

GRANT AGREEMENT

Project Title:

PARTIES TO AGREEMENT:

Board: **Town of Mt. Crested Butte Downtown Development Authority
Board of Directors**

Grantee: []

RECITALS

A. The Town of Mt. Crested Butte Downtown Development Authority (“DDA”) is a downtown development authority created pursuant to the provisions of Part 8, Article 25, Title 31 of the Colorado Revised Statutes, duly formed and in perpetual existence since 1996.

B. The DDA is generally governed by a Board of Directors (“Board”) possessing those powers customarily vested in the board of directors of a corporation and charged with exercising supervisory control over the activities of the DDA in carrying out the functions authorized to it.

C. Under the authority granted by the DDA Plan of Development, approved by the Town of Mt. Crested Butte Town Council on January 7, 1997, the Board has developed and implemented a grant program under which eligible projects may apply for and obtain DDA grant funds to assist in the completion of projects located within the DDA boundaries that meet certain defined eligible project criteria.

D. Grantee has filed an application for such grant funding (the “Project Application”) for a project which the Board determined satisfied the relevant criteria (the “Project”). The Project is described in the Project Application attached hereto as **Exhibit A**.

E. The Board approved Grantee’s Project Application on _____, 20___, subject to the execution of this detailed grant agreement, and subject to the terms and conditions set forth herein. The parties intend this agreement to be the detailed final grant agreement required by the Board (the “Agreement”).

AGREEMENT

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

1. Incorporation of Recitals.

The Recitals set forth above are hereby incorporated into the terms of this Agreement.

2. Representations and Warranties of Grantee.

- a. Grantee is a _____, duly organized in accordance with the laws of Colorado and has full and lawful authority to enter into, and comply with the terms of, this Agreement.
- b. Grantee represents by its signature below that it has undertaken and completed all acts necessary to legally enter into and bind itself to the terms of this Agreement.
- c. Grantee represents and warrants that it is the [*describe ownership interest*] in the Project _____ property.

3. Grant and Project.

Subject to the terms and conditions set forth in this Agreement, the Board hereby awards to Grantee a sum not to exceed [_____] (the “Grant”). The Grant shall be used by Grantee solely to complete the Project, in substantial conformity with the final plans, specifications, designs and uses approved by the Board.

4. Project Scope.

Grantee shall not materially modify the Project or the Project budget (as included in the Project Application, **Exhibit A**, the “Budget”) without the prior written approval of the DDA (Staff or Board, as applicable) such approval to be in the Board’s or Staff’s sole discretion. Any material modification to the Project undertaken without such prior written consent may be deemed a breach of this Agreement by Grantee, entitling the Board to all remedies available under this Agreement. If Grantee determines with reasonable probability that the Project will not or cannot be completed as reflected in the Project Application, Grantee will promptly advise the Board, and cooperate in good faith to seek a resolution.

5. Grantee Efforts.

Grantee shall complete the Project in a timely fashion, in a good and workmanlike manner, and consistent with this Agreement and the Board’s approvals related to the Project.

6. Completion Date.

Grantee shall complete the Project and submit its Final Report no later than _____ (the “Completion Date”). Grantee may request one extension of the Completion Date, which extension period shall not exceed one additional year, and may be granted in the sole discretion of the Board upon a showing of reasonable cause for delay outside of Grantee’s control or prediction. The Board may elect to terminate this Agreement and deauthorize the Grant in the event the original Completion Date is not met or an extended amended Completion Date is not met.

7. Matching Funds.

If applicable to the Project as indicated in the Budget, Grantee shall obtain the matching cash contributions required for the Project. If the required matching funds or contributions are unable to be secured by Grantee after diligent and reasonable efforts to obtain or provide the same have

been expended, Grantee may request an amendment of this requirement as a “material modification” to the Project under Section 4 above. If modification is not granted by the Board, then Grantee’s failure to provide the required funds/contributions constitutes a breach under Section 19 of this Agreement.

8. Disbursement of Funds.

- a. Post-Project – Preferred Fund Disbursement. The preferred method of Grant fund disbursement is upon or after completion of the Project. Preference is given by the Board to Projects that propose fund disbursement post-completion in this manner.
- b. Progress Payments – Exceptional Circumstances. Notwithstanding the preference for Projects seeking fund disbursement after completion, a Project Application may seek to receive a portion of the Grant funds after starting but prior to completing work on the Project (a “Progress Payment”). To justify such an arrangement, the Project Application must articulate how exceptional circumstances, unique to the Project and/or to the Applicant, result in the Project being possible only with Progress Payment(s).

If Progress Payment(s) are granted for this Project, to obtain such a payment, Grantee shall provide the Board with a progress report detailing expenditures and progress made to date (“Progress Report”). After reviewing the Progress Report, the Board may, in its discretion, request additional documentation to support making a Progress Payment.

A Progress Payment shall not exceed the percentage of expected overall costs (as determined by the Budget) applied to the value of documented eligible expenses or 50% of the Grant, whichever is less. A Progress Payment shall be considered a loan until the Project is complete and Final Payment (as defined below) has been made.

- c. Final Payment: Once the Project is complete, Grantee shall submit a final report to the Staff detailing the accomplishments of and expenditures related to the Project (the “Final Report”). The Project is “complete” when all facilities or other improvements included in the Project have been built and are ready for their intended use and when every permit, license, certificate of occupancy or other form of required Town approval have been obtained. Staff may, in its discretion, request additional documentation before its approval of the contents of the Final Report. Upon Staff’s review and approval of the Final Report, Staff shall pay the outstanding balance on the Grant (the “Final Payment”), subject to any reductions contemplated by any provision of this Agreement.

9. Conditions for Disbursement of Funds.

The Grant is subject to the following requirements and conditions.

- a. The Grant and all matching funds shall be used only for the cost of fixed assets, including construction of new facilities, and enlargement or renovation of existing facilities. The Grant and all matching funds may not be used to pay for, , maintenance

costs, administrative costs (such as salaries associated with administering the Grant, office supplies, telephone, or travel expenses), non-fixed assets (such as maintenance equipment), or any other costs deemed to be ineligible by the Board, at the Board's sole discretion.

- b. Except as otherwise agreed to in advance by the Board and/or Staff in accordance with the terms of this Agreement, no material modifications may be made to the Project. Material modifications to the Project to which the Board and/or Staff has not agreed may result in a reduction in the Grant. "Material modifications" may include, but are not necessarily limited to, a reduction in the total cost of the Project, a reduction in the size or number of public components to be constructed, changes to the nature of the components to be constructed, or any other variance from the Project as presented in the Project Application. It is the sole responsibility of Grantee to inform Staff of any such modifications to the Project. The Board strongly encourages Grantee to contact Staff when it becomes aware of or wishes to make any modifications to the Project, such that Staff may evaluate whether such modification is material and therefore subject to Board approval. Modifications that are not material may be approved by Staff.

10. Post-Project Completion: Operation and Maintenance.

- a. Grantee shall use its best efforts to operate, manage, and maintain the Project in a reasonable state of repair for the purposes specified in the Project Application for the long term.
- b. The Board shall not be liable for any cost of maintenance, management or operation of the Project.

11. Public Access.

Grantee agrees, for itself and its successors in interest, to allow public access to the publicly-accessible portions of the Project for the term specified in Section 10. Grantee may temporarily close such public access for construction, maintenance, emergency situations, or other reasonable purposes.

12. Compliance with Regulatory Requirements and Federal and State Mandates.

Grantee hereby assumes responsibility for compliance with all regulatory requirements and will indemnify and hold the Board harmless from any liability for any failure to comply with any such applicable requirements.

13. Nondiscrimination.

During the performance of this Agreement, Grantee and its contractors, subcontractors and agents shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, sex, sexual orientation, or any other basis prohibited by local, state or federal law. Grantee and its contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Further, during the performance of this Agreement, Grantee and anyone acting on behalf of Grantee shall not engage in any unlawful discrimination in permitting access and use of the Project.

14. Publicity and Project Information.

- a. At the DDA's option and direction, Grantee shall erect and maintain a sign at a prominent location on the Project site acknowledging the assistance of the DDA. The DDA shall either provide such signs at no cost to Grantee or provide reproducible samples of its logo to Grantee for custom signs.
- b. Grantee shall give Staff a minimum 30 days' notice of Project grand openings, dedications, or other events, and when possible, invite the Board and Staff to participate in the same.
- c. Grantee shall provide quality digital photographs or printed photographs, if unable to provide digital photographs (collectively, "Photographs") of the completed Project with the Final Report.
- d. At no time shall Grantee represent in any manner to the public or to any party that it is affiliated with the DDA, the Town or acting on behalf of the DDA or the Town.

15. Liability.

- a. Grantee shall be responsible for and shall indemnify, defend and hold harmless the Board, its officers, agents and employees from any and all liabilities, claims, demands, damages or costs (including reasonable legal fees) resulting from, growing out of, or in any way connected with or incident to Grantee's performance of this Agreement. Grantee hereby waives any and all rights to any type of express or implied indemnity or right of contribution from the Town, the DDA, or any of the members, member's officers, agents or employees of either of the same, for any liability resulting from, growing out of, or in any way connected with or incident to this Agreement. Grantee acknowledges that Grantee is the owner of the Project and the Property upon which it is located, or has control of the Project and the Property, and that the Board neither possesses nor controls the Project, the Property, nor the operations of the Project.
- b. Anything else in this Agreement to the contrary notwithstanding, no term or condition of this Agreement shall be construed or interpreted as a waiver, either express or implied, of any of the immunities, rights, benefits or protection provided to the Board under the Colorado Governmental Immunity Act ("CGIA") as amended or as may be amended in the future (including, without limitation, any amendments to such statute, or under any similar statute which is subsequently enacted). This provision may apply to Grantee if Grantee qualifies for protection under the Colorado Governmental Immunity Act, C.R.S. §24-10-101 *et seq.* The Board and Grantee understand and agree that liability for claims for injuries to persons or property arising out of the negligence of the Board, its members, officials, agents and employees may be controlled and/or limited by the provisions of the CGIA. The parties agree that no provision of this Agreement shall be construed in such a manner as to reduce the extent to which the CGIA limits the liability of the Board, its members, officers, agents and employees.

16. Audits and Accounting.

Grantee shall maintain standard financial accounts, documents, and records relating to the use, management, and operation of the Project. The accounts, documents, and records related to the Project shall be retained by Grantee for not less than three (3) years following the date of disbursement of funds under this Agreement. The Board, or its designated agent, shall have the right, upon reasonable notice to Grantee, to audit the books and records of Grantee which pertain to the Project and to the use and disposition of the Grant. Grantee shall use reasonable and appropriate accounting systems in maintaining the required records hereunder.

17. Inspection.

Throughout the term of this Agreement, Staff shall have the right to inspect the Project to ascertain compliance with this Agreement.

18. Withdrawal of Board Funding; Termination of Agreement.

Anything else in this Agreement or otherwise to the contrary notwithstanding, the Board may withdraw, in whole or in part, the Grant and/or terminate this Agreement, and/or seek a refund of payments already made if the Board and/or Staff determines in its discretion that:

- a. facts have arisen or situations have occurred that fundamentally alter the expectations of the parties or make the purposes for the Grant as contemplated infeasible or impractical;
- b. any material modifications in the scope or nature of the Project have occurred from that which was presented in the Project Application and such material modifications have not received the prior written approval of the Board;
- c. any statement or representation made by Grantee in the Project Application, this Agreement, the Progress Report (if applicable), the Final Report, or otherwise is untrue, inaccurate or incomplete in any material respect;
- d. the results of the Board's review of the Progress Report, or the Final Report are not acceptable to the Board;
- e. the Project will not or cannot be completed by the Completion Date or any extensions granted thereto or delays in the implementation of the Project have occurred which, in the Board's judgment, make the Project impracticable;
- f. the Project will not or cannot be completed within the Budget or any approved modifications, or the total Project cost and/or Grantee's matching funding are reduced; and
- g. title to or encumbrances against the Property are or become such that Grantee is unable to complete the Project, or the Project and/or the Property are or become unavailable for public use.

19. Breach.

- a. In the event that Grantee breaches any of the terms, covenants, representations, or conditions of this Agreement, the Board may elect to enforce any and all remedies available at law or in equity, including without limitation, any of the following:
 - i. Prior to payment of Grant:
 - Withdraw the Grant and terminate this Agreement; and,
 - Deny Grantee eligibility for participation in future Board grants, loans or projects.
 - ii. After payment (partial or full) of Grant:
 - Deny Grantee eligibility for participation in future Board grants, loans or projects;
 - Seek specific performance of Grantee's obligations under this Agreement;
 - Receive reimbursement in full of disbursement made under the Grant.
- b. The foregoing remedies are cumulative and may be exercised independently or in combination and are not exclusive to one another or to any other remedies available at law or in equity. In the event the Board must pursue any remedy hereunder and is the substantially prevailing party, the Board shall be awarded its costs and reasonable legal fees, including costs of collection.

20. Good Faith.

There is an obligation of good faith on the part of both parties, including the obligation to make timely communication of information which may reasonably be believed to be material to the other party.

21. Assignment.

Grantee may not assign its rights under this Agreement without the consent of the Board, which consent shall be in the discretion of the Board. Any assignment shall require that, at a minimum, the assignee is eligible to receive grants from the Board and assumes Grantee's ongoing obligations under this Agreement.

22. Applicable Law.

This Agreement shall be governed by the laws of the State of Colorado and venue for any dispute hereunder shall lie exclusively in the State Courts of the County of Gunnison.

23. No Joint Venture.

Nothing in this Agreement shall be construed to create a joint venture, partnership, employer/employee or other relationship between the parties hereto other than independent contracting parties. Except as permitted under the remedies provisions hereunder, neither party shall have the express or implied right to act for, on behalf of, or in the name of the other party.

24. Severability.

If any provision of this Agreement, or the application thereof, is found to be invalid, the remainder of the provisions of this Agreement, or the application of such provision, other than those as to which it is found to be invalid, shall remain in full force and effect.

25. Survival.

The terms and provisions of this Agreement and the parties' covenants hereunder shall survive the funding of the Grant and the completion of the Project.

26. Counterparts; electronic signatures.

This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which when taken together shall constitute one Agreement. In addition, the parties agree to recognize signatures of this Agreement transmitted by digital signature or e-mail as if they were original signatures.

27. Third Party Beneficiary.

The Board and Grantee hereby acknowledge and agree that this Agreement is intended only to cover the relative rights and obligations between the Board and Grantee, and that no third party beneficiaries are intended.

28. Construction.

Each party hereto has reviewed and revised (or requested revisions of) this Agreement, and therefore, any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Agreement.

29. Waiver.

The failure of either party to enforce a term hereof shall not be deemed a waiver of such term or right of enforcement as to that breach or any subsequent breach of the same, similar or different nature. No waiver shall be enforceable hereunder unless signed by the party against whom the waiver is sought to be enforced.

30. Entire Agreement.

Except as expressly provided herein, this Agreement constitutes the entire agreement of the parties. No oral understanding or agreement not incorporated in this Agreement shall be binding upon the parties. No changes to this Agreement shall be valid unless made as an amendment to this contract, approved by the Board, and signed by the parties.

IN WITNESS WHEREOF, the parties by signature below of their authorized representatives execute this Agreement effective as of _____, 20 ____ .

TOWN OF MT. CRESTED BUTTE
DOWNTOWN DEVELOPMENT AUTHORITY

GRANTEE:
[INSERT ENTITY/CORP. NAME]

By:

By:

Chair, DDA Board

Name

Title

PROPERTY OWNER ACKNOWLEDGEMENT AND CONSENT

*(*Required if property owner is different from named Grantee)*

The undersigned, as the owner of property upon which the Project is located, hereby acknowledges and consents to the terms of this Agreement and further agrees to be bound by its terms in the same manner as Grantee.

[INSERT NAME OF ENTITY/CORP. IF APPLICABLE]

By: Name

Title

EXHIBIT A
PROJECT APPLICATION