

- I. CALL TO ORDER
  
- II. ROLL CALL
  
- III. REVIEW AGENDA
  
- IV. CONSENT OF SEPTEMBER 9, 2014 MINUTES
  
- V. OLD BUSINESSES
  - a. Recommendation - Replat Drawing Options Rio Grande Avenue
  - b. Flume Committee Recommendation Clarification
  
- VI. NEW BUSINESS
  - a. Former School Property Discussion - Wyley Park & Playground
  - b. MCFA Annexation Update - Update
  
- VII. ADJOURN

POSTED 10/10/14

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OPEN TO THE PUBLIC

**PLANNING & ZONING COMMISSION  
CITY OF CREEDE, COLORADO - A TOWN  
September 9, 2014**

**REGULAR MEETING**

The Planning and Zoning Commission of the City of Creede – a Town, County of Mineral, State of Colorado, met in the Creede Town Hall at the hour of 5:32 p.m. There being present at the call of the roll the following persons:

COMMISSIONERS PRESENT: Kay Wyley, Eric Grossman (by phone), Lauri Jordan, Frank Freer  
[arr. 5:34]  
COMMISSIONERS ABSENT: Rex Sheppard

Commissioner Jordan, presiding, declared a quorum present:  
Those members of staff also present were as follows: Clyde Dooley, Town Manager  
Randi Snead, Town Clerk/Treasurer

**AGENDA**

Manager Dooley added a presentation and recommendation for the Flume Committee to New Business item b and a discussion of Rio Grande Avenue to Old Business item a. Commissioner Freer moved and Commissioner Wyley seconded to approve the agenda as amended. The vote was unanimous. Commission Chair Jordan declared the motion carried.

**CONSENT OF AUGUST 12, 2014 MINUTES**

Commissioner Wyley moved and Commissioner Freer seconded to approve the August 12, 2014 minutes. The vote was unanimous. Commission Chair Jordan declared the motion carried.

**OLD BUSINESS**

**NEW SCHOOL WATER UPDATE**

Dooley updated the Commission on ongoing negotiations related to the School Water Supply Agreement. Residential water and irrigation water would be considered separately, and the school is considering the purchase of water rights to secure future irrigation need in the future. The Water Agreement may be ready for consideration during the next regular Board of Trustees meeting.

**COUNTY ANNEXATION**

Mineral County Commissioner Scott Lamb was present and ongoing negotiations regarding a street Annexation in Creede America were discussed at length. Commission Chair Jordan moved and Commissioner Freer seconded to recommend that the Board of Trustees make a counter-offer to Mineral County offering to annex the remainder of Bee McClure Drive, an extension of Helfin Lane, and the cemetery road while continuing to allow ATV access on Bee McClure Drive from Bachelor Loop to the cemetery.

**RIO GRANDE AVENUE UPDATE**

Material was distributed and maps were inspected from Ron McLaughlin regarding Rio Grande Avenue. The Commission will be asked for a recommendation of one of the replat drawings during the October meeting.

**NEW BUSINESS**

**PARKS IMPROVEMENTS**

Dooley explained that many different parks improvements have been discussed over the past several boards. Some had been completed and some had not, and many priorities have been changed. He asked the Commission members to submit any ideas or projects they would like to see completed in 2015 so they may be taken into consideration during budget season.

FLUME PRESENTATION AND RECCOMENDATION

Robert Schlough gave a presentation on the progress of flume repairs. The Flume Committee feels prepared to move forward with Bohannan Houston to develop a repair plan involving shotcrete and concrete blankets according to the specifications their engineers develop. Commissioner Freer moved and Commissioner Grossman seconded to recommend that the Board of Trustees engage Bohannan Houston for the flume project. The vote was unanimous. Commission Chair Jordan declared the motion carried.

ADJOURN

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There being no further business to come before the Planning and Zoning Commission at this time, Commissioner Freer moved and Commissioner Grossman seconded that the meeting be adjourned at 6:08 p.m. The vote was unanimous. Commission Chair Jordan declared the motion carried.  
Respectfully submitted:

\_\_\_\_\_  
*/Randi Snead/*  
Randi Snead  
City Clerk/Treasurer



rec'd 9/9/14

September 9, 2014

City of Creede  
 Clyde Dooley, Manager  
 Box 457  
 Creede, Colorado 81130

Merrick-McLaughlin Water Engineers  
 2420 Alcott Street  
 Denver, Colorado 80211  
 Tel: +1 303-964-3333  
 Fax: +1 303-964-3355  
 wwwWestmerrick.com

**RE: Replat Rio Grande Avenue**

Dear Clyde:

Attached are four drawing sheets to describe the issues involved in replatting existing Rio Grande Avenue between West 5<sup>th</sup> Street and West 3<sup>rd</sup> Street.

1. We have superimposed the existing water and sewer system onto the proposed plat map you furnished. This drawing illustrates several conflicts between the proposed plat and the existing utilities - which would make this plan problematic (expensive).
2. The drawing labeled "Minimum Utility Protection Requirements" identifies those existing utilities that must be recognized and protected in any development layout.
3. The drawing labeled "Replat Rio Grande Avenue as Rio Grande Lane" configures a proposed development plan that protects those existing utilities under a replatted "Rio Grande Lane". This Rio Grande Lane would be a dedicated right-of-way as a grassy, open space utility corridor. No vehicular access would be provided on this new Rio Grande Lane. It would serve as an open space buffer between the existing neighborhood and whatever land uses might occur on the three new lots created by this plan. This layout extends both West 4<sup>th</sup> Street and West 5<sup>th</sup> Street through to Loma Street as shown on the original layout. To provide more area for land development, this plan would extend West 4<sup>th</sup> Street as a 40-foot ROW rather than the standard Creede 50-foot ROW. Any unused remainder land from the original platted Rio Grande Avenue would be vacated back to the adjacent properties.
4. The drawing labeled "Alternate Replat Rio Grande Avenue as Rio Grande Lane" protects the existing utilities as in the previous drawing and also creates three new lots. To create more land area for development, this alternative does not extend West 4<sup>th</sup> Street through to Loma Street. To protect the existing water line, an easement would be provided between the two adjacent lots. Not extending West 4<sup>th</sup> Street would save the cost of earthwork and paving to make the connection, would avoid a drainage crossing and would protect the existing neighborhood from unwanted through traffic. As in the other layout, any unused remainder land from the original platted Rio Grande Avenue would be vacated back to the adjacent properties.

Our preference would be the Alternate layout that does not extend West 4<sup>th</sup> Street through to Loma Street. This alternative allows the three new lots to develop with an orientation to the greater traffic and visibility of the Loma Street corridor and protects the integrity of the

existing residential neighborhood from possible traffic and incompatible land uses orienting toward Loma Street. It will also have the lowest development costs.

Sincerely,

**McLaughlin Water Engineers**  
A Division of Merrick & Company

A handwritten signature in black ink, reading "Ronald C. McLaughlin". The signature is written in a cursive style with a large, stylized initial "R".

Ronald C. McLaughlin, P.E. & L.S.

October 7, 2014

Clyde Dooley  
City Manager  
Town of Creede  
904 S. Main St.  
Creed, CO 81130

Re: Proposal for Engineering and Survey Services for Willow Creek Flume Rehabilitation Project

Dear Clyde:

Bohannon Huston, Inc. (BHI) is pleased to offer this proposal to provide engineering and survey services for the Willow Creek Flume Rehabilitation Project. The scope of services and associated fees are provided within Exhibit A, attached.

Our total fee for this work, being performed on a lump sum basis, is \$43,535.00 based on our current understanding of the project and attached scope. We are willing to discuss the scope and fee as needed to mutually agree on the final deliverable and cost.

If this proposal is acceptable, please sign in the space provided below and in the General Provisions Agreement. This contract letter, the enclosed Scope of Services and Associated Fees, and General Provisions Agreement constitute the contract.

Please return the signed original to this office and keep a copy for your records. This proposal is subject to renegotiation if not accepted within thirty (30) days. If any portion of this scope extends in duration for more than one year from the date of acceptance, the contract is subject to renegotiation.

Should you have any questions, please contact me at 505-823-1000.

Sincerely,



Craig W. Hoover, P.E.  
Senior Vice President  
Water Resources

CWH/le  
Enclosures

ACCEPTED: Town of Creede

BY \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

cc: Loretta Davis, Bohannon Huston, Inc. (w/encls.)  
Tandy Freel, Bohannon Huston, Inc. (w/encls.)  
Annette Fargnoli, Bohannon Huston, Inc. (w/encls.)

**Engineering ▲**  
**Spatial Data ▲**  
**Advanced Technologies ▲**

**EXHIBIT A  
TOWN OF CREEDE  
SCOPE OF SERVICES AND ASSOCIATED FEES  
WILLOW CREEK REHABILITATION PROJECT  
OCTOBER 7, 2014  
PAGE 1 OF 5**

**Background**

The Willow Creek Flume, constructed in 1950 by the United States Army Corps of Engineers (USACE) is a prominent feature bisecting the Town of Creede Colorado. The stone masonry lined flume is at the end of its design life and is showing numerous signs of deterioration and potential failure. Failure of the flume would result in flooding, property damage, and possibly loss of life.

There have been numerous studies investigating the condition of the flume and making recommendations for either its replacement or repair. Based on work completed by BHI from late 2010 to the present, the Town is prepared to move forward with a flume rehabilitation project that will include filling the larger voids at the toe of the flume side slope on each side and lining the groin where the side slopes meet the flume bottom on both sides. The lining will consist of Concrete Cloth™ manufactured by Milliken. With BHI's innovative concept and approach, the Town will save hundreds of thousands of dollars compared to more traditional rehabilitation or replacement options previously considered.

We understand the project requires services for the design and rehabilitation to the existing Willow Creek flume. The flume is approximately 5,500 feet long, 8 feet wide at the bottom and 7 feet deep with 1.5:1 (h:v) side slopes. The scope of services for this work will include the following:

**Scope of Services**

For purposes of this proposal, we have organized the required work elements into two primary tasks: Survey and Flume Rehabilitation Design and 404 Permitting. We recommend providing a separate proposal for Construction Phase Services once the design is nearly complete and decisions have been made with regard to potential construction phasing as these will greatly impact the construction duration and scope of required construction inspection services.

**1. Survey:**

As part of this task, BHI's survey staff will complete the necessary control survey and flume inventory. Furthermore, we understand the existing flume holds water throughout the year. The depth of water and rate of flow varies depending on the season. We do not anticipate deep water or heavy flow at the time of the field survey. Prior to the field survey, we will contact the Town of Creede to verify current flow condition. If flow condition appears to cause an un-safe working environment, the field survey will be placed on hold until such time as flow resides and conditions are safe to complete our work. We consider safe condition to be a water depth not exceeding 1 foot. This estimate does not include safety harnesses, flotation devices or other items to complete field surveys if water depth is greater than 1 foot. If this situation should arise and we are required to complete the field survey in water deeper than 1 foot, or with heavy flow, an adjustment to the compensation, as shown herein, may be required.

**EXHIBIT A  
TOWN OF CREEDE  
SCOPE OF SERVICES AND ASSOCIATED FEES  
WILLOW CREEK REHABILITATION PROJECT  
OCTOBER 7, 2014  
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**A. Control Survey**

The Control Survey will contain the following:

1. Horizontal and Vertical Survey Control based on the National Geodetic Survey Control Network or Survey Control as established and published by the municipality. Should an alternate Survey Control System be required, we request this information to be provided at the time of the "kick-off" meeting and prior to the commencement of the field survey. If this situation should arise, possible adjustment to the compensation, as shown herein, may be required.

BHI will provide a minimum of two horizontal and vertical ties to station and elevation points as shown on the "Willow Creek Channel Plan, Profile and Sections" preliminary plan sheet prepared by the NRCS.

2. Establishment of a "Basis of Bearing" based on two identifiable survey marks near the project location, in addition to establishing a minimum of two survey marks set in the area of the flume outlet (dissipater) for future construction.
3. Establishment of one site benchmark based on reference to the nearest controlling benchmark and datum set in the area of the flume outlet (dissipater) for future construction.

**Control Survey, Lump Sum Fee of \$1,830.00**

**B. Flume Inventory**

The Flume Inventory will contain the following:

1. Inventory the full flume, being approximately 5,500 feet long, to estimate the number and size of voids at the base of the side slopes (both sides of the flume). Perform field measurements at each void to outline the approximate configuration and size of the void. We anticipate a maximum of six survey point measurements at each void. Field point data will be incorporated into the survey base file and shown in model space as a polygon area to identify the horizontal configuration of the void. The depth of the void area will be measured and noted in the survey base file.
2. Collect cross-sections within the flume every 500 feet (top, toe, toe, top).
3. Location of visible surface evidence of the various utility systems, such as utility poles, manholes, inlets, catch basins, culverts, valves and fire hydrants. The following information will be located and obtained for specific visible utilities where access is possible:
  - Rim elevations of all manholes, inlets, culverts, catch basins.
  - Water systems: surface location of valves and hydrants.
  - Dry Utilities: location of poles, valves, pedestals and transformers.

**EXHIBIT A  
TOWN OF CREEDE  
SCOPE OF SERVICES AND ASSOCIATED FEES  
WILLOW CREEK REHABILITATION PROJECT  
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- Other visible utility surface features.
4. Final deliverable of the survey data will be in conformance with Exhibit "A", Deliverable Specifications.

**Flume Inventory, Lump Sum Fee of \$4,670.00**

**2. Flume Rehabilitation Design and 404 Permitting:**

**A. Design**

As part of this task, we will prepare construction plans and documents for rehabilitation of the Willow Creek Flume. The design will consist of plans for fill voids greater than 4 inches in size and install a single strip of Concrete Cloth™ lining the groin where the side slopes meet the flume bottom on both sides. We will prepare the necessary installation details including provisions for connection to the existing test section of Concrete Cloth™ and details for phasing of the installation to provide the Town with the ability to construct the project in phases should funding limitations dictate the need to do so. The plans will be prepared under the supervision of and stamped by a Professional Engineer Registered in Colorado.

The plans will include the following:

- Title Sheet
- General Notes Sheet
- Flume Rehabilitation Plan Sheets
- Miscellaneous Details Sheet

We will submit the plans for review by the Town and address comments prior to completing the final plans. Along with the final plans, we will prepare a final opinion of probable construction costs. Depending upon the Town's budget at the time of construction bidding, we will provide recommendations for phasing of construction. If phasing is required, appropriate notes will be added to the plans to indicate phasing and construction limits.

We will also prepare contract documents using American Public Works Association Standard Specifications for Public Works Construction. As part of the contract documents, we will prepare supplemental technical specifications for specialty items such as the material to fill the voids and the Concrete Cloth™ that would not be covered by the standard project specifications. The contract documents will include the necessary information for the Town to bid the project for construction.

We will also provide the following construction design support services assuming the project is built as a single construction project. If the construction is phased, additional fee will be required for multiple plans sets, bidding assistance, etc.

- Attend the pre-bid meeting
- Prepare and submit a final construction cost estimate

**EXHIBIT A  
TOWN OF CREEDE  
SCOPE OF SERVICES AND ASSOCIATED FEES  
WILLOW CREEK REHABILITATION PROJECT  
OCTOBER 7, 2014  
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- Tabulate bids and prepare a recommendation of award letter
- Prepare request for information (RFI) responses and review submittals

**Design, Lump Sum Fee of \$36,035.00**

**B. 404 Permitting**

As part of this task, we will meet with the United States Army Corps of Engineers (USACE) in Albuquerque, New Mexico (since Creede is in the Albuquerque District) to discuss the requirements for the project 404 permit. Based on limited discussions with the USACE and our experience, we anticipate the project will be permitted under Nation Wide Permit (NWP) 3 Maintenance. Further, we believe it will be considered under NWP 3 section (a) which applies to repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure. As such per NWP 3, a preconstruction notification (PCN) is not required. We will verify with the USACE both the appropriateness of the use of NWP 3 and that PCN is not required for this project.

**404 Permitting, Lump Sum Fee of \$1,000.00**

**Fee Summary:**

1. Survey:	Lump Sum \$6,500.00
2. Flume Rehabilitation Design and 404 Permitting:	Lump Sum <u>\$37,035.00</u>
<b>TOTAL FEE:</b>	<b>\$43,535.00</b>

**Exclusions/Assumptions**

**1. Survey:**

The client understands the project may be delayed due to unforeseen issues that are outside the control of BHI such as issues with adjoining properties, extreme weather, etc. If these occur and affect the scheduling of the survey work, the client will be informed of such problems immediately, and the completion date will need to be extended along with a possible increase in compensation.

**Extent of Agreement**

This agreement is for site-related improvements within the project limits.

Should additional services be required beyond the project limits or in addition to those services defined herein, the services associated with will be defined as additional services to this scope of work.

Furthermore, this agreement does **not** include:

- Services associated with preparation for, or attendance at, public hearings.
- Soil Boring layout and Construction layout surveying services.

**EXHIBIT A  
TOWN OF CREEDE  
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- Services required in connection with modification to, and removal of, any easements which may currently encumber the property.
- Location of the elevation of underground utilities through the use of potholing and/or the horizontal location of underground utilities as field marked by an underground utility locating sub-consultant.
- Drafting for existing easements.
- Drafting of "apparent" Right-of-Way or boundary lines.
- Boundary survey services.
- More than one site mobilization and commute from the Denver office.
- Preparation or conversion of the survey data into a GIS software format.
- Right of entry permits to access private lands.

**2. Flume Rehabilitation Design and 404 Permitting:**

- All permitting other than 404 permitting specifically as noted.
- Preparation of an Individual 404 Permit
- Preconstruction Notification (PCN) related to 404 permitting.
- Review and approval by any agencies other than the Town of Creede.
- Preparation of Record Drawings.

**BOHANNAN HUSTON, INC. GENERAL PROVISIONS  
FOR  
PROFESSIONAL SERVICES**

**CONTRACT NAME: Willow Creek Flume Rehabilitation Project**

**ARTICLE 1. DEFINITIONS**

Bohannan Huston, Inc. (BHI), whose address and telephone is 7500 Jefferson St NE, Albuquerque, NM, 87109, 505-823-1000 shall also be referred to as BHI for its subsidiaries. The Client, Town of Creede, whose address is 904 S. Main St., Creede, CO 81130 shall be referred to as Client and shall refer to the party, partnership, corporation, or entity signing this contract.

**ARTICLE 2. PROPERTY LOCATION**

BHI will furnish labor and/or materials for the property located at Creede, CO ("Property") pursuant to the terms and conditions of this contract.

**ARTICLE 3. INVOICES AND PAYMENT PROVISIONS**

The Client will be invoiced each month for work, which has been accomplished to the date shown on the invoice. Invoices are due and payable upon receipt. Questionable charges or errors on an invoice shall be brought to the attention of BHI within fourteen (14) days of the invoice date, or it is agreed that the charges are correct as invoiced. Disputed charges will be reconciled in a timely fashion and a revised invoice will be issued, if necessary. The revised invoice will be due and payable upon receipt. Invoices or portions of invoices unpaid in excess of thirty (30) days from the invoice date shall accrue interest at a rate of 1% per month until paid in full. The Client hereby agrees to pay all costs and expenses incurred by BHI including but not limited to reasonable attorney fees in pursuing collection of any sums not paid to BHI pursuant to the terms of this contract. BHI may terminate this contract if payment on any invoice not in dispute is not paid in full within forty five (45) days from the date of the invoice. Fees invoiced are due whether or not the project is constructed. Portions of the fee that may be billed on a time and materials basis will be billed in accordance with the Fee Schedule in effect at the time the services are invoiced. Applicable Gross Receipts Tax will be added to all charges. Applicable fees for processing, permits, or review shall be paid by the Client. Additional provisions are as follows:

- A. Oral or Implied Acceptance of Contract:** These General Provisions have been forwarded to the Client in advance of the formal written professional services contract. A formal executed contract will follow. The Client understands that BHI may proceed prior to receipt of executed copy of professional services contract. Client's oral acceptance or authorization to initiate services shall be considered by both parties to constitute acceptance of all terms and conditions of these general provisions prior to formal execution.
- B. Project Mobilization Fee/Retainer:** BHI may require a mobilization fee or retainer prior to the commencement of work. The mobilization fee or retainer will be applied to project charges as they are incurred and invoiced.
- C. Right to Renegotiate:** BHI reserves the right to renegotiate this contract should project be halted for 30 days or more.
- D. No Back-up for Reimbursables:** No back-up data or copies of bills, as maintained by BHI, will be provided for reimbursable expenses invoiced under this contract. Should back-up data maintained by BHI be requested, it will be provided for an administration fee of \$100.00 per monthly invoice requiring verification plus \$1.00 per copy of back-up data supplied.
- E. Lien Provisions:** The Client warrants, acknowledges and agrees that it has secured legal rights to the property upon which the project will be built or that such right will be secured within sixty (60) days after signing the contract. The Client further acknowledges and agrees that non-payment of fees owned under this contract may result in a mechanic's lien being placed on the property upon which the project is/will be located, whether or not the design plans or development data have been used in actual construction. This contract

constitutes proper notice to Client (if owner and/or original contractor), of Bohannan Huston, Inc.'s right to claim a lien in the event of non-payment in compliance with 48-2-2.1 of the New Mexico Statutes Annotated.

- F. Stamp or Release of Documents or Plans Only After Payment:** BHI will not stamp drawings with its professional seal for any phase of this project under the terms of this contract until all invoices billed up to that point in the project have been paid in full. BHI will, if necessary, withhold release of documents or plans until all invoices billed up to that point have been paid in full.

**ARTICLE 4. CONTRACT RENEGOTIATION**

BHI reserves the right to renegotiate fee schedule rates annually for open-end hourly rate and time and materials contracts, which continue for longer than one year.

**ARTICLE 5. CLAIMS**

The Client acknowledges that BHI is a corporation and agrees that any claim made by the Client arising out of any act or omission of any director, officer, or employee of BHI in the execution or performance of this contract shall be made against BHI and not against such director, officer, or employee individually.

- A. Professional surveying services:** Pursuant to Section 61-23-27.9(D) NMSA 1978, BHI carries professional liability insurance coverage for surveying services in the amount of \$2 million dollars per occurrence and \$4 million dollars in aggregate.

**ARTICLE 6. PROPRIETARY INFORMATION**

The use of any plans or specifications prepared by BHI shall be restricted to the original site for which they were prepared. Reproduction, reuse, or alteration by any method, in whole or in part, is prohibited unless authorized in writing by BHI. Any unauthorized reproduction, reuse or alteration of documents relieves BHI of any responsibilities or liabilities whatsoever. In addition, BHI may pursue damages for the value of the reproduced, reused or altered plans, which Client hereby agrees to be the final invoice amount on the original Property together with costs and reasonable attorney's fees.

BHI has the right to photograph any phase of this project, under the terms of this contract, and to use the photos in the promotion of the professional practice through advertising, public relations, brochures, or other marketing materials.

Drawings and specifications as instruments of service are and shall remain the property of BHI whether the project for which they are made is constructed or not. These drawings are not to be used by the Client on other projects, or extensions to this project, except by contract in writing and with appropriate compensation to BHI.

**ARTICLE 7. FORCE MAJEURE**

Should the services provided as a result of this contract result in construction of facilities, BHI in no way warrants or guarantees the performance of general or subcontractors. BHI assumes no responsibility for the contractor's or subcontractor's safety program (i.e., means, methods, techniques, sequences, schedules, or compliance with laws, rules, regulations, ordinances, codes, permits, or others).

BHI will not be responsible for delays or defaults in the performance of design services, which are beyond its control.

It is recognized that neither BHI nor the Client has control over the cost of labor, materials, or equipment; over the Contractor's methods of determining bid prices; or over competitive bidding, market, or negotiating conditions. Accordingly, BHI cannot and does not guarantee construction cost, nor has any fixed limit of construction cost been established as a condition of this contract.

**ARTICLE 8. DESIGN AND CONSTRUCTION RELATED PROVISIONS**

**A. Engineer's Construction Responsibilities:** Unless specifically contracted for, BHI shall only answer questions, attend meetings, prepare correspondence, and make revisions to design documents prepared by BHI where such services are directly attributable to changes in construction field conditions. Any other requests for service to modify, change, or revise any plans or documents and attend meetings to coordinate or implement construction of the improvements will be billed on a time and materials basis, at BHI's usual and customary rate.

**B. Title Search Requirement:** The Client shall provide a full title search prior to beginning work on any plat or boundary survey documents associated with the project.

**C. Opinion of Probable Construction Costs:** BHI's opinions of probable Construction Cost provided for herein are to be made on the basis of BHI's experience and qualifications and represent BHI's best judgment as an experienced and qualified professional generally familiar with the industry. However, since BHI has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, BHI cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by BHI. If OWNER wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator. BHI assumes no responsibility for the accuracy of opinions of Total Project Costs.

**ARTICLE 9. SUCCESSORS AND ASSIGNS**

The Client and BHI each binds itself, its successors, assigns, and legal representatives to the other party of this contract, and to the successors, assigns, and legal representative of such other party with respect to all provisions of this contract. Neither the Client nor BHI shall assign, set over, or transfer its interest, in whole or in part, in this contract without the prior written consent of the other, and any act in derogation hereof shall, at the option of the non-assigning party, render the written contract terminated.

**ARTICLE 10. DISPUTES**

BHI and the Client shall have claims, disputes, and other matters in question between the parties to this contract arising out of or relating to the contract or breach thereof to be decided by litigation if the matter cannot be resolved between the parties by mediation. Any lawsuit filed shall be filed in state court in the County of Bernalillo or federal court in the District Court of New Mexico.

**ARTICLE 11. CONTRACT TERMINATION**

This contract may be terminated by the Client upon fourteen (14) days' written notice to BHI. In the event of such termination, BHI shall be immediately paid compensation for all services performed to the termination date. Upon payment thereof, any and all obligations and liabilities of the parties hereto shall terminate. This Contract and any modification thereof may be terminated by BHI at its absolute discretion with or without cause

upon ten (10) day notice and BHI shall be paid compensation for services performed up to the termination date.

**ARTICLE 12. EXCLUSION OF DAMAGES**

In no event shall BHI be liable to Client for any indirect, incidental, special or consequential damages, regardless of the nature of the claim.

**ARTICLE 13. DISCOVERY OF UNANTICIPATED HAZARDOUS MATERIALS**

Hazardous materials may exist where there is no reason to believe they could or should be present. Bohannon Huston, Inc. and the Client agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. BHI and the Client also agree that the discovery of unanticipated hazardous materials may make it necessary for BHI to take immediate measures to protect human health and safety and/or the environment. BHI agrees to notify the Client as soon as practically possible should unanticipated hazardous materials be encountered.

The Client agrees to allow BHI to take any and all measures that in BHI's professional opinion are justified to preserve and protect the health and safety of BHI's personnel and public and/or the environment, and the Client agrees to compensate BHI for the additional cost of such work. In addition, the Client waives any claim against BHI and agrees to indemnify, defend, and hold harmless BHI from any claim or liability for injury or loss in regards to encountering any unanticipated hazardous materials. The Client also agrees to compensate BHI for any time spent and expenses incurred by BHI in defense of any such claim.

**ARTICLE 14. SCOPE OF AGREEMENT**

This contract represents the entire agreement with the client. Any change to the contract terms and conditions shall be modified only by a written modification executed by both parties. No oral or written representations, inducements, or understandings of any kind or nature may modify this agreement.

**ARTICLE 15. JOBSITE SAFETY**

Insofar as jobsite safety is concerned, BHI is responsible for its employees' activities on the jobsite, but this shall not be construed to relieve Client, the owner or any construction contractors from their responsibilities for maintaining a safe jobsite.

**ARTICLE 16. INDEMNIFICATION**

Client shall be responsible for, and shall hold BHI free and harmless from, and hereby indemnifies BHI against, any and all claims, demands, causes of action, loss, costs, damages and expenses, including reasonable attorney's fees arising out of or in connection with injuries or death to any and all persons and damages to any property to the extent or sustained in connection with, or arising out of Client, owner or general contractor's negligence.

**ARTICLE 17. SPECIAL PROVISIONS**

Special provisions, conditions, modifications, and/or schedules, which may be required, are contained in attachments or exhibits to this contract.

BOHANNAN HUSTON, INC.

  
APPROVED BY (SIGNATURE)

Craig W. Hoover, P.E.  
APPROVED BY (PRINT NAME)

Senior Vice President  
TITLE

October 7, 2014  
DATE

Town of Creede  
CLIENT

APPROVED BY (SIGNATURE)

APPROVED BY (PRINT NAME)

TITLE

DATE

# Creede School District Sale of Current School Property

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29 Sept 2014

Thank you for being here and for your interest in the school. Every time I attend a meeting like this I am reminded of how lucky Sandy and I are to live in this community.

The purpose of this meeting is to update you on the plans for disposition of the current school property and to report on the progress of the new school building.

We have with us this evening members of the Board of Education of the Creede School District, our school superintendent, Buck Stroh, our school principal, John Goss, and Desi Navarro, of NV5 Holdings, Inc., our Owner's Representative for the school project, and other interested parties.

I might tell you that one of the requirements of the BEST Grant was that we hire an owner's representative and we are most happy that we did. We have been very pleased with the service that Desi and his associates have given us.

- I. Disposition of the current school property.
  - A. Some items of information about the school property.
    1. The Board of Education is going to sell the current school property. We will have no need of it once the new building is occupied and we cannot afford to maintain it. The money from the sale will be used for our school operating budget. It will give us a much needed infusion of funds at a time when additional operating money is badly needed and hopefully will prevent some of the further cutbacks that we have anticipated.
    2. Construction money from the BEST grant and the bond, and operating money for the school budget are not interchangeable. They are in two different buckets and we cannot use construction money for anything else. We could use operating money for some aspects of construction, but we are in a budget crisis for our operating money and there is none to spare.
    3. An appraisal has been done on the current property. The appraisal document is about 95 pages long and contains a lot of information about the property. The bottom line is that the current property is worth more without the buildings on it, just as bare land. The appraisal for the land is \$465,000.00.
    4. As a part of the BEST grant, there is money available for abatement of the property; that is, to remove any hazardous material from the buildings and the site. The major concern here is asbestos building materials that have been used in the original construction and remodeling of the buildings over the years. There may also be some other hazardous material besides asbestos that will have to be dealt with.
    5. There is also money available through the BEST grant for demolition of the buildings. These two sources of money are different, but from a practical view,

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abatement work will partially demolish the buildings, so that when the abatement is complete, some of the buildings may be reduced to rubble.

6. If the money set aside for abatement is not used it must be returned to the BEST Board and cannot be used for other expenses of the project. We must have a contract in place for the abatement work by the time school opens in August of 2015, otherwise the abatement money will revert back to the State. Similarly, if the current buildings are not fully demolished, part of that money must also be returned to the BEST grant. The cost to demolish the buildings is currently part of The Neenan Company's Guaranteed Maximum Price for the new school project, and if the buildings are fully demolished, Neenan has the ability to manage this budget along with other line items in their GMP first, before returning any savings to CDE (BEST).

B. The Board of Education has discussed several ways to sell the property.

1. Sell the property as one parcel of bare land after the abatement and demolition is complete. This is probably the best for the School District, and probably the best for whoever buys the property, depending on intended use. The cost of abatement and demolition may well exceed the value of the property.
2. Divide the property into several parcels and sell each parcel separately. This would give more flexibility to the sales process and might allow the retention of some of the buildings, such as the gym.
  - a. Dividing the property into parcels creates some problems that would not be present in selling the property as one bare land parcel.
  - b. There are some "natural" dividing lines in the property; i.e. between the houses on the north and Lamb Elementary, between Lamb Elementary and the high school building, between the high school and the gym, and between the gym and the tennis courts. This would give 5 parcels. A division resulting in 3 parcels would also be practical.
  - c. There are some street extensions into the property that exist only on paper. Legal vacations of those streets may have to be explored if the property is divided into parcels.
  - d. Potentially, a division of the property into parcels and the sale of the parcels individually might leave one or more parcels unsold and remaining in possession of the School District. This would not be in line with the wishes of the BOE and would probably not reflect the best use of assets over which the BOE has stewardship.
3. Sell the property as is either in one or several parcels without doing abatement or demolition. There would be a significant burden of abatement on the buyers in this case. Again, depending on intended use, there are probably no buyers who would

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want to assume that liability, and it is probably in the best long term interest of the community to have any hazardous materials removed from the site.

C. Discussion

1. The BOE would like to have opinions and recommendations expressed at this time. We will try to answer questions that you might have.

II. Report on status of new building construction.

Adjourn