

**RESOLUTION NO. 45**

**SERIES 2016**

**RESOLUTIONS OF THE CRESTED BUTTE TOWN  
COUNCIL APPROVING THE SERVICES AGREEMENT  
WITH THE CRESTED BUTTE/MT. CRESTED BUTTE  
CHAMBER OF COMMERCE**

WHEREAS, the Town of Crested Butte, Colorado ("**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 Council has worked cooperatively with the Crested Butte/Mt. Crested Butte Chamber of Commerce (the "**Chamber**") over the years for the Chamber's provision of services related to the marketing and promotion of tourism in and around Crested Butte;

WHEREAS, the Town Council wishes to continue providing a portion of the proceeds from the Town's business occupation licensing tax (the "**BOLT**") set forth in Chapter 6, Article 2 of the Crested Butte Municipal Code (the "**Code**") to the Chamber to pay for expenses related to the promotion and marketing of tourism in and around Crested Butte, for the promotion and marketing of events beneficial to the business community in and around Crested Butte and for operation of the Crested Butte Visitors' Center;

WHEREAS, the Code contemplates that the proceeds from the fee imposed pursuant to BOLT shall be used for marketing and promotion of the Town's principal industry, tourism, and for payment of expenses related to promotion and marketing of events beneficial to the business community;

WHEREAS, the Chamber agrees to utilize a portion of the BOLT funds to market and promote tourism and events beneficial to Crested Butte and surround area businesses and to operate the Crested Butte Visitors' Center; and

WHEREAS, the Town Council finds that it is in the best interest of the health, safety and general welfare of Crested Butte, its residents and visitors to enter into a services agreement with the Chamber to accomplish the matters set forth above.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO RESOLVES:

The Town Council hereby approves the Services Agreement attached hereto as **Exhibit "A"** ("**Agreement**"). The Mayor is hereby authorized to execute the Agreement in substantially the same form as attached hereto.

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE THIS 19<sup>th</sup> DAY OF September 2016.

TOWN OF CRESTED BUTTE, COLORADO

By: Glenn Michel  
Glenn Michel, Mayor

ATTEST

Lynelle Stanford  
Lynelle Stanford, Town Clerk

(SEAL)



**EXHIBIT "A"**

**(Services Agreement)**

[attach form of Agreement here]

## SERVICES AGREEMENT

**THIS SERVICES AGREEMENT** (“**Agreement**”) is made and entered into this December 2016, with an effective date of January 1, 2017 (“**Effective Date**”), by and between the **TOWN OF CRESTED BUTTE** (the “**Town**”), a Colorado home rule municipality with an address of 507 Maroon Avenue, P.O. Box 39, Crested Butte, Colorado 81224 and the **CRESTED BUTTE / MT. CRESTED BUTTE CHAMBER OF COMMERCE** (the “**Chamber**”), a Colorado non-profit corporation with an address of P.O. Box 1288, Crested Butte, Colorado 81224.

### RECITALS:

A. Section 6-2-50 of the Crested Butte Municipal Code (the “**Code**”) provides for the use of the proceeds from the Town’s Business Occupation Licensing Tax, less twenty five percent (25%) thereof (the “**BOLT**” proceeds) for marketing and promotion of the Town’s principal industry, tourism, and for payment of expenses related to the promotion and marketing of events beneficial to the business community.

B. The Chamber desires to receive from the Town, and the Town desires to deliver to the Chamber, a portion of the BOLT proceeds in order for the Chamber to operate that certain going concern known as the “**Visitor Center**.”

**NOW, THEREFORE**, in consideration of the mutual agreements set forth herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### **SECTION 1** **PURPOSE**

The Town desires to promote awareness of tourist related attractions located within the Town through the Visitor Center, with the Visitor Center providing tourist and general information services, and the Town desires to support events that are beneficial to the business community. The Chamber will provide Visitor Center and information services which enhance the local tourism industry and tourist related attractions located within Gunnison County, and to conduct events which are beneficial to the business community.

### **SECTION 2** **SCOPE OF PERFORMANCE**

2.1 **Visitor Center Services**. The Chamber shall provide adequate personnel to operate the Visitor Center seven (7) days per week 365 days a year. Operating hours will be 9-5pm with reasonable flexibility to manage the hours of operation to best accommodate the tourists. Council will be notified of any changes in the scheduled hours. The Chamber shall be responsible for the payment of all costs and expenses whatsoever, of all Visitor Center facilities. The Chamber may not engage in any conspicuous display of advocacy in public areas of the Visitor Center. The Chamber shall, through the Visitor Center, coordinate the tasks required to

provide the following services for tourists and visitors to the Crested Butte area, in consideration for BOLT funds received from the Town.

2.1.1 Maintain adequate supplies of State and local information, brochures and local and regional maps.

2.1.2 Promote tourist travel and distribute such documents related thereto to facilitate their best use.

2.1.3 Encourage tourist travel to points and places of Crested Butte-wide interest, promote climate and recreational advantages, and provide such other information that, in the opinion of the Visitor Center staff, tends to attract and serve visitors to Crested Butte.

2.1.4 Stimulate and encourage local and State government agencies and private persons and enterprises to participate and cooperate in the promotion of tourism and tourism development in the community.

2.1.5 Maintain and advertise in conjunction with the Gunnison Crested Butte Tourism Association (“**TA**”) a telephone line for a Visitor Center toll-free number.

2.1.6 Maintain, a link to the TA’s visitor-oriented annual community calendar of cultural, historic and recreational events designed to draw visits and return visits throughout the year and make such information available through the Chamber’s official website.

2.1.7 Provide appropriate information to returning visitors and newcomers, without regard to Chamber membership. The Visitor Center staff shall respond within a reasonable time to inquiries, provide area information to visitors, make available an inventory of up-to-date brochures, literature and miscellaneous information and work in the best interest of area tourism. Chamber membership benefits include the opportunity to display brochures; non-members who have paid BOLT shall have the opportunity to display business cards only.

2.1.8 Provide and train an adequate number of personnel to staff the Visitor Center in accordance with hours of operation. The type and number of personnel shall be at the reasonable discretion of the Chamber.

2.1.9 Maintain records of walk-ins, mail, email and phone requests in a form which will provide informative data.

2.1.10 Make available information outside of the Visitor Center building and/or in the vestibule after Visitor Center hours.

2.1.11 Coordinate with Town and maintain event calendar and notices in space provided in the enclosed bus stops.

2.2 **Promotion and Marketing of Events Beneficial to the Business Community.**

The Chamber shall manage the tasks required to provide the following events and event resources in consideration for the Town providing the BOLT proceeds to the Chamber:

2.2.1 Host the Memorial Day and Labor Day weekend sidewalk sales; events of Crested Butte Bike Week and Fat Bike World Championships that are to be held in the Town of Crested Butte; 4th of July Parade and related festivities that are held in the Town of Crested Butte; December Holiday Light-Up Night; and January 12<sup>th</sup> Night Bonfire Celebration.

2.2.2 Meet, as requested, with the coordinators of all major Town events to review opportunities for collaboration between the event and the business community.

2.2.3 Act as a resource for planners of new events in order to assist the same in developing positive working relationships with the business community.

2.2.4 Work to implement recycling and zero waste for all Chamber events.

2.2.5 The Chamber shall also endeavor to identify and develop in conjunction with appropriate persons' potential new events that would enhance the reputation and attractiveness of the Crested Butte / Mt. Crested Butte area as a visitor and tourist destination.

2.3 **Cash Position.** The Chamber shall provide copies of bank statements, reconciliations and financials to the Town upon request.

2.4 **BOLT Proceeds Separate.** The Chamber shall keep all funds received from BOLT proceeds in a separate bank account from other Chamber funds.

2.5 **Requests for BOLT Funding.** The Chamber shall provide a formal written request to the Town on or before October 1, to be considered for BOLT funding for the next fiscal year. Said request shall include a year-to-date budget through September 15, a proposed budget for the next fiscal year and a summary of the projects and events which are anticipated to take place during the said fiscal year to promote the marketing of and enhance the business activities within the Town.

**SECTION 3**  
**TERM; TERMINATION**

3.1 **Term.** From the Effective Date through December 31, 2017 (the "**Term**").

3.2 **Termination.** In the event that either party believes that the other materially has breached any obligations under this Agreement, such party shall so notify the breaching party in writing. The breaching party shall have 60 days from the receipt of the notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within 60 days, the non-breaching party shall have the right to terminate the Agreement without further notice.

**SECTION 4**  
**NOTICES**

Whenever notice or demand may be given by either party to the other party, such notice or demand shall be given by mail, postage pre-paid, addressed to the Executive Director of the Chamber and the Town Manager for the Town at the addresses first set forth above.

**SECTION 5**  
**BOLT PROCEEDS; VISITOR CENTER LEASE**

**5.1 BOLT Proceeds.**

5.1.1 Provided that the Chamber is not otherwise in breach of any term or condition of this Agreement, and provided further that the Town has not otherwise terminated this Agreement, the Town shall pay the Chamber the BOLT proceeds for the period of January 1, 2017 through December 31, 2017; provided that such BOLT proceeds shall be used strictly for the purpose of performing the services set forth in Section 2.1 and 2.2 hereinabove. Such BOLT proceeds shall be provided to the Chamber, if at all, on January, April, July and October 15th. The October payment may be modified by the Town to reflect the balance remaining in the BOLT proceeds.

5.1.2 From time-to-time, the Visitor Center line of business may lend funds to the Chamber line of business, and vice versa, to close gaps in short-term cash flows. Such loans shall be sufficiently recorded and evidenced in the books, records and accounts of both lines of business when made and when repaid. Outstanding loans from BOLT proceeds to the Chamber line of business will be repaid before the end of the Chamber's fiscal year.

5.1.3 The Chamber shall keep or cause to be kept true, accurate, and complete records of all business and financial transactions relating to the aforementioned functions and shall make such records available to the Town upon reasonable request thereof and without expense. The chamber agrees that the Town shall have the right through its duly authorized employees, agents or representatives to examine all pertinent records at any and all reasonable times upon reasonable notice for the purpose of determining compliance with the terms of this Agreement.

5.2 **Visitor Center Lease.** The Town shall provide for the Chamber use of the Visitor Center building located at 601 Elk Avenue, Crested Butte, Colorado 81224, pursuant to the terms of a certain commercial lease agreement ("**Lease Agreement**"), dated May 22, 1995, and entered into between the Chamber and the Town.

**SECTION 6**  
**REMEDIES**

Upon an uncured breach of any terms of this Agreement or the Lease Agreement, the Town shall have one or more of the following remedies (1) recover damages due to the breach by the Chamber including expenses, attorneys' fees and costs; (2) terminate this Agreement

and/or the Lease; and/or (3) receive a refund of any unearned amounts paid the Chamber under this Agreement. The remedies set forth in this Section shall survive the expiration and any earlier termination of this Agreement. In addition to the foregoing, the Town reserves all rights to pursue and rights at law and in equity.

## **SECTION 7** **INDEMNIFICATION**

The Chamber shall defend, indemnify and hold harmless the Town, its elected, officers, employees, agents attorneys and contractors from and against any and all claims, suits, liabilities, costs, expenses, attorneys' fees or damages (collectively "**Claims**") on account of any acts or omissions of the Chamber, or any of its contractors, subcontractors, suppliers, directors, officers, agents, employees, invitees, guests or servants. The indemnification obligations set forth in this Section shall survive the expiration and any earlier termination of this Agreement.

## **SECTION 8** **REPORTING**

8.1 Within forty-five (45) days of the end of each calendar year, the Chamber shall file with the Town an electronic copy of the following reporting information:

8.1.1 Visitor Center Statistical Report: The report shall contain the number of contacts by types of inquiry and the method of communication (i.e., walk-in, call-in, mail-in, etc.) for the preceding calendar year. The report shall also include information concerning any specific activities of interest relating to the Visitor Center operation such as new programs, planned activities or events, or other such information that are tourist related.

8.1.2 Business Support Activity Report: The report shall contain a breakdown of all activity related to activities supporting and promoting events beneficial to the business community.

8.1.3 Financial Report: The report shall contain financial information reflecting the complete financial status of the Chamber and the Visitor Center for the preceding calendar quarter. Such report shall include balance sheets and profit and loss reports for the overall operation, membership line of business and the Visitor Center/events line of business, in form and presentation as is reasonably acceptable to the Town.

8.1.4 Event Report: For each event held in the Town of Crested Butte, the Chamber shall submit a report which summarizes the event, including participants, sponsors, and visitors. In addition, the Chamber shall report on any significant problems during the event, suggestions for rectifying any problems and any possible improvements or changes to future occurrences of this event. As a part of this reporting requirement, the Chamber shall conduct a post-event meeting and shall inform the Town of the time and place of such meeting. For any event that requires permitting from the Town, the Chamber and the Town shall determine any parties required to be part of post-event meetings.



8.1.4 A Chamber membership status report, including the attrition rate and outstanding renewals. Each attrition report shall depict the attrition rate during the preceding year.

8.1.5 A report of economic demographic information on visitors and participants in Chamber events. Information may include items such as number of days spent in Town/area, type of tourist/participant (e.g. younger, older, professional, general laborer, retired), income level and amount of money spent during the visit.

8.2 Final Report: Within forty-five (45) days of the termination of this Agreement, the Chamber shall provide a final report which shall include a complete summary of the reports required above.

## **SECTION 9** **REPRESENTATIONS; WARRANTIES**

9.1 The Chamber represents and warrants that it is duly qualified to do business and is in good standing with the State of Colorado.

9.2 The Chamber has the full power and authority to execute, deliver and perform its obligations under this Agreement.

9.3 The Chamber represents and warrants that it will comply with all applicable laws, ordinances, rules, regulations or orders issued by any public or governmental agency, body or authority, whether Federal, State, local or otherwise, and has obtained all applicable permits and licenses required in connection with its obligations under this Agreement.

The foregoing warranties and representations set forth in this Section shall survive the expiration or termination of this Agreement.

## **SECTION 10** **RELATIONSHIP**

The Chamber and any of its contractors, subcontractors, suppliers, directors, officers, agents and employees shall be an independent contractor, and not an employee of Town, within the meaning of all Federal, State and local laws and regulations governing employment insurance, workers' compensation, industrial accident, labor and taxes. The Town shall not be liable for employment or withholding taxes respecting the Chamber or any employee of Chamber. **THE CHAMBER IS NOT ENTITLED TO UNEMPLOYMENT INSURANCE OR WORKERS' COMPENSATION BENEFITS AS A RESULT OF ITS PERFORMANCE UNDER THIS AGREEMENT. THE CHAMBER IS REQUIRED TO PROVIDE WORKERS' COMPENSATION AND UNEMPLOYMENT INSURANCE BENEFITS FOR ITS EMPLOYEES AND/OR SUBCONTRACTORS. THE CHAMBER IS SOLELY LIABLE FOR ANY FEDERAL AND STATE INCOME AND WITHHOLDING TAXES, UNEMPLOYMENT TAXES, FICA TAXES AND WORKERS' COMPENSATION PAYMENTS AND PREMIUMS APPLICABLE TO THIS AGREEMENT OR ANY WORK PROVIDED. THE CHAMBER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS**

THE TOWN FOR ANY LIABILITY RESULTING FROM NONPAYMENT OF SUCH TAXES AND SUMS.

### **SECTION 11** **ASSIGNMENT**

The Chamber may not, without the Town's prior written approval, which such approval may be withheld in the Town's sole and absolute discretion, voluntarily or involuntarily assign, convey, transfer, pledge, mortgage or otherwise encumber all or any portion of its interests, rights or obligations in this Agreement.

### **SECTION 12** **IMMIGRATION COMPLIANCE**

The Chamber certifies that it has complied, and during the term of this Agreement will continue to comply, with the Immigration Reform and Control Act of 1986. The signature of the Chamber on this Agreement: (1) certifies that the Chamber and none of its contractors, subcontractors, suppliers, directors, officers, agents and employees are not natural persons unlawfully present in the United States; and (2) also certifies the statements below if this is a public contract for services as defined in C.R.S. § 8-17.5-101 et seq. and the Chamber utilizes subcontractors or employees in the Chamber's business. The Chamber shall not:

(a) knowingly employ or contract with an illegal alien to perform work under this Agreement; or

(b) enter into a contract with a subcontractor that fails to certify to the Chamber that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

The Chamber has confirmed the employment eligibility of all employees and subcontractors who are newly hired for employment to perform work under this Agreement through participation in either the e-verify program or the department program (as defined in C.R.S. § 8-17.5-101 et seq.). The Chamber may not use either the e-verify program or the department program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed. If the Chamber obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Chamber shall:

(i) notify the subcontractor and the Town within three (3) days that the Chamber has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(ii) terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to sub-subparagraph (a) of this subparagraph the subcontractor does not stop employing or contracting with the illegal alien; except that the Chamber shall not terminate the contract with the subcontractor if during such three (3) days the

subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

The Chamber shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to state law. The Chamber acknowledges that in the event that the Chamber violates any of the provisions of the foregoing the Town may terminate this Agreement for breach of contract. No notice need be given of said termination. If this Agreement is so terminated, the Chamber shall be liable for actual and consequential damages to the Town.

### **SECTION 13** **NON-DISCRIMINATION**

The Chamber expressly agrees not to discriminate against any employee, applicant for employment or potential subcontractor or supplier because of race, color, religion, age, national origin, gender, sexual orientation, military status, marital status or disability. The Chamber shall comply with all applicable local, State and federal laws with regard to equal employment opportunity.

### **SECTION 14** **MISCELLANEOUS**

14.1 **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns.

14.2 **Waiver.** No waiver by any party of any right or remedy under this Agreement shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement. No waiver of any term, covenant or condition of this Agreement shall be valid unless affirmed in writing.

14.3 **Severability.** If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by either party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

14.4 **Survival.** All covenants, conditions, representations, warranties, rights, remedies and agreements contained in this Agreement of an ongoing and continuing nature shall survive the expiration or earlier termination of this Agreement. Any provisions that are expressly stated to survive the expiration or termination of this Agreement shall be enforced accordingly.

14.5 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Colorado without regard to choice of law rules. Litigation respecting this Agreement shall only be brought in the applicable state courts of

Gunnison County, State of Colorado.

14.6 **Entire Agreement; Amendment.** This Agreement constitutes the entire and exclusive agreement between the parties relating to the specific matters covered in this Agreement. This Agreement may only be amended by an agreement in writing signed by each party hereto.

14.7 **Counterparts; Photocopy.** This Agreement may be executed in multiple counterparts, each of which, when taken together, shall constitute one and the same agreement. Photocopies shall be deemed to be originals for purposes of enforcement of the terms hereof.

14.8 **Construction.** Each of the parties hereto agrees that this Agreement represents an arms' length transaction and is the product of negotiations between sophisticated parties and individuals, all of whom were represented by legal counsel, and each of whom had an opportunity to participate in, and did participate in, the drafting of each provision hereof. Accordingly, ambiguities in this Agreement, if any, shall not be construed strictly or in favor of or against any party, hereto, but rather shall be given a fair and reasonable construction without regard to the rule of *contra proferentum*.

14.9 **No Third Party Beneficiaries.** Except as expressly provided herein, this Agreement is for the benefit of the parties hereto and is not entered into for the benefit of, and shall not be construed to confer any benefit upon, any other person.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives effective as of the Effective Date.

TOWN:

**TOWN OF CRESTED BUTTE,**  
a Colorado home rule municipality

By:   
Glenn Michel, Town Mayor

ATTEST:

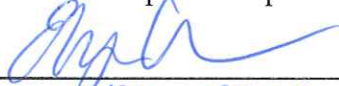
By:   
Lynelle Stanford, Town Clerk

(SEAL)




CHAMBER:

**CRESTED BUTTE / MT. CRESTED BUTTE  
CHAMBER OF COMMERCE,**  
a Colorado non-profit corporation

By:   
Name: Eliza Cress  
Title: Director

ATTEST:

By:   
Name: Leah Fischer  
Title: bookkeeper.

(SEAL)