

SPECIAL MEETING

- I. CALL TO ORDER
- II. PLEDGE OF ALLEGIANCE
- III. ROLL CALL
- IV. APPROVAL OF AGENDA
- V. EXECUTIVE SESSION
- VI. PUBLIC COMMENT

Public comment is intended for members of the public wishing to address the Board of Trustees about matters that are not listed for discussion on the agenda. Comments will be taken under advisement by the Board but no decisions will be made. At its discretion, the Board may elect to place a matter raised under public comment on a future agenda for further discussion and possible action.

VII. PRESENTATIONS

- a. Presentation of request by Debbie Whitmore for approval of a sales tax exemption on low volume sales by charitable organizations;

VIII. CONSENT AGENDA

- a. Minutes for October 4th, 2022 Regular Meeting;
- b. Minutes for November 1st, 2022 Regular Meeting;
- c. Minutes for November 15th, 2022 Special Meeting;
- d. Minutes for November 22nd, 2022 Special Meeting;
- e. Minutes for December 13th, 2022 Special Meeting;
- f. Minutes for December 30th, 2022 Special Meeting;
- g. Minutes for January 3rd, 2023 Regular Meeting;

IX. BOARD INFORMATION ITEMS

- a. Public Works Staff Report February 2023

X. NEW BUSINESS

- a. Consideration and possible authorization to purchase a 22kw Generac propane generator in the amount of \$9,659.00;

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OPEN TO THE PUBLIC

POSTED 2/17/2023

- b. Discussion regarding a proposed salary increase for future Mayor / Trustees;
- c. Discussion and possible authorization to proceed with an application to SLVCOG for a mini-grant in the amount of \$5000 to complete a lighting upgrade project at the Rec Center totaling approximately \$10,500.00;
- d. Discussion and possible authorization to proceed with final design work for the proposed micro-hydro project in the amount of \$161,000;
- e. Discussion of sample Ordinance XX "AN ORDINANCE OF THE CITY OF CREEDE, COLORADO AMENDING CHAPTER 6, ARTICLE 1 AND CHAPTER 10, ARTICLE 8 OF THE MUNICIPAL CODE OF THE CITY OF CREEDE, COLORADO TO CONFORM WITH CHANGES TO THE COLORADO LIQUOR CODE, THE COLORADO BEER CODE AND SPECIAL EVENT LIQUOR PERMITS MADE BY THE COLORADO LEGISLATURE IN 2018, AND PROVIDING FOR THE ISSUANCE OF A LICENSE FOR THE POSSESSION OF AN OPEN CONTAINER ON CITY OWNED PROPERTY DURING CERTAIN PUBLIC EVENTS SANCTIONED BY THE CITY";
- f. Discussion regarding the potential construction of a covered entranceway in front of the VC rec center;
- g. Discussion regarding the possible installation of automatic hardware in the VC rec center and park bathrooms;

XI. OLD BUSINESS

XII. BOARD REPORTS

XIII. ADJOURN

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OPEN TO THE PUBLIC

POSTED 2/17/2023



**§ 39-26-718. Charitable organizations - association or organization of parents and teachers of public school students**

(1) The following shall be exempt from taxation under the provisions of part 1 of this article 26:

(a) All sales made to charitable organizations, in the conduct of their regular charitable functions and activities;

(b)

(I) All sales by a charitable organization of tangible personal property, commodities, or services otherwise subject to tax under this article 26 if:

(A) The net proceeds from sales by the charitable organizations of tangible personal property, commodities, or services otherwise subject to tax under this article 26 do not exceed forty-five thousand dollars during the preceding calendar year; and

(B) The funds raised by the charitable organization through these sales are retained by the organization to be used in the course of the organization's charitable service.

(II) The exemption in this subsection (1)(b) shall not apply to sales made by a charitable organization on and after the date that the net proceeds from sales by the charitable organization of tangible personal property, commodities, or services otherwise subject to tax under this article 26 exceeds forty-five thousand dollars during the current calendar year.

(c) On or after September 1, 2008, a sale by an association or organization of parents and teachers of public school students that is a charitable organization, if the association or organization uses the funds raised through the sale for the benefit of a public school or an organized public school activity or to pay the reasonable expenses of the association or organization.

(2) The storage, use, or consumption of any item that is exempt from sales tax by operation of subsection (1)(b) or (1)(c) of this section is exempt from taxation under the provisions of part 2 of this article 26.

**History:**

Amended by 2021 Ch. 55, §4, eff. 9/7/2021. Amended by 2019 Ch. 263, §1, eff. 8/2/2019 and applicable to sales that occur on or after 1/1/2020.

Amended by 2018 Ch. 380, §3, eff. 7/1/2018. L. 2004: Entire part added with relocations, p. 1034, § 2, effective July 1. L. 2008: Entire section amended, p. 973, § 3, effective September 1. L. 2018: IP(1) and (1)(a)

**Colo. Rev. Stat. &sect; 39-26-718 Charitable organizations -  
association or organization of parents and teachers of public  
school students (Colorado Revised Statutes (2023 Edition))**

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amended, (HB 18-1218), ch. 2296, p. 2296, § 3, effective July 1. L. 2019:  
(1)(b) amended, (HB 19-1323), ch. 2487, p. 2487, § 1, effective August 2. L.  
2021: (2) added, (HB 21-1177), ch. 229, p. 229, § 4, effective September 7.

**Editor's Note:**

Subsection (1)(a) is similar to former § 39-26-114 (1)(a)(II), and subsection  
(1)(b) is similar to former § 39-26-114 (18), as they existed prior to 2004.

**Note:**

2021 Ch. 55, was passed without a safety clause. See Colo. Const. art. V, §  
1(3).

**Case Note:**

**ANNOTATION**

**Annotator's note.** Since § 39-26-718 is similar to §39-26-114 and §39-26-  
203 as they existed prior to their 2004 repeal and relocation to this part 7,  
relevant cases construing those provisions have been included in the  
annotations to this section.

**Law reviews.** For article, "State and Local Sales and Use Tax Exemptions  
for Colorado Charitable Organizations", see 29 Colo. Law. 55 (Aug. 2000).

**The definition of "charitable organization"** in a municipal tax code  
lends itself to two conflicting plain-meaning interpretations. In the first  
interpretation, in order to be eligible for a sales and use tax exemption, both  
religious and nonreligious charitable organizations must meet strict  
guidelines; in the second, a distinction is made between religious and  
charitable organizations, and the guidelines apply only to those  
organizations whose functions are nonreligious in nature. The court is  
obligated to support the first interpretation so as to avoid invoking a  
violation of the establishment clause of the federal constitution. *Catholic  
Health Initiatives Colo. v. City of Pueblo*, 207 P.3d 812 (Colo. 2009).

**Tax incentives that inure only to the benefit of religious  
organizations** solely by virtue of their religious nature violate the  
establishment clause. *Catholic Health Initiatives Colo. v. City of Pueblo*, 207  
P.3d 812 (Colo. 2009).

**A sales or use tax exemption for a charitable organization,  
whether religious or secular, must serve a broad, secular  
purpose.** *Catholic Health Initiatives Colo. v. City of Pueblo*, 207 P.3d 812  
(Colo. 2009).

**Company purchases made for charitable functions exempt.**

Purchases made by a company in connection with its charitable functions and activities, regardless of the nature of its ordinary business, are exempt from the operation of this article. *Bedford v. Colo. Fuel & Iron Corp.*, 102 Colo. 538, 81 P.2d 752 (1938).

**Only purchases used in regular charitable activities.** Only those purchases by charitable organizations which are for use in the conduct of their regular charitable functions and activities are exempt from the sales and use tax. *Sec. Life & Accident Co. v. Heckers*, 177 Colo. 455, 495 P.2d 225 (1972).

**Purchases by charitable organizations for use in charitable functions exempt.** Those purchases by charitable organizations which are for use in the conduct of their regular charitable functions and activities are exempt from the sales and use tax. *Sec. Life & Accident Co. v. Heckers*, 177 Colo. 455, 495 P.2d 225 (1972).

**Fraternal benevolent societies are not exempt from sales taxes that were not contemplated** in 1911 when they were declared to be "charitable and benevolent institution[s]" when such sales tax was first adopted in 1935 and the legislature imposed the tax on "all sales and purchases of tangible personal property at retail". This is particularly true if the legislation that created the tax listed specific exemptions that did not include fraternal benevolent societies. *Colo. Dept. of Rev. v. Woodmen of the World*, 919 P.2d 806 (Colo. 1996).

**The reintroduction of the words "and every" to a phrase making it read "all and every state tax" does not strengthen and reaffirm the broad scope of the exemption for fraternal benefit societies**, it merely was replaced after being determined by the revisor of statutes to be redundant. The meaning of the phrase remains unchanged. *Colo. Dept. of Rev. v. Woodmen of the World*, 919 P.2d 806 (Colo. 1996).

**Applied** in *First Lutheran Mission v. Dept. of Rev.*, 44 Colo. App. 417, 613 P.2d 351 (1980).

**CITY OF CREEDE, COLORADO  
ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE OF THE CITY OF CREEDE, COLORADO AMENDING CHAPTER 4  
OF THE MUNICIPAL CODE OF THE CITY OF CREEDE, COLORADO WITH THE  
EXEMPTION OF SALES MADE BY OR TO CHARITABLE ORGANIZATIONS.**

**WHEREAS**, the City of Creede has adopted by ordinance, a sales tax on the sale of tangible personal property or the furnishing of certain taxable services as provided by state law upon every retailer in the City; and

**WHEREAS**, it is the desire of the Board of Trustees that sales made to, or by charitable organizations operating within the City are not to be charged the City sales tax as provided by §39-26-718, C.R.S.

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF  
THE CITY OF CREEDE, COLORADO, AS FOLLOWS:**

**Section 1.** “Section 4-3-50 of the Municipal Code of the City of Creede, Colorado is amended to read as follows:

“Sec. 4-3-50. Exemptions from sales tax.

- (1) The following shall be exempt from taxation under the provisions of this Article 3:
- a. All sales made to charitable organizations, in the conduct of their regular charitable functions and activities;
  - b. All sales by a charitable organization of tangible personal property, commodities, or services otherwise subject to tax under this Article 3 if:
    - i. The net proceeds from sales by the charitable organizations of tangible personal property, commodities, or services otherwise subject to tax under this Article 3 do not exceed forty-five thousand dollars during the preceding calendar year; and
    - ii. The funds raised by the charitable organization through the sales are retained by the organization to be used in the course of the organization’s charitable service.
  - c. The exemption in this subsection (1)(b) shall not apply to sales made by a charitable organization on or after the date that the net proceeds from sales by the charitable organization of tangible personal property, commodities, or services otherwise subject to tax under this Article 3 exceeds forty-five thousand dollars during the current calendar year.
  - d. On or after September 1, 2008, the sales by an association or organization of parents and teachers of public school students that is a charitable organization, if the association or organization uses the funds raised through the sale for the benefit of a public school or an organized public

school activity or to pay the reasonable expenses of the association or organization.

- (2) The storage, use, or consumption of any item that is exempt from sales tax by operation of subsection (1)(b) or (1)(c) of this section is exempt from taxation under the provisions of this Article 3.
- (3) All sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from the sales tax, when such sale meets both the following conditions:
  - a. The purchaser is a nonresident of, or has his or her principal place of business outside of the City limits; and
  - b. Such personal property is registered or required to be registered outside the City limits under state law.”

**Section 2. Effective Date.** This ordinance shall be published and become effective as provided by law.

**Section 3. Severability.** If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the ordinance. The Town Board hereby declares that it would have passed the ordinance including each part, section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more parts, sections, subsections, sentence, clauses or phrases are declared invalid.

**Section 4. Repealer.** All ordinances or resolutions and motions of the Board of Trustees of the City of Creede or parts thereof, in conflict with this ordinance are to the extent of such conflict hereby superseded and repealed, provided that such repealer shall not repeal the repealer clauses of such ordinance, resolution or motion, nor revive any ordinance, resolution or motion thereby.

**INTRODUCED, READ, PASSED, ADOPTED AND ORDERED PUBLISHED THIS  
\_\_\_\_\_ DAY OF FEBRUARY 2023.**

**ATTEST:**

**CITY OF CREEDE**

\_\_\_\_\_  
Sarah Efthim-Williamson, Town Clerk

By \_\_\_\_\_  
Jeffrey Larson, Mayor





**BOARD OF TRUSTEES**  
**CITY OF CREEDE, COLORADO – A TOWN**  
**October 4<sup>th</sup>, 2022**

REGULAR MEETING

The Board of Trustees of the City of Creede – a Town, County of Mineral, State of Colorado, met in Regular Meeting session at the hour of 5:35 PM. There being present at the call of the roll the following persons:

OFFICIALS PRESENT (via either phone or video conferencing): Mayor Larson, Trustee Brink, Trustee Castleberry, Trustee Dooley and Trustee Hannah were all present.

Mayor Larson presiding declared a quorum present.

Those members of staff also present were as follows:

Louis Fineberg, Manager  
Scott Johnson, Public Works Director  
Sarah Efthim-Williamson, Clerk & Treasurer  
Madeline Westbrook, Deputy Clerk

APPROVAL OF AGENDA

Trustee Dooley motioned approval of agenda. Trustee Castleberry second. Motion carried unanimously.

EXECUTIVE SESSION

PUBLIC COMMENT

N/A

PRESENTATIONS

a. Presentation on the FY2021 Audit for the City of Creede by Wall, Smith and Bateman Inc.;

Kimberley Temple, CPA gave presentation on behalf of WSB.

CONSENT AGENDA

- a. Discussion and possible approval of a Parade Permit for 2022 Trunk or Treat;
- b. Minutes for the June 7th, 2022 Regular Meeting;
- c. Minutes for the June 21st, 2022 Special Meeting;
- ~~d. Minutes for the August 2nd, 2022 Regular Meeting;~~
- e. Minutes for the August 16th, 2022 Special Meeting;
- f. Minutes for the August 23rd, 2022 Special Meeting;
- g. Minutes for the September 20th, 2022 Special Meeting;
- h. Minutes for the September 29th, 2022 Special Meeting;

August 8<sup>th</sup> Minutes were in packet- not August 2<sup>nd</sup> Minutes. Trustee Brink noted on 9/29/22 Minutes to separate Special and Meeting at the top of page. Trustee Dooley motion to approve consent agenda. Trustee Brink second. Motioned carried unanimously.

BOARD INFORMATION ITEMS

NEW BUSINESS

OLD BUSINESS

BOARD REPORTS

City Manager Fineberg confirmed if there were not items to discuss/vote on for the Work Session meeting, then there would be no Work Session/Special Meeting in October.

ADJOURN

There being no further business to come before the Board, Trustee Dooley motion to adjourn. Trustee Castleberry second. Motion carried unanimously. Mayor Larson declared adjourned at 6:08 P.M. the motion carried.

Respectfully submitted:

/Sarah Efthim-Williamson /

Sarah Efthim-Williamson City Clerk

DRAFT



**BOARD OF TRUSTEES**  
**CITY OF CREEDE, COLORADO – A TOWN**  
**November 1<sup>st</sup>, 2022**

REGULAR MEETING

The Board of Trustees of the City of Creede – a Town, County of Mineral, State of Colorado, met in Regular Meeting session at the hour of 5:30 PM. There being present at the call of the roll the following persons:

OFFICIALS PRESENT (via either phone or video conferencing): Mayor Larson, Trustee Castleberry, Trustee Dooley, Trustee Hannah and Trustee Brink were present.

Mayor Larson presiding declared a quorum present.

Those members of staff also present were as follows:

Louis Fineberg, Manager  
Scott Johnson, Public Works Director  
Sarah Efthim-Williamson, Clerk & Treasurer

APPROVAL OF AGENDA

Trustee Brink motion to approve agenda. Trustee Dooley second. Vote carried unanimously.

EXECUTIVE SESSION

- a. Discussion regarding the purchase, acquisition, lease, transfer, or sale of any real, personal or other property interest related to the old Creede High School property on La Garita Avenue pursuant to §24-6-402(4)(a), C.R.S.;
- b. Conferences with an attorney for the local public body for the purposes of receiving legal advice on specific legal questions related to the setting of the mill levy for 2023 pursuant to § 24-6-402(4)(b), C.R.S.;

Trustee Brink motioned to enter executive session. Trustee Hannah second. Vote carried unanimously.

PUBLIC COMMENT

N/A

PRESENTATIONS

CONSENT AGENDA

- a. Minutes for July 5, 2022 Regular Meeting
- b. Parade Permits for Creede Holiday Festivities on Main Street from 9AM-7PM November 25th, November 26th, December 10th, December 17th and December 23rd 2022;
- c. Alcohol Beverage Festival Permit Applications by Spar City Capital 2 LLC dba The Creede Hotel for Creede Holiday Festivities on Main Street from 12PM until 6PM November 25th, November 26th, December 10th, December 17th and December 23rd 2022;
- d. Special Event Permit DR8439 by Creede Elks Lodge #506 at 104 S. Main Street (Elks Lodge Building) on November 12, 2022 from 2PM until 11PM;

Shelley Dee gave explanation of events for items b and c. Trustee Dooley motion to approve consent agenda. Trustee Brink second. Vote carried unanimously.

BOARD INFORMATION ITEMS

- a. Public Works Department Staff Report;

NEW BUSINESS

- a. Consideration and possible approval of City of Creede Ordinance No. 443, “AN ORDINANCE OF THE CITY OF CREEDE, COLORADO, VACATING A PORTION OF WALL STREET ADJACENT TO THE HOSSELKUS

TRACT LOCATED IN BLOCK 36, CREEDMOOR AND BLOCK 1, SOUTH CREEDE, CITY OF CREEDE, MINERAL COUNTY, COLORADO.”;

Trustee Castleberry motion to approve. Trustee Dooley second. Motion carried unanimously.

- b. Consideration and possible approval of City of Creede Resolution No. 2022-20, “A RESOLUTION OF THE BOARD OF TRUSTEES AUTHORIZING KENNETH K. SKOOG OF KUTAK ROCK TO SEND DAN BOUCHER A NOTICE OF INTENT TO ACQUIRE THE OLD HIGH SCHOOL BUILDING ON LA GARITA AVENUE BY EMINENT DOMAIN”;

There was comment made by the public. No motion was made- subject is mute.

#### OLD BUSINESS

#### BOARD REPORTS

Trustee Dooley requested the topic of STR to be on next meeting agenda. City Manager Fineberg will have STR draft ready for discussion at the next work session meeting.

#### ADJOURN

There being no further business to come before the Board, Trustee Dooley motion to adjourn. Trustee Castleberry second. Motion carried unanimously. Mayor Larson declared adjourned at 6:41PM the motion carried.

Respectfully submitted:

/Sarah Efthim-Williamson /

Sarah Efthim-Williamson City Clerk



**BOARD OF TRUSTEES**  
**CITY OF CREEDE, COLORADO – A TOWN**  
**November 15<sup>th</sup>, 2022**

SPECIAL MEETING

The Board of Trustees of the City of Creede – a Town, County of Mineral, State of Colorado, met in Special Meeting session at the hour of 5:34 PM. There being present at the call of the roll the following persons:

OFFICIALS PRESENT (via either phone or video conferencing): Mayor Larson, Trustee Castleberry, Trustee Dooley and Trustee Hannah were present. Trustee Brink was not present

Mayor Larson presiding, declared a quorum present.

Those members of staff also present were as follows:

Louis Fineberg, Manager  
Scott Johnson, Public Works Director  
Sarah Efthim-Williamson, Clerk & Treasurer  
Madeline Westbrook, Deputy Clerk

APPROVAL OF AGENDA

Add item C. under New business - Trustee Dooley to be assigned Mayor Pro-Tem for COG.

Trustee Dooley motion to approve agenda with said addition. Trustee Hannah second. Vote carried unanimously.

PUBLIC COMMENT

No public comments were made.

PRESENTATIONS

- a. A presentation by Jeffrey Wood, University Technical Assistance Program Coordinator, College of Architecture and Planning, University of Colorado, Denver on the final design concepts for a new Town Hall for the City of Creede, CO;

Jeffrey Wood and team gave schemes A, B and C with adjustment based on previous meetings with town hall and board. No decisions need to be made tonight per City Manager Fineberg- wanted Board and community to provide input on going forward. Amy Kruger made a comment and discussion ensued.

City Manager Fineberg asked that if the Board had opinions to let him know and will continue to the next phase.

- b. A presentation by Sarah Stoeber, Deputy Director on behalf of SLVDRG/COG for future projects and/or upcoming funding opportunities that the Town and its citizens may benefit from.

Sarah Stoeber spoke on projects applied for by DRG and funding available. Sarah expressed her needs for attendance at meetings. Trustee Dooley made a comment on behalf of Sarah's COG efforts benefiting the town.

CONSENT AGENDA

BOARD INFORMATION ITEMS

- a. Public Works Department Staff Report;

Well done and very thorough said Trustee Dooley and Trustee Hannah.

NEW BUSINESS

- a. Review of three quotes for a new pickup-mounted snow plow ranging from \$9500 - \$12,898 and possible authorization for staff to proceed with purchase of one unit;



PWD Johnson expressed to board that he would like to make the recommendation to approve the purchase of Twin Pine Motor Sports quote as this would be an addition to the fleet. Discussion ensued. Trustee Dooley motioned to approve TPMS. Trustee Hannah second. Vote carried unanimously.

b. Review of five short term rental ordinances adopted by small Colorado towns and discussion regarding the composition of a similar short term rental ordinance for Creede;

- i. Blue River;
- ii. Georgetown;
- iii. Idaho Springs;
- iv. Oak Creek;
- v. Nederland;

City Manager Fineberg explained the list above were example ordinances provided by other CO municipalities concerning STR's. Comments were made by the public. Trustees expressed wanting to be proactive and not reactive in planning for the cities future and the growth. Discussion ensued. Trustee Dooley would like for there to be a STR committee put together. STR discussion to be on agenda for next work session.

C. Sarah Stroeber expressed need for attendance at COG events and would like to make Trustee Dooley Mayor Pro-Tem in place of Mayor Larson.

Trustee Hannah motioned that Trustee Dooley be the alternative for COG. Trustee Castleberry second. Motion carried unanimously.

#### OLD BUSINESS

#### BOARD REPORTS

Next meeting City Manager Fineberg will update/discuss grant updates. The Mill levy will be on agenda for the first meeting in December and second meeting in December will be a special meeting to adopt the budget.

#### ADJOURN

There being no further business to come before the Board, Trustee Dooley motion to adjourn. Trustee Hannah second. Motion carried unanimously. Mayor Larson declared adjourned at 7:45 P.M. the motion carried.

Respectfully submitted:

/Sarah Efthim-Williamson /

Sarah Efthim-Williamson City Clerk



**BOARD OF TRUSTEES**  
**CITY OF CREEDE, COLORADO – A TOWN**  
**November 22<sup>nd</sup>, 2022**

SPECIAL MEETING

The Board of Trustees of the City of Creede – a Town, County of Mineral, State of Colorado, met in Special Meeting session at the hour of 5:30 PM. There being present at the call of the roll the following persons:

OFFICIALS PRESENT (via either phone or video conferencing): Mayor Larson, Trustee Brink, Trustee Dooley and Trustee Hannah were present. Trustee Castleberry was not present.

Mayor Larson presiding declared a quorum present.

Those members of staff also present were as follows:

Louis Fineberg, Manager  
Sarah Efthim-Williamson, Clerk & Treasurer  
Madeline Westbrook, Deputy Clerk

APPROVAL OF AGENDA

Trustee Hannah approved agenda. Trustee Brink second. Vote carried unanimously.

PUBLIC COMMENT

No public comments were made.

PRESENTATIONS

CONSENT AGENDA

BOARD INFORMATION ITEMS

NEW BUSINESS

- a. Discussion and possible approval of Special Event Permit (DR8439) for San Juan Suerte on November 25<sup>th</sup>, 2022 and November 26<sup>th</sup>, 2022 from 12PM until 5PM on Main Street, Creede, CO;

Trustee Brink motioned approval of SEP. Trustee Hannah second. Vote carried unanimously.

OLD BUSINESS

BOARD REPORTS

ADJOURN

There being no further business to come before the Board, Trustee Brink motion to adjourn. Trustee Hannah second. Motion carried unanimously. Mayor Larson declared adjourned at 5:31 P.M. the motion carried.

Respectfully submitted:

/Sarah Efthim-Williamson /

Sarah Efthim-Williamson City Clerk



**BOARD OF TRUSTEES**  
**CITY OF CREEDE, COLORADO – A TOWN**  
**December 13<sup>th</sup>, 2022**

REGULAR MEETING

The Board of Trustees of the City of Creede – a Town, County of Mineral, State of Colorado, met in Regular Meeting session at the hour of 5:35 PM. There being present at the call of the roll the following persons:

OFFICIALS PRESENT (via either phone or video conferencing): Mayor Larson, Trustee Castleberry, Trustee Dooley, Trustee Hannah and Trustee Brink were present.

Mayor Larson presiding declared a quorum present.

Those members of staff also present were as follows:

Louis Fineberg, Manager  
Scott Johnson, Public Works Director  
Sarah Efthim-Williamson, Clerk & Treasurer  
Rick Samson, Town Attorney

APPROVAL OF AGENDA

City Clerk Efthim-Williamson made note that Resolution 22-19 will still be voted on and valid this evening- #19 has been used before so for future meeting will bring back in front of the board to re-number. Item C under presentations to switch spots with item A. Trustee Brink noted this meeting should be REGULAR instead of SPECIAL. Trustee Brink motion to approve agenda with said updates and changes. Trustee Dooley second. Vote carried unanimously.

EXECUTIVE SESSION

- a. Conferences with an attorney for the local public body for the purposes of receiving legal advice on specific legal questions related to the setting of the mill levy for 2023 pursuant to § 24-6-402(4)(b), C.R.S.;
- b. Conferences with an attorney for the local public body for the purposes of receiving legal advice on specific legal questions related to litigation with Kip's Grill, LLC pursuant to § 24-6-402(4)(b), C.R.S.;

Trustee Dooley motioned to enter into Executive Session. Trustee Hannah second. Vote carried unanimously.

PUBLIC COMMENT

No public comment made.

PRESENTATIONS

- a. Budget to Actual Report for all City Funds (January 2022 – November 2022)
  - I. General Fund;
  - II. Water / Sewer Fund;
  - III. Capital Improvement Fund;
  - IV. Conservation Trust Fund;
  - V. Virginia Christensen Fund;
- b. Capital Project Update;
- c. Presentation by Zeke Ward on behalf of the Creede's Elks Lodge B.P.O.E #506 Historic Preservation;

CONSENT AGENDA

- a. Parade Permit for 2023 'Golden Pick' Pond Hockey Tournament January 14 & 15<sup>th</sup> 7AM-9PM; Trustee Dooley motion approval of parade permit. Trustee Castleberry second. Vote carried unanimously.

## BOARD INFORMATION ITEMS

### a. 2022 Department Reports;

- i. Clerk's Office;
- ii. Public Works Department;
- iii. Recreation Department;

## NEW BUSINESS

a. Consideration and possible approval of City of Creede Resolution No. 22-19 "A RESOLUTION OF THE CITY OF CREEDE, COLORADO, SETTING GENERAL PROPERTY TAXES FOR THE YEAR 2023, TO HELP DEFRAY THE COST OF GOVERNMENT FOR THE CITY OF CREEDE, COLORADO, FOR THE 2023 BUDGET YEAR";

No discussion was made. Trustee Hannah motion to approve. Trustee Castleberry second. Vote carried unanimously.

b. Consideration and possible approval of Resolution No. 22-20, "A RESOLUTION TO ADOPT AND APPROPRIATE THE 2023 CITY OF CREEDE ANNUAL BUDGET";

Trustee Dooley motion to approve. Trustee Brink second. Motion carried unanimously.

c. Consideration and possible approval of Resolution No. 22-22, "A RESOLUTION OF THE CITY OF CREEDE, COLORADO, RENEWING A WATER SUPPLY LEASE AGREEMENT BETWEEN THE CITY OF CREEDE, CO AND THE RIO GRANDE WATER CONSERVATION DISTRICT";

Trustee Castleberry motion to approve. Trustee Hannah second. Vote carried unanimously.

d. Discussion and possible authorization for staff to render payment to WaterVation, LLC in the amount of \$10,224 for services related to the preparation a grant application to FEMA in accordance with the terms of the agreement between the City of Creede and WaterVation, LLC;

Trustee Dooley motion to approve. Trustee Brink second. Vote carried unanimously.

## OLD BUSINESS

## BOARD REPORTS

## ADJOURN

There being no further business to come before the Board, Trustee Brink motion to adjourn. Trustee Dooley second. Motion carried unanimously. Mayor Larson declared adjourned at 8:01PM the motion carried.

Respectfully submitted:

/Sarah Efthim-Williamson /

Sarah Efthim-Williamson City Clerk



**BOARD OF TRUSTEES**  
**CITY OF CREEDE, COLORADO – A TOWN**  
**December 30<sup>th</sup>, 2022**

SPECIAL MEETING

The Board of Trustees of the City of Creede – a Town, County of Mineral, State of Colorado, met in Special Meeting session at the hour of 5:36 PM. There being present at the call of the roll the following persons:

OFFICIALS PRESENT (via either phone or video conferencing): Mayor Larson, Trustee Brink, Trustee Castleberry and Trustee Dooley were all present. Trustee Hannah was not present.

Mayor Larson presiding declared a quorum present.

Those members of staff also present were as follows:

Louis Fineberg, Manager  
Sarah Efthim-Williamson, Clerk & Treasurer  
Rick Samson, Town Attorney

APPROVAL OF AGENDA

Trustee Castleberry motion to approve agenda. Trustee Brink second. Vote carried unanimously.

PUBLIC COMMENT

No public comment made.

PRESENTATIONS

EXECUTIVE SESSION

a. Conferences with an attorney for the local public body for the purposes of receiving legal advice on specific legal questions related to litigation with Kip's Grill, LLC pursuant to § 24-6-402(4)(b), C.R.S.

Trustee Castleberry motion into Executive Session. Trustee Brink second. Vote carried unanimously.

ACTION AGENDA

a. Discussion and consideration of a Resolution 22-24, "A RESOLUTION OF THE CITY OF CREEDE, COLORADO, APPROVING A SETTLEMENT AGREEMENT WITH KIP'S GRILL IN MINERAL COUNTY DISTRICT COURT CASE NO: 2020CV30002";

Trustee Brink motion to approve Resolution 22-24. Trustee Dooley second. Vote carried unanimously.

BOARD INFORMATION ITEMS

NEW BUSINESS

OLD BUSINESS

ADJOURN

There being no further business to come before the Board, Trustee Brink motion to adjourn. Trustee Dooley second. Motion carried unanimously. Mayor Larson declared adjourned at 6:22 P.M. the motion carried.

Respectfully submitted:

/Sarah Efthim-Williamson /

Sarah Efthim-Williamson City Clerk





**BOARD OF TRUSTEES**  
**CITY OF CREEDE, COLORADO – A TOWN**  
**January 3<sup>rd</sup>, 2023**

REGULAR MEETING

The Board of Trustees of the City of Creede – a Town, County of Mineral, State of Colorado, met in Regular Meeting session at the hour of 5:32 PM. There being present at the call of the roll the following persons:

OFFICIALS PRESENT (via either phone or video conferencing): Mayor Larson, Trustee Brink and Trustee Dooley were present. Trustee Hannah and Trustee Castleberry were not present.

Mayor Larson presiding declared a quorum present.

Those members of staff also present were as follows:

Louis Fineberg, Manager  
Scott Johnson, Public Works Director  
Rick Samson, Town Attorney  
Sarah Efthim-Williamson, Clerk & Treasurer  
Madeline Westbrook, Deputy Clerk

APPROVAL OF AGENDA

Change 'Readopt Resolution 22-23' under Consent Agenda to 'Readopt Resolution 23-09'. Trustee Brink approved agenda as amended. Trustee Dooley second. Vote carried unanimously.

EXECUTIVE SESSION

PUBLIC COMMENT

No public comment made.

CONSENT AGENDA

- a. Readopt Resolution 22-23, "A RESOLUTION OF THE CITY OF CREEDE, COLORADO, SETTING GENERAL PROPERTY TAXES FOR THE YEAR 2023 TO HELP DEFRAY THE COST OF GOVERNMENT FOR THE CITY OF CREEDE FOR THE 2023 BUDGET YEAR AND PROVIDING A TEMPORARY REDUCTION OF THE MILL LEVY FOR 2023";

City Manager Fineberg corrected Resolution number to 23-09. Trustee Dooley motion to readopt Resolution correctly numbered as 23-09. Trustee Brink second. Vote carried unanimously.

BOARD INFORMATION ITEMS

PRESENTATIONS

NEW BUSINESS

- a. Consideration and possible approval of Resolution No. 23-01, "A RESOLUTION OF THE CITY OF CREEDE, COLORADO, APPOINTING A MAYOR PRO TEM";

Trustee Dooley stated she would be happy to be Mayor Pro Tem. Trustee Brink motion to approve Trustee Dooley as Mayor Pro Tem. Mayor Larson second. Vote carried unanimously.

- b. Consideration and possible approval of Resolution No. 23-02, "A RESOLUTION OF THE CITY OF CREEDE, COLORADO, APPOINTING A CITY ATTORNEY.";

City Manager Fineberg noted Resolution 23-02 would be re-appointing Rick Samson. Trustee Dooley motion to approve Resolution 23-02. Trustee Brink second. Vote carried unanimously.

- c. Consideration and possible approval of Resolution No. 23-03, "A RESOLUTION OF THE CITY OF CREEDE, COLORADO, APPOINTING A TOWN MANAGER";

Trustee Brink motion to re-appoint City Manager Fineberg, approving Resolution 23-03. Trustee Dooley second. Motion carried unanimously.

- d. Consideration and possible approval of Resolution No. 23-04, "A RESOLUTION OF THE CITY OF CREEDE, COLORADO, APPOINTING A CITY CLERK";

Trustee Dooley motion to re-appoint City Clerk Sarah Efthim-Williamson, approving Resolution 23-04. Trustee Brink second. Motion carried unanimously.

- e. Consideration and possible approval of Resolution No. 23-05, "A RESOLUTION OF THE CITY OF CREEDE, COLORADO, APPOINTING A TREASURER";

Trustee Brink motion to approve Resolution 23-05, reappointing Sarah Efthim-Williamson as Treasurer. Trustee Dooley second. Motion carried unanimously.

- f. Consideration and possible approval of Resolution No. 23-06, "A RESOLUTION OF THE CITY OF CREEDE, COLORADO, APPOINTING THE CITY MANAGER AS THE CITY BUILDING OFFICIAL";

Trustee Dooley motion to approve Resolution 23-06, appoint Louis Fineberg as CBO. Trustee Brink second. Motion carried unanimously.

- g. Consideration and possible approval of Resolution No. 23-07, "A RESOLUTION DESIGNATING AUTHORIZED SIGNATORIES ON CITY OF CREEDE ACCOUNTS AT DEL NORTE BANK";

Trustee Brink motion approval of Resolution 23-07 in favor of Trustee Dooley, Mayor Larson, City Manager Fineberg and Clerk Efthim-Williamson. Trustee Dooley second. Motion carried unanimously.

- h. Discussion and possible approval of Resolution 22-08 "CITY OF CREEDE ANNUAL DESIGNATIONS AND FEE SCHEDULES FOR THE 2023 CALENDAR YEAR";

City Manager Fineberg advised Board to adopt fee schedule as is and to bring back on future agenda when all Board members are present to discuss further. Trustee Dooley motion approval of Resolution 22-08. Trustee Brink second. Motion carried unanimously.

- i. Discussion and possible approval of an engagement letter with McPherson, Goodrich, Paolucci & Mihelich for on-going accounting services;

City Manager Fineberg explained this agreement as retaining our accountant – board to vote and Louis to execute agreement with engagement letter for 2.7.23 BOT Meeting. Trustee Brink motion to approve. Trustee Dooley second. Vote carried unanimously.

#### OLD BUSINESS

#### BOARD REPORTS

City Manager Fineberg asked if Board would be available to meet January 10<sup>th</sup> for a Work Session. Trustee Castleberry, Trustee Dooley and Trustee Brink all said yes.

#### ADJOURN

There being no further business to come before the Board, Trustee Brink motion to adjourn. Trustee Dooley second. Motion carried unanimously. Mayor Larson declared adjourned at 5:47PM the motion carried.

Respectfully submitted:

/Sarah Efthim-Williamson /

Sarah Efthim-Williamson City Clerk-



**PUBLIC WORKS DEPARTMENT  
STAFF REPORT  
February 2023**

**Streets:**

- Plowed city streets and sidewalks, and applied antiskid as needed during snow events
- Hauled out snow stock piles after snow events as needed
- Checked for fallen tree branches, etc. after high winds, removed as necessary, checked roads for drifting snow, and straightened street signs and/or posts as needed

**Water System:**

- Installed and calibrated a new Cl<sub>2</sub> sensor (complete kit) at the WTP
- Responded/marked CO 1 Calls when received
- Performed water meter readings at 3 required locations in the City
- Performed water sampling as required by CDPHE throughout the Water System
- Replaced a 55-gallon drum of Sodium Hypochlorite at the WTP
- Continued to work with ORC Fred Hand on the requirements set forth by the CDPHE and meeting those requirements on a timely basis

**Wastewater System:**

- Removed snow/gravel from manholes for RMS Utilities in order for them to perform post construction camera evaluations for the phase 2 sewer upgrade project
- Replaced the Chlorinating tube and its heating wire at the WWTP
- Removed the RV dump manhole lid and installed a regular manhole lid down at the RV dump in order to close it down for the upcoming RV season, as instructed
- Cleaned the SCADA cabinet inlet lines at the WWTP Effluent station, and calibrated the system.
- Continued to Chlorinate and Dechlorinate at the Effluent Chamber due to the rise in the E. Coli levels
- Continued to take Zinc & Cadmium wastewater samples at (4) manhole locations throughout the City for comparison to previous readings prior to the Phase 1 Sewer Upgrade project.
- Performed weekly wastewater sample studies at the WWTP as required by the CDPHE
- Responded/marked CO 1 Calls when received
- Continued to meet with ORC (Operator Responsibly in Charge)Water/Waste Water Operator Fred Hand to discuss general functions and operations of the Water and Wastewater treatment systems, verifying that all samples are being submitted in a timely and correct manner
- Continued to manually perform daily flow, temp. and Ph readings, as well as with the SCADA system, as required by the CDPHE
- Continued the application of the BioScrubber PBNN to the Northern most section of the WW system, and at the lagoons in order to aid in reducing any buildup of grease, fats, and oils, but ultimately to help reduce the Total Ammonia levels in the waste water system during the colder months

**PUBLIC WORKS DEPARTMENT  
STAFF REPORT  
February 2023**

**Water & Wastewater Projects:**

- 1) RMS Utilities has completed the post camera evaluations of the installed sewer pipe in the Phase 2 Sewer Upgrade project. Unfortunately, they have to come back and perform some of the evaluations again due to poor quality video and inconsistent reports.

**Storm Water:**

- Evaluated and cleaned ditch lines and/or culverts as needed
- Reinstalled caution tape and posts around the storm pipe stock piled up near the Hockey ponds

**Equipment/Assets:**

- Ordered replacement plow springs for the backhoe
- Replaced the V-plow blades on Wheel Loader (ordered replacement parts too)
- Installed a new ground wire for the V-box spreader in the bed of the '84 GMC
- Evaluated a 2002 VacCon Vac/Jet truck with Williams Equipment, upon successful inspection and minor repairs, the City will be purchasing this piece of equipment
- Installed new fiberglass fender and skirt on right rear of Wheel Loader
- Greased the loader and backhoe as needed

**Parks & Buildings:**

- Added another climbing wall portion and storage door to the climbing wall at the Rec Center
- Replaced the ZERN diaphragm and plastic lid on a urinal in the Basham Park restroom
- Scott met with Plumbing & Heating contractors to review automatic flushing kits and hands-free faucets at Basham Park, Hargrave's Park, and at the Rec Center in order to get bids/estimates for these projects. They have been submitted to Louis for review
- Moved a set of bleachers from the south hockey pond up to the north hockey pond in preparation of the "Golden Pick Hockey Tournament". Also put up "No Trespassing" signs and caution tape around the stacked pipe across from the hockey pond area
- Took down the Christmas light decorations along Main Street, along with the Christmas Tree, decorations in the Gazebo, and a large portion of the lights at Basham Park. (Just the lights needing a bucket lift remain)
- Cleaned/organized the crawl space at Basham Park
- Valley Electric installed new LED lighting in the Rec Center gymnasium
- Scott got 3 bids on backup generators for townhall and submitted them to Louis
- Continued to clean Basham Park and the REC Center restroom facilities

**PUBLIC WORKS DEPARTMENT  
STAFF REPORT  
February 2023**

**Projects/Upcoming Projects:**

1. The Micro-Hydro Project has had planning and preconstruction meetings between Rentricity, Louis, Headwaters Alliance and the BOT's. This project start date has been postponed for the time being as this project is now part of the HWA overall project scope of the Willow Creek rehabilitation project.
2. RMS Utilities finished the camera evaluations of the new sewer pipe installed on the Phase 2 Sewer Upgrade Project. Unfortunately they have to come back and perform this work again on some of the lines. They have been informed and we are awaiting a schedule to perform this work.
3. GMS has continued to work with Scott, Louis, and CDOT on the Main Street sidewalk safety project (crosswalks and sidewalk ramp upgrades from Wall Street up to N. 1<sup>st</sup> Street), and CDOT's "Revitalizing Main Streets" grant. Efforts made to combine these 2 projects were successful and this project is scheduled to begin possibly in 2024
4. The University of Colorado – Denver Architectural Dept. has presented another round of architectural drawings to the Staff, BOT's, and the public for a new public works garage, and a new Town Hall building at the January meeting. These project concepts will again be presented for BOT and public review, with any feedback being appreciated. After taking into account all of the feedback, they will be scheduling another final concept drawing meeting sometime in early "Spring". The grant funding for these architectural drawings is available in March of 2023.

**Special Events:**

- The "Golden Pick" Hockey Tournament took place 1/13-1/15. No requests were made to the PW Dept.

**Training/Education:**

- Scott attended a Waste Water Regulatory Training Treatment course online
- Scott's Water and Waste Water Treatment Operator's Licenses were renewed this month. The Certified Water Professional's certificates are now good until 2026.

**Other:**

- Scott conducted 3 interviews with candidates for the Full Time Public Works Operator/Laborer position. James Hansen was offered the position and he started work on Monday January 30, 2023.
- The Part-Time (weekend) Public Works Parks & Buildings Maintenance position now needs to be filled. The position has been posted and the city is now accepting applications for this position. Encourage those that you know and will be an asset to the Public Works team to apply!





# Stone Peak Power LLC

6365 County Road 334  
Ignacio, CO 81137

# Estimate

Date	Estimate #
2/1/2023	497 R

Name / Address
Creede Colorado Public Works Dept C/O Scott Johnson Creede, CO 81130



Description	Qty	Rate	Project
			Total
Generac 22 Kw home standby generator with 200 amp service rated automatic transfer switch	1	7,105.00	7,105.00
3" precast concrete "Gen Pad" leveled and installed	1	325.00	325.00
Heavy Duty Battery	1	185.00	185.00
Cold Weather Kit (installed)	1	375.00	375.00
Delivery, set-up, activation, transfer test.	1	1,270.00	1,270.00
1 year Service Contract: includes remote monitoring by dealer, annual service, and warranty upgrade* \$399 - OPTIONAL	1	399.00	399.00
Electrical tie-in by owner's electrician	1	0.00	0.00
Gas tie-in by owner	1	0.00	0.00
* Connection to Wifi network required. Additional equipment may be needed for connectivity at an extra cost.			
<b>Total</b>			\$9,659.00

January 31, 2023

City of Creede  
Attn: Scott Johnson

Power Systems West is pleased to submit the following pricing for: **Townhall Building, City of Creede**

### **BILL OF INCLUDED MATERIALS**

#### **Kohler Standby Generator Model Number: 24RCLA-QS50**

Configuration: 24kW (15.2kW with derate), 120/240V, 1 Phase, 3 Wire, 3600rpm, Kohler Engine

#### Description:

- UL2200 Listed
- Fuel: Propane
- Alternator: 4E5.0
- Aluminum Sound Enclosure: 61dBa at 23ft
- RDC2 Controller
- 100A, Line Circuit Breaker, 80% Rated
- Block Heater, 120V (Factory Installed)
- Battery Rack and Cables

#### **Automatic Transfer Switch: RXT-JFNC-100ASE-QS4**

Configuration: 100A, 120/240V, 1 Phase, 2 Pole, 3 Wire, Nema 3R, Open Transition

#### **Additional Items**

- 1 Set, Operation and Maintenance Manuals (Gen & ATS)
- 5 Year Standard Warranty on Generator and Transfer Switch
- Factory Freight, FOB: Jobsite – 2223 N. Main Street, Creede, CO 81130
- Start Up, Testing, and Training Included

#### **Project Specific Exceptions and Clarifications**

1. Installation of all components and loose accessories in BOM is provided by others
2. No written specs & no one-line. Customer must verify BOM for project accuracy
3. Fuel system (Propane) is not included or installed.
4. Material quoted at elevation of Creede – approximately 8852ft.
5. Battery not included – available for pickup only.

### General Exceptions and Clarifications

1. Off-loading and placement at the job site is excluded.
2. All fuel, fuel piping and connections are excluded.
3. No retainage is allowed.
4. Start-up testing and warranty validation includes one trip to jobsite during normal working hours. If equipment is not ready for start-up when we arrive at the jobsite, there may be additional charges for a return trip.
5. Kohler factory recommended field testing provided. NETA ATS testing, or any other 3<sup>rd</sup> party testing not included unless otherwise noted.
6. Training to be performed at start-up or subject to additional charges.
7. Additional O & M's will be \$50.00 net each.
8. All piping, wiring, anchoring, and permits are by others.
9. Equipment is shipped FOB factory, with freight prepaid and allowed to the job site unless otherwise noted.
10. Compliance with National Electrical Code, NFPA, IFC, and state and local fire codes is the responsibility of the installing contractor. Special fuel tank labeling and venting/filling equipment may be required, but is excluded unless otherwise noted.
11. Breaker coordination studies excluded.
12. Local codes may require outdoor generators to have a Service Rated disconnect. We are not providing a Service Rated disconnect unless it is specifically noted in this quotation.
13. TVSS devices for the generator or transfer switch(es) are excluded unless otherwise noted.
14. IBC seismic certification excluded unless otherwise noted.
15. Prices do not include any applicable taxes.
16. All orders are subject to Power Systems West Terms and Conditions.
17. Shipments are subject to manufacturer's lead times and transit times. Power Systems West assumes no responsibility for delays that are beyond our control and will not pay for liquidated damages.

### Current Approximate Factory Lead Times:

- Generator: Currently in stock at local branch
- ATS: Currently in stock at Fife, WA branch

\*ETA's are not guaranteed and are subject to change\*

## Power Systems West (PSW) – Terms & Conditions

**1. WARRANTIES.** To the extent that the Goods may be covered by manufacturers' warranty, PSW hereby assigns all rights & benefits under such to Buyer, if assignable, and undertakes to assist Buyer in the coordination of any claims under such warranties. Seller makes no further warranty of any kind with respect to the Goods. PSW DISCLAIMS ANY AND ALL WARRANTIES. THERE ARE NO EXPRESS WARRANTIES AND THERE ARE NO IMPLIED WARRANTIES INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND THERE ARE NO OTHER IMPLIED OR EXPRESS WARRANTIES OF ANY NATURE WHATSOEVER.

**2. LIMITATION OF PSW'S LIABILITY.** Other than the remedy set forth in this paragraph, Customer agrees that no damages, direct, consequential, liquidated, incidental, or other damages or remedy of any kind arising by reason of or related to this Equipment whether arising out of contract, warranty, late or non-delivery, negligence, strict liability, or tort shall now or any time in the future be recoverable from PSW or any of its agents. Customer assumes all risks inherent in the possession or operation of the Equipment. Customer's right, now existing or arising at any time in the future, to recover such damages is hereby fully, finally, irrevocably and unconditionally waived, released and discharged. **Notice of any defect in the Work or Equipment shall be made within 24 hours of the act or omission giving rise to the defect.** The sole and exclusive remedy is replacement of the nonconforming goods or refund of that portion of Customer's payment attributable to such goods at PSW's sole option.

**3. Payment Terms.** Full payment is due 30 days from invoice date, unless otherwise agreed to by both parties in writing. **There shall be NO retainage.** Payments not made on their due date shall accrue interest at the rate of 18% per annum. A cancellation charge of 20% of the price will be imposed if customer cancels order without prior written consent of PSW. **PSW must receive 100% payment before start-up services will be performed** (failure to complete proper, authorized startup procedures may void any manufacturer warranty). Terms may not be changed except by written agreement of the parties.

**4. Shipping and Delivery.** All Equipment shall be shipped F.O.B. manufacturer's factory unless otherwise agreed in writing by PSW and Customer. PSW is not responsible for goods lost or damaged in transit. In the event PSW agrees to delay shipment at Customer's request, Customer is responsible for payment of any storage costs. PSW does not agree, will not agree to and is not obligated to provide any specific goods or any delivery dates or times for any goods. All orders are subject to availability to PSW at its then existing locations, sources, suppliers and costs. All delivery dates and times which may be provided, if any, are estimates only and do not establish agreed delivery date(s).

**5. Indemnity and Hold harmless.** To the fullest extent permitted by law, Customer shall fully and forever indemnify, defend (with counsel reasonably acceptable to PSW) and hold PSW's employees, directors, successors and assigns harmless from any damage, claim, loss, expense and attorney fees (including those prior to any action, in an action and on any appeal) related to the performance or non-performance of Customer's obligations under this Agreement; the ownership, performance or operation of the Equipment; or PSW's liability, if any, under CERCLA, RCRA, or any other federal or state statute related to toxic, hazardous or other dangerous substances.

Thank you for the opportunity to offer quality Kohler products and our service. For over 75 years, Kohler has been recognized as a leader in the manufacture of standby generator systems. By choosing a Kohler generator provided by Power Systems West, you can be assured you will receive the highest quality standby power system available. Power Systems West has specialized in providing and servicing generator systems in the Northwest for over 50 years. Power Systems West – your best choice for power. If you have any questions, please feel free to call or e-mail.

*Marissa Moller*

(303) 815-8907 Cell

[Marissa.Moller@powersystemswest.com](mailto:Marissa.Moller@powersystemswest.com)

**Kohler 24RCLA-QS50 (15.2kW at site) Generator & 100ASE ATS Offer Total Price:  
\$13,645.00**

**\*\*Taxes Not Included in Pricing\*\***

**\*Pricing Valid for 30 days\***

**Offer Acceptance**

I hereby authorize Power Systems West to use this form as a bona fide purchase order of the equipment listed, which establishes price and Bill of Materials. Acceptance of this offer is expressly limited to Power Systems West terms and conditions.

**Proposed by:**

Company: Power Systems West

Sales Professional: Marissa Moller

Title: Territory Manager

Signature: *Marissa Moller*

Date: January 31, 2023

**Accepted by:**

Company: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_ / \_\_\_ / \_\_\_\_\_

February 7, 2023

To: City of Creede, Scott

Prepared by

Melissa Guillen  
 (970) 261-5815  
 melissa.l.guillen@cummins.com

We are pleased to provide you this quotation based on your inquiry.

Item	Description	Qty
1	<p><b>C30N6, 30kW, 60Hz, Standby, Propane Genset, 1800rpm engine, 23kW @ 8900 feet</b></p> <p>U.S. EPA, Stationary Emergency Application            C30N6, 30kW, 60Hz, Standby, Natural Gas/Propane Genset, 1800rpm engine            Duty Rating - Standby Power (ESP)            Emissions Certification - SI, EPA, Emergency, Stationary, 40CFR60            Listing - UL 2200            NFPA 110 Type 10 Level 1 Capable            Exciter/Reg - Torque Match            Voltage - 120/240, 1 Phase, 3 Wire            Alternator - 60Hz, 4L, 240/120V, 1 Phase, 105C, 40C Ambient, Increased Motor Starting (IMS)            Aluminum Sound Attenuated Winter Enclosure, with Exhaust System            Enclosure Color - Sandstone, Aluminum            Enclosure - Wind Load 180 MPH, ASCE7 - 10            Larger Battery Rack            Skidbase - Housing Ready            Control Mounting - Right Facing            PowerCommand 1.1 Controller            Gauge - Oil Pressure            Warning - Low Fuel Gas Pressure            Stop Switch - Emergency            Signals - Auxiliary, 8 Inputs/8 Outputs            Control Display Language - English            Load Connection - Single            Circuit Breaker, Location A, 100A, 2P, 600 Volts AC, 80%, UL            Engine Governor - Electronic, Isochronous            Single Gas Fuel - LP Vapor            Engine Starter - 12 Volt DC Motor            Engine Air Cleaner - Normal Duty            Battery Charging Alternator            Battery Charger - 6 Amp, Regulated            Engine Cooling - Radiator, High Ambient Air Temperature, Ship Fitted            Shutdown - Low Coolant Level            Extension - Coolant Drain            Engine Coolant - 50% Antifreeze, 50% Water Mixture            Coolant Heater, Extreme Cold Ambient            Engine Oil            Standby 5 Year 2500 Hour warranty, comprehensive            Literature - English            Packing - Skid, Poly Bag            Enclosure - Heater, Internal            DC Powered Lights Inside Enclosure            Panel, Distribution            Extension - Oil Drain</p>	1

	Sandstone Sound Level 2 Intake Baffle - Ship Loose	
2	<b>Enclosure Kit-Polymer Sandstone, Sound Level 1 to Sound Level 2</b>	1
3	<b>Starting Battery</b>	1
4	<b>Battery Heater Kit</b>	1
5	<b>Kit, Mounting Pad, shipped loose, to be installed by others</b>	1
6	<b>Delivery to site, off-loading not included</b>	1
7	<b>Start up &amp; testing w/ 2 hour load bank</b>	1
8	<b>OTECSEB, OTEC Service Entrance Transfer Switch-Electronic Control: 200 Amp</b> OTECSE200, Service Entrance TransferSwitch, PowerCommand, 200 Amp Listing - UL 1008 Application - Utility to Genset Cabinet - Type 3R Poles - 3 (Solid Neutral) Frequency - 60 Hz System - Single Phase, 2 or 3 Wire Voltage - 240 Volts AC Genset Starting Battery - 12V DC PC40 Control Aux Relay - Emergency Position - 12 Volts DC Aux Relay - Normal Position - 12 Volts DC Interface - Communications Network, MODBUS RTU Module Transfer Switch Warranty - 5 Year Comprehensive	1

**TOTAL: \$ 33,840.00**

**Quote valid for 30 days.**

**Current lead-times: Generator, 35 weeks from order date; ATS, 25 weeks from order date.**

**5 Year Maintenance to be provided on a separate quote.**

**Price includes the mounting base, shipped loose, pad to be leveled and installed by others. Generator mounting to pad to be provided by others.**

**Installation of equipment by others.**

Quote value does not include any tax.

Please feel free to contact me if you require any additional information; or if you have any further questions or concerns that I may be of assistance with.

Thank you for choosing Cummins.

**Submitted by:**

**Melissa Guillen**  
[melissa.l.guillen@cummins.com](mailto:melissa.l.guillen@cummins.com)  
 (970) 261-5815

**SUBMITTALS.** An order for the equipment covered by this quotation will be accepted on a hold for release basis. Your order will not be released and scheduled for production until written approval to proceed is received in our office. Such submittal approval shall constitute acceptance of the terms and conditions of this quotation unless the parties otherwise agree in writing.

**THERE ARE ADDITIONAL CONTRACT TERMS AND CONDITIONS ATTACHED TO THIS QUOTATION, INCLUDING LIMITATIONS OF WARRANTIES AND LIABILITIES, WHICH ARE EXPRESSLY INCORPORATED HEREIN. BY ACCEPTING THIS QUOTATION, CUSTOMER ACKNOWLEDGES THAT THE CONTRACT TERMS AND CONDITIONS HAVE BEEN READ, FULLY UNDERSTOOD AND ACCEPTED.**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Printed Name & Title

\_\_\_\_\_  
Purchase Order No

<Rest of the page is intentionally left blank>

**TERMS AND CONDITIONS FOR SALE OF POWER GENERATION EQUIPMENT**

These Terms and Conditions for Sale of Power Generation Equipment, together with the Quote, Sales Order, and/or Credit Application on the front side or attached hereto, are hereinafter referred to as this "Agreement" and shall constitute the entire agreement between the customer identified in the quote ("Customer") and Cummins Inc. ("Cummins") and supersede any previous representation, statements, agreements or understanding (oral or written) between the parties with respect to the subject matter of this Agreement. Customer shall be deemed to have made an unqualified acceptance of these Terms and Conditions and it shall become a binding agreement between the parties on the earliest of the following to occur: (i) Cummins' receipt of Customer's purchase order or purchase order number; (ii) Customer's signing or acknowledgment of this Agreement; (iii) Cummins' release of Products to production pursuant to Customer's oral or written instruction or direction; (iv) Customer's payment of any amounts due to Cummins; or (v) any other event constituting acceptance under applicable law. No prior inconsistent course of dealing, course of performance, or usage of trade, if any, constitutes a waiver of, or serves to explain or interpret, the Terms and Conditions set forth in this Agreement. Electronic transactions between Customer and Cummins will be solely governed by the Terms and Conditions of this Agreement, and any terms and conditions on Customer's website or other internet site will be null and void and of no legal effect on Cummins. In the event Customer delivers, references, incorporates by reference, or produces any purchase order or document, any terms and conditions related thereto: (i) shall be null and void and of no legal effect on Cummins, and (ii) this Agreement shall remain the governing terms of the transaction.

**SCOPE**

Cummins shall supply power generation equipment and any related parts, materials and/or services expressly identified in this Agreement (collectively, "Equipment"). No additional services, parts or materials are included in this Agreement unless agreed upon by the parties in writing. A Sales Order for Equipment is accepted on hold for release basis. The Sales Order will not be released and scheduled for production until written approval to proceed is received. A Quote is limited to plans and specifications section set forth in the Quote. No other sections shall apply. Additional requirements for administrative items may require additional costs. The Quote does not include off unit wiring, off unit plumbing, offloading, rigging, installation, exhaust insulation or fuel, unless otherwise stated.

**SHIPPING; DELIVERY; DELAYS**

Unless otherwise agreed in writing by the parties, Equipment shall be delivered FOB origin, freight prepaid to first destination. For consumer and mobile products, freight will be charged to Customer. Unless otherwise agreed to in writing by the parties, packaging method, shipping documents and manner, route and carrier and delivery shall be as Cummins deems appropriate. Cummins may deliver in installments. A reasonable storage fee, as determined by Cummins, may be assessed if delivery of the Equipment is delayed, deferred, or refused by Customer. Offloading, handling, and placement of Equipment and crane services are the responsibility of Customer and not included unless otherwise stated. All shipments are made within normal business hours, Monday through Friday. Any delivery, shipping, installation, or performance dates indicated in this Agreement are estimated and not guaranteed. Further, delivery time is subject to confirmation at time of order and will be in effect after engineering drawings have been approved for production. Cummins shall use best efforts to meet estimated dates, but shall not be liable to customer or any third party for any delay in delivery, shipping, installation, or performance, however occasioned, including any delays in performance that result directly or indirectly from acts of Customer or any unforeseen event, circumstance, or condition beyond Cummins' reasonable control including, but not limited to, acts of God, actions by any government authority, civil strife, fires, floods, windstorms, explosions, riots, natural disasters, embargos, wars, strikes or other labor disturbances, civil commotion, terrorism, sabotage, late delivery by Cummins' suppliers, fuel or other energy shortages, or an inability to obtain necessary labor, materials, supplies, equipment or manufacturing facilities.

***AS A RESULT OF THE OUTBREAK OF THE DISEASE COVID-19 ARISING FROM THE NOVEL CORONAVIRUS, TEMPORARY DELAYS IN DELIVERY, LABOUR OR SERVICES FROM CUMMINS AND ITS SUB-SUPPLIERS OR SUBCONTRACTORS MAY OCCUR. AMONG OTHER FACTORS, CUMMINS' DELIVERY OBLIGATIONS ARE SUBJECT TO CORRECT AND PUNCTUAL SUPPLY FROM OUR SUB-SUPPLIERS OR SUBCONTRACTORS, AND CUMMINS RESERVES THE RIGHT TO MAKE PARTIAL***



**DELIVERIES OR MODIFY ITS LABOUR OR SERVICE. WHILE CUMMINS SHALL MAKE EVERY COMMERCIALY REASONABLE EFFORT TO MEET THE DELIVERY, SERVICE OR COMPLETION OBLIGATIONS SET FORTH HEREIN, SUCH DATES ARE SUBJECT TO CHANGE.**

#### **PAYMENT TERMS; CREDIT; RETAINAGE**

Unless otherwise agreed to by the parties in writing and subject to credit approval by Cummins, payments are due thirty (30) days from the date of the invoice. If Customer does not have approved credit with Cummins, as solely determined by Cummins, payments are due in advance or at the time of supply of the Equipment. If payment is not received when due, in addition to any rights Cummins may have at law, Cummins may charge Customer eighteen percent (18%) interest annually on late payments, or the maximum amount allowed by law. Customer agrees to pay Cummins' costs and expenses (including reasonable attorneys' fees) related to Cummins' enforcement and collection of unpaid invoices, or any other enforcement of this Agreement by Cummins. Retainage is not acceptable nor binding, unless required by statute or accepted and confirmed in writing by Cummins prior to shipment.

#### **TAXES; EXEMPTIONS**

Unless otherwise stated, the Quote excludes all applicable local, state and federal sales and/or use taxes, permits and licensing. Customer must provide a valid resale or exemption certificate prior to shipment of Equipment or applicable taxes will be added to the invoice.

#### **TITLE; RISK OF LOSS**

Unless otherwise agreed in writing by the parties, title and risk of loss for the Equipment shall pass to Customer upon delivery of the Equipment by Cummins to freight carrier or to Customer at pickup at Cummins' facility.

#### **INSPECTION AND ACCEPTANCE**

Customer shall inspect the Equipment upon delivery, before offloading, for damage, defects, and shortage. Any and all claims which could have been discovered by such inspection shall be deemed absolutely and unconditionally waived unless noted by Customer on the bill of lading. Where Equipment is alleged to be non-conforming or defective, written notice of defect must be given to Cummins within three (3) days from date of delivery after which time Equipment shall be deemed accepted. Cummins shall have a commercially reasonable period of time in which to correct such non-conformity or defect. If non-conformity or defect is not eliminated to Customer's satisfaction, Customer may reject the Equipment (but shall protect the Equipment until returned to Cummins) or allow Cummins another opportunity to undertake corrective action. In the event startup of the Equipment is included in the services, acceptance shall be deemed to have occurred upon successful startup.

#### **LIEN; SECURITY AGREEMENT**

Customer agrees that Cummins retains all statutory lien rights. To secure payment, Customer grants Cummins a Purchase Money Security Interest in the Equipment. If any portion of the balance is due to be paid following delivery, Customer agrees to execute and deliver such security agreement, financing statements, deed of trust and such other documents as Cummins may request from time to time in order to permit Cummins to obtain and maintain a perfected security interest in the Equipment; or in the alternative, Customer grants Cummins a power of attorney to execute and file all financing statements and other documents needed to perfect this security interest. Cummins may record this Agreement, bearing Customer's signature, or copy of this Agreement in lieu of a UCC-1, provided that it shall not constitute an admission by Cummins of the applicability or non-applicability of the UCC nor shall the failure to file this form or a UCC-1 in any way affect, alter, or invalidate any term, provision, obligation or liability under this Agreement. The security interest shall be superseded if Customer and Cummins enter into a separate security agreement for the Equipment. Prior to full payment of the balance due, Equipment will be kept at Customer's location noted in this Agreement, will not be moved without prior notice to Cummins, and is subject to inspection by Cummins at all reasonable times.

#### **CANCELLATION; CHARGES**

Orders placed with and accepted by Cummins may not be cancelled except with Cummins' prior written consent. If Customer seeks to cancel all or a portion of an order placed pursuant to this Agreement, and Cummins accepts such cancellation in whole or in part, Customer shall be assessed cancellation charges as follows: (i) 10% of total order price if cancellation is received in Cummins' office after Cummins has provided submittals and prior to releasing equipment to be manufactured; (ii) 25% of total order price if cancellation is received in Cummins' office after receipt of submittal release to order, receipt of a purchase order for a generator already on order with the factory, or is asked to make any hardware changes to the equipment already on order with the factory; (iii) 50% of total order price if cancellation is received in Cummins' office 60 or fewer days before the scheduled shipping date on the order; or (iv) 100% of total order price if cancellation is received in Cummins' office after the equipment has shipped from the manufacturing plant.

#### **MANUALS**

Unless otherwise stated, electronic submittals and electronic operation and maintenance manuals will be provided, and print copies may be available upon Customer's request at an additional cost.

#### **TRAINING; START UP SERVICES; INSTALLATION**

Startup services, load bank testing, and owner training are not provided unless otherwise stated. Site startup will be subject to the account being current and will be performed during regular Cummins business hours, Monday to Friday. Additional charges may be added for work requested to be done outside standard business hours, on weekends, or holidays. One visit is allowed unless specified otherwise in the Quote. A minimum of two-week prior notice is required to schedule site startups and will be subject to prior commitments and equipment and travel availability. A signed site check sheet confirming readiness will be required, and Cummins personnel may perform an installation audit prior to the startup being completed. Any issues identified by the installation audit shall be corrected at the Customer's expense prior to the start-up. Portable load banks for site test (if offered in the Quote) are equipped with only 100 feet of cable. Additional lengths may be arranged at an extra cost. Cummins is not responsible for any labor or materials charged by others associated with start-up and installation of Equipment, unless previously agreed upon in writing. Supply of fuel for start-up and/or testing, fill-up of tank after start up, or change of oil is not included unless specified in the Quote. All installation/execution work at the site including, but not limited to: civil, mechanical, electrical, supply of wall thimbles, exhaust extension pipe, elbows, hangers, expansion joints, insulation and cladding materials, fuel/oil/cooling system piping, air ducts, and louvers/dampers is not included unless specified in the Quote. When an enclosure or sub-base fuel tank (or both) are supplied, the openings provided for power cable and fuel piping entries, commonly referred to as "stub-ups", must be sealed at the site by others before commissioning. All applications, inspections and/or approvals by authorities are to be arranged by Customer.

#### **MANUFACTURER'S WARRANTY**

Equipment purchased hereunder is accompanied by an express written manufacturer's warranty ("Warranty") and, except as expressly provided in this Agreement, is the only warranty offered on the Equipment. A copy of the Warranty is available upon request. While this Agreement and the Warranty are intended to be read and applied in conjunction, where this Agreement and the Warranty conflict, the terms of the Warranty shall prevail.

#### **WARRANTY PROCEDURE**

Prior to the expiration of the Warranty, Customer must give notice of a warrantable failure to Cummins and deliver the defective Equipment to a Cummins location or other location authorized and designated by Cummins to make the repairs during regular business hours. Cummins shall not be liable for towing charges, maintenance items such as oil filters, belts, hoses, etc., communication expenses, meals, lodging, and incidental expenses incurred by Customer or employees of Customer, "downtime" expenses, overtime expenses, cargo damages and any business costs and losses of revenue resulting from a warrantable failure.

**LIMITATIONS ON WARRANTIES THE REMEDIES PROVIDED IN THE WARRANTY AND THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES PROVIDED BY CUMMINS TO THE CUSTOMER UNDER THIS AGREEMENT. EXCEPT AS SET OUT IN THE WARRANTY AND THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY LAW, CUMMINS EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, ENDORSEMENTS, AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY STATUTORY OR COMMON LAW IMPLIED REPRESENTATIONS, WARRANTIES AND CONDITIONS OF FITNESS FOR A PURPOSE OR MERCHANTABILITY.**

The limited warranty does not cover Equipment failures resulting from: (a) inappropriate use relative to designated power rating; (b) inappropriate use relative to application guidelines; (c) inappropriate use of an EPA-SE application generator set relative to EPA's standards; (d) normal wear and tear; (e) improper and/or unauthorized installation; (f) negligence, accidents, or misuse; (g) lack of maintenance or unauthorized or improper repair; (h) noncompliance with any Cummins published guideline or policy; (i) use of improper or contaminated fuels, coolants, or lubricants; (j) improper storage before and after commissioning; (k) owner's delay in making Equipment available after notification of potential Equipment problem; (l) replacement parts and accessories not authorized by Cummins; (m) use of battle short mode; (n) owner or operator abuse or neglect such as: operation without adequate coolant, fuel, or lubricants; over fueling; over speeding; lack of maintenance to lubricating, fueling, cooling, or air intake systems; late servicing and maintenance; improper storage, starting, warm-up, running, or shutdown practices, or for progressive damage resulting from a defective shutdown or warning device; or (o) damage to parts, fixtures, housings, attachments and accessory items that are not part of the generating set.

#### **INDEMNITY**

Customer shall indemnify, defend and hold harmless Cummins from and against any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, brought against or incurred by Cummins related to or arising out of this Agreement or the Equipment supplied under this Agreement (collectively, the "Claims"), where such Claims were caused or contributed to by, in whole or in part, the acts, omissions, fault or negligence of the Customer. Customer shall present any Claims covered by this indemnity to its insurance carrier unless Cummins directs that the defense will be handled by Cummins' legal counsel at Customer's expense.

**LIMITATION OF LIABILITY NOTWITHSTANDING ANY OTHER TERM OF THIS AGREEMENT, IN NO EVENT SHALL CUMMINS, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION DOWNTIME, LOSS OF PROFIT OR REVENUE, LOSS OF DATA, LOSS OF OPPORTUNITY, DAMAGE TO**

**GOODWILL, ENHANCED DAMAGES, MONETARY REQUESTS RELATING TO RECALL EXPENSES AND REPAIRS TO PROPERTY, AND/OR DAMAGES CAUSED BY DELAY) IN ANY WAY RELATED TO OR ARISING FROM CUMMINS' SUPPLY OF EQUIPMENT UNDER THIS AGREEMENT OR THE USE OR PERFORMANCE OF EQUIPMENT SUPPLIED UNDER THIS AGREEMENT. IN NO EVENT SHALL CUMMINS' LIABILITY TO CUSTOMER OR ANY THIRD PARTY CLAIMING DIRECTLY THROUGH CUSTOMER OR ON CUSTOMER'S BEHALF UNDER THIS AGREEMENT EXCEED THE TOTAL COST OF EQUIPMENT SUPPLIED BY CUMMINS UNDER THIS AGREEMENT GIVING RISE TO THE CLAIM. BY ACCEPTANCE OF THIS AGREEMENT, CUSTOMER ACKNOWLEDGES CUSTOMER'S SOLE REMEDY AGAINST CUMMINS FOR ANY LOSS SHALL BE THE REMEDY PROVIDED HEREIN EVEN IF THE EXCLUSIVE REMEDY UNDER THE WARRANTY IS DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.**

#### **DEFAULT; REMEDIES**

Customer shall be in breach and default if: (a) any of the payments or amounts due under this Agreement are not paid; (b) Customer fails to comply, perform, or makes any misrepresentation relating to any of the Customer's obligations or covenants under this Agreement; or (c) prior to full payment of the balance due, Customer ceases to do business, becomes insolvent, makes an assignment for the benefit of its creditors, appoints a receiver, commences an action for dissolution or liquidation, or becomes subject to bankruptcy proceedings, or the Equipment is attached, levied upon, seized under legal process, is subjected to a lien or encumbrance, or transferred by operation of law or otherwise to anyone other than Cummins. Upon the occurrence of any event of Customer's default, Cummins, at its sole option and without notice, shall have the right to exercise concurrently or separately any one or all of the following remedies, which shall be cumulative and not alternative: (a) to declare all sums due, and to become due, under this Agreement immediately due and payable; (b) to commence legal proceedings, including collection actions and specific performance proceedings, to enforce performance by Customer of any and all provisions of this Agreement, and to be awarded damages or injunctive relief for the Customer's breach; (c) to require the Customer to deliver the Equipment to Cummins' branch specified on the face of this Agreement; (d) to exercise one or more of the rights and remedies available to a secured party under applicable law; and (e) to enter, without notice or liability or legal process, onto any premises where the Equipment may be located, using force permitted by law, and there to disconnect, remove and repossess the Equipment, the Customer having waived further right to possession after default. A waiver of any event of default by Cummins shall not be a waiver as to any other or subsequent default.

#### **CUSTOMER REPRESENTATIONS; RELIANCE**

Customer is responsible for obtaining, at its cost, permits, import licenses, and other consents in relation to the Equipment, and if requested by Cummins, Customer shall make these permits, licenses, and consents available to Cummins prior to shipment. Customer represents that it is familiar with the Equipment and understands operating instructions and agrees to perform routine maintenance services. Until the balance is paid in full, Customer shall care for the Equipment properly, maintain it in good operating condition, repair and appearance; and Customer shall use it safely and within its rated capacity and only for purpose it was designed. Even if Customer's purchase of Equipment from Cummins under this Agreement is based, in whole or in part, on specifications, technical information, drawings, or written or verbal advice of any type from third parties, Customer has sole responsibility for the accuracy, correctness and completeness of such specifications, technical information, drawings, or advice. Cummins make no warranties or representations respecting the accuracy, correctness and completeness of any specifications, technical information, drawings, advice or other information provided by Cummins. Cummins makes no warranties or representations respecting the suitability, fitness for intended use, compatibility, integration or installation of any Equipment supplied under this Agreement. Customer has sole responsibility for intended use, for installation and design and performance where it is part of a power, propulsion, or other system. Limitation of warranties and remedies and all disclaimers apply to all such technical information, drawings, or advice. Customer acknowledges and agrees by accepting delivery of the Equipment that the Equipment purchased is of the size, design, capacity and manufacture selected by the Customer, and that Customer has relied solely on its own judgment in selecting the Equipment.

#### **CONFIDENTIALITY**

Each party shall keep confidential any information received from the other that is not generally known to the public and at the time of disclosure, would reasonably be understood by the receiving party to be proprietary or confidential, whether disclosed in oral, written, visual, electronic, or other form, and which the receiving party (or agents) learns in connection with this Agreement including, but not limited to: (a) business plans, strategies, sales, projects and analyses; (b) financial information, pricing, and fee structures; (c) business processes, methods, and models; (d) employee and supplier information; (e) specifications; and (f) the terms and conditions of this Agreement. Each party shall take necessary steps to ensure compliance with this provision by its employees and agents.

#### **GOVERNING LAW AND JURISDICTION**

This Agreement and all matters arising hereunder shall be governed by and construed in accordance with the laws of the State of Indiana without giving effect to any choice or conflict of law provision. The parties agree that the courts of the State of Indiana shall have exclusive jurisdiction to settle any dispute or claim arising in connection with this Agreement.

#### **INSURANCE**

Upon Customer's request, Cummins will provide to Customer a Certificate of Insurance evidencing Cummins' relevant insurance coverage.

#### **ASSIGNMENT**

This Agreement shall be binding on the parties and their successors and assigns. Customer shall not assign this Agreement without the prior written consent of Cummins.

#### **INTELLECTUAL PROPERTY**

Any intellectual property rights created by either party, whether independently or jointly, in the course of the performance of this Agreement or otherwise related to Cummins pre-existing intellectual property or subject matter related thereto, shall be Cummins' property. Customer agrees to assign, and does hereby assign, all right, title, and interest to such intellectual property to Cummins. Any Cummins pre-existing intellectual property shall remain Cummins' property. Nothing in this Agreement shall be deemed to have given Customer a license or any other rights to use any of the intellectual property rights of Cummins.

#### **PRICING**

To the extent allowed by law, actual prices may vary from the price at the time of order placement, as the same will be based on prices prevailing on the date of shipment. Subject to local laws, Cummins reserves the right to adjust pricing on goods and services due to input and labor cost changes and other unforeseen circumstances beyond Cummins' control.

#### **MISCELLANEOUS**

Cummins shall be an independent contractor under this Agreement. All notices under this Agreement shall be in writing and be delivered personally, mailed via first class certified or registered mail, or sent by a nationally recognized express courier service to the addresses set forth in this Agreement. No amendment of this Agreement shall be valid unless it is written and signed by the parties hereto. Failure of either party to require performance by the other party of any provision hereof shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver by a party of a breach of any of the provisions hereof constitute a waiver of any succeeding breach. Any provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms hereof. These terms are exclusive and constitute entire agreement. Customer acknowledges that the provisions were freely negotiated and bargained for and Customer has agreed to purchase of the Equipment pursuant to these terms and conditions. Acceptance of this Agreement is expressly conditioned on Customer's assent to all such terms and conditions. Neither party has relied on any statement, representation, agreement, understanding, or promise made by the other except as expressly set out in this Agreement. In the event of a conflict in the terms of this Agreement with any Customer terms or conditions or agreement (whether referenced in an order submitted by Customer as the terms that govern the purchase of the Equipment or otherwise) or any terms set forth in any other documentation of Customer with respect to the Equipment, the terms of this Agreement shall govern. Cummins may incur additional charges which will be passed on to the Customer, as applicable.

#### **COMPLIANCE**

Customer shall comply with all laws applicable to its activities under this Agreement, including, without limitation, any and all applicable federal, state, and local anti-bribery, environmental, health, and safety laws and regulations then in effect. Customer acknowledges that the Equipment, and any related technology that are sold or otherwise provided hereunder may be subject to export and other trade controls restricting the sale, export, re-export and/or transfer, directly or indirectly, of such Equipment or technology to certain countries or parties, including, but not limited to, licensing requirements under applicable laws and regulations of the United States, the United Kingdom and other jurisdictions. It is the intention of Cummins to comply with these laws, rules, and regulations. Any other provision of this Agreement to the contrary notwithstanding, Customer shall comply with all such applicable all laws relating to the cross-border movement of goods or technology, and all related orders in effect from time to time, and equivalent measures. Customer shall act as the importer of record with respect to the Equipment and shall not resell, export, re-export, distribute, transfer, or dispose of the Equipment or related technology, directly or indirectly, without first obtaining all necessary written permits, consents, and authorizations and completing such formalities as may be required under such laws, rules, and regulations. In addition, Cummins has in place policies not to distribute its products for use in certain countries based on applicable laws and regulations including but not limited to UN, U.S., UK, and European Union regulations. Customer undertakes to perform its obligations under this Agreement with due regard to these policies. Strict compliance with this provision and all laws of the territory pertaining to the importation, distribution, sales, promotion and marketing of the Equipment is a material consideration for Cummins entering into this Agreement with Customer and continuing this Agreement for its term. Customer represents and warrants that it has not and shall not, directly or through any intermediary, pay, give, promise to give or offer to give anything of value to a government official or representative, a political party official, a candidate for political office, an officer or employee of a public international organization or any other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities for the purposes of inducing such person to use his influence to assist Cummins in obtaining or retaining business or to benefit Cummins or any other person in any way, and will not otherwise breach any applicable laws relating to anti-bribery. Any failure by Customer to comply with these provisions will constitute a default giving Cummins the right to immediate termination of this Agreement and/or the right to elect not to recognize the warranties associated with the Equipment. Customer shall accept full responsibility for any and all civil or criminal liabilities and costs arising from any breaches of those laws and regulations and will defend, indemnify, and hold Cummins harmless from and against any and all fines, penalties, claim, damages, liabilities, judgments, costs, fees, and expenses incurred by Cummins or its affiliates as a result of Customer's breach.

**To the extent applicable, this contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race,**

color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The employee notice requirements set forth in 29 CFR Part 471, Appendix A to Subpart A, are hereby incorporated by reference into this contract.

Check if this Agreement pertains to government work or facilities



Municipality	Population	MAYOR	TRUSTEE	TOTAL/YEAR MAYOR	TOTAL/YEAR TRUSTEE
Silt	3600	\$600/month	\$400/month	\$ 7,200.00	\$ 4,800.00
Bennett	3386	\$500/month	\$250/month	\$ 6,000.00	\$ 3,000.00
Lyons	2250	\$1200/quarter	\$600/quarter	\$ 4,800.00	\$ 2,400.00
Pagosa	2050	\$300/month	\$200/month	\$ 3,600.00	\$ 2,400.00
Creede	310	\$416.67/month	\$166.67/month	\$ 5,000.00	\$ 2,000.00
Monte Vista	4000	\$200/month	\$150/month	\$ 2,400.00	\$ 1,800.00
Elizabeth	2000	\$300/month	\$150/month	\$ 3,600.00	\$ 1,800.00
		\$600/Reg. Meeting	\$100/Reg. Meeting		
Severance	4750	\$50/Special or Work Session	\$50/Special or Work Session	\$ 7,800.00	\$ 1,800.00
Platteville	3000	\$250/month	\$60/meeting	\$ 3,000.00	\$ 1,440.00
Foxfield	600	\$100/month	\$100/month	\$ 1,200.00	\$ 1,200.00
Ignacio	800	\$100/month	\$75/month	\$ 1,200.00	\$ 900.00
Peetz	240	\$100/month	\$65/month	\$ 1,200.00	\$ 780.00
		\$45/Reg. Meeting	\$35/Reg. Meeting		
Oak Creek	950	\$35/Special or Work Session	\$25/Special or Work Session	\$ 960.00	\$ 720.00
Hotchkiss	1000	\$200/month	\$50/month	\$ 2,400.00	\$ 600.00
Dove Creek	635	\$100/regular meeting	\$50/regular meeting	\$ 1,200.00	\$ 600.00
Coal Creek	350	\$125/quarter	\$75/quarter	\$ 500.00	\$ 300.00



## **SLVCOG 2023 ECONOMIC DEVELOPMENT GRANT APPLICATION**

1. Jurisdiction: City of Creede
2. Name of Person Completing Application: Kathryn S. Ash  
Mailing Address: PO Box 457  
Phone Number: 719-658-2729  
Email address: recreation@creedetownhall.com
3. Project Title: Creede Rec Center / Park Bathrooms Lighting project
4. Name of Person Signing Project Agreement, Title & Email Address:  
Louis Fineberg , City Manager, manager@creedetownhall.com
5. Total Cost of Project: \$ 10,472.25  
Amount Requested: \$ 5,000.00  
Cash Match: \$ 5,472.25

**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?**

*The purpose of this project is to increase energy efficiency at The Virginia Christensen Multi use Facility and Creede's public bathrooms by providing new, energy efficient lighting fixtures.*

*The existing lights should be replaced because the fixtures are:*

- *Nearing the end of their useful life.*
- *Much less energy efficient than currently available LED lighting fixtures*
- *Provide less coverage and illumination than LED lighting fixtures*
- *Require costly maintenance*

**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?**

*The Virginia Christensen Multi use Facility is Creede's main Recreation Center. In addition to the community gymnasium, there are daily after school activities, pee wee sports, summer camps, senior lunch, and facility rentals (birthday parties, church services, yoga classes etc...)*

*Public Bathrooms in Ed Hargraves Park and Basham Park provide a much needed service to Creede's visiting population.*

*By replacing the lighting systems at these locations we expect to immediately*

- *Improve lighting coverage*
- *Provide a longer lasting lighting solution*
- *Reduces maintenance costs*
- *Save on energy bill*

**C. What exactly will the funds be used for? How was budget determined, i.e. do you have price quotes for items being purchased, did you get more than one bid Provide a budget for your project clearly listing both revenues and expenses in a table format such as the one provided.**

VC Rec Center		
Offices	\$	806.50
Kitchen	\$	1,561.40
Main Lobby	\$	1,756.58
Lady Locker room	\$	1,268.78
Cardio Room	\$	845.85
Mens Locker room	\$	1,691.60
Basham Park		
	\$	1,734.95
Ed Hargraves Park		
	\$	806.50
Total		
	\$	10,472.16

- *Bid by Valley Electric, INC - Alamosa CO*

**D. In which of the categories listed under "Use of Grant Funds" above does your project fit best? (If applying for more than one project, each must utilize different categories/outcomes on separate forms.) Explain how your project fits the category chosen. Assuming the project is funded, when will it begin and what is the timeframe for completion?**

*This project fits into the Economic Development projects including energy efficiency assessments and improvements category of the use of grant funds.*



**Lights**

- *LED lights have less negative environmental impact than the current fixtures being used*
- *the City of Creede would save money on energy bill and have more available funds to serve the community*
- *The City of Creede would save on maintenance cost by installing a long-term solution.*

*This project will begin upon approval and will be completed by the end of 2023.*





rentricity

Rentricity Inc.  
P.O. Box 1021  
Planetarium Station  
New York, New York 10024  
T: 732-319-4501  
F: 973-701-7106

January 31, 2023

Louis Fineberg  
Town Manager  
Creede Town Hall  
2223 N. Main Street  
Creede, CO 81130

Re: Updated - Rentricity Phase II Detailed Design for Willow Creek Micro-hydro Electric Generation

References: A. Consultant Agreement between the City of Creede. and Rentricity  
for Phase I services for the Willow Creek Hydropower Generation Project  
B. Willow Creek Phase I Executive Summary Report January 2022

## **Background**

Rentricity completed an initial design for the Willow Creek Hydro Electric Project in late December 2021. That study yielded an almost 60% design framework for the new flume pipeline and hydropower station. As part of the study, some initial work was also considered for using the pipeline as a delivery vehicle for filtration of the contaminants currently under review in the Willow Creek Watershed. Outlined below is the next phase of scope covering the completion of the mechanical and electrical design for the hydropower system. Rentricity will specify the engineering standards and detailed design that will provide clear direction to a General Contractor for a Construction Management At Risk (CMAR) approach to bid and deliver on the most cost effective, lowest risk and highest quality construction package. Rentricity has and will continue to support Creede's pursuit of additional agency funds given the full cost model and increased kW output prepared in Phase I.

## **Scope of Supply**

### **Hydropower System**

Phase II is defined as providing all engineering services required to complete a final detailed design inclusive of 90% drawings (to be sealed during CMAR process) for the micro turbine system, diversion structure, penstock and powerhouse, preparation of technical specifications for all equipment and systems, permitting with the identified State agencies and updated capital cost projection for the project. In addition, a draft Project Manual of all technical design documentation will be prepared. This work will support the CMAR bid process with general contractors for the procurement and construction phases of the project.

The following tasks are deliverables at the 90% design interval (not yet sealed documents), updated project capital cost estimate and the final task of securing all final permits and amendments and production copies of final documentation (drawings and specifications). Specific tasks include:

#### TASK 1 - PROJECT MANAGEMENT

- 1.A - Monthly Project Reporting & Invoicing
- 1.B - Bi-weekly Web Project Technical Update Meetings
- 1.C - Quality Assurance & Control

#### TASK 2 - 90% FINAL DESIGN

- Task 2.1 - Process and Instrument Diagrams
- Task 2.2 - Process and Operational Sequence Narratives
- Task 2.3 - Prepare Major Equipment/Piping Specifications
- Task 2.4 - Final Design Improvement Survey
- Task 2.5 - Site Geotechnical Investigation
- Task 2.6 - Pipeline Drawings & Tech Specification
- Task 2.7 - Mechanical/Civil/Architectural Drawings & Tech Specifications
- Task 2.8 - Structural Building Drawings & Tech Specifications
- Task 2.9 – Electrical and Instrumentation/Control Drawings
- Task 2.10 – Draft of Project Manual (except General Sections 01 and 02)
- Task 2.9 - City & County Building Department Coordination
- Task 2.10 - Final Design Site Visit
- Task 2.11 - Draft Level 3 Opinion of Project Costs
- Task 2.12 - Project Review Conference Call w/ Creede & incorporate any comments
- Task 2.13 - Final Design Documents Delivery

#### TASK 3 - PRECONSTRUCTION

- Task 3.1 - Prepare Preconstruction Request for Proposals
- Task 3.2 - RFP Contractor Coordination
- Task 3.3 - Preconstruction RFP Meeting & Site Tour
- Task 3.4 - RFP Addenda Preparation
- Task 3.5 - Preconstruction Proposal Review and Evaluation
- Task 3.6 - Recommendation of Preconstruction Award
- Task 3.7 - Preconstruction Coordination Conference Call w/Contractor & Creede
- Task 3.8 - Initial Preconstruction Contractor Coordination
- Task 3.9 - Review Contractor Initial Guaranteed Maximum Price (GMP)
- Task 3.10 - Initial GMP Review Conference Call w/ Creede
- Task 3.11 - Final Negotiation of Construction GMP
- Task 3.12 - Final Preconstruction Coordination Conference Call w/ Creede
- Task 3.13 - Notice of Construction Award

#### Notes:

- 1. Permitting application fees not included

2. All update and % complete design reviews conducted virtually
3. Scope will include only one (1) Total Project Cost update at the 90% complete level.

## **Creede Responsibilities**

- Provide standard (if required) “General Terms & Conditions” and generic requirements and specification for the Project Manual (to be provided to the CMAR).
- Site Access & Meeting participation as required

## **Schedule**

The Executive Summary Report for Phase I defined an overall schedule for the project of 24 months from commencement of the Phase II activities. Upon further detailed review of the project, Rentricity believes a 19 month schedule with commissioning in November 2024 is realistic, assuming the following:

- Rentricity completes this phase of work by September 30, 2023 (tasks above);
- the Final Design scope is authorized no later than March 1, 2023; and
- the General Contractor is under contract by January 2024.

## **Budget**

The proposed budget is \$161,000.00 as defined in the budget package as part of the Phase 2 deliverables, plus a 10% contingency of \$16,100.00.

## **Invoicing and Payment Terms:**

Invoices will be issued as follows:

- 10% of base contract or \$16,100 upon authorization to proceed; and
- 30% of base contract or \$48,300 approximately every six weeks; three equal invoices commensurate with progress. Funds due upon completion and acceptance of all work;
- All invoices are Net 30 days

Note: The proposed budget plus 10% contingency is a “Not-to-Exceed” total. Any unanticipated changes or requirements, not already identified, will be assessed and Creede advised if there is any cost and schedule impact.

## **Additional Terms & Conditions**

a. Ownership of Documents - Any documentation prepared by Rentricity shall be the property of CREEDE, however, Rentricity retains the perpetual right to use any trade secret intellectual property, or other information included in the documentation for its purposes. CREEDE 's use of the documentation and the information contained therein shall be limited to the development and commercialization for the Willow Creek Site(s). Any use other than that purpose shall be at CREEDE 's risk.

b. (1) Indemnification – Provided that Rentricity has received all amounts due for the Work performed, and to the extent authorized by law, Rentricity agrees to indemnify and hold harmless CREEDE, its officers, authorized representatives and agents, and employees (“Indemnitees”), from and against all third-party claims, liability, damages, losses,

expenses and demands, including attorney fees (other than such as may result from the negligence or willful misconduct of any Indemnitees), for bodily injury, sickness, disease, death, or damage to real or tangible property, arising out of or resulting from the performance of the Work by Rentricity, its authorized representatives or agents, or its subcontractors (collectively, "Rentricity"), provided, however, that Rentricity's obligation to indemnify or hold harmless (i) shall not exceed the amount represented by the degree or percentage of negligence or fault attributable to Rentricity, and (ii) may be determined only after Rentricity's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by Colorado law. The indemnification obligation under this Section shall apply, without limitation, to all matters involving injured employees regardless of any provisions of the applicable Workers' Compensation laws, and in particular regardless of the exclusive remedy and/or employees' immunity provisions of those laws, all of which are hereby expressly waived.

(2) Indemnification Procedures – The party seeking indemnification will give prompt notice to Rentricity of a claim subject to indemnification. The failure by an indemnified party to give such notice shall not relieve Rentricity of its obligation under Section b.(1), except to the extent that such failure results in a material adverse effect to Rentricity. In addition, the indemnified party will (i) allow Rentricity, at its option, to direct the defense and settlement of any such claim, with counsel of Rentricity's choice subject to the indemnified party's reasonable approval, so long as such defense is pursued diligently, and (ii) will provide Rentricity with information and assistance that is reasonably necessary for the defense and settlement of the claim; provided, however, that Rentricity shall not admit fault in any settlement or settle any claim other than for money without the indemnified party's prior written consent.

(3) Subrogation – If Rentricity shall be obligated to indemnify an indemnified party, Rentricity shall, upon fulfillment of its obligations with respect to indemnification, including payment in full of all amounts due pursuant to its indemnification obligations, be subrogated to the rights of the indemnified party with respect to the claims to which such indemnification relates.

- c. (1) Limitation of Liability – IN NO EVENT SHALL RENTRICITY BE LIABLE IN CONTRACT OR IN TORT (INCLUDING BREACH OF WARRANTY, NEGLIGENCE AND STRICT LIABILITY IN TORT) FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PRODUCT, LOSS OF USE, LOSS OF ANTICIPATED PROFITS OR REVENUE, LOSS OF BUSINESS, LOSS OF INCOME, NON-OPERATION OR INCREASED EXPENSE OF OPERATING SYSTEMS OR EQUIPMENT, OR ANY OTHER SUCH DAMAGES THAT CREEDE MAY HAVE INCURRED DUE TO NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF STRICT OR IMPLIED WARRANTY EVEN IF CREEDE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

(2) Liability Cap – Subject to Section c.(1), and to the fullest extent permitted by law, Rentricity’s total liability for direct damages, whether in contract or in tort (including breach of warranty, negligence and strict liability in tort) shall be limited in the aggregate for all claims and causes of action to an amount not to exceed the total reimbursement received by Rentricity from CREEDE. In no event shall Rentricity's total liability from any or all injuries arising from or resulting from Rentricity’s performance of the Work exceed stated Insurance coverage and limits.

(3) CREEDE shall have a duty to mitigate damages for which Rentricity may be responsible.

- d. Non-Assignment - Rentricity agrees not to transfer, assign, encumber, sell or otherwise dispose of its rights under this Agreement.
- e. Confidentiality - To the extent the Colorado Open Records Act, (CORA) C.R.S. § 24-72-201 to 206 applies, both parties to this Agreement undertake to keep confidential and not to disclose to any third party or to use itself, any confidential or secret information in any way, directly or indirectly, belonging to or relating to the other party, its affiliates, its or their business affairs, disclosed by or received by either party to this Agreement pursuant to or in the course of this Agreement ("Confidential Information").

Both parties to this Agreement undertake to disclose Confidential Information of the other party only to those of its officers, employees, agents and contractors to whom and to the extent to which disclosure is necessary for the purposes contemplated under this Agreement. The above obligations of confidentiality and non-use shall not apply to information or material:

- 1. which named prior to receipt by the receiving party as evidenced by documents in the possession of the receiving party at the time of disclosure;
  - 2. which, after receipt, is disclosed to the receiving party by a third party having the legal right to do so;
  - 3. which is available to the public at the time of receipt; or
  - 4. becomes available to the public after receipt through no fault of the receiving party.
- This clause shall survive the termination of this Agreement.

- f. Conflicts - Any conflicts in provisions between these pages bearing the signature of the parties and the provisions of the attachment(s) shall be resolved by adherence to the provision or provisions of these terms in preference to a conflicting term(s) in any of the attachments.
- g. Force Majeure - Neither Party will be liable for any failure or delay in performing an obligation under this Agreement that is due to any of the following causes, to the extent beyond its reasonable control: acts of God, accident, riots, war, terrorist act, epidemic, pandemic (including the COVID-19 pandemic), quarantine, civil commotion, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, or generalized lack of availability of raw

materials or energy. For the avoidance of doubt, Force Majeure shall not include (i) financial distress nor the inability of either party to make a profit or avoid a financial loss, or (ii) a party's financial inability to perform its obligations hereunder.

- h. Governing Law – The Contract shall be governed by and construed in accordance with the internal law, and not the law of conflicts, of the State of Colorado.





rentricity

### **Filtration Plant – Conceptual Design and Assessment Study**

The following scope is offered as an option to expand on the hydropower project design to provide input to further funding efforts beyond power generation and improve water quality.

- Provide treatment to remove toxic metals in Willow Creek;
- Leverage City of Creede’s investment in the Hydropower project to reduce water treatment infrastructure construction costs;
- Locate treatment facilities adjacent to hydropower generation facilities to centralize and simplify operations & maintenance; and
- Utilize the hydropower facilities to reduce electrical operating costs of water treatment facilities.

Specific Tasks include:

- Raw Water Quality Assessment
- State & Federal Regulatory Coordination
- Treatment Requirements Confirmation
- Initial Treatment Alternatives Evaluation
- Treatment Alternative Selection
- Concept Site Design Development
- Concept Process Design Development
- Concept Building & Support Design Development
- Concept Design Project Cost Estimate
- Concept Design Summary Document

Optional Filtration Study: (\$27,000 - \$38,000)



**CITY OF CREEDE, COLORADO  
ORDINANCE NO. XX**

**AN ORDINANCE OF THE CITY OF CREEDE, COLORADO AMENDING CHAPTER 6, ARTICLE 1 AND CHAPTER 10, ARTICLE 8 OF THE MUNICIPAL CODE OF THE CITY OF CREEDE, COLORADO TO CONFORM WITH CHANGES TO THE COLORADO LIQUOR CODE, THE COLORADO BEER CODE AND SPECIAL EVENT LIQUOR PERMITS MADE BY THE COLORADO LEGISLATURE IN 2018, AND PROVIDING FOR THE ISSUANCE OF A LICENSE FOR THE POSSESSION OF AN OPEN CONTAINER ON CITY OWNED PROPERTY DURING CERTAIN PUBLIC EVENTS SANCTIONED BY THE CITY.**

**WHEREAS**, the City of Creede is authorized by the general assembly of the State of Colorado to exercise its police powers for the protection of the economic and social welfare and the health, peace, and morals of the people of the state; and

**WHEREAS**, the general assembly revised the Colorado Liquor Code and the Colorado Beer Code in 2018; and

**WHEREAS**, it is the intent of the Board of Trustees of the City of Creede to revise Chapter 6, Article 1 and Chapter 10, Article 8 of the Creede Municipal Code to conform to current statutes;

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE CITY OF CREEDE, COLORADO, AS FOLLOWS:**

**Section 1.** “Chapter 6, Article 1, Section 10 of the Municipal Code of the City of Creede, Colorado is amended to read as follows:

“Sec. 6-1-10. Definitions.

(a) As used in this Article, unless the context indicates otherwise, certain words shall have the following meanings:

*Retail License* means a grantor licensee to sell fermented beverages pursuant to the Colorado Beer Code (Article 4 of Title 44, C.R.S.) for a grant to a licensee to sell malt, vinous or spirituous liquors pursuant to the Colorado Liquor Code (Article 3 of Title 44, C.R.S.).

*Retail licensee* or *licensee* means the holder of a license to sell fermented malt beverages pursuant to the Colorado Beer Code (Article 4 of Title 44, C.R.S.) By the holder of a license to sell malt, vinous or spirituous liquors pursuant to the Colorado Liquor Code (Article 3 of Title 44, C.R.S.), who is engaged at any time during the calendar year in such operation in the City.

(b) All other terms shall be defined as set forth in the provisions of the Colorado Beer Code, the Colorado Liquor Code and Special Events Permits, as the definitions presently exist or may hereafter be amended.”

**Section 2.** Chapter 6, Article 1, Section 20 of the Municipal Code of the City of Creede, Colorado is amended to read as follows:

“Sec.6-1-20. Application of state statutes.

Pursuant to declaration by the General Assembly, the Colorado Beer Code, Section 44-4-101, et seq., C.R.S., the Colorado Liquor Code, Section 44-3-101, et seq., C.R.S., and Special Event Permits, Section 44-5-101, et seq., C.R.S., as they presently exist or may hereafter be amended, shall apply to the sale of fermented malt beverages, alcoholic beverages, special malt liquors, spirituous liquors and vinous liquors in the City.”

**Section 3.** Chapter 6, Article 1, Section 30 of the Municipal Code of the City of Creede, Colorado is amended to read as follows:

“Sec. 6-1-30. Power and purpose.

The Board of Trustees hereby finds, determines and declares that it is empowered by Section 44-3-505, C.R.S., to fix and collect certain fees in connection with the application for issuance, transfer and renewal of certain types of beer, wine and liquor licenses. The Board of Trustees further finds that the fees imposed by the State are in an amount sufficient to cover actual and necessary expenses incurred by the City in connection with the handling of such licenses and applications therefore.”

**Section 4.** Chapter 6, Article 1, Section 50 (b)(1) of the Municipal Code of the City of Creede, Colorado is amended to read as follows:

“(b)(1) Eligible facilities. Outdoor sports and recreational facilities as defined in Section 44-3-103 (33), C.R.S., are eligible for licensing as an optional premise or optional premises for a hotel and restaurant.”

**Section 5.** Chapter 10, Article 8, Section 10, *private property* of the Municipal Code of the City of Creede, Colorado is amended to read as follows:

“*Private property* means any dwelling and its curtilage which is being used by a natural person for habitation and which is not open to the public, and privately owned real property, which is not open to the public. Private property shall not include:

- a. Any establishment, which has or is required to have a license pursuant to Article 3, 4 or 5 of Title 44, C.R.S.;
- b. Any establishment which sells alcoholic beverages or upon which alcoholic beverages are sold; or
- c. Any establishment, which leases, rents, or provides accommodations to members of the public generally. ”

**Section 6.** Chapter 10, Article 8, Section 50(f) of the Municipal Code of the City of Creede, Colorado is amended to read as follows:

“(f) A parent or legal guardian of a person under twenty-one (21) years of age, or any natural person who has permission of such parent or legal guardian, may give, or permit the possession and consumption of, alcoholic beverages to or by a person under the age of twenty-one (21) years under the conditions described in Paragraph (b)(1) above. This Subsection shall not be construed to permit any establishment which is or is required to be licensed pursuant to Article 3, 4 or 5 of title 44, C.R.S., or any members, employees, or occupants of any such

establishment to give, provide, make available, or sell alcoholic beverages the person under twenty-one (21) years of age.”

**Section 7.** Chapter 10, Article 8, Section 60 of the Municipal Code of the City of Creede, Colorado is amended to read as follows:

“Sec. 10-8-60. Sales near schools.

It is unlawful for any hotel or restaurant license, as defined in Section 44-3-413, C.R.S. to be issued for any premises within a distance of one hundred (100) feet from any private, public or parochial school. It is unlawful for any other class of license, as listed in Section 44-3-401, C.R.S. to be issued for any premises within a distance of two hundred sixty (260) feet from any private, public or parochial school. Said distance to be computed by direct measurement from the nearest property line of the land used for school purposes to the nearest portion of the building in which liquor is to be sold, using a route of direct pedestrian access. However, this prohibition shall not affect the rights of any person holding, at the time of the initial ordinance codified herein, a lawful permit or license to conduct such business within the restricted area hereby established; nor shall such prohibition prevent the renewal upon the expiration thereof of any license in effect at such time authorizing such business within the restricted area hereby established.”

**Section 8.** Chapter 10, Article 8, Section 80 of the Municipal Code of the City of Creede, Colorado is amended to read as follows:

“Sec. 10-8-80. Open container.

(a) It is unlawful for any person to possess or consume by open container any alcoholic beverage, whether such possession is actual or constructive, in any public place as defined in Section 10-8-10 of this Chapter, upon property owned, operated, leased or maintained by the State or any political subdivision or agency thereof, or upon property owned, operated, leased or maintained by the City; provided, however, that it shall not be a violation of this provision to store or consume any alcoholic beverage in conformance with, and pursuant to the terms of, any validly issued permit or license. For the purpose of this Section, an unsealed or open container shall not include a container of vinous liquor that has been resealed pursuant to the provisions of Section 44-3-423, C.R.S., and is clearly recognizable to a peace officer as a container that has been resealed by the hotel or restaurant license holder.

(b) Except as otherwise authorized by this Article, it shall be unlawful for any person within the jurisdiction of the City to possess an open container of or consume any fermented malt or alcoholic beverages in public, except upon premises licensed or permitted under provisions of the Colorado Liquor Code, as amended.

(c) For the purpose of this Section, *open container* means any container which is either opened so that the contents can be removed or upon which the seal, cork, pull tab or any type of cap applied by the manufacturer has been broken. A container shall be deemed an open container even if such container is resealed by any type of cap or seal.

(d) For the purposes of this Section, the term *in public* means:

(1) In or upon any public highway, street, alley, walk, parking lot, building, park or other property or place which is owned or leased by the City or other governmental entity, whether in a vehicle or not; and

(2) In or upon those portions of any private property upon which the public has an express or implied license to enter or remain. If such express or implied license is subject to time or conduct restrictions, consumption or prohibited possession of fermented malt or alcoholic beverages on such property shall be deemed to be *in public* regardless of the time of day.

(e) For the purpose of this Section, the term *possess* or *possession* means exercising physical control over or holding such container, but also means exercising dominion and control over the place where such containers are found.

(f) The City Manager, or designee, may, as provided in this Subsection, grant express written permission to persons to consume fermented malt beverages, or malt or vinous liquors, on City owned property for the following special functions: artistic events; civic events; cultural events; receptions; private parties; or other type function at the discretion of the City Manager.

(1) The City Manager shall adopt an administrative directive specifying the City properties or portions thereof upon which fermented malt beverages, or malt or vinous liquors, may be consumed.

(2) The City Manager shall grant such permission to persons applying for a permit if, considering the type of function, the City Manager finds that:

a. The application is filed with the City not later than thirty (30) days prior to the date of the event.

b. The time, location and duration of the function are not likely to significantly interfere with public traffic or services, including public safety services.

c. Procedures are proposed that are likely to ensure that underage persons and persons under the influence of alcohol will not obtain or consume fermented malt beverages, or malt or vinous liquors, served at the function.

d. Procedures are proposed that are likely to secure and supervise the area and the participants during the function.

e. The applicant agrees to provide food at the location during the time consumption is permitted, in an amount and type sufficient to serve the persons anticipated to attend.

f. The applicant agrees to be personally responsible for and provide financial guarantees to ensure the cleaning, trash disposal or repairs necessary as a result of the event for which the permit was granted. The City Manager, or designee, shall determine the amount of required financial guaranty based upon the location of the event, the duration of the event, the number of persons anticipated to attend, the failure of the applicant to clean or repair City property in conjunction with past events and the financial resources of the applicant.

g. The applicant agrees to indemnify and hold harmless the City, its employees and agents for all liability claims arising out of the event, and to provide general liability insurance, with minimum liability limits equal to that established by the Colorado Governmental Immunity

Act (Section [24-10-101](#), et seq., C.R.S.) to guarantee indemnification. The City Manager, or designee, may waive or reduce this insurance requirement if the applicant affirmatively establishes that the risk of liability to the City as a result of the function does not present the City with any significant additional risk of liability.

(3) The City Manager, or designee, may issue a permit for consumption of fermented malt beverages, or malt or vinous liquors, on City-owned property based upon the following criteria:

a. The request is for or on behalf of a City sponsored or cosponsored civil event using any City-owned property; and

b. The proposed event meets all the criteria as set forth in this Section.

(4) The City Manager, or designee, shall deny permission on the grounds that:

a. There is insufficient data presented by the applicant to make the findings required in Paragraph (2) of this Section.

b. Approval would be detrimental to the public safety, health, morals, order or welfare by reason of the nature of the event, the likelihood that the event would create a public nuisance, an unreasonable risk of violence or public disorder or result in the consumption of alcohol beverages by minors; or alternatively, the proximity of the event to schools or the failure of the applicant to conduct past events in compliance with this Section and the applicable rules and regulations.

c. Another event has previously been scheduled for the same location on the same day and time.

d. The event would unreasonably interfere with normal activities and customary and general use and enjoyment of the facility.

(5) The granting of permission by the City Manager under this Section does not relieve the applicant from the responsibility of obtaining any license or special event permit as may be required by state law or City ordinance.

(6) This Section is not intended to create a right of use or possession of City-owned or leased property in any person or group; rather, this Section relates only to permission to consume fermented malt beverages, or malt or vinous liquors, by an individual or group who otherwise has the lawful right to use or possess City-owned or leased property pursuant to City policy.”

**Section 9. Effective Date.** This ordinance shall be published and become effective as provided by law.

**Section 10. Severability.** If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the ordinance. The City Board hereby declares that it would have passed the ordinance including each part, section, subsection, sentence, clause or phrase thereof,

irrespective of the fact that one or more parts, sections, subsections, sentence, clauses or phrases are declared invalid.

**Section 11. Repealer.** All ordinances or resolutions and motions of the Board of Trustees of the City of Creede or parts thereof, in conflict with this ordinance are to the extent of such conflict hereby superseded and repealed, provided that such repealer shall not repeal the repealer clauses of such ordinance, resolution or motion, nor revive any ordinance, resolution or motion thereby.

**INTRODUCED, READ, PASSED, ADOPTED AND ORDERED PUBLISHED THIS \_\_\_\_  
\_\_\_\_ DAY OF \_\_\_\_\_ 2023.**

**ATTEST:**

**CITY OF CREEDE**

\_\_\_\_\_  
Sarah Efthim-Williamson, City Clerk

By \_\_\_\_\_  
Jeffrey Larson, Mayor