

AGENDA
Town of Crested Butte
Regular Town Council Meeting
Tuesday, February 19, 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.

5:00 REGULAR COUNCIL MEETING CALLED TO ORDER BY MAYOR OR MAYOR PRO-TEM

5:02 PUBLIC HEARING

1) Appeal of the December 18, 2018 BOZAR Denial Determination for the Demolition of the Existing Single Family Residence Located at 20 Third Street, Block 3, West 100 feet of Lots 20-21 and West 100 Feet of the South Half of Lot 19 in the R1 Zone.

6:30 BREAK FOR DINNER

7:02 APPROVAL OF AGENDA

7:04 CONSENT AGENDA

1) February 4, 2019 Regular Town Council Meeting Minutes.

2) Thomson Divide Legislation Letter of Support.

3) Town Council Referral to BOZAR Concerning Proposed Text Amendments for Chapter 16 and 17 for Subdivision Exemptions.

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 OLD BUSINESS

1) Update to Bywater Construction Contract to Build Affordable Housing in Paradise Park.

7:35 NEW BUSINESS

1) Ordinance No. 4, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Release of Deed Restrictions on Certain Properties in the Paradise Park Subdivision and Replacement with New Deed Restrictions.

7:45 2) Ordinance No. 5, Series 2019 - An Ordinance of the Crested Butte Town Council Transferring Block 76 Lots 1-6 and Block 77 Lot 10 to Bywater for the Construction of Affordable Housing.

7:50 3) Ordinance No. 6, Series 2019 - An Ordinance of the Crested Butte Town Council Approving a Loan from the Colorado Water Resources and Power Development Authority; and Authorizing the Execution of a Loan Agreement and a Governmental Agency Bond to Evidence Such Loan.

7:55 4) Ordinance No. 7, Series 2019 - An Ordinance of the Crested Butte Town Council Approving the Lease of the Downstairs North Room at 132 Elk Ave to Paragon Gallery.

8:00 5) Award of a Contract for the Construction of the Water Treatment Plant Improvements and Authorizing the Town Mayor to Enter Into a Construction Agreement Between the Town of Crested Butte and Moltz Construction, Inc.

8:05 6) Award of a Contract for the Construction Management of the Water Treatment Plant Improvements and Authorizing the Town Mayor to Enter Into a Professional Services Agreement Between the Town of Crested Butte and JVA, Inc. ²

8:10 7) Resolution No. 3, Series 2019 - A Resolution of the Crested Butte Town Council Accepting Construction of the Wastewater Treatment Plant Upgrades Performed by Integrated Water Services, Inc.

8:20 8) Update on Annexation Procedures for the Slate River Annexation.

8:35 **LEGAL MATTERS**

8:40 **COUNCIL REPORTS AND COMMITTEE UPDATES**

8:55 **OTHER BUSINESS TO COME BEFORE THE COUNCIL**

9:05 **DISCUSSION OF SCHEDULING FUTURE WORK SESSION TOPICS AND COUNCIL MEETING SCHEDULE**

- Monday, March 4, 2019 - 6:00PM Work Session - 7:00PM Regular Council
- Monday, March 18, 2019 - 6:00PM Work Session - 7:00PM Regular Council
- Monday, April 1, 2019 - 6:00PM Work Session - 7:00PM Regular Council

9:10 **ADJOURNMENT**

MINUTES
Town of Crested Butte
Regular Town Council Meeting
Monday, February 4, 2019
Council Chambers, Crested Butte Town Hall

Mayor Schmidt called the meeting to order at 7:02PM.

Council Members Present: Will Dujardin, Kent Cowherd, Chris Haver, Laura Mitchell, and Paul Merck

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

Town Clerk Lynelle Stanford (for part of the meeting)

APPROVAL OF AGENDA

MacDonald updated the title of the second Executive Session. They would be discussing land acquisition in general.

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

CONSENT AGENDA

1) January 22, 2019 Regular Town Council Meeting Minutes.

2) Resolution No. 2, Series 2019 - A Resolution of the Crested Butte Town Council Authorizing the Town Manager to Sign a Service Agreement with the Colorado State Forest Service Gunnison Field Office for Community Forestry Assistance.

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

PUBLIC COMMENT

None

STAFF UPDATES

- MacDonald suggested that the Council might want to discuss the Post Office under Other Business.
- The Town entered into a partnership with Gunnison County, City of Gunnison, Mt. Crested Butte and CB South to leverage buying power for projects.

Collectively, they would go out for one large bid, rather than as individual entities.

- Diner's last day would be on Friday. MacDonald invited everyone to the party at Kochevar's. Kat Cooke had been hired to replace Diner.
- Roland Mason would attend Council meetings regularly to update the Council and to gain feedback. He would start by attending the meeting on March 4th.
- Yerman announced that the housing lottery would be this week.
- Schmidt had questions on the hockey changing rooms. He asked if the project had been sent to an architect for plans.
- Schmidt mentioned the upcoming intergovernmental meeting.
- Cowherd recognized the landscaping, specifically trees, that would be at the Town Park playground.

PUBLIC HEARING

1) Ratification of Ordinance No. 1, Series 2019 (Emergency Ordinance) - An Ordinance of the Crested Butte Town Council Declaring a Temporary Moratorium On Demolition and the Processing and Approval of Applications for Demolition of Permanent Structures Within the Town of Crested Butte Pending Amendment of the Municipal Code of the Town of Crested Butte.

Yerman stated they continued the public hearing, so five members of the Council could vote on the ratification. Schmidt confirmed proper public notice had been given.

Sue Navy - 324 Gothic

- She supported the moratorium.
- It was important to protect the creative heritage from the past.

Schmidt acknowledged the letter from the Faustus. Cowherd wondered how the ordinance affected FAR numbers, which Yerman said had not been considered in the ordinance. The public hearing was closed.

Cowherd moved and Merck seconded a motion to ratify Ordinance No. 1, Series 2019. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

2) Ordinance No. 2, Series 2019 - An Ordinance of the Crested Butte Town Council Approving the Lease of the Property at 705 & 715 Seventh Street to Stepping Stones Children's Center.

Zillioux informed the Council that Town was proposing the lease with Stepping Stones for a period of five years at an opening rate of \$1 per square foot. This time was the first that they would be charged rent. Schmidt confirmed proper public notice had been given. There was no one present who chose to comment. The public hearing was closed.

Merck moved and Haver seconded a motion to pass Ordinance No. 2, Series 2019. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

3) Ordinance No. 3, Series 2019 - An Ordinance of the Crested Butte Town Council Amending the Town Code to Amend Crested Butte Municipal Code Section 18-2-30 (6) Concerning Fire Suppression Requirements for Townhomes Under the International Residential Code.

Yerman explained the ordinance would extend to townhomes in general, but it would not extend beyond triplexes. Schmidt confirmed proper public notice had been given.

Sean Caffrey - District Manager of the Crested Butte Fire Protection District

- Introduced Fire Inspector, Chris Davis.
- They were proponents of the International Residential Code. The most loss of life from fire was in residential structures. Synthetics were being used in construction, so the toxic effects of combustion affected people sooner.
- They understood the cost of sprinkler systems.
- He asked the Council to reconsider their decision.

Yerman specified the type of construction that included two-hour assembly. The cost implication was \$250,000 for the project that would be passed to the affordable housing applicants. Davis reiterated they could not put a price on public safety. Sprinklers worked well. The coverage and mitigation with a sprinkler system were priceless. Ric Ems stated that life safety was paramount. He explained that it was off-gassing from building materials that killed people.

Schmidt questioned insurance costs for a home with sprinklers versus one without sprinklers. Haver questioned the cost of sprinklers. Joe Wisian, from Bywater, contractor on the affordable housing project, identified that the additional cost to the project in order to include sprinklers would be \$225,000 to \$250,000. He cited issues with sprinkler systems and listed other safety measures. Ems identified that sprinklers were not a deluge system. Haver wanted to clarify the bigger picture cost of sprinkler systems. Merck knew fire suppression systems saved lives. He cited statistics from when sprinkler systems were present and properly maintained. Cowherd appreciated the Town reaching out to the Fire Department. He saw and understood that life safety would be satisfied by a two-hour firewall with smoke detectors and carbon monoxide detectors. Dujardin was okay with continuing the public hearing. He had a hard time balancing the costs versus saving lives.

Jim Starr

- Encouraged the Council to err on the side of safety in all cases.

Schmidt closed the public hearing.

Cowherd moved and Mitchell seconded a motion to approve Ordinance No. 3, Series 2019. A roll call vote was taken with Cowherd, Mitchell, and Schmidt voting, "Yes," and Dujardin, Merck, and Haver voting, "No." **Motion failed.**

Yerman said they would come back to the Council on ways to buy down AMIs. Delays would cost money. The recommendation would be to proceed with sprinklers and then find other cost savings.

4) Transfer of the Hotel and Restaurant Liquor License at 517 2nd Street from Chicken Shack Inc DBA Slogar Bar & Restaurant to Slogar LLC.

Malia Jones - 701 Red Lady Avenue (residence) and 517 2nd Street (business)

- They were looking to transfer the liquor license and extend the licensed premises to the fenced-in area outside.
- The outside area had been used for events.
- They would use heat lamps.
- The area would be utilized from Memorial Day to the end of September, weather permitting.

Yerman stated the standard curfew set for outdoor seating was 9PM. The restrictive covenant would come via ordinance at an upcoming meeting.

Tom Miller - 125 Whiterock Avenue

- Was in support of the usage of the patio with the 9PM curfew.

Ayla Scott - 722 Belleview Avenue (residence) and 517 2nd Street (business)

- She wondered if there could be an exception to the curfew to allow for events until 10PM.

Dujardin questioned enforcement of the curfew. He did not think they needed to include the first two conditions, which were 9PM curfew and prohibition on outdoor amplified music. Schmidt preferred to be consistent with the other restaurants.

Merck moved and Mitchell seconded a motion to approve the transfer of a Hotel and Restaurant Liquor License to Slogar LLC and to allow the expansion of the liquor license area into the patio area requiring an amended and restated Restrictive Covenant Agreement with the three proposed additional conditions. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

OLD BUSINESS

1) Discussion on The Corner at Brush Creek Housing Project.

Schmidt referenced the letter included in the packet. He mentioned the three conditions they agreed upon with Mt. Crested Butte. The letter was an explanation of how they reached the conditions. Cowherd thought the letter was critical to justify the three conditions to the citizens. He suggested the letter be submitted to the paper for the public. Haver liked the concept of explaining their stance. He suggested clarifying wording in the closing paragraph of the letter. Dujardin also recognized a change in the last paragraph. Schmidt recommended amendments that he identified. Mitchell thought

they should be clear concerning what would happen with the five acres set aside. Other uses caused the tug of war with the property. Schmidt summarized the changes including that they would drop the first sentence in the last paragraph, add the word mutual ahead of respect, and add the word rental to the majority of housing needs.

Dwayne Lehnertz - Mt. Crested Butte

- Asked for the letter being discussed.
- He stated that Gates indicated he would not move forward until he had an agreement that the property would be his. Schmidt commented on policy. Haver clarified the reason behind the letter.
- Lehnertz asked if the Council would stand on the three conditions, or were they still negotiable. Haver was not moving from the number of 156 units.

Dujardin's concerns were the time it would continue to take and the cost of lawsuits for going this far down the road.

David Leinsdorf - Treasury Hill Road

- Parse the letter to not create any daylight between Town and Mt. Crested Butte.
- The Town's influence was being in alignment with Mt. Crested Butte.
- Lehnertz agreed with Leinsdorf's points.

George Gibson - Powderview Drive

- The councils defined the conditions for consent. Gatesco got what was asked for.
- He read conditions from a document related to a quotation made by Matthew Birnie.

Dujardin did not support the conditions, so he would not be voting on the letter. Haver said it was time to have the answer of this or nothing. It was a major concern to make the process go faster. Dujardin did not think they were doing what their constituents were asking them to do.

Merck moved and Mitchell seconded a motion to send this letter to the County and the two newspapers with changes. A roll call vote was taken with all voting, "Yes," except Dujardin abstained from voting. **Motion passed unanimously.**

LEGAL MATTERS

Sullivan updated on the case with the Heights Open Space. Janna Hansen was in touch with the surveyors, and the survey could be completed before the snow melted. Town would be splitting the cost with the owners of the sites.

Sullivan reported on the dispute concerning the properties on Maroon. The Town had not been named as a party yet, but they had until February 27th. He did not expect resolution by the deadline.

Schmidt asked about the Kapushion Ditch. MacDonald stated the deal was done.

COUNCIL REPORTS AND COMMITTEE UPDATES

Will Dujardin

- Attended Upper Gunnison River Water Conservancy District meeting. There were good reports from the winter, but the area was technically in extreme drought.
- Attended the Zen business leadership retreat.

Laura Mitchell

- Attended Mountain Express meeting. Ridership out of CB South was up 25%. RTA ridership was up from CB South, too.
- The Scenic Byways meeting was postponed. She would review the minutes later.

Kent Cowherd

- The Zen meeting was great.

Chris Haver

- Went to the Zen meeting, which was enjoyable and run well.
- He met with Russ Forrest and Cathie Pagano to prepare for the next One Valley Leadership Council meeting. They discussed how to add more leadership training opportunities.

Jim Schmidt

- Went to Zen meeting. He did not take away the total positive feeling that others did.
- Attended a Land Preservation meeting. They accumulated money for seven projects that were scattered throughout the County. Two out of three properties up Ohio Creek were planned to be subdivisions until they were turned back into conservation easements.
- Talked with the Postmaster and his boss. They were short-staffed over the holidays, which was the reason behind the long lines. They hoped to be fully staffed next Christmas. They were trying to relieve people of the burden of paying for a post office box.
- RTA carried over 1,000 people a day in January.

Chris Haver

- Went to the meeting on the cell phone towers at the school. They were explaining how safe or dangerous a cell phone tower would be. They would be discussing in the future.

Will Dujardin

- Auto dealers were suing the State after CC4CA's win regarding legislation that adopted low emission vehicle standards.
- He was at the Mountain Express meeting. There had been an incident with a passenger.

OTHER BUSINESS TO COME BEFORE THE COUNCIL

Cowherd read his letter of resignation, explaining his reasons for resigning, effective tomorrow morning, so he could complete the meeting. Haver thanked him. Schmidt echoed Haver. Dujardin thanked Cowherd and so did Merck and Mitchell. MacDonald explained the process for the Council to appoint a new member. They had 30 days to appoint someone.

DISCUSSION OF SCHEDULING FUTURE WORK SESSION TOPICS AND COUNCIL MEETING SCHEDULE

- *Tuesday*, February 19, 2019 - 5:00PM Regular Council
- Monday, March 4, 2019 - 6:00PM Work Session - 7:00PM Regular Council
- Monday, March 18, 2019 - 6:00PM Work Session - 7:00PM Regular Council

MacDonald asked whether Brush Creek would be staying on Old Business. The Council decided the item would come back when something happened.

EXECUTIVE SESSION

Schmidt read the reason for the first Executive Session:

1) 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) regarding the draft MOU with the CB Fire District and CBSAR for TP1 in the Slate River Annexation.

Merck moved and Dujardin seconded a motion to go into Executive Session. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

Schmidt read the reason for the second Executive Session:

2) For the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under C.R.S. Section 24-6-402(4)(e) regarding land acquisition.

Merck moved and Dujardin seconded a motion to go into Executive Session. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

The Council went into the first Executive Session at 9:12PM. The Council returned to open meeting at 9:30PM. Mayor Schmidt made the required announcement upon returning to open meeting.

The Council went into the second Executive Session at 9:31PM. The Council returned to open meeting at 10:04PM. Mayor Schmidt made the required announcement upon returning to open meeting.

ADJOURNMENT

Mayor Schmidt adjourned the meeting at 10:05PM.

James A. Schmidt, Mayor

Lynelle Stanford, Town Clerk (SEAL)

Background for Consent Item: Request from High Country Conservation Advocates for the Crested Butte Town Council to Submit a Letter of Support for the Colorado Outdoor Recreation and Economy (CORE) Act to Sen. Bennet, Sen. Gardner, Rep. Neguse, and Rep. Tipton.

On January 28, 2019 Senator Michael Bennet and Representative Joe Neguse introduced the [Colorado Outdoor Recreation and Economy \(CORE\) Act](#) ([Attachment 1](#)), a comprehensive public lands bill establishing new wilderness areas, protecting wild places, and safeguarding existing outdoor recreation opportunities for future generations. The CORE Act protects approximately 400,000 acres of public lands across Colorado, including in Gunnison County. It combines and improves four previously introduced bills: the *Thompson Divide Withdrawal and Protection Act*, the *Curecanti National Recreation Area Boundary Establishment Act*, the *San Juan Mountains Wilderness Act*, and the *Continental Divide Recreation, Wilderness and Camp Hale Legacy Act*.

The Thompson Divide Withdrawal and Protection Act component withdraws approximately 200,000 acres in Gunnison, Pitkin, and Garfield Counties from all forms of disposal, mining, and mineral leasing. On April 3, 2017 the Town of Crested Butte submitted a letter of support for the Thompson Divide Withdrawal and Protection Act of 2017 ([Attachment 2](#)). The CORE Act combines that previously introduced bill along with the three other bills to protect incredible Colorado landscapes that preserve our clean air and water, sustain wild public lands, and support our recreation economy. High Country Conservation Advocates (HCCA) respectfully requests that the Town of Crested Butte submit a letter in support of the CORE Act, specifically the mineral withdrawal provision in Gunnison County.

Please send the letter to the following recipients:

The Honorable Michael Bennet
261 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Cory Gardner
354 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Joe Neguse
1449 Longworth House Office Building
Washington, DC 20515

The Honorable Scott Tipton
218 Cannon House Office Building
Washington, DC 20515

Background

- The Thompson Divide Withdrawal and Protection Act component of the CORE Act protects the Thompson Divide—one of Colorado’s most treasured landscapes—by withdrawing approximately 200,000 acres from future mining and mineral development, while preserving existing private property rights for leaseholders and landowners. It also creates a program to lease excess methane from nearby coal mines.
- The Thompson Divide Withdrawal and Protection Area ([Attachment 3](#)) encompasses mineral withdrawals under federal lands near Crested Butte, including the iconic Kebler Pass landscape along County Road 12, lands near Ohio Pass, and lands adjacent to the Raggeds Wilderness and West Elk Wilderness. This bill is good news for the Thompson Divide, Kebler Pass, and the North Fork Valley, and for Crested Butte residents and visitors who enjoy those landscapes. Precluding future mineral development in the withdrawal area would ensure that wildlife, recreation, and historic ranching thrive into the future.

Why the Town of Crested Butte Should Support the Bill

- First, the area withdrawn from future mining entry and mineral leasing includes a vast landscape surrounding the northern and western aspects of the West Elk Wilderness, almost the entirety of the west side of Kebler Pass, and the entire western and southern borders of the Raggeds Wilderness. These areas are near and dear to Crested Butte residents and visitors, and contain outstanding wildlife habitat and opportunities for sustainable recreation.
- Second, subject to valid existing rights, the Thompson Divide Withdrawal and Protection Area would be withdrawn from *all forms* of disposal, mining and mineral leasing. Per Sec. 303(a), “Subject to valid existing rights, the Thompson Divide Withdrawal and Protection Area is withdrawn from all forms of (1) entry, appropriation, and disposal under the public land laws; (2) location, entry, and patent under the mining laws; and (3) operation of the mineral leasing, mineral materials, and geothermal leasing laws.” This means that public lands immediately adjacent to Kebler Pass, the West Elk Wilderness and the Raggeds Wilderness would be permanently protected. Crested Butte is a town with a history of mining, but now has a vibrant local economy based on ranching, tourism and recreation, all of which would be protected under the bill.
- Third, based on requests from Gunnison County, Delta County, and natural gas producers, the bill contains a provision that would support local economies and address climate change by creating a program to lease and generate energy from excess methane in existing and abandoned coal mines in the North Fork Valley. While this provision would not substantively curtail methane emissions from the West Elk Coal mine (the single largest source of industrial methane in Colorado), it does initiate a program to address methane pollution in the North Fork while incentivizing economic development. Because Crested Butte’s economy is tied to snowpack and healthy public lands, and because methane is an extremely potent greenhouse gas, this is a step in the right direction.
- Fourth, the bill is supported by numerous Colorado counties, municipalities, and business owners (Attachment 4).
- Fifth, the withdrawal area in the bill now covers the lands that are proposed as the site of the Crested Butte to Carbondale Trail, which would be compromised by mining and mineral development within its midst.



COLORADO OUTDOOR RECREATION & ECONOMY ACT

Colorado U.S. Senator Michael Bennet and U.S. Congressman Joe Neguse's *Colorado Outdoor Recreation & Economy (CORE) Act* protects approximately 400,000 acres of public land in Colorado, establishing new wilderness areas and safeguarding existing outdoor recreation opportunities to boost the economy for future generations.

Colorado counties, in close coordination with businesses, recreation groups, sportsmen, and conservationists, helped write each element of the CORE Act over the last decade.

Of the land protected, about 73,000 acres are new wilderness areas, and nearly 80,000 acres are new recreation and conservation management areas that preserve existing outdoor uses, such as hiking and mountain biking. The bill also includes a first-of-its-kind National Historic Landscape to honor Colorado's military legacy and prohibits new oil and gas development in areas important to ranchers and sportsmen.

The CORE Act unites and improves four previously introduced bills:

1. Continental Divide Recreation, Wilderness, and Camp Hale Legacy Act
2. San Juan Mountains Wilderness Act
3. Thompson Divide Withdrawal and Protection Act
4. Curecanti National Recreation Area Boundary Establishment Act

Continental Divide Recreation, Wilderness, and Camp Hale Legacy Act

The *Continental Divide Recreation, Wilderness, and Camp Hale Legacy Act* establishes permanent protections for nearly 100,000 acres of wilderness, recreation, and conservation areas in the White River National Forest along Colorado's Continental Divide. It also designates the first-ever National Historic Landscape around Camp Hale to preserve and promote the 10th Mountain Division's storied legacy. In crafting the bill, Senator Bennet and then-Congressman Jared Polis collaborated with community leaders, veterans, and businesses in Eagle, Summit, and Grand Counties.

- **Wilderness Areas:** The bill creates three new wilderness areas in the Tenmile Range, Hoosier Ridge, and Williams Fork Mountains, totaling 21,033 acres. It also adds 20,196 acres to three existing wilderness areas by expanding Eagles Nest, Ptarmigan Peak, and Holy Cross wilderness areas. Input and support from community leaders in Eagle and Summit Counties led to these designations.
- **Camp Hale National Historic Landscape:** The bill designates 28,728 acres surrounding Camp Hale as the first-ever National Historic Landscape. This unprecedented designation speaks to the storied legacy of the Army's 10th Mountain Division in Colorado and around the world. The 10th Mountain Division that trained at Camp Hale led our nation to victory in World War II, then went on to create the outdoor industry as we know it today. The National Historic Landscape designation would ensure Camp Hale's historic preservation, secure existing recreational opportunities, and protect natural resources.
- **Wildlife:** The bill creates two new wildlife conservation areas totaling 11,668 acres. The Porcupine Gulch Wildlife Conservation Area would protect Colorado's only migration corridor over Interstate 70 for elk, bear, mule deer, and other wildlife. The Williams Fork Wildlife Conservation Area would enhance wildlife habitat for the Greater Sage-grouse and other species.
- **Recreation:** The bill creates a recreation management area in the Tenmile Range totaling 16,966 acres. This would protect access to world-class outdoor recreation, such as mountain biking, hiking, and hunting.
- **Other Land Management:** The bill addresses a number of management issues in specific areas along the Continental Divide. It adjusts wilderness boundaries around the Trail River Ranch in Rocky Mountain National Park to ensure ongoing access to the property for youth and community education programs. It authorizes special use of the Bolts Ditch headgate in the Holy Cross Wilderness Area to ensure the town of Minturn, Colorado, can use its existing water rights to fill Bolts Lake. Lastly, it allows the Forest Service to acquire "the Wedge"—several parcels of land in Grand County—to protect wildlife habitat and the landscape near Rocky Mountain National Park.

San Juan Mountains Wilderness Act

The *San Juan Mountains Wilderness Act* provides permanent protections for nearly 61,000 acres of land located in the heart of the San Juan Mountains in Southwest Colorado. It designates some of the state's most iconic peaks as wilderness, including two fourteeners: Mount Sneffels and Wilson Peak. The bill is the result of more than 10 years of collaboration among local leaders, businesses, and ranchers in San Miguel, San Juan, and Ouray Counties. It has passed out of both Senate and House committees with bipartisan support.

- **Wilderness:** The bill designates 31,725 acres of new wilderness areas near Telluride, Norwood, Ouray, and Ridgway. Approximately 23,000 acres are additions to the existing Lizard Head and Mount Sneffels Wilderness Areas. The bill also designates 8,884 acres surrounding McKenna Peak, an existing Wilderness Study Area, as a new wilderness area in San Miguel County.
- **Special Management:** The bill designates 21,663 acres as the Sheep Mountain Special Management Area between the towns of Ophir and Silverton, which includes Hope Lake and Ice Lakes Basin. The bill also creates the 792-acre Liberty Bell East Special Management Area near Telluride.
- **Mineral Withdrawal:** The bill protects 6,590 acres of mineral withdrawal outside of Norwood at Naturita Canyon, prohibiting future mineral development in the canyon.

Thompson Divide Withdrawal and Protection Act

The *Thompson Divide Withdrawal and Protection Act* protects the Thompson Divide—one of Colorado's most treasured landscapes—by withdrawing approximately 200,000 acres from future oil and gas development, while preserving existing private property rights for leaseholders and landowners. It also creates a program to lease excess methane from nearby coal mines, supporting the local economy and addressing climate change. Since joining the Senate, Senator Bennet has worked with ranchers, sportsmen, and elected officials to ensure the bill reflects the wishes of Gunnison, Pitkin, and Garfield Counties and local energy companies.

- **Mineral Withdrawal:** The bill permanently withdraws around 200,000 acres in the Thompson Divide near Carbondale and Glenwood Springs from future oil and gas development, while preserving existing private property rights for leaseholders and landowners. It also provides the option for leaseholders to exchange existing Thompson Divide leases for credits that could be used to bid on new leases elsewhere.
- **Methane Leasing:** Based on a request from Gunnison County, Delta County, and natural gas producers, the bill creates a program to lease and generate energy from excess methane in existing or abandoned coal mines in the North Fork Valley—supporting the local economy and addressing climate change.

Curecanti National Recreation Area Boundary Establishment Act

The *Curecanti National Recreation Area (NRA) Boundary Establishment Act* formally establishes the boundary for the Curecanti NRA. Although created in 1965, the boundary has never been designated by Congress, limiting the ability of the National Park Service to effectively manage the area. The bill improves coordination among land management agencies and ensures the Bureau of Reclamation upholds its commitment to expand public fishing access in the basin. Since 2011, Senator Bennet has worked closely with counties, federal agencies, landowners, and sportsmen to craft the bill.

- **Boundary Establishment:** The bill formally establishes the boundary of the Curecanti National Recreation Area, currently one of only a handful of NPS units without a formal designation by Congress.
- **Land Management:** The bill improves the efficiency of public land management in the area by initiating a series of administrative jurisdiction changes—a step supported by all of the relevant land management agencies that will save taxpayer dollars. It also ensures Bureau of Reclamation jurisdiction over the three dams in the area that play an important role in the Colorado River. Lastly, the bill allows nearby landowners to voluntarily receive assistance from the NPS to conserve natural resources on their property.
- **Fishing Access:** The bill ensures that the Bureau of Reclamation upholds its commitment to expand public fishing access in the basin, which was lost when the Aspinall Unit was created.

Town of Crested Butte

17

P.O. Box 39 Crested Butte, Colorado 81224

-National Trust for Historic Preservation's 2008 Dozen Distinctive Destinations Award Recipient-

-A National Historic District-

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

April 3, 2017

The Honorable Michael Bennet
261 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Cory Gardner
354 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Scott Tipton
218 Cannon House Office Building
Washington, D.C. 20515

Re: Support for the Thompson Divide Withdrawal and Protection Act of 2017

Dear Senator Bennet, Senator Gardner and Representative Tipton,

The Town of Crested Butte, Colorado strongly supports the Thompson Divide Withdrawal and Protection Act of 2017. We specifically support the provision in the legislation that permanently withdraws, subject to valid existing rights, lands in Gunnison County from all forms of (1) entry, appropriation, and disposal under the public land laws; (2) location, entry, and patent under the mining laws; and (3) operation of the mineral leasing, mineral materials, and geothermal leasing laws. Included in the Thompson Divide Withdrawal and Protection Area are federal lands near Crested Butte, including the iconic Kebler Pass area along County Road 12, lands near Ohio Pass, and lands adjacent to the Raggeds Wilderness and West Elk Wilderness. Conservation of this interconnected landscape is critical to the economic and environmental sustainability of Crested Butte, and we support its permanent protection through federal legislation.

Crested Butte has a history in mining, but now has a vibrant local economy based on recreation, ranching, and tourism. The public lands in Gunnison County that are part of the Thompson Divide Withdrawal and Protection Area support all three of these economic drivers. Mineral development in the withdrawal area, especially near Kebler Pass and County Road 12, Ohio Pass, and the Raggeds and West Elk Wilderness areas, is incompatible with our economic wellbeing and community values.

Near Crested Butte, the withdrawal area includes the iconic aspen forests that draw tourists every fall for leaf peeping. It also encompasses a significant portion of the West Elk Loop Scenic Byway, the proposed Carbondale to Crested Butte Trail, and those routes' viewsheds. The Town of Crested Butte is a partner in both the Byway and the Trail because they attract tourists to our town and surrounding communities. Hunting, fishing, hiking, mountain biking and backcountry winter sports are popular

recreation endeavors within the mineral withdrawal area. Wildlife also call this area home. Historic ranching stands to benefit from this legislation's permanent protection of public lands that support grazing. In addition, the mineral withdrawal area in Gunnison County is directly upstream from the farms, orchards and vineyards of Delta County, an area that supplies much of the fresh, local produce for Crested Butte residents and businesses.

The Thompson Divide Withdrawal and Protection Act of 2017 is good for Crested Butte, good for Gunnison County, and good for Colorado. By achieving a balance between energy development and conservation, it will sustain the quality of life we have developed in our community now and for future generations.

Sincerely,



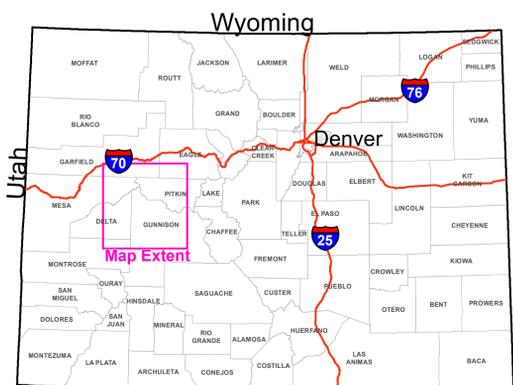
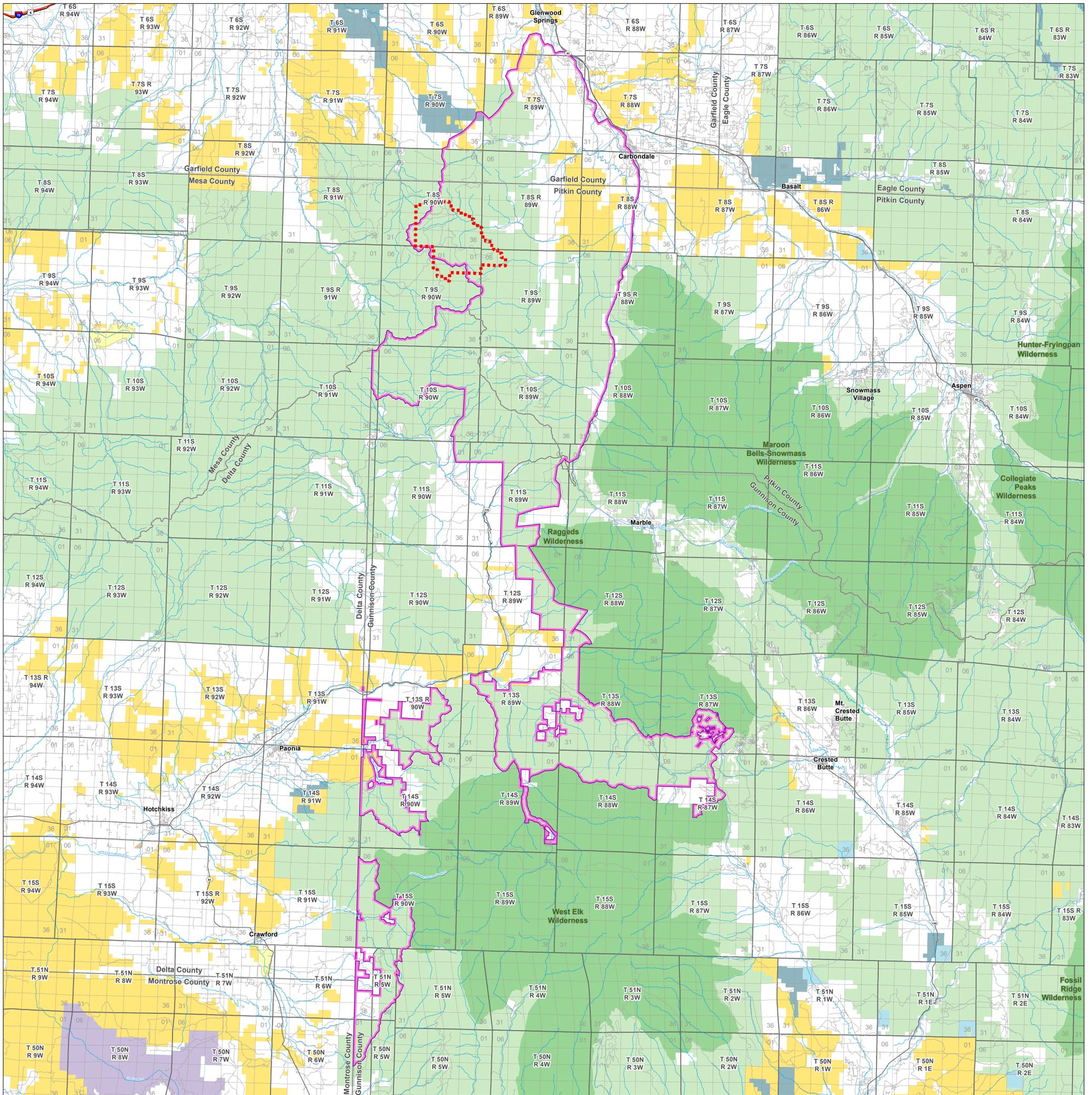
Glenn Michel

Mayor of the Town of Crested Butte

Greater Thompson Divide Area Map

September 22, 2016

This map prepared at the request of Senator Michael Bennet



0 5 10 20 Miles

1:130,000

This map is intended to be plotted at 34 x 44 in.

- Thompson Divide Withdrawal and Protection Area
- Wolf Creek Storage Agreement
- County Boundaries
- Streams & Rivers

- Interstates
- U.S. Highway
- State Highway
- County & Main Roads
- Bureau of Land Management
- Bureau of Reclamation
- National Park Service
- Other Federal
- State
- State, County, City; Areas
- US Forest Service
- USFS Wilderness Area

NO WARRANTY IS MADE BY THE BUREAU OF LAND MANAGEMENT FOR USE OF THE DATA FOR PURPOSES NOT INTENDED BY BLM.

This map was produced by the BLM Colorado State Office, Sep. 22, 2016. Document Path: T:\COCS\gis\work\osgeo\projects\legislative_images\2016\Thompson_Divide\mxd\Greater_Thompson_Divide_Area_Map.mxd



COLORADO OUTDOOR RECREATION & ECONOMY ACT

Support for the Colorado Outdoor Recreation & Economy Act

"I am thrilled to join Senator Bennet and Congressman Neguse in support of the Colorado Outdoor Recreation and Economy Act. As a Congressman, I was proud to champion the Continental Divide Recreation, Wilderness and Camp Hale Legacy Act with Senator Bennet. Today's CORE Act integrates the legislation into a robust public lands package that will protect the Colorado economy and preserve the Colorado environment for generations to come." - **Colorado Governor Jared Polis**

"Summit County is very excited for the new CORE Act, of which the Continental Divide Recreation, Wilderness & Camp Hale Legacy Act is an integral part. We thank Senator Bennet and Congressman Neguse for their leadership in this new effort to protect our public lands. Our public lands and Wilderness areas help define Summit County and drive our recreation economy. We have waited too long for these public lands bills to pass and we urge the rest of Colorado's congressional delegation to get behind this important legislation that will safeguard our public lands in a balanced way." - **Karn Stiegelmeier, Summit County Commissioner**

"These public lands bill are a culmination of years of local collaborative input. The areas protected are a combination of cherished landscapes, wildlife habitat and recreational opportunities and we have a duty to preserve them for future generations. We appreciate Senator Bennet's active role in working with our communities to build these public lands bills and assemble the new CORE Act with Congressman Neguse. I hope that our other representatives in Washington will support the economic and environmental benefits of these bill and add their names to this truly Colorado bill." - **Hilary Cooper, San Miguel County Commissioner**

“We have long waited for and actively pursued opportunities to protect public lands in numerous areas throughout Gunnison County. These public lands have been the backbone of our communities livelihoods and when well managed and sensibly protected, they will be an enduring wellspring of opportunity into the future. From the largest living organism in Colorado, the Kebler Pass Aspen Grove, to the nation’s largest kokanee salmon fishery anchored by Blue Mesa Reservoir we are happy to see these areas have the opportunity for protections that match our communities values and will continue to be a treasure for locals and visitors alike well into the future. Gunnison County applauds introduction the CORE Act and this package of conservation efforts.” - **Jonathan D. Houck, Gunnison County Commissioner**

“After serving as a sniper in combat in Iraq I returned to my home in the Rocky Mountains. I instinctively headed to the great outdoors and the amazing public lands in the west. I found that the desire to explore drove me to recover from physical injuries and the serenity of the natural world helped heal my war trauma. The lands of the free I swore to defend saved my life. It does generations of veterans an honor to protect Camp Hale the home of the 10th Mountain Division. It does every American a service to preserve more of the iconic Rocky Mountains to provide places to enrich our lives through recreation and recuperation.” - **Garett Reppenhagen, U.S. Army Iraqi Freedom Veteran & Rocky Mountain Director of Vet Voice Foundation**

“The customers who use our packs take them to wild public lands for adventures of all kinds. We strongly support the Colorado Outdoor Recreation and Economy Act to protect the very land that our business is tailored to.” - **Layne Rigney, President of Osprey Packs Inc.**

“I’ve lived in Colorado high country and know the value of Colorado’s public lands first hand. The areas in Sen. Bennet’s Colorado Outdoor Recreation & Economy (CORE) Act will bring more opportunities for exploration, recreation and all the related community and health benefits to the people of Colorado. We’re thankful for Sen. Bennet and his leadership in working with Coloradans on the CORE act.” - **Travis Campbell, Vice President, General Manager for the Americas of The North Face**

“Protecting our winter landscapes is critical to Colorado's growing outdoor recreation economy. In particular, recognizing and preserving the incredible skiing history and legacy at the Camp Hale National Historic Landscape is especially important. Our industry appreciates the leadership of Sen. Bennet and Rep. Neguse keeping our public lands accessible and wild.” - **Annelise Loevlie, CEO of Icelantic Skis**

The CORE Act is a Colorado-grown piece of legislation that has something in it for everyone. From the Continental Divide to the Thompson Divide, the novel approach Senator Bennet is taking with this bill prioritizes important landscape level conservation efforts that Colorado sportsmen and women have backed for over a decade. Locally developed wilderness proposals in the San Juans have been advanced with the support of local communities and hunters and anglers only to slip through the cracks of politically distracted congress after congress. I tip my hat to Senator Bennet for building a new approach that will ensure that those iconic mountains remain one of the very best places to hunting and fish in the state. Focusing energy on a comprehensive bill that benefits fish and wildlife habitat, protects water resources, enhances access for hunting and fishing and highlights Colorado's model outdoor economy is a powerful way to bring people together to show the rest of the country how Coloradans work together to set aside partisan political interests for the benefit of the wild public lands, waters and wildlife that belong to all of us. - **John Gale, Conservation Director of Backcountry Hunters & Anglers**

"For years, Trout Unlimited has fought to protect these important public lands on behalf of Colorado's sportsmen and women, so we are very excited to see Sen. Bennet and Rep. Neguse introduce legislation that shares our commitment to honoring the values of hunters and anglers. From the prime big game habitat and unique native cutthroat trout fisheries of the Thompson Divide to the pristine headwaters of the San Juan Mountains, the four bills that comprise the CORE Act will go a long way toward advancing Colorado's sporting heritage and fueling our outdoor recreation economy."- **David Nickum, Executive Director of Colorado Trout Unlimited**

"Colorado is known for its culturally-rich and inspirational places, and for its residents who will fight to protect and enhance these places. Curecanti National Recreation Area is no exception. This landscape deserves official recognition within the National Park System, managed by its dedicated staff, and celebrated for the significant benefit it brings to the local economy. We applaud Sen. Bennet for introducing the Colorado Outdoor Recreation and Economy Act." - **Tracy Coppola, Colorado Program Manager for the National Parks Conservation Association**

"Over the last few years working on the San Juan Mountains Wilderness Act, I've noted the many places around the country where images of these dramatically beautiful and inspiring public lands are displayed. The entire country sees the San Juan Mountains, from the State Supreme Court, to the Colorado State drivers' license and the backdrop to the Denver news channels, to many state and federal offices. While I am I lucky enough to see these lands in person every day, these priceless and irreplaceable landscapes need the protection of Wilderness status so that future generations will have that same opportunity. Ouray County sends a huge thank you to Senator Bennet for his vision in bringing the CORE Act forward." - **Ben Tisdell, Ouray County Commissioner**

“Our local economy depends on outdoor recreation and protected lands. That’s why we’ve supported protecting the San Juan Mountains for a decade, and support the Colorado Outdoor Recreation and Economy Act.” - **San Juan County Commissioner Pete McKay**

“We applaud the CORE Act for balancing the needs of wildlife and watershed protection with recreational and other uses of the forest. This collaborative legislative process has involved our water providers, conservation groups, recreational groups, and businesses. The Camp Hale National Historic Landscape especially helps to preserve and highlight an incredible piece of history and the legacy of the Tenth Mountain Division in Eagle County.” - **Kathy Chandler Henry, Eagle County Commissioner**

"Pitkin County has long supported legislation to permanently protect the Thompson Divide’s unique landscape. Our community is dependent on the ranching and recreation economy that our public land creates and we support Senator Bennet and Congressman Neguse’s new CORE Act to protect unique places like Thompson Divide that drive that economy. We have waited too long for these bills to pass and we urge Congress to pass the CORE Act in the months ahead.” - **Pitkin County Commission Chair Greg Poschman**

“We’re grateful to Senator Bennet for respecting our community’s long standing commitment to protecting the San Juan Mountains through the Colorado Outdoor Recreation and Economy Act. Telluride is a recreation hub - we depend on these lands for our very existence.” - **Telluride Mayor Sean Murphy**

“Ridgway is ideally situated at the foot of the San Juans, within close proximity to all types of outdoor recreation, which our public lands obviously offer in abundance. As a result, those uses are playing a rapidly increasing role in our economic development strategies. That's why we've long supported the protection of our public lands, and thank Senator Bennet for sponsoring the Colorado Outdoor Recreation and Economy Act.” - **Ridgway Mayor John Clark**

“In the history of this country, the majority of people believed that preserving land and creating wilderness was essential for healthy communities. The Wilderness Act of 1964 passed by a vote of 78 to 12," "As westerners we are rich in public lands, mountains, rivers, wildlife and wilderness. The town of Ophir is an historic western town. Today it is a true mountain town. People visit us to ski and hike and enjoy the unbelievable mountain vistas. The community of Ophir has worked tirelessly to preserve the health of the forests and rivers that surround us. The Colorado Outdoor Recreation and Economy Act furthers those protections and respects our community’s desire to appropriately manage motorized recreation and maintain our history of quiet, healthy and safe forest lands.” - **Ophir Mayor Corinne Platt.**

"We thank Senator Bennet for his strong leadership in introducing the Colorado Outdoor Recreation and Economy Act to Congress. In our area, the lands included for permanent protection include all those in the previously introduced San Juan Mountains Wilderness Bill. In the decade since the bill was first introduced, its boundaries and delineations have been refined to ensure that existing uses are still allowed, while critical areas are protected." - **Lexi Tuddenham, Executive Director of Sheep Mountain Alliance**

"The CORE Act continues a proud Colorado tradition of protecting our wild lands, clean water and outdoor recreation opportunities for future generations. This legislation would protect some of the best that Colorado's public lands have to offer, including pristine watersheds and key wildlife habitat along the Continental Divide, three popular fourteeners, and the rugged mountains and ranching heritage of the Thompson Divide. The CORE Act has something for everyone and all Coloradans stand to benefit. We are thankful for the leadership from Senator Bennet and Representative Neguse in writing the next chapter of Colorado's proud history of supporting wilderness and public lands." - **Jim Ramey, Colorado State Director of The Wilderness Society**

"Coloradans love our lands and this is a once-in-a-generation opportunity that Senator Bennet and Representative Neguse have put together -- protecting some of Colorado's most popular, iconic and historic public lands and widely supported by locals. We urge the entire Colorado delegation to listen to Coloradans and pass the CORE Act in this Congress." - **Kelly Nordini, Executive Director of Conservation Colorado**

"As a business owner my retail business and employees rely on the people who come to our area to access wild and natural areas. Enhancing and adding additional wild places is good business. Outdoor recreation generates billions of dollars annually in Colorado. This spending supports thousands of jobs and their related wages and salaries. As a business owner I support this new legislation. But, and just as important, I personally desire the protection of additional lands. People, wildlife, flora, and our water need wild places in order to survive and thrive. In an ever increasing crowded and busy world people need a place to find refuge that is free of modern day distractions. As human beings, more than ever, we need the ability to connect with nature. Most of us only have but a few chances to truly help future generations. Protecting our wild places is that chance." - **Tom Mullen, small business owner in Vail**

Support for the Continental Divide Recreation, Wilderness, and Camp Hale Legacy Act

“Designating Camp Hale will pay homage to our veterans and the birth of our state’s booming outdoor industry. I want to thank Representative Neguse and Senator Bennet for honoring World War II veterans, small business owners, and the lands that we all enjoy.” - **Bradley Noone, a U.S. Army 10th Mountain Division Veteran**

“Preserving our public lands like the Continental Divide and Camp Hale is about as American as you can get. You leave your politics behind when you walk into a wilderness area, race down a mountain side, or hunt your first elk. I urge Senator Gardner to protect our Western values and way of life and support the CORE Act.”

- **Dave Gorsuch, a fourth-generation Coloradan, rancher and businessman**

“Protected public lands help provide clean water and safeguard such lands from future development. Clean water is essential for the healthy fisheries that our guests from all over need to enjoy the outdoors.” - **Joe Macy, Eagle County Resident and Retired Fishing Guide**

Support for the Thompson Divide Withdrawal and Protection Act

“I am a rancher who has relied on the high-quality summer grazing in the Thompson Divide for 45 years. Protecting these public lands is critical not only to me and my fellow ranchers but to the entire community. Recreation and hunting are also vitally important to our local economy. There are just some areas where the costs to the community outweigh the potential benefits of drilling. The Thompson Divide is one of those places. I thank Senator Bennet for his continued leadership to get this bill passed in Congress eliminating the threat of oil and gas drilling in the Thompson Divide thereby safeguarding the continued prosperity of our community.” - **Bill Fales, a local rancher in the Thompson Divide area**

“Never before have I seen an issue so galvanizing for a community. Protecting our backyard, our watershed and for some their livelihood, has built an uncommonly broad coalition of land stewards. We welcome and appreciate Senator Bennet’s efforts to protect Thompson Divide not only for us but for future generations.” - **Dan Richardson, Mayor of Carbondale**

“As a fifth generation resident of the Crystal River Valley I know that the Thompson Divide area is a place that is too special to drill for oil and gas. Coal mining was once the lifeblood of our community, and we've worked hard to emerge from the boom and bust cycle of extractive industries to build a sustainable economy based on agriculture, tourism, and outdoor recreation. Our collective efforts and unified voice has repeatedly come together to protect this special landscape and we thank Senator Bennet for his decade-long dedication to ensure this landscape is protected for future generations of ranchers, sportsmen, and recreational users.” - **Stacey Bernot, Former Mayor of Carbondale**

"We support this legislative compromise because it addresses our concerns over continued access to areas we need in order to continue production from our existing leases. This bill does that by balancing energy needs with the wishes of the community to keep some areas undeveloped along Thompson Divide and Kebler Pass. We are also excited and encouraged over the new provisions in this bill that will promote the capture of energy from methane leaks into the atmosphere from old coal mining areas. These provisions will help bring jobs and economic growth to the North Fork Valley and also help the environment.' - **Brad Robinson, President of Gunnison Energy**

Support for the San Juan Mountains Wilderness Act

“The spectacularly rugged and pristine San Juan Mountains are an American treasure that are worthy of preservation. A public lands designation in the San Juan Wilderness bill will protect this unique and beautiful environment while ensuring recreational access that is core to the regional economy. I urge Senator Gardner to join Senator Bennet as a co-sponsor of this Wilderness bill to demonstrate solidarity within the Colorado delegation to preserve this iconic Southwest Colorado asset for future generations.” - **Bill Jensen, Chief Executive Officer of Telluride Ski & Golf**

“San Miguel Bike Alliance supports the proposed San Juan Wilderness bill. In particular, we are pleased that this bill allows land managers to approve future uses in the Sheep Mountain Special Management area. We will continue advocating for better trails and given the nature of our steep terrain there is a limited amount of viable public land. Thankfully, this bill acknowledges that potential with special management areas that complement the proposed wilderness expansion. Our region relies on our natural surroundings for myriad quality of life benefits and expanding the boundaries of protected land benefits us all.” - **Max Cooper, San Miguel Bike Alliance President**

“At Helitrax, we’re not just selling powder, we’re selling wilderness too. Our clients intuitively know these as wild places, and while we ski outside of designated and proposed wilderness, it’s what they look out at—the reason they keep coming back. The root experience of solitude, of wilderness is one that unites us, and the land composition we see here—2% density, and 98% wild—informs our place, our lives, the attitudes and culture that we pass down.” - **Drew Ludwig, Helitrax Guide, artist, and local entrepreneur**

“Wilderness is more vital than ever to me, as my life as a small business owner is hectic 24/7. I have been hiking, skiing and hunting in the area encompassed by the San Juan Wilderness Bill for close to 20 years and find solace, challenges and incredible natural beauty in its alpine environment. The value of having contiguous wild places in a world that is increasingly busy is immeasurable.” - **Todd Rutledge, Mountain Trip Guide**

“Our wild lands are an asset to this community. As a small business owner in Norwood I rely on visitors to this region who come for our beautiful mountains, rivers and scenic mesas. Protecting public land is essential for the growth and success of our local tourism based economy. The proposed San Juan Mountains Wilderness Act not only protects natural beauty it protects and strengthens the existing small business community I am a grateful to be part of.” - **Hannah Rossman, Founder and Owner of Blue Grouse Bread in Norwood**

"As a passionate hunter, I know first hand how incredibly important roadless habitat is to wildlife, especially our region's elk herd. This year I harvested an elk from the proposed Liberty Bell Addition that will provide my family with a year of great tasting meat, and I hope to be able to continue to do so for many years to come thanks to the protections provided by the San Juan Mountains Wilderness Bill. Many of my favorite hunting areas are within the proposed boundaries of this bill and that's a major reason why I wholeheartedly support it." - **Jesse Dudley, San Miguel County hunter**

Support for the Curecanti National Recreation Area Boundary Establishment Act

“This legislation is a three-way win,” “By finishing up important boundary legislation, three cooperating agencies will gain operational efficiency, while the visiting public will be assured of terrific recreational opportunities for the foreseeable future. While The National Park Service, Bureau of Land Management and the US Forest Service have cooperatively managed the boundary of Curecanti NRA in the past, this overdue legislation will ease many awkward boundary issues for the agencies and help protect the natural and cultural resources of the area for the visiting public. It has been my personal experience that there is widespread support for this legislation. Let’s cross the “t’s” and dot the “i’s” to finish business intended many years ago when managing the recreational aspect of Curecanti was transferred from the Bureau of Reclamation to the National Park Service. I thank Senator Bennet for his leadership to get this important legislation moving forward in Congress.” - **Connie Rudd, retired Curecanti National Recreation Area Superintendent**

“The Curecanti Bill is an important piece of legislation that both formalizes a prized National Recreation Area and memorializes the Bureau of Reclamation responsibilities to provide 26 miles of public fishing access on the Gunnison River upstream of the Aspinall Unit as mitigation for the development of Blue Mesa Reservoir. This is an incredible public lands amenity for sportsmen and outdoor recreationalists throughout the nation” - **John Messner, Gunnison County Commissioner**

“The Curecanti National Recreation Area hosts nearly one million visitors annually and is a vital part of the recreational economy in the Gunnison Basin. We laud Senator Bennet’s efforts in sponsoring legislation that will establish boundaries for the Area and protect it in perpetuity. Curecanti NRA includes Blue Mesa Reservoir, the largest reservoir in Colorado and the water resources and recreational amenities provided by Blue Mesa Reservoir are vital to our state. Thank you Senator Bennet for introducing legislation that will protect this important resource.” - **Frank Kugel, General Manager of Upper Gunnison River Water Conservancy District**

Town of Crested Butte

P.O. Box 39 Crested Butte, Colorado 81224

-National Trust for Historic Preservation's 2008 Dozen Distinctive Destinations Award Recipient-

-A National Historic District-

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

February 19, 2019

The Honorable Michael Bennet
 261 Russell Senate Office Building
 Washington, D.C. 20510

The Honorable Cory Gardner
 354 Russell Senate Office Building
 Washington, D.C. 20510

The Honorable Joe Neguse
 1449 Longworth House Office Building
 Washington, DC 20515

The Honorable Scott Tipton
 218 Cannon House Office Building
 Washington, DC 20515

Re: Support for the Colorado Outdoor Recreation and Economy (CORE) Act

Dear Senator Bennet, Senator Gardner, Representative Neguse, and Representative Tipton,

The Town of Crested Butte, Colorado strongly supports the Colorado Outdoor Recreation and Economy (CORE) Act of 2019. We specifically support the provision in the legislation that permanently withdraws – subject to valid existing rights – lands in the Thompson Divide Withdrawal and Protection Area from all forms of (1) entry, appropriation, and disposal under the public land laws; (2) location, entry, and patent under mining laws; and (3) operation of the mineral leasing, mineral materials, and geothermal leasing laws. Included in the Thompson Divide Withdrawal and Protection Area are federal lands near Crested Butte, including the iconic Kebler Pass landscape along County Road 12, lands near Ohio Pass, and lands adjacent to the Raggeds Wilderness and West Elk Wilderness. Conservation of this interconnected landscape is critical to the economic and environmental sustainability of Crested Butte, and we support its permanent protection through federal legislation.

Crested Butte has a history in mining, but now has a vibrant local economy based on recreation, ranching, and tourism. The public lands in Gunnison County that are part of the CORE Act support all three of these economic drivers. Mineral development in the withdrawal area, especially near Kebler Pass and County Road 12, Ohio Pass, and the Raggeds and West Elk Wilderness areas, is incompatible with our community's economic wellbeing and environmental values.

The withdrawal area includes the iconic aspen forests near Crested Butte that draw tourists every fall for leaf peeping. It also encompasses a significant portion of the West Elk Loop Scenic Byway, the

Town of Crested Butte

P.O. Box 39 Crested Butte, Colorado 81224

-National Trust for Historic Preservation's 2008 Dozen Distinctive Destinations Award Recipient-

-A National Historic District-

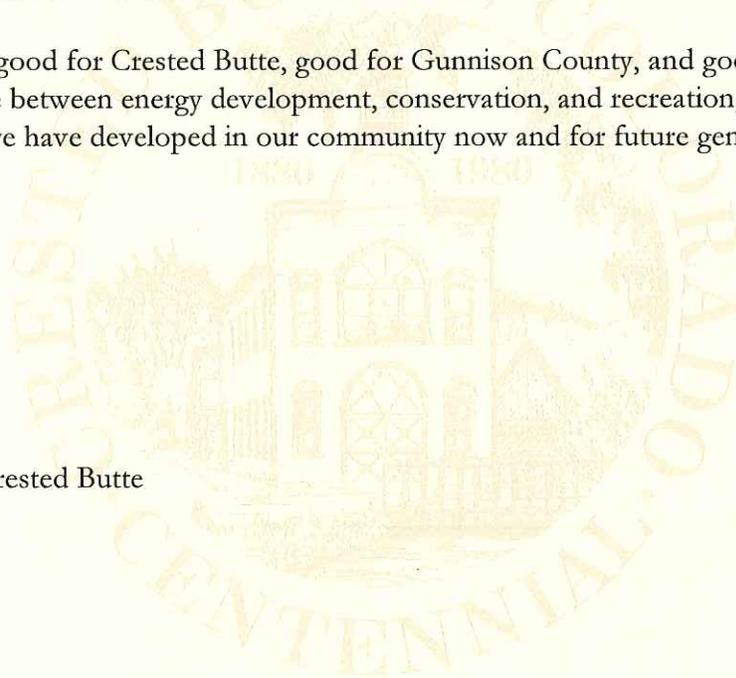
Phone: (970) 349-5338
FAX: (970) 349-6626
www.townofcrestedbutte.com

proposed Carbondale to Crested Butte Trail, and those routes' viewsheds. The Town of Crested Butte is a partner in both the Byway and the Trail because they attract tourists to our town and surrounding communities. Hunting, fishing, hiking, mountain biking, and backcountry winter sports are popular recreation endeavors within the mineral withdrawal area. Wildlife also call this area home. Historic ranching stands to benefit from this legislation's permanent protection of public lands that support grazing. In addition, the mineral withdrawal area in Gunnison County is directly upstream from the farms, orchards, and vineyards of Delta County, an area that supplies much of the fresh, local produce for Crested Butte residents and businesses.

The CORE Act is good for Crested Butte, good for Gunnison County, and good for Colorado. By achieving a balance between energy development, conservation, and recreation, it will help sustain the quality of life we have developed in our community now and for future generations.

Sincerely,

James A. Schmidt
Mayor, Town of Crested Butte





Staff Report

February 19, 2019

To: Mayor Schmidt and Town Council
Thru: Dara MacDonald, Town Manager
Thru: Michael Yerman, Community Development Director
From: Bob Nevins, Town Planner
Subject: **Town Council Referral to BOZAR Concerning Proposed Text Amendments for Chapter 16 and 17 for Subdivision Exemptions.**
Date: February 19, 2019

Purpose: For Town Council to further consider proposed text amendments initiated by the Community Development Department related to Municipal Code Chapters 16 and 17 for Subdivision Exemptions by referring the application on a majority vote to BOZAR for its study and recommendation in accordance with Sec. 16-23-40 Review of Amendments.

Town Council's referral of the application for text amendments to BOZAR is included on the consent agenda.

Background: The intent of these text amendments is to: 1) include condominiumization and townhouse subdivisions within Chapter 17-Subdivision; 2) expand the types of activities that are exempted from the terms of the subdivision regulations with administrative approval by the Community Development Director; and 3) more clearly define the review standards, application requirements and review procedures for condominiumization, townhouse plats, minor subdivisions and subdivision exemptions.

Amendment application: The Community Development Department has prepared an application requesting text amendments to the following:

- Chapter 16, Article 12-Condominiums and Townhouses
- Chapter 17, Sec. 17-1-100 Definitions
- Chapter 17, Sec. 17-3-10 Descriptions
- Chapter 17, Sec. 17-3-20 Characteristics of minor subdivisions
- Chapter 17, Sec. 17-3-40 Exemptions
- Chapter 17, Sec. 17-3-50 New Section to be added

Process: According to the Municipal Code review process, text amendment applications are first presented to Town Council. Upon consideration at a regular meeting, Town Council may, by a majority vote, refer the proposed text amendments to the Board of Zoning and Architectural Review (BOZAR) for its study and review. After receipt of the application, the Board will have up to forty-five (45) days to submit its recommendation to Town Council. The Town Council shall then hold a public hearing to consider the proposed text amendments pursuant to Sec. 16-23-60 Public hearing.

Recommended action: Refer the application to BOZAR pursuant to 16-23-40 by approving it on the consent agenda.



Memorandum

To: Town Council
From: Dara MacDonald, Town Manager
Subject: Manager's Report
Date: February 19, 2019

Town Manager

- 1) CML Annual Conference – The conference will be June 18-21 in Breckenridge. Registration opens Feb 4th. Please let myself or Betty know if you plan to attend and we will assist with registration and lodging reservations.
- 2) The CBCS School Accountability Committee discussed the request by school officials and GCSAAP to have the Town pass an ordinance to address underage possession of tobacco and related materials. Staff will plan to bring an ordinance forward for Council consideration unless we hear any objections.

Public Works

- 1) Snow removal continues. Due to the loss of Block 76 for snow storage we are seeing a lot of space pressures for snow storage in other areas, particularly the gravel pit. We are continuing to explore additional long-term solutions.

Marshals

- 1) Deputy Peter Daniels was invited as the Marshal's Office "trusted adult" representative for the Sources of Strength program at the Crested Butte Community School. He attended training last week for the evidence-based youth suicide and bullying prevention program.
- 2) Deputy Sean Besecker has been working an incredibly involved theft/identity theft case which has utilized an estimated 80 man-hours of investigation and follow-up time. As a result of Sean's lengthy investigation the Marshal's Office served search and arrest warrants at a Gunnison address on Wednesday the 13th. A 45-year-old Gunnison resident was arrested for a total of one misdemeanor and 94 felony charges. Evidence of the crimes were recovered at the scene.

Parks & Rec

- 1) No updates.

Community Development

- 1) Creative District Update - The Creative District is currently considering a transition to a new organizational structure to ensure financial sustainability and allow for new partnership and programming opportunities. In this new structure, a Public Art Commission would remain under the Town to make decisions on the Arts in Public Places Policy, public art maintenance, and public art projects, while the programming and advocacy aspect of the Creative District would become a program under the Center for the Arts. The Creative District will present this proposal to the Center for the Arts board in March, and pending their feedback, the Commission will present this transition plan to the Town Council at the March 18th meeting.

- 2) Affordable Housing
 - There were 28 applicants for the Lot and Duplex Lottery. There are now 7 more home opportunities for locals. Town staff is working on getting everyone under contract. Prior to the sale an Ordinance will need to be approved for each winner for the sale of the property. Anticipated move in date for the 4 duplex winners is July 1, 2019.
 - The Town staff made a mistake on the classification of the type of Firewall required for the duplex units. The incorrect firewall was approved. An additional fire coating has been authorized to resolve this issue. The overall cost of the change order for all six units in the project will amount to \$43,374.43. This brings the total change orders for the project to \$76,883.35.
 - The GVRHA has elected not to pursue a tax initiative in 2019. Jim and Chris will have additional updates on this issue with their GVRHA Board report.
 - Staff was asked by Council if there were any other codes changes anticipated for the upcoming affordable housing build. There are two that will appear over the next two months. First is updating the Townhome subdivision exemption provisions of the code. These need to be revised to make the process more defined. Second, an amendment to the International Residential code will need to be made for eaves that overhang over other units. These eaves will need to be fire rated but are required per the BOZAR design approval.

Town Clerk

- 1) Received a completed application for a new liquor license at the location of the former Ginger Café. The trade name of the applicant is Tin Cup Pasty Co.
- 2) The State approved the transfer of the liquor license to Slogar LLC, so the liquor licensing process is complete.
- 3) The Mardi Gras parade will be on March 5th.

Finance

Excerpt from the Bank of the West 2019 Economic Outlook:

There is greater uncertainty heading into 2019 than in many previous years. Volatility and uncertainty go hand in hand, and this will be a central theme for financial markets as investors weigh economic fundamentals against ongoing monetary policy shifts and geopolitical events worldwide.

The risk of recession in 2019 remains fairly low, though we continue to see an increased probability of one in 2020. Lower economic growth without a recession is the most likely scenario for 2019. However, the market will not wait for an actual call and instead see fear-based trading throughout the year.

As it relates to the Town of Crested Butte:

- 1) We continue to advise Council to be judicious with large project spending.
- 2) Long Lake, Affordable Housing and Water Treatment Plant upgrade all represent \$1 million + projects this year. These projects are only possible when the Town has healthy reserves.
- 3) Fund reserves have been depleted by nearly \$3mm since 2017.
- 4) We need to build back reserves prior to a full blown recession hitting.

- 5) When a recession hits, the greatest impacts will be felt in Sales Tax (tourism based) and RETT (real estate transaction volume and value). RETT funds Open Space, General Capital and Affordable Housing.
- 6) A recession presents the BEST opportunity for the Town of Crested Butte to invest in building projects and open space. However, we will need reserves to make that happen..

Intergovernmental

The City of Gunnison is planning to host the next meeting of elected officials in the County. The meeting will take place on the evening of Wednesday, February 27th beginning at 6:00 p.m., The Dive.

Upcoming Meetings or Events

February 27th – Intergovernmental meeting, dinner in Gunnison, 6:00 p.m. at The Dive.

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



To: Mayor Schmidt and Town Council

From: Michael Yerman, Community Development Director

Thru: Dara MacDonald, Town Manager

Subject: **Bywater Contract to Construction Affordable Housing in Paradise Park**

Date: February 19, 2019

Background:

At the February 4, 2019 Town Council meeting, the Council discussed amending the International Residential Building Code to exempt Townhome Triplexes from sprinkler requirements in lieu of providing a 2 hour fire wall. After taking testimony from the Fire District and the public the Council was split at a 3-3 decision and the Ordinance failed.

The 2019-2020 Bywater Paradise Park Affordable Housing build currently has 5 triplexes or 15 units that will be required to have sprinklers. The average construction cost for sprinklers per unit is \$17,500 or \$52,500 per triplex. There are also additional costs anticipated for the installation of the water main in Block 76 as well as ramifications for Block 80 because the water service lines installed in 2014 are inadequately sized for fire suppression.

Because of additional costs the contract has been amended with Bywater. There are three issues the Council needs to be aware of because of the requirements to sprinkler the triplexes.

1. The overall budget impact to the vertical construction costs to the project is \$262,500. At this time the contract has been amended to provide Bywater with \$52,500 in compensation when a building permit is released for a triplex in the project. The Council could elect to add these cost to the unit pricing in Exhibit C of the contract. Staff is not recommending increasing pricing of the units, rather we recommend the Town further subsidize the build from reserves from the affordable housing fund.
2. The installation of the water main and service line connections in Block 76 is an obligation of the Town this summer. The Town staff had originally proposed to take on the installation. Because the installation of fire systems require certifications that the Town staff do not carry, this will now go out to bid. Fire systems also require additional testing and flushing which is anticipated to add 2-4 weeks to the project timeline. The Town had budgeted \$100,000 for the water line installation. We are anticipating the contract will be over this amount and require a

budget amendment. We are working on bid documents and the contract should come back to Council in May or June.

3. The water service lines installed to Block 80 Lot 3 are 1” lines. The fire suppression systems require a 2” line. To build a triplex on this lot would require cutting the street and installing new service lines. There are many issues with the soils, water table, and the geogrid that would escalate costs to make a triplex a reality on this lot. These costs are well above \$100,000. This lot has been switched in the contract with Block 79, Lot 4. Finally, Bywater’s design team had already designed the triplex for this lot in Block 80. The design costs were at \$5,300 when this building was pulled from the BOZAR agenda for this month. The staff is recommending to make a onetime payment to Bywater of \$5,300 for these design costs. Unfortunately, this design will not be able to be used in the future. This lot will only be able to support a duplex in the future unless a future Council elects to take on the considerable costs of upsizing the service lines.

Recommendation:

A Council person make a motion followed by a second to approve the amended contract with Bywater with any subsequent changes to be approved by the Town Attorney.

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

This Contract (“Contract” or “Agreement”) is entered into on this ___ day of _____, 2019, between the Town of Crested Butte, Colorado (“Town”), a Colorado home rule municipal corporation, and Bywater, LLC, an Oklahoma limited liability company (“Bywater”), together (“the Parties”).

RECITALS:

A. The Paradise Park Subdivision (“Subdivision”) is located in the Town of Crested Butte, Colorado and the Subdivision is encumbered by certain Deed Restrictions (“Deed Restrictions”) that require use of the Subdivision for employee housing, primarily for persons living in and employed by entities within Gunnison County. **Exhibit A – Deed Restrictions** contains the Deed Restrictions recorded at Reception No. 641510 of the Gunnison County Clerk and Recorder for Blocks 79 and 80. Deed Restrictions for the other blocks and lots will be substantially the same.

B. The Town owns the following property within the Subdivision:

Block 76, Lots 1, 2, 3, 4, 5, and 6

Block 77, Lot 10

Block 78, Lot 6

Block 79, Lot 4, 10, and 11

These Lots are collectively referred to hereinafter as the “Property” or “Town Property.”

Exhibit B – Lot Map is attached hereto and incorporated herein.

C. The Town conducted a competitive Request for Proposal process to find a qualified developer to build up to 27 affordable homes on the Town Property that will be offered for sale to qualified applicants. Bywater was selected based on its qualifications, ability to meet neighborhood compatibility, competitive pricing, ability to meet the Town’s Design Guidelines, and construction schedule.

D. The Town and Bywater executed a Memorandum of Understanding on October 15, 2018, in which they agreed to the construction of the affordable housing units on the Town Property.

E. The Parties desire to enter into a contract for the purchase, development and sale of the affordable housing units on the Town Property developed under and subject to the protective covenants and Deed Restrictions governing the Town Property.

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

1. Provisions Specific to Development of the Property. Each of the following provisions shall be a material condition of this Contract and the subsequent closings for the conveyance of the Town Property. Each provision shall survive closing and shall be specifically enforceable by the parties:

- a. The project is described in two phases:
 - Phase 1 - Block 76, Lots 1, 2, 3, 4, 5, and 6 and Block 77, Lot 10
 - Phase 2 – Block 78, Lot 6, Block 79, Lots 4, 10 and 11

- b. Bywater commits to complete the entitlement process, secure construction financing, secure subcontractor agreements, and work diligently to build a total of 27 units of deed restricted workforce housing in Phase 1 and Phase 2, the details of which are further described throughout this document; and provide construction bonding per Section 11, and a one year warranty on materials and craftsmanship and a two-year warranty for mechanical systems, and plumbing per Section 12.

- c. Town commits to:
 - i. Install water main and taps for water service by August 31, 2019 for each unit to be constructed in Block 76. The Town will connect Water services concurrent with the water main extension.
 - ii. Cover the cost of Town water and sewer utility tap fees for all units
 - iii. Explore the potential of a solar garden that would enable eliminating extension of the gas main to serve Block 76. Town will make a decision on feasibility of the solar garden by January 31, 2019.
 - iv. Provide townhome surveys, legal descriptions, title work required for the transfer of sales, and prepare individual Deed Restrictions for title work 60 days prior to sale of homes.
 - v. Create and record party wall agreements.
 - vi. Create and record snow removal agreements for Block 76 and 78.

- d. To assist Bywater in constructing affordable housing units, the Town agrees to waive its Design Review Fee, Building Permit Fees, Resident Occupied Affordable Housing fees, performance deposit fee, and Town Impact Fee for the Town design review, approval, and issuance of building permits for the units that Bywater develops. The Town will assist Bywater in supplying any necessary documentation showing tax exempt status for the project. While the development fees are waived for these units, the Town expects that Bywater will complete the Board of Zoning and Architectural Review (“BOZAR”) review process and meet construction standards expected of similar housing types in Crested Butte. Bywater shall pay the 3% Real Estate Transfer Tax at the time of closing for each unit except for those units purchased by the Town.

- e. The Town shall pay Bywater \$52,500 at the time of issuance of building permit(s) for each triplex on the Town Property. This amount equates to \$17,500 per unit for a not

to exceed total of \$262,500. This payment is to offset the cost of installation of fire suppression systems in these units.

d. Bywater agrees to begin construction as soon as possible following first conveyance of any of the Town Property to Bywater, weather conditions permitting, and be concluded through issuance of a certificate of occupancy or temporary certificate of occupancy no later than September 1, 2020 for Phase 1, and August 15, 2021 for Phase 2. Failure to commence or to complete construction within the established timeframe may result in the exercise of remedies by the Town as set forth herein.

e. Bywater shall be responsible for the costs of extending the gas line for Block 76. If the Town determines the solar garden is feasible, and there is no need to extend the gas line, Bywater will pay the cost savings of not extending the gas line to the Town or its designee, the amount of which is anticipated to be \$50,000. The precise amount of Bywater's contribution to the solar garden will be established by a bid for the gas line extension from ATMOS Energy. Bywater will remit funds to Town or Gunnison County Electric Association (GCEA) as appropriate.

f. In Phase 1, Bywater shall construct 17 units on the Phase 1 Property, each unit to be deed restricted for affordable/workforce housing pursuant to the Deed Restrictions. Such units will be sold at prices not to exceed those described in **Exhibit C -AMI Table** attached hereto and incorporated herein.

g. In Phase 2, Bywater shall construct 10 units on the Phase 2 Property, each unit to be deed restricted for affordable/workforce housing pursuant to the Deed Restrictions. Such units will be sold at prices not to exceed those described in **Exhibit C -AMI Table**.

h. Bywater shall construct all units in compliance with the design guidelines for the Town BOZAR and all applicable Town building codes and regulations. Bywater shall construct foundation, exterior wall, two hour fire wall, insulation, eve detail, roof assembly and interior finishes in a manner substantially similar to **Exhibit D -Construction details** attached hereto and incorporated herein. The size of the units and bedroom count shall conform to **Exhibit C -AMI**.

i. All units will be designed by an architect and structural engineer licensed in the State of Colorado.

j. All units will be sold subject to the current Deed Restrictions, future Deed Restrictions specific to individual units as required by this Agreement, the protective covenants for the Paradise Park Subdivision, and in accordance with the income qualification and Town of Crested Butte Housing Guidelines, as in effect at the time of the sale.

k. Bywater will work in good faith with The Gunnison Valley Regional Housing Authority ("GVRHA") to sell units to qualified buyers. If a qualified buyer has not placed a unit under contract within six months of the issuance of the Certificate of Occupancy for the unit, Bywater may elect to make the unit available for rent for a lease term of one year

to qualified renters as define by the Town of Crested Butte Affordable Housing Guidelines, as may be amended. Prior to renewing the lease after one year, Town, Bywater, and GVRHA will decide if the unit should be again marketed for sale, or the rental use should be extended by another year. If the parties cannot agree on whether a unit should be leased or marketed for sale, the Town will make the final decision.

l. GVRHA and the Town will be responsible for qualifying prospective buyers. GVRHA will also serve as transaction broker for home sales to qualified buyers. GVRHA will responsible for establishing appropriate shared closing costs with potential buyers.

m. The Town will pay Bywater a developer incentive fee in the amount of 3% of the sale price within 30 days of the closing of any unit sold except for those units purchased by the Town.

2. Project Milestones. Each of the following provisions shall be a material condition of this Contract and the subsequent closings for the conveyance of the Town Property. The Town and Bywater agree that the development and construction of the housing units shall occur according to the following schedule, subject to Town Council approval of specific actions:

a. November 30, 2018 – Bywater BOZAR submissions begin – including Minor Subdivision and two building designs.

b. January 2019 - Execution of this Development Contract; Town and GVRHA sponsor homebuyer classes and conduct community outreach. Bywater submits two building designs for BOZAR review. Bywater begins financial underwriting for construction loan.

c. February 2019 – Subcontractor bid process begins; financial underwriting begins; Bywater submits two more building designs to BOZAR. Town and GVRHA conduct lottery for buyers of Town-owned lots and 2018 duplexes, currently being constructed per contract between High Mountain Concepts and Town of Crested Butte, in Paradise Park and provide feedback to Bywater on qualified applicant pool.

d. February 19, 2019 - First reading of ordinance to convey lots to Bywater for Phase 1.

e. March 4, 2019 - Second reading of ordinance to convey lots to Bywater for Phase 1.

f. March 19, 2019 – Earliest date for construction loan closing and conveyance of lots for Phase 1.

g. March, 2019 – Bywater submits the next two building designs to BOZAR. Construction loan closing anticipated, Town transfers land to Bywater.

- h. April 2019 – Bywater submits the next two building designs for BOZAR review. Bywater submits first four building permit plan sets, Block 77 Lot 10, and Blocks 76 Lots 4, 5, and 6 for building permit review.
- i. April 2, 2019 - Financing contingency deadline for Bywater.
- j. April 30, 2019 – Subcontractor bid process finalized and subcontractor agreements executed.
- k. May 15, 2019 –Notice to proceed issued from Bywater to excavation subcontractors. Bywater submits additional four building plans for building permit review for Block 76 Lots 1, 2, and 3. Bywater submits one building design to BOZAR.
- l. June 1, 2019 – Groundbreaking for units located in Phase 1 of the construction schedule will begin with the construction of a duplex on Block 77, Lot 10 of the Town Property (“Town Units”), followed by the construction of additional housing units on the six Lots in Block 76 of the Town Property.
- m. June 20, 2019 – Lottery for buyers of Phase 1 homes conducted by GVRHA and Town.
- n. July 1, 2019 - Phase 2 “Gating” Meeting - Town and Bywater will meet to evaluate market conditions and progress on Phase 1 project construction pricing and lottery demand. The Town and Bywater will then mutually agree upon any revisions and refinements required to this Agreement prior to commencing Phase 2 construction. If the Town and Bywater agree that market conditions are satisfactory and the Town finds that Bywater is meeting deadlines and quality expectations, and controlling costs, the Town will transfer Lots for Phase 2 to Bywater. Bywater will then commence excavation and foundation work on Phase 2. If the Parties cannot come to a mutual agreement on Phase 2, Bywater will not commence development and construction of any housing units for Phase 2. Town will retain ownership of the Phase 2 Lots, and Bywater will provide full electronic copies of all architecture and engineering to the Town. Town will compensate Bywater in the amount not to exceed \$120,000 for design work for both Phase 1 and Phase 2.
- o. July 15, 2019 – First reading of ordinance to convey lots for Phase 2.
- p. August 6, 2019 – Second reading of ordinance to convey lots for Phase 2.
- q. August 18, 2019 –Foundations for all buildings in Phase 1 completed prior to the conveyance of lots for Phase 2.
- r. November 1, 2019 – Work completed and inspected such that Certificate of Occupancy can be issued for Town Units on Block 77, Lot 10, with additional certificates of occupancy issued each month through March of 2020 to complete all units in Phase 1.

- s. December 1, 2019 - Complete foundations for all buildings in Phase 2.
- t. August 15, 2021 - Certificate of Occupancy issued for all units in Phase 2.

The Town and Bywater may mutually agree to extend or shorten these deadlines in a separate written document or amendment to this Agreement signed by both parties.

3. Transfer for Town Property. The Town and Bywater agree that the Town will transfer title through General Warranty Deed, to Bywater in order to permit Bywater to encumber the land to secure construction financing. Bywater will purchase the Town Property at a nominal price of \$ 10 per Lot.

Phase 1 - For Block 76 and Block 78, Lot 6, the Town will record affordable housing Deed Restrictions prior to the Town's transfer of the Town Property for Phase 1 to Bywater in a form substantially similar to **Exhibit A – Deed Restrictions**. The Town will not be obligated to transfer title to any of the Town Property for Phase 1 until after all buildings to be constructed on Block 76 are finally approved by the Town and Bywater has secured a commitment for construction financing. Bywater and its construction lender will agree that the Town will have the right and option to require that the Town Property be reconveyed to the Town in the event of default per Section 20 of this Agreement. The Town will convey the Phase 1 Property to Bywater subject to the Option attached hereto as **Exhibit F**.

Phase 2 – Lots for Phase 2 will be conveyed no sooner than the dates outlined in Section 2 and the completion of all foundation in Phase 1. Bywater and its construction lender will agree that the Town will have the right and option to require that the Town Property be reconveyed to the Town in the event of default per Section 20 of this Agreement. The Town will convey the Phase 2 Property to Bywater subject to the Option attached hereto as **Exhibit F**.

4. Town Purchase of Block 77 Housing Units. The Town agrees to purchase the housing units constructed on Block 77, Lot 6, which will be a duplex containing a 2 Bedroom home and 3 Bedroom home. The Town and Bywater will execute a separate contract for the sale and purchase of these units. The purchase price for these housing units will not exceed \$600,000. To assist with reducing construction interest costs for the entire project during Phase 1, the Town will pay a “deposit” of 70% of the purchase price for these two homes (\$420,000) at the closing of Phase 1. The Town will pay the remaining 30% of the purchase price (\$180,000) following the issuance of the certificate of occupancy for these housing units, or when Bywater transfers title to these housing units to the Town, whichever is later. The Town's financial obligations shall be subject to Article XX of the Colorado Constitution pursuant to Paragraph 30 of this Contract.

5. Additional Assistance from the Town. The Town will provide a further reduction of sales risk to Bywater by agreeing to purchase up to two more Phase 1 housing units, should a unit remain on the market for more than nine months following the date the Town issues the certificate of occupancy for the unit. The total purchase price for these two additional units

will not exceed \$680,000. The Town will also seek additional sources such as the Gunnison Valley Housing Foundation to assist in writing down the cost of some homes to provide them to buyers at greater affordability than what is proposed here. The Town will also work with the Gunnison Valley Housing Foundation on the possibility of providing ADA compliant or senior housing. The Town's obligation to purchase the lots and to provide financial assistance is subject to annual appropriations under Article X of the Colorado Constitution as set forth in Paragraph 30 of this Contract. The Town will provide no additional financial assistance to Bywater other than what is stated in this Contract.

6. **Transaction Fees.** The Town and the GVRHA will be responsible for marketing the housing units to buyers and for ensuring that the buyers meet the eligibility guidelines in the Deed Restrictions to purchase the housing units constructed under this Agreement. Bywater agrees to pay a 2% transaction fees to the GVRHA upon the closing for the sale of each home. However, sales to the Town and Town employees will be exempt from this fee. In addition to sale of homes to qualified buyers, Town agrees that up to seven homes may be sold directly to employers in Gunnison County for provision of housing to their employees. The definition of employers will be updated per direction of Crested Butte Town Council. Bywater agrees to pay a transaction fee of 1% for sales to local business that do not use the GVRHA as their broker and 2% to the GVRHA for local businesses that use the GVRHA to broker the purchase of a unit. Bywater shall have no additional payment obligations to buyers who choose to be represented by their own transaction agent.
7. **Architecture and Engineering.** Within 60 days of release of building permits, Bywater shall provide evidence of payment to design firms, and release complete and final digital work product to the Town for plans.
8. **Financing Conditions and Obligations.** The Town agrees to subordinate its interest in the Town Property under the Deed Restrictions to any development loan or financing obtained by Bywater that is secured by any portion of the Town Property. Bywater has the right to terminate this agreement on or before March 31, 2019, if Bywater determines, in its sole subjective discretion, that financing options for the proposed affordable housing development are not satisfactory to Bywater.
9. **Town Warranties.** The Town makes the following warranties and representations to Bywater, which warranties and representations shall not be merged by any instruments of conveyance:
 - a. There are no actions, suits, litigation, condemnation, or other proceedings or investigations pending, against or affecting the Property.
 - b. The Town will make its best effort to obtain the requisite consent of its Town Council and enact an ordinance to convey any of the Town Property to Bywater prior to any conveyance.
 - c. Title Warranty shall be clear, marketable and no liens, except for the Deed Restrictions, the Town Option attached hereto as Exhibit F, and other matters of public record.

10. Bywater Warranties. Bywater makes the following warranties and representations to the Town, which warranties and representations shall not be merged by any instruments of conveyance:

a. Bywater acknowledges that, excluding Block 77 Lot 10 and the possibility of the Town's additional unit purchases per Section 5, the Town has made no representations as to the investment potential of the Town Property, whether the development costs submitted by Bywater are reasonable or attainable, or statements or guarantees regarding unit sales prices.

b. Bywater warrants and represents that it has the financial ability and experience to develop the Town Property as a quality affordable/workforce residential housing development consistent with affordable housing developments in the Town of Crested Butte and to obtain the necessary financing to pay for the costs of construction of the units on the lots. Bywater shall satisfy this representation at all times prior to full performance by Bywater hereunder, and the Town may examine Bywater's financial records with reasonable notice, previous development projects, and current development progress at any time prior to Bywater's full performance hereunder.

c. Bywater has obtained the requisite corporate authority to receive title to and to develop the Town Parcel as contemplated by this Contract.

d. Bywater acknowledges that except as set forth in this Contract and in the forthcoming General Warranty Deed, the Town has made no warranty or representation as to the condition of the Town Property and, subject to the within provisions, the Town Property shall be conveyed to Bywater "AS IS" and "WITH ALL FAULTS."

e. Bywater acknowledges that it is neither a party to, nor subject to or bound by, any agreement of any kind that would conflict with its performance under this contract.

f. Bywater has the capability to obtain necessary permits and registrations to develop the Town Property as required by this Contract.

These representations and warranties shall survive the closing of this Contract and shall not be merged into the deed.

11. Performance Bond. Bywater shall provide the Town with a Performance Bond in the amount of 120% of cost to construct, exclusive of developer overhead and profit. The amount of the Performance Bond is anticipated to be \$6,000,000. This is 120% of the cost to construct. Bywater shall use the form of the Performance Bond attached as **Exhibit E**. The Town shall be authorized to draw upon the Performance Bond to correct any default by Bywater under this Agreement, which default shall be determined and substantiated by a written letter or an Affidavit of Default signed by the Town Manager. Performance Bond shall be issued prior to the Groundbreaking deadline of June 1, 2019.

- 12. Bywater Warranties for Construction of Units.** Bywater shall warrant any and all work performed in construction of the units for a period of twelve (12) months from the certificate of occupancy on each building. In addition, Bywater shall warrant all mechanical systems, and plumbing for a period of twenty-four (24) months from the issuance of the certificate of occupancy of each building. Warranties will be provided to purchasers of all units. Specifically, but not by way of limitation, Contractor shall warrant to the purchaser that:
- a. Any and all improvements constituting the Project shall be free from any security interest or other lien or encumbrance; and
 - b. Any and all structures so conveyed shall be free of any defects in materials or workmanship for a period of one (1) year.
 - c. Any and all mechanical systems and plumbing shall be warrantied for two (2) years.
 - d. Manufacture warranties on appliances will be provided to the buyer for their assumption with the manufacture.
- 13. Corrections to Project.** If, within one 1 year after the issuance of a certificate of occupancy for any housing unit any of Bywater's work is found to be not in accordance with the standards set forth in this contract, Bywater shall, at Bywater's expense, correct it promptly after receipt of a written notice from the Town or other buyer to do so unless the Town or other buyer has previously accepted the condition of the unit. Such notice shall be either delivered personally or by overnight express courier, or sent by registered or certified mail, postage prepaid, return receipt requested, and must be received by Bywater as soon as practicable after the Town discovers the defect or the loss or damage caused by such defect, but in no event later than the date that the warranty given hereby expires.
- 14. Conveyance Documents, Instructions and Closing.** The Town and Bywater will cooperate with the closing company to enable the closing company to prepare and deliver documents required for conveyances to Bywater and the Town and their designees. Bywater and the Town will furnish any additional information and documents required by closing company that will be necessary to complete this transaction. Bywater and The Town will sign and complete all customary or reasonably required documents at or before conveyance. Delivery of the deeds from the Town to Bywater will be at conveyance. Closing will be on the conveyance dates or by mutual agreement of the parties. The hour and place of conveyance closing will be designated by the parties.
- 15. Conveyance Costs, Closing Fees and Taxes.** Bywater and the Town will pay their respective closing costs and all other items required to be paid at conveyance, except as otherwise provided herein. The fee for real estate closing services will be paid at conveyance one-half by Bywater and one-half by the Town.

- 16. Recommendation of Legal and Tax Counsel.** By signing this Contract, Bywater and the Town agree that this Contract has important legal consequences and it is recommended that the parties consult with legal and tax or other counsel before signing this Contract.
- 17. Time of Essence, Default and Remedies.** Time is of the essence for all dates and deadlines in this Contract.
- 18. Legal Fees, Cost and Expenses.** Anything to the contrary herein notwithstanding, in the event of any litigation relating to this Contract, prior to or after Closing Date, the court shall award to the prevailing party in such litigation reasonable attorney fees, costs and expenses.
- 19. Default.** The parties covenant and agree that the following items shall be considered a default by Bywater, if any such item remains uncured for more than period of thirty (30) days:
- a. Failure to have or secure access to funds sufficient to construct the units on Town Property within 90 days of the financing objection deadline set forth in Section 2.
 - b. Default by Bywater on any of the terms and conditions of any financing obtained.
 - c. The filing of a voluntary petition in bankruptcy or insolvency or a petition for reorganization under any bankruptcy law by Bywater, or the admission by Bywater that it is unable to pay its debts as they become due.
 - d. The consent of Bywater to an involuntary petition in bankruptcy or the failure to vacate, within thirty (30) days from the date of entry thereof, any order approving an involuntary petition against Bywater.
 - e. The entering of an order, judgment or decree by any court of competent jurisdiction, on the application of a creditor, adjudicating Bywater as bankrupt or insolvent or approving a petition seeking reorganization or appointing a receiver, trustee, or liquidator of all or a substantial part of Bywater's assets or the Town Property.
 - f. Any attachment or execution levied upon Bywater's assets and the Property which causes Bywater to be unable to perform its obligations hereunder.
 - g. Any commencement of foreclosure proceedings for any lien against the Property, which mechanic's lien or foreclosure proceedings are not dismissed or the lien is bonded over and released within 30 days of the filing of the foreclosure proceedings or recording of the lien.
 - h. Failure to construct 27 affordable housing units on the Property in accordance with the Design Guidelines, square footage requirements, or Town building codes and regulations.
 - i. Failure to construct 27 affordable housing units within the time-frame established by this Contract, or such extension to which the parties may have agreed in writing.
 - j. Any other material default of the terms and conditions established by this Contract that remains uncured for a period of 30 days.

k. Failure to complete foundations for all units within 90 days of the milestones set out in Section 2.

l. Failure to obtain Certificate of Occupancy for all units within 90 days of the milestones set out in Section 2. Issuance of such Certificates of Occupancy will not be unreasonably withheld by the Town.

20. Remedies Upon Default of Bywater. Upon default by Bywater, in addition to any remedies available to the Town in law or equity, the Town has the right to exercise the right of reversion contained in the deed granted to Bywater for the Town Property, subject to compensation of Bywater for the work completed, and to terminate this Contract as set forth below:

a. If Bywater is in Default prior to the first conveyance of any Town Property, the Town has the right to terminate the Contract.

b. If Bywater defaults after the first conveyance of Town Property, the Town has the right to require Bywater to reconvey the Town Property to the Town pursuant to the Option attached hereto as **Exhibit F**. Bywater agrees to reconvey all or part of the Town Property and the Town agrees that Bywater and/or Bywater's Lender shall be entitled to recover amounts paid or loaned to Bywater for construction of improvements upon the Town Property pursuant to the Option attached hereto as **Exhibit F**.

21. Remedies Upon Default of The Town. In the event of a default by The Town hereunder, which remains uncured for a period of thirty (30) days, Bywater shall have all rights and remedies available to Bywater at law or equity.

22. Termination. Prior to the first conveyance of any Town Property, either party has a right to terminate, the termination is effective upon the other party's receipt of a written notice to terminate (Notice to Terminate), provided such written notice was received on or before the first conveyance deadline specified in Section 2. If the Notice to Terminate is not received on or before the specified deadline, the parties with the Right to Terminate accept the specified matter, document or condition as satisfactory and waive the Right to Terminate under such provision.

23. Effect of Termination. In the event this Contract is terminated, the Parties are relieved of all obligations hereunder, subject to the Option attached as **Exhibit F**, Bywater's obligation for payment for all inspections, tests, surveys, engineering reports, or other reports or work performed at Bywater's request, and Bywater must pay for any damage that occurs to the Property as a result of such work. Bywater must not permit claims or liens of any kind against the Property for work performed on the Property. Bywater agrees to indemnify, protect and hold the Town harmless from and against any liability, damage, cost or expense incurred by the Town and caused by any such work, claim or lien. This indemnity includes the Town's right to recover all costs and expenses incurred by the Town to defend against any such liability, damage, cost or expense, or to enforce this provision, including the Town's reasonable attorney fees and expenses. This provision shall survive the termination of this Contract.

24. Entire Agreement, Modification, Survival; Successors. This Contract, its exhibits and specified addenda, constitute the entire agreement between the parties relating to the subject

hereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Contract. Where possible, amendments and modifications to this Contract may be made by mutual agreement of Bywater and the Town and signed by the Town Manager. Any right or obligation in this Contract that, by its terms, exists or is intended to be performed after termination or Closing survives the same. Any successor to a Party receives the predecessor's benefits and obligations of this Contract.

25. Notice, Delivery, and Choice of Law.

a. Physical Delivery and Notice. Any document or notice to Bywater or the Town must be in writing and is effective when physically received by such party.

b. Electronic Notice. As an alternative to physical delivery, any notice may be delivered in electronic form to Bywater or the Town.

c. Electronic Delivery. Electronic Delivery of documents and notice may be delivered by: (1) email at the email address of the recipient, (2) a link or access to a website or server provided the recipient receives the information necessary to access the documents, or (3) facsimile at the Fax No. of the recipient.

d. Choice of Law. This Contract and all disputes arising hereunder are governed by and construed in accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in Colorado for real property located in Colorado.

26. Notice of Acceptance, Counterparts. Once accepted, this document will become a contract between the Town and Bywater. A copy of this Contract may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together are deemed to be a full and complete contract between the parties.

27. Good Faith. Bywater and the Town acknowledge that each party has an obligation to act in good faith including, but not limited to, exercising the rights and obligations set forth in the provisions of this Contract.

28. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

29. Severability. If any portion of this Agreement, or amendment thereto, shall be held invalid or contrary to law, such portion shall be severable from this Agreement and the remainder of this Agreement shall remain in full force and effect and shall be valid and enforceable between the parties.

30. Binding Agreement. This Agreement shall be binding upon the Parties, their respective heirs, personal representatives, successors and assigns.

31. Electronic Signatures. Electronic signatures shall be deemed as valid as an original signature.

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

THE TOWN

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

By: _____
James A. Schmidt, Mayor

ATTEST:

By: _____
Lynelle Stanford, Town Clerk

BYWATER

BYWATER, LLC, a Colorado limited liability company

By: _____

Its: Managing Member

Exhibit A – Deed Restriction

Exhibit B – Lot Map

Exhibit C - AMI Table

Exhibit D - Construction details

Exhibit E – Form of Performance Bond

Exhibit F – Option Agreement

EXHIBIT "A"

Deed Restriction

[attach approved form here]

K Simillion Gunnison County, CO
8/24/2016 4:19:51 PM
556

641510
Page 13 of 16
R 86.00 D 0.00



**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:

[insert legal description here],

also commonly known as: _____, Crested Butte, Colorado 81224 (the "Unit"), 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 August 24, 2016, and recorded in the official real property records of the Clerk and Recorder of Gunnison County, Colorado on August 24, 2016 at Reception No. 041510, 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. In addition, the following matters shall also apply to the Unit:

1. (a) \$ _____ represents the "Original Purchase Price" as of the effective date of this DR Acknowledgement.

- OR (as applicable) -

(b) \$ _____ represents the "Original Purchase Price" as of the effective date of this DR Acknowledgement which is based on a valuation of the Unit as assigned by the Town following the performance of a valuation of the Unit pursuant to the Affordable Housing Guidelines.

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

(a) The Original Purchase Price plus an increase of three percent (3%) of such price per year from the date of purchase to the date 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); or

(b) 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

K Simillion Gunnison County, CO
 8/24/2016 4:19:51 PM
 556

641510
 Page 14 of 16
 R 86.00 D 0.00



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 Page(s) to Follow]

K Simillion Gunnison County, CO
8/24/2016 4:19:51 PM
556

641510
Page 15 of 16
R 86.00 D 0.00



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: _____
_____, Mayor

ATTEST:

_____, Town Clerk

(SEAL)

OWNER:

Date: _____

By: _____

Name: _____

Address: _____

Attn: _____

Phone: _____

E-mail: _____

K Simillion Gunnison County, CO
8/24/2016 4:19:51 PM
556

641510
Page 1 of 16
R 86.00 D 0.00



**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
(Blocks 79 and 80, Paradise Park Subdivision)

THIS MASTER DEED RESTRICTION (this "**Deed Restriction**") is made this 24th day of August 2016 (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 fee simple title owner of the real property legally described in **Exhibit "A"** (the "**Property**") attached hereto.
- B. An individual lot, and the dwellings, structures, appurtenances, improvements and fixtures located thereon and located within the Property is defined herein as a "**Unit**."
- C. "**Qualified Buyers**" are natural persons meeting the income, residency and other qualifications set forth in the Town'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**").
- D. 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.
- E. 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.

RESTRICTIONS:

1. **Use and Occupancy.**

1.1 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 purpose hereof, an "**Owner**" is a person(s) who is a Qualified

K Simillion Gunnison County, CO
 8/24/2016 4:19:51 PM
 556

641510
 Page 2 of 16
 R 86.00 D 0.00



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.

1.2 An Owner, in connection with the purchase of a Unit, must:

(a) occupy the Unit as his sole place of residence during the period that such Unit is owned by him;

(b) 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;

(c) 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");

(d) sell or otherwise transfer the Unit, other than in accordance with this Deed Restriction and the Affordable Housing Guidelines;

(e) not permit any junior lienholder encumbrance to be recorded against the Unit without the Town's prior written approval;

(f) not sell or otherwise transfer the Unit other than in accordance with this Deed Restriction and the Affordable Housing Guidelines;

(g) not permit any use or occupancy of the Unit except in compliance with this Deed Restriction and the Affordable Housing Guidelines;

(h) continue to meet the residency and employment requirements of a Qualified Buyer established by the Affordable Housing Guidelines; and

(i) continue to meet the other requirements of this Deed Restriction and the Affordable Housing Guidelines.

Recertification of employment, residency and ownership of the Unit shall be required as set forth in the Affordable Housing Guidelines.

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

K Simillion Gunnison County, CO
8/24/2016 4:19:51 PM
556

641510
Page 3 of 16
R 86.00 D 0.00



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*.

3. **Multiple Qualified Bids.** In the event that one qualified bid is received equal to the Maximum Resale Price, the Unit shall be sold to such bidder at the Maximum Resale Price, and in the event Owner receives two or more such bids equal to the Maximum Resale Price, the Qualified Buyer shall be selected according to the priority for sale set forth in the Affordable Housing Guidelines, and in the event that more than one such qualified bidder is of equal priority pursuant to the Affordable Housing Guidelines, the Qualified Buyer shall be selected by lottery among the qualified bidders of the highest priority, whereupon the Unit shall be sold to the winner of such lottery at the Maximum Resale Price. If the terms of the proposed purchase contract, other than the price, as initially presented to Owner, are unacceptable to Owner, there shall be a mandatory negotiation period of three (3) business days to allow Owner and potential buyer to reach an agreement regarding the terms of purchase, including but not limited to, the closing date and any financing contingencies. If, after the negotiation period is over, Owner and the potential buyer have not reached an agreement for sale, the next bidder's offer shall then be presented to Owner for consideration and a three (3) business day negotiation period will begin again. Owner may reject any and all bids; however, Owner is subject to the provisions in the Affordable Housing Guidelines pertaining to the listing fee. Bids in excess of the Maximum Resale Price shall be rejected. If all bids are below the Maximum Resale Price, Owner may accept the highest qualified bid. If all bids are below the Maximum Resale Price and two or more bids are for the same price, the Qualified Buyer shall be selected by lottery from among the highest qualified bidders.

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 Unit shall continue to be listed 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.

4.1 Non-Qualified Transferees shall join in any sale, conveyance or transfer of the Unit to a Qualified Buyer and shall execute any and all documents necessary to do so.

K Simillion Gunnison County, CO
 8/24/2016 4:19:51 PM
 556

641510
 Page 4 of 16
 R 86.00 D 0.00



4.2 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.

4.3 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 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.

4.4 Where the provisions of this Section 4 apply, the Town may require Owner to rent the Unit in accordance with the requirements hereof.

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. **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

K Simillion Gunnison County, CO
 8/24/2016 4:19:51 PM
 556

641510
 Page 5 of 16
 R 86.00 D 0.00



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 allowing 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.

K Simillion Gunnison County, CO
 8/24/2016 4:19:51 PM
 556

641510
 Page 6 of 16
 R 86.00 D 0.00



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.**

10.1 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.

10.2 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.

10.3 Owner appoints the Town as its attorney in fact for purposes of curing any default. 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:

11.1 Owner shall permit a final walk-through of the Unit by the Town during the final three (3) days prior to Closing.

K Simillion Gunnison County, CO
 8/24/2016 4:19:51 PM
 556

641510
 Page 7 of 16
 R 86.00 D 0.00



11.2 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.

11.3 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.

11.4 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.**

13.1 Subject to Section 12 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.

13.2 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

K Simillion Gunnison County, CO
 8/24/2016 4:19:51 PM
 556

641510
 Page 8 of 16
 R 86.00 D 0.00



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:

15.1 **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.

15.2 **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.

15.3 **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.

15.4 **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.

15.5 **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.

15.6 **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.

15.7 **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.

K Simillion Gunnison County, CO
8/24/2016 4:19:51 PM
556

641510
Page 9 of 16
R 86.00 D 0.00



15.8 **Recitals**. The Recitals hereinabove contain materials terms to this Deed Restriction.

15.9 **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.

15.10 **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.

15.11 **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.

15.12 **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.

15.13 **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.

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

K Simillion Gunnison County, CO
8/24/2016 4:19:51 PM
556

641510
Page 11 of 16
R 86.00 D 0.00



EXHIBIT "A"

Property

Paradise Park Subdivision, according to the Replat thereof recorded in the Office of the Clerk and Recorder of Gunnison County, Colorado on April 27, 2016 at Reception No. 639098.

K Simillion Gunnison County, CO
8/24/2016 4:19:51 PM
556

641510
Page 12 of 16
R 86.00 D 0.00



EXHIBIT "B"

DR Acknowledgement

[attach form here]

Upon recording return to:
 Community Banks of Colorado
 a division of NBH Bank
 7800 East Orchard Road, Suite 300
 Greenwood Village, CO 80111

SUBORDINATION OF MASTER DEED RESTRICTION AGREEMENT

THIS SUBORDINATION OF MASTER DEED RESTRICTION AGREEMENT (the "Agreement"), is executed to be effective as of February [], 2019, by **BYWATER, LLC**, an Oklahoma limited liability company ("Owner") and **COMMUNITY BANKS OF COLORADO**, a division of NBH Bank, a Colorado state bank ("Lender"), and the **TOWN OF CRESTED BUTTE**, a home rule municipal corporation in the State of Colorado (the "Town").

WITNESSETH:

WHEREAS, Owner executed a Promissory Note, dated February [], 2019 (the "Note"), evidencing a loan from Lender to Owner in the amount of [] (\$[]) (the "Loan"), which is secured by a Deed of Trust, Security Agreement and Fixture Filing for the benefit of Lender (the "Deed of Trust"), which was recorded on February [], 2019, under Reception No. [], in the real estate records of the Clerk and Recorder of Gunnison County, Colorado (the "Records"), as it relates to the real property described on **Exhibit A**, which is attached hereto and made a part hereof by this reference (the "Property");

WHEREAS, the Note, Deed of Trust and all other documents and agreements related to the Loan are hereinafter collectively referred to as the "Loan Documents";

WHEREAS, the Town previously recorded a Master Deed Restriction against the Property dated _____, 2019, which was recorded on _____, 2019, under Reception No. _____, in the Records (the "Deed Restriction");

WHEREAS, it is a condition precedent to obtaining the Loan that Deed of Trust shall unconditionally be and remain at all times a lien or charge upon Owner's property prior and superior to the Deed Restriction; and

WHEREAS, it is to the mutual benefit of all parties to this Agreement that Lender make the Loan to Owner; and the Town agrees that Deed of Trust, when recorded, will constitute a lien or charge upon the Property, which is unconditionally prior and superior to the Deed Restriction.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to induce Lender to make the Loan to Owner, it is hereby declared, understood and agreed as follows:

1. The Town is the current beneficiary of the Deed Restriction and the Town does hereby agree that the Deed Restriction and all of the Town's rights thereunder shall be in all respects subordinate, secondary, inferior and junior to the lien of the Deed of Trust and the other Loan Documents and all extensions, renewals or modifications thereof, all as executed and delivered by Owner to Lender as security for the Note.
2. The Town and Lender hereby agree that upon the occurrence of a default by Owner under the terms of the Note, Deed of Trust, or any Loan Documents, Lender shall provide written notice to the Town (a "Default Notice").
3. Lender acknowledges and agrees that following delivery by Lender of a Default Notice, the Town shall have an option to purchase the Property pursuant to the terms of that certain Option Agreement between the Town, Owner and Lender dated on even date herewith (the "Option Agreement") and nothing in this Agreement shall serve to modify the Town's rights pursuant to the Option Agreement.
4. This Agreement and the Option Agreement contain the entire agreement between and among the parties hereto with respect to the Deed Restriction.
5. This Agreement and each and every covenant, agreement and other provisions hereof shall be binding upon the parties hereto and their respective successors and assigns.
6. This Agreement is made and executed under and in all respects will be governed and construed by the laws of the State of Colorado. The prevailing party in any action arising from or relating to this Agreement shall be entitled to an award of its reasonable legal fees and costs incurred in the defense or prosecution of such action.
7. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed one and the same instrument.

<<SIGNATURE PAGES TO FOLLOW>>

EXHIBIT A - LEGAL DESCRIPTION OF PROPERTY

Block 76, Lots 1, 2, 3, 4, 5, and 6

Block 77, Lot 10

Block 78, Lot 6

Block 79, Lots 4, 10, and 11

Paradise Park Subdivision,
Town of Crested Butte,
Gunnison County, Colorado

EXHIBIT "B"

Lot Map

[attach approved form here]



BYWATER DEVELOPMENT LOT MAP EXHIBIT B

- Bywater Development
- Duplex
- Triplex
- Developed / Sold
- Available
- Park / Snow Storage
- Wetlands
- Sidewalk
- (2) Number of Units on Lot

Number Units in Project: 27
 Lottery Units: 25



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

EXHIBIT “C”

AMI Table

[attach approved form here]

Pro Forma AMI Disbursement- 2019 Paradise Park Build-Sprinkler additional cost

| Lot/ Block | Home Type | SF | AMI | Sale Price | Total Sale Price/Building | Sprinkler cost /unit | total/BLDG |
|-----------------------------|-----------|-------|------|----------------|---------------------------|----------------------|------------|
| L10/B77 | 3 bed | 1200 | 100% | \$265,862.00 | | | |
| L10/B77 | 2 bed | 1000 | 130% | \$307,070.00 | \$572,932.00 | | |
| L6/B76 | 2 bed | 1000 | 140% | \$335,628.00 | | | |
| L6/B76 | 2 bed | 1000 | 140% | \$335,628.00 | \$671,256.00 | | |
| L5/B76 | 3 bed | 1200 | 120% | \$331,869.00 | | 20000 | |
| L5/B76 | 2 bed | 1000 | 100% | \$221,399.00 | | 17500 | |
| L5/B76 | 1 bed | 750 | 130% | \$245,395.00 | \$798,663.00 | 15000 | 52500 |
| L4/B76 | 3 bed | 1200 | 130% | \$364,873.00 | | | |
| L4/B76 | 1 bed | 750 | 110% | \$197,769.00 | \$562,642.00 | | |
| L3/B76 | 2 bed | 1000 | 130% | \$307,070.00 | | 17500 | |
| L3/B76 | 2 bed | 1000 | 100% | \$221,399.00 | | 17500 | |
| L3/B76 | 2 bed | 1000 | 150% | \$364,185.00 | \$892,654.00 | 17500 | 52500 |
| L2/B76 | 3 bed | 1200 | 130% | \$364,873.00 | | 20000 | |
| L2/B76 | 2 bed | 1000 | 100% | \$221,399.00 | | 17500 | |
| L2/B76 | 1 bed | 750 | 110% | \$197,769.00 | \$784,041.00 | 15000 | 52500 |
| L1/B76 | 3 bed | 1200 | 140% | \$397,877.00 | | | |
| L1/B76 | 1 bed | 750 | 140% | \$269,208.00 | \$667,085.00 | | |
| L10/B79 | 3 bed | 1200 | 120% | \$331,869.00 | | 20000 | |
| L10/B79 | 2 bed | 1000 | 120% | \$278,514.00 | | 17500 | |
| L10/B79 | 1 bed | 750 | 120% | \$221,582.00 | \$831,965.00 | 15000 | 52500 |
| L6/B78 | 2 bed | 1000 | 120% | \$278,514.00 | | 17500 | |
| L6/B78 | 2 bed | 1000 | 120% | \$278,514.00 | | 17500 | |
| L6/B78 | 2 bed | 1000 | 120% | \$278,514.00 | \$835,542.00 | 17500 | 52500 |
| L4/B79 | 2 bed | 1000 | 110% | \$249,956.00 | | | |
| L4/B79 | 2 bed | 1000 | 110% | \$249,956.00 | \$499,912.00 | | |
| L11/B79 | 2 bed | 1000 | 120% | \$278,514.00 | | | |
| L11/B79 | 2 bed | 1000 | 120% | \$278,514.00 | \$557,028.00 | | |
| Total sales | | | | \$7,673,720.00 | \$7,673,720.00 | | |
| Square feet | | 26950 | | | | | |
| Total sprinkler cost | | | | | | 262500 | |

EXHIBIT “D”

Construction Details

[attach approved form here]

Interior finish details-TOCB Paradise Park build 2019**Lots 1-6 B76 L10 L11 B79 L6 B78 L3 B80 L10 B77**

All items are intended to be representative in nature. No guarantee of inclusion of the exact products shown. All items selected for installation will be similar in nature. This exhibit is intended to describe what Bywater agrees to include in the finishes of the homes.

Flooring-

Level 1- stained & sealed concrete

Level 2- carpet/LVT wood

Walls & ceilings-

Textured & painted drywall

Doors and trim-

Painted wood

Cabinets-

Prefinished wood cabinets

Countertops-

Solid surface-quartz or granite

Plumbing Fixtures-

Delta

Appliances-

Energy star GE or equivalent- includes the following- W&D, Refrigerator, Dishwasher, OTR Vent, Range

Lighting-

Decorative lighting in baths and dining area, Led can lighting in balance of house

Hardware-

BHP-includes all door locks, bath hdwe



GE APPLIANCES
a Haier company



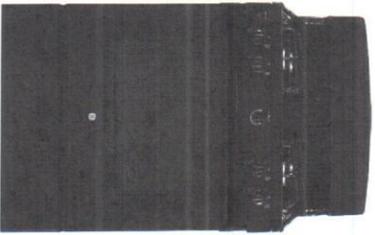
Model#: JN327HBB

GE® Non-Vented Standard Range Hood

Approx Dimensions (HxDxW):
5 1/2 in X 17 1/2 in X 29 7/8 in

- Non-Vented - Filter system cleans and returns air to the kitchen
- Vertical and rear exhaust - Exhausts from the top or rear of the hood

Also Available in:



Model#: JGBS30DEKBB

GE® 30" Free-Standing Gas Range

Approx Dimensions (HxDxW):
46 1/4 in X 28 3/4 in X 30 in

- 13,000 BTU burner - Delivers a wide range of heat output ideal for most cooking requirements
- Big view window - Large, clear window makes checking food easy
- Precise Simmer burner - Delicate foods don't burn with low, even heat
- Sealed cooktop burners - Contains spills and make cleaning quick and easy



Also Available in:



Model#: GSD3300KBB

GE® Built-In Dishwasher

Approx Dimensions (HxDxW):
34 in X 25 3/4 in X 24 in

- 3-level wash system - Powerful wash cleans dishes thoroughly
- Two-stage filtration with Extra Fine filter - Extra filtration keeps water clean
- Piranha™ hard food disposer - Grinds food into small particles that are washed away
- Hot Start option - Provides optimal water temperature for dependable performance



Also Available in:



Model#: GIE18CTHBB

GE® ENERGY STAR® 17.5 Cu. Ft. Top-Freezer Refrigerator



Approx Dimensions (HxDxW):
67 3/8 in X 32 7/8 in X 28 in

- #1 in Quality and Dependability - Among 14-18 cu. ft. refrigerators based on an independent study of property maintenance personnel. Source: The Stevenson Company, 2016—Market research company with over 20 years of experience in the appliance industry
- Upfront temperature controls - Easy-to-use controls regulate both fresh food and freezer sections
- Adjustable wire shelves - Moveable racks can handle a variety of foods
- Factory-installed icemaker - Refrigerator comes ready to automatically create ice

Also Available in:



Model#: GUD24E55MWW

GE Unitized Spacemaker® 2.3 DOE cu. ft. Capacity Washer with Stainless Steel Basket and 4.4 cu. ft. Capacity Electric Dr

Approx Dimensions (HxDxW):
74 7/8 in X 27 3/8 in X 23 3/4 in

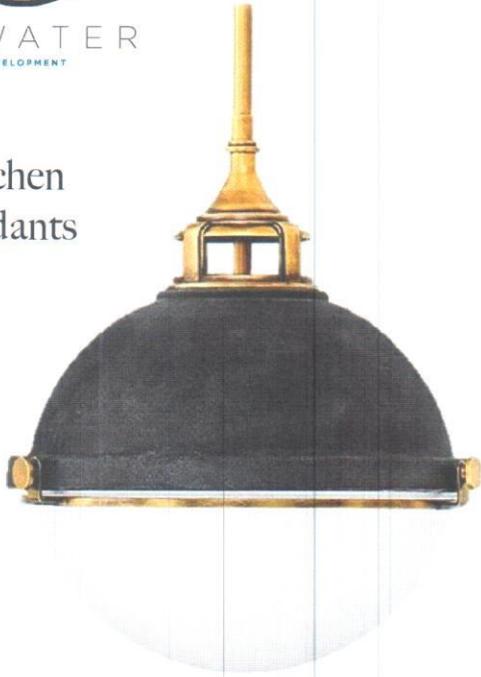
- Rotary- electromechanical controls (dryer) - Allow fast, easy cycle selection
- 11 wash cycles - Cycles are designed to specifically handle various fabrics and soils
- 6 wash / rinse temperatures - Select the right temperature for ideal wash results
- 1 wash / spin speed combination - Speeds are matched to fabric type for great clothes care



BY WATER
DEVELOPMENT

LIGHTING PACKAGE # I

Kitchen
Pendants



Living Room
Overhead



Bedroom Flush
Mount



Bath
Sconces





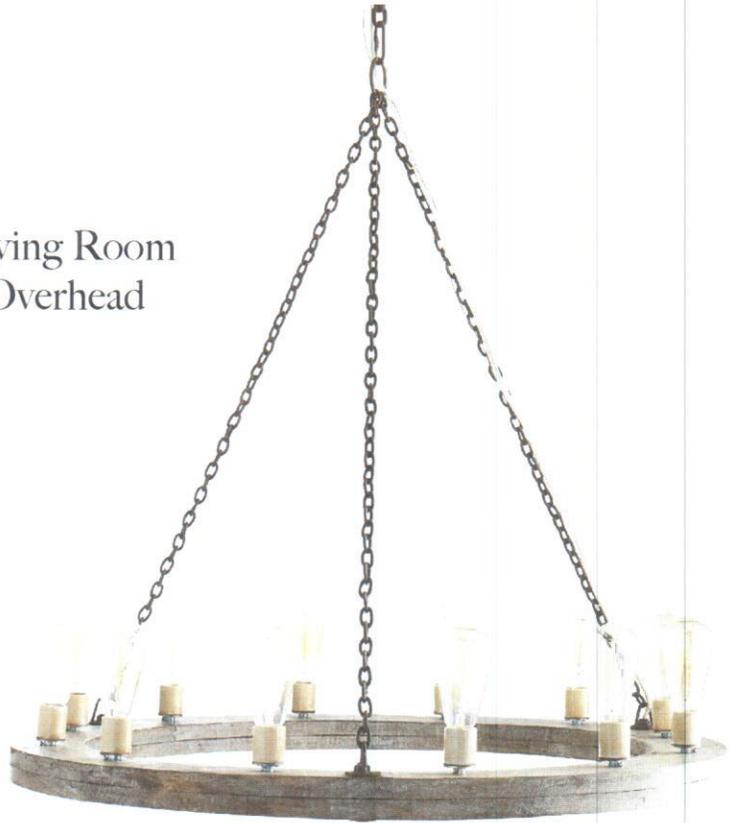
BY WATER
DEVELOPMENT

LIGHTING PACKAGE #2

Kitchen Pendants



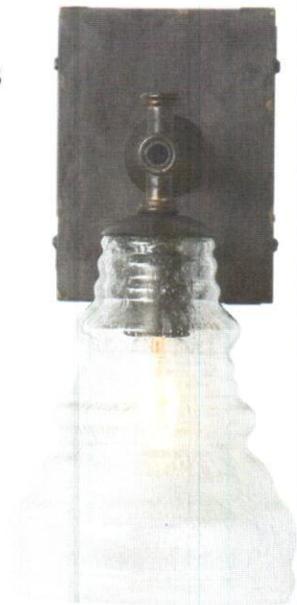
Living Room
Overhead



Bedroom Flush
Mount



Bath
Sconces





BY WATER
DEVELOPMENT

LIGHTING PACKAGE #3

Kitchen
Pendants



Living Room
Overhead



Bedroom Flush
Mount



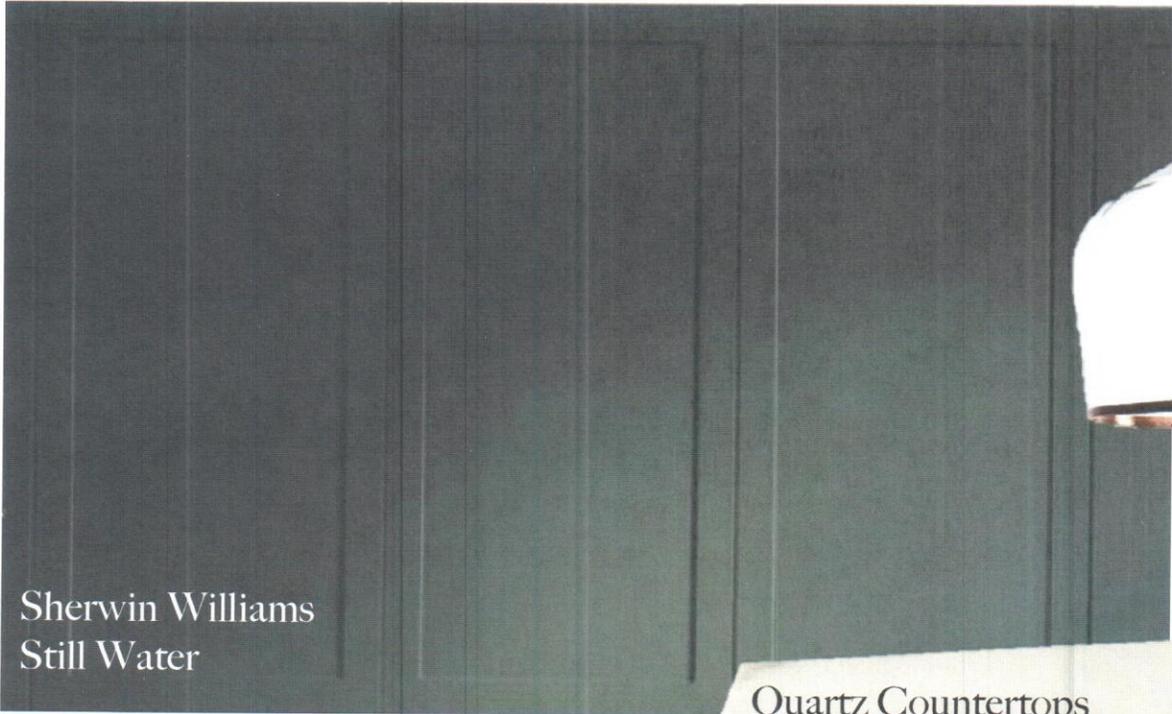
Bath
Sconces





BY WATER
DEVELOPMENT

KITCHEN PALETTE #1



Sherwin Williams
Still Water



Kitchen
Pendants



Quartz Countertops



Engineered Hardwoods
Color: Amazon



Kitchen Faucet



BY WATER
DEVELOPMENT

KITCHEN PALETTE #2

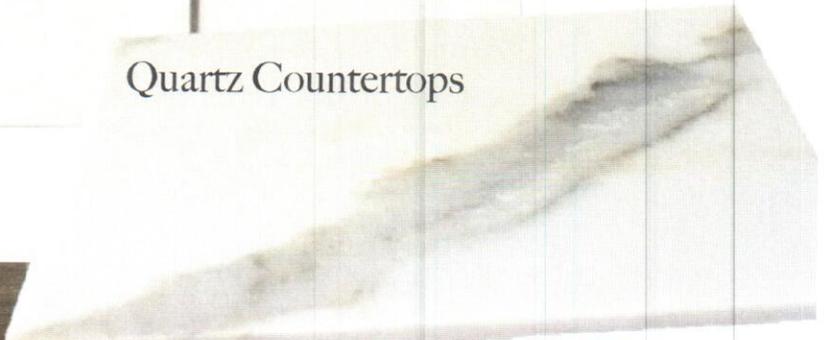


Sherwin Williams
Incredible White



Kitchen
Pendants

Quartz Countertops



Engineered Hardwoods
Color: Bear Lake

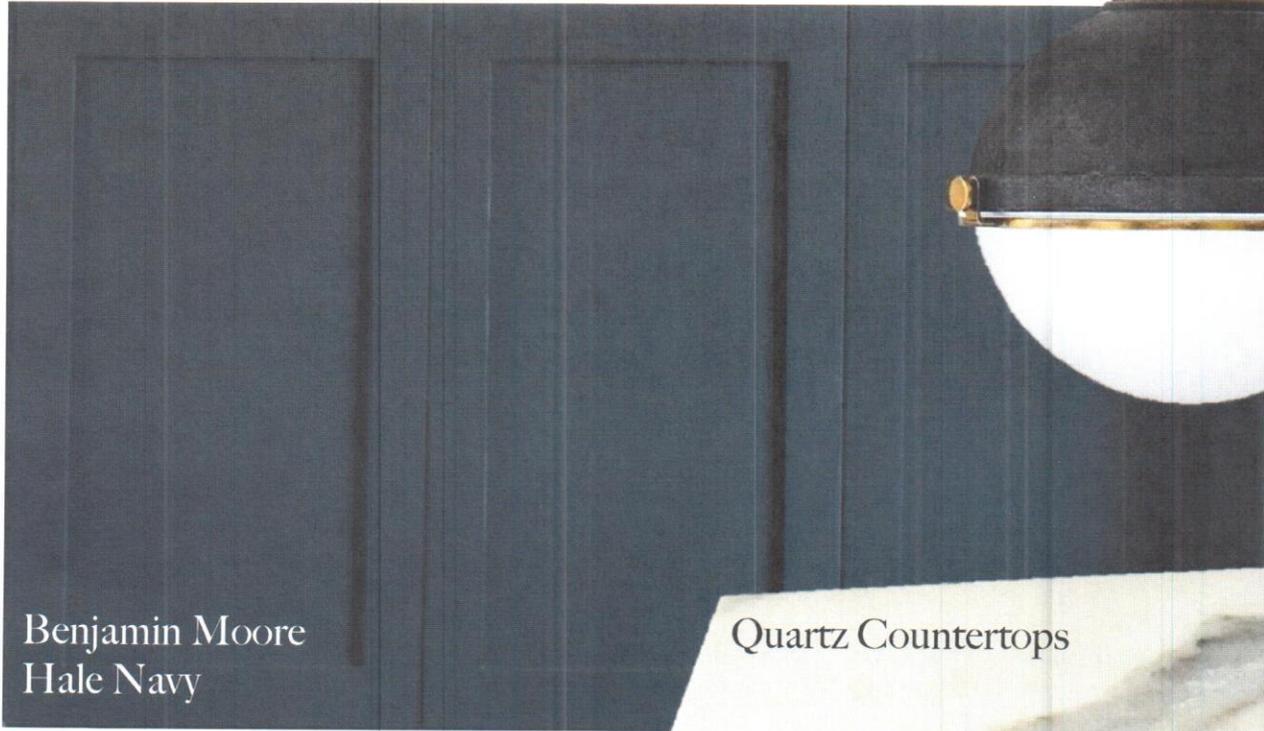


Kitchen Faucet



BY WATER
DEVELOPMENT

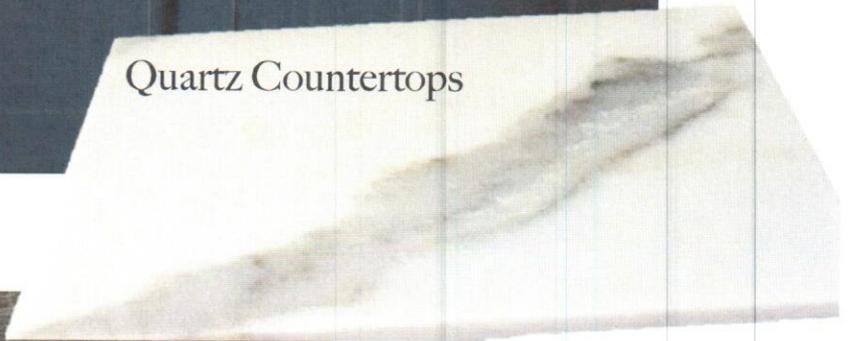
KITCHEN PALETTE #3



Benjamin Moore
Hale Navy



Kitchen
Pendants



Quartz Countertops



Engineered Hardwoods
Color: Havasu



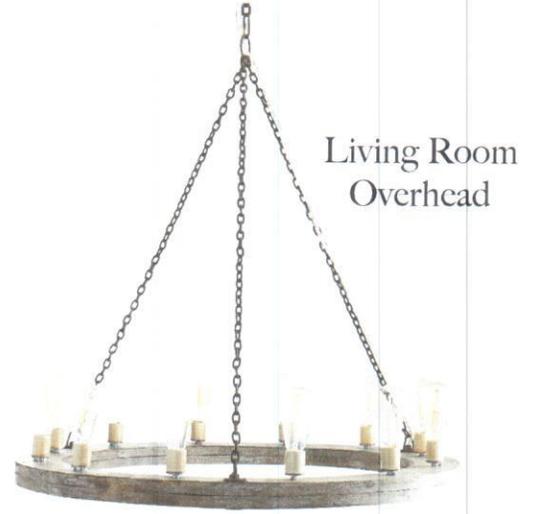
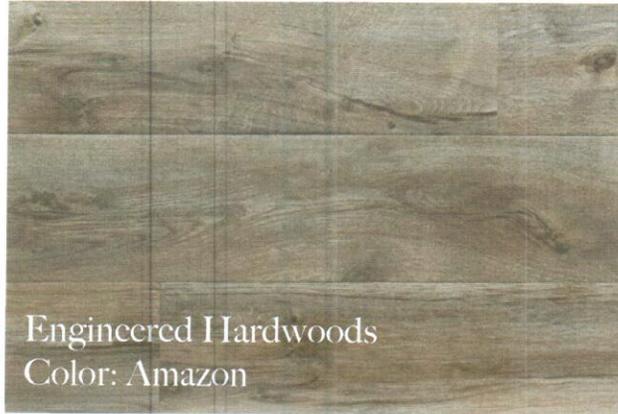
Kitchen Faucet



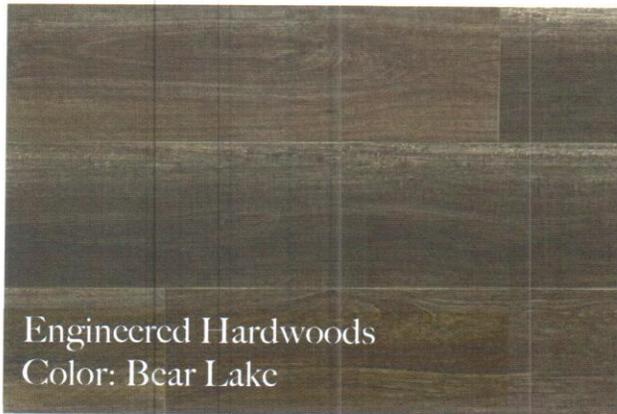
BY WATER
DEVELOPMENT

LIVING ROOM: FLOORING & LIGHTING

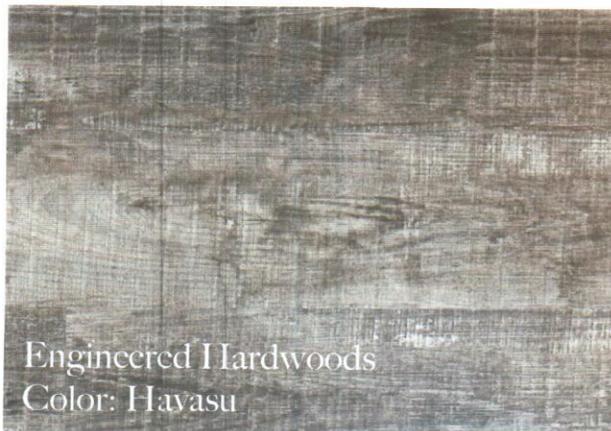
Palette #1



Palette #2



Palette #3





BY WATER
DEVELOPMENT

BEDROOMS: FLOORING & LIGHTING



Low Nap Berber Carpet



Flush Mounts
in Hand-Rubbed Brass
and
Oil Rubbed Bronze

EXHIBIT “E”

Form of Performance Bond

[attach approved form here]

Bond # _____

Exhibit E PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned
 , a _____ organized under the laws of the State of
 , hereinafter referred to as the Contractor and
 _____, a corporation organized under the laws of the State of
 , and authorized and licensed to transact business in the State of Colorado, hereinafter referred to as the
 Surety, are held and firmly bound unto the Town of Crested Butte, Colorado, hereinafter referred to as the
 Town, in the penal sum of \$6,000,000, lawful money of the United States of America, for the payment of
 which sum the Contractor and Surety bind themselves and their heirs, executors, administrators,
 successors and assigns, jointly and severally by these presents.

WHEREAS, the above Contractor has on the 22nd day of January, 2019 entered into a written
 contract with the Town for furnishing all labor, materials, equipment, tools, superintendence, and other
 facilities and accessories for the construction of the **2019 Paradise Park Affordable Housing Build** (the
 "Project") in accordance with the Contract Documents therefor which are incorporated herein by
 reference and made a part hereof, and are herein referred to as the Contract.

NOW, THEREFORE, the conditions of this performance bond are such that if the
 Contractor:

1. promptly and faithfully observes, abides by and performs each and every covenant,
 condition and part of said Contract, including, but not limited to, its warranty provisions,
 in the time and manner prescribed in the Contract; and
2. pay the Town all losses, damages (liquidated including, but not limited to, damages
 caused by delays in performance of the Contract), expenses, costs and attorneys' fees,
 that the Town sustains resulting from any breach or default by the Contractor under the
 Contract, then this bond is void; otherwise, it shall remain in full force and effect in
 accordance with the Contract.

IN ADDITION, if said Contractor fails to perform in any respect under the Contract Documents,
 the Surety shall pay any amounts incurred or to be incurred by the Town in connection with such failure
 in an amount not exceeding the amount of this obligation, inclusive of, without limitation, liquidated
 damages, together with any related costs and expenses incurred by the Town, including, without
 limitation, attorneys' fees.

IN ADDITION, if said Contractor fails to duly pay for any labor, materials, team hire,
 sustenance, provisions or any other supplies used or consumed by said Contractor or its subcontractors in
 its performance of the Work contracted to be done or fails to pay any person who supplies rental
 machinery, tools, or equipment, all amounts due as the result of the use of such machinery, tools or
 equipment in the prosecution of the Work, the Surety shall pay the same in an amount not exceeding the
 amount of this obligation, together with any related costs and expenses incurred by the Town, including,
 without limitation, attorneys' fees.

PROVIDED, that the said Surety, for value received, hereby stipulates and agrees that any and all changes in the Contract shall not affect the Surety's obligations under this bond and the Surety hereby waives notice of any such changes. Further, Contractor and Surety acknowledge that the penal sum of this bond shall increase in accordance with approved changes to the Contract Documents without obtaining the Surety's consent up to a maximum of twenty percent (20%) of the penal sum hereof.

IN WITNESS WHEREOF, said Contractor and said Surety have executed these presents as of this _____ day of _____, 2019.

CONTRACTOR:

By: _____

Name: _____

Title: _____

SURETY:

By: _____

Name: _____

Title: _____

(Accompany this Bond with the attorney-in-fact's authority from the Surety to execute this Bond, certified to include the date of the Bond.)

EXHIBIT "F"

Option Agreement

[attach approved form here]

Upon recording return to:
 Town of Crested Butte
 507 Maroon Avenue
 P.O. Box 39
 Crested Butte, CO 81230

OPTION AGREEMENT

THIS OPTION AGREEMENT (this “Option”) is entered into to be effective as of the [] day of February, 2019 (the “Effective Date”) by and between **BYWATER, LLC**, an Oklahoma Limited Liability Company, whose address is [] (“Bywater” or “Grantor”), the **TOWN OF CRESTED BUTTE, COLORADO** (“Town” or “Grantee”), whose address is 507 Maroon Ave., P.O. Box 39, Crested Butte, Colorado, 81230, and **COMMUNITY BANKS OF COLORADO**, a division of NBH Bank, a Colorado state bank (“Lender”).

FOR GOOD AND VALUABLE CONSIDERATION, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grantor hereby grants to Grantee an irrevocable option to purchase any of the following real property (the “Property”):

Block 76, Lots 1, 2, 3, 4, 5, and 6
 Block 77, Lot 10
 Block 78, Lot 6
 Block 79, Lots 4, 10, and 11

Paradise Park Subdivision Town of Crested Butte, Gunnison County, Colorado, with all appurtenances.

These Lots are collectively referred to hereinafter as the “Property” or “Town Property.” Exhibit B – Lot Map is attached hereto and incorporated herein.

2. Consideration for Option. This Option is granted as part of the consideration paid by the Town to Bywater in the form of the conveyance of the Property for the nominal price of \$10 per lot by that certain General Warranty Deed of even date herewith pursuant to the Contract to Buy, Sell and Develop Deed Restricted Housing in the Town of Crested Butte’s Paradise Park Subdivision (“Contract”). No additional consideration is given by Grantee for this Option. The Town shall record this option immediately following the conveyance of the Property to Bywater, and prior to the time Lender records its deed of trust to secure construction financing for the Property (the “Loan”). Subject to the terms hereof, this Option will be prior and superior to Lender’s deed of trust on the Property.

3. Term of Option. Unless sooner exercised by Grantee or terminated pursuant to Paragraph 5 below, this Option shall expire upon Bywater’s full performance of its obligations under Phase 1 and Phase 2 of the Contract or December 31, 2021, whichever is earlier.

4. Conditions Precedent to Exercise of Option. The Grantee shall have the absolute right to exercise this Option upon the occurrence of any one of the events of default specified in Section 19 of the Contract.

5. Exercise of Option. At any time after one of the events of default specified in Section 19 of the Contract and prior to expiration or termination of this Option, Grantee may exercise this Option by delivering written notice of exercise of this Option to Grantor and Lender. The Town may specify in its written notice that the Town is exercising this Option to repurchase all of the Lots conveyed to Bywater that comprise the Property, or only some of the Lots that comprise the Property. The purchase price for each Lot to be purchased by the Town shall be an amount equal to the portion of the Loan which was disbursed to fund improvements on the Lot being purchased plus a pro rata portion of the Loan which was disbursed to fund any improvements which service more than one Lot (the "Purchase Price"). The Purchase Price shall be substantiated by documentation from Bywater and Lender satisfactory to the Town that evidences the amount of the Purchase Price. Closing shall occur within 90 days of the Town's exercise of this Option (the "Closing Date"). The parties agree that the Purchase Price shall be paid to Lender in consideration for Lender's release of its lien on the Property. Title shall be conveyed by warranty deed, subject to (i) matters of record prior to the recordation of this Option; (ii) general taxes for the year for the year of closing; (iii) distribution utility easements (including cable TV); (iv) rights of third parties not shown by the public records of which the Town has actual knowledge; and (v) inclusion of the Property within any special taxing district. Grantee shall pay for any title insurance and recording fees. Customary closing costs will be split equally between Grantor and Grantee.

6. Lender Foreclosure. In the event of a default of the Loan, Lender shall give written notice of default to Bywater and the Town (the "Default Notice"). The Town shall have sixty (60) days from the date of the Default Notice to exercise this Option by delivering written notice of its intent to exercise to Bywater and Lender (the "Option Notice"). If this Option Notice is not delivered to Bywater and Lender within said sixty (60) day time period, this Option will be deemed terminated and of no further force or effect. If the Town delivers this Option Notice within the sixty (60) day time period, the Town shall close on the sale pursuant to the terms of Paragraph 5 above. Under any circumstances, if the Town does not complete the purchase of the Property by the Closing Date, this Option will be deemed terminated and of no further force or effect.

7. Town's Earnest Money for Units on Block 77, Lot 6. Pursuant to paragraph 4 of the Contract, the Town has agreed to enter into a separate contract with Bywater to purchase the units to be constructed on Block 77, Lot 6 (the "Purchased Units") and has further agreed to deliver to Bywater the sum of \$420,000 as earnest money for that purchase (the "Earnest Money") at the time the parties execute this separate contract. Bywater and Lender will hold the Earnest Money in a segregated and blocked account until the closing of the sale of the Purchased Units at which point the Earnest Money will be delivered to the title company and applied against the purchase price of the Purchased Units. If, prior to the closing of the sale of the Purchased Units to the Town, Lender delivers to the Town a Default Notice, Lender and the Town agree that the Earnest Money will continue to be applied to the purchase price of the Purchased Units.

8. Installation of Water Main. The Town acknowledges and agrees that it is responsible for the installation of the water main for the units to be constructed in Block 76 as set forth in

Paragraph 1.c.i. of the Contract. The Town further agrees that it will complete the installation of this water main regardless of whether Bywater is in default of the Contract or Lender has delivered to the Town a Default Notice. The Town further acknowledges and agrees that water taps will be available for purchase (at the then current posted rate) to serve all of the Lots which comprise the Property regardless of whether the Lots will be restricted for affordable housing or developed for sale at market rates.

9. Effect of Contract. The Town and Lender acknowledge and agree that the Contract is an obligation solely between the Town and Bywater. Lender shall have no obligations for or liability arising from the Contract and shall not be responsible to fulfill any of Bywater's obligations under the Contract even if Lender becomes an owner of some or all of the Property. Lender's only obligations to the Town and the Town's only obligations to Lender relating to the Property are set forth in this Agreement which shall control and bind the parties hereto.

10. Successors and Assigns. This Option and each and every covenant, agreement and other provisions hereof shall be binding upon the parties hereto and their respective successors and assigns.

11. Governing Law. This Option is made and executed under and in all respects will be governed and construed by the laws of the State of Colorado. The prevailing party in any action arising from or relating to this Option shall be entitled to an award of its reasonable legal fees and costs incurred in the defense or prosecution of such action.

12. Counterparts. This Option may be executed in multiple counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed one and the same instrument.

<<SIGNATURE PAGES TO FOLLOW>>

Signed on the date set forth below to be effective as of the date set forth above.

LENDER:

COMMUNITY BANKS OF COLORADO,
a division of NBH Bank, a Colorado state bank

By: _____

Name: _____

Title: _____

STATE OF _____)

) ss.

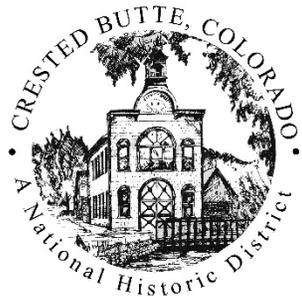
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019,
by _____ the _____ of Community Banks of Colorado, a division
of NBH Bank, a Colorado state bank.

Witness my hand and official seal.

My commission expires: .

Notary Public



To: Mayor Schmidt and Town Council

From: Michael Yerman, Community Development Director

Thru: Dara MacDonald, Town Manager

Subject: **Ordinance 4, Series 2019- Master Deed Restriction Paradise Park**

Date: February 19, 2019

Background:

A new deed restriction was recorded for Paradise Park Blocks 79 and 80 in 2016. This deed restriction will carry on for any existing units built during this period of time. Ordinance 4, Series 2019 will replace this deed restriction for vacant lands in Paradise Park and for the duplex currently being built for the School District. The reason for the new deed restriction is to allow for employee rentals in Paradise Park. The old deed restriction does not permit the use of the units as planned by the School District and the Fire District for their employees. This change will also allow the possibility of business employee rentals in the future if the Council elects to sell units for this purpose.

Recommendation:

A Council person make a motion followed by a second to set Ordinance 4, Series 2019 to a public hearing on March 4, 2019.

ORDINANCE NO.4

SERIES 2019

**AN ORDINANCE OF THE CRESTED BUTTE TOWN
COUNCIL AUTHORIZING THE RELEASE OF DEED
RESTRICTIONS ON CERTAIN PROPERTIES IN THE
PARADISE PARK SUBDIVISION AND REPLACEMENT
WITH NEW DEED RESTRICTIONS**

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 recorded August 29, 2002, at Reception No. 523290, August 29, 2002 at Reception No. 536326, and October 31, 2003, at Reception No. 641510 of the records of the Gunnison County Clerk and Recorder (“Deed Restrictions”); and,

WHEREAS, the Town required these Deed Restrictions to encumber real property and improvements located on Block 76, Block 77, Block 78, Block 79, and Block 80, Paradise Park Subdivision, Town of Crested Butte, Gunnison County, Colorado, according to the Final Plat recorded at Reception No. 523289; and,

WHEREAS, the Town has authorized a replat of Block 76, Paradise Park Subdivision, that changes the number of Lots within Block 76 from 7 Lots to 6 Lots; and,

WHEREAS, the replat of Block 76 was recorded on _____, 2019, at Reception No. _____; and,

WHEREAS, some of the uses on certain properties in the Paradise Park Subdivision have changed since the Deed Restrictions were recorded and the Deed Restrictions will be replaced with different land use conditions and deed restrictions that will apply to the following properties in the Paradise Park Subdivision:

Block 76, Lots 1, 2, 3, 4, 5, and 6
 Block 77, Lot 10
 Block 78, Lots 1, 3, 4 and 6
 Block 79, Lots 2, 4, 10, 11, 16, 18, and 19
 Block 80, Lots 1 and 3

Paradise Park Subdivision, Town of Crested Butte, Gunnison County, Colorado (the “Property”); and

WHEREAS, a map of the Lots comprising the Property is attached hereto as **Exhibit A** and the new replacement deed restrictions that will encumber the Property are attached hereto as **Exhibit B**; and,

WHEREAS, the Crested Butte Fire Protection District now owns Lot 4, Block 78, and has agreed to execute an Acknowledgment of the replacement deed restrictions that are attached hereto as **Exhibit B**; 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 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 August 29, 2002, at Reception No. 523290, August 29, 2002 at Reception No. 536326, and October 31, 2003, at Reception No. 641510, of the Gunnison County Clerk and Recorder, to wit:

Block 76, Lots 1, 2, 3, 4, 5, and 6
 Block 77, Lot 10
 Block 78, Lots 1, 3, 4 and 6
 Block 79, Lots 2, 4, 10, 11, 16, 18 and 19
 Block 80, Lots 1 and 3

Paradise Park Subdivision Town of Crested Butte, Gunnison County, Colorado (the "Property"). A map of the Lots comprising the Property is attached hereto as **Exhibit A**.

The Town Council further authorizes and directs the Town Manager and Town Clerk to appropriately execute any additional documents necessary and appropriate to consummate the release of the 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 B** 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

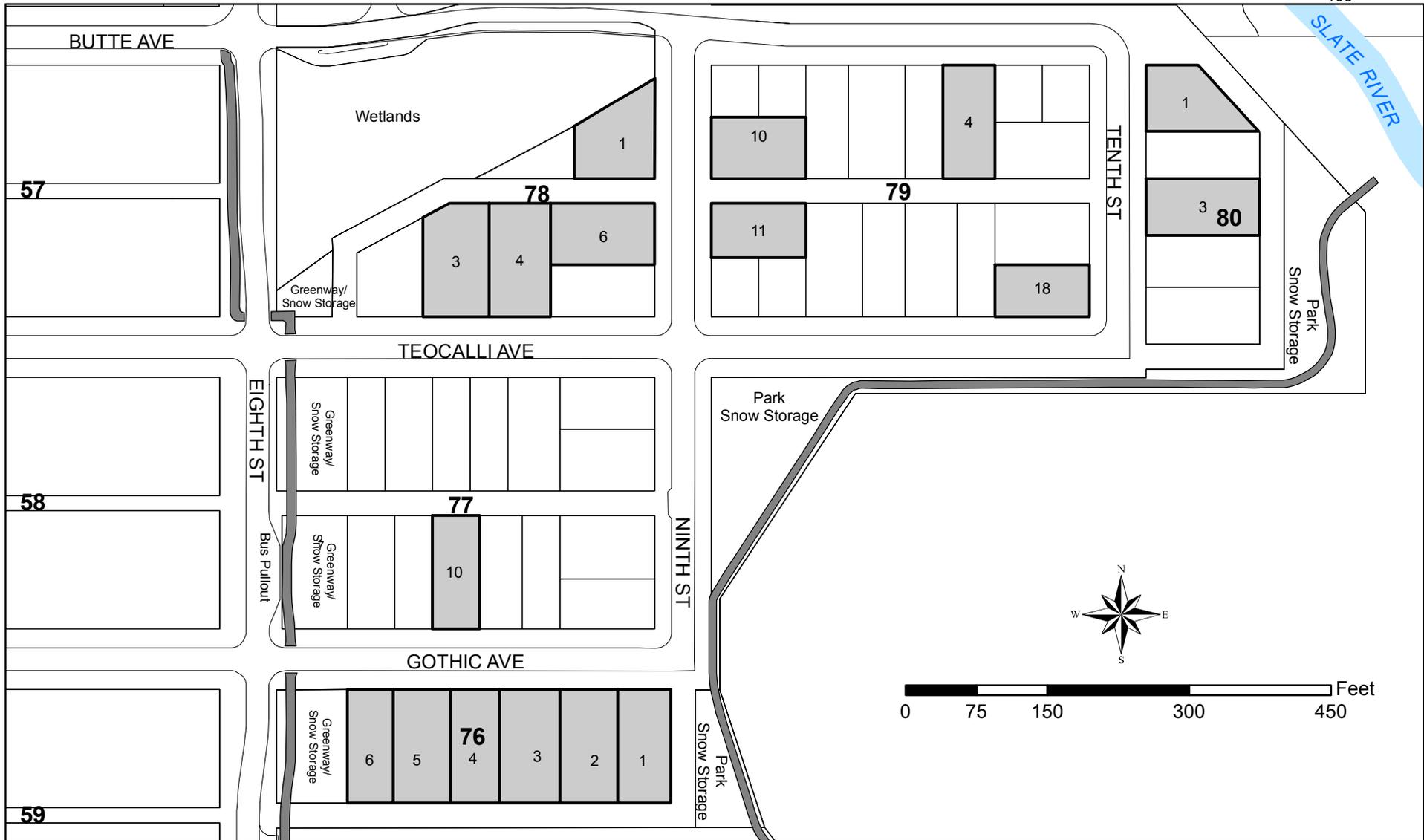
**By: _____
James A. Schmidt, Mayor**

ATTEST:

Lynelle Stanford, Town Clerk

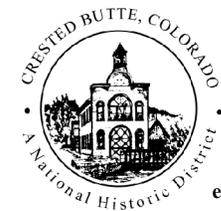
[SEAL]

SLATE RIVER



-  Deed Restricted
-  Sidewalk

Block 76 Lots 1-6
 Block 77 Lot 10
 Block 78 Lots 1, 3, 4, 6
 Block 79 Lots 4, 10, 11, 18
 Block 80 Lots 1, 3



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

Date: February 4, 2019
 Filename: ~town-projects\AH\PParkDRR.mxd

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 76, Lots 1, 2, 3, 4, 5, and 6
 Block 77, Lot 10
 Block 78, Lots 1, 3, 4 and 6
 Block 79, Lots 2, 4, 10, 11, 16, 18, and 19
 Block 80, Lots 1 and 3, Paradise Park Subdivision)

THIS MASTER DEED RESTRICTION (this "**Deed Restriction**") is made this ____ day of March 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 fee simple title owner of the real property legally described in **Exhibit 'A'** (the "**Property**") attached hereto.

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

C. "**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**").

D. 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.

E. 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.

F. The Town Council approved Ordinance __, Series 2019 releasing the Master Deed Restriction 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
 - ix. be a qualified business, nonprofit, government agency, or essential service provider located in Gunnison County that rents the unit as a Long-Term Rental as defined in the Code, as may be amended, to its employees (**“Employee Rental”**).
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 unless it is an Employee Rental. 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. **Employee Rentals.** Employee Rentals must be rented as a Long-Term Rental as defined by the Code and occupied by its employees for a lease of at least six (6) months. Eligibility for employee rentals is defined in the Affordable Housing Guidelines.

8. **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.

9. **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.
10. **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.
11. **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.
12. **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.
13. **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.
14. **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.

15. **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.

16. **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:

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

By: _____
James A. Schmidt, Mayor

ATTEST:

Lynelle Stanford, Town Clerk

(SEAL)

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

The foregoing Master Deed Restriction was acknowledged before me this ____ day of _____, 2019, by James A. Schmidt, Mayor, 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 _____

EXHIBIT "A"**Property**

Block 76, Lots 1, 2, 3, 4, 5, and 6,
Block 77, Lot 10,
Block 78, Lots 1, 3, 4 and 6,
Block 79, Lots 2, 4, 10, 11, 16, 18, and 19,
and Block 80, Lots 1 and 3

Paradise Park Subdivision Paradise Park Subdivision, according to the Paradise Park Subdivision Plat recorded on August 29, 2002, at Reception No. 523289, the Replat thereof recorded on April 27, 2016, at Reception No. 639098, and the Replat of Block 76 Paradise Park Subdivision , recorded at reception No. _____ in the Office of the Clerk and Recorder of Gunnison County, Colorado Subdivision

Exhibit A Map below for Master Deed Restriction identifies the effected properties.

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:

(Legal Description Here)

(the "**Unit**"), 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 August 24, 2016, 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. In addition, the following matters shall also apply to the Unit:

1. (a) \$000,000.00 represents the "Original Purchase Price" as of the effective date of this DR Acknowledgement.

- OR (as applicable) -

(b) \$ _____ represents the "Original Purchase Price" as of the effective date of this DR Acknowledgement which is based on a valuation of the Unit as assigned by the Town following the performance of a valuation of the Unit pursuant to the Affordable Housing Guidelines.

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

(a) The Original Purchase Price plus an increase of three percent (3%) of such price per year from the date of purchase to the date 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); or

(b) 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.

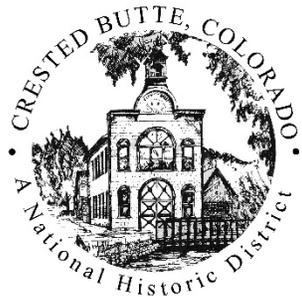
7. In the event of any inconsistency between this DR Acknowledgement, the Deed Restriction and the Affordable Housing Guidelines, this DR Acknowledgement shall control, then the Deed Restriction, then the Affordable Housing Guidelines.

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

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

Witness my hand and official seal.

My commission expires _____.



To: Mayor Schmidt and Town Council

From: Michael Yerman, Community Development Director

Thru: Dara MacDonald, Town Manager

Subject: **Ordinance 5, Series 2019- Transfer of Block 76 Lots 1-6 and Block 77 Lot 10 to Bywater for the construction of affordable housing**

Date: February 19, 2019

Background:

Per the contract with Bywater, LLC (Developer) the Town is transferring the lots in Phase 1 to allow the Developer to proceed with securing construction financing. The Town has broken the transfer of land into 2 phases to help protect the Town's interests in the event of default and to insure adequate market demand for the units. The Phase 2 transfer is anticipated to occur after the lottery for Phase 1 to ensure there is adequate applicants for these units.

Recommendation:

A Council person make a motion followed by a second to set Ordinance 5, Series 2019 to a public hearing on March 4, 2019.

ORDINANCE NO. 5

SERIES 2016

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AUTHORIZING THE TRANSFER OF TOWN-OWNED PROPERTY LEGALLY DESCRIBED AS LOTS 1-6, BLOCK 76 AND LOT 10 BLOCK 77, PARADISE PARK SUBDIVISION, TOWN OF CRESTED BUTTE, COUNTY OF GUNNISON, STATE OF COLORADO TO BYWATER, LLC FOR THE CONSTRUCTION OF AFFORDABLE HOUSING

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

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

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

WHEREAS, per the contract the Town will transfer land to Bywater in two Phases with Lot 1-6, Block 76 and Lot 10, Block 77 being the first phase; and

WHEREAS, the Lots being transferred to Bywater, LLC are encumbered by a Master Deed Restriction to ensure the housing created will house the Town’s citizens; and

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

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

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

Section 1. Authorization to Sell Town-owned Property. The Town Council, pursuant to the Crested Butte Town Charter and the laws of the State of Colorado, hereby authorizes the transfer by the Town, for the construction of affordable housing, the real property legally described as Lots 1-6, Block 76 and Lot 10 Block 77, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Bywater, LLC, for the construction of and use for affordable housing, and authorizes and directs the Town Manager and Town Clerk to appropriately execute any and all documents necessary and appropriate to consummate said sale following approval thereof by the Town Attorney.

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

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

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

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

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

TOWN OF CRESTED BUTTE, COLORADO

By: _____
James A Schmidt, Mayor

ATTEST:

Lynelle Stanford, Town Clerk

[SEAL]



Staff Report

February 19, 2019

To: Mayor and Town Council

Thru: Dara MacDonald, Town Manager

From: Rob Zillioux, Director of Finance and HR

Subject: Loan from the Colorado Water Resources and Power Development Authority to help fund upgrade to the Water Treatment Plant

Date: February 19, 2019

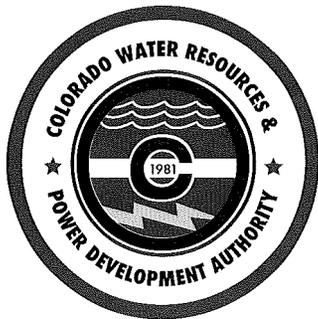
Summary: The Colorado Water Resources and Power Development Authority has approved a loan to the Town of Crested Butte for purposes of the Water Treatment Plant upgrade scheduled for 2019.

Background: The Town is currently requesting funding for the construction of the upgrades to the Water Treatment Plant in 2019 in the amount of \$2,025,600 million from the Colorado Water Resources and Power Development Authority. (The loan approval letter and draft loan agreement are attached). This will be a 20 year 2.5% interest loan. The total project cost is \$2,414,018. The additional funding will come from a \$405,000 DOLA Grant (see attached award letter).

The project is designed to maintain compliance and quality standards, and to meet increasing water needs. The upgrades of the treatment plant are based on a design being provided by JVA Engineers. Moltz is the firm who will do the construction. The project is designed to continue to maintain CDPHE compliance, upgrade infrastructure and maintain current and future water demands. The proposed improvements to maintain CDPHE compliance include; the addition of block and bleed valves on the existing skids, turbidimeters, and retrofitting the existing pretreatment system. The improvements also intend to address the hydraulic limitations of the facility by adding a fourth skid, which will also facilitate redundancy within the system. Finally, the improvements look to address aging infrastructure by replacing components within the existing skids, removing the UV system, replacing the SCADA system, and upgrading the building structure.

Bond council has advised Staff that our Enterprise Fund may have experienced a TABOR compliance issue in 2018. Specifically, DOLA grant revenue, associated with the WWTP, may have exceeded 10% of overall revenue for 2018. As a result, we cannot execute the loan and necessary ordinance in 2019. I am currently researching the issue and working with bond council. Should there in fact have been a TABOR compliance issue, then we will still be in a position to execute the ordinance and loan in January 2020.

Recommendation: Staff recommends that we proceed with the WTP project in 2019, as planned, using reserves and regular Enterprise Fund cash flow. Then, in January 2020, execute the ordinance and loan.



COLORADO WATER RESOURCES & POWER DEVELOPMENT AUTHORITY

Logan Tower Bldg - Suite 620, 1580 Logan Street, Denver, Colorado 80203-1942
303-830-1550 • Fax 303-832-8205 • info@cwprda.com

February 1, 2019

Shea Earley
Town of Crested Butte
PO Box 39
Crested Butte, CO 81244

Re: Drinking Water Revolving Fund ("DWRF") Loan Approval

Dear Mr. Earley:

On January 30, 2019, the Board of Directors of the Colorado Water Resources and Power Development Authority approved the Town of Crested Butte for a \$2,025,600 DWRF direct loan. The loan is for a term of up to 20 years at an interest rate of 2.5%.

We look forward to working with you and your attorneys towards a successful loan closing. Please call me at (303) 830-1550, extension 1012 or email me at wwilliams@cwprda.com with any questions.

Sincerely,

Wesley Williams
Sr. Financial Analyst

CC: Kim Crawford, (via email)
Barbara Green, (via email)
Leanne Miller, (via email)
Evan Butcher, (via email)
Randi Johnson-Hufford, (via email)
Joe McConnell, (via email)



COLORADO
 Department of Local Affairs
 Division of Local Government

November 30, 2018

The Honorable Jim Schmidt, Mayor
 Town of Crested Butte
 PO Box 30
 Crested Butte, CO 81224

RE: EIAF 8807 - Crested Butte Water Treatment Plant Improvements

Dear Mayor Schmidt:

The Department of Local Affairs is in receipt of your application for state Energy and Mineral Impact Assistance funds. These revenues are derived from oil, gas, carbon dioxide, coal, and metals extracted in Colorado.

Your project was reviewed based on a variety of factors such as its connection to energy impact, degree of need, measurable outcomes, amount of request, relationship to community goals, level of local match and community support, management capacity, and readiness to go. Competition for these limited funds was intense and we had many more requests than we had funds available.

Congratulations! After thorough review, I am excited to offer a grant award in the amount of \$405,000 for replacing aging infrastructure, improving the chemical pretreatment system, expanding the building footprint by 800 sq. ft., adding an additional membrane skid for process redundancy, and adding filtrate turbid meters and block and bleed valves to the existing membrane skids. This grant offer is made from federal mineral lease proceeds.

Please contact your DOLA Regional Manager, Kimberly Bullen, at 970-248-7333 for information on how to proceed. Expenditure of State funds prior to the contract being fully executed cannot be included in the contract budget or reimbursed by the State. If a circumstance arises and a grantee must spend their match dollars sooner than the full execution of the grant agreement, the Regional Manager for the respective grantee must be contacted immediately to discuss the need and offer an appropriate solution. Per our program guidelines, this offer is valid for one year from the date of this letter.

I wish you success with your project.

Sincerely,

Irv Halter
 Executive Director

cc:

Kerry Donovan, State Senator
 Millie Hamner, State Representative
 Rob Zillioux, Finance and Human Resources Director
 Kimberly Bullen, DOLA



DRINKING WATER REVOLVING FUND

LOAN AGREEMENT

BETWEEN

**COLORADO WATER RESOURCES AND POWER
DEVELOPMENT AUTHORITY**

AND

TOWN OF CRESTED BUTTE, COLORADO

DATED

LOAN AGREEMENT

THIS LOAN AGREEMENT is made and entered into as of this ____ day of _____ 2018, by and between **COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY** (the "Authority"), a body corporate and political subdivision of the State of Colorado, and the **TOWN OF CRESTED BUTTE, COLORADO, ACTING BY AND THROUGH ITS _____ ENTERPRISE** (the "Governmental Agency").

WITNESSETH THAT:

WHEREAS, the United States of America, pursuant to the federal Safe Drinking Water Act of 1996, assists state and local participation in the financing of the costs of drinking water system projects and said federal Drinking Water Act requires each state to establish a drinking water revolving fund to be administered by an instrumentality of the State.

WHEREAS, the Authority was created to initiate, acquire, construct, maintain, repair, and operate or cause to be operated certain water resource projects, and to finance the cost thereof;

WHEREAS, Section 37-95-107.8, Colorado Revised Statutes, has created a Drinking Water Revolving Fund to be administered by the Authority;

WHEREAS, the Authority has determined to loan certain sums to governmental agencies in Colorado to finance all or a portion of the costs of certain water resource projects;

WHEREAS, the Colorado Legislature has approved a Project Eligibility List that includes the water resource project proposed by the Governmental Agency to be financed hereunder;

WHEREAS, the Governmental Agency has made timely application to the Drinking Water Revolving Fund for a loan to finance a portion of the cost of a certain water resource project, and the Authority has approved the Governmental Agency's application for a loan from available funds in the Drinking Water Revolving Fund in an amount not to exceed the amount of the loan commitment set forth in Exhibit B hereto to finance all or a portion of the cost of such project;

WHEREAS, the Governmental Agency will issue its bond to the Authority to evidence said loan from the Authority;

NOW THEREFORE, for and in consideration of the award of the loan by the Authority, the Governmental Agency agrees to perform its obligations under this Loan Agreement in accordance with the conditions, covenants and procedures set forth herein and attached hereto as a part hereof, as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. Definitions. The following terms as used in this Loan Agreement shall, unless the context clearly requires otherwise, have the following meanings:

"Act" means the "Colorado Water Resources and Power Development Authority Act," being Section 37-95-101 et seq. of the Colorado Revised Statutes, as the same may from time to time be amended and supplemented.

"Authority" means the Colorado Water Resources and Power Development Authority, a body corporate and political subdivision of the State of Colorado duly created and validly existing under and by virtue of the Act.

"Authorized Officer" means, in the case of the Governmental Agency, the person whose name is set forth in Paragraph (7) of Exhibit B hereto or such other person or persons authorized pursuant to a resolution or ordinance of the governing body of the Governmental Agency to act as an Authorized Officer of the Governmental Agency to perform any act or execute any document relating to the Loan, the Governmental Agency Bond, or this Loan Agreement, whose name is furnished in writing to the Authority.

"Commencement Date" means the date of commencement of the term of this Loan Agreement, as set forth in Paragraph (1) of Exhibit B attached hereto and made a part hereof.

"Cost" means those costs that are eligible to be funded from draws under the Federal Capitalization Agreement capitalizing the Drinking Water Revolving Fund and are reasonable, necessary and allocable to the Project and are permitted by generally accepted accounting principles to be costs of the Project.

"Custodian" means Wells Fargo Bank National Association, or any successor appointed by the Authority as custodian of the direct loan portion of the Drinking Water Revolving Fund.

"Event of Default" means any occurrence or event specified in Section 5.01 hereof.

"Federal Capitalization Agreement" means the instrument or agreement established or entered into by the United States of America Environmental Protection Agency with the Authority to make capitalization grant payments pursuant to the Safe Drinking Water Act, as amended (42 U.S.C. Section 300f et seq.)

"Governmental Agency" means the entity that is a party to and is described in the first paragraph of this Loan Agreement, and its successors and assigns.

"Governmental Agency Bond" means the bond executed and delivered by the Governmental Agency to the Authority to evidence the Loan, the form of which is attached hereto as Exhibit D and made a part hereof.

"Loan" means the loan made by the Authority to the Governmental Agency to finance or refinance a portion of the Cost of the Project pursuant to this Loan Agreement. For all purposes of this Loan Agreement, the amount of the Loan at any time shall be the amount of the loan commitment set forth in Paragraph (4) of Exhibit B attached hereto and made a part of this Loan Agreement.

"Loan Agreement" means this Loan Agreement, including the Exhibits attached hereto, as it may be supplemented, modified, or amended from time to time in accordance with the terms hereof.

"Loan Closing" means the date upon which the Governmental Agency shall issue and deliver the Governmental Agency Bond.

"Loan Repayments" means the payments payable by the Governmental Agency pursuant to Section 3.03 of this Loan Agreement, including payments payable under the Governmental Agency Bond.

"Loan Term" means the term of this Loan Agreement provided in Paragraph (5) of Exhibit B attached hereto and made a part hereof. If the Loan is prepaid in its entirety pursuant to Section 3.06, the Loan Term shall automatically terminate.

"Pledged Property" means the source of repayment described in Paragraph (3) of Exhibit A to this Loan Agreement attached hereto and made a part hereof.

"Prime Rate" means the prevailing commercial interest rate announced by the Wall Street Journal from time to time, or, if the Wall Street Journal ceases announcing a prime rate, shall be the prevailing commercial interest rate announced by Citibank, N.A. as its prime lending rate.

"Project" means the project of the Governmental Agency described in Paragraph (1) of Exhibit A attached hereto and made a part hereof, all or a portion of the Cost of which is financed or refinanced by the Authority through the making of the Loan under this Loan Agreement.

"Project Loan Account" means the Project Loan Account established within the Drinking Water Revolving Fund.

"System" means the water system and wastewater treatment system of the Governmental Agency, described in Paragraph (2) of Exhibit A, including the Project, described in Paragraph (1) of Exhibit A attached hereto and made a part hereof, for which the Governmental Agency is making the borrowing under this Loan Agreement, as such System may be modified, replaced, or expanded from time to time.

Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, agencies and districts. Words importing one gender shall include the other gender.

ARTICLE II

REPRESENTATIONS AND COVENANTS OF GOVERNMENTAL AGENCY

SECTION 2.01. Representations of Governmental Agency. The Governmental Agency represents for the benefit of the Authority:

(a) Organization and Authority.

(i) The Governmental Agency is a governmental agency as defined in the Act and as described in the first paragraph of this Loan Agreement.

(ii) The Governmental Agency has full legal right and authority and all necessary licenses and permits required as of the date hereof to own, operate, and maintain the System, other than licenses and permits relating to the construction and acquisition of the Project that the Governmental Agency expects to receive in the ordinary course of business; to carry on its activities relating thereto; and to undertake and complete the Project. The Governmental Agency has full legal right and authority to execute and deliver this Loan Agreement; to execute, issue, and deliver the Governmental Agency Bond; and to carry out and consummate all transactions contemplated by this Loan Agreement and the Governmental Agency Bond. The Project is on the drinking water project eligibility list approved by the General Assembly of the State of Colorado pursuant to the Act and is a project that the Governmental Agency may undertake pursuant to Colorado law, and for which the Governmental Agency is authorized by law to borrow money.

(iii) The proceedings of the Governmental Agency's governing members and voters, if a referendum is necessary, approving this Loan Agreement and the Governmental Agency Bond, and authorizing their execution, issuance, and delivery on behalf of the Governmental Agency, and authorizing the Governmental Agency to undertake and complete the Project, or to cause the same to be undertaken and completed, have been duly and lawfully adopted and approved in accordance with the laws of Colorado, and such proceedings were duly approved and published, if necessary, in accordance with applicable Colorado law, at a meeting or meetings or election if necessary that were duly called pursuant to necessary public notice and held in accordance with applicable Colorado law, and at which quorums were present and acting throughout.

(iv) This Loan Agreement has been, and the Governmental Agency Bond when delivered at the Loan Closing will have been, duly authorized, executed, and delivered by an Authorized Officer of the Governmental Agency; and, assuming that the Authority has all the

requisite power and authority to authorize, execute, and deliver, and has duly authorized, executed, and delivered, this Loan Agreement, this Loan Agreement constitutes, and the Governmental Agency Bond when delivered to the Authority will constitute, the legal, valid, and binding obligations of the Governmental Agency in accordance with their respective terms; and the information contained under "Description of the Loan" on Exhibit B attached hereto and made a part hereof is true and accurate in all material respects.

(b) Full Disclosure.

There is no fact that the Governmental Agency has not disclosed to the Authority in writing on the Governmental Agency's application for the Loan or otherwise that materially adversely affects the properties, activities, prospects, or condition (financial or otherwise) of the Governmental Agency or the System, or the ability of the Governmental Agency to make all Loan Repayments, or the ability of the Governmental Agency otherwise to observe and perform its duties, covenants, obligations, and agreements under this Loan Agreement and the Governmental Agency Bond.

(c) Pending Litigation.

Except as disclosed to the Authority in writing, there are no proceedings pending, or, to the knowledge of the Governmental Agency threatened, against or affecting the Governmental Agency, in any court, or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the properties, activities, prospects, or condition (financial or otherwise) of the Governmental Agency or the System, or the ability of the Governmental Agency to make all Loan Repayments, or the ability of the Governmental Agency otherwise to observe and perform its duties, covenants, obligations, and agreements under this Loan Agreement and the Governmental Agency Bond.

(d) Compliance with Existing Laws and Agreements.

The authorization, execution, and delivery of this Loan Agreement and the Governmental Agency Bond by the Governmental Agency, the observance and performance by the Governmental Agency of its duties, covenants, obligations, and agreements thereunder, and the consummation of the transactions provided for in this Loan Agreement and in the Governmental Agency Bond; the compliance by the Governmental Agency with the provisions of this Loan Agreement and the Governmental Agency Bond; and the undertaking and completion of the Project; will not result in any breach of any of the terms, conditions, or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge, or encumbrance upon, any property or assets of the Governmental Agency pursuant to any existing ordinance or resolution, trust agreement, indenture, mortgage, deed of trust, loan agreement, or other instrument (other than the lien and charge of this Loan Agreement and the Governmental Agency Bond) to which the Governmental Agency is a party or by which the Governmental Agency, the System, or any of the property or assets of the Governmental Agency may be bound, and such action will not result in any violation of the provisions of the charter or other document pursuant to which the Governmental Agency was established, or of any laws, ordinances,

resolutions, governmental rules, regulations, or court orders to which the Governmental Agency, the System, or the properties or operations of the Governmental Agency, are subject.

(e) No Defaults.

No event has occurred and no condition exists that, upon authorization, execution, and delivery of this Loan Agreement and the Governmental Agency Bond, or receipt of the amount of the Loan, would constitute an Event of Default hereunder. The Governmental Agency is not in violation of, and has not received notice of any claimed violation of, any term of any agreement or other instrument to which it is a party, or by which it, the System, or its property, may be bound, which violation would materially adversely affect the properties, activities, prospects, or condition (financial or otherwise) of the Governmental Agency or the System, or the ability of the Governmental Agency to make all Loan Repayments, or the ability of the Governmental Agency otherwise to observe and perform its duties, covenants, obligations, and agreements under this Loan Agreement and the Governmental Agency Bond.

(f) Governmental Consent.

The Governmental Agency has obtained all permits and approvals required to date by any governmental body or officer for the making, observance, and performance by the Governmental Agency of its duties, covenants, obligations, and agreements under this Loan Agreement and the Governmental Agency Bond, or for the undertaking or completion of the Project and the financing or refinancing thereof; and the Governmental Agency has complied with all applicable provisions of law requiring any notification, declaration, filing, or registration with any governmental body or officer in connection with the making, observance, and performance by the Governmental Agency of its duties, covenants, obligations, and agreements under this Loan Agreement and the Governmental Agency Bond, or with the undertaking or completion of the Project and the financing or refinancing thereof. Other than those relating to the construction and acquisition of the Project, which the Governmental Agency expects to receive in the ordinary course of business, no consent, approval, or authorization of, or filing, registration, or qualification with, any governmental body or officer that has not been obtained is required on the part of the Governmental Agency as a condition to the authorization, execution, and delivery of this Loan Agreement and the Governmental Agency Bond, the undertaking or completion of the Project or the consummation of any transaction herein contemplated.

(g) Compliance with Law.

The Governmental Agency:

(i) is in compliance with all laws, ordinances, governmental rules, and regulations to which it is subject, the failure to comply with which would materially adversely affect the ability of the Governmental Agency to conduct its activities or to undertake or complete the Project, or the condition (financial or otherwise) of the Governmental Agency or the System; and

(ii) has obtained all licenses, permits, franchises, or other governmental authorizations presently necessary for the ownership of its property, or for the conduct of its activities that, if not obtained, would materially adversely affect the ability of the Governmental Agency to conduct its activities or to undertake or complete the Project, or the condition (financial or otherwise) of the Governmental Agency or the System.

(h) Use of Proceeds.

The Governmental Agency will apply the proceeds of the Loan from the Authority as described in Exhibit B attached hereto and made a part hereof (i) to finance all or a portion of the Cost; and (ii) where applicable, to reimburse the Governmental Agency for a portion of the Cost, which portion was paid or incurred in anticipation of reimbursement by the Authority.

SECTION 2.02. Particular Covenants of the Governmental Agency.

(a) Pledge of Source of Repayment.

The Governmental Agency irrevocably pledges and grants a lien upon the source of repayment described in Paragraph (3) of Exhibit A for the punctual payment of the principal of and the interest on the Loan, and all other amounts due under this Loan Agreement and the Governmental Agency Bond according to their respective terms.

(b) Performance Under Loan Agreement.

The Governmental Agency covenants and agrees to maintain the System in good repair and operating condition; to cooperate with the Authority in the observance and performance of the respective duties, covenants, obligations and agreements of the Governmental Agency and the Authority under this Loan Agreement; and, to comply with the covenants described in the Exhibits to this Loan Agreement.

(c) Completion of Project and Provision of Moneys Therefor.

The Governmental Agency covenants and agrees to exercise its best efforts in accordance with prudent water utility practice to complete the Project and to provide from the Pledged Property or other sources available to it all moneys, in excess of the total amount of loan proceeds it receives under the Loan, required to complete the Project.

(d) Disposition of the System.

During the Loan Term, the Governmental Agency shall not sell, lease, abandon, or otherwise dispose of, all or substantially all, or any substantial portion, of the System or any other system that provides revenues to provide for the payment of this Loan Agreement or the Governmental Agency Bond, except on ninety (90) days' prior written notice to the Authority and, in any event, shall not so sell, lease, abandon, or otherwise dispose of the same unless the following conditions are met: (i) the Governmental Agency shall assign this Loan Agreement in accordance with Section 4.02 hereof and its rights and interests hereunder to the purchaser or

lessee of the System, and such purchaser or lessee shall expressly assume all duties, covenants, obligations, and agreements of the Governmental Agency under this Loan Agreement in writing; and (ii) the Authority shall by appropriate action determine that such sale, lease, abandonment or other disposition will not adversely affect the Authority's ability to meet its duties, covenants, obligations, and agreements under the Act, the Federal Clean Water Act, the Safe Drinking Water Act, or any agreement between the Authority or the State of Colorado relating to any capitalization grant received by the Authority or the State of Colorado under the Federal Clean Water Act or the Safe Drinking Water Act, and in its sole discretion, approve such sale, lease, abandonment, or other disposition.

(e) Inspections; Information.

The Governmental Agency shall permit the Authority to examine, visit, and inspect, at any and all reasonable times, the property, if any, constituting the Project, and to inspect and make copies of, any accounts, books, and records, including (without limitation) its records regarding receipts, disbursements, contracts, investments, and any other matters relating thereto and to its financial standing, and shall supply such reports and information as the Authority may reasonably require in connection therewith. In addition, the Governmental Agency shall provide the Authority with copies of any official statements or other forms of offering prospectus relating to any other bonds, notes, or other indebtedness of the Governmental Agency secured from the Pledged Property and issued after the date of this Loan Agreement. At the discretion of the Authority, the Governmental Agency may be required to provide unaudited quarterly financial reports to the Authority.

(f) Cost of Project.

The Governmental Agency certifies that the Estimated Cost of the Project, as listed in Paragraph (3) of Exhibit B hereto and made a part hereof, is a reasonable and accurate estimation, and that upon direction of the Authority it shall supply the Authority with a certificate from its engineer stating that such cost is a reasonable and accurate estimation, taking into account investment income to be realized during the course of the Project, and other money that would, absent the Loan, have been used to pay the Estimated Cost of the Project.

(g) Reimbursement for Ineligible Costs.

The Governmental Agency shall promptly reimburse the Authority for any portion of the Loan that is determined not to be a Cost of the Project and that would not be eligible for funding from draws under the Drinking Water Revolving Fund. Such reimbursement shall be promptly repaid to the Authority upon written request of the Authority.

(h) Advertising.

The Governmental Agency agrees not to advertise the Project for bids until plans and specifications for the Project, if such plans and specifications require approval, have been approved by the State Department of Public Health and Environment.

(i) Commencement of Construction.

Within twelve (12) months after the Loan Closing, the Governmental Agency shall initiate construction of the Project.

(j) Interest in Project Site.

As a condition of the Loan, the Governmental Agency will demonstrate to the satisfaction of the Authority before advertising for bids for construction that the Governmental Agency has or will have a fee simple or such other estate or interest in the site of the Project, including necessary easements and rights-of-way, as the Authority finds sufficient to assure undisturbed use and possession for the purpose of construction and operation of the Project for the estimated life of the Project.

(k) No Lobbying.

No portion of the Loan shall be used for lobbying or propaganda as prohibited by 18 U.S.C. Section 1913 or Section 607(a) of Public Law 96-74.

(l) Operation and Maintenance of System.

The Governmental Agency covenants and agrees that it shall, in accordance with prudent water and wastewater utility practice: (i) at all times operate the properties of its System and any business in connection therewith in an efficient manner; (ii) maintain its System in good repair, working order and operating condition; (iii) from time to time make all necessary and proper repairs, renewals, replacements, additions, betterments, and improvements with respect to its System so that at all times the business carried on in connection therewith shall be properly and advantageously conducted; provided, however, this covenant shall not be construed as requiring the Governmental Agency to expend any funds that are derived from sources other than the operation of its System or other receipts of such System that are not pledged under subsection (a) of this Section 2.02, and provided further that nothing herein shall be construed as preventing the Governmental Agency from doing so.

(m) Records; Accounts.

During the Loan Term, the Governmental Agency shall keep accurate records and accounts for its System (the "System Records"), separate and distinct from its other records and accounts (the "General Records"). Such System Records shall be maintained in accordance with generally accepted accounting principles, generally accepted government accounting standards related to the reporting of infrastructure assets and System Records and General Records shall be made available for inspection by the Authority at any reasonable time.

(n) Audits.

(i) If the Governmental Agency's System Records or General Records are audited annually by an independent accountant, then it shall furnish a copy of such annual audit(s) including all written comments and recommendations of the accountant preparing the

audit to the Authority within 210 days of the close of the fiscal year audited, and the Governmental Agency shall cause its independent auditor to file with the Authority a report to the effect that the Governmental Agency is not in default of its Rate Covenant, Paragraph (4) of Exhibit A; Operations and Maintenance Reserve Fund Covenant, Paragraph (4) of Exhibit F; or Lien Representation, Paragraph (3) of Exhibit F under this Loan Agreement, which report may be a part of the annual audit or a separate document.

(ii) If the Governmental Agency's annual revenues are less than \$100,000, and the Governmental Agency elects in accordance with state law to file a short form audit exemption in lieu of performing an annual audit, then it shall provide the Authority a copy of the Exemption from Audit Form completed by a person skilled in governmental accounting practices, together with a report, also completed by a person skilled in governmental accounting practices, to the effect that the Governmental Agency is not in default of its Rate Covenant, Paragraph (4) of Exhibit A; Operations and Maintenance Reserve Fund Covenant, Paragraph (4) of Exhibit F; or Lien Representation, Paragraph (3) of Exhibit F under this Loan Agreement within 210 days of the close of the fiscal year.

(iii) If the Governmental Agency's annual revenues for any fiscal year commencing on or after January 1, 2015, are more than \$100,000, but less than \$750,000, and the Governmental Agency elects in accordance with state law to file a long form audit exemption in lieu of performing an annual audit, then it shall provide the Authority a copy of the Exemption from Audit Form completed by an independent accountant with knowledge of governmental accounting practices, together with a report, also completed by an independent accountant with knowledge of governmental accounting practices, to the effect that the Governmental Agency is not in default of its Rate Covenant, Paragraph (4) of Exhibit A; Operations and Maintenance Reserve Fund Covenant, Paragraph (4) of Exhibit F; or Lien Representation, Paragraph (3) of Exhibit F under this Loan Agreement within 210 days of the close of the fiscal year.

(o) Insurance.

During the Loan Term, the Governmental Agency shall maintain or cause to be maintained in force, insurance policies with responsible insurers or self-insurance programs providing against risk of direct physical loss, damage, or destruction of its System, at least to the extent that similar insurance is usually carried by utilities constructing, operating, and maintaining utility system facilities of the nature of the Governmental Agency's System, including liability coverage. The Governmental Agency shall pay all insurance premiums for coverage required hereby from revenues derived from the operation of the System. Nothing herein shall be deemed to preclude the Governmental Agency from asserting against any party, other than the Authority, a defense that may be available to the Governmental Agency, including, without limitation, a defense of governmental immunity.

(p) Notice of Material Adverse Change.

During the Loan Term, (i) the Governmental Agency shall promptly notify the Authority of any material adverse change in the activities, prospects, or condition (financial or otherwise)

of the Governmental Agency relating to its System, or its ability to observe and perform its duties, covenants, obligations, and agreements under this Loan Agreement; (ii) the Governmental Agency shall promptly notify the Authority of any material adverse change in the activities, prospects, or condition (financial or otherwise) of the Governmental Agency relating to its ability to make all Loan Repayments from the Pledged Property, or its ability to otherwise observe and perform its duties, covenants, obligations, and agreements under this Loan Agreement and the Governmental Agency Bond.

(q) Hiring Requirements.

The Governmental Agency agrees to comply with the requirements found at Title 8, Article 17, and Title 8, Article 17.5, Colorado Revised Statutes.

(r) Additional Covenants and Requirements.

Additional covenants and requirements are included on Exhibit F attached hereto and made a part hereof. The Governmental Agency agrees to observe and comply with each such additional covenant and requirement included on Exhibit F.

(s) Continuing Representations.

The representations of the Governmental Agency contained herein shall be true at the time of the execution of this Loan Agreement and the Governmental Agency covenants not to take any action that would cause them not to be true at all times during the term of this Loan Agreement.

(t) Capacity Development.

The Governmental Agency covenants to maintain its technical, financial, and managerial capability to ensure compliance with the requirements of the Safe Drinking Water Act of 1996 under Section 1452(a)(3)(A)(i).

(u) Archeological Artifacts.

In the event that archeological artifacts or historical resources are unearthed during construction excavation, the Governmental Agency shall stop or cause to be stopped, construction activities and will notify the State Historic Preservation Office and the Authority of such unearthing.

ARTICLE III

LOAN TO GOVERNMENTAL AGENCY; AMOUNTS PAYABLE; GENERAL AGREEMENTS

SECTION 3.01. The Loan. The Authority hereby agrees to loan and disburse to the Governmental Agency in accordance with Section 3.02 hereof, and the Governmental Agency agrees to borrow and accept from the Authority, the Loan in the principal amount equal to the Loan Commitment set forth in Paragraph (4) of Exhibit B attached hereto and made a part hereof as such Loan Commitment may be revised to reflect a reduction in the Cost of the Project prior to the initial Loan Repayment; provided, however, that the Authority shall be under no obligation to make the Loan if (i) the Governmental Agency does not deliver its Governmental Agency Bond to the Authority on the Loan Closing, or (ii) an Event of Default has occurred and is continuing under this Loan Agreement. The Governmental Agency shall use the proceeds of the Loan strictly in accordance with Section 2.01(h) hereof.

SECTION 3.02. Disbursement of the Loan. The Authority has created in the Drinking Water Revolving Fund a Project Loan Account for this Project from which the Costs of the Project shall be paid. Amounts shall be transferred into the Project Loan Account and disbursed to the Governmental Agency upon receipt of a requisition executed by an Authorized Officer, and approved by the Authority and the State Department of Public Health and Environment, in the form set forth in Exhibit G; provided that the Disbursement of the Loan may be withheld if the Governmental Agency is not complying with any of the covenants and conditions in the Loan Agreement.

SECTION 3.03. Amounts Payable.

(a) The Governmental Agency shall repay the principal of, interest on, and Administrative Fee, on the Loan **semi-annually on May 1st and November 1st** in accordance with the schedule set forth on Exhibit C attached hereto and made a part hereof, as the same may be amended or modified, commencing on the Loan Repayment Commencement Date set forth in Paragraph (8) of Exhibit B.

The Governmental Agency shall execute the Governmental Agency Bond to evidence its obligations to make Loan Repayments and the obligations of the Governmental Agency under the Governmental Agency Bond shall be deemed to be amounts payable under this Section 3.03. Each Loan Repayment shall be deemed to be a credit against the corresponding obligation of the Governmental Agency under this Section 3.03 and shall fulfill the Governmental Agency's obligation to pay such amount hereunder and under the Governmental Agency Bond. Each payment made pursuant to this Section 3.03 shall be applied to the payment of principal as set forth in Exhibit C.

(b) In addition to the payments required by subsection (a) of this Section 3.03, the Governmental Agency shall pay a late charge for any payment that is received by the Authority later than the tenth (10th) day following its due date, in an amount equal to the greater of twelve percent (12%) per annum or the Prime Rate plus one half of one percent per annum on such late payment from its due date to the date it is actually paid; provided, however, that such late charge shall not be in excess of the maximum rate permitted by law as of the date hereof.

(c) Loan Repayments pursuant to this Section 3.03 shall be made by electronic means (either by bank wire transfer or by Automated Clearing House "ACH" transfer).

SECTION 3.04. Unconditional Obligations. The Loan Repayments and all other payments required hereunder are payable solely from the Pledged Property. The obligation of the Governmental Agency to make the Loan Repayments and all other payments required hereunder shall be absolute and unconditional and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, while any payments due under the Loan Agreement remain unpaid regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of the purpose, any change in the laws of the United States of America or of the State of Colorado or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the Authority to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Project or this Loan Agreement or any rights of set-off, recoupment, abatement or counterclaim that the Governmental Agency might otherwise have against the Authority or any other party or parties; provided, however, that payments hereunder shall not constitute a waiver of any such rights.

SECTION 3.05. Disclaimer of Warranties and Indemnification. The Governmental Agency acknowledges and agrees that (i) the Authority makes no warranty or representation, either express or implied as to the value, design, condition, merchantability, or fitness for particular purpose, or fitness for any use, of the Project or any portions thereof, or any other warranty or representation with respect thereto; (ii) in no event shall the Authority or its agents be liable or responsible for any direct, incidental, indirect, special, or consequential damages in connection with or arising out of this Loan Agreement, or the Project, or the existence, furnishing, functioning, or use of the Project, or any item or products or services provided for in this Loan Agreement; and (iii) to the extent authorized by law, the Governmental Agency shall indemnify, save, and hold harmless the Authority against any and all claims, damages, liability, and court awards, including costs, expenses, and attorney fees incurred as a result of any act or omission by the Governmental Agency, or its employees, agents, or subcontractors pursuant to the terms of this Loan Agreement, provided, however, that the provisions of this clause (iii) are not intended to and shall not be construed as a waiver of any defense or limitation on damages provided for under and pursuant to the Colorado Governmental Immunity Act (Section 24-10-101, et seq. C.R.S.), or under the laws of the United States or the State of Colorado.

SECTION 3.06. Option to Prepay Loan Repayments. The Governmental Agency may prepay the Loan Repayments, in whole or in part without penalty upon prior written notice (unless otherwise waived by the Authority) of not less than thirty (30) days. Prepayments shall be applied first to accrued interest and then to principal on the Loan. The Authority will amend Exhibit C to reflect any prepayment of the principal amount of the Loan.

SECTION 3.07. Source of Payment of Governmental Agency's Obligations. The Authority and the Governmental Agency agree that the amounts payable by the Governmental Agency under this Loan Agreement, including, without limitation, the amounts payable by the Governmental Agency pursuant to Section 3.03, Section 3.05, Section 3.06, and Section 5.04 of this Loan Agreement are payable solely from the Pledged Property, and are not payable from any

other source whatsoever; provided, however, that the Governmental Agency at its option, may elect to make payment from any source available to it.

SECTION 3.08. Delivery of Documents. Concurrently with the execution and delivery of this Loan Agreement, the Governmental Agency will cause to be delivered to the Authority each of the following items:

(a) an opinion of the Governmental Agency's counsel substantially in the form set forth in Exhibit E-1 hereto (such opinion or portions of such opinion may be given by one or more counsel); provided, however, that the Authority may in its discretion permit variances in such opinion from the form or substance of such Exhibit E-1 if such variances are not to the material detriment of the interests of the Authority;

(b) an opinion of the Governmental Agency's Bond Counsel substantially in the form set forth in Exhibit E-2 hereto. Such opinion must be rendered by Bond Counsel listed in the Directory of Bond Counsel published by the Bond Buyer (the "Red Book");

(c) executed counterparts of this Loan Agreement;

(d) copies of the resolutions or ordinances of the governing body of the Governmental Agency authorizing the execution and delivery of this Loan Agreement and the Governmental Agency Bond, certified by an Authorized Officer of the Governmental Agency; and

(e) such other certificates, documents, opinions, and information as the Authority may require.

Upon receipt of the foregoing documents, the Authority shall obligate the amount of the Loan Commitment set forth in Paragraph (4) of Exhibit B, and make the amount of the Loan available for the Project in accordance with the terms of this Loan Agreement.

ARTICLE IV

ASSIGNMENT

SECTION 4.01. Assignment and Transfer by Authority. The Governmental Agency expressly acknowledges that other than the right, title, and interest of the Authority under Section 3.05, Section 5.04, and Section 5.07, all right, title, and interest of the Authority in, to, and under this Loan Agreement and the Governmental Agency Bond, including, without limitation, the right to receive payments required to be made by the Governmental Agency hereunder, and to compel or otherwise enforce observance and performance by the Governmental Agency of its other duties, covenants, obligations, and agreements hereunder, may be transferred, assigned, and reassigned in whole or in part by the Authority at its sole discretion to one or more assignees or subassignees at any time subsequent to their execution without the necessity of obtaining the consent of, but after giving prior written notice to, the Governmental Agency.

The Authority shall retain the right to compel or otherwise enforce observance and performance by the Governmental Agency of its duties, covenants, obligations, and agreements under Section 3.05 and Section 5.04.

SECTION 4.02. Assignment by Governmental Agency. Neither this Loan Agreement nor the Governmental Agency Bond may be assigned by the Governmental Agency for any reason, unless the following conditions shall be satisfied: (i) the Authority shall have approved said assignment in writing; (ii) the assignee shall be a governmental agency as defined by the Act, and the assignee shall have expressly assumed in writing the full and faithful observance and performance of the Governmental Agency's duties, covenants, agreements, and obligations under the Loan Agreement; (iii) immediately after such assignment, the assignee shall not be in default in the performance or observance of any duties, covenants, obligations, or agreements of the Governmental Agency under the Loan Agreement; and (iv) the Authority shall receive an opinion of counsel to the effect that such assignment will not violate the provisions of any agreement entered into by the Authority with, or condition of any grant received by the Authority from, the United States of America relating to the Federal Capitalization Agreement or any capitalization grant received by the Authority or the State under the Safe Drinking Water Act.

No assignment shall relieve the Governmental Agency from primary liability for any of its obligations under this Loan Agreement, and in the event of such assignment, the Governmental Agency shall continue to remain primarily liable for the performance and observance of its obligations to be performed and observed under this Loan Agreement.

ARTICLE V

DEFAULTS AND REMEDIES

SECTION 5.01. Event of Default. If any of the following events occur, it is hereby defined as and declared to be and to constitute an "Event of Default":

(a) failure by the Governmental Agency to pay, or cause to be paid, any Loan Repayment required to be paid hereunder when due, which failure shall continue for a period of thirty (30) days;

(b) failure by the Governmental Agency to make, or cause to be made, any required payments of interest and principal, redemption premium, if any, and interest on any bonds, notes, or other obligations of the Governmental Agency for borrowed money (other than the Loan and the Governmental Agency Bond), after giving effect to the applicable grace period, the payments of which are secured by the Pledged Property;

(c) failure by the Governmental Agency to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Loan Agreement other than as referred to in Paragraph (a) of this Section, which failure shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is

given to the Governmental Agency; provided, however, that if the failure stated in such notice is correctable, but cannot be corrected within the applicable period, the Authority may consent to an extension of such time if corrective action is instituted by the Governmental Agency within the applicable period and diligently pursued until the Event of Default is corrected;

(d) any representation made by or on behalf of the Governmental Agency contained in this Loan Agreement, or in any instrument furnished in compliance with or with reference to this Loan Agreement or the Loan, is false or misleading in any material respect; or

(e) (i) a petition is filed by or against the Governmental Agency under any federal or state bankruptcy or insolvency law, or other similar law in effect on the date of this Loan Agreement or thereafter enacted, unless in the case of any such petition filed against the Governmental Agency such petition shall be dismissed within thirty (30) days after such filing, and such dismissal shall be final and not subject to appeal; or (ii) the Governmental Agency shall become insolvent, or bankrupt or make an assignment for the benefit of its creditors; or (iii) a custodian (including, without limitation, a receiver, liquidator, or trustee of the Governmental Agency or any of its property) shall be appointed by court order, or take possession of the Governmental Agency, or its property or assets, if such order remains in effect, or such possession continues, for more than thirty (30) days.

SECTION 5.02. Notice of Default. The Governmental Agency shall give the Authority prompt telephonic notice of the occurrence of any Event of Default referred to in Section 5.01 at such time as any senior administrative or financial officer of the Governmental Agency becomes aware of the existence thereof. Any telephonic notice pursuant to this Section 5.02 shall be confirmed by the Governmental Agency in writing as soon as practicable.

SECTION 5.03. Remedies on Default. Whenever an Event of Default referred to in Section 5.01 hereof shall have occurred and be continuing, the Authority shall have the right to withhold disbursement of Loan funds remaining, and take such other action at law or in equity as may appear necessary to enforce the performance and observance of any duty, covenant, obligation, or agreement of the Governmental Agency hereunder, including, without limitation, appointment ex parte of a receiver of the System.

SECTION 5.04. Attorney's Fees and Other Expenses. In the Event of Default, the Governmental Agency shall on demand pay to the Authority the reasonable fees and expenses of attorneys, and other reasonable expenses (including, without limitation, the reasonably allocated costs of in-house counsel and legal staff) incurred by the Authority in the collection of Loan Repayments or any other sum due hereunder, or in the enforcement of the performance or observation of any other duties, covenants, obligations, or agreements of the Governmental Agency.

SECTION 5.05. Application of Moneys. Any moneys collected by the Authority pursuant to Section 5.03 hereof shall be applied (a) first, to pay any attorney's fees, or other fees and expenses owed by the Governmental Agency pursuant to Section 5.04 hereof, (b) second, to pay principal due and payable on the Loan, and (c) third, to pay any other amounts due and payable under this Loan Agreement.

SECTION 5.06. No Remedy Exclusive; Waiver; Notice. No remedy herein conferred upon or reserved to the Authority is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement, or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy, or power accruing upon any Event of Default shall impair any such right, remedy, or power, or shall be construed to be a waiver thereof, but any such right, remedy, or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article V.

SECTION 5.07. Retention of Authority's Rights. Notwithstanding any assignment or transfer of this Loan Agreement pursuant to the provisions hereof, or anything else to the contrary contained herein, the Authority shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation) bringing an action against the Governmental Agency at law or in equity, as the Authority may, in its discretion, deem necessary to enforce the obligations of the Governmental Agency to the Authority pursuant to Section 5.04, Section 3.03, and Section 3.05 hereof.

SECTION 5.08. Default by the Authority. In the event of any default by the Authority under any covenant, agreement, or obligation of this Loan Agreement, the Governmental Agency's remedy for such default shall be limited to injunction, special action, action for specific performance, or any other available equitable remedy, designed to enforce the performance or observance of any duty, covenant, obligation, or agreement of the Authority hereunder, as may be necessary or appropriate. The Authority shall on demand pay to the Governmental Agency the reasonable fees and expenses of attorneys, and other reasonable expenses, in the enforcement of such performance or observation.

ARTICLE VI

MISCELLANEOUS

SECTION 6.01. Notices. All notices, certificates, or other communications hereunder shall be sufficiently given and shall be deemed given when hand-delivered or mailed by registered or certified mail, postage prepaid, to the Governmental Agency at the address specified on Exhibit B attached hereto and made a part hereof, and to the Authority, at the following address:

Colorado Water Resources and Power
Development Authority
1580 Logan Street, Suite 620
Denver, Colorado 80203
Attention: Executive Director

Such address may be changed by notice in writing.

SECTION 6.02. Binding Effect. This Loan Agreement shall inure to the benefit of, and shall be binding upon, the Authority and the Governmental Agency, and their respective successors and assigns.

SECTION 6.03. Severability. In the event any provision of this Loan Agreement shall be held illegal, invalid, or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable, or otherwise affect, any other provision hereof.

SECTION 6.04. Amendments, Supplements and Modifications. This Loan Agreement may not be amended, supplemented, or modified without the prior written consent of the Authority and the Governmental Agency.

SECTION 6.05. Execution in Counterparts. This Loan Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

SECTION 6.06. Applicable Law and Venue. This Loan Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, including the Act. Venue for any action seeking to interpret or enforce the provisions of this Loan Agreement shall be in the Denver District Court.

SECTION 6.07. Consents and Approvals. Whenever the written consent or approval of the Authority shall be required under the provisions of this Loan Agreement, such consent or approval may only be given by the Authority unless otherwise provided by law, or by rules, regulations or resolutions of the Authority.

SECTION 6.08. Captions. The captions or headings in this Loan Agreement are for convenience only and shall not in any way define, limit, or describe, the scope or intent of any provisions or sections of this Loan Agreement.

SECTION 6.09. Further Assurances. The Governmental Agency shall, at the request of the Authority, authorize, execute, acknowledge, and deliver, such further resolutions, conveyances, transfers, assurances, financing statements, and other instruments, as may be necessary or desirable for better assuring, conveying, granting, assigning, and confirming, the rights and agreements, granted or intended to be granted, by this Loan Agreement and the Governmental Agency Bond.

SECTION 6.10. Recitals. This Loan Agreement is authorized pursuant to and in accordance with the Constitution of the State of Colorado and all other laws of the State of Colorado thereunto enabling. Specifically, but not by way of limitation, this Loan Agreement is authorized by the Governmental Agency pursuant to Title 37, Article 45.1 C.R.S., Title 31, Article 35, Part 4, C.R.S., and Title 11, Article 57, Part 2, C.R.S and shall so recite in the Governmental Agency Bond. Such recitals shall conclusively impart full compliance with all provisions and limitations of such laws and shall be conclusive evidence of the validity and regularity of the issuance of the Governmental Agency Bond, and the Governmental Agency Bond delivered by the

Governmental Agency to the Authority containing such recital shall be incontestable for any cause whatsoever after its delivery for value.

IN WITNESS WHEREOF, the Authority and the Governmental Agency have caused this Loan Agreement to be executed, sealed and delivered, as of the Commencement Date set forth on Exhibit B hereto.

**COLORADO WATER RESOURCES AND
POWER DEVELOPMENT AUTHORITY**

(SEAL)

By: _____
Executive Director

ATTEST:

By: _____
Assistant Secretary

TOWN OF CRESTED BUTTE, COLORADO

(SEAL)

By: _____
Mayor

ATTEST:

By: _____
Town Clerk

IN WITNESS WHEREOF, the Authority and the Governmental Agency have caused this Loan Agreement to be executed, sealed and delivered, as of the Commencement Date set forth on Exhibit B hereto.

**COLORADO WATER RESOURCES AND
POWER DEVELOPMENT AUTHORITY**

(SEAL)

By: _____
Executive Director

ATTEST:

By: _____
Assistant Secretary

TOWN OF CRESTED BUTTE, COLORADO

(SEAL)

By: _____
Mayor

ATTEST:

By: _____
Town Clerk

EXHIBIT A

(1) **Description of the Project**

The project consists of a building expansion to include a new membrane filtration skid, replacement of the raw water and reverse filtration tanks on existing skids, installation of new turbidity meters, chemical probes, bleed and block valves, redesigned pretreatment chemical feed system, SCADA, and the removal of a flocc tank, UV system and unused electrical equipment.

(2) **Description of the System**

"System" shall mean, (i) any facility, plant, works, system, building, structure, improvement, machinery, equipment, fixture or other real or personal property, relating to the collection, treatment, storage and distribution of water or the collection, treatment, transmission and disposal of wastewater that is owned, operated or controlled by the Governmental Agency, including, without limitation, the Project (ii) any renewal, replacement, addition, modification or improvement to (i) above, and (iii) all real or personal property and rights therein and appurtenances thereto necessary or useful or convenient for the effectiveness of the purposes of the Governmental Agency in the transmission, treatment, storage and distribution of water or the collection, treatment, transmission and disposal of wastewater.

(3) **Pledged Property**

The Pledged Property shall consist of Net Revenue, as defined below:

"Net Revenue" means the Gross Revenue after deducting the Operation and Maintenance Expenses.

"Gross Revenue" means all income and revenues directly or indirectly derived by the Governmental Agency from the operation and use of the System, or any part thereof, including without limitation, any rates, fees (including without limitation plant investment fees and availability fees), and charges for the services furnished by, or the use of, the System, and all income attributable to any past or future dispositions of property or rights, or related contracts, settlements, or judgments held or obtained in connection with the System or its operations, and including investment income accruing from such moneys; provided however, that there shall be excluded from Gross Revenue: ad valorem property taxes; any moneys borrowed and used for providing Capital Improvements; any money and securities, and investment income therefrom, in any refunding fund, escrow account, or similar account, pledged to the payment of any bonds or other obligations; and any moneys received as grants or appropriations from the United States, the State of Colorado or other sources, the use of which is limited or restricted by the grantor or donor to the provision of Capital Improvements or for other purposes resulting in the general unavailability thereof, except to the extent any such moneys shall be received as payments for the use of the System, services rendered

thereby, the availability of any such service, or the disposal of any commodities therefrom.

“*Capital Improvements*” means the acquisition of land, easements, facilities and equipment (other than ordinary repairs and replacements), and the construction or reconstruction of improvements, betterments, and extensions, for use by, or in connection with, the System.

“*Operation and Maintenance Expenses*” means all reasonable and necessary current expenses of the Governmental Agency, paid or accrued, for operating, maintaining and repairing the System, including without limitation legal and overhead expenses of the Governmental Agency directly related to the administration of the System, insurance premiums, audits, professional services, salaries and administrative expenses, labor and the cost of materials and supplies for current operation; provided however, that there shall be excluded from Operation and Maintenance Expenses any allowance for depreciation, payments in lieu of taxes or franchise fees, expenses incurred in connection with Capital Improvements, payments due in connection with any bonds or other obligations, and expenses that are otherwise paid from ad valorem property taxes.

(4) Rate Covenant

The Governmental Agency shall establish and collect such rates, fees, and charges for the use or the sale of the products and services of the System as, together with other moneys available therefor, are expected to produce Gross Revenue (as defined in Paragraph (3) of this Exhibit A to this Loan Agreement) for each calendar year that will be at least sufficient for such calendar year to pay the sum of:

- (a) all amounts estimated to be required to pay Operation and Maintenance Expenses (as defined in Paragraph (3) of this Exhibit A of this Loan Agreement) during such calendar year;
- (b) a sum equal to 110% of the debt service due on the Governmental Agency Bond for such calendar year and debt service coming due during such calendar year on any obligations secured by a lien on the Pledged Property which lien is on a parity with the lien of this Loan Agreement on the Pledged Property, in each case computed as of the beginning of such calendar year;
- (c) the amount, if any, to be paid during such calendar year into any debt service reserve account in connection with any obligations secured by a lien on the Pledged Property which lien is on a parity with the lien of this Loan Agreement on the Pledged Property;
- (d) a sum equal to the debt service on any obligations secured by a lien on the Pledged Property which lien is subordinate to the lien of this Loan Agreement on the Pledged Property for such calendar year computed as of the beginning of such calendar year; and

(e) amounts necessary to pay and discharge all charges and liens or other indebtedness not described above payable out of the Gross Revenue during such calendar year.

EXHIBIT B
DESCRIPTION OF THE LOAN

- (1) Commencement Date:
- (2) Name and Address of Governmental Agency:
- (3) Estimated Cost of the Project: \$2,425,000
- (4) Maximum Principal Amount of Loan Commitment: \$2,025,600
- (5) Loan Term: 20 years
- (6) Interest Rate: 2.5% annually
- (7) Authorized Officers: (please list at least two people that will be authorized to take action on this loan, including the ability to withdraw funds)
- (8) Loan Repayment Commencement Date:
- (9) Execution Date:

EXHIBIT C
REPAYMENT SCHEDULE

EXHIBIT D

GOVERNMENTAL AGENCY BOND

FOR VALUE RECEIVED, the undersigned **TOWN OF CRESTED BUTTE, COLORADO** (the "Governmental Agency"), hereby promises to pay to the order of the **COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY** (the "Authority") the principal amount of Two Million Twenty Five Thousand Six Hundred and 00/100 Dollars (\$2,025,600), or such lesser amount as shall be loaned to the Governmental Agency pursuant to the Loan Agreement dated as of _____, 2019, by and between the Authority and the Governmental Agency (the "Loan Agreement"), at the times and in the amounts determined as provided in the Loan Agreement, at two and a half percent interest, subject to late charges on late payments as provided in Section 3.03 (b) of the Loan Agreement, and payable on the dates and in the amounts determined as provided in the Loan Agreement.

This Governmental Agency Bond is issued pursuant to the Loan Agreement and is issued in consideration of the loan made thereunder (the "Loan") and to evidence the obligations of the Governmental Agency set forth in Section 3.03 thereof. This Governmental Agency Bond is subject to assignment or endorsement in accordance with the terms of the Loan Agreement. All of the definitions, terms, conditions, and provisions of the Loan Agreement are, by this reference thereto, incorporated herein as a part of this Governmental Agency Bond.

Pursuant to the Loan Agreement, disbursements to the Governmental Agency shall be made in accordance with written instructions upon the receipt by the Authority of requisitions from the Governmental Agency executed and delivered in accordance with the requirements set forth in Section 3.02 of the Loan Agreement.

This Governmental Agency Bond is entitled to the benefits, and is subject to the conditions, of the Loan Agreement. The obligations of the Governmental Agency to make the payments required hereunder shall be absolute and unconditional without any defense or right of set-off, counterclaim, or recoupment by reason of any default by the Authority under the Loan Agreement, or under any other agreement between the Governmental Agency and the Authority, or out of any indebtedness or liability at any time owing to the Governmental Agency by the Authority, or for any other reason.

This Governmental Agency Bond is subject to optional prepayment under the terms and conditions, and in the amounts, provided in Section 3.06 of the Loan Agreement. The obligation of the Governmental Agency to make payments under the Loan Agreement and this Governmental Agency Bond is payable solely from the Pledged Property, except for reserves created in connection with the Loan.

This Governmental Agency Bond does not constitute a debt or an indebtedness of the Governmental Agency within the meaning of any constitutional or statutory limitation or provision, and shall not be considered or held to be a general obligation of the Governmental Agency. The payment of this Governmental Agency Bond is not secured by an encumbrance, mortgage or other pledge of property except for such property and moneys pledged for the payment of the Governmental Agency Bond.

For the payment of this Governmental Agency Bond, the Governmental Agency shall enforce the Rate Covenant set forth in Paragraph (4) of Exhibit A to the Loan Agreement, shall promptly collect all revenues of the System, and shall take all necessary action to collect any revenues that are in default.

If an "Event of Default" as defined in Section 5.01 of the Loan Agreement occurs, the remedies on default set forth in Section 5.03 of the Loan Agreement shall be available to enforce the obligations of the Governmental Agency that are evidenced by this Governmental Agency Bond.

This Governmental Agency Bond is issued under the authority of and in full conformity with the Constitution and laws of the State of Colorado, including without limitation, Article X, Section 20 of the Constitution, Title 31, Article 35, Part 4, C.R.S.; Title 37, Article 45.1; certain provisions of Title 11, Article 57, Part 2, C.R.S. (the "Supplemental Public Securities Act"), and pursuant to the Loan Agreement. Pursuant to §11-57-210, of the Supplemental Public Securities Act, this recital is conclusive evidence of the validity and regularity of the issuance of the Governmental Agency Bond after its delivery for value. Pursuant to §31-35-413, C.R.S., this recital conclusively imparts full compliance with all the provisions of said statutes, and this Governmental Agency Bond issued containing such recital is incontestable for any cause whatsoever after its delivery for value.

IN WITNESS WHEREOF, the Governmental Agency has caused this Governmental Agency Bond to be duly executed, sealed and delivered, as of this ___ day of _____ 2019.

(SEAL)

**TOWN OF CRESTED BUTTE,
COLORADO**

ATTEST:

By: _____
Mayor

By: _____
Town Clerk

EXHIBIT E-1**OPINION OF GOVERNMENTAL AGENCY COUNSEL****[LETTERHEAD OF COUNSEL TO GOVERNMENTAL AGENCY]****[DATED : Closing Date]**

Colorado Water Resources and
Power Development Authority

Ladies and Gentlemen:

[insert "I am an attorney" or "We are attorneys"] admitted to practice in the State of Colorado and [insert "I" or "we"] have acted as counsel to **TOWN OF CRESTED BUTTE, COLORADO** (the "Governmental Agency"), of the State of Colorado, which has entered into a Loan Agreement (as hereinafter defined) with the **COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY** (the "Authority"), and have acted as such in connection with the authorization, execution and delivery by the Governmental Agency of its Loan Agreement and Governmental Agency Bond (as hereinafter defined).

In so acting [insert "I" or "we"] have examined the Constitution and laws of the State of Colorado and the [charter/by-laws/proceedings relating to organization] of the Governmental Agency. [insert "I" or "We"] have also examined originals, or copies certified or otherwise identified to [insert "my" or "our"] satisfaction, of the following:

- (a) the Loan Agreement, dated as of _____ (the "Loan Agreement") by and between the Authority and the Governmental Agency;
- (b) the proceedings of the governing body of the Governmental Agency relating to the approval of the Loan Agreement and the execution, issuance and delivery thereof on behalf of the Governmental Agency, and the authorization of the undertaking and completion of the Project (as defined in the Loan Agreement);
- (c) the Governmental Agency Bond, dated as of _____ (the "Governmental Agency Bond") issued by the Governmental Agency to the Authority to evidence the Loan(as defined in the Loan Agreement);
- (d) the proceedings of the governing body of the Governmental Agency relating to the issuance of the Governmental Agency Bond and the execution, issuance and delivery thereof to the Authority (the Loan Agreement and the Governmental Agency Bond are referred to herein collectively as the "Loan Documents");
- (e) all outstanding instruments relating to the bonds, notes or other indebtedness of or relating to the Governmental Agency.

[insert "I" or "We"] have also examined and relied upon originals, or copies certified or otherwise authenticated to [insert "my" or "our"] satisfaction, of such other records, documents, certificates and other instruments, and made such investigation of law as in [insert "my" or "our"] judgment [insert "I" or "we"] have deemed necessary or appropriate to enable [insert "me" or "us"] to render the opinions expressed below.

Based upon the foregoing, [insert "I am" or "we are"] of the opinion that:

(1) The Governmental Agency is a "governmental agency" within the meaning of the Authority's enabling legislation and is a (_____) of the State of Colorado with the full legal right and authority to execute the Loan Documents.

(2) The Governmental Agency has the full legal right and authority to carry on the business of the System (as defined in the Loan Agreement) as currently being conducted and as proposed to be conducted, and to undertake and complete the Project.

(3) The proceedings of the Governmental Agency's governing body authorizing the Governmental Agency to undertake and complete the Project were duly and lawfully adopted and approved in accordance with [applicable resolution] applicable Colorado law at meetings duly called pursuant to necessary public notice and held in accordance with applicable Colorado law at which quorums were present and acting throughout and were published in accordance with applicable Colorado law.

(4) The proceedings of the Governmental Agency's governing body approving the Loan Documents and authorizing their execution, issuance and delivery on behalf of the Governmental Agency have been duly and lawfully adopted and approved in accordance with [the applicable resolution] applicable Colorado law, at meetings duly called pursuant to necessary public notice and held in accordance with applicable Colorado law, and at which quorums were present and acting throughout and were published in accordance with applicable Colorado law.

(5) To the best of [insert "my" or "our"] knowledge, after such investigation as [insert "I" or "we"] have deemed appropriate, the authorization, execution and delivery of the Loan Documents by the Governmental Agency, the observation and performance by the Governmental Agency of its duties, covenants, obligations and agreements thereunder and the consummation of the transactions contemplated therein and the undertaking and completion of the Project do not and will not contravene any existing law or any existing order, injunction, judgment, decree, rule or regulation of any court or governmental or administrative agency, authority or person having jurisdiction over the Governmental Agency or its property or assets or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any existing bond resolution, trust agreement, indenture, mortgage, deed of trust, ordinance, order, or other agreement to which the Governmental Agency is a party or by which it, the System, or its property or assets is bound.

(6) To the best of [insert "my" or "our"] knowledge, after such investigation as [insert "I" or "we"] have deemed appropriate, all approvals, consents or authorizations of, or registrations of or filings with, any governmental or public agency, authority or person required to date on

the part of the Governmental Agency in connection with the authorization, execution, delivery and performance of the Loan Documents and the undertaking and completion of the Project, other than licenses and permits relating to the construction and acquisition of the Project which [insert "I" or "we"] expect the Governmental Agency to receive in the ordinary course of business, have been obtained or made.

(7) To the best of my knowledge, after such investigation as I have deemed appropriate, except as disclosed in writing to the Authority, there is no litigation or other proceeding pending or threatened in any court or other tribunal of competent jurisdiction (either State or Federal) that (1) questions the creation, organization or existence of the Governmental Agency; or the validity, legality or enforceability of the Loan Documents; or the undertaking or completion of the Project; or (2) if adversely determined, could (a) materially adversely affect (i) the financial position of the Governmental Agency; (ii) the ability of the Governmental Agency to perform its obligations under the Loan Documents; (iii) the security for the Loan Documents; or (iv) the transactions contemplated by the Loan Documents; or (b) impair the ability of the Governmental Agency to maintain and operate its system.

This opinion is rendered on the basis of Federal law and the laws of the State of Colorado as enacted and construed on the date hereof. [insert "I" or "We"] express no opinion as to any matter not set forth in the numbered paragraphs herein.

[insert "I" or "We"] hereby authorize Carlson, Hammond, & Paddock, L.L.C., General Counsel to the Authority, to rely on this opinion as if [insert "I" or "we"] had addressed this opinion to them in addition to you.

Very truly yours,

EXHIBIT E-2**OPINION OF GOVERNMENTAL AGENCY BOND COUNSEL****[LETTERHEAD OF BOND COUNSEL TO GOVERNMENTAL AGENCY]****[DATED: Closing Date]**

Colorado Water Resources and
Power Development Authority

Ladies and Gentlemen:

[insert "I am an attorney" or "We are attorneys"] admitted to practice in the State of Colorado and [insert "I" or "we"] have acted as bond counsel for **TOWN OF CRESTED BUTTE, COLORADO** (the "Governmental Agency"), of the State of Colorado, which has entered into a Loan Agreement (as hereinafter defined) with the **COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY** (the "Authority"), and have acted as such in connection with the authorization, execution, and delivery by the Governmental Agency of the Loan Agreement and Governmental Agency Bond (as hereinafter defined).

In so acting [insert "I" or "we"] have examined the Constitution and laws of the State of Colorado and [charter/by-laws/proceedings relating to organization] of the Governmental Agency. [insert "I" or "We"] have also examined originals, or copies certified or otherwise identified to [insert "my" or "our"] satisfaction, of the following:

- (a) the Loan Agreement, dated as of _____ (the "Loan Agreement"), by and between the Authority and the Governmental Agency;
- (b) the proceedings of the governing body of the Governmental Agency relating to the approval of the Loan Agreement, and the execution, issuance, and delivery thereof by the Governmental Agency, and the authorization of the undertaking and completion of the Project (as defined in the Loan Agreement);
- (c) the Governmental Agency Bond, dated as of _____ (the "Governmental Agency Bond"), issued by the Governmental Agency to the Authority to evidence the Loan (as defined in the Loan Agreement);
- (d) the proceedings of the governing body of the Governmental Agency relating to the issuance, of the Governmental Agency Bond, and the execution, issuance, and delivery thereof to the Authority (the Loan Agreement and the Governmental Agency Bond are referred to herein collectively as the "Loan Documents"); and
- (e) all outstanding instruments relating to the bonds, notes, or other indebtedness of, or relating to the Governmental Agency.

[insert "I" or "We"] have also examined and relied upon originals, or copies certified or otherwise authenticated to [insert "my" or "our"] satisfaction, of such other records, documents, certificates, and other instruments, and made such investigation of law as in [insert "my" or "our"] judgment [insert "I" or "we"] have deemed necessary or appropriate to enable [insert "me" or "us"] to render the opinions expressed below.

Based upon the foregoing, [insert "I am" or "we are"] of the opinion that:

(1) The Governmental Agency is a "governmental agency" within the meaning of the Authority's enabling legislation.

(2) The Governmental Agency has full legal right and authority to execute the Loan Documents and the Governmental Agency has full legal right and authority to observe and perform its respective duties, covenants, obligations, and agreements thereunder; subject, however, to the effect of, and to restrictions and limitations imposed by or resulting from, bankruptcy, insolvency, moratorium, reorganization, debt adjustment, or other similar laws affecting creditors' rights generally (Creditor's Rights Limitations), heretofore or hereafter enacted.

(3) The Governmental Agency has pledged the Pledged Property described in Paragraph (3) of Exhibit A to the Loan Agreement for the punctual payment of the principal on the Loan and all other amounts due under the Loan Documents according to their respective terms, and the Authority has a first lien on such Pledged Property, but not an exclusive first lien. *****Only include "but not an exclusive first lien" if there is parity debt***** No filings or recordings are required under the Colorado Uniform Commercial Code in order to provide a first lien on such Pledged Property, and all actions have been taken as required under Colorado law to insure the priority, validity, and enforceability of such lien.

(4) The Loan Documents have been duly authorized, executed, and delivered by the authorized officers of the Governmental Agency; and, assuming in the case of the Loan Agreement, that the Authority has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed, and delivered the Loan Agreement, the Loan Documents constitute the legal, valid, and binding obligations of the Governmental Agency enforceable in accordance with their respective terms; subject, however, to the effect of, and to restrictions and limitations imposed by, or resulting from, Creditor's Rights Limitations or other laws, judicial decisions, and principles of equity relating to the enforcement of contractual obligations generally, provided that no opinion is expressed herein regarding the validity or enforceability of Section 3.05 of the Loan Agreement or any other provision thereof that purports to require the Governmental Agency to indemnify or hold any party harmless.

(5) To the best of our knowledge, after such investigation as we have deemed appropriate, the authorization, execution, and delivery of the Loan Documents by the Governmental Agency, the observance and performance by the Governmental Agency of its duties, covenants, obligations, and agreements thereunder, and the consummation of the transactions contemplated therein, do not and will not contravene any existing law, or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any outstanding

instruments relating to the bonds, notes, or other indebtedness of, or relating to, the Governmental Agency.

(6) To the best of our knowledge, after such investigation as we deemed appropriate, all approvals, consents, or authorizations of, or registrations of or filings with, any governmental or public agency, authority, or person required to date on the part of the Governmental Agency in connection with the authorization, execution, delivery, and performance of the Loan Documents have been obtained or made.

****If the Governmental Agency constitutes an Enterprise under TABOR, the following paragraph should be included in the Bond Counsel opinion:**

(7) The execution and delivery of the Loan Documents are not subject to the limitations of Article X, Section 20 of the Colorado Constitution, since the Governmental Agency as defined in the Loan Agreement constitutes an enterprise under said Article X, Section 20 on the date of such execution and delivery. The performance of the Loan Documents is not subject to the limitations of said Article X, Section 20, as long as the Governmental Agency continues to qualify as an enterprise under said Article X, Section 20. If the Governmental Agency ceases to be an enterprise under said Article X, Section 20, during the Loan Term, the Loan Documents will continue to constitute legal, valid and binding obligations of the Governmental Agency enforceable in accordance with their respective terms; subject, however, to (a) Creditor's Rights Limitations or other laws, judicial decisions and principles of equity relating to the enforcement of contractual rights generally and (b) subject to the next sentence, the revenue and spending limitations of said Article X, Section 20. If the Governmental Agency at any time ceases to be an enterprise under said Article X, Section 20, (i) the **City/District/Town** may continue to impose and increase fees, rates and charges without voter approval; (ii) all revenues of the Governmental Agency used to pay Loan Repayments will be included in the Governmental Agency fiscal year spending limit under Section 7(d) of said Article X, Section 20 except that debt service changes and reductions are exceptions to, and not part of, the Governmental Agency revenue and spending bases and limits; and (iii) if the Governmental Agency is required to reduce spending in order to comply with its fiscal year spending limit under Section 7(b) of said Article X, Section 20, the Governmental Agency will first be required to reduce spending for purposes for which it does not have an obligation under law or by contract prior to reducing spending required to comply with the other covenants contained in the Loan Documents.

****If the Governmental Agency does not constitute an Enterprise under TABOR, the following paragraph should be included in the Bond Counsel opinion:**

(7) The Governmental Agency has complied with the requirements of Article x, Section 20 of the Colorado Constitution in connection with the execution and delivery of the loan documents.

This opinion is rendered on the basis of Federal law and the laws of the State of Colorado as enacted and construed on the date hereof. We express no opinion as to any matter not set forth in the numbered paragraphs herein.

[insert "I" or "We"] hereby authorize Carlson, Hammond & Paddock, L.L.C., General Counsel to the Authority, to rely on this opinion as if [insert "I" or "we"] had addressed this opinion to them in addition to you.

Very truly yours,

EXHIBIT F

ADDITIONAL COVENANTS AND REQUIREMENTS

(1) Rate Study.

In the event that Gross Revenue collected during a fiscal year is not sufficient to meet the requirements set forth in the Rate Covenant contained in Paragraph (4) of Exhibit A to this Loan Agreement, the Governmental Agency shall, within 90 days of the end of such fiscal year, cause an independent firm of accountants or consulting engineers, to prepare a rate study for the purpose of recommending a schedule of rates, fees, and charges for the use of the System that, in the opinion of the firm conducting the study will be sufficient to provide Gross Revenue to be collected in the next succeeding fiscal year that will provide compliance with the Rate Covenant described in Paragraph (4) of Exhibit A to this Loan Agreement. Such a study shall be delivered to the Authority. The Governmental Agency shall within six months of receipt of such study, adopt rates, fees, and charges for the use of the System, based upon the recommendations contained in such study, that provide compliance with said Rate Covenant. Notwithstanding the foregoing, the Authority may, from time to time, in its sole and absolute discretion and pursuant to such terms and restrictions it may specify, waive in writing the requirement that a rate study be performed by the Governmental Agency.

(2) Additional Bonds.

(a) Senior Lien Bonds. The Governmental Agency covenants that it will not issue any obligations payable out of, or secured by a lien or charge on, the Pledged Property that is superior to the lien or charge of this Loan Agreement on the Pledged Property.

(b) Parity Lien Bonds. The Governmental Agency covenants that it will not issue any obligations payable out of, or secured by a lien or charge on, the Pledged Property that is on a parity with the lien or charge of this Loan Agreement on the Pledged Property, unless the Governmental Agency certifies to the Authority that Net Revenue (as defined in Paragraph (3) of Exhibit A to this Loan Agreement) for any 12 consecutive months out of the 18 months preceding the month in which such obligations are to be issued was at least equal to the sum of (a) 110% of the maximum annual debt service due in any one year on (i) this Loan Agreement and (ii) all other outstanding obligations of the Governmental Agency payable out of, or secured by a lien or charge on, the Pledged Property that is on a parity with the lien or charge of this Loan Agreement on the Pledged Property, and (iii) such proposed obligations to be issued, and (b) the maximum annual debt service due in any one year on all obligations payable out of, or secured by a lien or charge on, the Pledged Property that is subordinate to the lien or charge of this Loan Agreement on the Pledged Property.

(c) Subordinate Lien Bonds. The Governmental Agency covenants that it will not issue any obligations payable out of, or secured by a lien or charge on, the Pledged Property that is subordinate to the lien or charge of this Loan Agreement on the Pledged Property, unless the Governmental Agency certifies to the Authority that for any 12 consecutive months out of the 18 months preceding the month in which such obligations are to be issued Net Revenue (as defined in Paragraph (3) of Exhibit A to this Loan Agreement) was at least 100% of the maximum

annual debt service due in any one year on (a) all obligations outstanding during such period that are payable out of, or secured by a lien or charge on, the Pledged Property and (b) such proposed obligations to be issued.

(d) Net Revenue Adjustment. In calculating revenue coverage for purposes of the issuance of additional parity or subordinate lien bonds, the Governmental Agency may adjust Net Revenue to reflect any rate increases adopted in connection with the issuance of additional obligations by adding to the actual Net Revenue for the period examined an estimated sum equal to 100% of the estimated increase in Net Revenue that would have been realized during such period had the adopted rate increase been in effect during all of such period.

(e) Refunding Bonds. Notwithstanding the foregoing, the Governmental Agency may issue refunding obligations payable out of, or secured by a lien or charge on, the Pledged Property, without compliance with the requirements stated above, provided that the debt service payments on such refunding obligations do not exceed the debt service payments on the refunded obligations during any calendar year.

(3) Lien Representation.

[insert if there is no outstanding debt] The Source of Repayment is free and clear of any pledge, lien, charge, or encumbrance thereon, or with respect thereto, prior to, or of equal rank with, the obligation of the Governmental Agency Bond.

[insert if the Authority Loan will be on a parity with the existing debt] The Governmental Agency has disclosed the following bonds, notes or other evidence of indebtedness of the Governmental Agency issued, or contractual obligations incurred, having a lien on the Source of Repayment of equal rank with the lien and charge on the Source of Repayment of the Governmental Agency Bond: {insert description of the parity lien obligations} (the “Parity Lien Obligations”). The Source of Repayment is free and clear of any pledge, lien, charge, or encumbrance thereon, or with respect thereto, other than that of the Parity Lien Obligations, that is of equal rank with the obligation of the Governmental Agency Bond. Further, the Source of Repayment is free and clear of any pledge, lien, charge, or encumbrance thereon, or with respect thereto, that is prior to the obligation of the Governmental Agency Bond.

[insert if there is existing senior lien debt only] The Governmental Agency has disclosed the following bonds, notes or other evidence of indebtedness of the Governmental Agency issued, or contractual obligations incurred, having a lien on the Source of Repayment superior to the lien and charge on the Source of Repayment of the Governmental Agency Bond: {insert description of the senior lien obligations} (the “Senior Lien Obligations”). The Source of Repayment is free and clear of any pledge, lien, charge, or encumbrance thereon, or with respect thereto, other than that of the Senior Lien Obligations, that is prior to the obligation of the Governmental Agency Bond. Further, the Source of Repayment is free and clear of any pledge, lien, charge, or encumbrance thereon, or with respect thereto, that is of equal rank with the obligation of the Governmental Agency Bond.

[insert if The Authority Loan will be junior to some debt and on parity with some existing debt] The Governmental Agency has disclosed the following bonds, notes or other evidence of indebtedness of the Governmental Agency issued, or contractual obligations incurred, having a

lien on the Source of Repayment superior to the lien and charge on the Source of Repayment of the Governmental Agency Bond: {insert description of the senior lien obligations} (the “Senior Lien Obligations”). The Governmental Agency has disclosed the following bonds, notes or other evidence of indebtedness of the Governmental Agency issued, or contractual obligations incurred, having a lien on the Source of Repayment of equal rank with the lien and charge on the Source of Repayment of the Governmental Agency Bond: {insert description of the parity lien obligations} (the “Parity Lien Obligations”). The Source of Repayment is free and clear of any pledge, lien, charge, or encumbrance thereon, or with respect thereto, other than that of the Senior Lien Obligations, that is prior to the obligation of the Governmental Agency Bond. The Source of Repayment is free and clear of any pledge, lien, charge, or encumbrance thereon, or with respect thereto, other than that of the Parity Lien Obligations, that is of equal rank with the obligation of the Governmental Agency Bond.

(4) Operation and Maintenance Reserve Fund. The Governmental Agency shall maintain an operation and maintenance reserve in an amount equal to three months of operation and maintenance expenses, excluding depreciation, of the System as set forth in the annual budget for the current fiscal year. Said reserve may be in the form of unobligated fund balances, or other unobligated cash or securities (i.e. capital reserves), or may be in a separate segregated fund and shall be maintained as a continuing reserve for payment of any lawful purpose relating to the System. If the operation and maintenance reserve falls below this requirement, the shortfall shall be made up in 24 substantially equal monthly installments beginning the second month after such shortfall.

(5) Davis Bacon & Related Acts (DBRA). The Governmental Agency will comply with the requirements of the Davis Bacon & Related Acts, codified at 40 U.S.C. §§ 3140 through 3148.

(6) Cost Overruns. Any cost overruns associated with the Project will be the responsibility of the Governmental Agency and any additional costs to defend against contract claims will not be reimbursed through this or any future funding.

(7) Audit Requirements. For each year in which the Governmental Agency requests a disbursement from the Project Loan Subaccount, the Governmental Agency shall conduct its annual audit in accordance with the federal Single Audit Act, 31 U.S.C. 7501 et seq.

(8) American Iron and Steel Requirement. The Governmental Agency will comply with all federal requirements applicable to the Loan, including Section 436 of P.L. 113-76, Consolidated Appropriations Act, 2014, (the “Appropriations Act”) and related State Revolving Fund Policy Guidelines, which require that all of the iron and steel products (as defined in the Appropriations Act and Guidelines) used in the Project must be produced in the United States unless the Governmental Agency has requested and received a waiver from the requirement pursuant to the “waiver process” described in the Appropriations Act and Guidelines.

(9) Construction Schedule.

The Governmental Agency has provided the following estimated dates regarding the project:

- a) Advertisement for Bids Publication Date:
- b) Construction Contract Award Date:
- c) Construction Start Date:
- d) Construction Completion Date:

(10) Technical Managerial and Financial Capacity Requirement. As described in the Technical/Managerial/Financial (TMF) Capacity Evaluation Report dated September 25, 2018.

EXHIBIT G
DWRF Form of Requisition

THE TOWN OF CRESTED BUTTE, COLORADO (the “Governmental Agency”)

Please submit to the following addresses:

Email To: cdphe_grantsandloans@state.co.us (preferred method)

Or Mail To: Colorado Department of Public Health and Environment
Grants and Loans Unit WQCD-OA-B2
Attn: Evan Butcher
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Or Fax To: 303-782-0390 (Call CDPHE Project Manager to confirm delivery)

Cc: CDPHE Project Manager <mailto:evan.butcher@state.co.us>

Cc: E-mail requisition form (Exhibit G) to the Colorado Water Resources and Power Development Authority at requisitions@cwrpda.com

This requisition is made in accordance with Section 3.02 of the Loan Agreement executed by the Colorado Water Resources and Power Development Authority on _____, 2019. Terms defined in the Loan Agreement and not otherwise defined herein shall have the same meanings when used herein.

The Governmental Agency hereby states as follows:

1. This is Requisition No _____.
2. The amount requisitioned hereunder is _____.
3. The person, firm or corporation to whom the amount requisitioned is due, or to whom a reimbursable and advance has been made, is _____.
4. The payee of the requisitioned amount is _____.
5. The manner of payment to the payee is to be wire transferred to:
 - Bank:
 - ABA No.:
 - Account No.:
 - Account Name:
 - Contact:
6. Attached hereto is the appropriate documentation demonstrating that the amount requisitioned hereunder is currently due or has been advanced by the Governmental Agency.
7. The amount hereby requisitioned is a proper Cost of the Project to be paid only from amounts deposited in the Project Account established for the Governmental Agency in the **Drinking Water Revolving Fund**.

8. On the date hereof, there does not exist any Event of Default under the Loan Agreement nor any condition which, with the passage of time or the giving of notice, or both, would constitute an Event of Default thereunder.

9. Estimate of total project completion percentage: _____%

10. The undersigned is an Authorized Officer of the Governmental Agency duly authorized in the Loan Agreement to submit the Requisition.

11. The Governmental Agency reaffirms that all representations made by it in the Loan Agreement are true and accurate as of the date of this requisition, and that it shall continue to observe and perform all of its duties, covenants, obligations and agreements thereunder, at all times during the entire term of said Loan Agreement.

Dated: _____.

TOWN OF CRESTED BUTTE, COLORADO

By: _____.

Title: _____ & Authorized Officer

Print Name: _____

You should receive all payments no later than 10 working days after receipt of requisition unless otherwise notified.

1. The undersigned approves the disbursement of the requisitioned amount from the Project Loan Account established in the **Drinking Water Revolving Fund** Project Account.

COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY

By: _____
Finance Director

Dated: _____

For Colorado Department of Public Health and Environment, Water Quality Control Division purposes only:

Payment approved by _____

Dated: _____



Staff Report

February 19, 2019

To: Mayor and Town Council

From: Rob Zillioux, Finance and HR Director

Subject: Ordinance 2019-07, An ordinance of the Crested Butte Town Council approving the lease of the downstairs north room at 132 Elk Ave to Paragon Gallery

Summary: Paragon Gallery (Paragon Artisan Guild) has been a long-term tenant of the Town. Their most recent lease expired in 2017. The Council directed staff to review all of the expired leases of town property and to bring forward new leases for those entities. Staff recommends entering into a new lease with Paragon Gallery.

Previous Council Action: In January of 2017, with Resolution 2017-02, the Council approved a policy regarding the leasing of non-residential municipal property.

Background: With the creation of a facility manager position a couple of years ago, the Town has begun to get a handle on the maintenance status of the many buildings the Town own and has begun investing in building improvements and deferred maintenance.

As of February, 2019 the Town had five tenants with expired or non-existent leases. All of the tenants are current with payments based upon the terms of the expired leases. Staff has been reaching out to all of our non-residential tenants with expired leases to make them aware that the Town would like to enter into new leases. In some cases this also included new proposed lease rates. Based upon the policy adopted by the Council, staff generated a sliding lease rate based first upon the size of the space rented with the goal of getting all of the tenants to \$2 - \$6 per square foot, per year for non-profits.

Discussion: The space that Paragon Gallery leases is approximately 600 sq. ft. Since 2001, they have been paying \$500 per year rent. Paragon have been paying utilities plus basic maintenance for the building. The lease would continue to require them to pay utilities and perform basic maintenance. Town is responsible for major maintenance on the building. The annual lease rate proposed is as follows:

| | | |
|------|---------|----------------|
| 2019 | \$1,800 | \$3.00 sq. ft. |
| 2020 | \$2,100 | \$3.50 sq. ft. |
| 2021 | \$2,400 | \$4.00 sq. ft. |
| 2022 | \$2,700 | \$4.50 sq. ft. |
| 2023 | \$3,000 | \$5.00 sq. ft. |

The rental term is for 5 years with an automatic 5 year renewal, unless either party provides termination notice

For comparison, the current commercial leases rates in town range from \$7.50 to \$10.00 on similar property:

| | |
|---------------------|---------|
| \$7.50 per sq. ft. | \$4,500 |
| \$10.00 per sq. ft. | \$6,000 |

Section 3(e) of the lease includes an acknowledgement that the lease rate is substantially below market rates in support of the community benefit provided by Paragon Gallery as a local non-profit.

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

Recommendation: Staff recommends the Town enter into a lease with Paragon Gallery Children's Center.

Proposed Motion: Motion and a second to set Ordinance No. 2, Series 2019 to public hearing at the March 4th Council meeting.

ORDINANCE NO. 7

SERIES 2019

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL APPROVING THE LEASE OF THE PROPERTY AT DOWNSTAIR NORTH ROOM OF THE “OLD TOWN HALL” LOCATED ON LOT 1 AND PART OF LOT 2, BLOCK 29 TO PARAGON GALLERY

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

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

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

WHEREAS, on January 1, 2001, the Town entered into a multi-year lease with Stepping Stones Children’s Center for property owned by the Town located at 132 Elk Ave; and

WHEREAS, the term of the lease expired on April, 2017; and

WHEREAS, the Town Council and Paragon Gallery wish to enter into a long-term Business Lease attached hereto as Exhibit A; and

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

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

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

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

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

TOWN OF CRESTED BUTTE, COLORADO

By: _____
James A Schmidt, Mayor

ATTEST

Lynelle Stanford, Town Clerk

(SEAL)

EXHIBIT "A"

Lease Agreements

BUSINESS LEASE

THIS BUSINESS LEASE (this "**Lease**") is entered into this ___ day of _____, 20___, with an effective date of _____, 2019 (the "**Effective Date**") by and between the TOWN OF CRESTED BUTTE, COLORADO ("**Landlord**"), a Colorado home rule municipality and the PARAGON GALLERY, ("**Tenant**").

AGREEMENT:

Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, upon and subject to the terms and conditions as set forth herein, the real property and improvements thereon located in the ground floor of Old Town Hall, 132 Elk Avenue Crested Butte, commonly known as Paragon Gallery (the "**Premises**").

Tenant has inspected the Premises and accepts the same in its "as is" condition.

1. **Use; Parking; Maintenance; Utilities; Signage.**

(a) Tenant may use and occupy the Premises solely for the Paragon Gallery and related purposes in keeping with the mission of the Tenant. Any other uses shall be following Landlord's prior written consent.

(b) All public facilities on the Premises shall be utilized as directed by Landlord and not restricted by Tenant. There is not parking provided on the Premises.

(c) During the Term (as defined below), Tenant shall provide routine maintenance and care respecting the Premises, including, without limitation, regular cleaning and general cosmetic care (collectively, "**Projects**"). All such maintenance and care shall be performed at Tenant's sole cost and expense. Further, Tenant agrees to keep snow removed from the front entrance and to survey the common areas and restrooms at least twice daily during the days Paragon is open for business, and timely report to the Town the need for maintenance, supplies or repair of these areas.

(d) Without limiting Tenant's obligation respecting such maintenance and care of the Premises, Landlord shall provide regular grounds maintenance (e.g., lawn care, snow removal) on and adjacent to the Premises.

(e) Tenant shall pay the gas and electric utilities (both pro rata) and communications services used by Tenant on the Premises during the Term, regardless of whether the services are billed directly to Tenant or through Landlord. Such amounts, where payable to Landlord, shall be payable as additional rent to be paid by Tenant

within fifteen (15) days after delivery of an invoice from the Town for such charges and expense.

(f) Landlord shall pay the expenses for water, sewer and trash/recycling services for the Premises during the Term.

(g) All exterior signage shall be installed only upon prior approval of Landlord.

2. **Term.**

(a) Provided that Tenant is not in default under any term or condition of this Lease, Tenant shall have and hold the Premises for a five (5) year period (the "**Term**") that shall commence on the Effective Date hereof and expire five (5) years following the commencement of the Term. The Term shall automatically be extended for an additional five (5) years, unless the Lease is terminated in writing by either party at least 90 days prior to the expiration of the initial Term.

(b) At the expiration or earlier termination of this Lease, Tenant shall surrender the Premises in broom clean, good order and condition, in the same condition and repair as Tenant initially took occupancy of the Property on the Effective Date, ordinary wear and tear excepted. Tenant shall fully repair any damage occasioned by the removal of any trade fixtures, equipment, furniture, alterations, additions and improvements. All trade fixtures, equipment, furniture, alterations, additions and improvements not so removed shall conclusively be deemed to have been abandoned by Tenant and may be appropriated, sold, stored, destroyed or otherwise disposed of by Landlord without notice to Tenant or to any other person and without obligation to account therefor. Tenant shall pay Landlord all expenses incurred in connection with Landlord's disposition of such property, including the cost of repairing any damage to any improvements or the Premises caused by such removal. Tenant's obligation to observe and perform the foregoing requirements shall survive the expiration or earlier termination this Lease.

3. **Rent; Additional Rent; Security Deposit.**

(a) Tenant shall pay Landlord \$1,800 on the Effective Date of this Lease. Payment for each successive year will be made on the lease anniversary date during the Term (the "**Rent**"). Rent shall increase annually as follows:

| | | |
|------|---------|----------------|
| 2019 | \$1,800 | \$3.00 sq. ft. |
| 2020 | \$2,100 | \$3.50 sq. ft. |
| 2021 | \$2,400 | \$4.00 sq. ft. |
| 2022 | \$2,700 | \$4.50 sq. ft. |
| 2023 | \$3,000 | \$5.00 sq. ft. |

(b) Any Rent that is paid late shall accrue interest at a rate of 1.5% of such unpaid Rent per month. Rent shall be prorated for any partial month.

(c) Rent, any additional rent and any other amounts due Landlord under this Lease shall be paid at Landlord's address specified herein for notices, without prior demand and without any abatement, deduction or setoff.

(d) To secure the faithful performance by Tenant of all of Tenant's covenants, conditions, and agreements in this Lease to be observed and performed, Tenant shall deposit with Landlord a security deposit (the "**Security Deposit**") within one (1) year of execution of the Lease. Tenant's security deposit shall be of \$500.00. The Security Deposit may also be used in the event of termination of the Lease by re-entry, eviction, or otherwise. The parties agree that the Security Deposit or any portion thereof, may be applied to any Event of Default (as defined below) that may exist, and/or payment of subsequent damages and costs incurred by Landlord, without prejudice to any other remedy or remedies that Landlord may have on account thereof. If Tenant shall perform all of its respective covenants and agreements in the Lease, the Security Deposit, or the portion thereof not previously applied pursuant to the provisions of the Lease, together with a statement, shall be returned to Tenant without interest, no later than sixty (60) days after the expiration of the Term, or any renewal or extension thereof (or such earlier time if required by applicable law), provided Tenant has vacated the Premises and surrendered possession thereof to Landlord.

(e) Tenant acknowledges that the lease rate proposed is substantially below market value for leasing of office space in Crested Butte at the time of the Effective Date. Below market lease rates are being offered in support of the community benefit provided by Tenant as a local non-profit. The following is provided for comparison on possible annual lease rates for this space:

| | |
|---------------------|---------|
| \$7.50 per sq. ft. | \$4,500 |
| \$10.00 per sq. ft. | \$6,000 |

4. **Landlord's Access.** Landlord, its agents, employees and contractors may, at their sole risk, enter the Premises at any time in response to an emergency, and at other reasonable time upon reasonable prior notice to Tenant, without limitation, (a) inspect the Premises, (b) determine whether Tenant is complying with its obligations under this Lease, (c) supply any other service that Landlord is required to provide, (d) post notices of non-responsibility or similar notices, or (e) make repairs which this Lease requires Landlord or Tenant to make. All work of Landlord shall be performed as promptly as reasonably possible and so as to cause as little interference to Tenant as reasonably possible, at all times taking into account the nature and extent of such work. Landlord shall at all times have a key with which to unlock all of the doors to the Premises (excluding Tenant's vaults, safes and similar areas designed in writing by Tenant in advance).

5. **No Alterations.** Without limiting Tenant's obligations to maintain, repair, restore and replace the Premises and any portion thereof, Tenant shall not make any alterations, additions, repairs, restorations or improvements to the Premises without Landlord's prior written consent.

6. **Compliance with Laws.**

(a) Tenant shall not use or occupy, or permit any portion of the Premises to be used or occupied in violation of any law, ordinance, order, rule, regulation, certificate of occupancy or other governmental requirement.

(b) Tenant and the Premises shall remain in compliance with all applicable laws, ordinances and regulations (including consent decrees and administrative orders) relating to public health and safety and protection of the environment, including those statutes, laws, regulations and ordinances, all as amended and modified from time to time..

7. **No Unsightliness.** Tenant covenants and agrees that no unsightliness shall be permitted on the Premises. Without limiting the generality of the foregoing, no vehicles, machinery, equipment, tools, refuse, scrap, debris, garbage, trash, bulk materials, used vehicle parts or waste shall be kept, stored or allowed to accumulate on the Premises at any time. The Tenant shall have the right to tow vehicles from the Premises and place signage on the Premises to enforce the above provisions.

8. **Insurance.**

(a) At its sole expense, Tenant shall obtain and keep in force during the Term commercial general liability insurance with a combined single limit of not less than One Million Dollars (\$1,000,000.00) for injury to or death of any one person, for injury to or death of any number of persons in one occurrence, and for damage to property, insuring against any and all liability of Landlord and Tenant, including coverage for contractual liability, broad form property damage, and non-owned automobile liability, with respect to the Premises or arising out of the maintenance, use or occupancy of the Premises. The insurance shall be noncontributing with any insurance that may be carried by Landlord and shall contain a provision that Landlord, although named as an insured, shall nevertheless be entitled to recover under the policy for any loss, injury, or damage to Landlord, its agents, and employees, or the property of such persons.

(b) Upon receipt of written notification from the Town, at Tenant's sole expense, Tenant shall obtain and keep in force, during the Term, "all-risk" coverage naming Landlord and Tenant as their interests may appear and other parties that Landlord or Tenant may designate as additional insureds in the customary form for buildings and improvements of similar character, on all buildings and improvements now or hereinafter located on the Premises. Such coverage shall include, without limitation, the historic replacement value of the Premises building structure. The amount of the insurance shall

be designated by Landlord no more frequently than once every twelve (12) months, shall be set forth on an "agreed amount endorsement" to the policy of insurance and shall not be less than the value of the buildings and improvements.

(c) All insurance required in this Section and all renewals of it shall be issued by companies authorized to transact business in the State of Colorado, and rated at least A+ Class X by Best's Insurance Reports (property liability) or approved by Landlord. All insurance policies shall be subject to approval by Landlord and any lender as to form and substance, said approval not to be unreasonably withheld or delayed; shall expressly provide that the policies shall not be canceled or altered without thirty (30) days' prior written notice to Landlord and any lender, and to Landlord in the case of general liability insurance; and shall, to the extent obtainable without additional premium expense, provide that no act or omission of Tenant which would otherwise result in forfeiture or reduction of the insurance shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained. Tenant may satisfy its obligation under this Section by appropriate endorsements of its blanket insurance policies.

(d) All policies of liability insurance that Tenant is obligated to maintain according to this Lease (other than any policy of workmen's compensation insurance) shall name Landlord and such other persons or firms as Landlord specifies from time to time as additional insureds provided such other persons have an insurable interest and does not result in any additional premium expenses. Original or copies of original policies (together with copies of the endorsements naming Landlord, and any others specified by Landlord, as additional insureds) and evidence of the payment of all premiums of such policies shall be made available to Landlord prior to Tenant's occupancy of the Premises and from time to time at least thirty (30) days' prior to the expiration of the term of each policy. All public liability, property damage liability, and casualty policies maintained by Tenant shall be written as primary policies, not contributing with and not in excess of coverage that Landlord may carry. No insurance required to be maintained by Tenant by this Section shall be subject to any deductible in excess of \$20,000.00 without Landlord's prior written consent.

(e) Landlord and Tenant waive all rights to recover against each other, or against the officers, elected officials, directors, shareholders, members, partners, joint venturers, employees, agents, customers, invitees, or business visitors of each of theirs, for any loss or damage arising from any cause covered by any insurance required to be carried by each of them pursuant to this Section or any other insurance actually carried by each of them. Tenant shall cause its insurer to issue an appropriate waiver of subrogation rights endorsements to all policies of insurance carried in connection with the Premises and any personal property located on the same. Tenant shall cause all other occupants of the Premises claiming by, under, or through Tenant to execute and deliver to Landlord a waiver of claims similar to the waiver in this Section and to obtain such waiver of subrogation rights endorsements.

9. **Indemnification; Tenant Waiver and Release.**

(a) Tenant shall indemnify Landlord, its elected officials, officers, employees, agents, contractor, attorneys, insurers and insurance pools (collectively, the “**Landlord Parties**”; as applicable, each an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all demands, claims, causes of action, fines, penalties, damages (including consequential damages), losses, liabilities, judgments, and expenses (including attorneys’ fees and court costs) incurred in connection with or arising from: (i) the use or occupancy of the Premises by Tenant or any person or entity claiming under Tenant, the employees, agents, contractors, guests, invitees or visitors of Tenant or any person or entity (each, a “**Tenant Related Person**”); (ii) any activity, work, or thing done or permitted or suffered by a Tenant Related Person in or about the Premises; (iii) any acts, omissions, or negligence of any Tenant Related Person; (iv) any breach, violation, or nonperformance by any Tenant Related Person of any term, covenant, or provision of this Lease or any law, ordinance or governmental requirement of any kind; or (v) except for loss of use of all or any portion of the Premises or Tenant’s property located within the Premises that is proximately caused by or results proximately from the gross negligence of Landlord, any injury or damage to the person, property or business of a Tenant Related Person entering upon the Premises under the express or implied invitation of Tenant. If any action or proceeding is brought against an Indemnitee by reason of any claim solely arising out of subparagraphs (i) through (v) above, upon notice from Landlord, Tenant shall defend the claim at Tenant’s expense with counsel reasonably satisfactory to Landlord.

(b) Tenant waives and releases all claims against Indemnitees with respect to any loss, injury, death, or damage (including consequential damages) to persons, property, or Tenant’s business occasioned by, without limitation, theft; act of God; public enemy; injunction; riot; strike; insurrection; war; court order; requisition; order of governmental body or authority; fire; explosion; falling objects; steam, water, rain or snow; leak or flow of water (including water from the elevator system), rain or snow from the Premises or into the Premises or from the roof, street, subsurface, or from any other place, or by dampness, or from the breakage, leakage, obstruction, or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, or lighting fixtures of the building; or from construction, repair, or alteration of the Premises or from any acts or omissions of any visitor of the Premises; or from any cause beyond Landlord’s control.

10. **Default Provisions.**

(a) If Tenant fails to perform any of its obligations under this Lease, then Landlord, after ten (10) days’ written notice to Tenant (or, in case of any emergency, upon notice or without notice as may be reasonable under the circumstances) and without waiving any of its rights under this Lease, may (but shall not be required to) pay the amount or perform the obligation. All amounts so paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any obligations (together with interest at the prime rate from the date of Landlord’s payment of the amount or incurring of each cost or expense until the date of full repayment by Tenant) shall be payable by Tenant to Landlord on demand and as additional rent. In the proof of

any damages that Landlord may claim against Tenant arising out of Tenant's failure to maintain insurance that is required by terms of this Lease, Landlord shall not be limited to the amount of the unpaid insurance premium but shall also be entitled to recover as damages for the breach the amount of any uninsured loss (to the extent of any deficiency in the insurance required by the provisions of this Lease), damages, costs and expenses of suit, including attorneys' fees, arising out of damage to, or destruction of, the Premises occurring during any period for which Tenant has failed to provide the insurance.

(b) The following occurrences are "**Events of Default**": (i) Tenant defaults in the due and punctual payment of rent or any other amount due under this Lease, and the default continues for five (5) days after notice from Landlord; (ii) Tenant defaults in the performance of any other obligation under this Lease that is not cured after ten (10) days' written notice to Tenant (or, in case of any emergency, upon notice or without notice as may be reasonable under the circumstances); or (iii) Tenant vacates or abandons the Premises.

(c) If any one or more Events of Default occurs, then Landlord may, at its election, give Tenant written notice of its intention to terminate this Lease on the date of the notice or on any later date specified in the notice, and, on the date specified in the notice, Tenant's right to possession of the Premises shall cease and this Lease shall be terminated. In addition, landlord shall have all other rights available at law and in equity, including, without limitation, recovery of actual damages, costs and expenses, including reasonable attorneys' fees. All remedies may be cumulatively and concurrently applied and enforced.

12. **Assignment.** Tenant may not assign this Lease, or sublet the Premises, in whole or in part, without Landlord's prior written consent.

13. **Notices.** All notices, demands, and requests required to be given by either party to the other shall be in writing, and with a copy given to counsel for each such party as provided below. All notices, demands, and requests shall be delivered personally or sent by electronic mail (e-mail), nationally recognized overnight courier, certified or registered mail, return receipt requested, postage prepaid, or via facsimile, addressed to the parties at the addresses set forth below or at such other addresses as the parties may designate in writing delivered pursuant to the provisions hereof. Any notice when given as provided herein shall be deemed to have been delivered on the day of delivery if delivered personally, on the first business day following the confirmation of sending of an e-mail when sent by electronic mail, on the first business day following deposit with the courier service when delivered by overnight courier, three business (3) days subsequent to the date that said notice was deposited with the United States Postal Service, or on the first business day following the date of confirmation of receipt when delivered by facsimile.

| | |
|--------------|---|
| To Landlord: | Town of Crested Butte P.O. Box 39 507 Maroon Avenue |
|--------------|---|

Crested Butte, CO 81224
 Facsimile: (970) 349-6626
 Attn: Town Manager

To Tenant: Paragon Gallery
 P.O. Box 3
 Crested Butte, CO 81224
 Attn: Jim Garrison

14. **No Waiver.** No waiver of any condition or agreement in this Lease by either Landlord or Tenant shall imply or constitute a further waiver by such party of the same or any other condition or agreement.

15. **Attorneys' Fees.** In case a dispute between the parties shall arise in connection with this Lease, the prevailing party shall be entitled to recover and shall be awarded (in addition to other relief granted) all reasonable attorneys' fees and costs in connection with such dispute from the non-prevailing party.

16. **Severability.** If any sentence, paragraph or article of this Lease is held to be illegal or invalid, this shall not affect in any manner those other portions of the Lease not illegal or invalid and this Lease shall continue in full force and effect as to those remaining provisions.

17. **Successors and Assigns.** The conditions and provisions hereof shall inure to the benefit of, and shall be binding upon, Landlord, Tenant and their respective personal representatives, successors and permitted assigns.

18. **Immigration Compliance.** Tenant certifies that it has complied, and during the term of this Lease will continue to comply, with the Immigration Reform and Control Act of 1986. The signature of Tenant on this Lease: (1) certifies that Tenant is not a natural person unlawfully present in the United States; and (2) also certifies the statements below if this is a public contract for services as defined in Colo. Rev. Stat. § 8-17.5-101, et seq., and Tenant utilizes subcontractors or employees in Tenant's business. Tenant shall not:

(a) knowingly employ or contract with an illegal alien to perform work under this Lease; or

(b) enter into a contract with a subcontractor that fails to certify to Tenant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Lease.

Tenant has confirmed the employment eligibility of all employees and subcontractors who are newly hired for employment to perform work under this Lease through participation in either the e-verify program or the department program (as defined in Colo. Rev. Stat. § 8-17.5-101, et seq.). Tenant may not use either the e-verify program or

the department program procedures to undertake pre-employment screening of job applicants while this Lease is being performed. If Tenant obtains actual knowledge that a subcontractor performing work under this Lease knowingly employs or contracts with an illegal alien, Tenant shall:

(i) notify the subcontractor and the Landlord within three (3) days that Tenant has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(ii) terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to sub-subparagraph (a) of this subparagraph the subcontractor does not stop employing or contracting with the illegal alien; except that Tenant shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Tenant shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to state law. Tenant acknowledges that in the event Tenant violates any of the provisions of the foregoing the Town may terminate this Lease for breach of contract. No notice need be given of said termination. If this Lease is so terminated, Tenant shall be liable for actual and consequential damages to the Landlord.

19. **Obligation to Report.** Tenant shall report any material damage to the Premises or disturbances therein or thereon to Landlord as soon as it becomes aware of any such damages or disturbances.

20. **Miscellaneous Provisions.**

(a) Each party represents and warrants that it has obtained any and all approvals necessary to enter into and perform the obligations contained in this Lease, if any.

(b) This Lease shall be construed and enforced in accordance with the laws of the State of Colorado.

(c) This Lease is entered into at Crested Butte, Colorado, and it is agreed that the proper jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Lease will be in the District Court of Gunnison County, Colorado.

(d) This Lease may be executed in multiple counterparts each of which shall constitute an original, and both of which when taken together shall constitute one and the same document. The parties hereby agree to accept facsimile or electronic copies of signatures as original signatures

(e) An recordation of this Lease or any record thereof, or the recordation of any encumbrance against the Premises and/or the Improvements by any person, including, without limitation, any mortgagee of Tenant, except Landlord and any mortgagee of Landlord, shall be void *ab initio* and a default under this Lease.

(f) This Lease constitutes the entire and exclusive agreement between the parties relating to the specific matters covered herein. Any other agreements between the parties, whether written or oral are hereby merged herein and of no further force and effect.

(g) Unless otherwise provided in the Lease, the Lease may be amended, modified, or terminated only by a written instrument executed by Landlord and Tenant.

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

IN WITNESS WHEREOF, Landlord and Tenant have executed Lease by their duly authorized officials effective as of the Effective Date first written above.

LANDLORD:

TOWN OF CRESTED BUTTE, COLORADO

By: _____
Dara MacDonald, Town Manager

ATTEST:

_____ [Seal]
Lynelle Stanford, Town Clerk

TENANT:

PARAGON GALLERY

By: _____

Name: _____

Title: _____



Staff Report

February 19, 2019

To: Mayor and Town Council

Thru: Dara MacDonald, Town Manager

From: Shea D Earley, Director of Public Works

Subject: **Award of a Contract for Construction Management of the WTP Improvements and Authorizing the Town Mayor to Enter Into a Professional Services Agreement with JVA, Inc.**

Award of a Contract for Construction of the WTP Improvements and Authorizing the Town Mayor to Enter Into a Construction Agreement with Moltz Construction, Inc.

Attachments: **WTP Improvements Construction Management Professional Services Agreement with JVA, Inc.**
WTP Improvements Construction Agreement with Moltz, Inc.

Summary:

In 2018, both JVA Inc. (JVA) and Moltz Construction Inc. (Moltz) were awarded contracts through the competitive bidding process for the engineering/design and Construction Manager at Risk (CMAR) of the Water Treatment Plant (WTP) Improvements Project, respectively. The intent of the CMAR agreement was to assist with the development of engineering/design and construction documents, as well as, a Guaranteed Maximum Price (GMP) that both the Town of Crested Butte (Town) and Moltz could agree upon. Based on the approval of a GMP, the intent of the agreement was to then award the contract for construction to Moltz. Through the cooperative efforts of both contractors construction documents, including a GMP for the construction phase of the project, were developed. Also, by utilizing the competitive bidding process, the Town satisfied all bidding requirement of Department of Local Affairs (DOLA) and the State Revolving Fund-Colorado Water Resources and Power Development Authority (SRF-CWRPDA).

The project is designed to continue to maintain Colorado Department of Public Health and Environment (CDPHE) compliance, upgrade infrastructure, and maintain current and future water demands. The proposed improvements to maintain CDPHE compliance include; the addition of block and bleed valves on the existing skids, turbidimeters, and retrofitting the existing pretreatment system. The improvements also intend to address the hydraulic limitations of the facility by adding a fourth skid, which will also facilitate redundancy within the system. Finally, the improvements looks to address aging infrastructure by replacing components within the existing skids, removing the UV system, replacing the SCADA system, and upgrading the building structure.

As part of the CMAR agreement with Moltz and based upon the agreed upon GMP, the Town wishes to enter into a construction agreement for the WTP Improvements Project. The Town also desires to

extend its agreement with JVA for construction management of the WTP Improvements Project. Tentatively, the contractor will break ground in April - May 2019 and complete construction in December of 2019. Final payment and project closeouts will occur in early 2020.

The project cost for construction management is \$139,400. The project GMP for construction is \$2,274,618, for a total project cost of \$2,414,018. The Town of Crested Butte has secured funding for the project in the form of a DOLA grant for \$405,000 and a SRF-CWRPDA loan for \$2,025,000, for a total funding amount of \$2,430,000.

Previous Council Action:

Engineering: On March 2nd, 2018 the Town of Crested Butte accepted bids on an RFQ for the Engineering Services of the WTP Improvements, in which, JVA was awarded the bid. On March 19th, 2018 the Town of Crested Butte entered into a Professional Services Agreement with JVA for Engineering Services of the Water Treatment Plant Improvement Project.

Construction: On September 20th, 2018 the Town of Crested Butte accepted bids on an RFP for the WTP Improvements CMAR, in which, Moltz was awarded the bid. On October 2nd, 2018 the Town of Crested Butte entered into a Professional Services Agreement with Moltz for the WTP Improvements CMAR.

Recommendation:

Throughout the design and CMAR process, Moltz, JVA, and Town staff have worked hand in hand to develop and vet a final project design for the Water Treatment Plant Improvements. Over the course of project, both contractors have developed an intimate knowledge and understanding of a highly sophisticated and intricate construction project. It is staff's recommendation, due to the nature and intricacies of the project, that it is in the best interest of the Town to retain, both Moltz and JVA, as the construction and construction management contractors, respectively.

Proposed Motion:

I move to Award the Contract for Construction Management of the WTP Improvements and Authorize the Town Mayor to Enter Into a Professional Services Agreement with JVA, Inc.

I move to Award the Contract for Construction of the WTP Improvements and Authorize the Town Mayor to Enter Into a Construction Agreement with Moltz Construction, Inc.

**SUGGESTED FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between _____ Town of Crested Butte _____ (“Owner”) and

Moltz Construction Inc. _____ (“Contractor”).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:
- A. All necessary labor, supervision, equipment, tools, and materials to construct and install improvements to the Town of Crested Butte Water Treatment Plant (WTP).
 - B. Contractor shall furnish and pay for all materials, equipment, supplies, appurtenances; provide all construction equipment and tools; and perform all necessary labor and supervision. Coordinate the progress of the Work including coordination between trades, subcontractors, suppliers, public utilities and subsequent building contractor performing work on site and Owner to insure the progress of Work. It is the intent of this contract that Work proceed in the most expeditious manner possible with scheduled milestones.

ARTICLE 2 – THE PROJECT

- 2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:
- A. This includes the purchase and installation of a Pall AP-4 microfiltration membrane skid, coordination with Pall regarding instrumentation and controls including installation and integration of a plant SCADA system and on-skid PLCs, relocation and demolition of existing equipment, replacement of tanks on existing membrane skids, modifications to process piping, construction of an integrated building addition and roof structure, and other structural modifications within the building. Work shall include installation and demolition of all electrical wiring, motor control centers, programmable logic controllers, all process piping, and completion of all associated site work relating to the modifications, as detailed on the Drawings and within the specifications.

ARTICLE 3 – ENGINEER

- 3.01 The Project has been designed by JVA, Inc. (Engineer), which is to assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Days to Achieve Substantial Completion and Final Payment*

- A. The Work will be substantially completed by December 31, 2019 as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions by February 29, 2020.

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$500 for each day that expires after the time specified in Paragraph 4.02 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$500 for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 – Contract Price

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A, 5.01.B, and 5.01.C below:

- A. For all Work other than Unit Price Work, a lump sum of: \$ 2,274,618
(In words: two million, two hundred, seventy four thousand, six hundred and eighteen dollars)
- B. All specific cash allowances are included in the above price in accordance with Paragraph 11.02 of the General Conditions.
- C. For all Work, at the prices stated in the Contractor's Guaranteed Maximum Price Tabulation, attached hereto as an exhibit.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.
- B. Owner may refuse to make payment of the full amount recommended by Engineer in accordance with Article 14 of the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 1st day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.
 - a. Ninety-five percent (95%) of Work completed (with the balance being retainage); and
 - b. Ninety-five percent (95%) of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to no more than ninety-five percent (95%) of the Work completed, if payments have not already reached that amount, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less two hundred percent (200%) of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work by Engineer and Owner in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

ARTICLE 7 – INTEREST

7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of zero percent (0%) per annum.

ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor’s safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
1. This Agreement (pages 1 to 8, inclusive).
 2. Performance bond (pages 1 to 3, inclusive).
 3. Payment bond (pages 1 to 3, inclusive).
 4. General Conditions (pages 1 to 66, inclusive).
 5. Supplementary Conditions (pages 1 to 12, inclusive).
 6. Drawings consisting of 31 sheets with each sheet bearing the following general title: Town of Crested Butte Water Treatment Plant Improvements, Crested Butte, Colorado, Construction Documents
 7. Project Manual
 8. Exhibits to this Agreement (enumerated as follows):
 - a. Exhibit A – Final GMP Proposal
 - b. Exhibit B – Proof of Liability Insurance
 9. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed (pages 1 to 1, inclusive).
 - b. Proof of Liability Insurance.
 - c. Work Change Directives.
 - d. Change Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 *Assignment of Contract*

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

10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 1. “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on 02/20/19 (which is the Effective Date of the Agreement).

OWNER: Town of Crested Butte

CONTRACTOR: Moltz Construction Inc.

By: _____

Title: _____

Attest: _____

Title: _____

Address for giving notices:

P.O. Box 39

Crested Butte, CO 81224

By: _____

Title: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Title: _____

Address for giving notices:

8807 County Road 175

P.O. Box 729

Salida, CO 81201

License No.: _____

(Where applicable)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

Agent for service of process:



Moltz Construction Inc.

General Contractor/Construction Manager

8807 CR 175
P.O. Box 729
Salida, CO 81201
Phone: (719)539-7319
Fax: (719)539-7695

February 14, 2019

Leanne Miller
JVA, Incorporated
817 Colorado Avenue, Suite 301
Glenwood Springs, CO 81601

SUBJECT: Town of Crested Butte Water Treatment Plant Improvements Project

REGARDING: Final GMP Proposal, assumptions and exclusions

Mrs. Leanne Miller:

Below please find Moltz’s summarized GMP proposal pricing for the 100% design of the Town of Crested Butte’s Water Treatment Plant Improvements Project issued on February 11, 2019.

| CRESTED BUTTE WTP - 100% Design GMP | | | |
|--|-------------------------|-----------|--------------------|
| February 14, 2019 | | | |
| | Takeoff Quantity | | Grand Total |
| 01 General Conditions | 1.00 | LS | 280,295 |
| 02 Sitework | 1.00 | LS | 210,362 |
| 03 Concrete | 1.00 | LS | 205,478 |
| 05 Metals | 1.00 | LS | 1,543 |
| 07 Sealants | 1.00 | LS | 10,256 |
| 08 Doors & Windows | 1.00 | LS | 20,329 |
| 09 Painting | 1.00 | LS | 57,610 |
| 10 Specialties | 1.00 | LS | 3,598 |
| 11 Process Equipment | 1.00 | LS | 621,903 |
| 13 Specialties - PEMB | 1.00 | LS | 380,256 |
| 15 Mechanical | 1.00 | LS | 202,569 |
| 16 Electric | 1.00 | LS | 251,883 |
| SUBTOTAL | 1.00 | LS | 2,246,082 |
| Contractor Contingency | 1.00 | LS | 28,536 |
| GRAND TOTAL | 1.00 | LS | 2,274,618 |

Our pricing is based on the following assumptions, exclusions and clarifications.

1. Drawing G0.1 General Note 1, Moltz assumes the design documents have been developed to meet the latest standards as referenced in this note and that by providing materials and installing per the design documents all referenced standards will be fully satisfied. In the event applicable standards govern over and require a change

from the design documents Moltz will negotiate a fair and equitable adjustment to the Contract Value and/or Contract Times. 196

2. Pricing excludes the costs of a 3rd party PLS as required by note 17 on G0.1. If required, please add an allowance to the Contract Award in the amount of \$10,000 to be paid out on a Time and Materials basis per the Agreement.
3. C1.0, repositioning the guy wire may not be allowed by Gunnison Power; an allowance of \$3,000 has been included.
4. Drawing C1.1, pricing assumes the onsite Versa-Block materials for the retaining wall are approved for use and are adequate in quantity and quality to complete the wall to the dimensions represented on the drawings.
 - a. Note – the location and height of the retaining wall on the 100% Drawings requires encroachment onto the adjacent property. As instructed Moltz has priced the wall as shown and excluded all costs associated with a necessary easement of wall re-design.
5. Consider protective provisions for stormwater inlet as the type C inlet is not HS-20 rated per C1.0 and maintenance equipment could damage the inlet or cause damage and injury to operators.
6. Pricing includes \$4,500 for the supply of two 10" tank nozzles per AWWA tank standards but has not included any costs for design, PE stamped calcs or welding inspections.
7. Pricing assumes the new PALL skid will be set on the existing reaction tank pad; no new pad is required.
8. Assume maintenance equipment will be relocated into the building addition by the Owner.
9. Assumes the CIP system can be offline for a minimum of 7 days to accommodate the equipment relocation from the mezzanine to new addition floor.
10. Assumes the removal of the existing PEMB wall will not require any new bracing or support to replace existing bracing.
11. Assumes clear, grub & tree removal is by the Owner; incidental to Owner's excavation for the retaining wall.
12. Assumes native materials will be suitable for use as backfill without need to mechanically process. No provisions for screening have been included.
13. GMP pricing excludes special inspection of post installed anchors as required by "Post installed anchors" note #8 on drawing S0.1.
14. The metal building erector and supplier excludes warranty and engineering of the building if tied to the existing structure.
15. Davis Bacon wage determination does not include a metalworker to cover the scope of erecting the building and installation of PEMB panels & accessories. Pricing assumes a composite wage of carpenters and laborers will apply.
16. Excludes import and placement of topsoil (02300).
17. Excludes a geotechnical inspection prior to construction as required by 02300.
18. Pricing excludes all snow removal from the access roads, parking areas and perimeter of the building.
19. Costs to reroute the 12" raw water influent line and demo the existing line have been removed commensurate with the changes to drawing C1.0
20. PALL Water's proposal includes language in their terms and conditions that are unilaterally in their favor including an exclusion for any responsibility for timely deliveries and no liquidated damages. Their terms and conditions are non-negotiable. In the event that PALL Water fails to perform or to provide all required materials/equipment in a timely manner, Moltz's Contract Times shall be extended on a day-for-day basis commensurate with the delays caused by PALL Water.
21. Pricing assumes that the existing sanitary sewer pipe and is PVC.
22. Supplementary Conditions Exclusions:
 - a. SC-5.06.B adds a requirement for "Equipment Breakdown Insurance" however there is no scope of coverage or limits. GMP pricing excludes costs for equipment breakdown insurance and property insurance. Moltz requests that this clause be removed and reverted back to the EJCDC clause.
 - b. SC-5.04.C.3 – requires \$2M for Automobile coverage. Moltz's standard insurance includes a \$1M Automobile policy. Coverage to the \$2M limit will be provided via our \$5M umbrella policy.
 - c. SC-5.07.B.1 – Moltz requests that the following be removed from the replacement paragraph " , but the foregoing shall not apply to liquidated damages Owner may claim as provided in the Agreement".
 - d. SC-6.20.A – these substantial changes in the indemnity agreement are not agreeable with Moltz and we request that this changed paragraph be removed and reverted back to the industry standard clause in the EJCDC document.

- e. SC-16.01 – this paragraph removes the option for mediation, Moltz requests to leave this conflict resolution option in the Agreement by removing the deletion of 16.09 in the Supplementary Conditions.¹⁹⁷
23. Doors and windows are priced as Butler Building's standard materials and may not meet the requirements of the specifications.
 24. The specifications call for the Pre-Engineered Metal Building steel to be painted. In accordance with the team's value engineering discussions, Moltz's GMP pricing provides for the primary steel of the building to be galvanized and all secondary rolled steel to be galvalume.
 25. 02300-3.4.C/D – Moltz excludes all responsibility for settlement of compacted backfill that is placed in accordance with the Contract Documents.
 26. 02300-2.1.B – Rock excavation is not defined. GMP pricing excludes excavation of all materials that cannot be removed with the use of a 40,000 pound excavator.
 27. 02300-2.13.A – Costs for erosion control mat are excluded from Moltz GMP pricing.
 28. 02300-3.11.K – GMP pricing excludes costs to import and place topsoil.
 29. 02370-1.5.B.1 – GMP pricing excludes all costs for dewatering and dewatering permitting; it is anticipated that no dewatering will be required.
 30. Butler Manufacturing is providing an MR24 Standing Seam Roof which is considered to be a higher quality than the materials required by the specifications. Color to be Emerald Bay.

Respectfully,

Handwritten signature of Cole Philips in blue ink. The signature is written in a cursive style with the first name 'COLE' and last name 'PHILIPS' clearly legible.

Cole Philips
Senior Project Manager

SUPPLEMENT TO CERTIFICATE OF INSURANCEDATE
09/26/2018

NAME OF INSURED: Moltz Construction, Inc.

Additional Description of Operations/Remarks from Page 1:Additional Information:

Builders Risk Coverage: Policy #QT6608141P206TIL18

Eff Date: 08/01/18-08/01/19 Insurer E: See Above

\$45,000,000 Any 1 Location Limit; \$5,000,000 Any 1 Location (Frame) Limit;

\$10,000,000 Any 1 Location (Joisted Masonry) Limit; \$40,000,000 Per Disaster Limit

\$1,000,000 Temporary Location/Transit Limit; \$2,500 Deductible; SPC Form

\$10,000,000 Flood/Earthquake Sub Limit; \$25,000 Deductible



Additional Insured – Automatic – Owners, Lessees Or Contractors

| Policy No. | Eff. Date of Pol. | Exp. Date of Pol. | Eff. Date of End. | Producer No. | Add'l. Prem | Return Prem. |
|--------------|-------------------|-------------------|-------------------|--------------|-------------|--------------|
| GLA685120200 | 08/01/2018 | 08/01/2019 | 08/01/2018 | | | |

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured: Moltz Construction, Inc.

Address (including ZIP Code):

P.O. Box 729
Salida, CO 81201

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

A. Section II – Who Is An Insured is amended to include as an additional insured any person or organization whom you are required to add as an additional insured on this policy under a written contract or written agreement. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf,

in the performance of your ongoing operations or "your work" as included in the "products-completed operations hazard", which is the subject of the written contract or written agreement.

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services including:

- a. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

C. The following is added to Paragraph 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit of Section IV -- Commercial General Liability Conditions:

The additional insured must see to it that:

1. We are notified as soon as practicable of an "occurrence" or offense that may result in a claim;
2. We receive written notice of a claim or "suit" as soon as practicable; and
3. A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity. This provision does not apply to insurance on which the additional insured is a Named Insured if the written contract or written agreement requires that this coverage be primary and non-contributory.

D. For the purposes of the coverage provided by this endorsement:

1. The following is added to the Other Insurance Condition of Section IV – **Commercial General Liability Conditions:**

Primary and Noncontributory insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured provided that:

- a. The additional insured is a Named Insured under such other insurance; and
 - b. You are required by written contract or written agreement that this insurance be primary and not seek contribution from any other insurance available to the additional insured.
2. The following paragraph is added to Paragraph 4.b. of the Other Insurance Condition of Section IV – **Commercial General Liability Conditions:**

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by a written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

E. This endorsement does not apply to an additional insured which has been added to this policy by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to that identified additional insured.

F. With respect to the insurance afforded to the additional insureds under this endorsement, the following is added to Section III – Limits Of Insurance:

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the written contract or written agreement referenced in Paragraph A. of this endorsement; or
 2. Available under the applicable Limits of Insurance shown in the Declarations,
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

All other terms and conditions of this policy remain unchanged.

Notice of Award

Date: 02/11/2019

 Project: Town of Crested Butte Water Treatment Plant Improvements Project

Owner: Town of Crested Butte

Owner's Contract No.:

 Contract: Town of Crested Butte Water Treatment Plant Improvements Project

Engineer's Project No.: 1002.2e

Bidder: Moltz Construction Inc.

 Bidder's Address: 8807 County Road 175, P.O. Box 729, Salida CO, 81201

You are notified that your Proposal dated September 20, 2018 for the above Contract has been considered. You are the Successful Proposer and are awarded a Contract for the improvements project at the Town of Crested Butte Water Treatment Plant.

The Work of this Contract includes all necessary labor, supervision, equipment, tools, and materials to construct and install improvements to the Town of Crested Butte Water Treatment Plant (WTP). This includes the purchase and installation of a Pall AP-4 microfiltration membrane skid, coordination with Pall regarding instrumentation and controls including installation and integration of a plant SCADA system and on-skid PLCs, relocation and demolition of existing equipment, replacement of tanks on existing membrane skids, modifications to process piping, construction of an integrated building addition and roof structure, and other structural modifications within the building. Work shall include installation and demolition of all electrical wiring, motor control centers, programmable logic controllers, all process piping, and completion of all associated site work relating to the modifications, as detailed on the Drawings and within the specifications.

The Town, Engineer, and Contractor reviewed the initial Guaranteed Maximum Price (GMP) estimate during successive Construction Manager at Risk (CMAR) and GMP meetings. After consideration of Assumptions, Clarifications, Exceptions, and Value engineering and Changes to the Assumptions, and Contingency, the Lump Sum price of your Construction Services in accordance with the Final GMP Cost Estimate dated 12/27/2018 is two million, two hundred seventy four thousand, six hundred and eighteen Dollars (\$2,274,618)

 Town of Crested Butte

Owner

By:

 Authorized Signature

 Title

 Copy to Engineer
 Copy to Owner

**AGREEMENT FOR PROFESSIONAL SERVICES FOR THE CONSTRUCTION
MANAGEMENT OF THE WATER TREATMENT PLANT IMPROVEMENTS**

This AGREEMENT FOR PROFESSIONAL SERVICES is made this _____ day of _____ 20__ between the TOWN OF CRESTED BUTTE, a Colorado municipal corporation ("Town"), and JVA, INC. ("Contractor").

WHEREAS, the Town desires that Contractor perform construction management services for the Water Treatment Plant Improvements, as an independent contractor, in accordance with the provisions of this Agreement, and more fully described in the scope of services attached as Exhibit A; and

WHEREAS, Contractor desires to perform such duties pursuant to the terms and conditions provided for in this Agreement; and

WHEREAS, the parties hereto desire to set forth certain understandings regarding the services in writing.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

In consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. Scope of Agreement. The Town agrees to retain Contractor to provide the services set forth herein, and as further specified in **Exhibit A**, attached hereto and incorporated herein by reference ("Services"), and Contractor agrees to so serve. Contractor warrants and represents that it has the requisite authority, capacity, experience, and expertise to perform the Services in compliance with the provisions of this Agreement and all applicable laws and agrees to perform the Services on the terms and conditions set forth herein.

2. Consideration. The Town agrees to compensate the Contractor for all fees and expenses, in accordance with the Basis of Payment detailed in **Exhibit A**, hereby incorporated by reference. The Town shall make payment within thirty (30) days of receipt and approval of invoices submitted by Contractor, which invoices shall be submitted to the Town not more frequently than monthly and which shall identify the specific Services performed for which payment is requested.

3. Term and Renewal. This Agreement shall be effective as of the date of its execution by both parties and shall extend until the Agreement is terminated pursuant to Section 10 of this Agreement; provided, however, that to the extent that the term of this Agreement exceeds one fiscal year, the obligations described herein shall be subject to annual appropriation by the Town Council, at its sole discretion.

4. Status. The Contractor is an independent contractor and shall not be considered an employee or agent of the Town for any purpose.

5. Outside Support Services and Sub-Contractor. Any sub-Contractors shall be pre-approved by the Town. A rate sheet for such sub-Contractors shall be provided to the Town.

6. Ownership of Instruments of Service. The Town acknowledges the Contractor's work product, including electronic files, are instruments of professional service. Nevertheless, the final work product prepared under this Agreement shall become the property of the Town upon completion of the services.

7. Standard of Care. The standard of care applicable to the Contractor's services will be the same degree of care, skill, and diligence normally employed by professionals performing the same or similar services. No other warranty, express or implied, is included in this Agreement or in any drawing, specification, or opinion produced pursuant to this Agreement. The Contractor does not guaranty that the documents and products are without error; however, the Contractor will re-perform any services not meeting this standard without additional compensation.

8. Indemnity, Insurance and Governmental Immunity Act. To the extent permitted by law, each party to this Agreement shall hold harmless and indemnify the other party, including the other party's employees, officers, agents, and assigns, from award of damages, to the extent such award of damages arises from the action or inaction of that party's own officers, employees and agents.

Nothing herein shall be interpreted as a waiver of governmental immunity, to which the other parties would otherwise be entitled under C.R.S. §24-10-101, et seq. as amended.

Contractor shall provide proof of general liability insurance to the Town upon execution of this Agreement. A copy of the Contractor's current available insurance coverage and limits is attached as **Exhibit B**.

9. Work By Illegal Aliens Prohibited. Pursuant to Section 8-17.5-101, C.R.S., *et. seq.*, Contractor warrants, represents, acknowledges, and agrees that:

- A. Contractor does not knowingly employ or contract with an illegal alien.
- B. Contractor shall not knowingly employ or contract with an illegal alien to perform works or enter into a contract with a subcontractor that fails to verify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- C. Contractor has participated in or attempted to participate in the basic pilot employment verification program created in Public Law 208, 104th Congress, as

amended, and expanded in Public Law 156, 108th Congress, as amended, administered by the Department of Homeland Security (hereinafter, "E-Verify") in order to verify that Contractor does not employ illegal aliens. If Contractor is not accepted into E-Verify prior to entering into this Agreement, Contractor shall forthwith apply to participate in E-Verify and shall submit to the District written verification of such application within five (5) days of the date of this Agreement. Contractor shall continue to apply to participate in E-Verify, and shall certify such application to the District in writing, every three (3) months until Contractor is accepted or this Agreement is completed, whichever occurs first. This paragraph shall be null and void if E-Verify is discontinued.

D. Contractor shall not use E-Verify procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

E. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall be required to:

(a) notify the subcontractor and the District within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(b) terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to this subparagraph the subcontractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

F. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment ("Department") made in the course of an investigation that the Department is undertaking pursuant to the authority established in subsection 8-17.5-102(5), C.R.S.

G. If Contractor violates this paragraph, the District may terminate this Agreement for breach of contract. If this Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the District arising out of said violation.

10. Termination. The Town or the Contractor may terminate this Agreement at any time by providing a minimum fifteen (15) calendar days' written notice to the other party. If the parties have mutually determined that the work has become infeasible, the parties agree to terminate the Agreement in accordance with this Section. In the event this Agreement is terminated, the Contractor shall be compensated for all work performed to date based on estimate percentage of completion, including the percentage of any and all work items begun but not completed.

11. Agreement Administration and Notice. For purposes of administering this Agreement, the Mayor will represent the Town in carrying out the purposes and intent of this Agreement. Any notices required to be given pursuant to this Agreement shall be delivered as follows:

To the Town: Shea D Earley, Director of Public Works
Town of Crested Butte
P.O. Box 39
507 Maroon Ave.
Crested Butte, CO 81224

Copy to: Barbara Green, Town Attorney
Sullivan Green Seavy
3223 Arapahoe Ave, Ste. 300
Denver, CO 80303

To the Contractor: Leanne Miller, Project Manager
JVA Inc.
817 Colorado Avenue
Suite 301
Glenwood Springs, CO 81601

12. Responsibilities. The Contractor shall be responsible for all damages to persons or property caused by the Contractor, its agents, employees or sub-Contractors, to the extent caused by its negligent acts, errors and omissions hereunder, and shall indemnify and hold harmless the Town from any claims or actions brought against Contractor by reason thereof.

13. Entire Agreement. This Agreement, **along with any addendums and attachments hereto**, constitutes the entire agreement between the parties. The provisions of this Agreement may be amended at any time by the mutual consent of both parties. The parties shall not be bound by any other agreements, either written or oral, except as set forth in this Agreement.

14. Governing Law. The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Venue for any action instituted pursuant to this agreement shall lie in Chaffee County, Colorado.

15. Authority. Each person signing this Agreement, **and any addendums or attachments hereto**, represents and warrants that said person is fully authorized to enter into and execute this Agreement and to bind the party it represents to the terms and conditions hereof.

16. Attorneys' Fees. Should this Agreement become the subject of litigation between the Town and Contractor, the prevailing party shall be entitled to recovery of all actual costs in connection therewith, including but not limited to attorneys' fees and expert witness fees. All rights concerning remedies and/or attorneys' fees shall survive any termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands this _____ day of _____ 20__.

TOWN OF CRESTED BUTTE, COLORADO

By: _____
Town Mayor

ATTEST:

Town Clerk

CONTRACTOR

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing AGREEMENT FOR PROFESSIONAL SERVICES was acknowledged before me this ___ day of _____ 20__ by _____.

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT A



February 6, 2019

Mr. Shea Earley, Public Works Director
Town of Crested Butte
507 Maroon Ave.
Crested Butte, CO 81224

JVA Incorporated
817 Colorado Avenue
Suite 301
Glenwood Springs,
CO 81601
970.404.3100
info@jvajva.com

www.jvajva.com

Reference: Town of Crested Butte Water Treatment Plant Improvements Project Construction
Administration Services – Letter Agreement for Engineering Services

Dear Shea:

JVA is pleased to present this letter agreement for engineering services related to the construction administration for the Town of Crested Butte (Town) Water Treatment Plant (WTP) Improvements Project. JVA completed the design of the WTP Improvement Project on December 31, 2018 and has been working with the Construction Manager at Risk (CMAR) contractor, Moltz Construction (Moltz) on design modifications to reduce costs and increase project value. JVA is currently contracted with the Town to complete submittal reviews for the metal building and Pall membrane system. JVA is very familiar with this project and will work closely with the Town and Contractor through the successful completion of the WTP Improvements Project.

JVA proposes the following scope of work for construction administration and the Drinking Water Revolving Fund (DWRF) Loan administration services for this project.

SCOPE OF SERVICES

The scope of services described below are based on JVA's knowledge of the Project, previous similar projects, and discussions with the Town to date. The following tasks are included in the proposed construction administration services:

1. JVA will review submittals and shop drawing data from the Contractor for conformance with the project drawings and specifications. All submittals will be received, reviewed, and returned to the Contractor electronically with electronic submittal review stamps. JVA will maintain and update the submittal review log.
2. JVA will review monthly pay applications submitted by the Contractor. JVA will review the construction progress and materials stored on-site to the amount of the scheduled value requested in the pay application. If the construction progress and materials stored on-site do not generally match the requested scheduled value, the pay application will be amended by the Contractor. Once reviewed and accepted, JVA will submit the pay application to the Town recommending payment.
3. JVA will assist the Town with the DWRF Loan and compliance with the loan requirements. We will review submittals for compliance with American-Iron and Steel (AIS), review pay applications for compliance with Davis-Bacon and subcontractors for Debarment. JVA will also perform Davis Bacon wage interviews with general contractors and subcontractors.
4. JVA will respond to contractor Requests for Information (RFIs) and process any change orders. JVA assumes change order changes will be minor modifications and/or clarifications. If significant design changes are required due to an Owner requested change order, JVA will negotiate a separate fee with the Town.
5. JVA will review electronic O&M manuals provided by the Contractor for the treatment process equipment, electrical, mechanical and miscellaneous items. An electronic copy (PDF) and one



hard copy will be produced and provided to the Town. All start-up forms and testing checklists will be included in applicable O&M manuals.

6. JVA will attend weekly construction meetings and site visits as needed for successful completion of the project. A construction duration of nine months is estimated, with a total of 57 site visits anticipated, including construction observation, start-up, and project closeout. The visits are anticipated for concrete reinforcement inspection, equipment installation and startup, chemical and process piping, and construction meetings.
7. JVA will perform construction observation for concrete reinforcement, concrete placement, excavation, pipe bedding, pipe placement, and backfill. The Contractor will be responsible for retaining a qualified third party laboratory for special inspections (concrete and soils testing). Third party services will be paid for and coordinated by the Contractor.
8. JVA will conduct punch lists for Substantial Completion and Final Completion. We will also assist the Town with project closeout.
9. Following project completion, JVA will prepare record drawings of the “as-built conditions” of the WTP Expansion Project based on Contractor red-lined drawings. Two (2) 11” x 17” hard copies and one (1) 24” x 36” hard copy along with electronic PDF and AutoCAD drawings will be submitted to the Town.

BASIS OF PAYMENT

The basis of payment for the Construction Administration will be on a time and material basis, not to exceed \$139,400. JVA will submit monthly billings based on the time expended at the current hourly rates, plus travel costs, and reimbursable expenses. All expenses have been included in the total fee estimate above. A complete breakdown of hours required to complete the scope associated with this project is provided in the attached work breakdown structure.

These fees are based upon the above assumptions and discussions to date. Services resulting from significant changes to the project scope may require additional services. These estimated fees do not include special inspections, concrete, soils testing, or construction surveying.

If you are in agreement with the scope in this letter, please indicate by signing below and returning a copy by email as our authorization to proceed. All of us look forward to continuing to work with the Town of Crested Butte on this important project.

Sincerely,
JVA, INCORPORATED

By: 
Leanne Miller, P.E.
Project Manager

Accepted by:
Town of Crested Butte

 2/14/2019
Title Date

Enclosure:
Work Breakdown Structure
2019 Environmental Hourly Rates

CC: David Jelinek

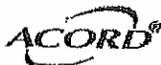


Environmental Engineering 2019 Hourly Billing Rate Schedule

| POSITION | RATE |
|-------------------------------|---------------|
| Principal | \$168 – \$200 |
| Senior Project Manager | \$152 – \$164 |
| Project Manager | \$132 – \$136 |
| Senior Project Engineer | \$128 |
| Project Engineer | \$112 – \$116 |
| Senior Designer | \$124 |
| Design Engineer/ CAD Designer | \$108 |
| Administrative Support | \$100 – \$132 |

Auto travel shall be reimbursed at 58¢ per mile. Costs for express delivery, airfare, car rental, meals, lodging, printing, copying, long distance calls and shipping shall be reimbursed at 1.1 times direct cost.

Exhibit B



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/14/2019

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
USI Colorado, LLC Prof Liab
P.O. Box 7050
Englewood CO 80155

CONTACT NAME:
PHONE (A/C, No., Ext): 800-873-8500 **FAX (A/C, No.):**
E-MAIL:
ADDRESS:

INSURED JVA INC
JVA, Inc.
1319 Spruce Street
Boulder CO 80302

| INSURER(S) AFFORDING COVERAGE | NAIC # |
|---|--------|
| INSURER A: Travelers Indemnity Company | 25658 |
| INSURER B: Travelers Property Cas. Co. of America | 25674 |
| INSURER C: Pinnacle Assurance Company | 41190 |
| INSURER D: XL Specialty Insurance Company | 37885 |
| INSURER E: | |
| INSURER F: | |

COVERAGES

CERTIFICATE NUMBER: 900330909

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED 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

| INBR LTR | TYPE OF INSURANCE | ADD'L SUBR INSD WVR | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS | |
|----------|--|---------------------|---------------|-------------------------|-------------------------|----------|--|
| A | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PER SUBJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER | Y | Y | 8809H706548 | 5/1/2018 | 5/1/2019 | EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMP/OP AGG \$4,000,000 \$ |
| B | <input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY | Y | Y | BA1688L578 | 5/1/2018 | 5/1/2019 | COMBINED SINGLE LIMIT (Per occurrence) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ |
| A | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10,000 | Y | Y | GUP6G343469 | 5/1/2018 | 5/1/2019 | EACH OCCURRENCE \$8,000,000 AGGREGATE \$8,000,000 \$ |
| G | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N <input type="checkbox"/> N/A | Y | N/A | 4131403 | 5/1/2018 | 5/1/2019 | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER EL EACH ACCIDENT \$1,000,000 EL DISEASE - EA EMPLOYEE \$1,000,000 EL DISEASE - POLICY LIMIT \$1,000,000 |
| D | Professional Liability Claims Made | Y | | DPR9924214 | 5/1/2018 | 5/1/2019 | Per Claim \$5,000,000 Annual Aggregate \$5,000,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 As required by written contract or written agreement, the following provisions apply subject to the policy terms, conditions, limitations and exclusions: The Certificate holder and owner are included as Automatic Additional Insured's for ongoing and completed operations under General Liability; Designated Insured under Automobile Liability; and Additional Insureds under Umbrella / Excess Liability but only with respect to liability arising out of the Named Insured work performed on behalf of the certificate holder and owner. The General Liability, Automobile Liability, Umbrella/Excess insurance applies on a primary and non contributory basis. A Blanket Waiver of Subrogation applies for General Liability, Automobile Liability, Umbrella/Excess Liability and Workers Compensation. The Umbrella / Excess Liability policy provides excess coverage over the General Liability, Automobile Liability and Employers Liability.

Please note that Additional Insured status does not apply to Professional Liability or Workers' Compensation.

CERTIFICATE HOLDER

CANCELLATION

Town of Crested Butte
P.O. Box 39
Crested Butte CO 81224

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



Staff Report

February 19, 2019

To: Mayor and Town Council

Thru: Dara MacDonald, Town Manager

From: Shea D Earley, Director of Public Works

Subject: **Resolution No. 3, Series 2019, A Resolution of the Crested Butte Town Council Accepting Construction of the Wastewater Treatment Plant Upgrades Performed by Integrated Water Services, Inc.**

Attachments: Resolution No. 3, Series 2019

Summary: As per the requirements of the State Revolving Fund (SRF) and the Colorado Water Resources and Power Development Authority (CWRPDA), the Town is required to pass a resolution confirming the completion of work for the Wastewater Treatment Facility Upgrades, performed by Integrated Water Services, Inc. (Contractor). Along with a resolution, the Town is also required to provide a 30 day public notice period. Once the resolution and public notice period are complete and the appropriate documentation has been provided to SRF and CWRPDA, the Finance Department will issue final payment, which will occur on March 4th, 2019.

Previous Council Action:

- Execution of Construction Agreement with the Contractor to perform the Wastewater Treatment Plant Upgrades (April 4th, 2017)
- Ordinance NO 4 Series 2017 authorizing the loan and execution of the loan agreement with CWRPDA for \$2,500,000.

Recommendation: Staff recommends that the Council approve Resolution No. 3, Series 2019, a Resolution of the Town Council Accepting Construction of the Wastewater Treatment Plant Upgrades Performed by Integrated Water Services, Inc.

Proposed Motion: I move to approve Resolution No. 3, Series 2019 as amended.

RESOLUTION NO. 3

SERIES 2019

**A RESOLUTION OF THE CRESTED BUTTE TOWN COUNCIL ACCEPTING
CONSTRUCTION OF THE WASTEWATER TREATMENT PLANT UPGRADES
PERFORMED BY INTEGRATED WATER SERVICES, INC.**

WHEREAS, the Town of Crested Butte entered into a Construction Agreement with Integrated Water Services, Inc. dated April 4, 2017 for upgrades to the Wastewater System; and

WHEREAS, Colorado Water Resources and Power Development Authority is requesting confirmation from the Town Council that the work required by the Construction Agreement has been completed; and

WHEREAS, the Town staff has inspected the work and determined that it is in accordance with the Construction Agreement and the approved plans and specifications.

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

The required work has been completed in accordance with the Construction Agreement and the approved plan and specifications and is hereby accepted.

INTRODUCED, READ, AND ADOPTED BY THE TOWN COUNCIL THIS 19th DAY OF FEBRUARY, 2019.

TOWN OF CRESTED BUTTE, COLORADO

By: _____
Jim Schmidt, Mayor

ATTEST:

Lynelle Stanford, Town Clerk

TO: Town Council

FROM: Barbara Green and Michael Yerman

DATE: February 19, 2019

RE: Update on Annexation Process Slate River

This memo summarizes the process and timeline for the Slate River Annexation.

Background

Based on the need for Town water and sewer service to a development outside the Town limits, Cypress and the Town entered into a Pre-Annexation Agreement, an Amended Pre-Annexation Agreement, and a Second Amendment to the Pre-Annexation Agreement that govern the terms and conditions of the extension of Town water and sewer services.

The County has approved a Major Subdivision for 23 residential lots located on the east side of the Slate River on what is referred to as the East Parcel. As part of the Pre-Annexation Agreements, Cypress will convey to the Town six lots on what is referred to as the West Parcel. Cypress has retained a portion of the West Parcel which will be developed into six lots. The Town is responsible for the annexation, subdivision, and zoning applications necessary to develop the West Parcel.

Annexation Process

The Chapter 15 of the Town Code and the Colorado Municipal Annexation Act, C.R.S. § 31-12-101, *et seq.* govern the timeline and process for annexation. For some requirements, there is a conflict between the Town Code and the Annexation Act. The doctrine of preemption dictates that when there is a conflict between a municipal requirement and state law, the state law will control for matters of statewide concern, and the municipal requirements will be void. There is no case law that explains which sections of the Annexation Act are “matters of statewide concern,” but to be safe, the Town’s annexation process will follow the Annexation Act whenever there is a conflict between the Code and the Act.

1. **Council approval of Concept Annexation Plan.** Council approves a Concept Annexation Plan prior to submittal of a formal annexation petition. CBMC Sec. 15-1-50(3)(b). (Council has approved the Concept Annexation Plan for Slate River.)
2. **Applicant files formal annexation petition.** The contents of the Annexation Petition are controlled by the Annexation Act, C.R.S. § 31-12- 107(1)(c-d).
 - a. The Town Code also requires that the petition be accompanied by a sketch plan and preliminary plan unless that requirement is waived. CBMC Sec. 15-1-60(a). These Town

February 19, 2019

RE: Cypress Annexation

Page 2

Code requirements, and the requirements set forth at CBMC 15-1-60(b) (preconditions to setting the annexation hearing which include approval of the sketch plan, and submittal of the preliminary subdivision plan among other requirements) potentially conflict with the Annexation Act and will not be required prior to the setting of the annexation hearing.¹

3. **Finding of Substantial Compliance and Setting of Hearing.** Council adopts a resolution finding the petition in substantial compliance with the Annexation Act, and sets the date of annexation hearing to determine if the proposed annexation complies with section 30 of article II of the state constitution and C.R.S. 31-12-104 and 31-12-105. See C.R.S. 31-12-108(1).

a. The annexation hearing must be set no less than *30 nor more than 60 days* from the effective date of the resolution. C.R.S. 31-12-108(1).

4. **Notice.** The clerk shall give notice as follows: A copy of the resolution or the petition as filed (exclusive of the signatures) together with a notice that, on the given date and at the given time and place set by the governing body, the governing body shall hold a hearing upon said resolution of the annexing municipality or upon the petition for the purpose of determining and finding whether the area proposed to be annexed meets the applicable requirements of section 30 of article II of the state constitution and C.R.S. 31-12-104 and 31-12-105 and is considered eligible for annexation. See C.R.S. 31-12-108(2).

a. Notice must be published *once a week for four successive weeks* in the paper. The first publication of such notice shall be at least thirty days prior to the date of the hearing. A copy of the published notice, together with a copy of the resolution and petition must also be sent by registered mail by the clerk to the board of county commissioners and to the county attorney of the county wherein the territory is located and to any special district or school district having territory within the area to be annexed *at least 25 days prior to the date* of the hearing.

5. **Annexation Impact Report.** *At least 25 days before the hearing*, unless waived by the BOCC, Town must file an annexation impact report pursuant to C.R.S. 31-12-108.

6. **Three Mile Plan.** *Before final adoption of annexation ordinance* within the area three miles outside present municipal boundaries, Town must have in place a plan for that area, in the nature of a comprehensive or master plan. C.R.S. 31-12-113(2).

¹ C.R.S. 31-12-115: “The annexing municipality may not institute the procedure [outlined in state statutes or municipal charter to make land subject to zoning] nor [outlined in its subdivision regulations to subdivide land in the area proposed to be annexed] at any time after a petition for annexation or a petition for an annexation election has been found to be valid in accordance with the provisions of Section 31-12-107.”

February 19, 2019

RE: Cypress Annexation

Page 3

7. **Annexation Hearing.** The procedure for the Annexation Hearing is governed by CBMC Sec. 15-1-80(b) and (c).²
- a. Adopt ordinance annexing property.
 - b. Adopts a resolution adopting a final annexation agreement.
 - c. Adopts ordinance zoning the property.
 - d. Council convenes as Planning Commission and approves final subdivision plan.
8. **Filing requirements.** Must be completed before annexation is effective. Original Annexation Ordinance and one copy of the annexation map filed in the office of the Town Clerk. C.R.S. § 31-12-113(2)(a)(I). Three certified copies of the annexation ordinance and map, containing a legal description, filed for recording with the County Clerk and Recorder. C.R.S. § 31-12-113(2)(a)(II)(A). Effective date of annexation is the effective date of annexing ordinance as long as above filing conditions are met. C.R.S. § 31-12-113(1).

Slate River Annexation Timeline

March 4 Substantial Compliance Resolution setting the public hearing April 15th

March 5 Staff to send out land use applications for review agency comments.

March 26 BOZAR Hearing

April 8 Sketch Plan review by Planning Commission (Town Council sitting as Planning Commission.)

April 15th Public hearing on Annexation – Hearing may be continued as necessary until annexation agreement, subdivision, and zoning approvals are ready.

² In order for the zoning and subdivision processes to “catch up” with the annexation process, the Council may continue the annexation hearing as long as one hour of testimony is taken.

March 4, 2019**Work Session**

- 1) Red Lady Sidewalk
- 2) Center for the Arts
- 3) Update from Roland Mason

Interviews for Council Appointment**Appointment of Council Member****Consent Agenda**

Letter to the USFS on Comments to the Wild and Scenic Rivers Eligibility Report.

New Business

- 1) Purchase Contract with Bywater for Town's Block 77 Duplex
- 2) Ordinance - Amending Subdivision Regulations
- 3) Resolution of Substantial Compliance and Setting a Hearing Date – Slate River Annexation
- 4) Ordinance - Prohibition on Underage Possession of Tobacco Products Including Vaping Devices
- 5) Memorandum of Understanding Between the Town of Crested Butte and the Crested Butte Fire Protection District and Crested Butte Search and Rescue Regarding Transfer and Use of Town Parcel 1, Slate River Annexation.
- 6) Council Member Appointments to Boards and Committees
- 7) Ordinance - Letter from GCSAPP
- 8) Ordinance - Amending IRC Regarding Eaves
- 9) Social Media Policy

Executive Session

Land Trust

March 18, 2019**Work Session**

- 1) GPLI Update
- 2) Creative District Transition Proposal

Old Business

Brush Creek

New Business

- 1) Lease #3 – 1st Reading
- 2) Year-end Update from Chamber Director Ashley UpChurch.
- 3) Presentation of BOZAR Project of the Year.

April 8, 2019

Council meets as Planning Commission to Review Sketch Plan Application for Slate River Annexation

April 15, 2018

Work Session

- 1) Coal Creek
- 2) Slate River Working Group

Future Items

- Quarterly Financial Reports
- Heights Open Space Plat Note and Covenants
- DOLA Update

**Agenda
Design Review Committee
Monday
February 11, 2019**

- 3:00 Consideration of the application of **Town of Crested Butte in conjunction with Bywater LLC** to construct a duplex and a cold accessory building to be located at 828/830 Gothic Avenue, Block 76, Lot 1 in the R2A zone. (Barney/Wisian)
- Architectural approval is required.
- 4:00 Consideration of the application of **Cynthia Ann Ervin** to demolish a portion of the building, rehabilitate and construct additions to the historic single family residence and construct a new accessory building located at 510 Third Street, Block 34, South half of Lot 15 and all of Lot 16 in the R1C zone. (Cowherd)
- Architectural approval is required.
- Permission to demolish a portion of a historic home is requested.
- A conditional use permit for a non-residential, heated and/or plumbed accessory building in the R1C zone.
- A conditional waiver for a non-conforming aspect with respect to the South side yard setback is required.
-A recommendation to the Town Council for a Revocable License Agreement regarding the front (west) porch roof is requested.

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

AGENDA

Call to Order

Roll Call

Approval of the February 5, 2019 Regular Town Council Meeting Minutes

Reports

- Town Manager's Report
- Department Head Reports
 - Community Development
 - Finance
 - Police Department
 - Public Works
- Town Council Reports
- Downtown Development Authority Report - Gary Keiser, Chairman
- Crested Butte / Mt. Crested Butte Chamber of Commerce 2018 Year End Report – Ashley UpChurch, Director

CORRESPONDENCE

OLD BUSINESS-

Discussion and Possible Consideration of Amending the Amended Affordable Housing Deed Restriction for the Homestead Subdivision

Discussion and Possible Consideration of an Extension to the Contract Deadlines to Buy, Sell and Develop Deed Restricted Housing in the Homestead Subdivision with Homestead Housing LLC

NEW BUSINESS –

Discussion and Possible Consideration of the 2019 Mt. Crested Butte Town Council Strategic Plan

OTHER BUSINESS –

PUBLIC COMMENT – *Citizens may make comments on items not scheduled on the agenda. Those commenting should state their name and physical address for the record. Comments are limited to five minutes.*

ADJOURN

If you require any special accommodations in order to attend this meeting, please call the Town Hall at 349-6632 at least 48 hours in advance. Public comment on these agenda items is encouraged.

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

FEBRUARY 12, 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. Approval of the January 22, 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 no 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 January 22, 2019 Regular Session meeting.

Estimated time: 2 minutes

B. Excuse Councilor Logan from the January 22, 2019 meeting.

Background: Councilors are allowed to be formally excused from a Regular, Special or Reorganization Session meeting by a quorum vote of the City Council per Section 4.4 (F) of the Gunnison Municipal Home Rule Charter.

Staff contact: City Clerk Erica Boucher

Action Requested of Council: A motion, second and vote to excuse Councilor Logan from the January 22, 2019 Regular Session meeting.

Estimated time: 2 minutes

C. Ordinance No. 1, Series 2019, Second Reading: An Ordinance of the City Council of the City of Gunnison amending Sections: 2.3 Designated Housing Types; 2.4 Principal Use Table; 2.6 Base Zone District Dimensional

Standards; 3.3 Residential Use Standards; and 4.4 Off-Street Parking and Loading within the *City of Gunnison Land Development Code*.

Background: As part of Council's Strategic Plan priorities of Livable and Affordable Housing and Economic Prosperity, the text amendment is based off recommendations within the *Gunnison Vibrancy Initiative Report* and the *Land Development Code Diagnosis*.

Staff contact: Interim Community Development Director Andie Ruggera

Action Requested of Council: Introduce, ready by title only, motion, second and vote to pass and adopt Ordinance No. 1, Series 2019 on second reading.

Estimated time: 5 minutes

D. Small Business Development Center (SBDC) Request.

Background: Paula Swenson, Gunnison Country Chamber of Commerce Board President is requesting a re-allocation of \$5,000.00 of the Chamber of Commerce allocation to utilize in hosting the regional office of the SBDC.

Community contact: Paula Swenson

Action Requested of Council: A motion, second, and vote to pass to reallocate \$5,000.00 of the Chamber of Commerce funds to host the SBDC regional office.

Estimated time: 5 minutes

E. ICELab Discussion and Update.

Background: The management of the ICELab is transitioning from Western to the Gunnison Crested Butte Tourism Association.

Community contact: John Norton, Executive Director of the ICELab

Action Requested of Council: No action is requested at this time.

Estimated time: 20 minutes

F. Gunnison Arts Center Discussion

Background: Report and discussion concerning City support of the Gunnison Arts Center.

Community contact: Gunnison Arts Center Director Carlie Kenton

Action Requested of Council: No action is requested at this time.

Estimated time: 15 minutes

G. Colorado Parks and Wildlife Bears and Trash Presentation and Discussion

Background: Per Council's request CPW's J Wenum is here to review precautions when dealing with bears that come into town seeking food and wreaking havoc with the trash.

Community contact: J Wenum Colorado Parks and Wildlife

Action Requested of Council: No action is requested at this time.

Estimated time: 20 minutes

H. Trash Discussion.

Background: Public Works will provide a presentation on challenges and issues with garbage and recycling pick up and provide some ideas on how to address those issues.

Staff contact: Public Works Director David Gardner

Action Requested of Council: No action is requested at this time.

Estimated time: 25 minutes

IV. Reports:

Police Department Semi-Annual Report – Police Chief Keith Robinson

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

V. 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 SPECIAL MEETING:

- 8:30 • Call to Order
- 8:30 • Gunnison County Boards and Commissions Appointments
 - Board of Adjustments & Board of Appeals
 - Environmental Health Board
 - Extension Advisory Committee
 - Historical Preservation Commission
 - Housing Authority
 - Land Preservation Board
 - Library Board of Trustees
 - Planning Commission
 - Region 10
 - Sage Grouse Strategic Committee
 - Sustainable Tourism & Outdoor Recreation
 - Tourism Association Board
 - Veterans Service Officer
- 8:45 • Rescind Motion of 12/20/11 Authorizing Waunita Hot Springs Ranch, Inc. to Maintain a Private Right of Action to Enforce the Gunnison County Land Use Resolution Against Mile 200, LLC and Leigh Marie, LLC
- 8:55 • BOCC Letter of Support; Colorado Outdoor Recreation & Economy (CORE) Act
- 9:00 • Adjourn

GUNNISON COUNTY BOARD OF COMMISSIONERS WORK SESSION:

- 9:00 • Gunnison-Crested Butte Tourism Association Update
- 9:20 • Colorado River Water Conservation District Update
- 9:35 • HB 1177 Roundtable Report
- 9:45 • CSU Extension Update
- 10:05 • Fairgrounds Master Planning Update
- 10:20 • Discussion; Somerset Issues & Concerns
- 11:05 • 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 COUNTY COMMISSIONERS REGULAR MEETING:

- 8:30
- Call to Order
 - Agenda Review
 - Minutes Approval:
 1. 1/8/19 Regular Meeting
 2. 1/15/19 Special 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. Appointment; Gunnison/Hinsdale Combined Emergency Telephone Service Authority Board (911 Board); Scott Morrill, Gunnison County Emergency Manager
 2. Acknowledgment of County Manager's Signature; Professional Services Agreement; SGM
 3. Acknowledgment of County Manager's Signature; 2019 Services Agreement; Sterling Valley Systems Inc. dba Inntopia
 4. Acknowledgment of County Manager's Signature; Personal Services Agreement Amendment; Susan Hansen; Facilitation Services; North Fork Coal Mine Methane Working Group
 5. Request for Alternate Protest Period; Gunnison County Assessor's Office
 6. Letter of Support; North Fork EMS Ambulances
 7. Ratification of BOCC Correspondence; Proposed Legislation to Protect Water Quality in the Context of Hard Rock Mining
 8. Second Amendment; Contract for Professional Services; Ben White Architecture, LLC
 9. Third Amendment; Contract Agreement; Christopher Klein Construction, Inc.
 10. Liquor License Renewals; Crested Butte LLC dba Paradise Restaurant, Crested Butte South General Store dba CB South Country Store & ND Enterprises LLC dba Crested Butte Country Club
 11. Services Contract; Project Management and Engineering for Multi-Jurisdictional Asphalt Project; SGM, Gunnison County, City of Gunnison, Town of Crested Butte, Town of Mt Crested Butte & Crested Butte South
 12. Agreement; Care Coordination; Rocky Mountain Health Plan
 13. Agreements; Core Services & Cost Containment; ELAP
 14. Addendum; Metric-Based Negotiation Services Authorization; ELAP
 - Scheduling
- 8:40
- County Manager's Report
- 8:50
- Deputy County Manager's Report
 1. Discussion; Request for Late Opening of Cottonwood Pass
 2. Discussion; Fairgrounds Parking Lot Rental; Wright Amusements
- 9:15
- Grant Application; Colorado Water Plan Grant; Shady Island River Park Project; \$340,000
- 9:20
- Contractor Agreement; Gunnison-Crested Butte Tourism Association Board; REDI Grant

- 9:25
- Consideration of Resolution; A Resolution authorizing the financing of a portion of the acquisition price of certain real property and, in connection therewith, authorizing the leasing of certain real property and the execution and delivery by the county of a site lease, a lease purchase agreement, and other documents and matters relating to certain certificates and participation, series 2019; setting forth certain parameters and restrictions with respect to the financing; authorizing officials of the County to take all action necessary to carry out the transactions contemplated hereby; ratifying actions previously taken; and providing for other matters related thereto
- 9:30
- John Biro, Lake Irwin Coalition v. JW Smith, et al.; 2017CV030060; Joinder of the Board of County Commissioners of the County of Gunnison, Colorado; Possible Executive Session Pursuant to Colo. Rev. Stat. §24-6-402(4)(b) Conference with the County Attorney and Deputy County Attorney to receive legal advice; and Colo. Rev. Stat. §24-6-402(4)(e)(I) determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations and instructing negotiators
 - **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.