

RESOLUTION NO. 37

SERIES NO. 2015

RESOLUTIONS OF THE CRESTED BUTTE TOWN COUNCIL AUTHORIZING THE EXPENDITURE OF UP TO \$25,000.00 FROM THE TOWN'S OPEN SPACE FUND FOR THE CRESTED BUTTE LAND TRUST'S PURCHASE OF APPROXIMATELY 15 ACRES DESCRIBED AS ROOSEVELT NO. 3 LODE MINING CLAIM, EMBRACING A PORTION OF SECTION 2, TOWNSHIP 14 SOUTH, RANGE 87 WEST, 6TH P.M., COUNTY OF GUNNISON, STATE OF COLORADO

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, the Town staff has recommended that the Town Council provide funds for the Crested Butte Land Trust's (the "Land Trust") purchase of approximately 15 acres of real property described as ROOSEVELT NO. 3 Lode Mining Claim, embracing a portion of Section 2, Township 14 South, Range 87 West, 6th P.M, Gunnison County, State of Colorado (the "Subject Property");

WHEREAS, the Town staff has, in support of such recommendation, presented to the Town Council that the Subject Property will be protected from development and held as open space; and

WHEREAS, the Town Council finds hereby that providing up to \$25,000.00 to the Land Trust to purchase and protect the Subject Property as open space free from development is in the best interest of conserving lands from development, and, therefore, is in the best interest of Town and the general public.

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

1. **Findings.** The Town Council hereby authorizes the expenditure of up to \$25,000.00 from the Town's Open Space Fund for the purchase of approximately 15 acres of real property described as ROOSEVELT NO. 3 Lode Mining Claim, embracing a portion of Section 2, Township 14 South, Range 87 West, 6th P.M, Gunnison County, State of Colorado.

2. **Funding Agreement; Authorization.** Pursuant to the above findings, the Town Council hereby approves the delivery of such funds to the Land Trust pursuant to the terms and conditions of the "Funding Agreement" attached hereto as Exhibit "A." In furtherance thereof, the Town Council hereby authorizes the Mayor to execute the Funding Agreement in

substantially the same form as attached hereto, without only those changes approved by the Town Attorney.

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL THIS 19th
DAY OF October, 2015.

TOWN OF CRESTED BUTTE, COLORADO

By: *Aaron J. Huckstep*
Aaron J. Huckstep, Mayor

ATTEST
Lynelle Stanford
Lynelle Stanford, Town Clerk

(SEAL)



EXHIBIT "A"

Funding Agreement

[attach approved form here]

OPEN SPACE FUNDING AGREEMENT

THIS OPEN SPACE FUNDING AGREEMENT (the "**Agreement**") is entered into effective this 19th day of October, 2015 (the "**Effective Date**") by and between the TOWN OF CRESTED BUTTE, a Colorado home rule municipality with an address of 507 Maroon Avenue, P.O. Box 39, Crested Butte, Colorado 81224 (the "**Town**") and the CRESTED BUTTE LAND TRUST, a Colorado non-profit corporation with an address at 308 3rd Street, P.O. Box 2224, Crested Butte, Colorado 81224 ("**Grantee**"). The Town and Grantee are sometimes individually referred to herein as a "**party**," collectively as the "**parties**."

RECITALS:

- A. Pursuant to §4-4-90(b), as amended, of the Crested Butte Municipal Code, the Town may, in pertinent part, fund the purchase of interests in real property to be conserved from development outside of Crested Butte and designate such other entities as it deems appropriate to acquire such interests in real property in place of the Town.
- B. The Town Council, by Resolution No. 37, Series 2015, appropriated \$25,000.00 in funding to be used for Grantee's purchase of the fee title to the real property described on Exhibit "A" attached hereto (the "**Subject Property**").
- C. The Town and Grantee desire herein to memorialize the terms and conditions upon which the Town will fund and Grantee will complete the purchase of the Subject Property.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Incorporation of Recitals.** The Recitals set forth above are material terms and conditions of this Agreement and are supported by the same consideration as the other terms and conditions hereof.
2. **Grant Funds; Payment Obligation.**
 - A. The Town hereby grants \$25,000.00 (the "**Grant Funds**") to Grantee subject to the terms and conditions set forth in this Agreement.
 - B. The Grant Funds shall be paid to Grantee on the earlier to occur of closing on the purchase of the Property or December 31, 2015.
 - C. Notwithstanding the foregoing, where the Town requires, in its sole and absolute discretion, additional funds in 2016 for the Trampe purchase and conservation transaction, Grantee shall re-transfer back to the Town the Grant Funds upon thirty (30) days' written notice to Grantee. In such case, the Town shall endeavor to re-pay Grantee, Grantee

acknowledging and agreeing that the Town's ability to pay Grantee the re-transferred Grant Funds is subject to the Town having sufficient funds, as determined by the Town in its sole and absolute discretion taking into account funds in the Town's Open Space Fund from tax received from the Town's Land Transfer Excise Tax and the need for the Town keep a reasonable balance in such Open Space Fund, the re-transferred \$25,000.00 on or before March 31, 2017 (provided that Grantee has actually purchased the Subject Property). Notwithstanding the foregoing, in the event that the Town does not have sufficient funds to re-transfer the Grants Funds on or before March 31, 2017, the Town's obligations hereunder shall terminate.

D. Notwithstanding anything in this Agreement to the contrary, in the event that Grantee does not purchase and close on the Subject Property on or before June 1, 2016, or in the event of a re-transfer of the Grant Funds as contemplated above, May 31, 2017, the Grant Funds shall be re-transferred to the Town in the former instance, and/or the Town's obligations hereunder shall terminate.

E. Notwithstanding anything in this Agreement to the contrary, (i) nothing contained in this Agreement shall constitute a pledge of the full faith and credit of the general tax revenues, funds or moneys of the Town except the amount appropriated for the purpose of making payments hereunder during the current fiscal year, (ii) the Town is not obligated hereby to make any payments in any fiscal year beyond the fiscal year for which funds are appropriated for the payment thereof or to make payments from any funds of the Town other than funds appropriated for the payment of current expenditures, (iii) all payment obligations of the Town under this Agreement, including, without limitation, the Town's obligation to pay the Grant Funds, are from year-to-year only and do not constitute a multiple fiscal-year direct or indirect financial obligation of the Town, (iv) the agreement hereunder to pay the Grant Funds is subject to annual renewal and such agreement to pay shall be terminated upon the occurrence of an event of non-appropriation and, in such event, (x) all payments from the Town under this agreement shall terminate, and (y) Grantee expressly waives hereby all remedies and claims against the Town.

F. The Grant Funds shall be used by Grantee solely to acquire the Subject Property and to defray the costs and expenses in connection therewith, including the administration of the same. Grantee agrees that the Payment shall be used to pay the purchase price to acquire the Subject Property and to defray certain direct costs of the Grantee in connection with such purchase.

G. Notwithstanding the foregoing, the Grant Funds may not be used for the general administration and overhead costs of Grantee.

3. **Purchase Money Loan.**

A. The Payment shall be used by Grantee as payment of the purchase price to acquire the Subject Property and to defray certain direct costs and expenses in connection therewith. The remaining amount of the purchase price for the Subject Property may be paid from funds received from various sources and will include loaned money not to exceed \$ 50,000 (the "**Loan**"). In such case, the Loan will be collateralized against other real

property owned in fee by the Grantee (the "**Trade Lands**") and described to the Town in writing to the Town's elected officials prior to such collateralization. Grantee shall pay off the Loan against the Trade Lands as soon as reasonably possible, with reasonable efforts being made by Grantee to accomplish the same, through funding which may come from third party sources or the Town of Crested Butte, or both; except that Grantee shall not request that the Town fund any more than the Grant Funds in connection with the acquisition of the Subject Property. Upon payment of the Loan, the lien encumbering the Trade Lands shall be extinguished and released of record by the recording of a release of such lien in the official real property records of the Clerk and Recorder of Gunnison County, State of Colorado, with notice thereof delivered to the Town.

B. As part of the Grantee's purchase of the Subject Property, Grantee shall do all things necessary and appropriate to ensure that the Subject Lands are maintained as open space and not subject to development.

C. Neither Grantee nor the holder of fee title in the Subject Project may sell, assign, transfer or otherwise pledge, hypothecate, lien or mortgage the Subject Property or any interest therein without the express written approval of the Town.

4. **Exchange of Subject Lands.** Grantee may exchange, without prior approval of the Town, the Subject Lands with other property of equal or greater value provided that the Subject Lands and such new lands shall at all times be maintained as open space and free from development.

5. **No Liens.** Grantee shall not allow the Subject Property to become subject to any lien or claim of lien on account of any act or omission of Grantee or any person operating under the authority of Grantee. In such case, Grantee shall be responsible for the satisfaction or payment of any such lien filed or placed of record against the Subject Property. Should any such lien or claim of lien be filed against the Subject Property, Grantee shall cause the same to be canceled and discharged of record by bond or otherwise within ten (10) days after notice of the filing thereof. Should Grantee fail to discharge such lien within such 10-day period, then the Town may discharge the same, in which event the Grantee shall reimburse the Town, on demand, for the amount of the lien or the amount of the bond, if greater, plus all costs and expenses incurred by the Town in connection therewith, inclusive of reasonable attorneys' fees, costs and expenses.

6. **Signage.** In the event that any signage is installed respecting the funding for the acquisition of the Subject Property the Town shall be listed on such signage as a grantee of such funding. Such signage shall be approved in advance by the Town, such approval to not be unreasonably withheld, conditioned or delayed.

7. **Liability.**

A. **Indemnity.** To the extent allowed by law, Grantee shall be responsible for, indemnify, defend and hold harmless the Town, its elected officials, officers, agents, employees, insurers, insurance pools and attorneys (collectively, the "**Town Parties**") from any and all liabilities, claims, demands, damages or costs (including reasonable attorneys' fees) resulting

from, growing out of, or in any way connected with or incident to Grantee's receipt of the Grant Funds and any of its acts or omissions pursuant to this Agreement. Grantee hereby waives any and all rights to any type of express or implied indemnity or right of contribution from the Town Parties, for any liability resulting from, growing out of, or in any way connected with or incident to this Agreement.

B. **No CGIA Waiver.** The parties understand and agree that the parties are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (currently \$350,000 per person and \$990,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101, *et seq.*, C.R.S., as from time to time amended, or otherwise available to the parties, their elected officials, officers, agents, employees, insurers, insurance pools and attorneys officers.

C. **Compliance with Regulatory Requirements and Federal and State Mandates.** Grantee hereby assumes responsibility for compliance with all regulatory requirements in all applicable areas, including but not limited to nondiscrimination, immigration compliance, worker safety, local labor preferences, preferred vendor programs, equal employment opportunity, use of competitive bidding, and other similar requirements. To the maximum extent permitted by law, Grantee hereby agrees to indemnify, defend and hold harmless the Town from any cost, expense or liability for any failure to comply with any such applicable requirements.

D. **Nondiscrimination.** During the performance of this Agreement, Grantee and its contractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age or sex, and shall comply with any other applicable laws prohibiting discrimination. Grantee and its contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination.

8. **Audit and Accounting Records.** Grantee shall maintain standard financial accounts, document, and records relating to the acquisition, use, management, operation and maintenance of the Subject Property. The accounts, documents, and records related to acquisition of the Subject Property shall be retained by Grantee for five (5) years following the date of disbursement by the Town of the Grant Funds, and shall be subject to examination and audit by the Town or its designated agent during this period. All accounts, documents, and records described in this paragraph shall be kept in accordance with generally accepted accounting principles.

9. **Breach.** In addition to such other remedies as shall be available at law or in equity, in the event that Grantee breaches any of the terms or conditions of this Agreement and fails to correct the same within thirty (30) days of receipt of notice from the Town of such breach, the Town reserves the right to seek equitable relief and/or all other remedies as available to it under applicable law, including but not limited to, the return of all or a portion of the Grant Funds.

10. **Miscellaneous Provisions.**

A. **Good Faith.** Both parties have an obligation of good faith, including the obligation to make timely communication of information that may reasonably be believed to be of interest to the other party.

B. **Assignment.** Grantee may not assign its rights or delegate its obligations under this Agreement without the express written consent of the Town.

C. **Applicable Law.** Colorado law applies to the interpretation and enforcement of this Agreement.

D. **Status of Grantee.** The parties acknowledge that the Town lacks the power and right to direct the actions of Grantee. Grantee acts in its separate capacity and not as an officer, employee or agent of the Town.

E. **Survival.** The terms and provisions of this Agreement and Grantee's obligations hereunder shall survive the funding of the Grant Funds and the acquisition of, and any future conveyance of, the Subject Property.

F. **Fax and Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which when taken together shall constitute one agreement. In addition, the parties agree to recognize signatures to this Agreement transmitted by facsimile as if they were original signatures.

G. **Third Party Beneficiary.** The parties hereby acknowledge and agree that this Agreement is intended only to cover the relative rights and obligations between the Town and Grantee, and that no third party beneficiaries are intended.

H. **Notice.** Any notice, demand, request, consent, approval or communication that either party desires or is required to give the other shall be in writing and either served personally or sent by first class mail, postage prepaid, to the addresses first shown in this Agreement.

I. **Construction; Severability.** Each party hereto has reviewed and revised (or requested revisions of) this Agreement, and therefore, any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Agreement. If any provision in this Agreement is found to be ambiguous, an interpretation consistent with the purpose of this Agreement that would render the provision valid shall be favored over any interpretation that would render it invalid. If any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement, and the balance of this Agreement shall otherwise remain in full force and effect. At any time when this Agreement refers to a party's ability to act or make determinations or decisions with discretion, this Agreement shall be construed to permit such party to act and to make such determinations and/or decisions in its sole discretion.

J. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties. No oral understanding or agreement not incorporated in this Agreement shall be binding upon the parties. No changes in this Agreement shall be valid unless made in writing and signed by the parties to this Agreement.

K. **Authority.** The parties represent and warrant to the other that each is duly authorized and existing business entity; each is qualified to do business Colorado; each has full right and authority to enter into this Agreement; the person signing on behalf of each party is duly authorized to do so and has obtained any and all approvals necessary to enter into and perform the obligations contained in this Agreement; and each party's compliance with the terms hereof do not violate any agreement or other obligation of such party.

L. **Prevailing Party.** In the event of any dispute arising from or related to this Agreement, the prevailing party will be entitled to recovery of all reasonable costs incurred in connection therewith, including, without limitation, court costs, attorneys' fees and other related expenses.

M. **Record Memorandum.** A record memorandum of this Agreement may be recorded by the Town in the official real property records of the Clerk and Recorder of Gunnison County, Colorado.

IN WITNESS WHEREOF, the parties by signature below of their authorized representatives execute this Agreement as of the Effective Date set forth above.

TOWN:

GRANTEE:

TOWN OF CRESTED BUTTE

CRESTED BUTTE LAND TRUST

By: 
Aaron J. Huckstep, Mayor

By: 
Name: Ann Johnston
Title: Executive Director

ATTEST:

Lynelle Stanford, Town Clerk

[SEAL]



EXHIBIT "A"

Subject Property

- 1: Copley Lake Photograph by Bob Couchman
- 2: Green outline of mining claim to be protected
- 3: Copley Lake location in relation to Lake Irwin and Town of Crested Butte

