

ORDINANCE NO. 11

SERIES 2020

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE
AUTHORIZING A POTABLE WATER SERVICE AGREEMENT FOR LOT 8,
TRAPPER'S CROSSING AT CRESTED BUTTE, GUNNISON COUNTY, COLORADO**

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

WHEREAS, the Town Code § 13-1-280(e)(5) authorizes the Town to provide at its sole discretion extraterritorial water service by written agreement; and

WHEREAS, Turnbull, the owner of property located outside the Town limits and legally described as Lot 8, Trapper's Crossing at Crested Butte, Gunnison County ("Property") desires to connect the Property to the Town water system and receive potable water service from the Town at some future point; and

WHEREAS, the Town has agreed to provide potable water service to the Property pursuant to the terms and conditions of the Potable Water Service Agreement between the Town and Turnbull attached as **Exhibit A** to this Ordinance ("Potable Water Agreement") in exchange for Turnbull granting an easement for installation and operation of the Crested Butte Town Pipeline on the Property ("Easement"); and

WHEREAS, the grant of the Easement confers substantial public benefits to the Town.

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

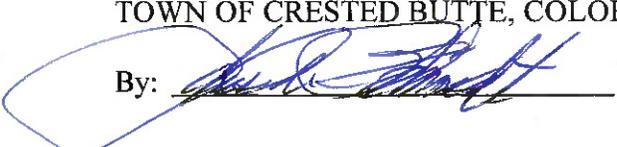
Section 1. The Town Council hereby authorizes the provision of extraterritorial water service to the Property and expressly waives the system availability fee, tap fee and costs and expenses pursuant to the Potable Water Service Agreement.

Section 2. The Mayor is authorized to execute the Potable Water Service Agreement.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 6th DAY OF April, 2020

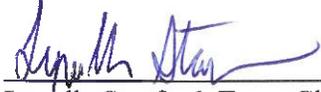
ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 20th DAY OF April, 2020.

TOWN OF CRESTED BUTTE, COLORADO

By: 

James A. Schmidt, Mayor

ATTEST:



Lynelle Stanford, Town Clerk

[SEAL]



Exhibit A

POTABLE WATER SERVICE AGREEMENT

THIS POTABLE WATER SERVICE AGREEMENT (“Agreement”) is made and entered into this 23rd day of APRIL 2020, by and between the TOWN OF CRESTED BUTTE, a Colorado home rule municipality (“Town”); and THOMAS M. AND PAMALA L. TURNBULL, individuals, whose address is P.O. Box 849, Hotchkiss, CO 81419 (“Turnbull”) (collectively, the Town and Turnbull are referred to in this Agreement as the “Parties”).

Recitals

- A. The Town is a home rule municipality duly and regularly organized and validly existing as a body corporate and politic under and by virtue of the Constitution and laws of the State of Colorado.
- B. The Town owns and operates the Town of Crested Butte water system (“Town Water System”) in accordance with the laws of the State of Colorado, and in accordance with the Crested Butte Home Rule Charter and Crested Butte Municipal Code (“Town Code”), and various other Town ordinances, rules, regulations, policies, and resolutions. This Agreement is entered into in conformity with and subject to such charter, Town Code, ordinances, rules, regulations, policies, and resolutions.
- C. The Town has in place certain requirements for the extension of water service and associated systems outside the Town’s boundaries codified in Section 13-1-280 of the Town Code. Pursuant to Town Code § 13-1-280(e)(5), the Town may provide extraterritorial water service by written agreement.
- D. Turnbull has acquired title to the real property located at 123 Meadow Drive, Gunnison County Parcel No. 3177-000-01-007 (“Turnbull Property”). The Turnbull Property is legally described in attached **Exhibit A** as Lot 8, Trapper’s Crossing at Crested Butte, according to the Trappers Crossing Plat, and is located outside the Town’s municipal boundaries.
- E. The Town Water System includes a potable water line that is located, in part, on the Turnbull Property.
- F. Turnbull desires to connect to the Town Water System on the Turnbull Property and receive potable water service from the Town at some future point.
- G. The Town is willing and able to provide potable water service to the Turnbull Property pursuant to the terms and conditions of this Agreement and in exchange for Turnbull simultaneously entering into an associated Easement Agreement between the Parties. The Easement Agreement governs a grant of easement from Turnbull to the Town for installation and operation of a pipeline on the Turnbull Property for the Crested Butte Town Pipeline conditional water right (“Town Pipeline”) decreed to the Town on April 19, 1974 in Case No. W-2084, Division 4 Water Court.

H. The Town has determined that this Agreement and all covenants in this Agreement are necessary to comply with the Town Code and other policies. By entering into this Agreement, the Town is *not* representing that it is a regulated public utility or holding itself out to the public in general as capable of or intending to provide water service extraterritorially.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, and the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

Agreement

1. Water Service to Turnbull Property. The Town shall provide potable water service to the Turnbull Property in the form of two (2) Town Water System taps. The first tap may serve one (1) primary single-family residence with up to 5,000 square-feet of gross residential floor area ("GRFA"), and the second tap may serve one (1) guest house, which may be either attached to or detached from the single-family residence, with up to 1,500 square-feet of GRFA. The two taps may collectively provide a maximum amount of 0.91 acre-foot of potable water per year subject to the terms and conditions of this Agreement. This amount is based on 0.59 acre-foot of water per year for indoor use (525 gallons per day) at the 5,000 square-foot single-family residence and 0.177 acre-foot of water per year for indoor use (160 gallons per day) at the 1,500 square-foot guest house. It also includes up to 0.143 acre-foot of water per year to irrigate up to 2,500 square feet of outdoor lawns and gardens.

1.1 Limitations on Provision of Potable Water Service. This Agreement is solely for the supply of potable water service as described in this Section 1, and does not authorize any other expansion or extensions of uses, connections, or service. The Town's water supply is dependent upon sources that are variable in quantity and quality beyond the Town's reasonable control. Therefore, no liability shall attach to the Town under this Agreement on account of any failure to accurately anticipate the availability of water supply or on account of an actual failure of water supply due to inadequate runoff, drought, poor quality, failure of infrastructure, or other occurrence beyond the Town's reasonable control. The Town agrees that it shall not treat actual or potential water users on the Turnbull Property differently than it treats actual or potential water users within the Town's municipal boundaries except as provided for in this Agreement.

1.2 Irrigation Water Use. Turnbull may elect to irrigate up to 2,500 square feet of lawns and gardens on the Turnbull Property with potable water from the Town under this Agreement. Prior to commencing any such outdoor potable irrigation, Turnbull must verify to the Town that it is in compliance with Town Code § 13-3-10 et al. pertaining to backflow prevention and cross-connection control regulations. Turnbull shall accomplish any and all potable water irrigation in accordance with Town Code § 13-2-40 and the Town's general water policies.

1.3 Raw Water Use. The Town shall not provide any raw water for irrigation or any other use to the Turnbull Property under this Agreement. However, nothing in this Agreement

shall prevent Turnbull from using or seeking a separate/additional source of raw water supply in accordance with Colorado water law governing the appropriation and use of water. The Parties acknowledge that Turnbull currently owns a well on the Turnbull Property and intend to use the well as the primary water supply to the Turnbull Property for the time being. In addition, nothing in this Agreement shall prevent the Town from taking any action in accordance with Colorado water law that it deems appropriate and necessary to protect its own water rights and supplies should Turnbull seek to change any existing or develop any new raw water rights or supplies on the Turnbull Property at any future point. There shall be no cross-connections between the Town Water System and any raw water supplies or infrastructure on the Turnbull Property. Once Turnbull connects to the Town Water System, Turnbull shall install any necessary backflow prevention devices on any such raw water supplies or infrastructure on the Turnbull Property as required by Town Code § 13-3-10 et al., including but not limited to the backflow assembly described under paragraph 2 below and the inspection, testing, and repair requirements described in Town Code § 13-3-60 and under paragraph 2.3 below. Turnbull is responsible for the proper installation, maintenance, and testing of any requisite backflow prevention devices and for assuring that unprotected cross-connections or structural or sanitary hazards do not exist on the Turnbull Property.

1.4 Rules for Water Use. All provisions in this Agreement are rules and regulations governing the use of water from the Town Water System on the Turnbull Property. Turnbull shall abide by the Town's ordinances, rules, and regulations governing the Town Water System as they apply additionally and equally to all Town Water System users, including but not limited to the Town Code provisions pertaining to conservation measures, curtailment during times of shortage, outdoor watering limitations, elimination of any actual or potential cross-connections, and utilization of water conservation devices. Turnbull agrees to take reasonable efforts to prevent waste of water, as "waste" is defined in the Town Code, on the Turnbull Property.

1.5 Property Rights in Water. All water provided under this Agreement is on a contractual basis for use on the Turnbull Property and all property rights to such water are reserved to the Town. This Agreement does not bestow upon Turnbull any right to make a succession of uses of any potable water provided by the Town, and upon completion of the primary use of potable water on the Turnbull Property, all dominion over such water shall revert in its entirety back to the Town. However, subject to the general prohibition against waste set forth in this Section 1, Turnbull shall have no obligation to create any particular volume of return flow from use of the potable water provided under this Agreement. Turnbull shall cooperate with the Town to reasonably measure and report its return flows to the extent that such measuring and reporting are required by the Colorado State Engineer.

2. Connection to Town Water System. Turnbull may connect two water service lines with a maximum size each of one inch (1") to the Town Water System. Turnbull shall bear all expenses associated with installation and construction of the 1" line and all related infrastructure (collectively the "Turnbull Service Lines"). Such infrastructure must include both a backflow prevention assembly and a meter. The backflow prevention assembly and meter are to be located on the Turnbull Property as near as reasonably possible to the point where the Turnbull Service

Line connects to the Town Water System. The Town will provide Turnbull with the appropriate meter at Turnbull's expense. Turnbull shall accomplish all construction and installation work relating to the Turnbull Service Line in a workmanlike manner and in accordance with the engineered plans reviewed and approved by the Town in accordance with Town Code § 13-1-280(d) & (e) and any other applicable sections. Upon completion of the installation, Turnbull's professional engineer shall certify in writing to the Town that the work was accomplished in a workmanlike manner in conformity with the Town approved engineering plans and with the water service line engineering feasibility study and hydraulic analysis called for in Town Code § 13-1-280(d), including but not limited to certification of the adequacy of the backflow prevention assembly.

2.1 Preconstruction documents. Turnbull shall submit to the Town all plans and other documents called for by Town Code § 13-1-280 for review and approval and/or approval with conditions, in a timely manner prior to any construction pursuant to this Agreement.

2.2 Utility Easement. Turnbull shall be responsible at its sole effort and expense for securing or confirming any easements that it needs to connect the Turnbull Property to the Town Water System.

2.3 Inspection, Testing, and Repair. Turnbull shall ensure that the Turnbull Service Line and Property are available to Town representatives for inspection, as authorized in the Town Code, to confirm that the Turnbull Service Line and associated backflow prevention assembly and meter have been constructed and installed in accordance with the Town approved engineering plans and feasibility study, that no cross-connections or other structural or sanitary hazards exist, that no treated municipal water is being used for outdoor irrigation or aesthetic purposes other than as provided in this Agreement, and that Turnbull is in general compliance with all provisions in the Town Code and other Town ordinances, rules, regulations, and policies that govern the Town Water System. Specifically but not exclusively, a certified cross-connection control technician shall test the Turnbull Service Line backflow prevention assembly upon installation, and then once-per-year subsequently, at Turnbull's expense in accordance with Town Code § 13-3-60. If the backflow prevention assembly is ever found to be defective, Turnbull shall repair or replace the device for re-testing.

3. Operation, Maintenance, Cleaning, Repair, and Replacement (collectively "OMR"). Turnbull shall be responsible for all OMR of the Turnbull Service Line and shall accomplish such OMR in a workmanlike manner. In the event that Turnbull plans a major repair or replacement to the Turnbull Service Line, it shall provide the Town with reasonable advance notice of the work to be undertaken and the estimated time of completion. In the event that the Town discovers an emergency situation or condition (such, but not limited to, a pipeline rupture), it shall make all reasonable attempts to promptly notify Turnbull.

4. Sewer Service. This Agreement does not govern extension of the Town's sewer system to the Turnbull Property nor authorize Turnbull to receive municipal sewer services from the Town.

5. Fees and Costs/Expenses. Except as otherwise provided in this Agreement, Turnbull shall pay all fees and other charges required under this Agreement and Town Code § 13-1-280 in a timely manner. Any requisite sum that is not timely paid shall accrue interest at eighteen percent (18%) per annum, or the highest rate allowed by applicable law, whichever is less, commencing on the date such sum becomes due and owing.

5.1 System Development Fees. There are no system development fees within the meaning of Town Code § 13-1-280(E)(4)(h) owed by Turnbull under this Agreement.

5.2 Tap Fees. As partial consideration for this Agreement, the Town waives the tap fee requirement that would otherwise be owed by Turnbull as defined in Town Code § 13-1-280(E)(4)(i).

5.3 Service Fees. Turnbull shall be required to pay service fees for each tap at two times (2X) times the in-town rate in accordance with Town Code § 13-1-280(E)(4)(j).

5.4 Fees and Costs. As partial consideration for this Agreement, the Town waives the costs and expenses requirements that would otherwise be owed by Turnbull and defined in Town Code § 13-1-280(E)(6) that have been incurred by the Town in connection with its provision of potable water service to Turnbull and with transacting this Agreement.

5.5 To the extent the terms of this Agreement conflict with the provisions of the Town Code, the terms of this Agreement shall control. Not by way of limitation, the Town expressly waives any restriction contained in Town Code § 13-1-280(e)(5).

6. Consideration. The Town entering into this Agreement and granting Turnbull consent to connect to the Town Water System is consideration for Turnbull's grant of easement to the Town for construction and installation of a segment of the Town Pipeline on the Turnbull Property pursuant to the associated Easement Agreement between the Parties.

7. Covenant Running with the Land. The recording of this Agreement shall create a covenant running with and for the benefit of the Turnbull Property that restricts all use of potable water delivered to the Turnbull Property through the Town Water System to the terms and conditions of this Agreement and to all other Town Code provisions, ordinances, rules, regulations, and policies that govern the Town Water System as they apply additionally and equally to all Town Water System users. This Agreement shall be fully enforceable on the Turnbull Property as if it were situated entirely inside the Town's municipal boundaries. This Agreement shall further burden and benefit the Turnbull Property and inure to the benefit of and be binding upon the heirs, executors, administrators, successors, and assigns of both Parties.

8. Amendment / Termination. Except as provided above, this Agreement may only be amended or terminated in writing signed by both Parties or their successors or assigns. The term of this Agreement shall continue in perpetuity until such termination.

9. Notices. Any notice required or permitted under this Agreement shall be in writing and shall be sufficient if personally delivered, emailed, or mailed by certified mail with return receipt requested to the addresses listed below or to any other address provided by notice under this paragraph. Nothing in this paragraph prohibits provision of notice as provided in the Colorado Rules of Civil Procedure for service of civil process.

If to the Town: Town of Crested Butte
Attn: Town Manager; Town Public Works Director
507 Maroon Avenue
P.O. Box 39
Crested Butte, CO 81224
Phone: (970) 349-5338
Email: dmacdonald@crestedbutte-co.gov;
searley@crestedbutte-co.gov

With copy to: Patrick Miller & Noto, P.C.
Attn: Scott Miller; Danielle Van Arsdale
197 Prospector Drive, Ste. 2104A
Aspen, CO 81611
Phone: (970) 920-1030
Email: miller@waterlaw.com; vanarsdale@waterlaw.com

If to Turnbull: Thomas M. and Pamela L. Turnbull
P.O. Box 849
Hotchkiss, CO 81419
Phone: 970-640-3330
Email: mpturnbull@msn.com

With copy to: Law Office of Craig Corona, P.C.
Craig Corona
1018 Lauren Ln.
Basalt, CO 81621
cc@craigcoronalaw.com

10. No Regulated Public Utility Status; Extraterritorial Water Service Proprietary. By entering into this Agreement, the Town is *not* agreeing to serve any other properties with extraterritorial water service, the provision of which remains solely proprietary and within the Town's sole discretion. This Agreement further does not render the Town a regulated public utility that is compelled to serve other parties similarly situated to Turnbull. At no time shall Turnbull, or its successors or assigns, petition the Colorado Public Utilities Commission to acquire jurisdiction over any water service, fee, rate, or rate set by the Town. If the Town is ever determined to be a regulated public utility by virtue of this Agreement, this Agreement shall terminate in its entirety and be of no further force or effect.

11. Indemnification. Turnbull agrees to indemnify, defend, and hold the Town, and its elected officials, officers, employees, agents, attorneys, insurers, and insurance pools harmless from and against all liability, claims, damages, and demands, on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss, or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with Turnbull's and/or its agents, representatives, or contractors' negligence or intentional misconduct in relation to installation, construction, use, or OMR of the Turnbull Service Pipeline or potable water delivered via the Turnbull Service Pipeline, or from Turnbull's failure to comply with any term or condition of this Agreement. Turnbull agrees to investigate, handle, respond to, and provide defense for and defend against any such liability, claims, or demands at its sole expense, including, without limitation, court costs and attorneys' fees with an attorney of Turnbull's choosing in Turnbull's sole discretion, whether or not any such alleged liability, claims, or demands are found to be groundless, false, or fraudulent.
12. Immunity. Nothing in this Agreement shall be construed to abrogate or diminish any protections and limitations afforded to the Town by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*, as amended, or any other law.
13. Governing Law; Venue; Attorney Fees. This Agreement shall be construed in accordance with the laws of the State of Colorado. Venue for all actions arising under this Agreement shall be Gunnison County, Colorado. If either Party takes legal action to enforce or defend any part of this Agreement, the prevailing Party shall be awarded its reasonable attorneys' fees and costs.
14. Entire Agreement of the Parties. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, offers, acceptances, and understandings of the Parties with respect to its subject matter. All prior and contemporaneous conversations, negotiations, possible alleged agreements, representations, covenants, and warranties concerning the subject matter of this Agreement are merged into this Agreement. This paragraph does not apply to the Easement Agreement between the Parties.
15. Recordation. Following execution, the Town shall record this Agreement in the Gunnison County Clerk and Recorder's Office.
16. Counterparts. This Agreement may be executed in multiple counterpart signatures by the Parties, which taken together shall constitute the Agreement between the Parties. Electronically generated, fully signed copies of this Agreement shall be treated as originals.
17. Severability. If a court of competent jurisdiction ever holds any paragraph, term, or provision in this Agreement to be illegal or in conflict with any state or federal law, such determination shall not affect the validity of the Agreement's remaining paragraphs, terms, and provisions. The rights and obligations of the Parties shall be construed and enforced as if the

Agreement did not contain the invalidity.

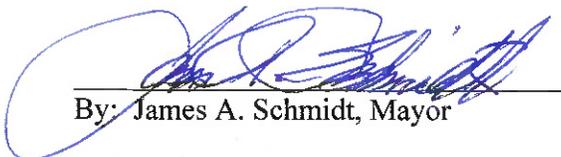
18. Code Changes. References in this Agreement to any provision of the Code or to any other Town policy refer to any and all subsequent amendments or revisions to such Code or policy. Any amendment or revision shall have the same binding affect upon the Parties as the Code provision or Town policy in effect at the time of the execution of this Agreement.

19. Incorporation of Exhibits. The attached Exhibit A is incorporated into this Agreement by reference and is a material part of this Agreement.

WHEREFORE, the Parties indicate their acceptance of the terms and conditions of this Agreement by affixing their respective signatures below.

REMAINDER OF PAGE INTENTIONALLY BLANK

TOWN OF CRESTED BUTTE
A Colorado home rule municipality


By: James A. Schmidt, Mayor

ATTEST:


Lynelle Stanford, Town Clerk

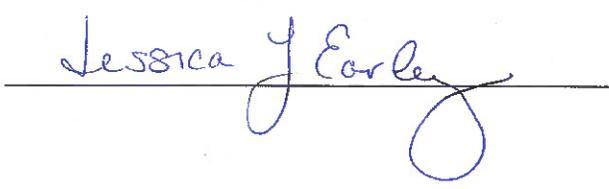


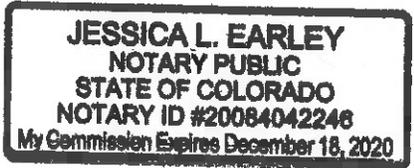
STATE OF COLORADO)
) SS.
COUNTY OF GUNNISON)

Subscribed and sworn to before me this 23 day of April 2020 by James A. Schmidt as Mayor of the Town of Crested Butte.

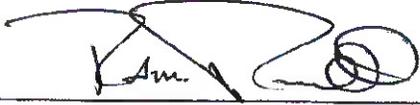
Witness my hand and official seal.

My Commission expires: 12-18-2020.





THOMAS M. TURNBULL



By: Thomas M. Turnbull

STATE OF COLORADO)
) SS.
COUNTY OF Montrose)

Subscribed and sworn to before me this 26 day of May 2020 by
Thomas M. Turnbull, individual.

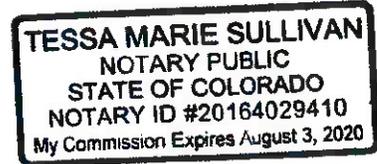
Witness my hand and official seal.

My Commission expires: August 3, 2020. Tessa Marie Sullivan

PAMELA L. TURNBULL



By: Pamela L. Turnbull



STATE OF COLORADO)
) SS.
COUNTY OF Montrose)

Subscribed and sworn to before me this 26 day of May 2020 by Pamela
L. Turnbull, individual.

Witness my hand and official seal.

My Commission expires: August 3, 2020. Tessa Marie Sullivan

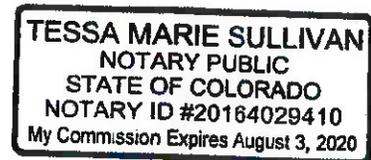


EXHIBIT A
(Turnbull Property)

Lot 8, TRAPPER'S CROSSING AT CRESTED BUTTE, according to the Plat thereof filed April 26, 1990 As Reception No. 419857, County of Gunnison, State of Colorado.