days after written notice from the holder of any instrument secured by a deed of trust or other encumbrance affecting the Unit of any default to exercise the Option (the "**Option Period**"). The Town shall exercise the Option by delivering to Owner written notice of such exercise within the Option Period. The Town shall be granted entry onto the Unit during the Option Period in order to inspect the Unit. Owner or any lienholder shall maintain utility connections until expiration of the Option Period or Closing (as defined below). The Town shall have the Option to

purchase the Unit for the amount due to any holder of a promissory note secured by a first deed of trust on the Unit (the "**Lienholder Amount**"). The Town shall have the following rights and obligations respecting its exercise of the Option:

- a. Owner shall permit a final walk-through of the Unit by the Town during the final three (3) days prior to Closing.
 - b. Upon payment of the Lienholder Amount by the Town, Owner shall cause to be delivered to the Town a general warranty deed for the Unit, free and clear of all liens and encumbrances.
 - c. Normal and customary Closing costs shall be shared equally by Owner and the Town. Owner shall be responsible for, at its cost, any and all title insurance fees, document fees and recording fees for the deed. Taxes shall be prorated based upon taxes for the calendar year immediately preceding Closing. Any fees incident to the issuance of a letter or statement of assessments by an association shall be shared paid by Owner. Owner shall receive a credit for that portion of association assessments paid in advance from date of Closing.
 - d. Closing on the purchase of the Unit by the Town shall occur expeditiously, but in any case, within sixty (60) days of the Town's exercise of the Option at a date and time to be mutually agreed upon by the Town and Owner (the "Closing"). The location of the Closing shall be the title company closing the transaction, said title company to be selected by the Town. Possession shall be delivered to the Town at Closing, unless otherwise agreed between Owner and Town.
12. **Termination of Deed Restriction.** In the event of a sale in foreclosure or acceptance of deed in lieu of foreclosure by the holder of a deed of trust where the Town does not exercise the Option or otherwise fails to close on the Option as provided herein, this Deed Restriction shall automatically and permanently terminate and be of no further force and effect as respects the subject Unit. In the event of the termination of this Deed Restriction, the Town shall cause to be recorded in the real property records of the Clerk and Recorder of Gunnison County, Colorado a full and complete release of this Deed Restriction.
13. **Run with the Land; Binding.** Subject to Section 13 hereof, this Deed Restriction shall be a perpetual covenant that shall run with the land as a burden thereon for the benefit of the Town, its designees and assigns, and shall be binding on Owner, its heirs, personal representatives, successors, assigns, lessees, licensees and transferees.

The Town shall have the right to terminate this Deed Restriction as to any Unit when the Town is the fee title owner of such Unit by recording an instrument

reflecting such termination in the real property records of the Clerk and Recorder of Gunnison County, Colorado. Upon such termination, as to the effected Unit, this Deed Restriction shall be null and void.

14. **Transfer and Conveyance.** In the event the Unit is sold, transferred, encumbered or otherwise conveyed without complying with this Deed Restriction, such sale, transfer, encumbrance or conveyance shall be wholly null and void *ab initio* and shall confer no title or other interest whatsoever upon the purported transferee. Each and every encumbrance or conveyance of the Unit shall be deemed, for all purposes, to include the Affordable Housing Guidelines.

15. **General Provisions.** The following terms and conditions shall apply to this Deed Restriction:
 - a. **Notices.** Any notice, consent or approval that is required to be given hereunder shall be given by either: mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided herein; or hand-delivering the same to any address provided herein. Notices shall be considered delivered on the date of delivery if hand-delivered or if both hand-delivered and mailed; or three (3) days after postmarked, if mailed only. Notices, consents and approvals shall be sent to the parties at the addresses last of record for the parties.

 - b. **Severability.** Whenever possible, each provision of this Deed Restriction and any other related document shall be interpreted in such manner so as to be valid under applicable law; but, if any provision of any of the foregoing shall be invalid or prohibited under applicable law, such provisions shall be ineffective only to the extent of such invalidity or prohibition without invalidating the remaining provisions of such document.

 - c. **Attorneys' Fees.** If the Town is required to enforce any provision of this Deed Restriction or the Affordable Housing Guidelines, the Town shall be entitled to collect any and all costs and expenses in connection therewith including, without limitation, reasonable attorneys' fees.

 - d. **Choice of Law; Venue.** This Deed Restriction and each and every related document shall be governed and construed in accordance with the laws of the State of Colorado. Venue for any legal action arising from this Deed Restriction shall be in Gunnison County, Colorado.

 - e. **Assignment and Transfer.** This Deed Restriction and the rights, benefits and obligations contained herein may be assigned and transferred, in whole or in part, by the Town without notice to Owner or any lienholder. Such right of assignment and transfer shall include, without limitation, the rights of

performance and enforcement of the terms hereof.

- f. **Successors and Assigns.** Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon all heirs, personal representatives, successors, assigns, lessees, licensees and transferees.
- g. **Section Headings.** Section headings within this Deed Restriction are inserted solely for convenience of reference and are not intended to and shall not govern, limit or aid in the construction of any terms or provisions contained herein.
- h. **Recitals.** The Recitals herein contain material terms to this Deed Restriction.
- i. **Waiver.** No claim of waiver, consent or acquiescence with respect to any provision of this Deed Restriction shall be valid against any party hereto except on the basis of a written instrument executed by the parties. The party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition in writing, however.
- j. **Gender and Number.** Whenever the context so requires herein, the neuter, male or female gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.
- k. **Construction.** None of the provisions of this Deed Restriction shall be construed against or interpreted to the disadvantage of a party by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured or dictated such provisions.
- l. **Amendments in Writing.** This Deed Restriction may only be modified or amended in writing by the Town. No such modification shall be effective until an instrument in writing is executed and recorded in the official real property records of the office of the Clerk and Recorder of Gunnison County.
- m. **Conflict.** In the event of any conflict or inconsistency between this Deed Restriction and the Affordable Housing Guidelines, this Deed Restriction shall in all cases prevail and control.

IN WITNESS WHEREOF, the Town has made this Deed Restriction effective as of Effective Date.

TOWN:

EXHIBIT "A"**Property**

Block 77, Lot 3, Unit B Peeler Town Houses, Town of Crested Butte, Gunnison
County, State of Colorado Reception No. 543195

EXHIBIT "B"**DR Acknowledgement Form****RECORDING REQUESTED BY:****WHEN RECORDED RETURN TO:**

Town of Crested Butte
 Attn: Town Clerk
 P.O. Box 39
 507 Maroon Avenue
 Crested Butte, CO 81224

**ACKNOWLEDGEMENT OF DEED RESTRICTION
 AND MAXIMUM RESALE PRICE**

By execution of this **ACKNOWLEDGEMENT OF DEED RESTRICTION AND MAXIMUM RESALE PRICE** (this "**DR Acknowledgement**"), the undersigned fee title owner ("**Owner**") of the following real property and improvements thereon:

Block 77, Lot 3, Unit B Peeler Town Houses, Town of Crested Butte, Gunnison County, State of Colorado Reception No. 543195

(the "**Unit**"), and the Owner's Lender, Community Bank ("Lender") hereby acknowledges, confirms and agrees to be bound by the terms, agreements, conditions, covenants and requirements of that certain Master Deed Restriction (the "**Deed Restriction**") dated _____, 2019, and recorded in the official real property records of the Clerk and Recorder of Gunnison County, Colorado on _____ at Reception No _____, respecting the Unit, as and when the circumstances may dictate. For purposes hereof, the contents, terms and conditions of the Deed Restriction are hereby incorporated herein as if fully set forth verbatim herein. Lender agrees to subordinate its Deed of Trust encumbering the Unit to this Deed Restriction. In addition, the following matters shall also apply to the Unit:

1. (a) \$240,189.47 represents the "**Maximum Sales Price**" as of the effective date of this DR Acknowledgement.

2. In no event shall the Unit be sold for an amount in excess of the following:

(a) The Maximum Sales Price plus an increase of three percent (3%) of such price per year from the date of Maximum Sales Price listed above and of Owner's notice of intent to sell (prorated at the rate of .25 percent for each whole month for any part of a year) plus an amount (based upon the Consumer Price Index, Seasonally-adjusted Housing Category, U.S. City Average, Urban Wage Earners and Clerical Workers (Revised), published by the U.S. Department of Labor, Bureau of Labor Statistics) calculated as follows: Owner's purchase price divided by the Consumer Price Index published at the time of Owner's purchase stated on the Settlement Statement, multiplied by the Consumer Price Index current at the date of intent to sell. In no event shall the multiplier be less than one (1). For purposes hereof, the "date of intent to sell" or Owner's notice shall be the date of execution of a listing contract, or if a listing contract is not otherwise necessary, the date shall be determined to be the date upon which an Owner provides written notice of intent to sell to the Town or a requirement for Owner to sell is first applicable (the "**Maximum Resale Price**").

3. Subject to the limitations of this Section, for the purpose of determining the Maximum

Resale Price in accordance with this Section, Owner may add to the amount specified above, the cost of Permitted Capital Improvements as described in the Affordable Housing Guidelines.

4. For the purpose of determining the Maximum Resale Price, Owner may also add the cost of any permanent improvements constructed or installed as a result of any requirement imposed by any governmental agency, provided that written certification is provided to the Town of both the applicable requirement and the information required in the Affordable Housing Guidelines.

5. In order to obtain Maximum Resale Price, Owner must ensure that the Unit meets the Town's generally applicable minimum standards for a seller of a deed-restricted unit to receive full value as determined by the Town in its discretion. This shall include requirements to clean the home, ensure that all fixtures are in working condition and to repair damage to the Unit beyond normal wear and tear and as stated in the Minimum Standards for Seller to Receive Full Value at Resale as set forth in the Affordable Housing Guidelines. If the seller does not meet this requirement, the Town may require that Owner escrow at closing a reasonable amount as determined by the Town to achieve compliance, or reduce the Maximum Resale Price accordingly.

6. Capitalized terms not defined herein shall have the meanings ascribed to such terms in the Deed Restriction and the Affordable housing Guidelines.

7. In the event of any inconsistency between this DR Acknowledgement, the Deed Restriction and the Affordable Housing Guidelines, this DR Acknowledgement shall control, then the Deed Restriction, then the Affordable Housing Guidelines.

[Remainder of Page Intentionally Left Blank;
Signature Pages(s) to Follow]

IN WITNESS WHEREOF, the Town and Owner have entered into this DR Acknowledgement effective as of the date of Owner's signature set forth below (the "Effective Date").

TOWN:

TOWN OF CRESTED BUTTE, COLORADO, a Colorado home rule municipal corporation

Date: _____

By: _____
Dara MacDonald, Town Manager

ATTEST:

Lynelle Stanford, Town Clerk (SEAL)

OWNER:

Date: _____

By: _____
Name: _____

By: _____
Name: _____
Address: _____

Attn: _____
Phone: _____
E-mail: _____

LENDER:

Date: _____

By: _____
Name: _____

By: _____
Name: _____
Address: _____

Attn: _____
Phone: _____
E-mail: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing Acknowledgement of Deed Restriction and Maximum Resale Price was acknowledged before me this __ day of _____, 20__, by Dara MacDonald, Town Manager, Town of Crested Butte, Colorado, a Colorado home rule municipal corporation on behalf of said entity.

Witness my hand and official seal.
My commission expires _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing Acknowledgement of Deed Restriction and Maximum Resale Price was acknowledged before me this __ day of _____, 20 __, by _____ as the Owner.

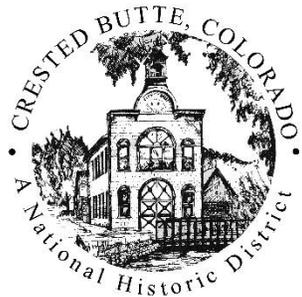
Witness my hand and official seal.
My commission expires _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing Acknowledgement of Deed Restriction and Maximum Resale Price was acknowledged before me this __ day of _____, 20 __, by _____ as the Lender.

Witness my hand and official seal.
My commission expires _____

As



To: Mayor Schmidt and Town Council

From: Michael Yerman, Community Development Director

Subject: **Ordinances 18-20, Series 2019 Block 79 and 80 Lot Sales**

Date: April 15, 2019

Background:

On February 8, 2019, the Town in conjunction with the Gunnison Valley Regional Housing Authority conducted a lottery for the sale of 3 lots located in Blocks 79 and 80. These lots will close this year. Two applicants plan to break ground this year and one applicant plans to break ground in 2020.

Ordinances 18-20 Series 2019 authorizes the sale of the lots. The following are the winners and price of each of the lots:

1. Lot 5, Block 79 Brice and Karen Hoskin \$40,000
2. Lot 13, Block 79 Tara Hiteman \$30,000
3. Lot 2, Block 80 Benjamin Blackwood \$65,000

The Ordinances also authorizes the Town Manager and Town Attorney to execute all necessary documents for the sale.

Recommendation:

A Council person make a separate motion for each ordinance followed by a second to approve Ordinances 18-20, Series 2019.

ORDINANCE NO. 18

SERIES 2019

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AUTHORIZING THE SALE OF TOWN-OWNED PROPERTY LEGALLY DESCRIBED AS LOT 5, BLOCK 79, PARADISE PARK SUBDIVISION, TOWN OF CRESTED BUTTE, COUNTY OF GUNNISON, STATE OF COLORADO TO BRICE AND KAREN HOSKIN FOR THE SALE PRICE OF \$40,000.00

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

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

WHEREAS, the Town Council has directed the Town staff to sell the above-described property to Brice and Karen Hoskin for \$40,000.00; and

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

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

Section 1. **Authorization to Sell Town-owned Property.** The Town Council, pursuant to the Crested Butte Town Charter and the laws of the State of Colorado, hereby authorizes the sale and transfer by the Town, for the sum of \$40,000.00 plus customary closing costs and fees, the real property legally described as Lot 5, Block 79, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Brice and Karen Hoskin, for the construction of and use for affordable housing, and authorizes and directs the Town Manager and Town Clerk to appropriately execute any and all documents necessary and appropriate to consummate said sale following approval thereof by the Town Attorney.

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

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

Section 4. Savings Clause. Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town which is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS __ DAY OF _____, 2019.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS __ DAY OF _____, 2019.

TOWN OF CRESTED BUTTE, COLORADO

**By: _____
James A. Schmidt, Mayor**

ATTEST:

Lynelle Stanford, Town Clerk

[SEAL]

ORDINANCE NO. 19

SERIES 2019

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AUTHORIZING THE SALE OF TOWN-OWNED PROPERTY LEGALLY DESCRIBED AS LOT 13, BLOCK 79, PARADISE PARK SUBDIVISION, TOWN OF CRESTED BUTTE, COUNTY OF GUNNISON, STATE OF COLORADO TO TARA HITEMAN FOR THE SALE PRICE OF \$30,000.00

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

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

WHEREAS, the Town Council has directed the Town staff to sell the above-described property to Tara Hiteman for \$30,000.00; and

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

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

Section 1. Authorization to Sell Town-owned Property. The Town Council, pursuant to the Crested Butte Town Charter and the laws of the State of Colorado, hereby authorizes the sale and transfer by the Town, for the sum of \$30,000.00 plus customary closing costs and fees, the real property legally described as Lot 13, Block 79, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Tara Hiteman, for the construction of and use for affordable housing, and authorizes and directs the Town Manager and Town Clerk to appropriately execute any and all documents necessary and appropriate to consummate said sale following approval thereof by the Town Attorney.

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

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

Section 4. Savings Clause. Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town which is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS __ DAY OF _____, 2019.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS __ DAY OF _____, 2019.

TOWN OF CRESTED BUTTE, COLORADO

**By: _____
James A. Schmidt, Mayor**

ATTEST:

Lynelle Stanford, Town Clerk

[SEAL]

ORDINANCE NO. 20

SERIES 2019

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AUTHORIZING THE SALE OF TOWN-OWNED PROPERTY LEGALLY DESCRIBED AS LOT 2, BLOCK 80, PARADISE PARK SUBDIVISION, TOWN OF CRESTED BUTTE, COUNTY OF GUNNISON, STATE OF COLORADO TO BENJAMIN BLACKWOOD FOR THE SALE PRICE OF \$65,000.00

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

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

WHEREAS, the Town Council has directed the Town staff to sell the above-described property to Benjamin Blackwood for \$65,000.00; and

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

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

Section 1. Authorization to Sell Town-owned Property. The Town Council, pursuant to the Crested Butte Town Charter and the laws of the State of Colorado, hereby authorizes the sale and transfer by the Town, for the sum of \$65,000.00 plus customary closing costs and fees, the real property legally described as Lot 2, Block 80, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Benjamin Blackwood, for the construction of and use for affordable housing, and authorizes and directs the Town Manager and Town Clerk to appropriately execute any and all documents necessary and appropriate to consummate said sale following approval thereof by the Town Attorney.

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

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

Section 4. Savings Clause. Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town which is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS __ DAY OF _____, 2019.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS __ DAY OF _____, 2019.

TOWN OF CRESTED BUTTE, COLORADO

**By: _____
James A. Schmidt, Mayor**

ATTEST:

Lynelle Stanford, Town Clerk

[SEAL]



To: Mayor Schmidt and Town Council

From: Michael Yerman, Community Development Director

Subject: **Ordinances 21, Series 2019 Amendment to Restrictive Covenant**

Date: April 15, 2019

Background:

Mark Schumacher (Owner) of 315 6th Street executed a restrictive covenant with the Town in 1989. As part of the covenant the residence was restricted as follows:

“to maintain said dwelling unit as a long-term residence by restricting any leases associated with the dwelling to a minimum of 6 months.”

The Owner approached the Town about the unit being owner occupied or the owner of the business in the front of the structure being allowed to occupy the unit. The Owner’s legal counsel contacted the Town about the possibility of the unit being owner occupied. The Town did not agree with the interpretation under the current restrictive covenant that it could be used as an owner occupied unit. However, the staff recognized there was some potential ambiguity in the restrictive covenant. The staff offered to bring an amendment of the restrictive covenant for the Council’s consideration to help clarify the restrictive covenant to allow for it to be owner occupied. The proposed amendment will also bring the restrictive covenant language up to the current language being use in new covenants. The following is the proposed amendment.

“to maintain said dwelling unit as a long term rental as defined in Section 16-1-20 of the Town Code, as it may be amended from time to time unless owner of the Property is occupying the dwelling unit as his primary residence, or the owner of the business located on the Property is occupying the dwelling unit. If the owner of the business is an entity such as a corporation or a limited liability company, then the individual occupying the unit must be a majority owner of the entity.”

The staff feels this is a good compromise and cleans up an old restrictive covenant. The Covenant amendment ensures the unit will continue to provide long-term housing for the community.

Recommendation:

A Council person make a motion followed by a second to approve Ordinance 21, Series 2019.

ORDINANCE NO. 21

SERIES 2019

**AN ORDINANCE OF THE CRESTED BUTTE TOWN
COUNCIL AUTHORIZING THE AMENDMENT OF LAND
USE CONDITIONS AND RESTRICTIVE COVENANTS**

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

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

WHEREAS, the Town and property owner Mark Schumacher executed an agreement for Notice of Zoning Conditions and Restrictive Covenants on December 19, 1989 (“Restrictive Covenant Agreement”), for Schumacher’s property with the following legal description:

Lot 23, Block 24, Town of Crested Butte, County of Gunnison, State of Colorado,
Commonly known as 315 6th Street, Crested Butte, Colorado 81224 (“Property”).

WHEREAS, The Restrictive Covenant Agreement Easement was recorded in Book 674, Page 293, Reception No. 417949, on December 28, 1989, in the records of the Gunnison County Clerk and Recorder. A copy of the recorded Restrictive Covenant Agreement is attached hereto as **Exhibit 1**.

WHEREAS, The Town and Schumacher have agreed to amend one of the Conditions of Approval in the Restrictive Covenant Agreement, and the parties desire to memorialize their agreement as set forth in the Amendment of Zoning Conditions and Restrictive Covenants attached hereto as **Exhibit 2**; and

WHEREAS, the Town Council hereby finds that it is necessary and suitable, and in the best interest of the Town and the health, safety and welfare of the residents and visitors of Crested Butte, that the Restrictive Covenants should be discontinued and released, as set forth hereinbelow.

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

Section 1. Authorization to Amend Town-owned Restrictive Covenant. The Town Council, pursuant to the Crested Butte Town Charter and the laws of the State of Colorado, hereby authorizes the Town to amend the Restrictive Covenant Agreement recorded at recorded in Book 674, Page 293, Reception No. 417949, on December 28, 1989, in the records of the Gunnison County Clerk and Recorder, upon the Property described as follows:

Lot 23, Block 24, Town of Crested Butte, County of Gunnison, State of Colorado,
Commonly known as 315 6th Street, Crested Butte, Colorado 81224 (“Property”).

The Town Council further authorizes and directs the Town Manager and Town Clerk to appropriately execute the Amendment of Zoning Conditions and Restrictive Covenants attached hereto as **Exhibit 2**, and any additional documents necessary and appropriate to consummate the amendment of the Restrictive Covenant Agreement between the Town and Schumacher, following approval thereof by the Town Attorney.

Section 2. Severability. If any section, sentence, clause, phrase, word or other provision of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this ordinance, or the validity of this ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

Section 3. Savings Clause. Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town which conflicts with this ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS __ DAY OF _____, 2019.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS __ DAY OF _____, 2019.

TOWN OF CRESTED BUTTE, COLORADO

**By: _____
James A. Schmidt, Mayor**

ATTEST:

Lynelle Stanford, Town Clerk

[SEAL]

THIS AGREEMENT AND INDENTURE, made this 19th day of December, 19889, between Mark A. Schumacher, of Almont, Colorado, (hereinafter referred to as the "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:

BOOK 674 PAGE 293

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 23, Block 24

which real property is subject to the zoning and land use ordinances of the Town of Crested Butte (said real property hereinafter referred to as the "Property"), and

WHEREAS, the Owner has applied to the Town for certain zoning and land use approvals not allowed as a matter of right under the Town's Zoning Ordinance, and

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

WHEREAS, the Town's Board of Zoning and Architectural Review has placed certain conditions on these approvals, which conditions have been agreed to by the Owner, and

WHEREAS, Section 15-2-17 of the Town's Zoning Ordinance provides that conditions or restrictions relative to the use and/or occupancy of the Property which are made a consideration 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:

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:

1. Grant of Discretionary Land Use and/or Zoning Approval. The Town, through the appropriate action of its Board of Zoning and Architectural Review and/or Town Council, hereby grants to the Owner, with respect to the Property described above, a () VARIANCE, (XX) CONDITIONAL USE, () CONDITIONAL WAIVER, () SPECIAL DEVELOPMENT PERMIT, () PUD APPROVAL, () CONDITIONAL REZONING APPROVAL, and/or () ARCHITECTURAL APPROVAL, as follows:

to allow an accessory dwelling in a B-3 zone

2. Conditions of Approval. In consideration of the above referred discretionary approval, the Owner hereby agrees to the following conditions and/or restrictions on the use and/or occupancy of the Property by himself, and 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;

- 1. to provide 2 parking spaces of not less than 9' by 18' for use by the dwelling residents and to guarantee access to said spaces year round.
2. to maintain said dwelling unit as a long-term residence by restricting any leases associated with the dwelling to a minimum of 6 months.

3. Remedies. In addition to any other remedy provided by law for the enforcement of this Agreement creating Restrictive Covenants, the Town shall be entitled to the remedies of specific enforcement and/or injunctive relief, and further, the Town shall be entitled to an award of reasonable attorney's fees in the successful prosecution or defense of any action to enforce this Agreement.

BOOK 674 PAGE 294

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; it being the express understanding of the parties that breaches of this Agreement shall be waived only by written consent of the Town.

5. Severance Clause: Any provision of this Agreement which is invalidated 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 THE DATE SET FORTH ABOVE.

TOWN OF CRESTED BUTTE:

OWNER AND GRANTOR:

BY Wesley C. Light
Mayor

BY [Signature]

ATTEST: [Signature]
Town Clerk



STATE OF COLORADO }
COUNTY OF GUNNISON } ss.

The foregoing Agreement and Grant of Restrictive Covenants, styled as a Notice of Zoning Conditions and Restrictive Covenants, was acknowledged before me this 19th day of December, 1989, by Mark Schumacher, Owner and Grantor.



[Signature]
Notary Public

Address: 207 Sopris
Crested Butte, Co.

My Commission Expires: 11-20-92

Return To:

AMENDMENT OF ZONING CONDITIONS AND RESTRICTIVE COVENANTS

THIS AMENDMENT OF ZONING CONDITIONS AND RESTRICTIVE COVENANTS is agreed and entered into this __ day of _____, 2019, between the Town of Crested Butte, Colorado, a Colorado home rule municipal corporation (“Town”), whose legal address is 507 Maroon Avenue, P.O. Box 39, Crested Butte, Colorado 81224, and Mark A. Schumacher, whose legal address is _____, Almont, Colorado 81224 (“Schumacher”).

RECITALS

A. The Town and Schumacher executed an agreement for Notice of Zoning Conditions and Restrictive Covenants on December 19, 1989 (“Restrictive Covenant Agreement”), for Schumacher’s property with the following legal description:

Lot 23, Block 24, Town of Crested Butte, County of Gunnison, State of Colorado,
Commonly known as 315 6th Street, Crested Butte, Colorado 81224 (“Property”).

B. The Restrictive Covenant Agreement Easement was recorded in Book 674, Page 293, Reception No. 417949, on December 28, 1989, in the records of the Gunnison County Clerk and Recorder. A copy of the recorded Restrictive Covenant Agreement is attached hereto as **Exhibit 1**.

C. The Town and Schumacher have agreed to amend one of the Conditions of Approval in the Restrictive Covenant Agreement, and the parties desire to memorialize their agreement herein.

D. The Town Council has approved this amendment by Ordinance No. 21, Series 2019, on _____, 2019.

In consideration of the forgoing Recitals and for other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the Town and Schumacher agree as follows:

1. Paragraph 2, subsection 2 of the Conditions of Approval in the Restrictive Covenant Agreement is deleted and replaced with the following Condition of Approval:

“2. to maintain said dwelling unit as a long term rental as defined in Section 16-1-20 of the Town Code, as it may be amended from time to time unless owner of the Property is occupying the dwelling unit as his primary residence, or the owner of the business located on the Property is occupying the dwelling unit. If the owner of the business is an entity such as a corporation or a limited liability company, then the individual occupying the unit must be a majority owner of the entity.”

THIS AGREEMENT AND INDENTURE, made this 19th day of December, 19889, between Mark A. Schumacher, of Almont, Colorado, (hereinafter referred to as the "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:

BOOK 674 PAGE 293

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 23, Block 24

which real property is subject to the zoning and land use ordinances of the Town of Crested Butte (said real property hereinafter referred to as the "Property"), and

WHEREAS, the Owner has applied to the Town for certain zoning and land use approvals not allowed as a matter of right under the Town's Zoning Ordinance, and

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

WHEREAS, the Town's Board of Zoning and Architectural Review has placed certain conditions on these approvals, which conditions have been agreed to by the Owner, and

WHEREAS, Section 15-2-17 of the Town's Zoning Ordinance provides that conditions or restrictions relative to the use and/or occupancy of the Property which are made a consideration 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:

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:

1. Grant of Discretionary Land Use and/or Zoning Approval. The Town, through the appropriate action of its Board of Zoning and Architectural Review and/or Town Council, hereby grants to the Owner, with respect to the Property described above, a () VARIANCE, (XX) CONDITIONAL USE, () CONDITIONAL WAIVER, () SPECIAL DEVELOPMENT PERMIT, () PUD APPROVAL, () CONDITIONAL REZONING APPROVAL, and/or () ARCHITECTURAL APPROVAL, as follows:

to allow an accessory dwelling in a B-3 zone

2. Conditions of Approval. In consideration of the above referred discretionary approval, the Owner hereby agrees to the following conditions and/or restrictions on the use and/or occupancy of the Property by himself, and 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;

- 1. to provide 2 parking spaces of not less than 9' by 18' for use by the dwelling residents and to guarantee access to said spaces year round.
2. to maintain said dwelling unit as a long-term residence by restricting any leases associated with the dwelling to a minimum of 6 months.

3. Remedies. In addition to any other remedy provided by law for the enforcement of this Agreement creating Restrictive Covenants, the Town shall be entitled to the remedies of specific enforcement and/or injunctive relief, and further, the Town shall be entitled to an award of reasonable attorney's fees in the successful prosecution or defense of any action to enforce this Agreement.

BOOK 674 PAGE 294

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; it being the express understanding of the parties that breaches of this Agreement shall be waived only by written consent of the Town.

5. Severance Clause: Any provision of this Agreement which is invalidated 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 THE DATE SET FORTH ABOVE.

TOWN OF CRESTED BUTTE:

OWNER AND GRANTOR:

BY Wesley C. Light
Mayor

BY [Signature]

ATTEST: [Signature]
Town Clerk



STATE OF COLORADO }
COUNTY OF GUNNISON } ss.

The foregoing Agreement and Grant of Restrictive Covenants, styled as a Notice of Zoning Conditions and Restrictive Covenants, was acknowledged before me this 19th day of December, 1989, by Mark Schumacher, Owner and Grantor.



[Signature]
Notary Public

Address: 207 Sopris
Crested Butte, Co.

My Commission Expires: 11-20-92

Return To:



To: Mayor Michel and Town Council
From: Michael Yerman, Community Development Director
Subject: **Slate River Annexation Public Hearing**
Date: April 15, 2019

Background:

The Slate River Major Development application started with an annexation petition request to the Town in the fall of 2014 by Cypress Equities (Developer). After a year of negotiations, the proponents withdrew their application for annexation with the Town. At this time, the County was approached by the developer about the possibility of a major subdivision in the County.

In 2016, negotiations with the Town about extending sewer service to the development resulted in the Town and the developer executing the first of three agreements: a pre-annexation agreement, an amended pre-annexation agreement and a second amendment to the pre-annexation agreement. The Pre-Annexation Agreement, Reception #638399, created a hybrid development project in which a portion of the development would occur in the unincorporated area of the County, followed by the annexation of the remaining property into the Town. The Slate River would serve as the dividing line between the Town and unincorporated development. In exchange for sewer service, the developer dedicated six parcels to the Town on the western portion of the development to serve as public uses, affordable housing, passive park space, and open space. These parcels will be platted and annexed under the Town's Municipal Code regulations.

An amendment to the Pre-Annexation Agreement was negotiated after the developer went before the County Planning Commission and Board of County Commissioners (BOCC). Concerns about the developer's plans for water supply resulted in an additional request for Town water. At this time, the Amendment to the Pre-Annexation Agreement, Reception #643828, was agreed upon to extend water service to the development in the County in exchange for senior water rights in the McCormick Ditch among other conditions. These two recorded agreements will be referenced as "Pre-Annexation Agreements" for the remainder of the memo.

Both the Pre-Annexation Agreement and the Amended Pre-Annexation Agreement were bound to the County's approval of the Major Subdivision of 23 residential lots on the eastern portion of the site. The County has approved the Major Subdivision which has set in motion the need for the execution of several agreements. The approval of the County Major Subdivision also sets in motion the Town's annexation process and landfill voluntary clean up (VCUP).

After approval of the County's Major Subdivision, the Second Amendment to the Pre-Annexation Agreement, Reception #656557 was executed to clarify additional provisions that were necessary for

the VCUP, construction of landscaping and fencing on Town property, and the construction of utilities. A working draft document prepared by the Town Attorney that combines the Pre-Annexation Agreement and amendments is included in the Council packet.

Slate River Annexation Public Hearing:

The Town received an annexation petition and prepared a Sketch Plan Application for annexation. Resolution 4, Series 2019 found the annexation petition in substantial compliance and set the beginning of the annexation public hearing for April 15, 2019.

The Colorado Annexation Act requires the annexation hearing to be begun no less than 30 or more than 60 days from the Resolution of Substantial compliance. However, the subdivision and zoning of the property also need to be finalized before the Town can complete the annexation process. The Planning Commission held the first of the subdivision hearings on April 8, 2019, and approved the Sketch Plan with conditions. The planning commission also needs to approve the preliminary plan application, and Council needs to approve the zoning for the property. A draft schedule is included in the Council packet with the Town Attorney memo.

It is anticipated that it will take until at least September 3, 2019 to process the subdivision and zoning of the property. The Town is recommending continuing the public hearing to September 3, 2019 allow these processes to occur. The Council should open the public hearing and take comment on the application. Once the public comment has been received and entered into the record, the Council should continue the public hearing until September 3, 2019.

Recommendation:

Following public testimony, a Council member make a motion followed by a second to continue the Slate River Annexation public hearing until September 3, 2019.

MEMORANDUM

TO: Town Council
FROM: Barbara Green, Town Attorney
DATE: April 15, 2019
RE: Slate River Annexation Hearing

Introduction

The Council is opening an annexation hearing for the Slate River Subdivision not less than 30 nor more than 60 days from the March 4 Resolution of Compliance on the annexation petition, as required by the Colorado Annexation Act. As explained in Michael Yerman's staff report in this packet, after receiving public testimony, Council should continue the hearing to September 3, 2019 so that the subdivision and zoning processes can "catch up" with the annexation process. The Crested Butte Municipal Code requires that the Town approve the Annexation Agreement, Annexation Ordinance, the subdivision final plan, the new zone district, the zoning of the annexed property, and the subdivision improvements agreement as part of the annexation process.

Relevant Considerations on the Annexation

Council eventually will be required to make findings that the property is eligible for annexation:

- 1/6 of perimeter is contiguous to Town boundary/community of interest exists,
- that said area is urban or will be urbanized in the near future;
- the area is integrated with or is capable of being integrated with the Town.

Because 100% of the landowners have agreed to the annexation, no other findings are required. The findings will be incorporated in a resolution to be adopted at the conclusion of the continued hearing.

Subdivision and Zoning

Before the end of the annexation proceedings, Council, sitting as planning commission, will approve the preliminary subdivision plan and the final subdivision plan. The Council will adopt an ordinance amending the zoning code to create a new zone district for the six lots that Cypress will develop and will enact an ordinance rezoning all of the lots in the subdivision. The proposed schedule and procedure for those land use proceedings is set forth below.

Proposed Schedule and Procedure for Slate River Annexation

The proposed schedule for the annexation is based on timeframes in the Municipal Code. The schedule may change depending upon the date that the engineering can be completed for the Preliminary Subdivision Plan application.

ATTORNEYS & COUNSELORS AT LAW

2036 E. 17th Avenue
Denver, CO 80206
Phone: 303-322-0366
Fax: 303-316-0377

Barbara J.B. Green
303-355-4405
barbara@sullivangreenseavy.com

3223 Arapahoe Avenue, Suite 300
Boulder, CO 80303
Phone: 303-440-9101
Fax: 303-443-3914

MEMO

April 15, 2019

Re: Slate River Annexation

Page 2

April 15- Council Annexation hearing

Opens Annexation hearing, takes testimony, and continues the hearing to September 3 or other date certain.

Week of June 10 – Preliminary plan application submitted

Staff submits Preliminary Plan application and sends to referral agencies

See Municipal Code Sec. 17-5-40(c).

July 29 (at least 45 days after preliminary plan application is submitted)

Planning Commission hearing and action on preliminary plan application.

See Municipal Code Sec. 17-5-40(i), Sec. 17-5-40(j)(1) and 17-5-40(j)(3)(a).

August 15 – Staff initiates application for Zoning Amendment to create a new zoning district and prepares ordinances to Amend the Zoning Code and Zone the Annexed Property.

See Municipal Code Sec.16-23-30 (BOZAR has already reviewed and made a recommendation on the proposed zoning).

September 3 - Continuation of Annexation Hearing - Council continues to take testimony on the proposed annexation. Likely that Council will continue the hearing once again to October 7.¹

September 16 - Council Meeting

First Reading, Ordinance Amending Zoning Code to create new zone district

First Reading, Subdivision Improvements Agreement

First Reading, Annexation Agreement

First Reading, Annexation Ordinance

First Reading, Ordinance Zoning Property

October 7 - Council combined hearing/continuation of Annexation Hearing.

- Council opens the combined public hearing, and the continuation of the Annexation Hearing, and takes testimony on:
 - proposed annexation;
 - proposed zoning; and
 - proposed subdivision final plan in its capacity as Planning Commission.
- Council adopts a resolution pursuant to Sec. 31-12-110 of the Annexation Act making findings of fact.
- Council adopts by ordinance final Annexation Agreement. (Note: Annexation Agreement must be adopted as an Ordinance because it alters code requirements.)
- Council adopts ordinance annexing the property.
- Council adopts ordinance creating new zoning district.
- Council adopts ordinance zoning the property.
- Council approves by ordinance the subdivision improvements agreement.

¹ If the materials required to finalize the subdivision and zoning are submitted more quickly than anticipated in this schedule, Council may conclude the annexation hearing on September 3 and the first readings of the ordinances will occur in August.

MEMO

April 15, 2019

Re: Slate River Annexation

Page 3

- Convening as the Planning Commission, the Town Council approves the final subdivision plan.

See Municipal Code Sec. 15-1-80

Annexation Agreement

Because the annexation is subject to terms or conditions are to be imposed, those must be imposed before the annexation ordinance is approved. In this case, the Council will adopt an Annexation Agreement by ordinance that incorporates the terms and conditions of the Pre-Annexation Agreement, as amended, that will survive annexation.

SULLIVAN GREEN SEAVY LLC

MEMORANDUM

TO: Crested Butte Town Council
 FROM: Barbara J.B. Green, Town Attorney
 DATE: April 10, 2019
 RE: Cypress Pre-Annexation Agreement and Amendments - combined
 Slate River Subdivision

For your convenience, we have combined into one DRAFT document the Pre-Annexation Agreement, the Amended Pre-Annexation Agreement, and the Second Amended Pre-Annexation Agreement between the Town and Cypress Foothills, LP. Cypress is the owner of the land that will be annexed into the Town as the Slate River Subdivision. The Pre-Annexation Agreement, as amended, is an enforceable contract between the Town and Cypress.

Many of the terms in this combined Pre-Annexation Agreement have already been completed, while others are on-going. Staff can answer questions about any of these terms during the presentation at the annexation hearing. The combined Pre-Annexation Agreement begins on page 2 of this memo.

As we discussed at the planning commission meeting, Council will approve a new Annexation Agreement by ordinance before completion of the entire annexation, subdivision, and zoning process for the Slate River Subdivision. The Town Council must enact the Annexation Agreement by ordinance because it waives or modifies some of the Town Code requirements that would otherwise apply to the Slate River Subdivision. The Annexation Agreement will only reflect those terms that survive the annexation; those terms that reflect conditions that have already been completed will not be included.

ATTORNEYS & COUNSELORS AT LAW

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 Denver, CO 80206
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 Fax: 303-316-0377

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 303-355-4405
barbara@sullivangreenseavy.com

3223 Arapahoe Avenue, Suite 300
 Boulder, CO 80303
 Phone: 303-440-9101
 Fax: 303-443-3914

April 15, 2019

Re: Cypress Pre-Annexation Agreement - combined with amendments

Page 2

Key:

1A, Pre-Annexation Agreement

1B, [Amendment: Blue Text](#)

1C, [Second Amendment: Red Text](#)

PRE-ANNEXATION AGREEMENT - combined DRAFT working copy

THIS PRE-ANNEXATION AGREEMENT (this "**Agreement**") is made and entered into this **7th day of December, 2016**** (the "**Effective Date**"), by and between the **TOWN OF CRESTED BUTTE, COLORADO** (the "**Town**"), a Colorado home rule municipality and **CYPRESS FOOTHILLS, LP** ("**Applicant**"), a Texas limited partnership.

***NOTE: this is the Effective date of the first Amendment- we do not have an Effective Date for the Second Amendment.*

RECITALS:

A. At the Town Council's January 11, 2016 Town Council meeting, the Town Council considered an application (the "**Application**") from Applicant requesting that Applicant be given the right and approval to connect its real property, approximately 44.5 acres in size, as legally described in **Exhibit A** attached hereto (the "**Subject Property**") to the Town's sewer system pursuant to §13-1-280 of the Crested Butte Municipal Code (the "**Code**").

B. Section 13-1-280 of the Code authorizes the Town to provide sewer services outside of the Town's municipal boundaries in certain circumstances; the Subject Property is located within the Town's Waste Water Service Area; and an Intergovernmental Agreement Regarding the Upper East River Valley Areawide 201 Facilities Plan to which the Town is a party contemplates that the Town may provide sewer services to properties within its Waste Water Service Area.

C. As part of the Application, Applicant has agreed, in exchange for the right and approval to connect the Subject Property to the Town's sewer system, to convey title to part of the Subject Property to the Town, subject to certain requirements and conditions, along with Applicant's performance of certain other obligations hereunder.

D. During said Town Council meeting, the Town Council received and considered a Town Staff Report addressing the Application, as well as comment from the public on the Application.

E. Following presentation of the Application by Applicant, Town Staff's presentation and the Town Council's receipt of comments from the public, the Town Council considered the Application and moved to instruct the Town Staff and Town Attorney to prepare a pre-annexation agreement reflecting Applicant's Application and including therein such other terms and condition as are deemed necessary and advisable.

F. The Town and Applicant now desire to memorialize the terms and conditions respecting the Application, the conveyance of title to part of the Subject Property to the Town, the requirements and conditions in connection with such conveyance, and Applicant's performance of certain other obligations in this Agreement pursuant to §13-1-280 of the Code.

AGREEMENT:

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and Applicant agree as follows:

1. **Purpose.** The purpose of this Agreement is to set forth certain, binding terms and conditions upon which the Town and Applicant agree as respects the discrete subject matters addressed herein. By Applicant's performance of its obligations set forth herein, Applicant shall be authorized to connect to the Town's sewer system pursuant to §13-1-280 of the Code.

2. **No Other Vested Right.** No vested right or entitlement of any kind whatsoever are being granted or conveyed by the Town to Applicant other than the contractual rights between the parties arising by virtue of this Agreement.

NOTE: IC ¶ 6: "Any rights created by this Second Amendment are contractual rights. This Second Amendment does not create and shall not be construed to create or convey any vested rights."

3. **Incorporation.** The Application is incorporated herein. In the event of any inconsistency between any term or condition of this Agreement and the Application, this Agreement and such inconsistent term or condition herein shall in all cases prevail and control.

4. **Term.** Applicant shall have **from the Effective Date of this Agreement through February 16, 2021** to: (a) obtain approval from Gunnison County (the "**County**") of its Major Impact Land Use Change Application (the "**County Application**") project (the "**County Project**"), as further described in paragraph 5; (b) obtain approval from the State of Colorado Department of Public Health and Environment ("**CDPHE**") of the voluntary cleanup plan further described in paragraph 6.3; and (c) convey the Town Parcels (as defined below). If after the expiration of 48 months, the Town fails to extend this Agreement by resolutions of the Town Council, this Agreement shall terminate and be of no further force and effect, and the parties shall be relieved of their respective obligations hereunder upon such termination.

[rev by IC, ¶ 8]

5. **Subject Property Development.** Applicant shall develop the portion of the Subject Property east of the Slate River (the "**East Parcel**") by filing the County Application and seeking approval of the County Project from the County pursuant to the County's Land Use Resolution. Applicant shall develop the portion of the Subject Property west of the Slate River (the "**West Parcel**") through the Town's annexation process, including Chapter 15 of the Code, subject to the terms contained herein. The West Parcel and the East Parcel are legally described

on **Exhibit A**. This boundary line between the West Parcel and the East Parcel generally corresponds to the western boundary of the wetlands along the west bank of the Slate River as it flows through the Property, as such wetlands have been delineated by the United States Army Corps of Engineers. The Town's municipal boundary, following annexation of the West Parcel, shall be extended north and east to the boundary between the West Parcel and the East Parcel. Cypress agrees not to erect a gate or fence across Road A at the boundary between the West Parcel and the East Parcel.

5.1 **East Parcel Generally**. The East Parcel shall be developed through the County into a residential neighborhood.

5.2 **West Parcel Generally**. Subject to the terms and conditions contained herein, the majority of the West Parcel shall be conveyed to the Town for use as affordable housing, open space, parks, public and other civic uses. Such potential uses include, without limitation, an emergency services center, preschool, open space, parks, recreational facilities, and affordable housing, at the locations further specified in paragraph 6.4 below. Applicant shall retain a parcel located in the northeast corner of the West Parcel along the Slate River (the "**Applicant Retained Lands**"), as legally described on **Exhibit A**, which shall be developed into six residential lots in connection with the annexation of the West Parcel.

5.3 **Site Plan**. The site plan attached hereto to as **Exhibit B** shows the East Parcel, the West Parcel, "**Road A**," "**Road B**," and the general location of the proposed uses on the West Parcel. **Exhibit B** is preliminary in nature; it is not a final site plan or lot layout.

NOTE: 1C, ¶ 1.1, original Exhibit B is replaced with new Exhibit B.

6. **Subject Property Development Specifics**. Development of the Subject Property shall occur in the following order and pursuant to the following terms and conditions:

6.1 Applicant shall file its County Application with the County as soon as practicable after the Effective Date.

6.1.1 At the time the Applicant submits its Preliminary Plan Application to the County, Applicant shall also submit to the Town its plan for connecting the East Parcel to the Town's sewer system and its plan for constructing Road A on the West Parcel according to *Public Works Criteria for Design and Construction of Earthwork, Sewer and Water* (the "**Town Specifications**").

6.1.2 Upon County approval of the County Project, Applicant will enter into a standard sewer connection agreement with the Town, which agreement (a) shall be substantially similar to the sewer connection agreements the Town has previously used to extend sewer service beyond its municipal boundaries, and (b) shall not be inconsistent with this Agreement (the "**Sewer Connection Agreement**").

6.1.3 The traffic study Applicant prepares as part of its County Application will include the proposed uses on both the East Parcel and the West Parcel.

6.1.4 This Agreement and all of the terms hereof shall be contingent and are hereby expressly conditioned upon Applicant obtaining County approval of the County Project on the East Parcel, together with approval for the construction of Road A across the West Parcel, as reflected on **Exhibit B**, which County approval is satisfactory to Applicant in its sole discretion (the “**Requisite Approval**”). In the event Applicant fails to obtain the Requisite Approval, this Agreement shall be null and void and the parties shall have no further obligations to one another.

6.2 If Applicant obtains the Requisite Approval from the County on the East Parcel, the County-approved final plat of the Subject Property shall reflect the West Parcel as a remainder tract. No activities related to the West Parcel, including but not limited to its planning, annexation, zoning, subdivision and development shall delay Applicant’s construction of road and utility infrastructure (including but not limited to the construction of Road A as reflected on **Exhibit B**) necessary to sell the residential lots approved by the County on the East Parcel; provided that, before Applicant constructs any such road and utility infrastructure across and through the West Parcel to the East Parcel, including Road A, Applicant shall deliver to the Town, and the Town will review, and not unreasonably withhold its approval of, an engineering feasibility study regarding the delivery of wastewater services to the East Parcel, and the parties will enter into the Sewer Connection Agreement. Applicant shall pay the Town’s costs and expenses of reviewing and approving the engineering feasibility study delivered to the Town pursuant to this paragraph 6.2, and such costs and expenses the Town incurs in connection with the preparation and execution of the Sewer Connection Agreement.

6.3 If and when Applicant obtains the Requisite Approval from the County on the East Parcel, Applicant shall promptly enter the portions of the Old Town Landfill located within the West Parcel as reflected on **Exhibit B** into the Colorado Voluntary Cleanup Program (“**VCUP**”) administered by CDPHE. Applicant shall request approval from CDPHE of a cleanup plan proposed by Applicant that meets CDPHE standards necessary to allow a portion of Town Parcel 2 (as defined below) to be used for a preschool, for open use recreational facilities, parks, or playfields, libraries or museums, art centers, schools, essential governmental uses (but not public utility facilities), a bus stop and parking ancillary to the foregoing uses and open space if the Town so elects pursuant to paragraph 6.3.1 below; Town Parcel 3 (as defined below) to be used for the development of affordable housing; and Town Parcel 4 (as defined below) to be used as open space. Applicant’s receipt of a no action determination from CDPHE confirming that Applicant has achieved the cleanup standards described above (the “**No Action Determination**”) is an express condition precedent to Applicant’s obligation to convey the Town Parcels to the Town. In the event Applicant fails to obtain the No Action Determination, this Agreement shall be null and void, and the parties shall have no further obligations to one another.

6.3.1 Upon entry of the portions of the Old Town Landfill located within the West Parcel as reflected on **Exhibit B** into CDPHE’s VCUP, Applicant shall thereafter communicate with the Town at regular, but in no event less than every other two weeks regarding the VCUP process, the cleanup being performed pursuant thereto and the progress thereof. In this regard, Applicant agrees to allow the Town to reasonably communicate with

CDPHE in concert with Applicant regarding the VCUP process and the cleanup being performed. Applicant and the Town agree to work cooperatively regarding the VCUP process and the cleanup, with the Town agreeing to not interfere with the VCUP process and cleanup and Applicant agreeing to share any and all information regarding the VCUP process and cleanup with the Town. With respect to the cleanup of the Old Town Landfill on Town Parcel 2, the Town may elect, at any time and in its sole discretion, to notify Applicant, in writing, that it intends to use the Old Town Landfill on Town Parcel 2 only as open space. Upon receipt of such an election by the Town, Applicant agrees to use all reasonable efforts with CDPHE to amend its VCUP to define the end use of the Old Town Landfill on Town Parcel 2 as open space. Upon approval of this modification by CDPHE, Applicant shall only perform the cleanup work required by CDPHE to use the Old Town Landfill on Town Parcel 2 as open space, and the Town shall thereafter only be entitled to use Town Parcel 2 as open space; provided that, if the Town, at its sole cost and expense, elects, at its sole discretion, to later gain an amendment to the No Action Determination (or the issuance of a new no action determination by CDPHE, as the case may be) for Parcel 2 thus allowing for the other uses contemplated in paragraphs 6.3 and 6.4.1.3 based on the Town achieving the cleanup standards required therefor, the Town shall be entitled to use Parcel 2 for such permitted uses in accordance with CDPHE's no action determination.

6.3.2 In connection with the VCUP, Applicant shall obtain and provide to the Town an estimate of the cost of obtaining the No Action Determination based on the cleanup plan proposed by Applicant and approved by CDPHE (the "**Estimated Cleanup Cost**"), which such estimate shall be stamped by a Colorado licensed professional engineer. Applicant shall initiate and complete the approved cleanup with reasonable diligence, provided that in no event shall Applicant be required to spend more than 125% of the Estimated Cleanup Cost in pursuing the No Action Determination. In the event the actual cleanup cost exceeds the Estimated Cleanup Cost by more than 25%, Applicant and the Town shall consult with one another on how the excess costs of the cleanup shall be paid.

6.4 Upon Applicant's receipt of the No Action Determination, Applicant shall be obligated to convey by quitclaim deed, on an "as is where is" basis, made without representations or warranties as to the physical or environmental conditions (the "**Deed of Conveyance**") "**Town Parcel 1,**" "**Town Parcel 2,**" "**Town Parcel 3,**" and "**Town Parcel 4,**" "**Town Parcel 5,**" and "**Town Parcel 6**" (each a "**Town Parcel**"; together collectively, the "**Town Parcels**") on the West Parcel. **The Town Parcels are generally depicted on the revised Exhibit B attached hereto. The parties are in the process of developing the precise legal descriptions of the Town Parcels.** The Town Parcels are subject to the encumbrances and exceptions set forth on **Exhibit C, which shall be updated with the most recent title work immediately prior to the conveyance of the Town Parcels to the Town.** The Deed of Conveyance also will be subject to the terms and conditions of this Agreement, and expressly set forth the restrictions and obligations contained in paragraphs 6.4.4 and 6.4.5 hereof. Other than any conditions, limitations, restrictions, **and controls contained in the No Action Determination by the State of Colorado Department of Public Health and Environment ("CDPHE")** Applicant agrees not to further encumber the Town Parcels. Applicant's obligation to convey the Town Parcels shall be subject to the following express conditions precedent:

[rev by IC, ¶ 1.2]

6.4.1 Following the Requisite Approval from the County, Applicant shall file an annexation petition pursuant to Chapter 15 of the Town Code seeking to annex the West Parcel. The Town shall, as soon as practicable, initiate and process to completion the master planning, annexation, zoning and subdivision processes for the West Parcel consistent with this Agreement. The Town shall consult with Applicant, and Applicant shall cooperate with, the Town's planning, annexation, zoning and subdivision of the West Parcel, including but not limited to providing the Town all engineering, surveys, and other non-privileged materials related to the Subject Property already in Applicant's possession, custody, or control. However, except as otherwise set forth herein, the completion of these processes for the West Parcel shall be the primary responsibility of, and at the sole cost and expense of, the Town, and all costs to Applicant shall be waived.

6.4.1.1 The Applicant Retained Lands shall be subdivided into no less than six lots. The Applicant Retained Lands are unique and located adjacent to wetlands. As such, the subdivision of the Applicant Retained Lands into six usable lots cannot be done within one of the Town's existing zoning districts. Applicant and the Town desire to allow for the subdivision of the Applicant Retained Lands in a manner that minimizes the impact on the wetlands and maximizes the area and dimensions of the building envelopes on the six lots, as well as the design flexibility of the lot layouts, while maintaining FAR limits consistent with the existing R1D zoning district within Town. Accordingly, the Town will use its best efforts to create a new residential zoning district for the Applicant Retained Lands to achieve the goals set forth in this section.

[rev by IC, ¶ 1.3]

6.4.1.2.A. The Town shall make best efforts to zone Town Parcel 1 as "P." The uses of Town Parcel 1 shall be limited to uses allowed in the "P" zone district, subject to the following: i) Any emergency services center to be located on the Town Parcels shall be located only on Town Parcel 1; ii) No development shall be allowed within the pond wetlands other than as necessary to accommodate the extension of Road B, or for the temporary storage of irrigation water. In the event the Town uses the pond wetlands for the storage of irrigation water, it shall keep the pond full during the irrigation season and maintain the pond in a neat and attractive condition so that it serves as an aesthetic amenity for the Town Parcels and residential lots on the Applicant Retained Lands. In order to maintain the pond, the Town will periodically drain and/or clean the pond in order to keep the pond from gaining unreasonable amounts of sediment. No building constructed on Town Parcel 1 shall exceed 30 feet in height.

[rev by IB, ¶ 9.4; rev by IC, ¶ 1.3]

6.4.1.2.B. The Town shall make best efforts to zone Town Parcel 2 "P" and subject to paragraph 6.3.1 above, Town Parcel 2 shall only be used for open use recreational facilities, parks, or playfields, libraries or museums, art centers, schools, essential governmental uses (but not public facilities), a bus stop, and parking ancillary to the foregoing uses.

[added by IC, ¶ 1.3]

6.4.1.2.C. The Town shall make best efforts to zone Town Parcel 3 as "A-O" "R2A" and/or "R4"; provided however, that if Town Parcel 3 is zoned for residential

uses, such residential uses shall be limited to affordable housing. If Town Parcel 3 is not zoned for residential uses, it shall only be used as open space, parks, and snow storage.

[added by 1C, ¶ 1.3]

6.4.1.2.D Town shall make best efforts to zone Town Parcel 4 as “A-O” or “P”; provided however, that Town Parcel 4 shall be used only for open space, parks, snow storage and/or additional storage for the public works yard. The Town shall install a 6’ chain link fence, with opaque vinyl slats substantially similar to the fence installed by the Town along the southern and western property lines of the service yard to provide screening of storage areas from Pyramid Avenue. No other structures, except for fencing or screening may be installed on Town Parcel 4.

[added by 1C, ¶ 1.3]

6.4.1.2.E The Town shall make best efforts to zone Town Parcel 5 as “A-O” “R2A” and/or “R4”; provided however, that if Town Parcel 5 is zoned for residential uses, such residential uses shall be limited to affordable housing. If Town Parcel 5 is not zoned for residential uses, it shall only be used as open space, parks, and snow storage. Prior to the development of any housing, on Town Parcel 5, the Town shall file a VCUP application with CDPHE and obtain a No Action Determination confirming that the Town has achieved the cleanup levels necessary for the development of affordable housing. The Town shall be responsible for the costs of the VCUP application and the required cleanup of Town Parcel 5.

[added by 1C, ¶ 1.3]

6.4.1.2.F Town Parcel 6 is located within the 100-foot buffer for the high-quality wetlands of the Slate River. Town shall make best efforts to zone Town Parcel 6 as “A-O,” provided however that it shall be used only as protected open space for wildlife, except that the Town shall allow public access through Town Parcel 6 only within the Boat Launch, which is depicted on revised **Exhibit B**. The Town’s access to Town Parcel 6 shall be limited to maintenance of fencing, noxious weed mitigation, or other activities necessary to protect wildlife resources. No structures may be installed on Town Parcel 6 other than signage deemed necessary by the Town to ensure the preservation of the high-quality wetlands and to prevent trespassing.

[added by 1C, ¶ 1.3]

6.4.1.2.G The Deed of Conveyance shall restrict the Town Parcels to the uses set forth in this section 6.4.1.2.

[added by 1C, ¶ 1.3]

NOTE: 6.4.1.3, 6.4.1.4, 6.4.1.5 Deleted in Second Amendment, ¶ 1.3.

6.4.1.6. Prior to or within two years of annexation, Applicant shall construct a river trail along with west bank of the Slate River through the West Parcel as shown on the revised **Exhibit B** (the “River Trail”) in order to provide connectivity to the existing Rec Path south and east of the Subject Property. Concurrently, with the construction of the River Trail, or sooner if Applicant so desires, Applicant will construct fencing between the River Trail and the Town’s Public Works Yard. Applicant shall choose the design, style, and material for

such fencing, provided that the design of the fencing shall conform to the Fence, Berm, and Trail Plans attached hereto as **Exhibit D**.

[rev by IC, ¶ 1.6]

6.4.1.6.A. The Town shall permit the installation of berms, retaining walls, buffers and other mitigation measures at the Applicant's expense on the West Parcel and Town property around the Public Works Yard that is substantially similar to the style, location, and height of the berms, buffers, and other mitigation measures shown on **Exhibit D**, or as otherwise agreed to by the Town Manager. Prior to the installation of such berms, retaining walls, buffers or other mitigation measures the Town and Applicant shall enter into a "Landscape Maintenance Agreement," which shall be assignable by Applicant in Applicant's sole discretion to the Aperture Homeowners Association, Inc (the "HOA"). The Landscape Maintenance Agreement shall describe the Applicant's future responsibilities for assuming responsibility for maintenance and repair of any landscaping and irrigation along the River Trail. The parties agree, and the Landscape Maintenance Agreement shall provide, that (i) landscaping shall be limited to native plant species; (ii) the Town shall have no responsibility to maintain or repair the irrigation or landscaping; (iii) the Applicant or HOA will be responsible for fees related to an irrigation tap; and (iv) the Town will grant an easement to the Applicant or its successor for access to that portion of the Town Public Works Yard located north and east of the fence to be constructed pursuant to this paragraph for the purpose of allowing Applicant to perform its obligations under the Landscape Maintenance Agreement. The Applicant and Town will endeavor to use raw or non-potable water for the irrigation of the landscaping. If water rights for irrigation cannot be obtained by the Town, the Town will permit the Applicant to purchase an irrigation tap to be used for irrigation of plantings along the River Trail on the Town's property, subject to the applicable fees as set forth in the Town Code at the time of purchase. The Landscape Maintenance Agreement is the only remaining condition precedent to Applicant's right to commence construction on the River Trail and the landscaping and fencing associated therewith. Accordingly, once the Applicant and the Town have entered into the Landscape Maintenance Agreement, Applicant shall be entitled to commence construction on the River Trail and the landscaping and fencing associated therewith consistent with the Town's construction season limitations.

[added by IC, ¶ 1.6]

6.4.1.6.B. Maintenance and repair of the River Trail itself shall be the sole responsibility of the Town and shall be maintained for the same duration as the remainder of the Rec Path. Maintenance and repair of the fence between the River Trail and the Town's Public Works Yard shall be responsibility of the Applicant or its successor where such maintenance is attributable to normal wear and tear. The Town shall use its best efforts to avoid damaging the fence between the River Trail and the Town's Public Works Yard.

[added by IC, ¶ 1.6]

6.4.1.6.C Applicant and the Town shall enter into a "Boater Access Easement Agreement" concurrently with the annexation and conveyance of the Town Parcels memorializing such access in perpetuity. This easement agreement will address the terms and conditions for boater access to the Slate River, and as it flows through the East Parcel, as well as associated uses of the Boat Launch, including but not necessarily limited to, other permissible

recreational uses of the Boat Launch and vehicular access to and from the Boat Launch. The areas of the “Boat Launch” and “Boater Access Easement” are depicted on revised **Exhibit B** to this Second Amendment. The public shall access the Boater Access Easement exclusively from the Boat Launch.

[added by 1C, ¶ 1.6]

6.4.1.6.D Applicant reserves the right, in its sole discretion, and at its sole expense, to require that the Town install odor controls on the wastewater treatment plant, as contemplated by the Public Works Facility Master Plan prepared by JVA, Incorporated, or as otherwise agreed to by the parties. Such odor control mitigation work shall be performed by the Town and/or its contractors.

[added by 1C, ¶ 1.6]

6.4.1.7 The annexation and development of the West Parcel is unique and is unlikely to fit neatly into each and every one of the more formulaic requirements of the Town’s annexation and subdivision provisions. The Town Code affords the Town Council the flexibility necessary to annex and develop the West Parcel consistent with this Agreement and in the best interest of the Town’s citizens. *See, e.g.,* § 15-1-60(a)(10) & (b)(2)(d); § 15-1-70(a)(3) & (b)(1); § 15-1-80(b)(7) & (b)(14).

6.4.1.8 Prior to the conveyance of the Town Parcels **to the Town, and following reasonable diligence**, the Town shall release Applicant, its partners, affiliates, lenders, agents, employees, and all predecessor owners of the Town Parcels in connection with the transfer of the Town Parcels, including all portions of the Old Town Landfill located on Town Parcel 2, Town Parcel 3, **Town Parcel 4, and Town Parcel 5. The release** shall include a release of all claims and a covenant not to sue with respect to any site conditions and or any responsibilities or liabilities, including without limitations any environmental liabilities related to the Town Parcels. The Town shall record **such a release** against Town Parcel 2, Town Parcel 3, **Town Parcel 4, and Town Parcel 5 which shall be a condition of any transfer to any future purchaser of any portion of these Town Parcels**, and to which any future purchaser of any portion of such Town Parcels must agree.

[rev by 1C, ¶ 1.7]

6.4.2 The Town Parcels shall be conveyed by Applicant to the Town once Applicant has obtained the No Further Action determination from CDPHE and the Town Parcels have been legally subdivided, approved, annexed, and zoned.

6.4.3 Town Parcel 1, Town Parcel 2, Town Parcel 4, **Town Parcel 5, and Town Parcel 6** shall be conveyed to the Town without any financial consideration. Town Parcel 3 shall be conveyed to the Town **in exchange** for \$350,000.00, which amount is a portion of the anticipated cost of obtaining the No Action Determination.

[rev by 1B, ¶ 9.1 and 1C, ¶ 1.5]

6.4.4 The Deed of Conveyance shall require the Town to refrain from any uses of the Town Parcels affected by the Old Town Landfill that may disturb any cap associated with the approved cleanup, and abide by any other controls and conditions contained

in the No Action Determination. However, the Town may apply for a VCUP for Affordable Housing on Town Parcel 5 which VCUP shall not cause any interference with the No Action Determination. The Deed of Conveyance shall also include: (i) the right of Applicant to enforce, through injunctive relief, the terms of this Agreement and the controls and conditions contained in the No Action Determination; and (ii) the obligation of the Town to obtain Applicant's consent to any amendment or modification to the terms of this Agreement and the controls and conditions contained in the No Action Determination.

[rev by 1B, ¶ 9.2 and 1C, ¶ 1.8]

NOTE: 6.4.5 deleted in Second Amendment, ¶ 1.9.

6.4.6 In the event that the Town desires to use Town Parcel 4 for any of the uses described in paragraph 6.4.1.5(b) or (c)¹ above after the expiration of the Land Conservation Covenant, it shall be the Town's sole responsibility to undertake whatever other remediation of the applicable portion of the Old Town Landfill is required by CDPHE to modify the No Action Determination as needed to allow for the Town's proposed uses of Town Parcel 4, provided however, that in the event the Town uses a portion of Town Parcel 4 for affordable housing consistent with paragraph 6.4.1.5(c) above, it must, at a minimum, meet the same cleanup standards Applicant was required to meet for the cleanup of Town Parcel 3.

6.4.7 Applicant represents and warrants that it has provided to the Town all record and off record information within its possession regarding the Town Parcels, including, without limitation, any and all environmental reports, tests and studies thereof.

6.4.8 The maximum floor area of all buildings on a lot on the East Parcel shall not exceed 5,750 square feet in the aggregate. The main residence shall not exceed 5,000 square feet, and the sum total of all detached accessory buildings shall not exceed 750 square feet.

6.4.9 The Town shall cooperate with Applicant to ensure compatible development and appropriate buffering between development of the East Parcel and the Applicant Retained Lands, on the one hand, and the Town Parcels and any Town properties, on the other hand. Development of the Town Parcels shall not compete from a market perspective with Applicant's residential development on the East Parcel and the Applicant Retained Lands and the Town and Applicant shall cooperate with respect to the placement of Applicant's signage at agreed upon locations on the West parcels. Immediately after Applicant obtains the Requisite Approval, the Town shall reasonably permit the installation of (a) temporary signage along Gothic Road (in a form reasonably acceptable to Applicant and the Town); and (b) buffers, and other mitigation measures at Applicant's expense on the West Parcel and on Town property around the Town Public Works Yard as contemplated in the Town Public Works facility master plan, or as otherwise agreed to by the Town Manager. Applicant's temporary signage along Gothic Road shall ultimately be replaced by permanent signage along Gothic Road (in a form reasonably acceptable to Applicant and the Town) pointing the way to Applicant's subdivision. Applicant shall have the right to erect permanent "entry feature" signage on the bridge across the Slate River, all property to be retained by Applicant adjacent thereto, as well as any additional signage Applicant desires on the East Parcel.

¹ 6.4.1.5 Deleted in Second Amendment; appears references should be to 6.4.1.2.B and C.

[rev. by 1B, ¶ 9.6]

6.4.10 Lot lines on the East Parcel may extend to wetland boundaries, provided however that the Applicant shall observe a 50-foot building setback from all high quality wetlands on the East Parcel, and Applicant shall observe a 25-foot building setback from all low-quality wetlands on the East Parcel.

[rev. by 1B, ¶ 9.8]

6.4.11 Applicant shall be responsible for the construction of Road A and Road B on the West Parcel, and all of the roads on the East Parcel at its sole cost expense. Road A and Road B on the West Parcel shall be constructed in accordance with the Town Specifications. Road A and Road B on the West Parcel shall be dedicated to the Town and maintained by the Town following acceptance thereof, subject to a two-year warranty by Applicant. The Town shall convey adequate right-of-ways for the benefit of Applicant and its successors and assigns for Road A and Road B on and through the West Parcel. All roads on the West Parcel shall be public. All roads on the East Parcel shall be private.

6.4.12 The right of way for the extension of Eighth Street north from Butte Avenue to Road A would cross Town Property (where the Town Public Works Yard is currently located) and the Subject Property. It is possible that there are portions of the Old Town Landfill within this right of way, on the Town's property, on Applicant's property, or both. If portions of the Old Town Landfill are located within the Eighth Street right of way on the Town's property, then the Town may elect to undertake whatever remediation is required by CDPHE to allow for the construction of Eighth Street through the Town's property to the Subject Property. If the Town elects to perform such remediation, or if there are not portions of the Old Town Landfill located on the Town property within the Eighth Street right of way, then in the event there are portions of the Old Town Landfill located within the Eighth Street right of way on Applicant's property, Applicant shall be responsible for undertaking whatever remediation is required by CDPHE to allow for the construction of Eighth Street through the Subject Property to the intersection between Eighth Street and Road A. Once the Town and Applicant have obtained any necessary approvals from CDPHE allowing for the construction of Eighth Street through their respective properties, or if CDPHE approval is not required, then, and only then, will Applicant be responsible for the performance of the construction of Eighth Street and associated utility infrastructure work. However, Applicant can, in its sole discretion, choose to perform all of the necessary cleanup of landfill materials itself, on both the Subject Property and Town property, but in order to perform any cleanup of landfill materials on the Town property, Applicant will be required to enter into an indemnification agreement that is satisfactory to the Town. If Applicant performs the construction of Eighth Street and associated utility infrastructure work pursuant to this paragraph 6.4.12, then such construction and associated utility infrastructure work shall be performed at Applicant's cost and expense. The Town shall provide access to Town property as necessary for all purposes related to the construction of Eighth Street and associated utility infrastructure. The Town shall provide Applicant with a release of all claims and covenant not to sue with respect to any site conditions and any responsibilities or liabilities, including without limitation any environmental liabilities, related to the Eighth Street construction and any associated utility infrastructure work. Until the Town and Applicant are able to achieve the construction of Eighth Street and associated utility

infrastructure, the Town shall grant an easement for non-motorized pedestrian access to the Subject Property from Butte Avenue across Town property to the north (where the Town Public Works Yard is currently located) for the benefit of the Subject Property, and allow Applicant to construct a trail at Applicant's expense, and at a location and pursuant to terms approved by the Town, in order to accommodate said easement. Once the parties have agreed upon the construction of Eighth Street pursuant to Section 6.4.12, Applicant shall enter into a standard development improvements agreement with the Town that is (a) substantially similar to the development improvement agreements the Town has previously used, and (b) not inconsistent with this Amendment. All infrastructure constructed pursuant to such development improvements agreement shall be constructed in accordance with the Town Specifications, dedicated to the Town, and maintained by the Town following acceptance thereof, subject to a two-year warranty by the Applicant.

[rev. by 1B, ¶9.3]

6.4.13 Applicant shall be responsible for the installation of all utility infrastructure necessary to connect the residential lots on the East Parcel to the Town's sewer system pursuant to and in accordance with the terms and conditions of the Sewer Connection Agreement. All wastewater infrastructure shall be constructed in accordance with the Town Specifications, dedicated to the Town, and maintained by the Town following acceptance thereof, subject to a two-year warranty by Applicant.

6.4.14 Applicant shall be responsible for the installation of all utility infrastructure necessary to connect the Town's water and wastewater systems from the Town Parcels to the residential lots on the Applicant Retained Lands pursuant to and in accordance with the terms and conditions of a standard development improvements agreement to be executed upon the annexation of the West Parcel pursuant to paragraph 6.4.1 above that is (a) substantially similar to the development improvement agreements the Town has previously used, and (b) not inconsistent with this Agreement. Such infrastructure shall be constructed in accordance with the Town Specifications, dedicated to the Town, and maintained by the Town following acceptance thereof, subject to a two-year warranty by Applicant.

6.4.15 On the written request of the Town, Applicant shall permit and shall not unreasonably condition or delay an adjacent property owner's request to connect to the Town's sewer system through the East Parcel and the Applicant Retained lands; provided that any such connection shall not result in an increase in cost or expense to Applicant, but rather shall be borne by such adjacent property owner benefiting from such connection, with the terms and conditions and easements necessary for such future connections to be negotiated between Applicant and such third parties. Such terms and conditions shall include compliance with all applicable Town requirements, including, without limitation, §13-1-280 of the Code and the Town Specifications.

6.4.16 Applicant shall be responsible to pay availability fees for water and sewer service in accordance with Section 13-1-160 of the Code (the "Availability Fees"). Applicant shall pay all Availability Fees for the East Parcel and Applicant Retained Lands upon the Town's acceptance of all wastewater infrastructure.

[rev. by 1B, ¶9.7]

6.4.17 Pursuant to Section 13-1-280 of the Code, tap fees for water and sewer service for residential lots on the East Parcel will be one and one half times (1.5x) per EQR of the in-Town rate (the "**Tap Fees**") as of the date of building permit application for such lot seeking service. The one half times (1.5X) multiplier will not be subject to change.
[rev. by 1B, ¶9.7]

6.4.18 Monthly service fees for residential lots on the East Parcel (the "**Service Fees** ") will be two times (2x) per EQR of the in-Town rate pursuant to Section 13-01-280. The (2x) per EQR multiplier will not be subject to change, however, such monthly fees will be amended by the Town from time to time.
[rev. by 1B, ¶9.7]

6.4.19 Applicant acknowledges that at all times, all road and related infrastructure maintenance and snow plowing on the East Parcel shall be the sole responsibility of Applicant at its cost and expense. Applicant shall provide, however, easements and associated access for maintenance of all sewer infrastructure on the East Parcel which shall be performed in accordance with the Code. Applicant shall be responsible for all other road and utility infrastructure maintenance and snow plowing on the West Parcel, at its sole cost and expense, until the completion, acceptance, and dedication of such infrastructure.

7. **Right and Authority to Connect to Water System; Requirements.** By Applicant's performance of its obligations set forth herein, Applicant shall have the right and authority to connect the East Parcel to the Town's water system pursuant to §13-1-280 of the Code subject to the terms and conditions hereof. As more specifically set forth in Section 7.6 below, Applicant shall have the right to use treated water from the Town for all indoor uses on the East Parcel, including all indoor uses within up to twenty-three (23) primary residences, up to twenty-three (23) detached accessory dwellings or buildings, and an owners' complex and associated amenities to be owned by the homeowners association for the East Parcel, irrigation and landscaping of all of the 0.46 acre park to be owned by the homeowners association for the East Parcel, irrigation and landscaping of up to 2,500 square feet per residential lot on the East Parcel, and all required fire flows. Upon Applicant's receipt of the Requisite Approval, Applicant and the Town will enter into a water services agreement (the "**Water Services Agreement**") that will be consistent with the terms and conditions of the Agreement and this Amendment, and that will not impose any additional system development charges, tap fees, assessments, or costs on the Applicant under Chapter 13 of the Code, other than as specified in the Agreement or this Amendment. The Water Services Agreement shall be recorded in the official real property records of the office of the Clerk and Recorder of Gunnison County, Colorado. Applicant's right and authority to connect the East Parcel to the Town's water system shall be conditioned upon compliance with the terms and conditions of the Agreement and this Amendment, including but not limited to the following:

7.1 **Water Rights Dedication.** In exchange for the Town giving Applicant the right and authority to connect the Subject Property to the Town's water system pursuant to §13-1-280 of the Code, upon Applicant's receipt of the Requisite Approval, and immediately after the execution of the Sewer Connection Agreement and Water Services Agreement, Applicant shall

convey to the Town (by Special Warranty Deed) interests in the McCormick Ditch in the amounts and priorities described on the attached **Exhibit “A”** (the “**McCormick Ditch Water Rights**”), subject to Applicant’s reservation of rights as described below. Applicant provides no representations or warranties of any kind regarding the amount of historical consumptive use water or actual available flow rates associated with the McCormick Ditch Water Rights as discussed further in Section 7.2 below, or the amount of water that may be available to change to municipal use. The parties understand the McCormick Ditch Water Rights are currently owned by Verzuh Ranch, Inc., and that Applicant will need to acquire title to the McCormick Ditch Water Rights from Verzuh Ranch, Inc., in order to satisfy the above water rights dedication to the Town. The parties also understand the McCormick Ditch Water Rights were or are used for irrigation on what is known as (or formerly known as) the McCormick Ranch outside and east of the Town boundaries (the “McCormick Ranch”). The Town seeks to change the McCormick Ditch Water Rights in certain amounts, as discussed below, for uses within the Town water system and for Town purposes; and seeks to file a water court case for such changes in December 2016. Therefore, on or before December 15th, 2016, Applicant shall acquire authorization and consent from Verzuh Ranch, Inc., in writing and in a form acceptable to Town, which allows the Town’s use of the McCormick Ditch Water Rights in the “Change Case” as defined below (“Verzuh Authorization”). Such Verzuh Authorization will provide that the Town has Verzuh Ranch Inc.’s irrevocable authority to file the Change Case with Town as the applicant, and prosecute such application to completion so long as this Amendment is still in effect. Such Verzuh Authorization shall also include an agreement by Verzuh Ranch, Inc. to: (1) cooperate, at no expense to Verzuh Ranch, Inc., with the Change Case; (2) not file a statement of opposition or other opposition to the Change Case; and (3) provide information in its possession, custody, and control as to the use of said McCormick Ditch Water Rights, including internal diversion records, irrigation records, aerial photographs, affidavits, and other available information concerning the historic use of the McCormick Ditch Water Rights. In the event Applicant does not obtain the Verzuh Authorization by December 15th, 2016, this Amendment shall automatically terminate and be of no further force and effect. In the event the Agreement or this Amendment terminates for any reason and the Applicant’s right to connect to the Town’s water system becomes null and void, Town will abandon the Change Case and convey or grant any interests, contractual or otherwise, in the McCormick Ditch Water Rights back to Verzuh Ranch, Inc.

7.2 Water Court Case. No later than three months after the Verzuh Authorization or conveyance of the McCormick Ditch Water Rights to the Town, whichever comes first, the Town will file a change case in Water Court (the “**Change Case**”) to: (a) change the type of uses, places of use and decree an alternate point of diversion at the Town’s municipal intake for up to 9 (nine) acre feet of historic consumptive use (the “**HCU**”) credit and associated diversion rate amount under the senior Priority 164 of the McCormick Ditch Water Rights as used on the McCormick Ranch; (b) potentially include up to 9 (nine) acre feet of HCU from the senior Priority 164 of the McCormick Ditch Water Rights in a plan for augmentation and/or exchange for Town purposes; (c) quantify the total acre feet of HCU credit associated with the existing and/or potential dry-up of historically irrigated acres under the senior Priority 164 of the McCormick Ditch Water Rights as used on the McCormick Ranch; and (d) change that portion of the senior Priority 164 of the McCormick Ditch Water Rights to be allocated to Applicant (see Section 7.3, below); Applicant shall provide a description of such change for inclusion in the

Town's water court application no later than December 15th, 2016. The Town will take all reasonable and cost-effective steps to maximize the amount of HCU credit quantified in the Change Case, and Applicant will cooperate with those efforts. Applicant shall not file a statement of opposition or otherwise oppose the Change Case; except that Applicant may intervene at any time if Applicant reasonably believes its reserved rights pursuant to Section 7.3 below are being adversely affected or that this Agreement is or will be violated as it relates to the McCormick Ditch Water Rights under this Section 7. In addition, the Town agrees to keep Applicant reasonably apprised of the status of the Change Case and provide copies to Applicant of all pleadings and other documents filed in the Change Case. Applicant does not warranty or make any representation as to the amount of HCU credit, if any, the Town may be able to quantify and decree in the Change Case; and similarly, the Town provides no representations or warranties of any kind regarding the amount of historical consumptive use water that may be quantified or obtained in the Change Case, or the amount of historical consumptive use water that may be available to allocate to Applicant for its purposes. Applicant shall execute any documents, affidavits or covenants required by the Town, the water court, and/or the Division of Water Resources to memorialize, delineate, map and effectuate the dry up of any portions of the McCormick Ranch required to generate and quantify the HCU credit available for transfer, provided that Applicant is the appropriate party to execute such documents, affidavits, or covenants, and provided further that such documents affidavits, or covenants do not increase Applicant's obligations under this Amendment or result in any expense to Applicant.

7.3 Applicant's Reservation of Rights. Following entry of a final, non-appealable water court decree in the Change Case, the Town shall allocate the average annual HCU credit quantified by the court as follows: the Town shall receive the first six (6) acre feet of decreed HCU credit; Applicant shall receive the next six (6) acre feet of HCU credit; the Town and Applicant shall share equally in the next six (6) acre feet, i.e., any HCU credit from 12-18 acre feet shall be split 50/50; and Applicant shall receive any HCU credit in excess of 18 acre feet. Each party shall receive a proportionate share of the flow rates associated with the McCormick Ditch Water Rights commensurate with its HCU credit allocation. If the quantity of water physically and legally available for diversion at any given time under the McCormick Ditch Water Rights is less than 100%, the flow rates associated with the McCormick Ditch Water Rights shall be administered in strict priority, and the flow rates associated with the senior Priority 164 shall be operated between the parties commensurate with the allocation method for the decreed HCU credit described above, i.e., the Town shall receive the flow rate associated with its 6 acre feet first, Applicant shall receive the flow rate associated with its 6 acre feet second, etc.² Nothing in this paragraph shall prevent either party from taking any portion of the available flow that is not being taken by the other party at that point in time. Each party will be allocated, and responsible for complying with, a proportionate share of any diversion limits, return flow obligations, or other related terms and conditions of the final decree. Each party shall receive the exclusive right and entitlement to claim and enforce dry-up on the acres associated

² For example, if the Court decrees 9 acre feet of HCU credit under Priority 164 of the McCormick Ditch (decreed for 0.64 c.f.s.), the Town will receive 6 acre feet and a corresponding 66.5% of the flow rate, or 0.426 c.f.s.; and Applicant will receive 3 acre feet and a corresponding 33.5% of the flow rate, or 0.214 c.f.s. If the flow rate in the Ditch is only 0.5 c.f.s., then Town shall be entitled to the first 0.426 c.f.s., and Applicant shall be entitled to the remainder 0.074 c.f.s., until the Town has diverted a volume of water that corresponds with 6 acre-feet of consumptive use credit.

with its HCU credit allocation. Existing dry-up acres shall be assigned to the first HCU credits, and future dry-up acres shall be assigned to the later HCU credits. The Town shall cause a map to be prepared delineating the locations of the dry-up areas assigned to the Town and Applicant, in a manner that is consistent with this paragraph. Once the Change Case is completed and the allocation is made, the Town shall promptly convey Applicant's allocated interest in the McCormick Ditch Water Rights and HCU credits by Special Warranty Deed, together with all appurtenances to Applicant, or, at Applicant's written direction, to Applicant's designee or assign. Thereafter, Applicant agrees to not "call" for its McCormick Ditch Water Rights so as to prevent or curtail the Town from exercising its changed or exchanged McCormick Ditch interest at the Town municipal intake on Coal Creek. This restriction shall bind and run with Applicant's interest in the McCormick Ditch Water Rights. The Town shall not file a statement of opposition or otherwise oppose any future water court case changing the Applicant's interest in the McCormick Ditch Water Rights; except that Town may intervene at any time if Town reasonably believes its interests in the McCormick Ditch Water Rights are being adversely affected or that this Agreement is or will be violated as it relates to the McCormick Ditch Water Rights under this Section 7. In addition, in the event of such future change case involving the McCormick Ditch Water Rights, the Applicant agrees to keep the Town reasonably apprised of the status of the water court case and provide copies to the Town of all pleadings and other documents filed in the case.

7.4 Water Court Case Costs. Applicant and the Town agree to split the first \$50,000.00 of costs and expenses incurred by the Town in pursuing the Change Case. Applicant shall reimburse to Town, within 30 days of invoicing, all fees, costs and expenses to file and prosecute the Change Case up to a maximum amount not to exceed \$25,000.00.

7.5 Water Infrastructure. At the time Applicant submits its preliminary plan as part of the County Application, Applicant shall also submit to the Town its plan for connecting the East Parcel to the Town's water system and its plan for constructing Road A on the West Parcel according to the Town Specifications. Applicant shall be responsible for the installation of all utility infrastructure necessary to connect the Town's water systems to the East Parcel pursuant to and in accordance with the terms and conditions of a standard development improvements agreement to be executed by Applicant upon receipt of the Requisite Approval that is (a) substantially similar to the development improvement agreements the Town has previously used, and (b) not inconsistent with this Amendment. Such infrastructure shall be constructed in accordance with the Town Specifications, dedicated to the Town, and maintained by the Town following acceptance thereof, subject to a two-year warranty by the Applicant. Applicant shall pay the cost and expense of the Town's review and acceptance of the utility infrastructure.

7.6 Treated Water Service. The Town will provide treated water service to the East Parcel for all uses approved by Gunnison County in the Requisite Approval, including all indoor uses on the East Parcel, such indoor uses to include use within up to twenty-three (23) homes of 5,000 square feet, up to twenty-three (23) detached accessory dwellings or buildings of 750 square feet or less, and an owners' complex and associated amenities to be owned by the homeowners association for the East Parcel; irrigation and landscaping of all of the 0.46 acre park to be owned by the homeowners association for the East Parcel; irrigation and landscaping

of up to 2,500 square feet per residential lot on the East Parcel (such allowance not to be combined or cumulated); and all required fire flows. Applicant understands and agrees that the Town will be the sole provider of treated water to the East Parcel and that Town shall not be obligated to provide more than the total number of equivalent residential units (EQRs) represented by such above development, as converted to gross maximum and average water demands and depletions using Town water engineering assumptions and standards. The treated water to be delivered by the Town under the terms of this Amendment may be used for all lawful in-building residential purposes and normal and reasonable outside irrigation of trees, lawns and gardens, such outdoor irrigation or landscaping area not to exceed irrigation of the 0.46 acre park to be owned by the homeowners association for the East Parcel, plus an additional 2,500 square feet per residential lot with treated water; such treated water further subject to all Town water-related ordinances and policies now or then in effect, and which are equally applicable to residents of Town. The recording of this Amendment and/or the Water Services Agreement will constitute a covenant running with the land restricting the use of treated water delivered hereunder to the terms and conditions contained in this Amendment and/or Water Services Agreement, and to all Town ordinances and policies now or in the future in effect, which are equally applicable to residents of Town, and the limitation to no more than the irrigation of the 0.46 acre park to be owned by the homeowners association for the East Parcel, plus an additional 2,500 square feet of lawn and garden irrigation per residential lot by drip or sprinkler irrigation means. The treated water to be delivered by the Town under the terms of this Amendment shall be used consistent with all Town water-related ordinances and policies now or then in effect, provided that such water-related ordinances and policies are equally applicable to all residents of the Town.

7.7 Use of Raw Water for Outside Uses. Applicant understands and agrees that the Town will not provide any raw water for irrigation or other uses. Nothing in this Amendment or the Agreement will prevent Applicant from seeking separate, additional raw water if it desires. Any and all raw water use on the Subject Property will be in accordance with Colorado water law governing the appropriation and use of water, provided, however that if Applicant seeks to change or develop any additional water rights or supplies, the Town may take such actions as it deems appropriate to protect its own water rights and supplies so long as any such actions are consistent with the Town's obligations under the Agreement and this Amendment. There will be no cross-connections of the Applicant's raw water supplies or infrastructure to the Town's treated water system. All backflow prevention devices shall be installed and inspected according to Town Code. Applicant will demonstrate in its plans, to the satisfaction of the Town, and be responsible for, the proper installation, maintenance and testing of required backflow prevention devices and for assuring that unprotected cross-connections, structural or sanitary hazards do not exist on the East Parcel. Applicant's water systems (for both treated and raw water) will be available for inspection as provided in the Code, to authorized Town Representatives to determine whether cross-connections or other structural or sanitary hazards exist, and to confirm that no treated municipal water is being used for outdoor irrigation or aesthetic purposes other than as provided herein.

7.8 Tap Fees, System Development Fees, Availability of Service Fee. As further set forth in Section 9.7 below, all tap fees, system development fees, availability fees and service charges, now or later in effect, and equally applicable to residents of Town, for treated

water service will be assessed and determined utilizing the Town's applicable fees and rates at the time of application for a building permit for the structure for which service is sought. No water service will be provided to any structure absent payment of the appropriate fee and charges. Such fees and charges shall be paid to the Town at the time of building permit submittal to the County. The Town Public Works Department will determine scheduling of all physical taps or connections to the main lines, which scheduling will be done in accordance with then applicable Code, rules, regulations, standards and policies of the Town. Applicant understands and agrees it obligation to pay to the Town an availability fee according to Code 13-1-160 for each building site during the period of time in which the building sites are not connected to the Town water and sewer lines. The availability of service fee charges will commence and begin to accrue at the time of acceptance of water system infrastructure. Applicant understands that the Town is under no obligation to reimburse these or any applicable fees.

7.9 Limitations on Provision of Water Service. This Amendment is for the supply of treated water service as herein described and no expansion of uses, connections, or water service beyond those set forth herein is in any way authorized by this Amendment. The Town is not by this Amendment representing its ability to provide treated water service to any use or structure except as provided herein. Applicant understands and agrees that the Town's water supply is dependent upon sources from which the supply is variable in quantity and quality and beyond the Town's reasonable control; therefore, no liability will attach to the Town under this Agreement on account of any failure to accurately anticipate availability of water supply or because of an actual failure of water supply due to inadequate runoff, poor quality, failure of infrastructure, drought, or other occurrence beyond the Town's reasonable control. The Town agrees that it shall not treat actual or potential water users on the East Parcel any differently than it treats actual or potential water users within the Town's municipal boundaries, except as set forth herein.

1B12 Water and Sewer Service Subject to the Town's Charter, Codes, Rules, Regulations and Policies. All water and sewer service provided by the Town to Applicant and its assigns or successors in interest, in whole or in part, will be subject to, all provisions of the Code and the rules, policies or regulations of the Town now in effect or as may be hereafter adopted as to provision of water and sewer service by the Town, provided that all such provisions of the Code and such rules, policies and regulations are equally applicable to all residents of the Town.

1B10 Service Lines. The installation, maintenance, repair and upgrade of all service lines (as defined in Section 13-1-40 of the Code), including that portion which traverses public property, shall be the sole and absolute responsibility of Applicant and the individual property owners of the Subject Property, at the same's sole cost and expense, except that water meters may only be maintained, repaired or replaced by the Town according to Section 13-1-220 of the Code.

1B11 Easements. Applicant shall obtain at its own cost and expense and shall convey in perpetuity to the Town as-built, non-exclusive easements for all water mains, sewer mains, lines, tanks, pump houses and other water and sewer facilities constructed under this Amendment and the Agreement located on or adjacent to the Subject Property, along with all necessary access

easements for maintenance, upgrade and repair purposes. Unless otherwise approved by the Town, all such easements will be a maximum of thirty feet (30') in width unless a maximum width of thirty-five feet (35') is necessary to accommodate the parallel installation of water and sewer lines. Such easements shall be shown on the Final Plat of the subdivision of the East Parcel if and when approved by Gunnison County and where appropriate, in the reasonable determination of the Town, memorialized in separate grants of easements instruments.

1C, 2 Easement Agreement for Cemetery Water Line. Concurrently with the execution of this Second Amendment, Applicant and the Town shall enter into an Easement Agreement for Cemetery Water Line substantially in the form attached hereto as **Exhibit E**.

1C, 1.4 Application to County for Building Permits. The Applicant shall be permitted to apply to the County for building permits for primary residences and accessory dwellings on the East Parcel once the water service serving the East Parcel has been completed by the Applicant and accepted by the Town in accordance with the Development Improvements Agreement for Slate River Development dated August 8, 2017 and recorded in the official real property records of the Office of the Clerk and Recorder of Gunnison County, Colorado on August 31, 2016 at Reception No. 648730 (the Town "DIA"). However, prior to any occupancy including temporary occupancy on the East Parcel, sewer service improvements serving the East Parcel must be completed by the Applicant and accepted by the Town in accordance with the Town DIA. At the time that any person submits a building permit application to the County for construction on a lot in the East Parcel, it shall submit architectural plans to the Town. The Town shall review such plans expeditiously only to: (i) confirm that the plans are consistent with the size limitations contained in section 6.4.8 of the Agreement; (ii) confirm compliance with the Town Code's provisions regarding solid-fuel burning devices pursuant to section 8.3 of the Amendment; and (iii) determine the amount of water and sewer Tap Fees owed to the Town pursuant to section 9.7 of the Amendment. The Town shall promptly provide notice, in writing, to the building permit applicant of the amount of water and sewer Tap Fees owed by the applicant and of compliance or noncompliance with (i) and (ii) of this section. Once the applicant has paid the Tap Fees and is in compliance with (i) and (ii) of this section, the Town shall promptly provide notice, in writing, to the applicant and Gunnison County that the Tap Fees have been paid in full and that the applicant has complied with (i) and (ii) of this section.

1B, 8 Additional Requirements in Exchange for Right and Authority to Connect. In exchange for granting Applicant the right and authority to connect to the Town's water system, Applicant shall comply with the following additional requirements:

1B, 8.1 Irrigation of Town Parcels. Upon and in coordination with the construction of Eighth Street as contemplated in Section 6.4.12 of the Agreement, Applicant shall cause the delivery of raw water from the McCormick Ditch to the Town Parcels via underground pipe, appurtenances and related facilities (the "**Town Parcel Irrigation Facilities**") to be constructed by either Applicant or the Town pursuant to the Agreement. The design, location and construction of the Town Parcel Irrigation Facilities shall be in accordance with the Town Specifications and shall be approved in advance by the Town, such approval to not be unreasonably withheld. Such Town Parcel Irrigation Facilities shall be designed and constructed at Applicant's sole cost and expense. Following dedication to and acceptance thereof by the

Town, the Town shall maintain the same provided that Applicant shall provide a two-year warranty on the materials and workmanship of such Town Parcel Irrigation Facilities. Such additional terms and conditions reflecting the Town Parcel Irrigation Facilities' design, installation and construction shall be included in the Sewer Connection Agreement and the development improvements agreement contemplated in Sections 6.1.2 and 6.4.14 of the Agreement, provided that such additional terms and conditions (a) shall be substantially similar to the terms and conditions of sewer connection agreements and development improvement agreements the Town has previously used and (b) shall not be inconsistent with this Amendment.

1B, 8.2 **Voluntary Declaration of Covenant**. Upon Applicant's receipt of the Requisite Approval, Applicant shall record a declaration of covenant (the "**Declaration of Covenant**") encumbering all lots located on the East Parcel. The Declaration of Covenant shall be in substantially the same form as **Exhibit "B"** attached hereto.

1B, 8.3 **Wood Burning Stove Requirements**. All solid-fuel burning devices as defined in Chapter 18, Article 8 of the Code located on the East Parcel shall conform to the requirements of such Article 8, as amended and modified from time to time. The Town shall have the right to inspect compliance with and enforce such requirements in accordance with the Code.

1B, 8.4 **Grant Applications**. Applicant grants the Town the right to, and shall use all reasonable good faith efforts to assist the Town in, applying for grant funding for and allowing the design of, affordable housing on Town Parcel 3 and an emergency services center on Town Parcel 1. Applicant agrees to party with the Town and provide consent if necessary on any grant applications. Applicant agrees to allow the Town and associated parties to prepare site specific designs for new facilities and structures. Applicant's obligations under this Section 8.4 shall not require Applicant to incur any cost or expense and shall not be inconsistent with any other provision of this Amendment.

Costs and Expenses. Except where the responsibility is otherwise assigned to a party in, all costs and expenses associated with a particular performance item shall be the sole and absolute responsibility of Applicant.

No Interference with Gunnison County's Jurisdiction. For purposes of clarity, final approval of the subdivision and development of the East Parcel rests with Gunnison County, Colorado. The parties do not intend, and are not, by entering into this Agreement seeking to usurp or interfere in any way with the County's jurisdiction over the subdivision and development of the East Parcel, the County Land Use Resolution, or the County's land use change process. Provided that Applicant complies with the terms and conditions of this Agreement, the Town shall not impose any further obligations on Applicant's subdivision and development of the East Parcel with the County, nor shall it object to the County's approval of the County Project at any phase thereof, nor shall it advocate for additional restrictions on the East Parcel; provided that the County Application is, and remains, consistent with the terms and conditions of this Agreement. However, in the event any subsequent amendment to the County's Land Use Resolution lessens regulatory restrictions on the development of the East Parcel, Applicant must obtain the approval of the Towne in order to benefit from any such amendment with respect to the development of the East Parcel.

Compliance with Law. When fulfilling its obligations under this Agreement, Applicant shall comply with all relevant laws, ordinances and regulations in effect as of the Effective Date. In addition, Applicant shall be subject to all laws, ordinances and regulations of general applicability that become effective after the Effective Date.

No Waiver. Applicant acknowledges and agrees that the Town is relying upon, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations (currently \$350,000.00 per person and \$990,000.00 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as from time to time amended, or otherwise available to the parties, their officers, or their employees.

No Waiver. A waiver of any right or remedy on any one occasion shall not be construed as a bar to or waiver of any such right or remedy on any other occasion.

Waiver of Defects. In executing this Agreement, the parties waive all objections they may have over defects, if any, in the form of this Agreement, the formalities for execution, concerning the power of the Town to impose the conditions on Applicant as set forth herein, or over the procedure, substance or form of the resolutions adopting this Agreement.

Preservation of Governmental Powers. Unless otherwise provided herein, nothing in this Agreement constitutes a limitation on or waiver of any review, approval, or permit authority, or a predetermination of any action taken hereafter by the Town.

TABOR; Colorado Constitution, Article X, Section 20. Notwithstanding any other provision in this Agreement to the contrary, the parties understand and acknowledge that the Town is subject to Article X, § 20 of the Colorado Constitution (“**TABOR**”). (a) The parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. (b) It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the Town are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the parties’ current fiscal period ending upon the next succeeding December 31. (c) Financial obligations of the Town payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available in accordance with ordinances and resolutions of the Town and other applicable law. (d) Nothing contained in this Agreement shall constitute a pledge of the full faith and credit of the general tax revenues, funds or moneys of the Town except the amount appropriated for the purpose of making payments hereunder during the current fiscal year. (e) The Town’s obligation to pay \$350,000 to Applicant in exchange for the conveyance of Town Parcel 43 is subject to annual renewal and such obligation to pay shall be terminated upon the occurrence of an event of non-appropriation and, in such event, (i) The Town shall not be obligated to pay \$350,000 for the conveyance of Town Parcel 3, and (ii) Applicant shall not be obligated to convey Town Parcel 3.

_____. **Cooperation; Other Documentation; Instruments.** The parties shall reasonably cooperate with each other in order effect the transactions contemplated in this Agreement. The parties shall give, enter into, execute and approve such additional agreements, corporate approvals and instruments as are necessary and appropriate to effect such transactions.

_____. **Assignment; Assumption.**

_____. This Agreement and the rights and obligations contained herein may be assigned or transferred by Applicant only upon written consent approved by resolutions of the Town Council, which such consent shall not be unreasonably withheld, provided however that the right of approval belonging to Applicant in paragraph 6.4.5(c) shall be freely assignable and transferrable to the homeowners association for the residential lots to be developed on the East Parcel. Any transfer or assignment without the necessary written consent shall be void *ab initio*. Upon any proper assignment or transfer hereunder, the assignee or transferee shall assume all the rights and obligations of Applicant hereunder.

_____. Applicant's rights and obligations under paragraphs 7.2 and 7.3 shall be absolutely assignable by Applicant without the approval of the Town Council, written or otherwise, including but not limited to (a) Applicant's right to be reasonably apprised of the status of the Change Case and to be provided with copies of pleadings and other documents filed in the Change Case and (b) Applicant's right to have the Town convey Applicant's allocated interest in the McCormick Ditch Water Rights and HCU credits by Special Warranty Deed, together with all appurtenances. All other rights and obligations contained in this Amendment may be assigned or transferred by Applicant only upon written consent approved by resolutions of the Town Council, which such consent shall not be unreasonably withheld. Any transfer or assignment without written consent, where such consent is required, shall be void *ab initio*. Upon any proper assignment or transfer hereunder, the assignee or transferee shall assume all the rights and obligations, as applicable, of Applicant hereunder.

_____. **Termination.** Each party reserves the right to terminate this Agreement if the other party breaches any term or condition hereof, and, after receipt of written notice thereof from the non-breaching party, fails to cure such breach within 30 days of receipt of such notice; except that where such breach is not susceptible to timely cure despite reasonable efforts by the breaching party, the breaching party shall have such additional time as is reasonably necessary to effect a cure where such cure is being diligently pursued. In addition to termination of this Agreement, the non-breaching party may pursue all rights and remedies at law and in equity against the breaching party, including, without limitation, specific performance and actions for damages. Neither party shall be liable to the other for any incidental, special, or consequential damages.

_____. **Entire Agreement.** This Agreement supersedes and controls all prior written and oral agreements and representations of the parties with respect to the subject matters addressed herein and represents the total integrated agreement between the parties with respect to such subject matters.

_____. **Modification.** This Agreement shall not be amended or modified, except by subsequent written agreement of the parties approved by resolutions of the Town Council.

_____. **General Release.** It is expressly understood that the Town cannot be legally bound by the representations of any of its elected officials, officers, employees, agents, representatives and attorneys or their designees, except in accordance with Town ordinances, the Code and the laws of the State of Colorado, and that Applicant, when dealing with the Town, acts at its own risk as to any representation or undertaking by the Town, its elected officials, officers, employees, agents, representatives, and attorneys or their designees, which is subsequently held unlawful by a court of law; provided, however, this paragraph shall not be construed to limit the rights and remedies of the parties otherwise provided by law, including under equitable doctrines such as estoppel.

_____. **Authority.** The person executing this Agreement on behalf of Applicant does hereby covenant and warrant that as to Applicant, such person is duly authorized and has full right and authority to enter into this Agreement and that the person signing on behalf of Applicant is authorized to do so.

_____. **Notices.** Any notice or other information required by this Agreement to be sent to a party shall be sent by facsimile, e-mail, overnight courier or certified mail to the following:

Cypress Foothills, LP
 Attention: Cameron Aderhold
 8343 Douglas Ave., Suite 200
 Dallas, Texas 75225
 Facsimile: 214-283-1600
cameron.aderhold@cypressequities.com

with a copy to:

Cypress Foothills, LP
 Attention: Brian Parro
 8343 Douglas Ave., Suite 200
 Dallas, Texas 75225
 Facsimile: 214-283-1600
brian.parro@cypressequities.com

with a copy to:

Law of the Rockies
 Attention: Marcus J. Lock
 525 North Main Street
 Gunnison, Colorado 81230
 Facsimile: 970-641-1943
mlock@lawoftherockies.com

Town of Crested Butte
 Attention: Michael Yerman
 507 Maroon Avenue
 P.O. Box 39
 Crested Butte, Colorado 81224
 Facsimile: 970-349-6626
myerman@crestedbutte-co.gov

with a copy to:
 Town Attorney
 Sullivan Green Seavy LLC
 Barbara J. B. Green or John Sullivan
 3223 Arapahoe Ave., Suite 300
 Boulder, Colorado 80303
barbara@sullivangreenseavy.com or john@sullivangreenseavy.com

[added by IC, ¶ 1.10]

Notice shall be effective when actually received by the party intended to be notified.

_____. **Voluntary Agreement.** Applicant's continued compliance with all of the terms and conditions of this Agreement on a voluntary and contractual basis is a condition of its right to connect to the Town's **water and sewer systems.**

[rev by IC, ¶ 21]

_____. **Enforcement.** The parties, their assigns or successors in interest, in whole or in part, to this Amendment and the Agreement recognize and agree that the damages flowing from any violation of the Amendment or the Agreement are irreparable, and there may be no adequate remedy at law for such violations. Accordingly, in addition to any other rights that may be available to them in law or equity, each party has the right to specifically enforce the Amendment and the Agreement against the other party, their assigns or successors in interest, in whole or in part, by seeking injunctive relief in the District Court in and for Gunnison County, Colorado. All remedies are cumulative and may be applied concurrently.

_____. **Attorneys' Fees; Costs.** Should this Agreement become the subject of a dispute between the Town and Applicant, the substantially prevailing party shall be entitled to reasonable attorneys' fees, costs, and expenses incurred in such dispute.

_____. **Governing Law; Venue.** This Agreement and all rights conferred and obligations imposed hereunder shall be interpreted and construed in accordance with the laws and internal judicial decisions of the State of Colorado. The sole venue in any dispute shall be the District Court for Gunnison County, State of Colorado.

_____. **No Third Party Beneficiary.** The parties intend no third party beneficiaries to this Agreement, and none shall be permitted hereunder.

_____. **Recording.** Upon execution, Applicant shall record this Agreement in the Office of the Gunnison County Clerk and Recorder. The benefits and burdens of this Agreement shall run with the Subject Property and be binding upon the parties successors and assigns. In the event this Agreement becomes null and void for any of the reasons set forth herein, the parties agree to execute and record a notice of termination of this Agreement and, in addition, if necessary to remove this Agreement as an exception to title to the Subject Property.

_____. **Electronic Reproductions; Counterparts.** For purposes of enforcement of terms of this Agreement, electronic reproductions of this Agreement shall be deemed to be originals. This Agreement may be executed in multiple counterparts, each of which, when taken together shall constitute one and the same instrument.

[Remainder of Page Intentionally Left Blank; Signature Page(s) to Follow]

WHEREFORE, the parties hereto have executed and entered into this Agreement by their duly authorized officers on the date first written above.

TOWN OF CRESTED BUTTE, COLORADO

By: _____
Glenn Michel, Mayor

ATTEST:

Lynelle Stanford, Town Clerk

(SEAL)

CYPRESS FOOTHILLS, LP

By: _____
Name: _____
Title: _____



Staff Report

April 15, 2019

To: Mayor and Town Council
From: Rob Zillioux, Finance & HR Director
Subject: Spring 2019 Community Grant Cycle

Councilmembers Laura Mitchel, Paul Merck and I met April 4th to review, evaluate and make recommendations on spring community grant requests.

The total 2019 budget for Community Grants is \$52,500. Of this, 60% or \$31,500, was awarded during this fall cycle. That left \$21,000 for the spring awards.

Requests were evaluated through the lens of previously approved Council guiding principles for grants:

Guiding Principles

- We believe that creative and sustainable solutions come from people who work collaboratively to address common community needs and aspirations
- We give high priority to investments that create positive, substantive impact and long-term benefit to the Community
- We recognize and respect the need for advancing equity, diversity, creativity, and inclusion within our program
- Consideration is also given to the Town Council's stated values:
 - Support Crested Butte's quality of life
 - Promote resource efficiency and environmental stewardship
 - Encourage a sustainable and healthy business climate
 - Maintain an authentic and unique community
 - Remain fiscally responsible
 - Continue thoughtful management of our historic character
 - Seek collaborative solutions to regional and local issues

Additionally, the Town's community grant evaluation criteria was considered for making award recommendations.

Town of Crested Butte

Community Grant Evaluation Criteria

EVALUATION CRITERIA:

Each community funding request will be assigned a score of 0, 3 or 5 according to the following definitions. Requestors should provide sufficient explanations to aid evaluators in ranking requests using these criteria.

1. Funding Priorities and Objective – How strongly does a request align with one or more of the outlined priorities? Those being: Health and Welfare, Environment, Education and Heritage, Arts and Entertainment, Sports.

- 0 pt – Not closely aligned
- 3 pts – Project is aligned and provides benefit to many citizens
- 5 pts – Project is tightly aligned and provides benefit to a large portion of the community

2. Applicant Qualifications – How clearly are qualifications met?

- 0 pts – One or more qualifications are not met, e.g. the organization is not a 501(c) non-profit
- 3 pts – Qualifications are met
- 5 pts – Qualifications are strongly met, e.g. clear and measurable benefits to the Community

3. Future Dependence on the Town – Is this a one-time project or an on-going activity or program?

- 0 pts – This is a program for which funds need to be raised annually
- 3 pts – This is a new or continuing program but other sources of funding are secure and the Town will not likely be asked for annual support
- 5 pts – This is a one-time project (or event)

4. Town Council values – Is the request aligned with Town Council Values?

- 0 pt – No clear alignment
- 3 pts – Alignment with one or more values
- 5 pts – Clear alignment with several values

5. Strength of the Application itself – How well organized and articulated is the proposal?

- 0 pt – No clear budget, poor planning, no community involvement, etc
- 3 pts – Generally organized and clear
- 5 pts – Very clear, organized, with Community involvement and measurable outcome.

The total list of spring requests and recommended awards follows:

Town of Crested Butte
Community Grant Evaluation Matrix
 Spring 2019

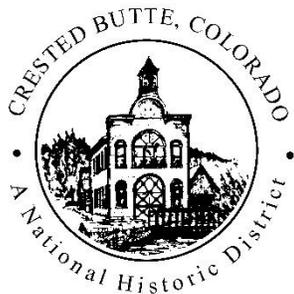
Spring 2019 Request Summary					
Requesting Organization	Project Name	Amount of Request	Total Project Cost	Portion of Total Project Cost	Recommended Award
CB DEVO	Junior Bike Week	2,200	2,200	100%	\$500
Project Hope of GV	Crisis line, emergency services, and counseling	3,000	18,000	17%	\$3,000
Center for the Arts	Aplenglow	5,000	47,700	10%	\$3,000
CBMBA	CB Conservation Corps	25,000	107,450	23%	\$15,000
CB Mountain Heritage Museum	Rotating exhibit display infrastructure	2,000	3,900	51%	\$1,000
Chamber of Commerce	CB3P	2,000	6,500	31%	\$5,000
Chamber of Commerce	CB Bike Week Challenge and Scavenger Hunt	2,000	7,000	29%	\$0
Chamber of Commerce	4th of July Celebration	5,000	18,800	27%	\$0
CB Search and Rescue	Swiftwater Resuce Technician Training	\$4,250	\$4,250	100%	\$2,125
					\$0
	Totals	\$50,450	\$215,800	23%	\$29,625

	Fall	
	Awards	Spring
Total 2019 Estimated Budget	60%	Awards 40%
\$52,500	\$31,500	\$21,000
Council Committee Recommendation		<u>\$29,625</u>
Surplus (Deficit)		-\$8,625 Requires 2019 Budget amendment

The Community Grant Committee would like to discuss the following with Council:

1. Town’s obligation, if any, providing ongoing operating funds for requesting organizations. Town’s evaluation criteria states that grant seekers should not see Town as a source of ongoing operating funding. In particular, the Committee discussed at length Town’s obligation, if any, to the CBCC operating funds. Council has granted CBMBA / CBCC \$48,000 over the last two years. Related, what should be the National Forest Service, etc obligation here?
2. Should Council wish to approve the Committee’s recommendation, it would require a budget amendment in the amount of \$8,625 for funding above that expressly approved in the 2019 budget.

	Total 2014 through Fall 2018 cycle	Spring 2019 grant cycle - Committee Proposal	Total if Spring 2019 Proposals accepted
COMMUNITY GRANTS			
Chamber - Total	63,250		68,250
CBMBA & CBCC	50,000	15,000	65,000
Coal Creek Watershed Coalition	27,250		
Living Journeys	24,500		
Chamber - July 4th	19,500	1,667	21,167
Mountain Heritage Museum	18,980	1,000	19,980
Nordic Center	17,500		
Center for the Arts - Total	16,400		19,400
Land Trust	15,000		
KBUT	14,000		
Center for Mental Health	13,500		
Mountain Theatre	13,500		
Chamber - Fat Bike Championships	13,000		
Center for the Arts - Alpenglow	12,900	3,000	15,900
Chamber-Bike Week	12,750	1,667	14,417
Chamber-Butte Bucks	12,000		
Mountain Roots	11,500		
Adaptive Sports Center	10,500		
Gunnison County Substance Abuse Prevention	10,000		
Arts Festival	9,000		
Film Festival	7,500		
Northwest Colo. Legal Services	7,500		
Wildflower Festival	7,250		
Vinotok	7,000		
Gunnison Valley Mentors (Partners)	6,000		
Dance Collective	5,500		
Gunnison Valley Health Foundation	5,000		
National Forest Foundation	5,000		
School of Dance	5,000		
Six Points	5,000		
CB Fire and EMS Volunteer Association	4,500		
Project Hope	4,500	3,000	7,500
Sustainable CB	4,500		
Upper Gunnison Water Conservancy Dist. - Total	4,500		
Avalanche Center	4,250		
Gunnison Valley Regional Housing Authority	4,000		
Mountain Manners	4,000		
West Elk Soccer Assoc. (WESA)	4,000		
Chamber - Pole, Pedal, Paddle	3,500	1,667	5,167
Paradise Animal Welfare Society (PAWS)	3,000		
Center for the Arts - Winter Season production	2,500		
Silent Tracks	2,500		
CB Development Team	2,000	500	2,500
Colorado Jazz Musicians Festival	2,000		
Old Rock Library	1,770		
Chamber-Light Up Night	1,500		
Center for the Arts - Art Studio	1,000		
Chamber - Paradise Cleanup	1,000		
Community Foundation-Rural Philanthropy Days	500		
Gunnison County Food Pantry	500		
Gunnison Valley Women's Network	500		
West Elk Senic Byway	250		
CB Search and Rescue	-	2,125	2,125
Total Community Grants	422,867	29,625	



To: Mayor Schmidt and Town Council

From: Michael Yerman, Community Development Director

Thru: Rob Zillioux, Acting Town Manager

Subject: **Party Wall Agreements for Duplex Sales Block 79 Lots 6 and 14**

Date: April 15, 2019

Background:

The Town is working towards the sale and closing for the Duplexes on July 1, 2019. One important piece of the title work that needs be recorded prior to closing is a Party Wall Agreement for each duplex. Since the Town will technically own the Duplex when the Party Wall Agreement is recorded the Council will need to take action to authorize the Mayor to sign this agreement. The Party Wall Agreement addresses maintenance, repairs, access across neighboring units for these repairs, and other matters that are to the benefit of the future homeowners.

Town staff has been working with the Town Attorney and the future home owners to finalize these agreements. The staff anticipates there will be additional revisions that might need to be added based on additional input from the future homeowners.

The Town interests in the property are protected by the Master Deed Restriction. Therefore, this document is really for the benefit of the future home owners should disputes or future maintenance be needed on the property. The staff recommends the Council approve the attached Draft Party Wall Agreement and authorize the Mayor to execute the agreement conditioned on the Town Attorney approving the final agreement prior to recording the agreement on Block 79 Lots 6 and 14.

Recommendation:

Staff recommends the Council authorize the Mayor to execute the Party Wall Agreements for Block 79, Lot 6 and 14 conditioned on the Town Attorney signing off on the final agreement prior to recording.

PARTY WALL AGREEMENT FOR _____ TOWNHOUSES

This Party Wall Agreement for _____ Townhouses (hereinafter referred to as the "Agreement") is made this ____ day of _____ 2019, by the Town of Crested Butte, a Colorado home rule municipality (hereinafter collectively referred to as "Declarant"), whose address is 507 Maroon Avenue, P.O. Box 39, Crested Butte, Colorado 81224

RECITALS

1. Declarant is the Owner of real property situated in the Town of Crested Butte, County of Gunnison, State of Colorado, more particularly described as Block 79, Lot 6, Paradise Park Subdivision, according to the Final Re-Plat of Blocks 79 and 80, Paradise Park Subdivision recorded April 27, 2016, at Reception No. 639098, of the records of the Gunnison County Clerk and Recorder (the "Property").
2. A duplex building consisting of two (2) separate units, each designed and intended for use as a residential dwelling along with its appurtenant property, designated as Unit A or Unit B, which are sometimes referred to separately as a "Unit," or collectively as "Units," are constructed on the Property, as depicted on the Map attached hereto as Exhibit ____.
3. Declarant desires to establish mutual covenants for the ownership and maintenance of the Units on the Property, by establishing separate ownership and rights and obligations related to Unit A and Unit B.

DECLARATION

SECTION I.

ESTABLISHMENT OF COVENANTS

Declarant does publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations and obligations shall be deemed to run with the Units and the Property, shall be a burden and a benefit to Declarant, its members, managers, successors and assigns and any person acquiring or owning an interest in the described real property and improvements built thereon, their grantees, personal representatives, heirs, successors and assigns.

**SECTION II.
DEFINITIONS**

Unless the context shall expressly provide otherwise, the following terms shall have the following meanings:

A. "

B. "Property" means Block 79, Lot 6, Replat of Blocks 79 and 80, Paradise Park Subdivision, according to the Final Re-Plat of Blocks 79 and 80, Paradise Park Subdivision recorded April 27, 2016, at Reception No. 639098, referenced above..

C. "Map" means the Plat of _____ Townhouses, which is attached hereto as Exhibit ____.

D. "Owner" means a person or persons, owning an interest in the Units, and shall include, when the context permits, such Owner's family, agents, guests, invitees.

E. "Unit" or "Units" means either the Unit A or Unit B, or both, the boundaries of which are shown on the Map.

F. "Parcel" shall mean the real property upon which a Unit is constructed as shown on the Map.

SECTION III. DESCRIPTION AND RESERVATION

Every contract of Sale, Deed, Lease, Mortgage, Trust Deed, Will or other instrument shall legally describe a Unit or real property interest as follows:

Unit A or Unit B (as the case may be), _____ Townhouses, according to the plat thereof bearing Reception No. _____ and the Party Wall Agreement for _____ Townhouses bearing Reception No. _____, Town of Crested Butte, County of Gunnison, State of Colorado.

Upon completion of the improvements addressed herein, a Final Plat, depicting the improvements, shall be executed by the owner(s) of each Unit and recorded in the real property records of Gunnison County. That Final Plat will be referenced in any subsequent legal description of the Units.

Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect a Unit and all appurtenant rights, benefits and burdens thereto as created by the provisions of this Agreement, and each such description shall be so construed.

SECTION IV. PROPERTY DIVISION.

A. Declarant establishes this plan for the subdivision of the Property into two (2) Units for ownership in fee simple consisting of the Unit A and Unit B identified on the Map.

In the event any Unit is owned by more than one person, the Owners thereof shall designate in writing, to the Owner of the other Unit the name and address of the person to whom all legal or official assessments, liens, levies or other such notices may be properly and lawfully mailed. If an Owner fails to designate such person, the other Owner shall be deemed to be the agent for receipt of notices to such Owners.

B. Any such entity or concurrent Owners shall give written notice to the other Owner designating the individual to act on its or their behalf and such notice shall be effective until revoked in writing by such entity or Owners. Any act or omission by such designated individual shall be binding on the entity or Owners having designated him in favor of the other Owner or any person who may rely thereon.

C. Each Unit shall be considered a separate parcel of real property and shall be separately

assessed and taxed.

SECTION V. ENCROACHMENTS

If any portion of the improvements associated with Unit A or Unit B now encroaches upon the other Parcel as a result of the construction of any building, or if any such encroachment shall occur later as a result of settling or movement of any building, a valid easement for the encroachment and the maintenance of the same so long as the building stands, shall exist. In the event any building shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings and then rebuilt, encroachments of parts of the building on the other parcel, due to such rebuilding, shall be permitted, so long as such encroachments are of no greater extent than those previously existing, and valid easements for such encroachments and the maintenance thereof shall exist so long as the building shall stand.

SECTION VI. PARTY WALL

A. The common walls placed on the common boundary separating Unit A and Unit B (including the common walls located in the main structure), the footings underlying and the portion of roof over such walls are collectively referred to as the "Party Wall."

B. To the extent not inconsistent with this Agreement, the general rules of law regarding party walls and liability for damage due to negligence, willful acts or omissions shall apply to the Party Wall.

C. The Owners of each Unit shall have a perpetual easement in and to that part of the other Unit on which the Party Wall is located, for party wall purposes, including mutual support, maintenance, repair and inspection. In the event of damage to or destruction of the Party Wall from any cause, then the Owners shall at their joint expense, repair or rebuild the Party Wall, and each Owner shall have the right to the full use of the Party Wall so repaired and rebuilt. Notwithstanding anything contained above to the contrary, if the negligence, willful act or omission of any Owner, his family, agent or invitee, shall cause damage to or destruction of the Party Wall, such Owner shall bear the entire cost of its repair or reconstruction, and an Owner who by his or her negligent or willful act causes the Party Wall to be exposed to the elements shall bear the full cost of furnishing the necessary protection against such elements.

SECTION VII. LANDSCAPING, SERVICE FACILITIES AND PARKING

A. The Owners from time to time shall undertake such landscaping and general outdoor improvements including but not limited to driveway and parking areas as they may mutually and unanimously deem proper for the harmonious improvement of both Units in a common theme, and each Owner shall be solely responsible for all expenses, liabilities and general upkeep responsibilities with respect to such landscaping and outdoor improvements on the Unit of that Owner. The Owner of one Unit shall not unreasonably damage the value of the other Unit such as by shoddy upkeep outside, but both Owners shall make all reasonable efforts to preserve a

harmonious common appearance of the Units. Nothing contained in this Agreement shall be deemed to prevent either Owner from adding any additional patios, decks, fencing, natural landscaping, trees or similar items to such Owner's Unit, or from installing grass, with or without lawn sprinkling facilities, all at the sole expense, maintenance and upkeep of such Owner, unless otherwise specifically agreed to by the Owners themselves.

B. Common utility or service connections or lines, common facilities or other equipment and property located in or on either of the Units but used in common with the other Unit, if any, shall be owned as tenants in common in equal undivided one-half interests by the Owners of each Unit and, except for any expense or liability caused through the negligence or willful act of any Owner, his family, agent or invitee, which shall be borne solely by such Owner, all expenses and liabilities concerned with such property shall be shared proportionately with such ownership. The Owner of the Unit on which such property is not located shall have a perpetual easement in and to that part of such other Unit containing such property as is reasonably necessary for purposes of maintenance, repair and inspection. If any landscaping or improvements are damaged during the maintenance, repair and inspection of utilities by the other Owner on the neighboring property, the expense to repair the landscaping and improvements shall be borne solely by the Owner conducting the work.

C. All landscaping shall be watered, trimmed and maintained in a neat, attractive and healthy condition at all times. The watering requirements contained in this paragraph shall be subject to any watering restrictions imposed by the Town of Crested Butte.

D. Unit B shall have a perpetual easement, as depicted on the Map, on the easternmost four (4) feet of Unit B for snow storage and snow shedding from Lot 5.

E. Unit A and Unit B, each shall have two (2) dedicated off-street parking spaces for their sole, exclusive use as depicted on the Map. These off-street parking spaces must be maintained and be available for use of the Owner at all times unless an alternative plan is approved by the Town of Crested Butte.

SECTION VIII. ALTERATION, MAINTENANCE AND REPAIRS

A. In addition to maintenance provided for in Section VII, the Owners shall, at their own individual expense with respect to each respective Unit, provide exterior maintenance and exterior repair upon the Units and the unimproved portions of the parcels upon which the Units are located including, but not limited to, the exterior walls and the roof housing the Units; repair, replacement or cleaning of exterior windows shall be considered interior maintenance. If the need for repair or maintenance is caused through the negligence or willful act of any Owner, such Owner shall bear the entire costs of such repair or maintenance, even though the need for such repair or maintenance exists on the other Owner's Unit.

In the event an Owner, at his own expense, fails to maintain, preserve, and replace as needed, the trees, shrubs and grass (the "plantings"), landscaping or other outdoor items within the property boundaries of his Unit or Parcel in accordance with VII. C., the other Owner may, after thirty (30) days written notice to the Owner, if such failure continues and if within that time the offending Owner has failed to make a good faith effort to bring his plantings, landscaping or other outdoor items into substantial conformity with the other Owner's plantings, landscaping or other outdoor items, the other Owner may contract with responsible parties to bring to standard

the offending Owner's plantings, landscaping or other outdoor items and charge the offending Owner therefore and such cost shall be added to and become charge and lien to which such Unit is subject. The Owner grants to the other Owner, its agents and assigns, an irrevocable easement to perform the above work.

B. Each Owner shall be solely responsible for maintenance and repair of the inside of his Unit including fixtures and improvements and all utility lines and equipment located therein and serving such Unit only; window glass and frames shall be deemed interior maintenance. In performing such maintenance and repair, or in improving or altering one's Unit, no Owner shall do any act or work which impairs the structural soundness of either Unit or the Party Wall or which interferes with any easement granted or reserved in this Agreement.

C. Utility or service connections or lines, facilities or other utility equipment and property located in, on or upon either of the Units, which are used solely to supply a service or utility to one Unit, shall be owned by the Owner of the Unit using such utility or service and all expenses and liabilities for repair and maintenance shall be borne solely by the Owner of such Unit, who shall have a perpetual easement in and to that part of such other parcel or Unit containing such property as is reasonably necessary for purposes of maintenance, repair and inspection.

D. No Owner shall make or suffer any structural or exterior design change (including a building material and/or color scheme change), either permanent or temporary and of any type or nature whatsoever, upon any part of his or her Unit without first obtaining the prior written consent from the other Owner. The exterior of the Units shall be painted in the same color scheme and at the same time, and both Units shall be maintained in the same manner. In the case of damage or destruction of either Unit or any part thereof by any cause whatsoever, the Owner of such Unit shall with due diligence cause the Unit to be repaired and restored, applying the proceeds of insurance, if any, for that purpose. Such Unit shall be restored to a condition comparable to that prior to the damage and in a harmonious manner to promote the common theme of both Units.

E. In the event that additional allowable floor area is available, for an Owner's Parcel in its entirety, pursuant to Town ordinances, rules and regulations, then Unit A and Unit B shall each be allocated an equal share of that available floor area, unless the owners agree, in writing, to allocate that available floor area in another manner.

SECTION IX. ALLOCATION OF EXPENSES

Costs and expenses of landscaping, service facilities, parking, alteration, snow plowing and removal, maintenance and repairs, except as caused by the negligence or willful act of an Owner, shall be allocated in the following proportions:

Unit A	50%
Unit B	50%

SECTION X. MECHANIC'S LIENS: INDEMNIFICATION

A. Except for items incurred as a common expense as provided for in this Agreement, if any Owner shall cause any material to be furnished to his Parcel or Unit or any labor to be performed, the other Owner shall not under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished; all such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to his Unit or any improvements; nothing shall authorize either Owner or any person dealing through, with or under either Owner to charge the Unit of the other Owner with any mechanic's lien or other lien or encumbrance whatever; and, on the contrary (and notice is given), the right and power to charge any lien or encumbrance of any kind against one Owner or against one Owner's Unit for work done or materials furnished to the other Owner's Unit is expressly denied.

B. Except as provided for below, if, because of any act or omission of any Owner, any mechanic's or other lien or order for the payment of money shall be filed against the other Owner's Unit or Parcel, the Owner whose act or omission forms the basis for such lien or order shall at his own cost and expense cause the same to be cancelled and discharged of record or bonded by a surety company reasonably adaptable to such other Owner, within twenty (20) days after the date of filing, and further shall indemnify and hold the other Owner harmless from and against any and all costs, expenses, claims, losses or damages, including reasonable attorney's fees.

SECTION XI. INSURANCE

A. Each Owner shall keep their Unit and all fixtures insured against loss or damage by fire and extended coverage perils (including vandalism and malicious mischief) for the maximum replacement value, which amount shall be established by mutual agreement of the Owners. In the event the Owners cannot agree upon the replacement value for purposes of establishing the level of insurance to be obtained, any Owner may on thirty (30) days written notice, at any time one (1) year or longer after the last appraisal of the Units, obtain a written appraisal of such Units from a competent appraiser, and the cost shall be allocated as set forth in Section IX. Such appraiser shall be a disinterested and independent third party who is unrelated in any manner to either Owner whether through joint business adventures or otherwise.

B. Each Owner shall provide and keep in force, for the Owner's protection, general public liability and property damage insurance against claims for bodily injury or death or property damage occurring in, on or upon, their parcel owned in fee simple and any improvements, in a limit of not less than \$300,000.00 in respect of bodily injury or death to any number of persons arising out of one accident or disaster, or for damage to property, and if higher limits shall at any time be customary to protect against possible tort liability, such higher limits shall be carried and each Owner shall name the other Owner as an additional insured party under such policy.

C. Each Owner shall deliver to the other Owner certificates evidencing all insurance required to be carried under this paragraph, each containing agreements by the insurers not to cancel or modify the policies without giving the other Owner written notice of at least thirty (30) days. Each Owner shall have the right, upon his or her reasonable request, to inspect and copy all such insurance policies of the other Owner and require evidence of the payment of individual premiums.

D. Nothing provided in this paragraph shall prevent the Owners from jointly acquiring a single policy to cover any one or more of the hazards required in this paragraph to be separately

insured against by each Owner.

**SECTION XII.
FIRST RIGHT OF REFUSAL**

A. No Owner, except Declarant, may sell such Owner's Unit or any interest therein except pursuant to the provisions of this Section XII. Any Owner, except Declarant, who receives a bona fide offer for the purchase of his Unit, which he intends to accept, shall give prompt written notice to the Declarant of such offer and of such intention, the name and address of the proposed purchaser, the terms of the proposed transaction, and such other information as the Declarant may reasonably require, and such selling owner shall thereupon offer to sell his Unit to the Declarant on the same terms and conditions as contained in the bona fide offer. The giving of notice shall constitute a warranty and representation to the Declarant, that such owner believes the offer to purchase to be bona fide in all respects.

B. Within seven (7) days after the receipt of a bona fide offer, the selling owner shall mail by United States certified mail, return receipt requested, postage prepaid, to the

Declarant the information as to the bona fide offer to purchase. For a period of fourteen (14) days beginning on and including the date of the actual mailing of such information, the Declarant shall have the right to purchase the subject Unit on the same terms and conditions as contained in the bona fide offer.

C. In order to exercise the right of first refusal, the Declarant, must on or before the end of such fourteen (14)-day period, actually deliver to the selling owner a written commitment to purchase the subject Unit. The Declarant shall enter into a contract with the selling owner to purchase the offered Unit upon the same terms and conditions as contained in the bona fide offer and tender to the selling owner any down payment or deposit theretofore made under the bona fide offer.

D. If the Declarant shall not exercise its right hereunder the time period provided, the selling owner shall be free to accept and close upon the basis of the bona fide offer with the person or persons who made the bona fide offer. If the selling owner shall not within the period provided in the bona fide offer close the transaction on the same terms and conditions as originally contained therein, then the selling owner shall be required to again comply with all of the terms and provisions of this Section XII in order to subsequently sell the Unit.

E. Any sale of a Unit without full compliance with the terms and provisions of this Section XII shall be voidable at the election of the Declarant within one (1) year following the recording of a deed conveying the selling owner's Unit.

F. After compliance by an offering owner with this Section XII, and after all periods of time provided for purchase by the Declarant have expired and the right of first refusal has not been exercised, then the Declarant shall execute a certificate in recordable form stating that the provisions of this Section XII have been complied with and that any right of first refusal theretofore vested in the Declarant has been waived as to that sale.

G. The following transfers or conveyances of a Unit expressly excepted from the

provisions of this Section XII:

- (a) A transfer to or purchase by any mortgagee which acquires its title as a result of foreclosure proceedings or conveyance in lieu thereof.
- (b) A transfer or conveyance between or among owners.
- (c) A transfer or conveyance by gift, devise or inheritance or by operation of law, or court order.

SECTION XIII. DESTRUCTION OF IMPROVEMENTS ON PARCEL

A. In the event of damage or destruction to a Unit by fire or other disaster, the insurance proceeds, if sufficient to reconstruct the Unit, shall be deposited into a bank account which requires, for withdrawals, the signature of both the Owners, unless otherwise required by the insurance carriers, in which event the requirements of the insurance carriers shall establish the method of disbursement. The Owners shall then promptly authorize the necessary repair and reconstruction work and the insurance proceeds will be applied by the Owners to defray the cost. "Repair and reconstruction" of the Units means restoring the improvements to substantially the same condition in which they existed prior to the damage with such Unit having the same boundaries as before.

B. If the insurance proceeds are insufficient to repair and reconstruct any damaged Unit, such damage or destruction shall be promptly repaired and reconstructed by the Owner using the insurance proceeds and the proceeds of a special assessment against the Owners of the damaged Unit. Any such assessments shall be equal to the amount by which the cost of reconstruction or repair of the Unit exceeds the sum of the insurance proceeds allocable to such Unit. Such assessments shall be due and payable not sooner than thirty (30) days after written notice of the assessments. The special assessment provided for in this Agreement shall be a debt of each Owner and a lien on their parcel and the improvements and may be enforced and collected by foreclosure proceedings in the Courts.

C. Notwithstanding the above, the Owners and first mortgagees of any or all of the destroyed or damaged Units may agree that the destroyed or damaged Units shall immediately be demolished and all debris and rubble caused by such demolition be removed and the parcel(s) regraded and landscaped. The cost of such landscaping and demolition work shall be paid for by any and all insurance proceeds available. Any excess insurance proceeds shall then be disbursed to such Owners and their first mortgagees jointly.

SECTION XIV. RIGHT TO LIEN

A. If an Owner, at any time, shall neglect or refuse to perform or pay his share of any obligation required under this Agreement, the other Owner may, but shall not be obligated to, after fifteen (15) days written notice unless the circumstances required immediate action, make such payment or, on behalf of such other Owner, expend such sum as may be necessary to perform such obligation including, but not limited to, the payment of any insurance premiums required under this Agreement or the undertaking of any work required under this Agreement for repair, restoration or maintenance, and such other Owner shall have an easement in and to that part of such defaulting Owner's Unit as is reasonably necessary for such repair, restoration or

maintenance.

B. All sums so paid or expended by an Owner, with interest at the rate of eighteen percent (18%) per year from the date of such payment or expenditures, shall be payable by the Owner so failing to perform (the "defaulting Owner") upon demand of the other Owner.

C. All sums so demanded but unpaid by the defaulting Owner shall constitute a lien on the Unit of the defaulting Owner in favor of the other Owner prior to all other liens and

encumbrances, except: (i) liens for taxes and special assessments; and (ii) the lien of any first mortgage or first deed of trust of record encumbering such Unit. The lien shall attach from the date when the unpaid sum shall become due and may be foreclosed in like manner as a mortgage on real property upon the recording of a notice or claim thereof executed by the non-defaulting Owner setting forth the amount of the unpaid indebtedness, the name of the defaulting Owner, and a description of the Unit. In any such foreclosure or any other collection proceeding the defaulting Owner shall be required to pay the costs and expenses of such proceedings, including reasonable attorney's fees, all of which costs shall be included in the lien as provided in this Agreement.

D. The lien provided for in this Agreement shall be superior to the lien of any first mortgage or deed of trust, including all additional advances. Sale or transfer of any Unit as the result of court foreclosure of a mortgage foreclosure through the public trustee, or any proceeding in lieu of foreclosure, shall extinguish the lien of such assessments as to payments thereof which become due prior to such sale or transfer, but shall not relieve any former Owner of personal liability. The mortgagee of such Unit who acquires title by way of foreclosure or the taking of a deed in lieu of foreclosure shall not, however, be liable for future assessments on the date it becomes the Owner of such Unit. No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof. In the event of the sale or transfer of a Unit with respect to which sums shall be unpaid by a defaulting Owner, except transfers to a first mortgagee in connection with a foreclosure of its lien or a deed in lieu thereof, the purchaser or other transfer of an interest in such Unit shall be jointly and severally liable with the seller or transferor for any such unpaid sums.

E. Upon written request of any Owner, mortgagee, prospective mortgagee, purchaser or other prospective transferee of a Unit, the Owner of the other Unit shall issue a written statement setting forth the amount he is owed under this paragraph, if any, with respect to such Unit. Such statement is binding upon the executing Owner in favor of any person who may rely thereon in good faith. Unless a request for such statement shall be complied with within fifteen (15) days after receipt, all unpaid sums which became due prior to the date of making such request shall be subordinated to the lien or other interest of the person requesting such statement.

SECTION XV. RESOLUTION OF DISPUTES

Both Unit Owners shall be mutually responsible for the administration and management of the obligations created under this Agreement. However, in the event both Owners cannot mutually agree when a decision is required by this Agreement, all disputes and all other controversies shall attempt to be settled by mediation. One mediator shall be selected by the Owners. The cost and expense of mediation shall be shared equally by the Owners. The mediation shall be conducted in accordance with the following time schedule unless otherwise mutually

agreed to in writing by the Owners: (i) the parties to the mediation shall appoint the mediator within fifteen (15) business days after the occurrence of the event giving rise to mediation; (ii) within ten (10) business days after the appointment of the mediator, parties to the mediation shall provide all documents, records, and supporting information reasonably necessary to resolve the dispute (iii) within fifteen (15) business days after the date the above records are due, the mediation shall take place.

SECTION XVI. USE RESTRICTIONS

A. Each Unit shall be restricted to use as a single-family residential dwelling.

B. No exterior mounted radio, shortwave, television or other type of antenna whatsoever or tank of any kind, either elevated or buried, or incinerator or any kind whatsoever or outside storage of any personal property shall be permitted or maintained on either Unit without the prior written approval of both Owners. Notwithstanding the foregoing sentence, Owners are permitted to mount one (1) 18 inch satellite dish on the exterior of their Unit.

C. No "short-term rental use," "time sharing," "interval ownership or use" or similar interest, whereby ownership of a Unit is shared by Owners on a time basis, shall be permitted for either Unit.

D. No animals shall be kept or maintained in, on or upon either Unit, except two (2) domesticated dogs and two (2) cats per unit; provided, however, that such domesticated animals are kept under control at all times, do not present a nuisance to the other Owner and are kept controlled in strict compliance with all regulations that may apply to such animals.

(i) Owners of Dogs shall:

(a) Not allow their dogs to bark, disturb, threaten, scare, injure or otherwise bother any person or any animal;

(b) Immediately clean up the dogs' waste; and

(c) At all times control their dogs by leash or voice command.

E. Because of the close proximity of the two (2) Units to each other and the Party Wall, no noxious, offensive activity, loud music or loud noise shall be carried on or upon any part of either the Units which is or may become an unreasonable nuisance, disturbance or annoyance to the other Owner. The Owners acknowledge and agree that the Units are to be used for single-family residential purposes only and that excessive noise and other excessive nuisances are to be avoided.

F. No Unit shall be used in any way or for any purpose that may endanger the health or unreasonably disturb by noise, dust, fumes, vibration or otherwise the owner or occupant of the other Unit.

G. The Property is subject to a Master Deed Restriction recorded at Reception No. 641510 and a Snow Plow Covenant recorded at Reception No. _____, of the Gunnison County Clerk and Recorder. In the event of a conflict between the terms of this Agreement and the terms of the Deed Restriction or Snow Plow Covenant, the terms of the Deed Restriction or Snow Plow Covenant will be controlling.

SECTION XVII. NOTICE

Each Owner shall register his mailing address with the other Owner and all notices or demands intended to be served upon an Owner shall be sent by certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. In the alternative, notice may be delivered, if in writing, personally to an Owner.

SECTION XVIII. DURATION OF AGREEMENT

This Agreement shall be a perpetual covenant running with the Units, Parcels, and the Property.

SECTION XIX. AMENDMENT OR REVOCATION

This Agreement may be amended or revoked only by (a) Declarant so long as Declarant owns both the Unit A and Unit B or (b) upon unanimous written approval in recordable form of all Owners of record of the Unit A or Unit B. Lienholder consent shall not be required. However, the use restrictions set forth in Section XVI. H. may not be amended or altered.

SECTION XX. EFFECT OF PROVISIONS OF AGREEMENT

Each provision of this Agreement, and agreement, promise, covenant and undertaking to comply with each provision of this Agreement, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Agreement: (i) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any portion of the Unit A or Unit B is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument; shall, by virtue of acceptance of any right, title or interest in any portion of the Unit A or Unit B by an Owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner and, as a personal covenant, shall be binding on such Owner and his heirs, personal representatives, successors and assigns; and, shall be deemed a personal covenant to, with and for the benefit of each Owner of any portion of the Unit A or Unit B and (iii) shall be deemed a real covenant by Declarants, for themselves, their heirs, personal representatives, successors and assigns, and also an equitable servitude, running, in each case, as a burden with and upon the title to each and every portion of the Unit A or Unit B.

SECTION XXI. ENFORCEMENT AND REMEDIES

A. If the mediation required under Section __ of this Agreement does not resolve the dispute between the Owners, an Owner may enforce any provision of this Agreement by commencing an action for injunctive relief, or an action to recover damages or any other remedy. If court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Agreement, the Court shall award the prevailing party its costs and expenses in connection therewith, including reasonable attorney's fees.

The foregoing document was acknowledged by James A. Schmidt, as Mayor.

Witness my hand and official seal.

My Commission Expires: _____

Notary Public

(SEAL)

Draft



Staff Report

April 15, 2019

To: Mayor and Town Council

From: Rob Zillioux, Finance Director and Acting Town Manager

Subject: Ordinance 22-2019, Increasing compensation for the positions of Mayor and Council members

Summary: The Council has previously identified the goal of recruitment and retention of quality Council members. One method of achieving this goal is to review the compensation elected officials receive in exchange for their service. The Council directed at their regular meeting on April 1st that they would like to revisit compensation for serving as an elected official. This action would not apply to any sitting member of the Council until after the next time their position is up for election.

Previous Council Action: The most recent action taken on this issue was in June of 2017 with Ordinance 2017-15. That ordinance increased compensation for Council members from \$4,800 to the current rate of \$6,000 (\$500 per month). The ordinance also increased the compensation for Mayor from \$9,600 to \$10,800 (\$900 per month). Prior to Ordinance 2017-15 the compensation had not been increased since 2012.

Background: Section 3.6 of the Crested Butte Home Rule Charter allows for members of the Council and the Mayor to receive such compensation as the Council shall prescribe by ordinance, provided that the compensation of any member during his or her term of office shall not be increased or decreased.

At this time the position of Mayor receives \$10,800 per year and Council members each receive \$6,000. Compensation for elected officials was last increased in 2017. The averages from other CAST communities were reviewed in 2017 and came out to just over \$11,000 per year for Mayor and \$6,700 for Council members.

The Council directed on April 1st that an ordinance be brought forward for consideration increasing compensation for all elected officials by \$150 per month. An increase of \$150 per month would result in new rates of \$7,800 per year (\$650 per month) for Council members and \$12,600 (\$1,050 per month) for the Mayor and an annual budget increase of \$12,600 once fully implemented.

Financial Implications: Should the Council approve an increase in compensation there would be a minor budget implication following the election in November with increases going into effect for newly elected positions.

Recommended Motion: A Council member should make a motion to set Ordinance 22-2019 for public hearing on May 6th.

ORDINANCE NO. 22

SERIES NO. 2019

**AN ORDINANCE OF THE CRESTED BUTTE TOWN
COUNCIL RAISING THE PAYMENT OF
COMPENSATION TO MEMBERS OF THE TOWN
COUNCIL AND THE MAYOR**

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

WHEREAS, Section 3.6 of the Crested Butte Home Rule Charter allows for members of the Council and the Mayor to receive such compensation as the Council shall prescribe by ordinance, provided that the compensation of any member during his or her term of office shall not be increased or decreased; and

WHEREAS, the duties, responsibilities and time demands upon the Town Council and Mayor have increased due to the rapid rate of development within the Town and the number of subcommittees in which they participate; and

WHEREAS, the Council still supports the goal of recruitment and retention of quality Council members with pay increases as a step towards achieve the goal; and

WHEREAS, the Town Council wishes to adequately compensate said elected officials for the increased time necessitated by and demands occasioned by their positions; and

WHEREAS, the Town Council finds that increasing compensation for elected officials is in the best interest of the general health safety and welfare of the Town, its residents and visitors alike.

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

Section 1. **Compensation.** Section 2-2-10(a) and (b) of the Crested Butte Municipal Code are hereby deleted in their entirety and replaced with the following new subsections (a) and (b). Section 2-2-10(c) shall remain unchanged.

“Section 2-2-10. Compensation.

(a) The Mayor shall receive the sum of \$12,600 (or \$1,050.00 per calendar month) per year for his or her service to the Town.

(b) Each Councilmember shall receive the sum of \$7,800 (or \$650.00 per calendar month) per year for his or her service to the Town.”

Section 2. Severability. If any section, sentence, clause, phrase, word or other provision of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this ordinance, or the validity of this ordinance 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.

Section 3. Savings Clause. Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision thereof 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 _____, 2019.

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

TOWN OF CRESTED BUTTE, COLORADO

By: _____
James A. Schmidt, Mayor

ATTEST:

Lynelle Stanford, Town Clerk

(SEAL)

Agenda
BOARD OF ZONING and ARCHITECTURAL REVIEW
Tuesday
March 26, 2019

- 6:00 Call to Order.
- 6:01 Review and approve the minutes from the **February 26, 2019** BOZAR meeting.
- 6:03 Collect Guidelines from each member. Committee member selection.
- 6:15 Consideration of a land use application by the **Town of Crested Butte as authorized by Cypress Foothills, LP** concerning an undeveloped 14.157 acre parcel that adjoins the Town of Crested Butte's northeastern municipal boundary. Full application information is available at www.townofcrestedbutte.com . Municipal Code land use requirements to be considered include: (Nevins/Yerman)
- Establishment of zoning pursuant to Chapter 16, Article 3 Zoning Districts;
- Creation of R1F Residential standards pursuant to Chapter 16, Article 23 Amendments; and
- Major Subdivision Sketch Plan review pursuant to Chapter 17, Article 5 Major Subdivisions.
- Recommendation to the Planning Commission is required.
- 7:15 Consideration of the application of **Bywater LLC in conjunction with the Town of Crested Butte** to construct a triplex and cold accessory building to be located at 8, 10, 12 Ninth Street, Block 79, Lot 10 in the R2A zone. (Barney/Reeser/Wisian)
- Architectural approval is required.
- 8:00 Consideration of the application of **Bywater LLC in conjunction with the Town of Crested Butte** to construct a triplex to be located at 11, 13, 15 Ninth Street, Block 78, Lot 6 in the R2A zone. (Barney/Reeser/Wisian)
- Architectural approval is required.
- 9:00 Consideration of the application of **322 Belleview Avenue, a Colorado LLC** to demolish a portion of the building and reconstruct the second floor and roof of the existing, non-historic commercial building located at 322 Belleview Avenue, Block 46, Lots 5-6 in the C zone. (Hadley/Ryan)
- Architectural approval is required.
- Permission to demolish a portion of a non-historic commercial building is requested.
- 10:00 Consideration of the application of **James Steyaert and Harmony Cummings** to demolish the existing primary and accessory building and site a single family residence and accessory building to be located at 222 Whiterock Avenue, Block 40, Lots 6-7 in the R2C zone. (Vandervoort/Steyaert)
- Architectural approval is required.
- A conditional use permit for a non-residential, heated and/or plumbed accessory building in the R2C zone is required.
- Permission to demolish two non-historic structures is requested.
- 11:15 Miscellaneous:
- o DRC for April 15 and 22: Magner and Nauman (BOZAR – April 30th)
 - o DRC for May 13 and 20: Magner and _____ (BOZAR – May 28th)
 - o DRC for June 10 and 17: _____ (BOZAR – June 25th)
 - o Board member changes
 - o Update from Bob Nevins on the Subdivision Exemption Ordinance.
 - o Insubstantial:
 - o Duke (818 Teocalli, Unit A) – Metal wainscot, directed to full Board in June as an insubstantial.
- 11:30 Adjourn

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



AGENDA

Regular Town Council Meeting

6:00 PM - Tuesday, April 16, 2019
Council Chambers

1. **WORK SESSION - 5:00PM**
Financing Work Force Housing
2. **CALL TO ORDER**
3. **ROLL CALL**
4. **PUBLIC COMMENT**
Citizens may make comments on items **NOT** scheduled on the agenda. Per Colorado Open Meetings Law, no Council discussion or action will take place until a later date, if necessary. You must sign in with the Town Clerk before speaking. Comments are limited to three minutes.
5. **APPROVAL OF MINUTES**
 - 5.1. Approval of the April 2, 2019 Regular Town Council Meeting Minutes
6. **REPORTS**
 - 6.1. **Town Manager's Report**
 - 6.1.1. Town Manager's Report
 - 6.2. **Department Head Reports**
 - 6.2.1. Community Development Report
 - 6.2.2. Finance
 - 6.2.3. Police Department
 - 6.2.4. Public Works
 - 6.3. **Town Council Reports**
 - 6.4. **Other Reports**
 - 6.4.1. Admissions Tax Report - Nordic Inn - Will Gauthier
7. **CORRESPONDENCE**
8. **OLD BUSINESS**
 - 8.1. Discussion and Possible Consideration of Ordinance No. 3, Series 2019 - An Ordinance of the Town Council of the Town of Mt. Crested Butte, Colorado, Amending Chapter 21, Zoning, of the Town Code of the Town of Mt. Crested Butte, Colorado (Modifying Setback Regulations and Chapter Organization) - Second Reading - Leah Desposato
9. **NEW BUSINESS**
 - 9.1. Discussion and Possible Consideration of Appointing One (1) Member to The Town Council - Terms Expires April 2020
 - 9.2. Consideration of an Appointment of one Town Council Member to the Crested

Butte/ Mt. Crested Butte Chamber of Commerce Board of Directors

- 9.3. Consideration of an Appointment of one Town Council Member to the Gunnison Valley Regional Housing Authority Board
- 9.4. Consideration of an Appointment of one Town Council Member to the Mt. Crested Butte Admissions Tax Committee
- 9.5. Discussion and Possible Consideration of the 2019 Intergovernmental Agreement Regarding Undesirable Plant Management

10. OTHER BUSINESS

11. ADJOURNMENT

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

Approximate meeting time: 2.5 hours

TUESDAY

APRIL 9, 2019

REGULAR SESSION

5:30 P.M.

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

II. Citizen Input: (estimated time 3 minutes)

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

III. Council Action Items

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

○ **Approve Gunnison Arts Center Multi-Day City Event Permit for Sundays @ 6.**

Background: Sundays @ 6 Multi-day City Event Permit is a yearly event that the Gunnison Arts Center in Legion Park. This annual music event is enjoyed each summer by residents and visitors. All multi-day city event permits must be approved by City Council.

Staff contact: City Clerk Erica Boucher

○ **Approve Gunnison Farmers Market Multi-Day City Event Permit for the Gunnison Farmers Market.**

Background: Each summer and early fall the organizers of the Gunnison Farmer's Market set up next to IOOF on East Virginia Avenue from Main Street to Iowa Street. This is another annual event that residents and visitors enjoy and it brings vibrancy to our downtown area. All multi-day city event permits must be approved by City Council.

Staff contact: City Clerk Erica Boucher

Action Requested of Council: A motion, second and vote to approve the Consent Agenda as presented with the following items:

- Approve Sundays @ 6 and Farmers Market multi-day city event permits and authorize the Mayor's signature on both permits.

Estimated time: 5 minutes

B. Excuse Councilors Logan and Morrison from the March 26, 2019 Regular Session Meeting

Background: Background: Councilors are allowed to be formally excused from a Regular, Special or Reorganization Session meeting by a quorum vote of the City Council per Section 4.4 (F) of the Gunnison Municipal Home Rule Charter.

Staff contact: City Clerk Erica Boucher

Action Requested of Council: A motion and a second to excuse Councilor Logan and Councilor Morrison from the March 26, 2019 Regular Session meeting.

Estimated time: 2 minutes

C. Approval of the March 12, 2019 Regular Session meeting minutes.

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

Staff contact: City Clerk Erica Boucher

Action Requested of Council: A motion, second and vote to approve the minutes of the March 12, 2019 Regular Session meeting.

Estimated time: 2 minutes

D. Approval of the March 26, 2019 Regular Session meeting minutes.

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

Staff contact: City Clerk Erica Boucher

Action Requested of Council: A motion, second and vote to approve the minutes of the March 26, 2019 Regular Session meeting.

Estimated time: 2 minutes

E. Ordinance No. 3, Series 2019, Second Reading: *An Ordinance of the City Council of the City of Gunnison, Colorado, Amending Sections: 2, Table 2-5, Nonresidential Zone District Dimensional Standards and 3.7, Accommodations, Retail, Service - Commercial Use Standards, of the City of Gunnison Land Development Code.*

Background: The proposed text amendment is being driven by the Gunnison Vibrancy Initiative community input and recommendation, the Land Development Code Diagnosis, and public comment received in regard to the B1 zone district at multiple public hearings.

Staff contact: Community Development Director Anton Sinkewich

Action Requested of Council: Introduce, read by title only by the City Attorney, motion, second and vote to pass and adopt Ordinance No. 3, Series 2019 on second reading.

Estimated time: 5 minutes

- F. Ordinance No. 4, Series 2019, Second Reading:** *An Ordinance of the City Council of the City of Gunnison, Colorado Amending Section 5.4 E. 2., Wetland and Streams Corridor Protection, Buffer/Setback Areas, Wetlands of the City of Gunnison Land Development Code.*
 Background: This text amendment is to correct an error to the *Land Development Code* regarding a setback from a delineated wetland of 50 feet. The original intent was geared around protection of the Tomichi Creek and the Gunnison River.
 Staff contact: Community Development Director Anton Sinkewich
Action Requested of Council: Introduce, read by title only by the City Attorney, motion, second and vote to pass and adopt Ordinance No. 4, Series 2019 on second reading.
 Estimated time: 5 minutes
- G. License Agreement – Jerry and Arlene Kowal, 322/324 North 14th Street.**
 Background: The license agreement is requested for a roof extension to provide a safe access into the east and west sides of the existing duplex during the winter months and to provide protection of the electric pane, gas meter and crawl space access.
 Staff contact: Community Development Development Anton Sinkewich
Action Requested of Council: Approval of and authorization for the Mayor to sign the revocable License Agreement for the construction and maintenance of a roof extension that encroaches into 14th Street and Ohio Avenue rights-of-way. Estimated time: 10 minutes
- H. Building Permit Fee Waiver Request by GVRHA for GardenWalk Apartment Project.**
 Background: The Gunnison Valley Regional Housing Authority (GVRHA) is preparing to partner with the developers of the GardenWalk of Gunnison, LLC apartment complex located at the 700 block of N. Colorado Street. The GVRHA is requesting building permit fee waivers to enhance the affordability of the GardenWalk apartment project. Reducing the upfront costs of development reduce the overall debt structure of the project allowing for deeper subsidies to target extremely-low and very-low incomes.
 Community Contact: Jennifer Kermode, Executive Director of GVRHA
Action Requested of Council: Approval for building permit fees to be waived in the amount of \$22,001 for the GardenWalk Apartment Project to help decrease development costs.
 Estimated time: 20 minutes
- I. Crested Butte Land Trust Long Lake Land Exchange.**
 Background: The Crested Butte Land Trust is requesting \$250,000 in capital or affordable housing funds from the City of Gunnison for the years 2019 and 2020.
 Community Contact: Cynthia Wolff, Director of Development for the Crested Butte Land Trust
Action Requested of Council: The City of Gunnison has no available budgeted funds for the request in this proposal.
 Estimated time: 20 minutes

- J. Ordinance No. 5, Series 2019, First Reading:** *An Ordinance of the City of Gunnison, Colorado, Acting by and through Its Enterprise Fund, Approving Loans from the Colorado Water Resources and Power Development Authority to Finance Improvements to the Sewer Collection System and the Wastewater Treatment Facility; Authorizing the Execution of Loan Agreements and Bonds to Document the Loans; and Providing for Payment of the Bonds from Net Revenue of the Sewer System.*

Background: This ordinance approves two loans necessary for financing the improvements at the City of Gunnison Wastewater Treatment Plant. The ordinance both allows signature on the loans and causes the loans not to be subject to referendum as multi-year debt.

Staff contact: Finance Director Ben Cowan

Action Requested of Council: Introduce, read by title only by the City Attorney, motion, second and vote to pass and order published Ordinance No. 5, Series 2019 on first reading.

Estimated time: 5 minutes

- K. Ordinance No. 6, Series 2019, First Reading:** *An Ordinance of the City Council of the City of Gunnison, Colorado, Adopting an Additional Appropriation for the Fiscal Year Ending December 31, 2019.*

Background: This ordinance obtains the legal authority to spend the amounts as approved by the Council that constitute a divergence from the original adopted budget.

Staff contact: Finance Director Ben Cowan

Action Requested of Council: Introduce, read by title only by the City Attorney, motion, second and vote to pass and order published Ordinance No. 6, Series 2019 on first reading.

Estimated time: 10 minutes

- L. Resolution No. 3, Series 2019:** *A Resolution of the City Council of the City of Gunnison, Colorado, Adopting Fees.*

Background: To formalize fee adjustments for the City of Gunnison's various fee schedules in order to support the cost of service provision to area residents. This particular resolution will be adding a new fee for overfilled refuse containers.

Staff contact: Finance Director Ben Cowan

Action Requested of Council: A motion to approve Resolution No. 3, Series 2019: A Resolution of the City Council of the City of Gunnison, Colorado, Adopting Fees.

Estimated time: 5 minutes

VI.

Reports:

City Attorney Report

City Clerk Schedule Update

City Manager Strategic Projects Update and Report

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

VIII. Meeting Adjournment

The City Council Meetings agenda is subject to change. The City Manager and City Attorney reports may include administrative items not listed. Regular Meetings and Special Meetings are recorded and action can be taken. Minutes are posted at City Hall and on the City website at www.gunnisonco.gov. Discussion Sessions are recorded; however, minutes are not produced. For further information, contact the City Clerk's office at 970.641.8140. **TO COMPLY WITH ADA REGULATIONS, PEOPLE WITH SPECIAL NEEDS ARE REQUESTED TO CONTACT THE CITY CLERK 24 HOURS BEFORE ALL MEETINGS AT 970.641.8140.**

GUNNISON COUNTY BOARD OF COMMISSIONERS
REGULAR MEETING AGENDA

140

DATE: Tuesday, April 2, 2019

Page 1 of 1

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

GUNNISON COUNTY BOARD OF COUNTY COMMISSIONERS REGULAR MEETING:

- 8:30
- Call to Order
 - Agenda Review
 - Minutes Approval:
 1. 3/5/19 Regular Meeting
 - Consent Agenda: These items will not be discussed unless requested by a Commissioner or citizen. Items removed from consent agenda for discussion may be rescheduled later in this meeting, or at a future meeting.
 1. Policy Update; Gunnison County Employee Handbook; Effective April 2, 2019
 2. Policy Update; Motor Pool & Personal Vehicle Policy #4.3.3
 3. Agreement; Payment for Coroner's Work Space
 4. Grant Proposal; Colorado Nutrition Incentive Program; Mountain Roots; \$12,308
 5. Contract; Colorado Child Care Assistance Program (CCCAP); Contracted Slots Pilot Program
 6. Gunnison County Employee Medical Benefit Plan; CoreSource; Effective January 1, 2019
 7. Application; Categorical Exclusion (CATEX); Gunnison-Crested Butte Regional Airport; Federal Aviation Administration
 8. Attachment I; Criteria for Payor Access; OptumHealth Care Solutions, Inc.
 9. Ratification of Approval to Submit Grant Application; Department of Local Affairs; Energy / Mineral Impact Assistance Fund Grant; Solar PV
 - Scheduling
- 8:40
- County Manager's Report
- 8:50
- Deputy County Manager's Report
 1. Termination of Lease Agreement; BAMP, LLC & Gunnison County; Gold Basin Industrial Park
 2. Agreement for Professional Services; Gothic Road Bridge Evaluation
- 9:00
- Continued Public Hearing; Request for Waiver of Gunnison County Standard Specifications for Road & Bridge Construction; Gregory Subdivision
- 9:10
- Energy Performance Contract; Investment Grade Audit; Colorado Energy Office
 - Unscheduled Citizens: Limit to 5 minutes per item. No formal action can be taken at this meeting.
 - Commissioner Items: Commissioners will discuss among themselves activities that they have recently participated in that they believe other Commissioners and/or members of the public may be interested in hearing about.
 - Adjourn

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

GUNNISON COUNTY BOARD OF COMMISSIONERS
WORK SESSION AGENDA

141

DATE: Tuesday, April 9, 2019

Page 1 of 1

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

GUNNISON COUNTY BOARD OF COUNTY COMMISSIONERS WORK SESSION:

- 8:30 • Colorado River Water Conservation District Report
- 8:45 • HB 1177 Roundtable Report
- 8:50 • Break
- 9:00 • Community Planning Assistance for Wildfire Presentation
- Adjourn

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

May 6, 2019**Work Session**

Creative District Restructuring
Slate River Working Group Update

Consent Agenda

Crested Butte Art Market Special Event Application
Bid Award for Old Town Hall Elevator
Weed IGA

Public Hearing

Tin Cup Pasty Liquor License

New Business

County Commissioner Update

May 20, 2019**Work Session**

Q1 Financial Update

Consent Agenda

Consultant Selection for the Climate Action Plan

New Business

Ordinance - Lease
Resolution - Fee Schedule Changes

June 3, 2019**Work Session**

Demolition Moratorium

New Business

Bid Award for Block 76 Water Main Project
Ordinance - Lease

June 17, 2019

Work Session Start at 5PM - Joint Meeting with Housing Foundation
InDeed Deed Restriction Purchase Program

July 1, 2019

Ordinance - Releasing Kikel CE

Future Items

- Quarterly Financial Reports
- Heights Open Space Plat Note and Covenants

- DOLA Update
- Annual Report from the Creative District Commission - October
- Snow Plan - October
- Deadline for Presentation of Annual Budget - October 15th
- Annual Report by the Chair of the Weed Advisory Board on Weed Management in the Town of Crested Butte - November
- Funding Agreement with the Chamber - December
- Ordinance - CO Model Traffic Code 2018
- Ordinance - Creative District Restructuring
- Briefing of the Legal Implications of Vested Rights