

ORDINANCE NO. 25

SERIES 2011

**AN ORDINANCE AUTHORIZING THE EXECUTION OF
REFUSE AND RECYCLING COLLECTION AND
DISPOSAL AGREEMENT WITH WASTE MANAGEMENT
OF COLORADO, INC.**

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

WHEREAS, the Town presently contracts with Waste Management of Colorado, Inc. ("**WMI**") for WMI's provision of refuse and recycling collection and disposal services for residential dwellings located in Crested Butte;

WHEREAS, the contract for WMI's provisions of such services expired on December 31, 2011;

WHEREAS, the Town Council has determined that it is appropriate that the Town enter into a new contract for WMI's provision of such services to the Town, the term of which shall be for as few as one (1), and as many as ten (10), consecutive calendar year periods;

WHEREAS, the fees charged the Town by WMI for such services are as set forth in that certain Refuse and Recycling Collection and Disposal Agreement to be entered into by and between the Town and WMI;

WHEREAS, the fees charged the Town for such services are as set forth in the Refuse and Recycling Collection and Disposal Agreement; and

WHEREAS, the Town Council finds that it is in the best interest or the health, safety and general welfare of the Town, its residents and visitors to enter into the Refuse and Recycling Collection and Disposal Agreement as set forth herein below.

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

Section 1. **Approving the Refuse and Recycling Collection and Disposal Agreement with WMI.** The Town Council hereby approves the Refuse and Recycling Collection and Disposal Agreement attached hereto as **Appendix "A"** ("**Agreement**"). The Mayor, Mayor Pro Tem and Town Clerk are hereby authorized to execute the Agreement in substantially the same form as attached hereto.

Section 2. **Severability.** If any section, sentence, clause, phrase, word or other provision of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such

holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this ordinance, or the validity of this ordinance as an entirety, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

Section 3. Savings Clause. Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision thereof that is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 19th DAY OF DECEMBER, 2011.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 3rd DAY OF JANUARY, 2012.

TOWN OF CRESTED BUTTE, COLORADO

By: 
Aaron J. Huckstep, Mayor

ATTEST:

Eileen Hughes, Town Clerk

[SEAL]



REFUSE AND RECYCLING COLLECTION AND DISPOSAL AGREEMENT

THIS REFUSE AND RECYCLING COLLECTION AND DISPOSAL AGREEMENT ("**Agreement**"), made this 3rd day of January, 2012, with an effective date of January 1, 2012 ("**Effective Date**"), is entered into by and between the Town of Crested Butte, Colorado, a Colorado home rule municipality, hereinafter referred to as the "**Town**," and Waste Management of Colorado, Inc., a Colorado corporation, hereinafter referred to as "**WMI**," and is based on the following conditions:

WITNESSETH:

WHEREAS, the Town, in accordance with Chapter 13, Article 5 of the Crested Butte Municipal Code ("**Code**"), addresses the collection of residential trash, refuse and rubbish and establishes standards, scheduling and the payment of fees for said collections;

WHEREAS, the Town desires that the collection and disposal of said trash, refuse, rubbish and certain recyclables be contracted to a single professional trash processing company that is adequately staffed, equipped, insured, licensed and certified to handle said collections and disposal in a regular, timely, safe and efficient manner with a minimum amount of disruption to the peace and tranquility of Crested Butte;

WHEREAS, the Town desires to have said collection and disposal handled in a fiscally responsible manner that minimizes the cost to residents and provides stable and manageable projections of cost increases over time;

WHEREAS, WMI desires to provide certain trash, refuse, rubbish and recyclables collections and disposal, and be the single professional processing source for such collection and disposal, WMI being adequately staffed, equipped, insured, licensed and certified to handle said collection and disposal in a regular, timely, safe and efficient manner with a minimum amount of disruption to the peace and tranquility of Crested Butte; and

WHEREAS, WMI can handle the collection, disposal and recycling of said trash, refuse, rubbish and recyclables in a fiscally responsible manner that minimizes the cost to residents and provides stable and manageable projections of cost increases over time.

NOW THEREFORE, in consideration of the mutual covenants, conditions, requirements and obligations set forth herein, the Town and WMI agree as follows:

AGREEMENT:

1. SCOPE OF SERVICES

WMI shall collect, process and dispose of, at least once each calendar week, all trash, refuse, rubbish and certain recyclables deposited curbside for collection by the owners and/or inhabitants of each residential dwelling and collect, process and dispose of the contents of all residential trash containers and dumpsters within Crested Butte identified by the Town as

contemplated in Section 3(A) hereof. Title to all trash, refuse and rubbish and all recyclables shall be vested in WMI upon collection at curbside.

2. **TERM; TERMINATION.**

(A) The "length of this Agreement" shall be five (5) consecutive one (1) year terms (each a "**Term**"). The first Term shall commence on January 1, 2012. Each subsequent Term, if any as described hereinafter, shall commence on January 1 of the subsequent calendar year. This Agreement shall automatically expire at 12:00 a.m. midnight, MT on December 31 of each calendar year, unless the Town, at its option, appropriates, during the preceding calendar year, funds sufficient to pay the compensation due WMI under this Agreement for the subsequent Term. If funds are appropriated during the preceding calendar year to compensate WMI during the subsequent Term, the Agreement will be automatically renewed through the following December 31. Such appropriation shall be required each calendar year for the subsequent Term during the length of this Agreement.

(B) At the option of the Town, such option to be exercised by the Town giving written notice to WMI of its election to exercise said option thirty (30) days prior to the expiration of the final Term as described above, the length of this Agreement may be extended for up to three (3) additional consecutive one (1) year terms (each an "**Initial Renewal Term**"). In addition, upon the expiration of the third Initial Renewal Term, the Town may again, at its option exercised in the same manner as provided above, extend the length of the Agreement two (2) additional one (1) year terms (each a "**Final Renewal Term**"; together with each Initial Renewal Term, collectively the "**Renewal Terms**"). Each of the Renewal Terms shall expire or automatically renew, if at all, in the same fashion as each of the Terms as described above.

(C) The terms of this Agreement shall apply equally during any Term or Renewal Term.

(D) Each of the following events shall constitute a "default" under this Agreement and shall be considered a material breach of this Agreement, and shall allow a party, as applicable, to seek the remedies under this Agreement: (a) the Town's failure to timely pay any undisputed amount due to WMI in accordance with this Agreement which is not cured within thirty (30) days following notice of said failure; (b) a material breach of any representation or warranty under this Agreement by either party, provided that such failure is not cured within the time frames, if any, set forth in this Agreement or within thirty (30) days of receipt of notice of said breach if no specific time to cure is specified; and (c) failure of a party to timely observe or perform any other material covenant, agreement, obligation, term or condition required to be observed or performed under this Agreement which is not cured within thirty (30) days following receipt of written notice of such failure. Upon the occurrence of a default by the Town, WMI may, at its option, elect to recover actual amounts owed by the Town to WMI accruing on or before the date of termination, or terminate this Agreement and recover actual damages due to the default of Town. Upon the occurrence of a default of WMI, the Town shall have one or more of the following remedies (a) recover damages due to the default of WMI, (b) terminate this Agreement, and/or (c) receive a refund in connection with any faulty performance of WMI under this Agreement. In no event shall WMI be entitled to damages for lost profits,

lost opportunity, lost income or consequential damages caused by the Town's termination of this Agreement.

3. **COMPENSATION.**

(A) In exchange for WMI's performance of the services contemplated under this Agreement, the Town shall pay WMI \$18.52 per calendar month per residential "dwelling," as such term is defined in Chapter 13, Article 5 of the Code, within the Town limits, commencing on January 1, 2012. The number of residential dwellings served hereunder shall be the number of residential dwellings provided by the Town to WMI, as may be amended from time to time by the Town. In this regard, WMI acknowledges and agrees that certain residential dwellings shall have the right to opt out of receiving trash, refuse, rubbish and recyclables curbside collection services provided by WMI as contemplated in this Agreement pursuant to Section 13-5-20 et seq. of the Code. Notwithstanding anything in this Agreement, there shall be no minimum commitment of residential dwellings served pursuant to this Agreement.

(B) The compensation due to WMI for each Term and any Renewal Term shall be increased (but not decreased) on each anniversary date of the Effective Date by the percentage increase in the Consumer Price Index - Denver for the one (1)-year period ending one (1) month prior to the then applicable anniversary date of the Effective Date, but in no event shall any annual increase exceed three percent (3%) per annum.

(C) Payments to WMI by the Town shall be adjusted as new residential dwellings are added to or removed from the Town's residential dwelling list. Said adjustments shall commence on the first day of the calendar month following issuance of a certificate of occupancy or other such circumstance that adds or subtracts from the number of residential dwellings in the Town limits.

(D) If the owner or occupant of a dwelling within the Town frequently deposits for collection accumulations of refuse substantially in excess of three (3) 32 gallon containers, WMI may separately bill each residential dwelling no more than five dollars (\$5.00) for each 32 gallon container of refuse, or the equivalent thereof, which is placed for collection in excess of those quantities.

(E) If at any time the fees paid by WMI for disposal of refuse collected under this Agreement increase by more than ten percent (10%), the Town and WMI may renegotiate the compensation paid to WMI and the payment schedule herein.

(F) On the commencement date of each Term or Renewal Term, WMI shall submit a written report to the Town Manager documenting the fees paid by WMI for WMI's trash, refuse, rubbish and recyclables collections and disposal provided under this Agreement.

(G) WMI agrees to provide seven (7) WMI Solar Compactor Kiosk units (a "**Kiosk unit**": consists of a compacting trash unit and a non-compacting recycling unit) at no cost or expense to the Town. The Kiosk units will remain the property of WMI and will be imprinted

with WMI branding. WMI shall keep such Kiosk units in good working condition and repair. All maintenance and repair on the Kiosk units shall be at WMI's sole cost and expense. Should the Town wish to have a custom wrap, such an addition/change would require additional considerations, such as production cost or a possible contract extension in lieu of additional costs.

(H) WMI agrees to provide, at no cost to the Town, one (1) three-yard dumpster to be placed behind the Crested Butte Visitors' Center, 601 Elk Avenue, Crested Butte, Colorado 81224 from June through to September during the Term and any Renewal Term, to be serviced once per week. Any additional service, if needed and requested by the Town, will be charged to the Town at \$50.00 per haul.

(I) WMI shall make available and provide as requested by the occupants of any residential dwelling, at such occupants' cost and expense, wild-life resistant refuse containers and wild-life resistant dumpsters so that such occupants may comply with the requirements of Section 7-5-510 et seq. of the Code.

4. **EQUIPMENT; EMPLOYEES.**

WMI shall utilize modern, covered, sanitary, leak-proof, packer-type trash collection vehicles. WMI further agrees to utilize a covered, sanitary and leak-proof collection vehicle for the purpose of collecting recyclables. WMI shall employ and pay for the services of all drivers and laborers associated with said equipment and the maintenance and insurance thereof. WMI will have sole responsibility to ensure that all vehicle operators are licensed and insured to the standards of the State of Colorado.

5. **HANDLING.**

All collections shall be made with minimum disturbance to Town residents. Collections shall not be made prior to 7:00 AM or later than 7:00 PM. Containers shall be carefully handled, thoroughly emptied and left where deposited for collection standing upright with lids in place. WMI agrees to pick up and remove all material spilled from containers or the collection vehicle in the process of collection.

6. **DISPOSAL.**

All trash, refuse and rubbish collected pursuant to this Agreement shall be disposed of at a lawful site identified by WMI.

7. **RECYCLABLE MATERIALS.**

For the purposes of this Agreement, recyclables shall consist of the following: (i) corrugated cardboard; (ii) non-leaded glass; (iii) aluminum cans; (iv) newspapers and magazines; (v) tin or steel cans; (vi) office paper; (vii) junk mail; and (viii) plastic containers Nos. 1-7. At least sixty (60) days prior to the expiration of each Term or Renewal Term, the Town may renegotiate the list of recyclables to include any additional materials desired by the Town, which

may be collected and conveyed by WMI at a reasonable cost. All recyclables collected by WMI shall be delivered to WMI's recycling facility in Grand Junction, Colorado.

8. **REPORTING; COMMUNICATION.**

WMI shall deliver regular reports to the Town tracking volumes of trash, refuse, rubbish and recyclables. Using this data, WMI will translate the information into environmental impact facts for use by the Town. WMI shall provide a written report, at its expense, of these facts to the Town quarterly and an annual overview report on the commencement of each Term. WMI shall assist the Town in the development of a comprehensive communications and public relations plan designed to inform and develop awareness of, and educate the residents regarding, the importance of recycling and other sustainability programs with the goal of increasing the Town's landfill diversion rates. WMI agrees to participate, at its expense, in all public informational meetings required by the Town.

9. **BILLING; PAYMENT.**

Monthly payments made to WMI by the Town shall be made within thirty (30) days of receipt of an itemized receipt for WMI services provided to the Town. The failure or inability of the Town to collect waste disposal fees from owners or residents of dwellings within the Town shall in no way alleviate or release the Town from its obligation to compensate WMI under the terms of this Agreement. The Town reserves the right under this Agreement to add an administrative charge to the monthly billing for each residential dwelling. The administrative charge shall not exceed three percent (3%) of the monthly charges for refuse collection and shall be billed directly to residential dwellings by the Town in addition to WMI's monthly fee.

10. **COMPLIANCE WITH LAWS.**

The parties shall comply with all law, orders and rules applicable to the obligations of the parties contemplated under this Agreement, whether existing on the effective date of this Agreement or subsequently enacted, whether of the Town, Gunnison County, State of Colorado or other applicable authority.

11. **AUTHORITY.**

Each party represents and warrants it is properly formed, validly existing and authorized to do business in the State of Colorado, under the laws of the State of Colorado, and has full right and authority to enter into this Agreement and perform the obligations set forth hereunder, and that the person signing on behalf of each party is duly authorized to do so.

12. **WMI INDEPENDENT CONTRACTOR.**

WMI shall be an independent contractor and not an employee of the Town within the meaning of all federal, State and local laws and regulations governing employment insurance, workers' compensation, industrial accident, labor and taxes. The Town shall not be liable for employment or withholding taxes respecting WMI or any employee of WMI.

13. **INSURANCE.**

WMI shall carry and maintain the following insurance:

(A) Insurance which shall comply with workman's compensation and occupational disease laws of the State of Colorado. Such insurance shall cover all employees of WMI engaged in performing any of the obligations under this Agreement, inside or outside of the corporate limits of Crested Butte.

(B) General public liability insurance with bodily injury limits of not less than \$250,000 per person and \$1,000,000 per occurrence adjusted as the statutory limits or judgments against the Town may be amended during the term of this Agreement and any extensions thereof, and property damage limits of not less than \$100,000 per occurrence.

(C) Commercial general liability insurance covering all operations of WMI. Coverage shall include automobile liability (owned, hired and non-owned) operations, property damage, and personal injury with a single limit of not less than \$1,000,000 per occurrence/\$2,000,000 general aggregate. Such insurance shall cover any and all vehicles used in the performance of duties incorporated into this Agreement.

(D) The Town, its employees, officers, elected, attorneys, insurers and insurance pools will be named as additional insureds under the coverage in paragraphs B and C above. WMI shall cause its insurance carrier to waive all rights of subrogation against the Town. All required insurance policies, except workers' compensation and employer's liability, shall be endorsed to be primary and non-contributory to any insurance otherwise carried by WMI and the Town with respect to the Project.

(E) The foregoing insurance shall be maintained in full force and effect at all times during each Term and any Renewal Term. WMI shall provide to the Town at least annually a certificate of insurance evidencing that such insurance is in full force and effect and affording the Town at least thirty (30) days' notice of any cancellation, termination or lapse in such insurance coverage. At the request of the Town, copies of insurance policies shall be submitted to the Town.

14. **HOLIDAY SCHEDULING; SERVICE FLEXIBILITY.**

(A) WMI will observe the holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. If any of these holidays occur on a collection day, the service will be delayed and resumed one (1) day later for the remainder of the week, and may include a Saturday collection as the holiday dictates.

(B) WMI will provide consistency and dependability in its pick-up schedule. Changes in regular collection routes or schedules may be requested, as needed, to maintain efficiency and productivity. Routing and scheduling changes will be made only where necessary to provide consistent quality service upon commencement of WMI service and as the Town to

grow. WMI will review and seek approval for any proposed day changes with the Town at least thirty (30) days prior to changes being made, and will communicate any necessary changes to residents using the most appropriate method(s) including the Town's information distribution system(s).

15. **ASSUMPTION OF RISK; INDEMNIFICATION; RELEASE OF CLAIMS.**

(A) WMI, its officers, employees, contractors, agents and representatives (collectively, "**Releasor/Indemnitor**") hereby assumes all risk of claims, liabilities, injuries, losses, demands or damages, whether related to bodily injury, personal injury, sickness, disease, death, property loss or damage (including attorneys' fees, costs and expenses) (collectively, "**Claims**") arising out of, directly or indirectly, WMI's provision of the services contemplated under this Agreement ("**Services**"), whether or not caused by any act or omission, negligence or other fault of the Town or the residents or visitors of Crested Butte, the Town's elected officials, officers, employees, agents, insurers, insurance pools, attorneys, representatives, contractors and subcontractors (collectively, "**Releasee/Indemnitee**").

(B) Releasor/Indemnitor hereby waives any claims, and hereby releases, Releasee/Indemnitee against and from any and all Claims arising out of, directly or indirectly, the Services, whether or not caused by any act or omission, negligence or other fault of Releasor/Indemnitor and/or Releasee/Indemnitee.

(C) Releasor/Indemnitor shall indemnify, defend and hold harmless Releasee/Indemnitee from and against any and all Claims of third parties, including, without limitation, employees, contractors, agents and representatives of Releasor/Indemnitor, arising out of, directly or indirectly, the Services, whether or not caused by any act or omission, negligence or other fault of Releasor/Indemnitor and/or Releasee/Indemnitee.

16. **ASSIGNMENT BY WMI.**

WMI agrees not to assign, transfer, sell, sublet, mortgage or pledge this Agreement, or any part hereof, without obtaining the prior written consent of the Town. Any such assignment or transfer without prior written approval from the Town shall be deemed void ab initio.

17. **JURISDICTION; VENUE.**

This Agreement is entered into in the Town of Crested Butte, Gunnison County, Colorado. It is agreed that the proper jurisdiction and venue of any action pertaining to the enforcement or interpretation of any term of condition incorporated into this Agreement shall be the District Court of Gunnison County, Colorado. WMI expressly waives any right to bring such action in or to remove such action to any other court, whether state or federal.

18. **MODIFICATION.** This Agreement may be modified or amended only by a duly authorized written instrument executed by the parties hereto.

19. **ENTIRE AGREEMENT.**

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

20. **CONSTRUCTION.**

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

21. **NO WAIVER.**

No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision, nor shall it be deemed to constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both Town and WMI, nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. A party's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by the other party or the acceptance of any non-performance.

22. **NO THIRD PARTY BENEFICIARY.**

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Town and WMI, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third person. It is the express intention of the Town and WMI that any person other than the Town or WMI receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

23. **NOTICES.**

All notices and communications required under this Agreement shall be in writing and shall be sent by registered or certified mail or delivered personally to the parties involved at the following addresses:

TOWN: Town of Crested Butte
P.O. Box 39
507 Maroon Avenue
Crested Butte, Colorado 81224
Attn: Town Manager

WMI: Waste Management of Colorado, Inc.
P.O. 2724
467 Riverland Drive

Crested Butte, Colorado 81224

Notice shall be deemed properly given when mailed to the above addresses. Both parties agree to notify the other in writing of any change of address relevant to this Agreement.

24. **ATTORNEYS' FEES.**

If any dispute occurs in connection this Agreement, the substantially prevailing party in such dispute shall be awarded all reasonable attorneys' fees, costs and expenses incurred in such dispute.

25. **BINDING AGREEMENT.**

It is understood and agreed that this Agreement shall be binding to the parties within this Agreement, their heirs, executors, successors and assigns thereto.

26. **SEVERABILITY.**

It is understood and agreed by the parties hereto that if any term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law, State or federal, the validity of the remaining portions or provisions hereof shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

27. **TERMINOLOGY.**

All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all genders; the singular shall include the plural and the plural shall include the singular. References to days, months and years are to calendar days, calendar months and calendar years, respectively, unless the context clearly otherwise requires. The word "include" and similar terms such as "included" and "including" shall be terms of enlargement or example and shall not imply any restriction or limitation unless the context clearly requires otherwise. The word "or" shall not indicate exclusivity and shall be interpreted to mean both "and" and "or" unless the context clearly requires otherwise. The titles of articles or sections and paragraphs in this Agreement are for convenience only and neither limit nor amplify the provisions of this Agreement.

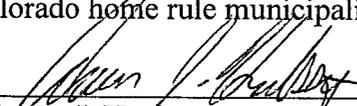
28. **COUNTERPARTS; ELECTRONIC COPIES.**

This Agreement may be executed in multiple counterparts, each of which, when taken together with the other, shall constitute one and the same document. For purposes of enforcement of the terms hereof, electronic signatures shall be deemed to be originals.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE(S) TO FOLLOW]**

IN WITNESS WHEREOF, the Town and WMI have executed this Agreement effective as of Effective Date set forth above.

TOWN OF CRESTED BUTTE,
a Colorado home rule municipality

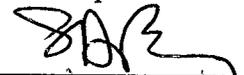
By: 
Aaron J. Huckstep, Mayor

ATTEST:

Eileen Hughes, Town Clerk

(SEAL)

WASTE MANAGEMENT OF COLORADO, INC.,
a Colorado corporation

By: 
Name: Scott A. Bradley
Title: V.P.

