

ORDINANCE NO. 21

SERIES 2017

**AN ORDINANCE OF THE CRESTED BUTTE TOWN
COUNCIL APPROVING AN AMENDED
INTERGOVERNMENTAL AGREEMENT WITH
THE TOWN OF MT. CRESTED BUTTE FOR THE
MOUNTAIN EXPRESS TRANSPORTATION
SYSTEM**

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, the Town and the Town of Mt. Crested Butte ("Mt. Crested Butte") each have the authority and power to own, maintain, and operate public transportation systems; and

WHEREAS, the Town and Mt. Crested Butte are authorized through Article XIV, Section 18, or the Colorado Constitution, Section 14.5 of the Town's home-rule charter, and C.R.S. 29-1-203 to contract to provide for the joint exercise of any function, service, or facility lawfully authorized to each; and

WHEREAS, the Town and Mt. Crested Butte have previously entered into an Intergovernmental Agreement for Mountain Express Transportation dated April 18, 2010 (the "2010 IGA") which established a transportation system known as "Mountain Express", established as a separate and distinct public entity or instrumentality to provide transportation services; and

WHEREAS, Mountain Express has been continuously operated to provide transportation services since 1990; and

WHEREAS, the term of the 2010 IGA expired on May 31, 2017; and

WHEREAS, the Town affirms, by entering into this agreement, the need for an organizational framework through which it will work with Mt. Crested Butte to provide public transportation to the citizens and visitors as an alternative to the private automobile; and

WHEREAS, the Town Council and the Town of Mt. Crested Butte wish to enter into the Amended Intergovernmental Agreement for Mountain Express Transportation System (the "Amended IGA") attached hereto as Exhibit A; and

WHEREAS the Town Council finds hereby that approving the Amended IGA is in the best interest of the general health safety and welfare of the Town, its residents and visitors alike.

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

1. **Findings**. The foregoing recitals are hereby fully incorporated herein.
2. **Authorization of Mayor**. Based on the foregoing, the Town Council hereby authorizes the Mayor to execute the Amended Intergovernmental Agreement for Mountain Express Transportation System in substantially the same form as attached hereto as **Exhibit "A"**.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 24th DAY OF July, 2017.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 8th DAY OF August, 2017.

TOWN OF CRESTED BUTTE, COLORADO

By: Glenn Michel
Glenn Michel, Mayor

ATTEST Lynelle Stanford
Lynelle Stanford, Town Clerk

(SEAL)



EXHIBIT "A"

AMENDED INTERGOVERNMENTAL AGREEMENT FOR MOUNTAIN EXPRESS
TRANSPORTATION SYSTEM

[attach form of agreement here]

AMENDED INTERGOVERNMENTAL AGREEMENT FOR
MOUNTAIN EXPRESS TRANSPORTATION SYSTEM

THIS AGREEMENT is made and entered into this 1st day
of August, 2017, by and between the TOWN OF CRESTED
BUTTE, a Colorado home-rule municipality (hereinafter referred
to as "CRESTED BUTTE") and the TOWN OF MT. CRESTED BUTTE,
COLORADO, a Colorado home-rule municipality, hereinafter
referred to as "MT. CRESTED BUTTE." The parties are hereinafter
collectively referred to as "TOWNS."

W I T N E S S E T H:

WHEREAS, the TOWNS each have the authority and power
to own, maintain, and operate public transportation systems; and

WHEREAS, each of the TOWNS are authorized by reason of
Article XIV, Section 18, of the Colorado Constitution, Section
14.5 of Crested Butte's home-rule charter, and Section 29-1-203,
C.R.S., to contract to provide for the joint exercise of any
function, service, or facility lawfully authorized to each; and

WHEREAS, the TOWNS have previously entered into an
Intergovernmental Agreement for Mountain Express Transportation
dated April 18, 2010, which established a transportation system
known as "MOUNTAIN EXPRESS", established as a separate and

distinct public entity or instrumentality to provide transportation services; and

WHEREAS, MOUNTAIN EXPRESS has been continuously operated to provide transportation services since 1990; and

WHEREAS, the TOWNS affirm, by entering into this agreement, the need for an organizational framework through which they will provide public transportation to the citizens and visitors as an alternative to the private automobile; and

NOW, THEREFORE, in consideration of the mutual benefits to be derived herefrom, it is agreed by the parties as follows:

1. STATEMENT OF PURPOSE. The purpose of this agreement is to continue a public transportation system. The TOWNS, by this agreement, desire to continue the existence of the previously established transportation entity separate and distinct from the two TOWNS, with the authority and responsibility to:

A. Own, operate, and administer a public transportation system, both within and without the corporate limits of each of the TOWNS.

B. Contract with any person, firm, or public agency to use, manage, and operate its transportation facilities.

C. Such additional acts that are necessary to effectuate this agreement.

D. It is the intention of the parties that this agreement continues the existence of the previously established separate legal entity to provide the transportation services described herein pursuant to 29-1-203(4), C.R.S.

E. It is further the intention of the parties that the separate legal entity previously created and continued pursuant to this agreement is and shall be a public entity, as the term is defined at 24-10-103(5), C.R.S., and be entitled to all the rights and subject to all the obligations and duties of public entities pursuant to the Colorado Governmental Immunity Act, being Title 24, Article 10, Part 1, C.R.S.

2. ADMINISTRATION OF AGREEMENT.

A. Continuation of a Transportation System.

Upon the effective date of this agreement, there is continued the Mountain Express, a transportation system, hereinafter referred to as "MOUNTAIN EXPRESS", a separate and distinct public entity or instrumentality, as the legal entity to

exercise the common powers provided for in this agreement, and to administer or otherwise execute the terms of this agreement.

B. Board of Directors - Appointment.

i. MOUNTAIN EXPRESS shall be governed by a board of directors consisting of five members. The board of directors shall be appointed by motions adopted by the individual TOWNS from persons nominated as follows: (a) Two members nominated by the Town Council of Crested Butte; (b) Two members nominated by the Town Council of Mt. Crested Butte; (c) One person nominated by majority vote of the four members of the board of directors identified in (a) and (b) hereof.

ii. The members of the board of directors nominated by the Town Councils of the TOWNS serve at the pleasure of the respective Town Councils and may be removed at any time by majority vote of the Town Council which nominated that particular member of the board of directors of MOUNTAIN EXPRESS.

iii. The one member of the board of directors nominated by majority vote of the remaining four members of the board of directors may be removed only upon the adoption of a motion by a majority of the remaining members of

the board of directors finding a violation of the director's duties and obligations to MOUNTAIN EXPRESS.

iv. The term of each nominated member of the board of directors of MOUNTAIN EXPRESS shall be for a term of two years.

C. Board of Directors - Organization. The board of directors shall abide by the previously adopted written bylaws that govern the organization and operation of MOUNTAIN EXPRESS. The bylaws shall include the following, but not be limited to:

i. Designation of officers, including chairperson, vice-chairperson, secretary, and treasurer.

ii. Appointment of officers and their duties.

iii. Filling of vacancies.

iv. Officers' performance bonds.

v. Meeting schedules.

vi. Calling of special meetings.

vii. Quorum.

viii. Manner of voting.

ix. Appointment to administrative committees.

- x. Parliamentary procedures.
- xi. Procedure for amendment of bylaws.
- xii. Minutes and records of meetings.
- xiii. Authority to sign documents and checks.

Any amendments to the bylaws shall follow the amendment procedure set forth in the bylaws.

D. Board of Directors - Responsibilities. The primary responsibility of the board of directors is to provide for a safe, reliable, and financially-sound transportation system. Within the board's overall responsibility to govern the operation of the transportation system, the board shall:

- i. Adopt policies and procedures to govern the operations, personnel, and procurement practices necessary to operate the system, or in the alternative, to enter into management contracts with any entity which incorporate the foregoing.

- ii. Adopt and from time to time amend a transportation development plan, which may include route structures and fares.

- iii. To adopt an operating and capital budget for MOUNTAIN EXPRESS.

iv. To review and adopt a minimum five-year financial plan for the capital needs of MOUNTAIN EXPRESS.

v. To employ a general manager or enter into a management contract for the management of the transportation system, which may include the hiring of the necessary staff for operation of the system.

vi. To report, in writing, to the respective Town Councils at a minimum of once per year at meetings of the respective Town Councils. This report shall include, but not be limited to, the financial status, fleet status, ridership, operations, route configuration, service agreements, and program recommendations for the next season of transportation operations. At such meetings, the board of directors of MOUNTAIN EXPRESS and the respective Town Councils shall review this intergovernmental agreement, the proposed MOUNTAIN EXPRESS budget, and MOUNTAIN EXPRESS operations.

3. POWERS AND FUNCTIONS OF MOUNTAIN EXPRESS.

MOUNTAIN EXPRESS shall have the powers common to the respective TOWNS to own, operate, and maintain a public transportation system. In the exercise of the powers under this agreement, MOUNTAIN EXPRESS is authorized, under its own name, to:

- A. Employ a general manager or to enter into a management contract.
- B. Employ agents and employees, and contract for professional services.
- C. Make and enter into leases and other contracts.
- D. Acquire, convey, construct, manage, maintain, and operate buildings and improvements.
- E. Acquire and convey real and personal property.
- F. Incur obligations and liabilities.
- G. Accept contributions, grants, or loans from any private entity, public agency, or the United States, or any department, instrumentality, or agency thereof, for the purpose of financing the planning, acquisition, construction, maintenance, or operation of the transportation system.
- H. Invest money that is not needed for the immediate necessities of the transportation system as the board determines advisable in the same manner and upon the same conditions as other local governmental entities in the State of Colorado.

I. Obtain or contract for such insurance as is reasonably necessary to protect the assets of MOUNTAIN EXPRESS, and to protect the interests of the two TOWNS.

J. Sue and be sued in its own name.

K. Do all other acts reasonably necessary to carry out the purpose of this agreement.

The powers to be exercised by MOUNTAIN EXPRESS are subject to the same authority and restrictions, immunities, and liabilities as those imposed upon the respective TOWNS in the exercise of similar powers. In the event of conflicting provisions or requirements of the method of exercising specific authorities granted to each of the TOWNS, MOUNTAIN EXPRESS shall comply with the more restrictive of the requirements. MOUNTAIN EXPRESS shall be strictly accountable for all funds received, held, and disbursed by it.

4. FINANCING AND BUDGET.

A. MOUNTAIN EXPRESS'S fiscal year shall be January 1 through December 31.

B. The board of MOUNTAIN EXPRESS shall consider and, following a public hearing thereof, adopt an annual budget and a five-year capital improvement program. Copies of the annual budget and the five-year capital improvement program

approved by the board of directors of MOUNTAIN EXPRESS shall be submitted to the respective Town Councils for their review and implementation pursuant to this agreement. The annual budget and five-year capital improvement program shall comply with applicable local governmental budgetary laws of the State of Colorado.

C. The Town of Mt. Crested Butte shall contribute 95 per cent of the 1 cent sales tax adopted by the Town for transportation and other services pursuant to Ordinance No. 12, Series 1982, of the Town of Mt. Crested Butte and not less than 25 per cent of the proceeds of the 4 per cent Admissions Tax adopted by the Town and designated for transportation pursuant to Ordinance No. 7, Series 2002, of the Town of Mt. Crested Butte. The Town of Crested Butte shall contribute 95 per cent of the 1 cent sales tax adopted by the Town for transportation and other purposes pursuant to Ordinance No. 11, Series 1982, of the Town of Crested Butte. Such sums shall be paid to MOUNTAIN EXPRESS by the 15th day of the month following the month in which the proceeds of the sales tax are received by the TOWNS. MOUNTAIN EXPRESS shall account for its use of such funds in accordance with the terms and conditions hereinafter stated.

D. The board of directors of MOUNTAIN EXPRESS shall account for its funds as follows:

i. To provide operating funds to cover the cost of the transportation services described herein.

ii. To provide funds for the purpose of acquiring public transportation facilities and equipment.

5. LIABILITIES. Without a subsequent agreement of the TOWNS, the debts, liabilities, and obligations of MOUNTAIN EXPRESS shall not be the debts, liabilities, or obligations of the respective TOWNS, nor shall the debts, liabilities, or obligations of the respective TOWNS be the debts, liabilities, or obligations of MOUNTAIN EXPRESS. Any contracts entered into by MOUNTAIN EXPRESS shall include a reference to this paragraph.

6. INDEPENDENT AUDIT. An independent audit shall be made of all MOUNTAIN EXPRESS accounts at least annually, and more frequently if deemed necessary by the board of directors. Such audit shall comply legally with governmental audit practices and shall be made by certified public accountants experienced in municipal accounting and federal grants, selected by the board of directors. Copies of such audit shall be provided to the respective TOWNS and made available for public inspection at MOUNTAIN EXPRESS'S office.

7. TERMINATION, DISSOLUTION, AND LIMITATION OF

REMEDIES. This agreement shall become effective as of September 1, 2017, and continue in force for a term of 10 years until August 31, 2027, and will automatically renew in terms of 10 years, unless subsequently extended by the TOWNS or terminated by breach of the agreement by either of the TOWNS or by notice given by either of the Towns prior 180 days to agreement expiration.

In the event of a default in performance of any of the obligations, covenants, or requirements of this agreement which is not corrected within thirty days of written notice thereof sent to the defaulting Town, the non-defaulting Town may elect to either terminate this agreement, in which case MOUNTAIN EXPRESS shall be dissolved as hereinafter set forth, or the non-defaulting Town may seek an order requiring specific performance of this agreement from any court of competent jurisdiction in the Seventh Judicial District, State of Colorado. The remedy of specific performance shall be the sole remedy hereunder, the parties having specifically waived any claim for damages occasioned by the breach of this agreement whether they be actual consequential, or punitive, except that an order requiring a party to contribute funds to the operation of

MOUNTAIN EXPRESS shall bear interest from the date such funds should have been contributed until the same are paid at the Base Rate of Interest charged by the Crested Butte Bank. Neither Town has waived any defense it may have to an action for specific performance by execution of this agreement.

If this agreement is terminated either by the expiration of the term hereof or by reason of a default of either of the parties hereto, all property, equipment, and surplus funds of MOUNTAIN EXPRESS, after satisfaction of the debts, liabilities, and obligations of MOUNTAIN EXPRESS, shall be distributed equally to the respective TOWNS, except that the Town of Crested Butte shall receive by assignment or other appropriate instrument any PUC certificate of authority for operation of a transportation system.

8. ATTORNEY'S FEES. In the event an action seeking specific performance of this agreement is brought, the prevailing party therein shall be entitled to an award of reasonable attorney's fees incurred in the prosecution or defense thereof.

9. AMENDMENTS. This agreement may be amended by written amendment approved by the respective Town Councils, acting separately.

10. BINDING AGREEMENT. This agreement shall be binding upon and inure to the benefit of any successors to or assigns of the parties hereto.

11. ASSIGNMENT. Except as may be specifically provided herein to the contrary, an assignee for security purposes is not a beneficiary of this agreement.

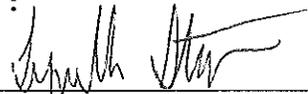
12. SEVERABILITY. Should any part, term, portion, or provision of this agreement be finally decided to be in conflict with any law of the United States or the State of Colorado, or otherwise be found to be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be affected thereby, providing such remaining portions or provisions can be construed in substance to constitute the agreement which the parties intended in the first instance.

13. AUTHORIZATION. This agreement shall be authorized by ordinance of the Town Council of the Town of Crested Butte and ordinance of the Town Council of the Town of Mt. Crested Butte, County of Gunnison, Colorado.

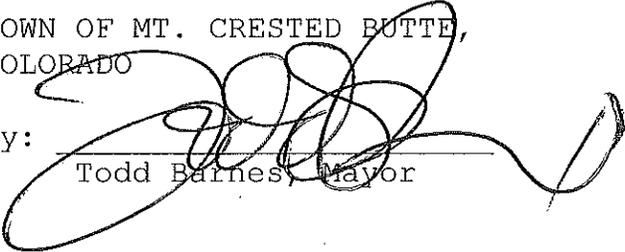
TOWN OF CRESTED BUTTE, COLORADO

By: Glenn Michel
Glenn Michel, Mayor

ATTEST:

By: 
Lynelle Stanford, Town Clerk

TOWN OF MT. CRESTED BUTTE,
COLORADO

By: 
Todd Barnes, Mayor

ATTEST:

By: 
Jill Lindros, Town Clerk