RESOLUTION NO. 40

SERIES 2017

RESOLUTIONS 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.

10th INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL THIS DAY OF July, 2017.

TOWN OF CRESTED BUTTE

By: Glenn Michel

Glenn Michel, Mayor

ATTEST

Lynelle Stanford, Town Clerk

(SEAL)

TOWN OF CRESTED BUTTE CORPORATE SEAL JULY 2, 1880 GUNNISON COUNTY, CO

SERVICES AGREEMENT - 2017

This 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 the Town of Crested Butte, a home rule municipality organized under the laws of the state of Colorado, with a place of business located at: P.O. 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 (not to exceed 5 years) 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 below.

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 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. **Equipment**. Unless otherwise provided in the Scope of Work or in a writing signed by the parties, all equipment purchased 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.

8. **Liability; Insurance.** Each party hereto agrees to be responsible, to the extent authorized by law, for its own wrongful or negligent acts or omissions, or those of its officers, agents, or employees acting within the scope of their authority. Notwithstanding any other provision contained herein, no term or condition of this Agreement shall be deemed, construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or provisions, of the "Colorado Governmental Immunity Act", 24-10-101, et seq., C.R.S., as now or hereafter amended ("Immunity Act"), nor of the Risk Management self-insurance statutes at 24-30-1501, et seq., C.R.S., as now or hereafter amended ("Risk Management Act"). The parties understand and agree that the liability of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is at all times controlled and limited by the provisions of the Immunity Act and the Risk Management Act, as now or hereafter amended. The parties also understand and agree that the liability of the Client, its departments, institutions, agencies, boards, officials and employees is at all times controlled and limited by the provisions of the Immunity Act. Any provision of this Agreement, whether or not incorporated herein by reference, shall be controlled, limited, and otherwise modified so as to limit any liability of the State and of the Client by the provisions of the above cited laws.

   Colorado State University, its officers, governing board, employees and authorized volunteers (collectively herein, "University") shall not be liable for consequential, indirect, special, incidental, exemplary or other damages arising from the Agreement or its performance by University, except for direct, breach of contract damages proximately caused by a breach of this Agreement by University. Direct damages for which the University may be liable shall not, in any event, exceed the total amount paid for the specific services that University failed to deliver as agreed. University shall not be responsible for any costs incurred by Client in connection with obtaining services through any other provider in the event that this Agreement is terminated, whether for convenience or cause.

9. **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 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.

10. **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 University Vice President for Research. In the case of the Client, prior written approval is required from an authorized representative of the Client.

11. **Termination**. Any 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.

12. **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 Agreement 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 Agreement 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 10 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.

13. **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.), (iii) fax transmission if verification of receipt is obtained, or (iv) email with return receipt, to the designated representative 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
Fax: 970-491-7736

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
01 Administration Building
0006 Campus Delivery
Colorado State University
Fort Collins, CO 80523-0006
Tel: 970-491-6270

To Client:

Town of Crested Butte
Janna Hansen
P.O. Box 39
Crested Butte, CO 81224
Telephone: 970-349-5338

14. **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 University Vice-President for Research or his/her authorized delegate.

15. **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.

16. **Amendment.** No amendment to this Agreement shall be valid unless it is made in a writing signed by the authorized representatives of the parties.

17. **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.

18. **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 a court of competent jurisdiction situated in the County of Larimer, State of Colorado.

19. **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.

20. **Obligations to be limited to the funds made available.** Any other provision of this Agreement notwithstanding and pursuant to Section 29-1-110, C.R.S., the amount of funds appropriated for this Agreement is Seven Hundred Fifty Dollars ($320.00) for the year ending December 31, 2017. In no event shall the Client be liable for payment under this Agreement for any amount in excess thereof. The Client is not under obligation to make any future apportionment of allocation to this Agreement. Any potential expenditure for this Agreement outside the current fiscal year is subject to future annual appropriation of funds for any such proposed expenditure.

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:_____

Printed Name: Sam J. Pankratz

Title: Assistant District Forester, CSFS, Gunnison Field Office

Date: _____

Client:

By:_____

Printed Name: Dara MacDonald

Title: Town Manager

Date: _____

APPROVED:

By: _____

EXHIBIT A TO SERVICE AGREEMENT

Scope of Work

(Enter or attach a complete description of the work to be performed, including any supplies, deliverables or work product to be provided by University. Specify time and manner of performance as required. . Each page of this Exhibit should be initialed by the signatories for the parties).

PRINCIPAL INVESTIGATOR:_____ Sam Pankratz_____

TITLE: _____Assistant District Forester, CSFS, Gunnison Field Office_

CLIENT INVESTIGATOR: _____Town of Crested Butte (Janna Hansen) _____

DETAILED DESCRIPTION of Scope of Work for July 11, 2017 – December 31, 2017

A. Assist in tree care program to renovate existing tree resources within town jurisdiction, i.e. pruning, planting, contract assistance, advice

B. Assist with Arbor Day

C. Attend Tree Board Meetings

D. Diagnose public and private sick trees within town limits upon request

E. Supervise and inspect technical aspects of tree cutting permit applications

F. Assist with Tree City USA program

Payment Terms:

$325.00 due in full upon receipt of invoice.

Exhibit A to Services Agreement
Initials:
CSU:
_____
Client:
_____

SERVICES AGREEMENT - 2017

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

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2. **Term.** This Agreement shall be effective commencing on the date of final signature (the "Effective Date") and shall terminate one year (not to exceed 5 years) thereafter, unless sooner terminated as provided herein or extended by written agreement of the parties.

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   ☐ 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.

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9. **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 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.

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Tel: 970-491-6270

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Town of Crested Butte
Janna Hansen
P.O. Box 39
Crested Butte, CO 81224
Telephone: 970-349-5338

14. **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 University Vice-President for Research or his/her authorized delegate.

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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: _____

Printed Name: Sam J. Pankratz

Title: Assistant District Forester, CSFS, Gunnison Field Office

Date: 7/28/17

Client:

By: _____

Printed Name: Dara MacDonald

Title: Town Manager

Date: 8/1/17

APPROVED:

By: _____

EXHIBIT A TO SERVICE AGREEMENT

Scope of Work

(Enter or attach a complete description of the work to be performed, including any supplies, deliverables or work product to be provided by University. Specify time and manner of performance as required. . Each page of this Exhibit should be initialed by the signatories for the parties).

PRINCIPAL INVESTIGATOR:_____ Sam Pankratz_____

TITLE: _____Assistant District Forester, CSFS, Gunnison Field Office_

CLIENT INVESTIGATOR: _____Town of Crested Butte (Janna Hansen) _____

DETAILED DESCRIPTION of Scope of Work for July 11, 2017 – December 31, 2017

A. Assist in tree care program to renovate existing tree resources within town jurisdiction, i.e. pruning, planting, contract assistance, advice

B. Assist with Arbor Day

C. Attend Tree Board Meetings

D. Diagnose public and private sick trees within town limits upon request

E. Supervise and inspect technical aspects of tree cutting permit applications

F. Assist with Tree City USA program

Payment Terms:

$325.00 due in full upon receipt of invoice.

Exhibit A to Services Agreement
Initials:
CSU:
SP
_____
Client:
_____