

RESOLUTION NO. 2

SERIES 2021

A RESOLUTION OF THE CRESTED BUTTE TOWN COUNCIL APPROVING THE SERVICE AGREEMENT WITH THE COLORADO STATE FOREST SERVICE GUNNISON FIELD OFFICE FOR COMMUNITY FORESTRY ASSISTANCE

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;

WHEREAS, C.R.S. Section 29-1-201, et seq., authorizes governments to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each, and to establish a separate legal entity to do so;

WHEREAS, Crested Butte Town Code Section 16-15-10 et seq. requires that the Town provide tree care for trees on public property and defines the permitting process for removal of trees on private property;

WHEREAS, entering into the Agreement supports the Town's tree care standards as defined by the Arbor Day Foundation to meet Tree City USA standards;

WHEREAS, the parties to the Agreement are governing bodies or officials having charge of tree care within their jurisdictions;

WHEREAS, the Town Council hereby finds that the Agreement is in the best interest of the Town and the health, safety and general welfare of the residents and visitors of Crested Butte.

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

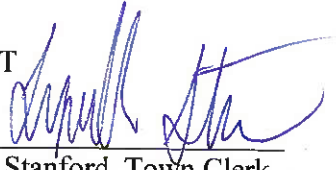
1. The Town Council incorporates the foregoing recitals as its conclusions, facts, determinations, and findings.
2. The Town Council hereby authorizes the Town Manager to enter into the Service Agreement with the Colorado State Forest Service Gunnison Field Office for the purpose of community forestry assistance hereto as **Exhibit A** as shall be approved by the Town Attorney to accomplish such transactions.

16th INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL THIS DAY OF February, 2021.

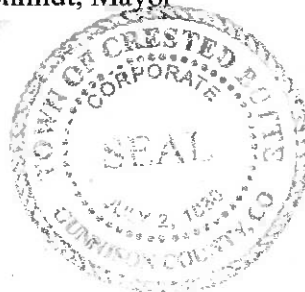
TOWN OF CRESTED BUTTE

By: 
James A. Schmidt, Mayor

ATTEST


Lynelle Stanford, Town Clerk

(SEAL)



UNIVERSITY SERVICES AGREEMENT

This University Services Agreement ("Agreement") is entered into by and between The Board of Governors of The Colorado State University System, acting by and through Colorado State University, an institution of higher education of the State of Colorado ("University"), for the use and benefit of the Colorado State Forest Service, and Town of Crested Butte, a Other: Town organized under the laws of the state of Colorado, with a place of business located at: PO Box 39, Crested Butte, Colorado 81224 ("Client").

NOW THEREFORE, in consideration of the above and the mutual promises contained herein, the parties agree as follows:

1. **Independent Contractors.** It is understood and agreed by the parties that the University is an independent contractor with respect to the Client and that this Agreement is not intended and shall not be construed to create an employer/employee or a joint venture relationship between the University and the Client. The University shall be free from the direction and control of the Client in the performance of the University's obligations under this Agreement, except that the Client may indicate specifications, standards requirements and deliverables for satisfaction of the University's obligations under this Agreement.
2. **Term.** This Agreement shall be effective commencing on the date of final signature (the "Effective Date") and shall terminate one year thereafter, unless sooner terminated as provided herein or extended by written agreement of the parties.
3. **Scope of Work.** The University agrees to perform the services described in the Scope of Work attached hereto (the "Services") and made a part hereof as Exhibit A, under the direction and supervision of the Principal Investigator, whose name appears in Exhibit A.
4. **Payment.** The Client agrees to pay the University for the Services performed under this Agreement as follows (*check one*):
 - In a fixed price amount of _____ payable 50% upon execution; 40% at mid-project; 10% upon University's submission of the final report; OR
 - In accordance with the payment terms set forth in the Scope of Work, Exhibit A attached hereto.
5. **Ownership of Information.** At all times during and following the term of this Agreement, including any extensions or renewals hereof, all records, information and data provided to the University by the Client or developed during the performance of the Services under this Agreement by the University and/or the Client ("Project Records") shall be and remain the sole property of the Client. The University retains the right to use the Project Records for academic and research purposes. Except as provided in paragraph 7 of this Agreement, any Project Records shall be provided to or returned to the Client upon request after termination of this Agreement.
6. **Reporting Requirements.**
 - 6.1 The University agrees that all Project Records as defined in the Scope of Work or detailed description thereof shall be made available to Client at any reasonable time, subject to the reporting requirements set forth in the Scope of Work.

6.2 Client shall have the right to audit the records of the University, to the extent such records are related to the Services performed under this Agreement, during normal business hours and upon reasonable notice to University. Such audit may include the financial records of University relating to the Services. University shall reasonably cooperate with Client in satisfying any requirement or order issued by any governmental agency or court, including but not limited to the inspection of University's records or facility.

7. Confidentiality.

7.1 Each party has certain documents, data, information, and methodologies that are confidential and proprietary to that party ("Confidential Information"). During the term of this Agreement, either party may, as the "Disclosing Party," disclose its Confidential Information to the other party (the "Recipient"), in writing, visually, or orally. Recipient shall receive and use the Confidential Information for the sole purpose of the performance of this Agreement, and for no other purpose (except as may be specifically authorized by the Disclosing Party, in writing). Recipient agrees not to make use of the Confidential Information except for such Services and agrees not to disclose the Confidential Information to any third party or parties without the prior written consent of the Discloser.

7.2 Recipient shall use its reasonable best efforts to preserve the confidentiality of the Confidential Information (using the same or similar protections as it would as if the Confidential Information were Recipient's own, and in any event, not less than reasonable care). Recipient shall obligate its affiliates with access to any portion of the Confidential Information to protect the proprietary nature of the Confidential Information.

7.3 "Confidential Information" shall not include, and Recipient shall have no obligation to refrain from disclosing or using, information which:

7.3.1 is generally available to the public at the time of this Agreement;

7.3.2 becomes part of the public domain or publicly known or available by publication or otherwise, not through any unauthorized act or omission of Recipient;

7.3.3 is lawfully disclosed to the Recipient by third parties without breaching any obligation of non-use or confidentiality;

7.3.4 has been independently developed by persons in Recipient's employ or otherwise who have no contact with Confidential Information, as proven with written records; or

7.3.5 is required to be disclosed by law; provided that, in the event that Recipient is required to redisclose Confidential Information under this subsection 7.3.5, it will promptly notify the Disclosing Party, and the Disclosing Party may, at its sole discretion and expense, initiate legal action to prevent, limit or condition such redisclosure.

7.4 With respect to 7.3.5, the Client acknowledges that the University is subject to the Colorado Open Records Act, C.R.S. §§ 24-72-200.1, et seq. ("CORA"). If disclosure of any Confidential Information is required pursuant to CORA, the University shall reasonably cooperate with the Client to review and identify any information not subject to disclosure. However, University shall retain the right to proceed in the manner it believes, in its sole discretion and judgment, is required to be compliant with the law.

7.5 Notwithstanding any other provision of this Agreement, a party may retain one copy of the other party's Confidential Information in its confidential files, for the sole purpose of establishing compliance with the terms hereof.

8. **Equipment.** Unless otherwise provided in the Scope of Work or in a writing signed by the parties, all equipment purchased by University with funds provided under this Agreement for use in connection with this Agreement shall be the property of the University, and shall be dedicated to providing Services under this Agreement while this Agreement is in effect.
9. **Liability; Insurance.** Each party hereto agrees to be responsible for its own wrongful or negligent acts or omissions, or those of its officers, agents, or employees to the full extent allowed by law. Liability of the University, and Client, if Client is a public entity in Colorado, is at all times herein strictly limited and controlled by the provisions of the Colorado Government Immunity Act, C.R.S. secs. 24-10-101, *et seq.* as now or hereafter amended. Nothing in this Agreement shall be construed as a waiver of the protections of said Act. As an institution of the State of Colorado, CSU is not authorized to indemnify any party, public or private, as against the claims and demands of third parties and any such indemnification provision in this Agreement shall be null and void.

(Only if checked) During the term hereof, Client represents and warrants that it has and will maintain general liability insurance covering itself and its employees, if any, in the performance of this contract, in an aggregate amount of not less than one million dollars (\$1,000,000.00), or \$_____, whichever is less, all or part of which may be self-insured. Client will furnish University with a certificate evidencing such insurance upon written request.

10. **Exclusive Warranty; Disclaimer.** University warrants that all deliverables provided under this Agreement will be provided substantially in accordance with the Scope of Work and/or written protocol provided by Client. All other warranties, express and implied, are hereby expressly disclaimed **INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** University does not perform any services under this agreement that may be subject to FDA Regulations, e.g. GMP, cGMP, GLP, GCP work/services. University shall not be liable for any indirect, special, incidental, consequential or punitive loss or damage of any kind, including but not limited to lost profits (regardless of whether or not University knows or should know of the possibility of such loss or damages). The liability of either party under this Agreement shall not exceed the amount paid or payable to the University under this Agreement.
11. **Use of Tradenames and Service Marks.** Neither party obtains by this Agreement any right, title, or interest in, or any right to reproduce or to use for any purpose, the name, tradenames, trade- or service marks, or logos (the "Marks"), or the copyrights of the other party. Neither party will include the name of the other party or of any employee of that party in any advertising, sales promotion, or other publicity matter without the prior written approval of that other party. In the case of the University, prior written approval is required from the Vice President for External Relations, or designee. In the case of the Client, prior written approval is required from an authorized representative of the Client.
12. **Termination.** Either party may terminate this Agreement, without cause, upon not less than sixty (60) days' written notice, given in accordance with the Notice provisions of this Agreement. Termination of this Agreement shall not relieve a party from its obligations incurred prior to the termination date. Upon early termination of this Agreement by Client, except in the case of a material breach by University, Client shall pay all costs accrued by University as of the date of termination including non-cancelable obligations for the term of this Agreement, which shall

include all appointments of staff incurred prior to the effective date of the termination. University shall exert its best efforts to limit or terminate any outstanding financial commitments for which Client is to be liable. University shall furnish, within ninety (90) days of the effective termination, a final report of all costs incurred and all funds received and shall reimburse Client for payments which may have been advanced in excess of total costs incurred with no further obligations to Client.

13. **Default.** A party will be considered in default of its obligations under this Agreement if such party should fail to observe, to comply with, or to perform any term, condition, or covenant contained in this Contract and such failure continues for thirty (30) days after the non-defaulting party gives the defaulting party written notice thereof. In the event of default, the non-defaulting party, upon written notice to the defaulting party, may terminate this Contract as of the date specified in the notice, and may seek such other and further relief as may be provided by law. Notwithstanding the foregoing, in the event of a breach or threatened breach of paragraph 7 or 11 of this Agreement, the non-defaulting party may terminate the Agreement immediately without affording the defaulting party the opportunity to cure, and may seek an injunction or restraining order as required to prevent unauthorized disclosures of Confidential Information or unauthorized use of its Marks or copyrights. In the event that Client defaults under the obligation to make any payment as required herein, the University shall be entitled to recover, in addition to all amounts due and unpaid, interest at the rate of eighteen percent per annum, plus costs of collection and reasonable attorney fees incurred in connection with such default.
14. **Notices.** All notices and other correspondence related to this Agreement shall be in writing and shall be effective when delivered by: (i) certified mail with return receipt, (ii) hand delivery with signature or delivery receipt provided by a third party courier service (such as FedEx, UPS, etc.), or (iii) email with return receipt, to the designated representative(s) of the party as indicated below. A party may change its designated representative for notice purposes at any time by written notice to the other party. The initial representatives of the parties are as follows:

To University:

Colorado State Forest Service
5060 Campus Delivery
Colorado State University
Fort Collins, CO 80523-5060
Telephone: 970-491-6303
Email: Sam.Pankratz@colostate.edu

To Client:

Town of Crested Butte
PO Box 39
Crested Butte, CO 81224
Telephone: 970-349-5338
Email: jhansen@crestedbutte-co.gov

A copy of any notice concerning a breach, alleged breach, or dispute arising under this Agreement shall also be sent to:

Office of the General Counsel
0006 Campus Delivery
Colorado State University
Fort Collins, CO 80523-0006
Telephone: 970-491-6270
Email: contracts@colostate.edu

15. **Legal Authority.** Each party to this Agreement warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, bylaws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind it to its terms. The person(s) executing this Agreement on behalf of a party warrant(s) that such person(s) have full authorization to execute this Agreement. This Agreement shall not be binding upon Colorado State University, its governing board or the State of Colorado unless signed by the Associate Vice-President for Finance or his/her authorized delegate.
16. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties, and supersedes any previous contracts, understandings, or agreements of the parties, whether verbal or written, concerning the subject matter of this Agreement.
17. **Amendment.** No amendment to this Agreement shall be valid unless it is made in a writing signed by the authorized representatives of the parties.
18. **Severability.** In the event that any provision of this Agreement is held unenforceable for any reason, the remaining provisions of this Agreement shall remain in full force and effect.
19. **Governing Law, Jurisdiction and Venue.** This Agreement shall be governed by and construed under the laws of the State of Colorado. Any claim arising under this Agreement shall be filed and tried in the District Court in and for Larimer County, situated in the City of Fort Collins, State of Colorado.
20. **Assignment.** This Agreement shall not be assigned without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed, provided however, such consent shall not be required in the case of a sale or transfer to a third party of all or substantially all of a party's business. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding on the successors and permitted assigns of the parties.
21. **International Agreement.**

This is an International Agreement: (only applicable if checked)

Agreements with non-U.S. contractors require approval by the CSU Export Control Office or Office of the General Counsel. The undersigned represents that he or she is duly authorized to approve export control measures on behalf of the University.

By: _____

**Signature*

Name: _____

Title: _____

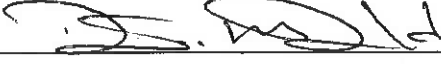
IN WITNESS WHEREOF, the parties have executed this Agreement the day and year written below.

The Board of Governors of the Colorado State University System, acting by and through Colorado State University:

By: Sam Pankratz
Sam Pankratz
Supervisory Forester
Date: 1/22/2021

Digitally signed by Sam Pankratz
DN: cn=Sam Pankratz, o=Colorado State Forest Services, ou=small-sam.pankratz@colorado-state.edu, c=US
Date: 2021.01.22 08:59:18 -0700

Client:

By: 
Printed Name: DARA MACDONALD
Title: TOWN MANAGER
Date: 2/18/2021

***APPROVED AS TO FORM:**

By: _____
Grant N. Calhoun, JD
Associate Legal Counsel/Director of Contracting Services
Office of the General Counsel

*Not required unless legal changes made to this document.

EXHIBIT A TO SERVICES AGREEMENT

SCOPE OF WORK

PRINCIPAL INVESTIGATOR: Sam Pankratz

CLIENT INVESTIGATOR: Town of Crested Butte

TITLE: Town of Crested Butte Urban and Community Forestry

DETAILED DESCRIPTION: of Scope of Work for January 1, 2021 – December 31, 2021

- A. Provide technical assistance in Community Forestry Program to renovate existing tree resources within city jurisdiction, i.e. technical assistance with pruning, planting, contract assistance, and hazard tree assessments**
- B. Assist with Arbor Day Observations**
- C. Attend Tree Board Meetings at the request of the city tree board**
- D. Diagnose sick trees within city limits on trees owned by the city upon request**
- E. Supervise and inspect technical aspects of city tree care contracts**
- F. Assist with the Tree City USA program (technical assistance with re-application and program guidance).**

Payment Terms:

\$1,040.00 due in full upon receipt of invoice.