ORDINANCE NO. 28

SERIES 2020

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL GRANTING A GROUND LEASE TO GUNNISON COUNTY ELECTRIC ASSOCIATION, INC. FOR THE INSTALLATION OF AN ELECTRIC VEHICLE CHARGING STATION ON A 20 FOOT BY 20 FOOT PORTION OF THE FIRE STATION PUBLIC PARKING AREA

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

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

WHEREAS, the Town Director of Public Works and Town staff have recommended to the Town Council that the Town enter into a ground Lease with Gunnison County Electric Association ("GCEA") under and upon the Town owned property located at the Fire Station Public Parking Area for purposes of an electric vehicle charging station to be located on this Town owned property; 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 Town enter into a ground lease with GCEA for the Town owned property in the form attached hereto as Exhibit A.

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

Section 1. **Authorization For Ground Lease Upon Town-Owned Property**. The Town Council, pursuant to the Crested Butte Town Charter and the laws of the State of Colorado, hereby authorizes the granting of a ground lease for Town owned property to GCEA, in the form attached hereto as Exhibit A, for the purposes of an electric vehicle charging station located on the Town-owned property at the Fire Station Public Parking Area, and authorizes and directs the Town Manager and Town Clerk to appropriately execute any and all documents

necessary and appropriate to consummate said ground lease with GCEA following approval thereof by the Town Attorney.

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

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

INTRODUCED, READ, AND SET FOR PUBLIC HEARING THIS 2 DAY OF NOVEMBER, 2020.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 16 DAY OF NOVEMBER, 2020.

TOWN OF CRESTED BUTTE, COLORADO

By: _____
James A. Schmidt, Mayor

ATTEST:

_____
Lynelle Stanford, Town Clerk

[SEAL]

GROUND LEASE

THIS GROUND LEASE (this "**Lease**") is entered into this 30 day of March 2021, with an effective date of June 30, 2020 (the "**Effective Date**"), by and between the TOWN OF CRESTED BUTTE, COLORADO ("**Landlord**") and GUNNISON COUNTY ELECTRIC ASSOCIATION, INC. ("**Tenant**").

AGREEMENT:

1. **Premises**. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, upon the terms and conditions as set forth herein, the real property as more particularly described on **Exhibit "A"** attached hereto (the "**Premises**").

2. **Use; Maintenance; Signage and Cooperation**.

(a) Tenant shall use the Premises solely for the following purposes (and shall not authorize or permit the Premises to be used by anyone else) for the following purposes of: installation, construction, maintenance, operation, repair and removal of (i) an electric vehicle charging station (the "**Charging Station**"), (ii) equipment and cabling associated with the Charging Station, (iii) enclosure and/or facade for the location and housing of the Charging Station, (iv) bollards to protect the Charging station from impact by vehicles and equipment and other damage, and (iv) signage designating the Charging Station (collectively, the "**Improvements**").

(b) All of the Improvements shall be installed, constructed, maintained, operated, repaired and removed only following approval by Landlord of plans and specifications therefor, including, without limitation, Landlord's approval of engineered drawings for the Improvements, Landlord's Board of Zoning and Architectural Review (the "**Board**") of the architectural appropriateness of all structures, the Board's approval of all signage and the Landlord's issuance of permits for all applicable activities in connection with the Improvements.

(c) Tenant shall provide signage for the Charging Station designating the location and nature of the Charging Station as dictated by the terms of the state grant.

(d) Tenant shall install and maintain appropriate signage relating to the parking and usage of the Charging Station as dictated by the terms of the state grant.

(e) Tenant shall, at its sole discretion, take steps through advertising and other appropriate means to disseminate information about the availability of the Charging Station for electric vehicles and other relevant information in connection with the service.

(f) Tenant shall work in cooperation with the Landlord to assure that the Charging Station remains relevant to the then current technology on the delivery of

electric power to automobiles evolves over time and make reasonable changes to maintain current technology.

3. **Term**. Tenant shall have and hold the Premises for a term of 10 years commencing on the Effective Date and expiring on June 30, 2030 at 5 p.m. (the "**Term**"), unless the Term is earlier terminated or extended as provided herein. Upon the expiration or earlier termination of this Lease, Tenant shall remove the Improvements at its sole costs and expense at the direction of Landlord, failing which Landlord may remove and dispose of the same at Tenant's sole cost and expense.

4. **Rent**. Rent shall be due and payable during the Term annually at a rate of Ten Dollars ($10.00) per year, commencing on the Effective Date, and continuing thereafter until the end of the Term. Said rent and the obligations committed to by Tenant hereunder shall be deemed to be reasonable consideration for the usage of the Premises by Tenant hereunder.

5. **Landlord's Inspection and Related Rights**. Landlord or its agents shall have the right, but not the obligation, at any time to enter the Premises to examine the same, or to make such repairs as it may deem necessary or proper for the safety, improvement or preservation thereof. Notwithstanding Landlord's right of inspection, Tenant shall be solely responsible for the safety, maintenance and preservation of the Premises during the Term; except Landlord shall remove snow on the property adjacent to the Charging station and keep and maintain the grade of the Premises in reasonably level manner.

6. **Alterations**. Tenant shall not make any alterations in the Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld.

7. **No Waste, Impairment of Value or Hazardous Substances**. Tenant covenants and agrees that (i) nothing shall be done or kept on the Premises which might impair the value of the Premises or which would constitute waste, and (ii) no hazardous substances shall be stored, maintained or deposited on the Premises.

8. **No Unsightliness**. Tenant covenants and agrees that no unsightliness shall be permitted on the Premises that shall be visible from any adjacent or nearby property. Without limiting the generality of the foregoing, all unsightly conditions, equipment, objects and conditions shall be kept enclosed on the Premises; no refuse, scrap, debris, garbage, trash, bulk materials, automobile parts or waste shall be kept, stored or allowed to accumulate on the Premises; and no storage of abandoned vehicles shall be permitted on the Premises. No overnight parking shall be allowed on the Premises. Tenant shall have the right to tow vehicles from the Premises and place signage on the Premises to enforce the above provisions.

9. **Insurance**.

(a) At its sole cost and expense, Tenant shall obtain and keep in force during and through the Term "all-risk" property coverage naming Landlord and Tenant as their interests may appear.

(b) At its sole expense, Tenant shall obtain and keep in force during and through the Term commercial general liability insurance (coverage shall include, public liability, operations, property damage and personal injury, including death, with a minimum combined single limit of not less than $1,000,000.00 per occurrence / $2,000,000.00 general aggregate) and insurance covering obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee of Tenant within the meaning of applicable law insuring Landlord and Tenant, as their interests under this Lease appear, including, without limitation, coverage for contractual liability and broad form property damage with respect to 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, cost or damage to Landlord, or the property of the same.

(c) All insurance required herein and all renewals thereof 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 otherwise approved by Landlord in writing. All insurance policies shall be subject to approval by Landlord as to form and substance, shall expressly provide that the policies shall not be canceled without 30 days' prior written notice to Landlord and shall provide that no act or omission of Landlord that 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 as an additional insured. Originals or copies of original policies (together with copies of the endorsements naming Landlord as an additional insured) and evidence of the payment of all premiums of such policies shall be made available to Landlord on the date first written above. All public liability, property damage liability and casualty policies maintained by Landlord shall be written as primary policies, not contributing with and not in excess of coverage that Landlord may carry.

(e) The parties waive all rights to recover against each other, or against the elected and appointed officials, employees, contractors, agents, advisors, attorneys, insurers, insurance pools, shareholders, directors, members, managers, officers, suppliers, agents or servants of each other, 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 Tenant's operations and Landlord's operations and property.

10. <u>Indemnification</u>.

(a) Tenant agrees to exonerate, hold harmless, protect and indemnify Landlord from and against any and all losses, damages, claims (including without limitation, mechanics lien claims), suits, or actions, judgments and costs which may arise based on events occurring during the Term hereof in connection with Tenant's usage of the Premises for personal injury, loss of life or damaged property sustained in or about the Premises, and from and against all costs, reasonable attorneys' fees, expenses and liabilities incurred in any such claims, the investigation thereof or the defense of any action or proceeding brought thereon.

(b) Tenant shall keep the Premises free and clear of all liens arising out of or claimed by reason of any work performed, materials furnished or obligations incurred by or at the instance of Tenant, and Tenant shall indemnify and save Landlord and the Premises harmless of all such liens or claims of lien and all reasonable attorneys' fees and other costs and expenses incurred by reason thereof. Should Tenant fail to discharge fully any such lien or claim of lien or provide an acceptable indemnity bond in the event of contest, Landlord, at Landlord's option and subject to Landlord's right of reimbursement from Tenant, may pay the same or any part thereof, and Landlord shall be the sole judge of the validity of such lien or claim.

11. <u>Default Provisions; Termination</u>.

(a) The occurrence of any one or more of the following events shall constitute a default of this Lease by Tenant:

(1) Tenant failing to make any payments required to be made by Tenant, when due, where such failure shall continue for a period of 10 days following notice from Landlord to Tenant.

(2) Tenant failing to perform or keep any of the other terms, covenants, and conditions herein contained for which it is responsible, and such failure continuing and not being cured for a period of 10 days after notice, or if such default is a default which cannot be cured within a 10-day period, then Tenant's failing to commence to correct the same within said 10-day period and thereafter failing to prosecute the same to completion with reasonable diligence within no more 30 days following receipt of the notice referred to above.

(b) In the event of an occurrence of default as set forth above, in addition to such remedies as may be permitted or provided for under applicable law and equity, Landlord shall have the right to terminate this Lease by giving to Tenant written notice of such termination.

(c) Upon a determination by Landlord in its sole and absolute discretion that Landlord requires the use of the Premises for another purposes or that the Charging Station is not serving a public purpose sufficient to justify its location on the Premises, Landlord may terminate this Lease on 120 days' written notice.

12. **Assignment.** This Lease and the rights and obligations contained herein may be assigned or transferred by Tenant only upon written consent approved by resolutions of the Town Council, which such consent shall not be unreasonably withheld. Any transfer or assignment without such written consent shall be void *ab initio.* Upon any proper assignment or transfer hereunder, the assignee or transferee shall assume all the rights and obligations of Tenant hereunder.

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 Attn: Town Manager P.O. Box 39 507 Maroon Avenue Crested Butte, CO 81224 Facsimile: (970) 349-6626
With a copy to:	Town of Crested Butte Attn: Town Attorney P.O. Box 39 507 Maroon Avenue Crested Butte, CO 81224 Facsimile: (970) 349-6626
To Tenant:	_____
With a copy to:	_____

14. **Attorneys' Fees.** In case 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.

15. **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.

16. **No Recordation**. Neither this Lease nor any record hereof may be recorded in the official real property records of the Clerk and Recorder of Gunnison County, Colorado.

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

(c) This Lease shall not be amended or modified, except by subsequent written agreement of the parties approved by resolutions of the Town Council.

(d) A waiver of any right or remedy on any one occasion shall not be construed as a bar to or waiver of any such right or remedy on any other occasion.

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

(f) 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.

(g) 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.

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

DARA MACDONALD

Town of Crested Butte name

Town of Crested Butte signature

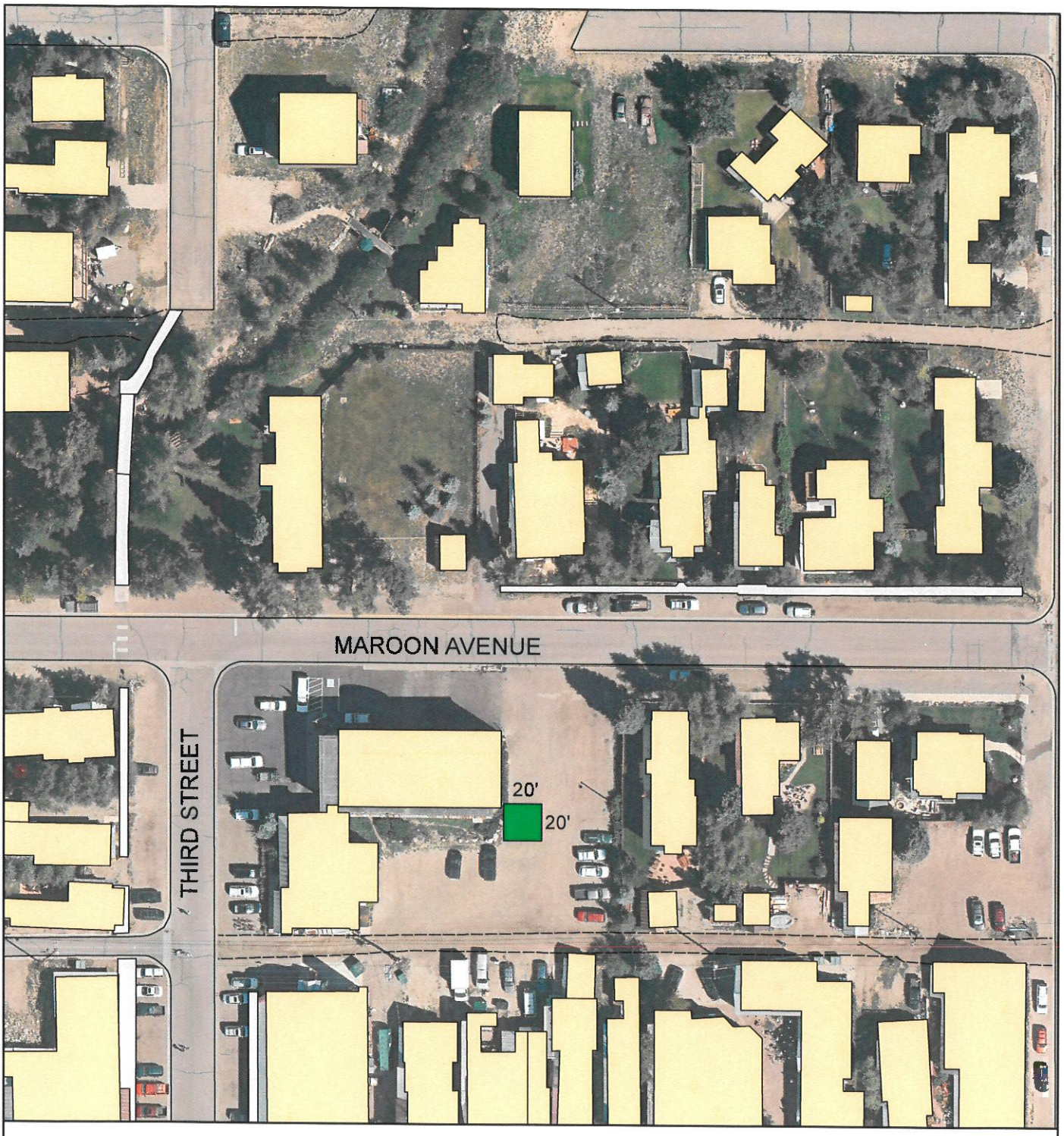
Mike McBride, Chief Executive Officer

EXHIBIT "A"

Premises

1. Description: A 20 foot by 20 foot parking block approximately 3 feet east and 6.5 feet south of the southeast corner of Crested Butte Fire Department building , as shown in the attached drawing.

2. Drawing.



Electric Vehicle Charging Station
Town of Crested Butte, Colorado

Electric Vehicle Charging Station
Buildings — Paved Roads
Sidewalks - - - - Unpaved Roads

N
W E
S

0 37.5 75 150 225
Feet

Aerial photography: August 27, 2013

Filename: C:/project/townofcb/charging_sta_TH.mxd
Date: October 28, 2020