

SPECIAL MEETING

- I. CALL TO ORDER
- II. ROLL CALL
- III. REVIEW AGENDA
- IV. PUBLIC HEARINGS AND RELATED ACTIONS
 - a. Approve/Disapprove Application for Hotel & Restaurant Liquor License – Arp’s LLC
- V. NEW BUSINESS
 - a. Approve/Disapprove Professional Services Agreement with Bohannan Houston, Inc.
- VI. EXECUTIVE SESSION
 - a. Executive session for meeting with Town Attorney to receive legal advice to discuss personnel matters pursuant to Colorado Revised Statute §24-6-402(4)(b) concerning Scott Leggitt
- VII. ADJOURN

REGULAR WORK SESSION

- Schedule/Discuss Sourcewater Protection Meeting
 - Recycle Creede Lease Amendment
 - Retreat Goal Prioritization
 - Free Dump Day
 - COG Grant

Any Other Business

Posted 2/13/15

OPEN TO THE PUBLIC

City of Creede, a Statutory Town
Liquor License Summary

Note: Liquor License forms contain a mixture of confidential and public information. In an effort to protect the confidentiality of items such as social security numbers, driver's license numbers, and dates of birth, liquor application forms are longer available to the public. This summary is intended to give the Town Board and citizens the public content of the issue at hand.

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Type of Action Requested: Consider application for approval of a new Hotel & Restaurant Liquor License to sell malt, vinous and spirituous liquor.

Applicant: Arp's, LLC d/b/a Arp's

Application details:

- Business address is 124 N. Main Street.
- The Licensed premises are proposed to be the current indoor structure at 112 N. Main Street. See attached drawing for details.
- Applicant has current sales tax license and FEIN.
- Applicant is eligible to apply for a liquor license.
- The location is eligible to be licensed.
- Applicant does not hold any other liquor license.
- Officer of the applicant Corporation is John Arp, 3909 Wyandot St., Denver, CO 80211.
- Possession of the property is documented by lease agreement with a renewable term expiring 12 months after opening date.

Factual Findings:

- The applicant must prove needs and desires for a new license request.
- Operation of this business is in compliance with local zoning.
- This application was filed with the Town Clerk on February 13, 2015
- All applicable fees have been paid.
- The applicant has submitted a petition containing 26 Creede residents in favor of granting this liquor license and 0 opposed to establish neighborhood needs and desires.

Recommended Action

Consider approval of a new Hotel & Restaurant Liquor License for Arp's LLC d/b/a Arp's located at 124 N. Main Street contingent upon the receipt and outcome of the information provided by Colorado Bureau of Investigations (CBI)-NCIC/CCIC in comparison to the information provided by the applicants' on the Individual History Record (Form 8404-I).

PROFESSIONAL SERVICES AGREEMENT

Project/Services Name: PRELIMINARY ENGINEERING REPORT for Willow Creek Flume Rehabilitation

THIS PROFESSIONAL SERVICES AGREEMENT (“**Agreement**”) is entered into by and between Bohannon Huston Inc., a corporation of the State of Colorado, whose business address is Meridian One, 9785 Maroon Circle, Suite 140, Englewood, CO 80112-5928 (“**Contractor**”) and the City of Creede, Colorado (“**City**”), a statutory town of the State of Colorado (individually a “**Party**” and collectively the “**Parties**”)

RECITALS AND REPRESENTATIONS

WHEREAS, the City desires to have certain professional services performed as described in this Agreement; and

WHEREAS, the City has been awarded state grant funds by and through the GRANT AGREEMENT between STATE OF COLORADO DEPARTMENT OF LOCAL AFFAIRS and CITY OF CREEDE, Project/Award Number EIAF 7767 (“**DOLA Grant Agreement EIAF 7767**”) which imposes additional terms and conditions; and

WHEREAS, the Contractor represents that the Contractor has the skill, ability, and expertise to perform the services described in this Agreement and within the deadlines provided by the Agreement; and

WHEREAS, the City desires to engage the Contractor to provide the services described in this Agreement subject to the terms and conditions of the Agreement.

NOW, THEREFORE, in consideration of the benefits and obligations of this Agreement, the Parties mutually agree as follows:

1.0 SERVICES AND CONTRACTOR PERFORMANCE

1.1 Services and Work Product. As directed by and under the supervision of the City Manager for the City of Creede, the Contractor shall provide the City with the services described in **Exhibit A** (“**Services**”). “**Work Product**” shall consist of deliverables and/or product to be created, provided or otherwise tendered to the City as described in the Services. The Services shall be construed to meet the minimum requirements for the preparation of a preliminary engineering report as set forth in DOLA Grant Agreement EIAF 7767.

1.2 Changes to Services. The City may request a change or changes in the Services. Any changes that are mutually agreed upon between the City and the Contractor shall be made in writing and upon execution by both Parties shall become an amendment to the Services described in this Agreement. To be effective, any written change must be signed by the Contractor and by the Board of Trustees.

1.3 Independent Contractor. The Contractor shall perform the Services as an independent contractor and shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other relationship with the City other than as a contracting party and independent contractor. The City shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or the Contractor's employees, sub-consultants, contractors, agents, or representatives, including coverage or benefits related but not limited to: local, state, or federal income or other tax contributions; insurance contributions (e.g., FICA); workers' compensation; disability, injury, or health; professional liability insurance, errors and omissions insurance; or retirement account contributions.

1.4 Standard of Performance. In performing the Services, the Contractor shall use that degree of care, skill, and professionalism ordinarily exercised under similar circumstances by members of the same profession practicing in the State of Colorado. Contractor represents to the City that the Contractor is, and its employees performing such Services are, properly licensed and/or registered within the State of Colorado for the performance of the Services (if licensure and/or registration is required by applicable law) and that the Contractor and employees possess the skills, knowledge, and abilities to competently, timely, and professionally perform the Services in accordance with this Agreement.

1.5 Patent Indemnification. Contractor shall indemnify, defend and hold City harmless from any and all claims, demands, and causes of action (including reasonable attorneys' fees and costs of suit) for actual or asserted infringement or actual or asserted appropriation or use by City of trade secrets, proprietary information, know-how, copyright rights, or patented inventions included in any design or specification furnished by Contractor or arising from the use or sale of materials, equipment, methods, processes, designs and information, furnished by Contractor in connection with the Services. Contractor shall include the foregoing indemnification provision as a term of each agreement utilized by it in the performance of its work which shall extend expressly from the vendor or subcontractor to City.

1.6 Safety. When and to the extent that Contractor or any of its employees, agents or subcontractors are working under the terms of this Agreement, Contractor will comply, and cause all of its employees, agents and subcontractors to comply, with applicable safety rules and security requirements.

1.7 Qualified Personnel. Contractor will make available all qualified Contractors, drafters, technical and clerical personnel necessary to fulfill its obligations under this Agreement. Prior to commencement of work, Contractor will provide City with the names of all Contractor personnel and their then current hourly rates, if applicable, whose services are to be employed in performance of the Services. Removal or re-assignment of personnel by Contractor will only be done with prior written approval of City.

1.8 Removal of Personnel by City. City may, in its discretion, require Contractor to dismiss from performance of the Services any personnel of Contractor or any subcontractor for any reason, effective upon written notice from City of such dismissal. City will not be required to pay salary or any other costs associated with dismissed personnel effective upon Contractor's receipt of notice to dismiss from City.

1.9 Representations and Warranties. Contractor represents and warrants that the Services will be performed in a manner consistent with other reasonable professionals providing similar services under similar circumstances. Contractor will complete the Services in accordance with the Agreement and applicable United States laws, regulations, ordinances, and codes in existence at the time the Agreement is executed.

1.10 Maintenance of and Access to Records. Contractor will maintain detailed records of all matters relating to the Services during the term of the Agreement and for a period after its cancellation or

termination of not less than five (5) years. City will have the right to copy and audit during regular business hours all records of any kind which in any way relate to the Services, whether created before, during or after the termination of this Agreement. Access to such records will be provided to City at no cost. NOTWITHSTANDING THE FOREGOING, Contractor shall also maintain records in compliance with Paragraph of 9 of the DOLA Grant Agreement EIAF 7767.

1.11 Disclosure of Adverse Information. Contractor will promptly disclose to City any and all information which Contractor may learn or which may have a material adverse impact on the Services or the Work Product or City's ability to utilize the Work Product in the manner and for the purpose for which the Work Product is intended.

2.0 COMPENSATION

2.1 Commencement of and Compensation for Services. Following execution of this Agreement by the City, the Contractor shall be authorized to commence performance of the Services as described in **Exhibit A** subject to the requirements and limitations on compensation as provided by this **Section 2.0 COMPENSATION** and its Sub-Sections.

A. Time and Materials Contract – Not to Exceed Amount. The Contractor shall perform the Services and shall invoice the City for work performed based on the rates and/or compensation methodology described in **Exhibit B**. Total compensation (including all reimbursable expenses) shall not exceed **NINETEEN THOUSAND NINE HUNDRED EIGHTY DOLLARS (\$19,980.00)**.

B. Reimbursable Expenses. The following shall be considered "reimbursable expenses" for purposes of this Agreement and may be billed to the City without administrative mark-up but which must be accounted for by the Contractor and proof of payment shall be provided by the Contractor with the Contractor's monthly invoices:

- Vehicle Mileage (billed at not more than the prevailing per mile charge permitted by the Internal Revenue Service as a deductible business expense)
- Printing and Photocopying Related to the Services
- Long Distance Telephone Charges Related to the Services
- Charges incidental to securing needed information (e.g., charges imposed to obtain recorded documents)
- Postage and Delivery Services
- Lodging and Meals (only with prior written approval of the City as to dates and maximum amount)

C. Non-reimbursable Costs, Charges, Fees, or Other Expenses. Any fee, cost, charge, fee, or expense incurred by the Contractor not otherwise specifically authorized by this Agreement shall be deemed a non-reimbursable cost and shall be borne by the Contractor and shall not be billed or invoiced to the City and shall not be paid by the City.

D. Increases in Compensation or Reimbursable Expenses. Any increases or modification of compensation or reimbursable expenses shall be subject to the approval of the Board of Trustees of the City and shall be made only by written amendment of this Agreement executed by both Parties.

2.2 Payment Processing. The Contractor shall submit invoices and requests for payment in a form acceptable to the City. Invoices shall not be submitted more often than once each month unless otherwise approved by this Agreement or in writing by the City. Unless otherwise directed or accepted by the City, all invoices shall contain sufficient information to account for all Contractor time (or other appropriate measure(s) of work effort) and all authorized reimbursable expenses for the Services during the stated period of the invoice. Following receipt of a Contractor's invoice, the City shall promptly review the Contractor's invoice.

2.3 City Dispute of Invoice or Invoiced Item(s). The City may dispute any Contractor time, reimbursable expense, and/or compensation requested by the Contractor described in any invoice and may request additional information from the Contractor substantiating any and all compensation sought by the Contractor before accepting the invoice. When additional information is requested by the City, the City shall advise the Contractor in writing, identifying the specific item(s) that are in dispute and giving specific reasons for any request for information. The City shall pay the Contractor within forty-five (45) days of the receipt of an invoice for any undisputed charges or, if the City disputes an item or invoice and additional information is requested, within thirty (30) days of acceptance of the item or invoice by the City following receipt of the information requested and resolution of the dispute. To the extent possible, undisputed charges within the same invoice as disputed charges shall be timely paid in accordance with this Agreement. Payment by the City shall be deemed made and completed upon hand delivery to the Contractor or designee of the Contractor or upon deposit of such payment or notice in the U.S. Mail, postage pre-paid, addressed to the Contractor.

3.0 CONTRACTOR'S GENERAL RESPONSIBILITIES

3.1 The Contractor shall become fully acquainted with the available information related to the Services. The Contractor is obligated to affirmatively request from the City such information that the Contractor, based on the Contractor's professional experience, should reasonably expect is available and which would be relevant to the performance of the Services.

3.2 The Contractor shall perform the Services in accordance with this Agreement and shall promptly inform the City concerning ambiguities and uncertainties related to the Contractor's performance that are not addressed by the Agreement.

3.3 The Contractor shall provide all of the Services in a timely and professional manner.

3.4 The Contractor shall promptly comply with any written City request for the City or any of its duly authorized representatives to reasonably access and review any books, documents, papers, and records of the Contractor that are pertinent to the Contractor's performance under this Agreement for the purpose of the City performing an audit, examination, or other review of the Services.

3.5 The Contractor shall comply with all applicable federal, state and local laws, ordinances, regulations, and resolutions.

3.6 The Contractor shall be responsible at the Contractor's expense for obtaining, and maintaining in a valid and effective status, all licenses and permits necessary to perform the Services unless specifically stated otherwise in this Agreement.

4.0 TERM AND TERMINATION

4.1 Term. This Agreement shall be effective on **March 18, 2015 at 12:01 a.m.**, ("**Effective Date**") and shall terminate at **11:59 p.m. on July 31, 2015**, or on a prior date of completion of the Services or

termination as may be permitted by this Agreement; provided, however, that the Parties may mutually agree in writing to the monthly extension of this Agreement for up to twelve (12) consecutive calendar months if such extension is approved by the Board of Trustees and the Contractor and such extension does not alter or amend any of the terms or provisions of this Agreement.

4.2 Continuing Services Required. The Contractor shall perform the Services in accordance with this Agreement commencing on the Effective Date until such Services are terminated or suspended in accordance with this Agreement. The Contractor shall not temporarily delay, postpone, or suspend the performance of the Services without the written consent of the Board of Trustees.

4.3 City Unilateral Termination. This Agreement may be terminated by the City for any or no reason upon written notice delivered to the Contractor at least ten (10) days prior to termination. In the event of the City's exercise of the right of unilateral termination as provided by this paragraph:

A. Unless otherwise provided in any notice of termination, the Contractor shall provide no further services in connection with this Agreement after receipt of a notice of termination; and

B. All finished or unfinished documents, data, studies and reports prepared by the Contractor pursuant to this Agreement shall be delivered by the Contractor to the City and shall become the property of the City; and

C. The Contractor shall submit to the City a final accounting and final invoice of charges for all outstanding and unpaid Services and reimbursable expenses performed prior to the Contractor's receipt of notice of termination and for any services authorized to be performed by the notice of termination as provided by **Sub-Section 4.3(A)** above. Such final accounting and final invoice shall be delivered to the City within thirty (30) days of the date of termination; thereafter, no other invoice, bill, or other form of statement of charges owing to the Contractor shall be submitted to or accepted by the City.

4.4 Termination for Non-Performance. Should a Party to this Agreement fail to materially perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated by the performing Party if the performing Party first provides written notice to the non-performing Party which notice shall specify the non-performance, provide both a demand to cure the non-performance and reasonable time to cure the non-performance, and state a date upon which the Agreement shall be terminated if there is a failure to timely cure the non-performance. For purpose of this **Sub-Section 4.4**, "reasonable time" shall be not less than five (5) business days. In the event of a failure to timely cure a non-performance and upon the date of the resulting termination for non-performance, the Contractor prepare a final accounting and final invoice of charges for all performed but unpaid Services and authorized reimbursable expenses. Such final accounting and final invoice shall be delivered to the City within fifteen (15) days of the date of termination; thereafter, no other invoice, bill, or other form of statement of charges owing to the Contractor shall be submitted to or accepted by the City. Provided that notice of non-performance is provided in accordance with this **Sub-Section 4.4**, nothing in this **Sub-Section 4.4** shall prevent, preclude, or limit any claim or action for default or breach of contract resulting from non-performance by a Party.

4.5 Unilateral Suspension of Services. The City may suspend the Contractor's performance of the Services at the City's discretion and for any reason by delivery of written notice of suspension to the Contractor which notice shall state a specific date of suspension. Upon receipt of such notice of suspension, the Contractor shall immediately cease performance of the Services on the date of suspension except: **(1)** as may be specifically authorized by the notice of suspension (e.g., to secure the

work area from damage due to weather or to complete a specific report or study); or (2) for the submission of an invoice for Services performed prior to the date of suspension in accordance with this Agreement.

4.6 Reinstatement of Services Following City's Unilateral Suspension. The City may at its discretion direct the Contractor to continue performance of the Services following suspension. If such direction by the City is made within (30) days of the date of suspension, the Contractor shall recommence performance of the Services in accordance with this Agreement. If such direction to recommence suspended Services is made more than thirty-one (31) days following the date of suspension, the Contractor may elect to: (1) provide written notice to the City that such suspension is considered a unilateral termination of this Agreement pursuant to **Sub-Section 4.3**; or (2) recommence performance in accordance with this Agreement; or (3) if suspension exceeded sixty (60) consecutive days, request from the City an equitable adjustment in compensation or a reasonable re-start fee and, if such request is rejected by the City, to provide written notice to the City that such suspension and rejection of additional compensation is considered a unilateral termination of this Agreement pursuant to **Sub-Section 4.3**. Nothing in this Agreement shall preclude the Parties from executing a written amendment or agreement to suspend the Services upon terms and conditions mutually acceptable to the Parties for any period of time.

4.7 Delivery of Notice of Termination. Any notice of termination permitted by this **Section 4.0 TERM AND TERMINATION** and its subsections shall be addressed to the person signing this Agreement on behalf of either City or Contractor at the address shown below or such other address as either Party may notify the other of and shall be deemed given upon delivery if personally delivered, or forty-eight (48) hours after deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested.

5.0 INSURANCE

5.1 Insurance Generally. The Contractor shall obtain and shall continuously maintain during the term of this Agreement insurance of the kind and in the minimum amounts specified in this **Sub-Section 5.1**. The Required Insurance shall be procured and maintained with insurers with an A- or better rating as determined by Best's Key Rating Guide. All Required Insurance shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor.

The Contractor shall secure and maintain the following ("**Required Insurance**"):

A. Worker's Compensation Insurance in the minimum amount required by applicable law for all employees and other persons as may be required by law. Such policy of insurance shall be endorsed to include the City as a Certificate Holder.

B. Comprehensive General Liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000.00) Dollars each occurrence and of One Million Dollars (\$1,000,000.00) aggregate. The policy shall be applicable to all premises and all operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees and agents as additional insured parties.

C. Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury of not less than of One Hundred Thousand Dollars (\$100,000.00) each person and each accident and for property damage of not less than Fifty Thousand Dollars (\$50,000.00) each accident with respect to each of the Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Agreement, both on the work site and off the work site, and such coverage shall include non-ownership and hired cars coverage. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees and agents as additional insured parties.

D. Professional Liability (errors and omissions) Insurance with a minimum limit of coverage of One Million Dollars (\$1,000,000.00) per claim and annual aggregate. Such policy of insurance shall be obtained and maintained for one (1) year following completion of all Services under this Agreement. Such policy of insurance shall be endorsed to include the City as a Certificate Holder.

5.2 Additional Requirements for All Policies. In addition to specific requirements imposed on insurance by this **Section 5.0 INSURANCE** and its subsections, insurance shall conform to all of the following:

A. For both Contractor Insurance and Required Insurance, all policies of insurance shall be primary insurance, and any insurance carried by the City, its officers, or its employees shall be excess and not contributory insurance to that provided by the Contractor; provided, however, that the City shall not be obligated to obtain or maintain any insurance whatsoever for any claim, damage, or purpose arising from or related to this Agreement and the Services. The Contractor shall not be an insured party for any City-obtained insurance policy or coverage.

B. For both Contractor Insurance and Required Insurance, the Contractor shall be solely responsible for any deductible losses.

C. For Required Insurance, no policy of insurance shall contain any exclusion for bodily injury or property damage arising from completed operations.

D. For Required Insurance, every policy of insurance shall provide that the City will receive notice no less than thirty (30) days prior to any cancellation, termination, or a material change in such policy.

5.3 Failure to Obtain or Maintain Insurance. The Contractor's failure to obtain and continuously maintain policies of insurance in accordance with this **Section 5.0 INSURANCE** and its subsections shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Agreement. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which the City may immediately terminate this Agreement, or, at its discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Contractor to the City immediately upon demand by the City, or at the City's sole discretion, the City may offset the cost of the premiums against any monies due to the Contractor from the City pursuant to this Agreement.

5.4 Insurance Certificates. Prior to commencement of the Services, the Contractor shall submit to the City certificates of insurance for all Required Insurance. Insurance limits, term of insurance, insured

parties, and other information sufficient to demonstrate conformance with this **Section 5.0 INSURANCE** and its subsections shall be indicated on each certificate of insurance. Certificates of insurance shall reference the Project Name as identified on the first page of this Agreement. The City may request and the Contractor shall provide within three (3) business days of such request a current certified copy of any policy of Required Insurance and any endorsement of such policy. The City may, at its election, withhold payment for Services until the requested insurance policies are received and found to be in accordance with the Agreement.

6.0 OWNERSHIP OF DOCUMENTS

6.1 Work Product is Property of City. Upon complete payment for services rendered, the Work Product, as defined in **Sub-Section 1.1**, shall be deemed work made for hire and made in the course of Services performed under this Agreement and will be the exclusive property of City. City will have unlimited right to make, have made, use, reconstruct, repair, modify, reproduce, publish, distribute and sell the Work Product, in whole or in part, or combine the Work Product with other matter, or not use the Work Product at all, as it sees fit. Any reuse of the Work Product produced under this Agreement for any purpose not directly related to this Agreement will be at the sole risk of City.

6.2 Obligations of Contractor's Personnel and Subcontractors. Contractor warrants it has enforceable written agreements with all of its personnel and subcontractors to be involved in performing the Services that:

- A. assign to Contractor ownership of all patents, copyrights and other proprietary rights created in the course of their employment or engagement; and
- B. obligate such personnel or subcontractors, as the case may be, upon terms and conditions no less restrictive than are contained in this **Section 6.0 OWNERSHIP OF DOCUMENTS**, not to use or disclose any proprietary rights or information learned or acquired during the course of such employment or engagement including, without limitation, any Work Product, all Contractor property and any other information pursuant to this **Section 6.0 OWNERSHIP OF DOCUMENTS**.

6.3 Assignment of Proprietary Rights. To the extent that any title to any Work Product may not, by operation of law, vest in City, or such Work Product may not be considered to be work made for hire, Contractor hereby irrevocably transfers and assigns to City in perpetuity all worldwide right, title and interest in and to the patent rights, copyrights, trade secrets and other proprietary rights in and ownership of, the Work Product.

6.4 City Furnished Information. Title to all materials and all documentation furnished by City to Contractor will remain in City. Contractor will deliver to City and any all Work Product and property, including copies thereof on whatever media rendered, upon the first to occur of:

- A. City's written request; or
- B. completion of the Services under this Agreement; or
- C. termination of this Agreement.

6.5 The Contractor waives any right to prevent its name from being used in connection with the Services.

7.0 CONFLICT OF INTEREST

The Contractor shall refrain from providing services to other persons, firms, or entities that would create a conflict of interest for the Contractor with regard to providing the Services pursuant to this Agreement. The Contractor shall not offer or provide anything of benefit to any City official or employee that would place the official or employee in a position of violating the public trust as provided by C.R.S. §24-18-109, as amended, or any City-adopted Code of Conduct or ethical principles.

8.0 REMEDIES

In addition to any other remedies provided for in this Agreement, and without limiting its remedies available at law, the City may exercise the following remedial actions if the Contractor substantially fails to perform the duties and obligations of this Agreement. Substantial failure to perform the duties and obligations of this Agreement shall mean a significant, insufficient, incorrect, or improper performance, activities or inactions by the Contractor. The remedial actions include:

- 8.1 Suspend the Contractor's performance pending necessary corrective action as specified by the City without the Contractor's entitlement to an adjustment in any charge, fee, rate, price, cost, or schedule; and/or
- 8.2 Withhold payment to the Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or
- 8.3 Deny payment for those services which have not been satisfactorily performed, and which, due to circumstances caused by the Contractor, cannot be performed, or if performed would be of no value to the City; and/or
- 8.4 Terminate this Agreement in accordance with this Agreement.

The foregoing remedies are cumulative and the City, at its sole discretion, may exercise any or all of the remedies individually or simultaneously.

9.0 MISCELLANEOUS PROVISIONS

9.1 **No Waiver of Rights**. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party. The City's approval or acceptance of, or payment for, services shall not be construed to operate as a waiver of any rights or benefits to be provided under this Agreement. No covenant or term of this Agreement shall be deemed to be waived by the City except in writing signed by the Board of Trustees or by a person expressly authorized to sign such waiver by resolution of the Board of Trustees of the City of Creede, and any written waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver unless specifically stated.

9.2 **No Waiver of Governmental Immunity**. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the City, its officials, employees, contractors, or agents, or any other person acting on behalf of the City and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

9.3 **Affirmative Action**. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Contractor will take affirmative action to ensure applicants are employed, and employees are treated during employment without regard to their

race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

9.4 Binding Effect. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section 9.4 shall not authorize assignment.

9.5 No Third Party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or sub-contractor of Contractor. Absolutely no third party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

9.6 Article X, Section 20/TABOR. The Parties understand and acknowledge that the City is subject to Article X, § 20 of the Colorado Constitution (“**TABOR**”). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the City's current fiscal period ending upon the next succeeding December 31. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of City of Creede, and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated.

9.7 Governing Law, Venue, and Enforcement. This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Mineral County, Colorado. To reduce the cost of dispute resolution and to expedite the resolution of disputes under this Agreement, the Parties hereby waive any and all right either may have to request a jury trial in any civil action relating primarily to the enforcement of this Agreement. The Parties agree that the rule that ambiguities in a contract are to be construed against the drafting Party shall not apply to the interpretation of this Agreement. If there is any conflict between the language of this Agreement and any exhibit or attachment, the language of this Agreement shall govern.

9.8 Survival of Terms and Conditions. The Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

9.9 Assignment and Release. All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by Contractor without the express written consent of the Board of Trustees for City of Creede. Any written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities, or benefits so assigned, and shall not be effective unless approved by resolution or motion of the Board of Trustees for the City of Creede. No assignment shall release the Contractor from performance of any duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment.

9.10 Paragraph Captions. The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

9.11 Integration and Amendment. This Agreement represents the entire and integrated agreement between the City and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this must be in writing and be signed by both the City and the Contractor.

9.12 Severability. Invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

9.13 Incorporation of Exhibits. Unless otherwise stated in this Agreement, exhibits, applications, or documents referenced in this Agreement shall be incorporated into this Agreement for all purposes. In the event of a conflict between any incorporated exhibit and this Agreement, the provisions of this Agreement shall govern and control.

9.14 Employment of or Contracts with Illegal Aliens. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Contractor shall not contract with a subcontractor that fails to certify that the subcontractor does not knowingly employ or contract with any illegal aliens. By entering into this Agreement, Contractor certifies as of the date of this Agreement it does not knowingly employ or contract with an illegal alien who will perform work under the public contract for services and that the Contractor will participate in the e-verify program or department program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services. The Contractor is prohibited from using 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 Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to notify the subcontractor and the City within three (3) days that the Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien. The Contractor shall terminate the subcontract if the subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving the notice regarding Contractor's actual knowledge. The Contractor shall not terminate the subcontract if, during such three days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Contractor is required to comply with any reasonable request made by the Department of Labor and Employment made in the course of an investigation undertaken to determine compliance with this provision and applicable state law. If the Contractor violates this provision, the City may terminate this Agreement, and the Contractor may be liable for actual and/or consequential damages incurred by the City, notwithstanding any limitation on such damages provided by such Agreement.

9.15 Non-Liability of City for Indirect or Consequential Damages or Lost Profits. Parties agree that the City shall not be liable for indirect or consequential damages, including lost profits that result from the City's declaration that the Contractor is in default of the Agreement, so long as the City acts in good faith.

9.16 Indemnity. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless City, its members, affiliates, officers, directors, partners, employees, and agents from and

against all claims, damages, losses and expenses, including but not limited to reasonable attorney's fees, arising out of the performance of the Services, provided that any such claim, damage, loss or expense is caused by any negligent act or omission of Contractor, anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable, except to the extent any portion is caused in part by a Party indemnified hereunder.

9.17 Notices. Unless otherwise specifically required by a provision of this Agreement any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States Mail properly addressed to the intended recipient. Written notice may also be provided by electronic mail which shall be deemed delivered when receipt is acknowledged by reply of the recipient.

If to the City:

If to the Contractor:

| | |
|--|--------------------|
| Clyde Dooley, City Manager City of Creede P.O. Box 457 2223 Main Street Creede, CO 81130 creedemanager@gmail.com | Attention: |
| With Copy to: Eric J. Heil, Esq. 3445 S. Clermont St. Denver, CO 80222 eric@heillaw.com | |

10.0 AUTHORITY

The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of City of Creede and the Contractor and bind their respective entities.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK-SIGNATURE PAGE FOLLOWS]

EXHIBIT A: SERVICES

Preliminary Engineering Report for the Willow Creek Flume Rehabilitation Project

Services

The Services include the completion of a preliminary engineering report for the Willow Creek flume in Creede, Colorado which shall include an assessment of the required repairs, rehabilitation and/or reconstruction of the Willow Creek Flume.

The following tasks are required to complete the report:

1. Detailed inspection of the entire existing Willow Creek Flume. Describe and catalog existing conditions and problem areas.
2. Review the existing U. S. Army Corps of Engineers and other reports. Determine the existing and the reasonable design hydraulic capacities of the flume.
3. Develop and describe alternative preliminary level conceptual plans.
4. Compare alternatives from appropriate aspects as a minimum; capital cost, expected useful life, maintenance levels, aesthetics, and safety considerations.
5. Develop preliminary design level descriptions (illustrated) of the recommended improvement program. Determine probable quantities and prepare preliminary level project budget cost estimate.
6. Provide all field and office survey work required for proposed preliminary design of the project(s).
7. Organize and attend a minimum of two (2) work sessions with the Board of Trustees of the City of Creede to explain the plans, justify selection of the optimum plan, and obtain approvals, which work sessions shall be scheduled no later than Tuesday, May 19, 2015 to review a preliminary draft of the report and Tuesday, July 16, 2015 to review a final draft of the report. Copies of materials for work sessions shall be provided no later than the Thursday preceding the work session date.
8. Submit ten (10) copies of a bound Preliminary Engineering Report and one (1) electronic version of the Preliminary Engineering Report that is free of typos and inaccuracies.

Accomplish all phases of the preliminary engineering design in the format required by the appropriate funding agencies, and assist the City in securing and administering grant funds.

From: [Cary Bush](#)
To: [Clyde Dooley](#); clerk@creedetownhall.com
Subject: Recycle Creede Lease Amendment
Date: Friday, February 27, 2015 11:31:26 AM
Attachments: [Amendment to City Lease.docx](#)
[ATT00012.txt](#)

Clyde and Randy,

I've attached an Amendment to the Lease to clarify the terms of Section 6. This will state that we MAY collect residential and commercial pickups of recyclables.

If an agreement with Jon comes to fruition, then this point will be moot and the agreement will supersede it because the two entities will have made that decision between themselves. But if things don't work out now, or don't work out sometime in the future, it seems reasonable that we be allowed to pick up recyclables within the City. This would not conflict with MDS getting a monopoly on trash collection, because although recyclables are part of the solid waste stream, they are treated very differently and require different equipment, expertise and connections to be recycled.

Because of the long-term commitment to honest and real recycling that Recycle-Creede has proven over the past nine years, I feel that this is an important distinction to be made.

Thank you.

Cary Bush
303-503-9975
hummingbirdwoman@gmail.com

PS. Sorry to use this address and confuse everyone, but my other

AMENDMENT
To
RECYCLE CREEDE, INC.
LEASE AGREEMENT

This Amendment to the Recycle Creede, Inc. Lease Agreement dated July 2, 2009, clarifies the terms of Section 6 of the Lease Agreement as follows:

6. Tenant shall use said premises for the sole purpose of a recycling drop-off center and associated activities which may include the residential and commercial pick-up of recyclables within the City Limits of Creede, Colorado. The Tenant shall not permit the accumulation of trash or refuse outside the building and no storage of materials or equipment not directly associated with the recycling collection activities is permitted on the property.

RECYCLE CREEDE, INC. LEASE AGREEMENT

This Lease Agreement is entered into this 29th day of July 2009, by and between the City of Creede, a Colorado municipality, by and through the Board of Trustees' ("Landlord") and Recycle Creede, Inc. a Colorado non-profit corporation ("Tenant").

For good and valuable consideration, and for the mutual promises and covenants contained herein, the parties agree as follows:

1. The Landlord, by entering this Lease, expresses its intention to lease the subject property to the Tenant for a period of twenty (20) years, at a minimal cost, as a "donation in kind". The Board recognizes the Tenant is providing a necessary public service with its recycling drop-off center. At the end of this Lease, there will be an option to renew for another twenty (20) years with the mutual consent of Landlord and Tenant.
2. Landlord hereby leases and lets to Tenant a Parcel of Land, lying and being situate within the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 36, Township 42 North, Range 1 West, New Mexico Principal Meridian, City of Creede, County of Mineral, State of Colorado and further described in the attached: "EXHIBIT "A". Exhibit A shall be developed by a survey of the above parcel of property and upon receipt thereof will be incorporated as part of this Agreement.
3. Landlord does grant this Lease for a term of twenty (20) years beginning August 1, 2009 and ending July 31, 2029. This Lease will be reviewed every five-years by the Board of Trustees to consider the rental amount of the agreement. Any increase in the rental amount will be negotiated by the Tenant and the Landlord, with the understanding that the original intent of the Board of Trustees is stated in paragraph 1 above. Notice of non-renewal of the Lease, must be for reasonable cause by either party, and provided in writing, at least 270 days prior to the expiration of the Lease, to the other party. The Lease will terminate automatically in the event that the premises ceases to be used for recycling collection activity or the Tenant is no longer a non-profit organization.
4. As consideration for the granting of this lease, Tenant agrees to:
 - a. Pay the Landlord the sum of One Dollar (\$1.00) for each year of the lease due and payable on the first (1st) of August each year.
 - b. Pay all costs associated with building permits and connecting to the City's infrastructure.
5. Tenant shall, at its expense, provide liability insurance for the leased building and provide the City with a copy of the policy listing the City of Creede as "Additional Insured".
6. Tenant shall use said premises for the sole purpose of a recycling drop-off center and associated activities. The Tenant shall not permit the accumulation of trash or refuse outside the building and no storage of materials or equipment not

- directly associated with the recycling collection activities is permitted on the property.
7. Tenant shall be responsible for any real improvements on the leased property, including the installation of and payment for all utilities it elects to install at the premises. These utilities include, but are not limited to; electricity and heating costs, telephone service, trash removal service, water, sewer and drainage.
 8. Tenant further agrees to maintain the interior of the building and the associated property in a manner, to the extent reasonably possible, free from common hazards to occupants and visitors to the premises. Tenant shall be responsible for removal of snow and ice from accesses to the premises.
 9. Tenant further agrees and warrants that:
 - a. Upon breach of this Lease it shall return possession of the leased premises in good condition, wear and tear and fire casualty excepted to the Landlord.
 - b. Tenant shall not assign or sublet said premises or allow any other person or entity to occupy the leased premises without Landlord's prior written consent.
 - c. Tenant shall be responsible for the cost of any material alteration to the premises. Tenant shall further notify Landlord of any material alteration to the premises.
 - d. Tenant shall comply with all building, zoning and health codes and other applicable laws for use of said premises.
 - e. Tenant shall not conduct or permit to be conducted any activity on the premises which violate any Federal, State, County or City law or ordinance.
 - f. Tenant shall not conduct or permit to be conducted any operation or activity on the premises which may be deemed to be ultra-hazardous or which would require an increase in the casualty insurance premium for the premises. The Tenant further agrees that it shall not permit any form of hazardous waste to be unreasonably accumulated or disposed of on the premises.
 - g. Tenant will notify the City within 30 days of any change in its non-profit status.
 10. Tenant agrees and stipulates that in the event that it is in breach of the terms or covenants of this Lease, and does not correct said breach within thirty (30) days of receipt of written notice from Landlord, Landlord may enter and take possession of the premises without further notice or legal action.

Exhibit "A"

RECYCLE CREEDE LEASE PARCEL

A Parcel of land located within the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 36, Township 42 North Range 1 West of the N.M.P.M., City of Creede, Mineral County, Colorado being more particularly described by metes and bounds as follows:

All bearings contained herein are based upon the east line of Section 36 from the Southeast Corner of said Section 36 to the East $\frac{1}{4}$ Corner of said Section 36 having a bearing of N00°57'50"E;

Beginning at the northeast corner of the parcel herein described from whence the East $\frac{1}{4}$ Corner of said Section 36 bears N21°27'55"E a distance of 1056.72 feet';

Thence S09°31'24"E a distance of 50.00 feet to the southeast corner of the parcel herein described;

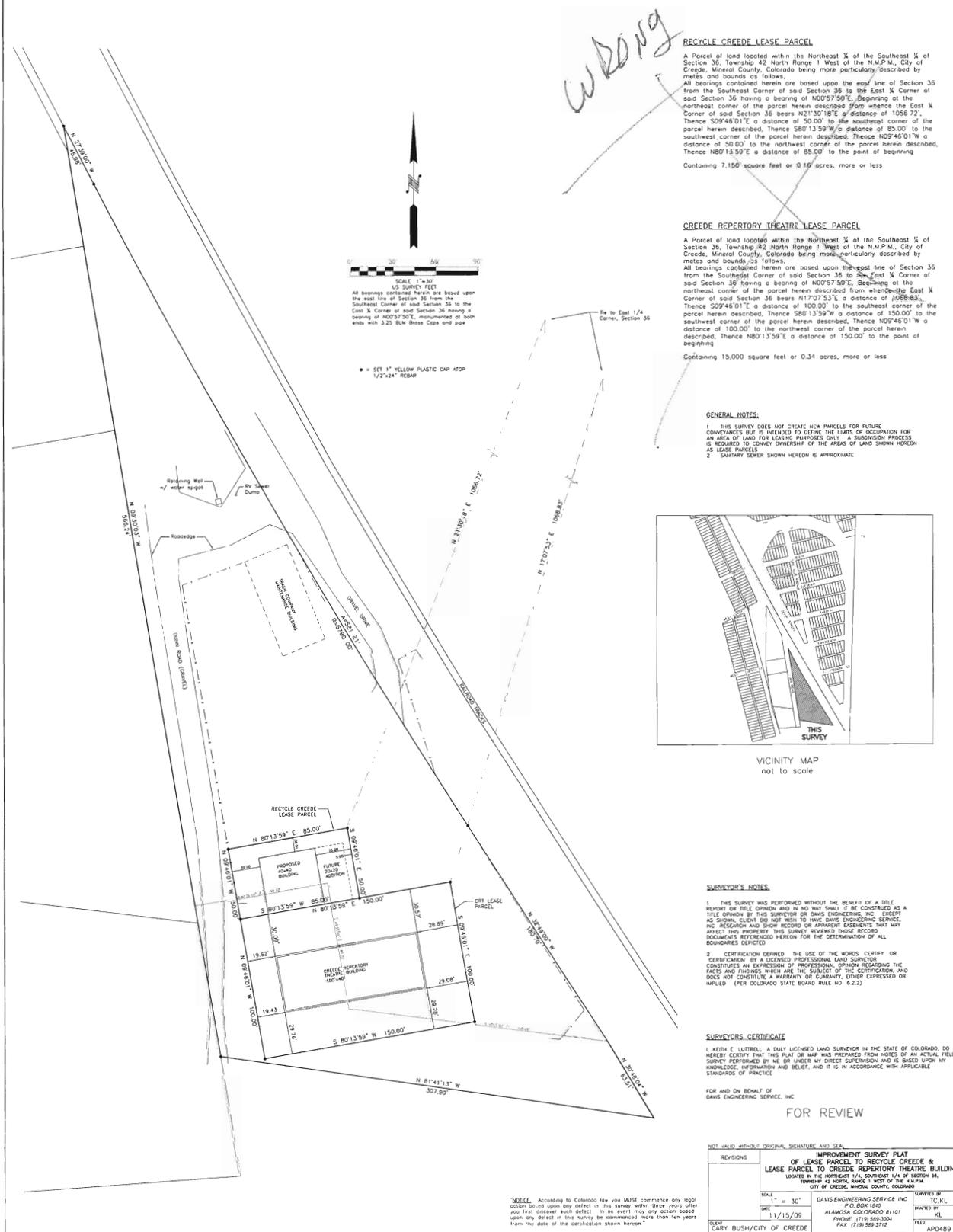
Thence S80°28'36"W a distance of 85.00 feet to the southwest corner of the parcel herein described;

Thence N09°31'0124"W a distance of 50.00 feet to the northwest corner of the parcel herein described;

Thence N80°28'36"E a distance of 85.00 feet to the point of beginning containing 4,250 square feet or 0.10 acres more or less.

IMPROVEMENT SURVEY PLAT OF LEASE PARCEL TO RECYCLE CREEDE & LEASE PARCEL TO CREEDE REPERTORY THEATRE BUILDING

LOCATED IN THE NORTHEAST 1/4, SOUTHEAST 1/4 OF SECTION 36,
TOWNSHIP 42 NORTH, RANGE 1 WEST OF THE N.M.P.M
CITY OF CREEDE, MINERAL COUNTY, COLORADO



WRONG

RECYCLE CREEDE LEASE PARCEL

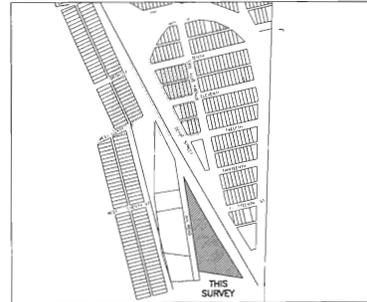
A Parcel of land located within the Northeast 1/4 of the Southeast 1/4 of Section 36, Township 42 North Range 1 West of the N.M.P.M., City of Creede, Mineral County, Colorado being more particularly described by metes and bounds as follows:
All bearings contained herein are based upon the east line of Section 36 from the Southeast Corner of said Section 36 to the East 1/4 Corner of said Section 36 having a bearing of N00°57'50"E. Beginning at the northeast corner of the parcel herein described from whence the East 1/4 Corner of said Section 36 bears N21°30'18"E a distance of 1056.72'. Thence S09°48'01"E a distance of 50.00' to the southeast corner of the parcel herein described. Thence S80°13'59"W a distance of 85.00' to the southwest corner of the parcel herein described. Thence N09°48'01"W a distance of 50.00' to the northwest corner of the parcel herein described. Thence N80°13'59"E a distance of 85.00' to the point of beginning.
Containing 7,150 square feet or 0.16 acres, more or less

CREEDE REPERTORY THEATRE LEASE PARCEL

A Parcel of land located within the Northeast 1/4 of the Southeast 1/4 of Section 36, Township 42 North Range 1 West of the N.M.P.M., City of Creede, Mineral County, Colorado being more particularly described by metes and bounds as follows:
All bearings contained herein are based upon the east line of Section 36 from the Southeast Corner of said Section 36 to the East 1/4 Corner of said Section 36 having a bearing of N00°57'50"E. Beginning at the northeast corner of the parcel herein described from whence the East 1/4 Corner of said Section 36 bears N17°07'53"E a distance of 1008.82'. Thence S09°48'01"E a distance of 100.00' to the southeast corner of the parcel herein described. Thence S80°13'59"W a distance of 150.00' to the southwest corner of the parcel herein described. Thence N09°48'01"W a distance of 100.00' to the northwest corner of the parcel herein described. Thence N80°13'59"E a distance of 150.00' to the point of beginning.
Containing 15,000 square feet or 0.34 acres, more or less

GENERAL NOTES:

1. THIS SURVEY DOES NOT CREATE NEW PARCELS FOR FUTURE CONVEYANCES BUT IS INTENDED TO DEFINE THE LIMITS OF OCCUPATION FOR AN AREA OF LAND FOR LEASING PURPOSES ONLY. A SUBDIVISION PROCESS IS REQUIRED TO CONVEY OWNERSHIP OF THE AREAS OF LAND SHOWN HEREON AS LEASE PARCELS.
2. BOUNDARY SIZES SHOWN HEREON IS APPROXIMATE.



SURVEYOR'S NOTES:

1. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT OF TITLE OPINION AND IN NO WAY SHALL IT BE CONSTRUED AS A TITLE OPINION BY THIS SURVEYOR OR DAVIS ENGINEERING, INC. EXCEPT AS SHOWN. CLIENT DID NOT WISH TO HAVE DAVIS ENGINEERING SERVICE, INC. RESEARCH AND CHECK RECORDS OR APPROPRIATE EASEMENTS THAT MAY AFFECT THIS PROPERTY. THIS SURVEY REVIEWED THOSE RECORD DOCUMENTS REFERENCED HEREON FOR THE DETERMINATION OF ALL BOUNDARIES DEPICTED.

2. CERTIFICATION DENIES THE USE OF THE WORDS 'CERTIFY' OR 'CERTIFICATION' BY A LICENSED PROFESSIONAL LAND SURVEYOR CONSTITUTES AN EXPRESSION OF PROFESSIONAL OPINION REGARDING THE FACTS AND FINDINGS WHICH ARE THE SUBJECT OF THE CERTIFICATION, AND DOES NOT CONSTITUTE A WARRANTY OF GUARANTY, OTHER EXPRESSED OR IMPLIED (PER COLORADO STATE BOARD RULE NO. 6.2.2)

SURVEYOR'S CERTIFICATE

I, KEVIN E. LUTTRELL, A SOLE LICENSED LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THIS PLAT OR MAP WAS PREPARED FROM NOTES OF AN ACTUAL FIELD SURVEY PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION AND IS BASED UPON MY KNOWLEDGE, INFORMATION AND BELIEF; AND IT IS IN ACCORDANCE WITH APPLICABLE STANDARDS OF PRACTICE.

FOR AND ON BEHALF OF
DAVIS ENGINEERING SERVICE, INC.

FOR REVIEW

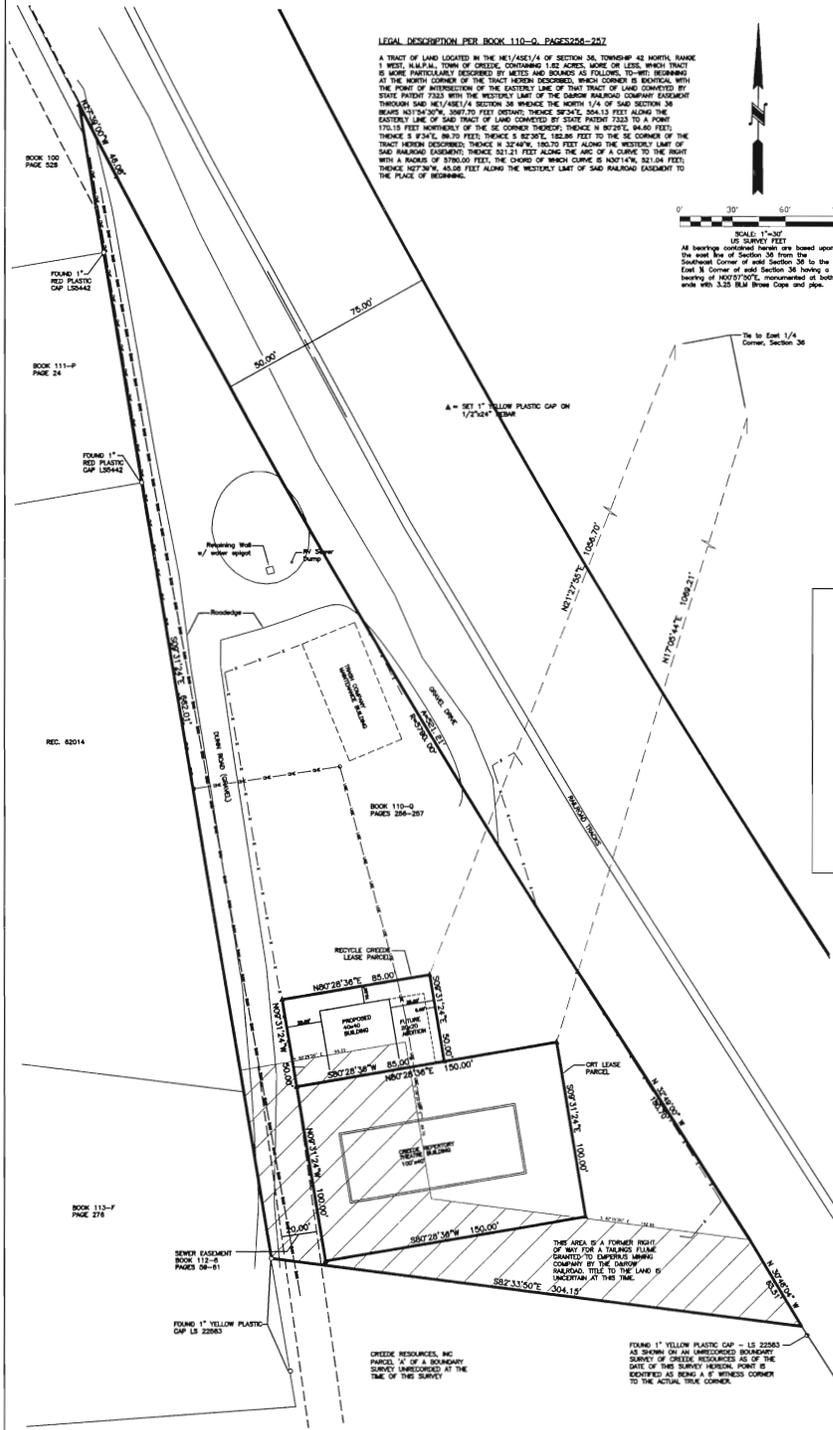
NOT VALID WITHOUT ORIGINAL SIGNATURE AND SEAL

| REVISED | IMPROVEMENT SURVEY PLAT OF LEASE PARCEL TO RECYCLE CREEDE & LEASE PARCEL TO CREEDE REPERTORY THEATRE BUILDING | LOCATED IN THE NORTHEAST 1/4, SOUTHEAST 1/4 OF SECTION 36, TOWNSHIP 42 NORTH, RANGE 1 WEST OF THE N.M.P.M. CITY OF CREEDE, MINERAL COUNTY, COLORADO | DATE | BY |
|---------|---|---|----------|--|
| | | | 11/15/09 | DAVIS ENGINEERING SERVICE, INC. P.O. BOX 660 ALAMOSA, COLORADO 81101 PHONE: (719) 589-2004 FAX: (719) 589-3712 |
| | | | | APD489 |

NOTICE: According to Colorado law, you MUST commence any legal action to redress any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than two years from the date of the certification shown hereon.

IMPROVEMENT SURVEY PLAT OF LEASE PARCEL TO RECYCLE CREEDE & LEASE PARCEL TO CREEDE REPERTORY THEATRE BUILDING

LOCATED IN THE NORTHEAST 1/4, SOUTHEAST 1/4 OF SECTION 36,
TOWNSHIP 42 NORTH, RANGE 1 WEST OF THE N.M.P.M.
CITY OF CREEDE, MINERAL COUNTY, COLORADO



LEGAL DESCRIPTION PER BOOK 110-0, PAGES 224-227

A TRACT OF LAND LOCATED IN THE NE1/4SE1/4 OF SECTION 36, TOWNSHIP 42 NORTH, RANGE 1 WEST, N.M.P.M., CITY OF CREEDE, MINERAL COUNTY, COLORADO, BEING MORE OR LESS, WHICH TRACT IS MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, TO-WIT: BEGINNING AT THE NORTH CORNER OF THE TRACT HEREIN DESCRIBED, WHICH CORNER IS IDENTICAL WITH THE POINT OF INTERSECTION OF THE EASTERN LINE OF THAT TRACT OF LAND CONVEYED BY STATE PATENT 7323 WITH THE WESTERN LINE OF THE GARDEN HAWKING COMPANY EASEMENT THROUGH SAID NE1/4SE1/4 SECTION 36 HENCE THE SOUTH 1/4 OF SAID SECTION 36 BEARS N07°28'36\"/>

RECYCLE CREEDE LEASE PARCEL

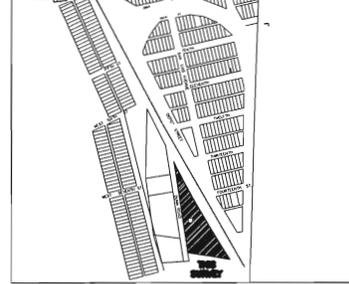
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CREEDE REPERTORY THEATRE LEASE PARCEL

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2. SURVEY SEWER SHOWN HEREON IS APPROXIMATE. LOCATION IS SHOWN BY RED PIN FLAGS FOUND DURING A FIELD SURVEY OF THE PROPERTY.
3. EASEMENTS OF PUBLIC UTILITIES IS APPARENT THOUGH NO DOCUMENTS WERE FOUND IN THE RECORDS OF THE PROPERTY.



SURVEYOR'S NOTES:

1. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT OR TITLE OPINION AND IN NO WAY SHALL BE CONSIDERED A TITLE OPINION BY THE SURVEYOR OR DAVIS ENGINEERING, INC. EXCEPT AS INDICATED HEREON. IT IS NOT INTENDED TO MAKE DAVIS ENGINEERING, INC. RESPONSIBLE AND SHALL BECOME BY APPLICABLE DOCUMENTS THAT MAY AFFECT THIS PROPERTY. THIS SURVEY REVIEWED THESE RECORD DOCUMENTS REFERENCED HEREON FOR THE DETERMINATION OF ALL BOUNDARIES DEPICTED.
2. CERTIFICATION DEFERRED. THE USE OF THE WORDS 'CERTIFY' OR 'CERTIFICATION' BY A LICENSED PROFESSIONAL LAND SURVEYOR CONSTITUTES AN AFFIRMATION OF PROFESSIONAL OPINION REGARDING THE FACTS AND FIGURES WHICH ARE THE SUBJECT OF THE CERTIFICATION, AND DOES NOT CONSTITUTE A WARRANTY OR GUARANTEE, EITHER EXPRESSED OR IMPLIED. (PER COLORADO STATE BOARD RULE NO. 8.2.2.)

SURVEYOR'S CERTIFICATE

I, KEVIN E. LUTHELL, A DAILY LICENSED LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THIS PLAT OR MAP WAS PREPARED FROM NOTES OF AN ACTUAL FIELD SURVEY PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION AND IS BASED UPON MY KNOWLEDGE, INFORMATION AND BELIEF, AND IT IS IN ACCORDANCE WITH APPLICABLE STANDARDS OF PRACTICE.

FOR AND ON BEHALF OF
DAVIS ENGINEERING SERVICE, INC.

FOR REVIEW

"NOTICE: According to Colorado law you MUST commence any legal action based upon any defect in this survey within three years from the date of this survey or you will lose your right to sue. In no event may any error based upon any defect in this survey be commenced more than two years from the date of the certification shown herein."

| REVISIONS | | DATE | |
|-----------|--|------|--|
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Large map in Map Expanding File.

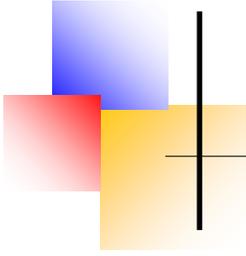
FEB 2015 Retreat / Goals & discussion takeaways...

(In no particular order, and an ongoing discussion. Updated from Town Board Retreat, 2.28.15)

- Town Board setting up 2015 budgeted REC position for success.
- Chamber of Commerce budget outlay conversation.
- “One Government” conversation, joint city / county or some type of hybrid with joint departments / functions?
- The Lake City model or our own equivalent for a professional grant writer type of position?
- Downtown district, sub-district, or separate neighborhood designation?
- Continued Economic Development, with focus on year round financial stability.
- Welcome to City of Creede kiosk / better town entry signage, Hecla idea of new town entry sign celebrating mining heritage?
- Develop modern code of ethics, and adopt Bob’s Rules instead of Robert’s Rules.
- Flume.
- Restructuring of Parks and Recreation Department.
- Develop mining events arena into a tourist attraction / self guided tour when not in use?
- Upgrade restrooms and / or possible new location? New playground if required?
- Plan / develop rest of RR ROW south of 5th Street towards Hwy 149.
- Continue storm drainage improvements.
- Sidewalks (repair), and bury power lines at same time? Snow removal from such? Adding additional sidewalks? Pedestrian bridges over flume?
- Better engaging of public.
- New town hall? Meeting room? More office space or adding office space to another building?
- Law enforcement conversation along with updating codes where applicable.
- July 4th event / production structure looking into the future?
- VC outlay structure for 2016, 1/3 to each: parks and rec / capital improvements / the local non-profit public?
- Maintaining our history by preservation of old structures and pursuing such, etc.
- Future Waste Water Plant.

(Next Town Board Retreat 4.1.15 @ 5:30pm with location confirmation from Randi.)

(Draft Ver. 2.28.15 to be voted on at 3.3.15 BOT meeting.)



SAN LUIS VALLEY COUNCIL OF GOVERNMENTS

SAN LUIS VALLEY COUNCIL OF GOVERNMENTS 2015 ECONOMIC DEVELOPMENT GRANT APPLICATION

Funded by the San Luis Valley Council of Governments
in cooperation with the Colorado Department of Local Affairs
Energy and Mineral Impact Assistance Program

SLVCOG is soliciting proposals for economic development projects from its membership. A total of \$30,000 is available to fund 2015 economic development projects for SLVCOG members only.

This Grant Application Package contains the following:

- ◆ 2015 Economic Development Grant Guidelines
- ◆ 2015 Economic Development Grant Application Form

Please send applications or letters of intent to the address below or electronically to the email address below. Decisions will be made by a committee of the Executive Board. All decisions are final. Funding will be provided for projects that begin after March 1, 2015 and are completed by December 31, 2015. This is a reimbursement grant program and funds will be paid to grantees when the project is completed.

Please submit completed applications to:

San Luis Valley Council of Governments
PO Box 300
Alamosa, CO 81101
719-589-6099 (fax) 719-589-6299
rwisdom@slvdrg.org

If you have any questions regarding SLVCOG's Grant Program, please contact Roni Wisdom at 719-589-6099.

2015 ECONOMIC DEVELOPMENT GRANT GUIDELINES

Eligibility:

- A. Grants are only awarded to municipalities or counties that are members in good standing of the San Luis Valley Council of Governments (SLVCOG).
- B. Only one application per member jurisdiction will be considered for funding each cycle/year.
- C. *After the grants have been awarded, any change in scope to a funded project must be submitted in writing to the SLVCOG Executive Committee for approval.*
- D. Cash awards will be made in the amounts determined by the SLVCOG Executive Committee, totaling no more than \$30,000 for all grant awards combined.
- E. All grants require a 1 to 1 cash match.
- F. Maximum grant request for any one jurisdiction is \$10,000.
- G. Grant funding will be paid on a reimbursement basis only.
- H. The SLVCOG board reserves the right to adapt these guidelines to serve the needs of communities and to make adjustments to the amount of available funding.
- I. \$5,000 is to be shared within each county and the communities within that county.
- J. Counties/communities who apply must be a members of SLVCOG
- K. Applications will be reviewed on a first come/first serve basis. When county/communities have reached their \$5,000 limit, applications and letters of intent will be put into a 2nd round of grant funding, IF the funds are available.
- L. If funds are still available after 90 days, a second round of grants will be announced
- M. The 2nd round of funds will be obligated on a first come/first serve basis
- N. Applications that were not funded in the first round because the \$5,000/county/community limit had been reached will reviewed first. New applications will be accepted.

Use of Grant Funds:

- A. Eligible projects must begin no sooner than March 1, 2015 and be completed no later than December 31, 2015.
- B. Funding will be awarded to projects that demonstrate contributions to **Economic Development** needs of the community including but not necessarily limited to:
 - i. Economic Development projects including façade improvements, energy efficiency assessments and improvements, Main Street/Community assessments, and community mapping,
 - ii. Small scale capital improvements projects,
 - iii. Development of marketing/promotional resources such as a website for the municipality or county,
 - iv. Planning studies/analysis for municipality/county use,
 - v. Training or meeting facilitation

- C. Grant funds may not be used to supplant regularly budgeted staff or project funds, to purchase rolling stock, office equipment, or normal operating expenses, etc.
- D. Documentation of cash expenditures must follow the Department of Local Affairs process including:
 - i. If the project includes capital improvements, purchase of hard assets i.e. benches, or requires an RFP, bidding must be open and competitive. Obtain and document at least three telephone bids.
 - ii. Submit a final one-page report of the project accomplishments, receipts, and a copy of the completed project measurable results.
 - iii. Submit a copy of all invoices and expenses paid for contract services.
- E. Recipients of SLVCOG 2015 Economic Development Grant will sign a letter of agreement including these guidelines. This is a reimbursement grant in that grant funds will be sent to the grantee once the project is completed.

Time Line:

| | |
|--|---------------------------|
| Grant announced: | March 1, 2015 |
| Notification of decision on Applications received: | within 2 weeks of receipt |
| 2nd round announced (if funds available): | July 1, 2015 |
| All funds must be expended and matched by: | December 31, 2015 |

SLVCOG 2015 - 2014 ECONOMIC DEVELOPMENT GRANT APPLICATION

- 1. Jurisdiction _____
- 2. Name of Person Completing Application _____
Address _____
Phone Number _____ e-mail address _____
- 3. Project Title _____
- 4. Name of Person Responsible for Completion of Project _____
- 5. Total Cost of Project \$ _____
 Amount Requested \$ _____
 Cash Match \$ _____

Please provide the following information. Use a separate attachment if necessary (two pages maximum):

- A. Briefly describe the project. Why is the project needed at this time? How does the implementation of this project address the need?
- B. Explain why this project is important to your community and/or the SLVCOG Region. What measurable results do you expect? How and when will these results be measured?
- C. What exactly will the funds be used for? Provide a budget for your project clearly listing both revenues and expenses in a table format.
- D. In which of the categories listed above under "Use of Grant Funds" does your project fit best? Explain.
- E. Assuming the project is funded, when will it begin and what is the timeframe for completion?