

ORDINANCE NO. 05

SERIES NO. 2025

**AN ORDINANCE OF THE CRESTED BUTTE TOWN
COUNCIL APPROVING THE LEASE OF A PORTION OF
THE PROPERTY AT AVALANCHE PARK (TRACT I & II,
ECCHER RANCH) TO THE GUNNISON COUNTY ELECTRIC
ASSOCIATION**

WHEREAS, the Town of Crested Butte, Colorado (the "Town") is a home rule municipality duly and regularly organized and now validly existing as a body corporate and politic under and by virtue of the Constitution and laws of the State of Colorado; and

WHEREAS, the Town is the owner of Tract I & II, Eccher Ranch, Crested Butte, County of Gunnison, and State of Colorado, also known as Avalanche Park; and

WHEREAS, on December 21, 2019, the Town declared a Climate Emergency and adopted the Town's Climate Action Plan through Resolution No. 25, Series 2019 and on April 21, 2025, adopted the 2030 Climate Action Plan which solidified and furthered the Town's commitment to identify Town-owned property to utilize for the purposes of developing renewable energy opportunities; and

WHEREAS, the Town identified Avalanche Park as a suitable property for renewable energy development and collaborated with Gunnison County Electric Association ("GCEA") to solicit proposals for a large-scale solar array ("Solar Array") to be located on Avalanche Park; and

WHEREAS, the Town in 2020 entered into a ground lease with GVS, LLC to install and operate the Solar Array; and

WHEREAS, on June 6, 2024 a site plan for the Solar Array was approved by Gunnison County; and

WHEREAS, GVS, LLC was unable to commence and complete the Solar Array and the ground lease has since terminated; and

WHEREAS, GCEA has determined that it will construct and operate the Solar Array as originally proposed by GVS, LLC; and

WHEREAS, the Town plans to purchase renewable energy credits from the Solar Array from Gunnison County Electric Association; and

WHEREAS, the Town and GCEA wish to enter into a long-term Lease Agreement to utilize a portion of the property at Avalanche Park for development of a large-scale solar array, the form of which is attached hereto as Exhibit A; and

WHEREAS the Town finds hereby that approving this Lease Agreement provides substantial public benefits to the Town by furthering the Town's Climate Action Plan and providing the opportunity for the Town to purchase renewable energy credits to off-set the Town's electric usage.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT:

1. **Findings.** The foregoing recitals are hereby fully incorporated herein as
2. **Authorization of Town Manager.** Based on the foregoing, the Town Council hereby authorizes the Town Manager to execute a lease in substantially the same form as attached hereto as Exhibit "A" and authorizes the Town Manager to revise the Lease to reflect the actual boundaries of the Premises and the easements described therein as defined by a metes and bounds legal description.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 19th DAY OF MAY, 2025.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING AND PUBLIC HEARING THIS 2nd DAY OF JUNE, 2025.

TOWN OF CRESTED BUTTE, CO

By:


Ian Billick, Mayor

ATTEST


Lynelle Stanford, Town Clerk

(SEAL)



GROUND LEASE AND OPTION AGREEMENT

THIS GROUND LEASE AND OPTION AGREEMENT (this "Lease") is made and entered into by and between the Town of Crested Butte, a Colorado municipal corporation ("Landlord") and Gunnison County Electric Association, a Colorado cooperative association ("Tenant"), effective as of June 16, 2025 (the "Effective Date"). Landlord and Tenant shall collectively be referred to as the "Parties," and each individually as a "Party."

WHEREAS, Landlord owns the real property described in **Exhibit A-1** attached hereto (the "Land").

WHEREAS, Tenant desires to lease a portion of the Land described in **Exhibit A-2** (the "Premises") in order to develop, construct and operate an approximately 1.125 MW AC solar photovoltaic array (the "System").

NOW THEREFORE, in consideration of the amounts to be paid to Landlord by Tenant and the other mutual promises and covenants set forth herein, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Leased Premises.

- 1.1. Commencing on the Effective Date and continuing for a period of six months thereafter ("Option Period") (unless this Lease is earlier terminated in accordance with Section 4 below), Landlord hereby grants Tenant an exclusive, irrevocable option (the "Option") to lease the Premises on the terms and conditions set forth herein. Tenant may exercise the option at any time during the Option Period by written notice to Landlord (the date of such exercise by Tenant, the "Lease Commencement Date").
- 1.2. Effective as of the Lease Commencement Date, Landlord hereby agrees to lease the Premises to Tenant, and Tenant hereby agrees to lease the Premises from Landlord, upon the terms and subject to the conditions set forth herein.
- 1.3. The Premises shall comprise the area identified in **Exhibit A-2** together with all existing improvements and fixtures located on the Premises and all other rights, benefits and easements pertaining to or appurtenant to the Premises. **Exhibit A-2** sets forth the approximate location of the Premises, which may be changed or amended from time to time in accordance with Section 1.4 below.
- 1.4. Prior to the Construction Commencement Date, Tenant shall assess the Land to determine the most suitable location for the System and may propose changes to the Premises to Landlord for approval, not to be unreasonably withheld. Upon approval by Landlord, the exact location thereof shall be documented by Tenant delivering to Landlord a site plan or metes and bounds legal description of the Premises (collectively, "Premises Legal Description"). Upon delivery of

the Premises Legal Description to Landlord, the Parties agree that the Premises Legal Description will be deemed incorporated into **Exhibit A-2** without need for amendment to this Lease. Without limitation to the foregoing, Landlord agrees that if requested by Tenant, Landlord will enter into an amendment to this Lease replacing Exhibit A-2 with the Premises Legal Description provided such Premises Legal Description is consistent with the location of the Premises agreed by Landlord.

2. Cooperation.

- 2.1. Landlord shall provide to Tenant any of the following in Landlord's possession or control as of the Effective Date: (1) any notice of violation of any law or regulation, including zoning laws applicable to the Premises, (2) any "Phase I" and other environmental assessment reports regarding the Premises, (3) Landlord's most recent survey and title insurance policy relating to the Premises, (4) any governmental permits, licenses or approvals for the Premises, (5) contracts and agreements relating to the Premises, and (6) any other surveys, physical condition reports, or notices regarding zoning or government action with respect to the Premises.
- 2.2. Landlord will cooperate with and not oppose Tenant's efforts to obtain all necessary zoning, land use, interconnection and other approvals or permits required for the development, construction, operation and maintenance of the System, including without limitation delivering any required documents or authorizations; provided, that Landlord shall not be required to incur any cost or liability in connection with the foregoing.
- 2.3. Landlord acknowledges that Tenant may obtain, at Tenant's expense, a title insurance policy insuring Tenant's leasehold interest in the Premises. Landlord agrees to reasonably assist Tenant in obtaining such title policy by supplying any information reasonably requested by the title insurance company in connection with issuing such title policy.

3. Lease Term.

The Lease term ("Term") shall commence on the Lease Commencement Date and continue until the thirtieth (30th) anniversary of the date on which the System is interconnected to the local distribution grid and achieves all other requirements for commencement of commercial operations under any applicable power purchase agreement entered into by Tenant with respect to the System (such date, the "Commercial Operation Date"). Tenant will have the option to extend the Term for one five (5) year period from the end of the original thirty (30) year Term ("First Extension Period") by providing written notice thereof to Landlord no less than thirty (30) days prior to the end of the original Term. Additionally, Landlord may, upon request of Tenant, extend the term for an additional five (5) year period ("Second Extension Period") following the end of the First Extension Period. Such request shall be made by Tenant in writing to Landlord no less than thirty (30) days prior to the end of the First Extension Period, and such request shall not be

unreasonably denied by Landlord. If Landlord does not respond within fifteen (15) days of Tenant's request, the Second Extension Period shall be deemed to have been granted and the Term shall be deemed to have been extended accordingly.

4. Termination of Lease. This Lease may be terminated as follows:

- 4.1. Landlord shall have the right to terminate this Lease by thirty (30) days written notice to Tenant if the Construction Commencement Date has not occurred by the first anniversary of the Effective Date; provided, that if at any time (including after notice of termination has been provided but before the effective date of termination) the Construction Commencement Date occurs, the right of Landlord to terminate pursuant to this Section shall be deemed to have lapsed and this Lease shall continue in full force and effect. "**Construction Commencement Date**" means the date on which Tenant begins construction of the System on the Premises, as confirmed by written notice from Tenant to Landlord.
- 4.2. [Reserved].
- 4.3. Tenant shall have the right to terminate this Lease as to all or any part of the Premises upon thirty (30) days prior written notice to Landlord.
- 4.4. In accordance with Section 14 below, or as may otherwise be expressly provided in this Lease.

5. Rent; Payment Schedule;

- 5.1. As full consideration for the lease of the Premises and the other rights and benefits granted pursuant to this Lease, Tenant shall pay \$10 per year ("Rent"). Rent shall be payable in advance in annual installments due on the Effective Date and on January 15 of each subsequent year during the Term (each, a "Rent Payment Date").
- 5.2. If any overdue installment of rent is not received by Landlord within ten(10) days after Landlord provides Tenant written notice of the delinquency, Tenant will pay a late fee to Landlord in the amount of five percent (5%) of the unpaid delinquent rent amount, and Tenant shall pay interest of 1.5% per month on the unpaid balance due from the date of Landlord's notice until paid in full.

6. Utilities; Maintenance.

During the Term, (a) Tenant shall arrange and pay for all public utility services used on the Premises by Tenant, and (b) Tenant shall be responsible for the repair and maintenance of the entire Premises, including any portion of the Premises located outside of the proposed fenced area.

7. Tenant's Property.

- 7.1. The System and its constituent parts, together with any and all other improvements or other features constructed on, or personal property installed or placed on the Premises by or for Tenant, including without limitation, machinery, fixtures, trade fixtures, equipment, racking, inverters, cables, solar panels and other personal property (collectively, "**Tenant's Property**") are and shall remain the sole personal property of Tenant regardless of the manner of attachment to the Premises and shall not become fixtures. For the avoidance of doubt and without limiting the foregoing, Landlord hereby waives all rights to levy, distraint, possession or landlord's lien against Tenant's Property, if any, and shall not cause the creation of, or attachment to, Tenant's Property of any liens (including mechanics' and judgment liens) or other encumbrances. Tenant shall have the right in its sole discretion to file one or more precautionary financing statements with respect to the Tenant's Property, including fixture filings, in such jurisdictions as it deems appropriate.
- 7.2. The parties acknowledge that the Premises consists of land only and does not include Tenant's Property. Any claim to a lien or encumbrance upon the Premises, arising from any act or omission of Landlord, shall accrue only against the real estate owned by Landlord, and not against Tenant's Property, and shall be subject to this Lease. If any such lien or encumbrance shall be filed against Tenant's Property as a result of Landlord's actions, Landlord shall, without cost or expense to Tenant, promptly and within a reasonable time cause such lien or encumbrance to be discharged of record by payment, statutory lien release bond, court order or otherwise as provided by law. In the event Landlord fails to remove any lien or encumbrance affecting the Premises as required by this Section, Tenant shall have the right, but not the obligation, to discharge such lien or encumbrance and recover the cost thereof from Landlord.
- 7.3. Landlord acknowledges that it has no interest pursuant to this Lease in any renewable energy credits, environmental attributes, tax credits, or other incentives or credits associated with or generated by the System, all of which shall be the sole and exclusive property of Tenant and shall be included in Tenant's Property.

8. Use and Occupancy.

- 8.1. Tenant shall use the Premises for the development, construction, operation, and maintenance of the System, including such lawful uses that are incidental to, or not inconsistent with such use. Without limitation to the foregoing, Tenant (and its agents, representatives, consultants and affiliates) shall be permitted access to the Premises prior to the Construction Commencement Date at reasonable times and upon reasonable notice to Landlord, for purposes of conducting (at Tenant's expense) any and all investigations or testing of the Premises as Tenant may deem necessary, appropriate or convenient, including without limitation, the surveying or investigation of environmental, soils,

biological, cultural, historical, boundary or geotechnical matters. Tenant is hereby authorized to undertake direct discussions and/or negotiations with any governmental entity or other agency, body or organization that has jurisdiction over the Premises (including, without limitation, any city, county state or federal agency) in regards to the Premises and the System.

- 8.2. Tenant shall additionally have the right, during the Term of this Lease, to grant to Whetstone Mountain Ranch, as owner of the Spann-Nettick Irrigation Ditch (the "Ditch") or its successors in interest (collectively, the "Ditch Owner"), a sublease or sublicense for access to such portion of the Premises (the "Ditch Maintenance Area") as Tenant determines may be necessary for the purposes of providing Ditch Owner with the ability to conduct maintenance of the Ditch. A preliminary depiction of the anticipated location of the Ditch Maintenance Area is provided in **Exhibit A-3**, which may be subsequently modified by Tenant.

9. Alterations and Construction Rights.

- 9.1. Tenant may, at its expense, and subject to the written consent of Landlord and in compliance with applicable laws, remove and/or alter any existing improvements on the Premises. Subject to the foregoing, Tenant may make such alterations, additions, improvements and changes to the Premises that Tenant deems reasonably necessary in connection with the installation of the System, including without limitation installation of interconnection facilities, fencing, security devices and/or signage, and excavating, grading, leveling or otherwise modifying the Land where the Premises are located. Prior to the Construction Commencement Date, Tenant will provide Landlord with a proposed site plan for the System. Tenant shall use commercially reasonable efforts to incorporate any comments provided by Landlord; provided, that Tenant shall not be required to make changes to the design of the System that would materially increase the cost to construct the System or reduce anticipated production from the System. If Landlord does not respond to Tenant's submission of a proposed site plan within ten (10) business days, Landlord shall be deemed not to have comments. Landlord shall sign and deliver all applications and other documents, and shall take all such other actions, as are reasonably requested by Tenant in connection with obtaining any land use change permits or other approvals as Tenant shall deem necessary or desirable in connection with the operation of the Premises.
- 9.2. During the Term, Landlord and Tenant agree to confer on any mutually agreed avalanche mitigation measures to protect the Premises and the Tenant's Property.
- 9.3. Landlord will be solely responsible for the cost of relocating the existing trailhead located on the Premises, including the costs of constructing any additional roads required for access to such trailhead.

- 9.4. Tenant acknowledges that, other than the obligations of Landlord in this Section 9, or such other obligations as may otherwise be provided in this Lease, Tenant will have sole responsibility for satisfying any permit conditions required in connection with the System.

10. Decommissioning.

Within one hundred twenty (120) days after the expiration or earlier termination of the Term, Tenant shall completely remove all of Tenant's Property and vacate the Premises. The removal of Tenant's Property shall be completed in a manner that does not unreasonably and adversely affect the suitability of the Premises to be used for the same purposes existing as of the Effective Date, and Tenant shall leave the Premises free of any conditions created by Tenant which present a current unreasonable risk of harm to Landlord or members of the public. For the avoidance of doubt, Tenant shall have no obligation to restore any improvements demolished and removed from the Premises and shall not be required to replant any trees or farm crops removed in connection with the construction of the System. If Tenant fails to vacate the Premises in accordance with this, Landlord shall be entitled to holdover rent in the amount equal to one hundred twenty-five percent (125%) of Rent for the final year of the Term, prorated on a daily basis, for each day that Tenant fails to so vacate the Premises. Any such holdover shall be construed as a tenancy from month-to-month.

11. Taxes.

Landlord represents that Landlord is not subject to payment of real property taxes with respect to the Land or the Premises. In the event any real property or personal property taxes are levied on the Tenant's Property, Tenant shall be solely responsible for payment of such taxes. If requested by Tenant, Landlord will reasonably cooperate with any effort by Tenant to secure available tax exemptions or abatements in connection with the System and Tenant's Property.

12. Fire or Other Casualty.

If during the Term, all or part of the Premises or Tenant's Property are damaged by fire, wind, flood, earthquake or other casualty, with the result that, in Tenant's sole and absolute discretion, it would not be commercially or economically reasonable or desirable to repair and restore the Premises and/or Tenant's Property, as applicable, then Tenant may terminate this Lease by providing Landlord with written notice of the same and vacating the Premises in compliance with Section 10 hereof. Tenant, or its successor in interest, shall be entitled to 100% of any proceeds from casualty insurance policies maintained by Tenant

13. Condemnation.

- 13.1. If all or part of the Premises and/or Tenant's Property shall be subject to condemnation, the exercise of the power of eminent domain, or other governmental taking (the foregoing, collectively, a "Taking") with the result that, in Tenant's sole and absolute discretion, the unaffected portion of the

Premises is insufficient or otherwise unsuitable for Tenant's continued use of the Premises for the operation of the System or such other use as existed at the time of the Taking (a "Total Taking"), then Tenant may terminate this Lease by providing Landlord with written notice of the Total Taking, the Lease shall terminate effective as of the date set forth in such notice, and Tenant shall vacate the Premises in accordance with Section 10.

13.2. If all or part of the Premises and/or Tenant's Property shall be subject to a Taking that, in Tenant's sole and absolute discretion, does not constitute a Total Taking (a "Partial Taking") then (i) concurrently with such Taking this Lease shall terminate with respect to the affected portion of the Premises, which Tenant shall vacate in accordance with Section 10, (ii) and this Lease shall continue in full force and effect with respect to the unaffected portion of the Premises. For purposes of clarification only, Tenant shall be entitled to remove Tenant's Property from any portion of the Premises that is subject to a Taking.

13.3. Tenant shall have the right but not the obligation to participate in any proceedings with respect to a Taking; in such event Landlord shall cooperate with Tenant to facilitate such participation. Neither Landlord nor Tenant shall enter voluntarily into any binding agreement or settlement related to a Taking without the prior consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

13.4. If a Takings of Land and Premises occurs that results in compensation being awarded, the proceeds shall be apportioned between the Landlord and Tenant as follows: Landlord shall receive the share of any compensation awarded for a takings of the Land, but not the improvements constructed or placed by Tenant thereon, and Tenant shall receive such amounts as are awarded for the loss of use of the Premises so Taken, including any improvements constructed or placed by Tenant on the Land, and the loss or interruption of Tenant's business and the cost of any restoration or repair necessitated by such Taking, including consequential losses. If after giving effect to the foregoing there remain any un-apportioned proceeds, they will be equitably apportioned as between Landlord and Tenant.

14. Default; Remedies.

The failure by a party hereto to perform its obligations under this Lease, if not remedied within thirty (30) calendar days of written notice of such failure from the other party, or if such failure is not capable of being remedied within thirty (30) days, then if remedial action is not commenced and diligently pursued within such thirty (30) day period, shall constitute a default hereunder (a "Default"). Following and during the continuation of an event of Default, the non-defaulting party may pursue any available remedies at law or in equity, including specific enforcement to the extent permitted by applicable law, subject to Section 24. Notwithstanding the foregoing, the non-defaulting party shall take commercially reasonable measures to mitigate damages resulting from such Default. Tenant may, in its sole and absolute discretion, elect to

cure a Default on the part of Landlord, in which case Tenant shall be entitled to offset against future payments of Rent or other amounts due to Landlord hereunder the reasonable and documented out-of-pocket expenses incurred by Tenant in curing such Default.

15. Hazardous Materials

15.1. Tenant will not use, dispose of, or release on the Premises, or cause or permit to exist or be used, stored, disposed of, or released on the Premises as a result of Tenant's operations, any substance that is defined as a "hazardous material" or has a similar designation under applicable federal, state or local environmental laws, except in such quantities as may be required in its normal business operations and in full compliance with applicable environmental laws. Tenant shall, and shall cause its contractors to, comply in all respects with applicable environmental laws and regulations. Tenant agrees to indemnify, defend and hold harmless Landlord and its affiliates, directors, shareholders, members, managers, employees and representatives from any damages, claims, actions, demands, liabilities, costs and expenses (including reasonable attorneys' fees) incurred or arising as a result of any violation of environmental laws by Tenant, including without limitation any release of hazardous materials first introduced to the Premises by Tenant.

15.2. Landlord and Tenant acknowledge and agree that; other than Tenant's obligations pursuant to Section 15.1 above, Tenant will not be liable for any violations of environmental law occurring with respect to the Premises or the Land. Without limitation to the foregoing, in no event will Tenant be responsible for handling, removal, or treatment of any hazardous materials present at the Premises or the Land prior to the Effective Date, or which are brought onto the Land or the Premises or released by Landlord or its lessees, agents or contractors at any time, and no costs or liabilities incurred in connection with any of the foregoing shall be the responsibility of Tenant.

15.3. The provisions of this Section 15 shall survive termination of this Lease.

16. Indemnification.

16.1. Tenant shall indemnify, defend and hold harmless Landlord and Landlord's affiliates, directors, shareholders, members, managers, employees and representatives (collectively "Landlord Indemnified Parties"), from and against any and all damages, claims, actions, demands, liabilities, costs and expenses (including reasonable attorneys' fees) caused by: (i) the System or the use or occupancy of the Premises by Tenant, (ii) the negligence or willful misconduct of Tenant or its employees, contractors or agents, or (iii) Tenant's breach of this Lease, except in each case to the extent directly attributable to the negligence or willful misconduct of the applicable Landlord Indemnified Party.

16.2. The provisions of this Section 16 shall survive termination of this Lease.

17. Notices.

All notices, elections, demands, requests, and other communications hereunder shall be made in writing, and shall be given by personal delivery or shall be sent by certified or registered United States mail, postage prepaid, or by national overnight courier service which provides tracking and acknowledgement of receipts or by email transmission with acknowledgement of receipt, in each case at the address indicated below or at such other address as may hereafter be designated in writing by either party hereto.

If to Landlord: Town of Crested Butte
 Attention: Town Manager
 507 Maroon Avenue
 P.O. Box 39
 Crested Butte, CO 81224

If to Tenant: Gunnison County Electric Association
 Attention: CEO
 37250 US Hwy 50
 Gunnison, CO 81230

All notices sent in accordance with the above will be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by reputable overnight, express courier, then on the next business day immediately following the day sent, (iii) if sent by registered or certified mail, then on the day actually received, or (iv) if sent by email, then on the day when receipt is acknowledged.

18. Easements.

18.1. Landlord if necessary and subject to the limitations of this Paragraph 18.2 shall grant to Tenant during the Term of this Lease (a) an exclusive easement on, over and across the Land and any adjacent property owned by Landlord for access to solar irradiance by all parts of the System at all times of the day ("Solar Easement"), (b) a non-exclusive easement over, on and across the Land and any adjacent property owned by Landlord for ingress and egress to and from the Premises for the development, construction, use, maintenance, operation and repair of the System or for any other use permitted by this Lease, including the right to install, use and improve an access road for such purposes ("Access Easement"), (c) a non-exclusive easement over, on, under and across the Land and any adjacent property owned by Landlord for the development, construction, use, maintenance, operation and repair of electric transmission and distribution lines, wires, poles, towers, electrical transformers, substations, interconnection and switching equipment and facilities, and related foundations and footings, and other facilities and

equipment for the collection, transmission and distribution of electrical power from the System ("Interconnection Easement," and together with the Solar Easement and Access,"), (d) an easement for any and all encroachments of Tenant's Property onto Landlord's adjacent property ("Encroachment Easement"), and (e) an easement over, under and across the Landlord's adjacent property for audio, visual, view, light, flicker, noise, vibration and any other effects attributable to the System (the "Visual Easement," and together with the Solar Easement, the Access Easement, the Interconnection Easement, and the Encroachment Easement, the "Easements."). The Easements are temporary and shall terminate upon the expiration or earlier termination of this Lease. The Easements shall run with and against the land during the Term of this Lease and be binding upon and against Landlord and its successors, assigns, licensees and lessees, and may be recorded in the County records against the Land and/or any property adjacent to or in the vicinity of the Premises. During the term of this Lease, the Easements shall inure to the benefit of Tenant and its permitted transferees, successors and assigns. The easements specified herein shall be agreed to and finalized by separate written agreement at the completion of construction and based on actual as-built drawings of System and in conformance with the Site Plan approved by Gunnison County.

- 18.2. Additionally, if requested by the utility to which the System is interconnected (the "Utility") or the provider of telecommunications service to the System (the "Telecommunications Provider"), Landlord will grant directly to the Utility or Telecommunications Provider, using each of their standard forms, such easements as may be reasonably necessary to facilitate the development, construction, use, maintenance, operation and repair of the System, or otherwise in connection with Tenant's use of the Premises during the Term.

19. Non-Disturbance Agreements.

Landlord shall use reasonable efforts to cause any beneficiaries of any mortgages/deeds of trust, or any other parties with rights in, or interests secured by Landlord's interest in, the Land or any other property owned by Landlord which is subject to an Easement benefiting Tenant (collectively, "Landlord's Land") as of the Effective Date, to enter into an agreement with Tenant in form and substance reasonably acceptable to Tenant and Tenant's Financing Parties confirming such party will not disturb or extinguish Tenant's possession and use of the Premises pursuant to this Lease or any of Tenant's other interests in Landlord's Land or the Premises under this Lease or the Easements. Additionally, and without limitation to Section 23 below, in the event any right or interest in the Premises or Landlord's Land is granted to any party after the Effective Date, Landlord will deliver prior to the effective date of such right or interest an agreement for the benefit of Tenant and Tenant's Financing Parties in form and substance reasonably acceptable to Tenant and Tenant's Financing Parties pursuant to which such party subordinates its rights or interests in Landlord's Land to this Lease, and agrees that such party will not disturb or extinguish Tenant's possession and use of

the Premises pursuant to this Lease or any of Tenant's other interests in Landlord's Land or the Premises under this Lease or the Easements.

20. Landlord's Representations and Warranties.

Landlord hereby represents and warrants to Tenant that: (a) Landlord owns the Land in fee simple, and has all requisite right, power and authority to enter into this Lease; (b) the execution of this Lease will not constitute a violation of nor be in conflict with nor constitute a default under any term or provision of any agreement or instrument to which Landlord is a party or by which the Premises or any part thereof is bound; (c) to Landlord's knowledge, no hazardous or toxic substances have been released or manufactured, or are present on the Premises in amounts in excess of the lawful limit absent a permit, and no underground storage tanks (whether or not abandoned) exist on or under the Premises; (d) Landlord has not received any notice of zoning change or legal, regulatory or other noncompliance relating to the Premises, or of any possible widening of the streets abutting the Premises; (e) Landlord has not received any notice of proposed curtailment of utility services to the Premises; (f) to Landlord's knowledge, and with the exception of Gunnison County land use regulations, the Premises are free from any recorded or unrecorded use or occupancy restrictions or declarations of restrictive covenants, and there are no existing liens, mortgages, or deeds of trust encumbering all or any part of the Premises; (g) there are no service or maintenance contracts affecting the Premises; (h) there are no delinquent or outstanding taxes, liens or other impositions levied or assessed against the Premises or any larger parcel of property of which the Premises is a part; (i) to Landlord's knowledge and except for this Lease, there are no leases, options to purchase, license agreements or other third party rights to use or possess the Premises, whether written or oral, recorded or unrecorded; (j) Landlord is a Colorado municipal corporation under the laws of the state of Colorado and the undersigned representatives of Landlord have full power and authority to execute and deliver this Lease; (k) there is no underground septic system or leach field located upon the Land; (l) to Landlord's knowledge, there are no wells, dry wells, exploration wells or monitoring wells on the Land; (m) to Landlord's knowledge, no person or entity has buried any refuse, construction materials, garbage or any other matter of any kind or nature below the surface of the Land, (n) to Landlord's knowledge, the Land does not support or affect any endangered species and is not within an area that is subject to any "environmentally sensitive" or "non-disturbance" designation under any law or zoning ordinance, and (o) to Landlord's knowledge, no portion of the Land includes any archeological site, burial site, artifact or other condition of archeological, tribal or historical significance.

21. Insurance.

During the Term, Tenant shall maintain insurance on the terms set forth below, at Tenant's cost and expense:

- 21.1. Commercial general liability insurance covering Tenant and System operations, written on "occurrence" policy forms, including coverage for premises/operations, products/completed operations, blanket contractual

liability, and personal injury, with coverage limits of no less than \$1,000,000 for any one occurrence and \$2,000,000 general aggregate.

- 21.2. Automobile liability insurance covering Tenant, including coverage for owned, leased, non-owned and hired automobiles for both bodily injury and property damage in accordance with statutory legal requirements, with combined single limits of no less than \$1,000,000 per accident with respect to bodily injury, property damage or death. To the extent Tenant does not own any automobiles, contingent liability for hired, leased and non-owned automobiles may be obtained through endorsement to the general liability policy required in Section 21.1 above.
- 21.3. Workers' compensation insurance in accordance with statutory requirements at any time in which Tenant has employees, including coverage for employer's liability with a limit of not less than \$1,000,000 and such other forms of insurance which Tenant is required by applicable law to provide for loss resulting from injury, sickness, disability or death of each of their employees.
- 21.4. Umbrella or excess liability insurance with limits of not less than \$5,000,000 per occurrence and annual aggregate (inclusive of the coverage requirements and limits required in Section 21.1) covering Tenant and System operations, and with a term concurrent with that of the commercial general liability insurance and automobile liability insurance required in Sections 20.1 and 20.2 above. The umbrella or excess liability insurance shall include as insured all persons or entities that are named as additional insureds under Tenant's commercial general liability insurance.
- 21.5. All liability policies required by this Section 21 are maintained by the Tenant or on behalf of the Tenant shall expressly provide that all provisions thereof, except the limits of liability (which shall be applicable to all insureds as a group) shall operate in the same manner as if there were a separate policy covering each such insured and shall not contain an exclusion for cross liability.
- 21.6. Landlord shall be named as additional insureds under the commercial general liability insurance and umbrella/follow form excess insurance required above.
- 21.7. Upon Landlord's request, Tenant will promptly furnish Landlord with certificates of insurance evidencing the insurance required to be maintained under this Section.

22. Landlord Covenants.

From and after the Effective Date until the expiration or earlier termination of the Term:

- 22.1. Landlord shall not, without the prior written consent of Tenant, (i) institute or apply for any rezoning of the Premises; (ii) encumber, pledge, sell, grant and/or assign, sublease, mortgage or otherwise transfer the Premises;; or (iii)

cause or permit the violation of any applicable laws, rules, regulations or ordinances applicable to the Premises

22.2. Landlord will not cause or permit any activities or conditions on the Land or any adjacent properties owned by Landlord as identified by the easements and as-builts in accordance with Section 18 above that would impair operation of the System or access of the System to sunlight, including, without limitation, erecting or permitting to be erected any cell towers, water towers, billboards, silos, trees or any other natural or man-made structures (other than structures existing as of the Effective Date) that may diminish the quantity of sunlight that otherwise would reach the Premises or that may cause shade or shadows upon the Premises or any portion thereof, and Landlord shall not emit or permit the emission of suspended particulate matter, smoke, fog or steam or other air-borne impediments to insolation on the Premises, or burn or permit the burning of garbage, plant, shrub, and yard trimmings or other vegetation that could adversely affect insolation levels on the Premises. Upon written notice from Tenant, Landlord shall promptly remove any uses or improvements on any property owned or controlled by Landlord adjacent to in violation of the easements specified in Section 18 above (other than structures existing as of the Effective Date) that Tenant reasonably determines violate the requirements of this Section. If Landlord does not remove such uses or improvements within thirty (30) days after notice thereof from Tenant, Tenant shall have the right to cause such uses or improvements to be removed and deduct the cost thereof from any amounts owed to Landlord under this Lease.

22.3. Landlord shall promptly give Tenant a copy of any notice of any kind received by Landlord regarding the Premises.

23. Memorandum of Lease.

23.1. Within five (5) days following Tenant's request, Landlord and Tenant shall execute a memorandum of this Lease in recordable form setting forth, at minimum, the following provisions of this Lease: (a) all information required by law, (b) restrictions on transfers, (c) the Term of the Lease, (d) the existence of the Easement rights granted to Tenant hereunder, and (e) such other provisions of this Lease as the parties may mutually agree to incorporate therein. Tenant shall cause the memorandum of lease to be recorded in the County records against the Land and any other property of Landlord (if applicable).

24. Assignments; Transfers.

This Lease shall be binding upon and inure to the benefit of the parties hereto and their legal representatives, successors and assigns, subject to the following terms and conditions:

24.1. Tenant may not assign this Lease, in whole or in part, or sublet the Premises, or any part thereof, without Landlord's prior written consent; provided, that (i) Tenant may without Landlord's consent collaterally assign or mortgage its rights

under this Lease (which for the avoidance of doubt shall be limited to the leasehold estate granted by this Lease and not the fee simple interest of Landlord in the Premises) in accordance with Section 25, and (ii) Tenant may sublet or sublicense the Premises to the Ditch Owner as provided in Section 8.2. Upon a permitted assignment of its entire interest in this Lease to a party that expressly assumes in writing all obligations of Tenant under this Lease arising after the effective date of the assignment, Tenant shall be released or discharged from all of its covenants and obligations under this Lease, except such obligations as shall have accrued prior to the effective date of any such assignment or transfer, and Landlord agrees to look solely to Tenant's assignee for performance of such obligations. Any assignment made by Tenant in violation of this Section 24.1 will be void.

- 24.2. Landlord shall not sell, pledge, mortgage or otherwise transfer the Premises, the Land or any portion thereof (collectively, a "Landlord Transfer"). Without limitation to the foregoing, this Lease shall run with the land and survive any such Landlord Transfer, and any Landlord Transfer shall be expressly made subject to this Lease.

25. Financing Party Protections.

Tenant may pledge, sell, grant and/or assign, sublease, mortgage and otherwise transfer (each, a "Tenant Transfer") this Lease or Tenant's leasehold interest in the Premises and the Easements (which for the avoidance of doubt shall be limited to the leasehold estate granted by this Lease and not the fee simple interest of Landlord in the Premises), in whole or in part, without Landlord's prior consent, in connection with the financing or re-financing of the System or Tenant's Property. If Tenant shall notify Landlord in writing of the existence of, and contact information for, any third party (including, without limitation, any tax-credit equity providers) with a security interest or other interest in the Lease or the System, whether via a collateral Tenant Transfer or otherwise (any such third party, a "Financing Party"), then the following provisions shall apply until such time as Landlord shall receive written confirmation that such Financing Party's interests in this Lease, the System or the Premises are released:

- 25.1. No assignment, amendment, election by Tenant to terminate or other modification of this Lease shall be effective unless approved by the Financing Party in writing. In the event Tenant acquires fee ownership of the Land, or in the event of Tenant's voluntary surrender of the leasehold estate, there shall be no merger of the leasehold estate created by this Lease with the fee without the prior written consent of the Financing Party, which consent may be granted, conditioned or withheld in the Financing Party's sole and absolute discretion.
- 25.2. Landlord shall provide each Financing Party with copies of any notice of Default sent to Tenant. Each Financing Party will have a period equal to the greater of (i) sixty (60) days from such notice, and (ii) thirty (30) days after the period for cure of such Default permitted by this Lease ("Financing Party Cure Period"), during which it may, in its sole and absolute discretion, cure

such Default on Tenant's behalf. In the event that cure of any Default would require possession of the Premises, and if the Financing Party has initiated foreclosure proceedings to acquire the leasehold estate of Tenant, the Financing Party Cure Period shall be extended until Financing Party has completed such foreclosure proceedings and acquired Tenant's leasehold estate provided Financing Party is diligently pursuing such foreclosure. Notwithstanding anything in this Lease to the contrary, Landlord may not terminate this Lease or exercise any other remedy as a result of a Tenant Default until the expiration of the applicable Financing Party Cure Period. No notice shall be effective against a Financing Party unless and until actually received by such Financing Party.

- 25.3. Neither the bankruptcy nor the insolvency of Tenant shall be grounds for terminating this Lease as long as the Rent and all other obligations of Tenant hereunder are paid or performed by or on behalf of Tenant or the Financing Party in accordance with the terms of this Lease.
- 25.4. Subject to Section 24.2, if this Lease is terminated pursuant to a Tenant Default, Landlord shall, if requested by Financing Party, enter into a new lease with Financing Party or its nominee on the same terms as set forth herein, and for a term equal to the then- unelapsed portion of this Lease. Such new lease shall be effective as of the date of termination of this Lease. If more than one Financing Party makes a request for a new lease pursuant hereto, the new lease shall be delivered to the Financing Party with the security interest in this Lease which is prior in lien, and the request of any Financing Party without a security interest in this Lease or whose lien is subordinate shall be void and of no further force or effect.
- 25.5. A Financing Party shall have the right, subject to the terms and conditions of this Lease: (a) to assign its security interest; (b) to enforce its lien and acquire title to the leasehold estate by any lawful means; (c) to take possession of and operate the Tenant's Property, the leasehold estate or any portion thereof and to perform all obligations to be performed by Tenant hereunder, or to cause a receiver to be appointed to do so; and (d) to acquire the leasehold estate by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer the leasehold estate to a third party, and no such exercise of rights by a Financing Party will be a Default under this Lease or give rise to a right of termination thereof. Landlord's consent shall not be required for the acquisition of the encumbered leasehold estate or subleasehold estate by a third party who acquires the same by or subsequent to foreclosure or assignment in lieu of foreclosure.

to the terms and conditions hereof, Landlord hereby waives any lien, security interest, or claim of any nature that Landlord now has or may hereafter have by statute, rule, regulation, common law, agreement or otherwise, in and to Tenant's Property and other of Tenant's property that is or may be from time to time hereafter located at the Premises and/or the Landlord's adjacent property as

specified in Section 18 above, , and to which Tenant at any time has granted or will grant a security interest to a Financing Party (all such property and the records relating thereto shall be hereafter called the "**Collateral**"). Landlord recognizes and acknowledges that any claim or claims ("**Claims**") that a Financing Party has or may have against such Collateral by virtue of any lien or security interest are superior to any lien, security interest, or claim of any nature that Landlord now has or may hereafter have to such Collateral by statute, rule, regulation, common law, agreement or otherwise. The waiver provided for herein shall be effective until the discharge of the Claims. Landlord further agrees to notify any purchaser of the Premises and/or the Landlord's adjacent property, as specified in Paragraph 18 above and any subsequent mortgagee or other encumbrance holder of the existence of the foregoing waiver of Landlord's lien rights, which shall be binding upon the executors, administrators, successors and transferees of Landlord, and shall inure to the benefit of the successors and assigns of a Financing Party. Landlord hereby irrevocably agrees and consents to refrain from taking any action to bar, restrain or otherwise prevent a Financing Party from the Premises for the purpose of inspecting the Collateral.

25.6. Landlord agrees to execute and deliver such documents and instruments, including, without limitation, an amendment to this Lease, an amendment to any recorded memorandum of lease or a subordination agreement or consent to assignment, as may be reasonably requested by a Financing Party or in furtherance of a Tenant Transfer related to the financing or re-financing of the System, to allow such Financing Party reasonable means to protect or preserve the System or its collateral interest in the Lease; provided, that Landlord shall not be required to amend this Lease in any way that would extend the Term, decrease the Rent or otherwise in any material respect adversely affect any rights of Landlord.

25.7. Each Financing Party is an express third-party beneficiary of the provisions of this Section 25.

26. Estoppel.

Upon the request of either party (or any Financing Party), the non- requesting party shall deliver to the requesting party a certificate setting forth the material terms of the Lease, the existence of any Default under the Lease, the date through which Rent has been paid and any amounts on deposit with Landlord, the current Rent rate, and such other reasonable terms requested by the requesting party.

27. Brokerage Commission.

Except as pursuant to a separate agreement between Tenant and Tenant's broker, if any, Landlord and Tenant each represent and warrant to the other that they have not dealt with any real estate agent or broker in connection with this transaction. Landlord and Tenant each hereby indemnify and save the other harmless from and against all losses, costs and expenses incurred by reason of a breach of such representation and warranty.

28. Governing Law.

This Lease shall be construed and enforced in accordance with the laws of the State of Colorado, and any disputes arising from or relating to this Lease shall be construed, governed and interpreted and regulated under the laws of such state. EACH PARTY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS LEASE, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LEASE. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS LEASE.

29. Interpretation; Amendment.

The terms of this Lease shall not be amended, restated, changed or otherwise modified except in a writing signed by Landlord, Tenant and any Financing Party, if applicable. If any term or provision of this Lease shall to any extent be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each other term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

30. Integration; Anti-Merger.

This instrument, including the attached Exhibits, contains the complete agreement of the parties regarding the subject matter of this Lease, and there are no oral or written conditions, terms, understandings or other agreements pertaining thereto which have not been incorporated herein. This instrument creates only the relationship of landlord and tenant between the parties as to the Premises; and nothing in this Lease shall in any way be construed to impose upon either party any obligations or restrictions not expressly set forth in this Lease. This Lease shall continue until the expiration or termination of the Lease and Term, and shall not be extinguished by operation of law pursuant to the acquisition by a single party of the interests in both Tenant and Landlord hereunder.

31. Exclusive Control; Quiet Enjoyment.

Tenant shall have exclusive control, possession, occupancy, use and management of the Premises on and after the Construction Commencement Date, and Landlord shall warrant and defend Tenant's right to quietly hold and enjoy the Premises in accordance with this Lease. Tenant, and its agents, guests, subtenants and designees, and any Financing Party, shall have access to the Premises at all times after the Construction Commencement Date, and neither Landlord nor any agent of Landlord shall, without a Tenant representative, enter upon any portion of the Premises except as specifically permitted hereunder. For the avoidance of doubt, this Lease does not convey any subsurface oil, gas, mineral, liquid or other subsurface rights (collectively, "**Mineral Rights**") to Tenant; provided, however, that Landlord shall not engage in, and shall not permit, any activity, including, without limitation, the extraction of minerals, oil, gas, liquid or other substances, if such activity could result, in Tenant's sole and absolute discretion, in a failure of subsurface support for the Premises or otherwise impair or

adversely affect in any manner Tenant's Property or Tenant's use of the Premises. The foregoing sentence shall be a covenant running with the Land binding upon any party owning any interest in, or rights to develop or use such Mineral Rights.

32. Waiver.

The waiver by any party of any instance of a breach of any covenant or agreement herein shall not be deemed to constitute waiver of any subsequent breach of the same or any other covenant or agreement under this Lease.

33. Nonrecourse.

The performance of this Lease by Landlord and Tenant shall be secured by their respective interests in the Premises. Except for such interests in the Premises, neither Landlord's, nor Tenant's property or assets (including without limitation Tenant's Property), shall be subject to levy, execution or any other enforcement procedure in connection with the satisfaction of liability under this Lease.

34. Consents; Further Assurances.

Each party shall execute and deliver such further documents and perform such other acts, as may be reasonably necessary to achieve the parties' intent in entering into this Lease. The parties further agree that, to the extent the consent or approval of either of them is required, requested or appropriate under this Lease, such consent or approval shall not be unreasonably or unduly withheld, delayed, or conditioned, and except as may otherwise be expressly provided for herein, each party shall bear its own costs and expenses, including legal costs, in connection with such consent or approval.

35. Counterparts.

This Lease may be executed in any number of counterparts, each of which shall be deemed an original once executed and delivered. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing with the same force and effect as if such facsimile were an original thereof.

36. Survival.

Upon the expiration or earlier termination of this Lease in accordance with its terms, this Lease shall cease to have force and effect, except for those provisions that expressly survive termination, or which by their nature would be required to survive termination to achieve the parties' intent with respect thereto.

37. Attorneys' Fees.

In the event of any dispute under this Lease, the party against whom any final judgment is entered agrees to pay the prevailing party all reasonable costs, charges, and expenses, including attorneys' fees, expended or incurred in connection therewith.

38. Tax Credits.

If under applicable law the holder of a leasehold interest in the nature of that held by Tenant or Tenant's assignee becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Tenant's option, Landlord and Tenant shall work in good faith to amend this Lease or replace it with a different instrument so as to convert Tenant's interest in the Premises to a substantially similar interest that makes Tenant eligible for such tax credit, benefit or incentive.

39. No Additional Obligations.

Except as expressly required in the Lease, Tenant shall not be obligated to pay any amount as rent, additional rent, expense reimbursements, real property taxes, transaction privilege taxes or otherwise.

40. No Third-Party Beneficiaries.

Except for any Financing Party in accordance with Section 25, or any Tenant Indemnified Party or Landlord Indemnified Party entitled to indemnification, no provision of this Lease is intended to inure to the benefit of any third party so as to constitute such third party a third-party beneficiary of this Lease

41. Consequential Damages Waiver.

NEITHER PARTY SHALL BE ENTITLED TO, AND EACH OF LANDLORD AND TENANT HEREBY WAIVES, ANY CONSEQUENTIAL, INCIDENTAL AND PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER ARISING, WHETHER IN CONTRACT, IN TORT OR OTHERWISE, IN CONNECTION WITH THIS LEASE. THE FOREGOING LIMITATION WILL NOT BE CONSTRUED AS LIMITING THE INDEMNIFICATION OBLIGATIONS OF TENANT WITH RESPECT TO THIRD PARTY CLAIMS.

42. Specific Performance.

To the extent permitted by applicable law, and without waiving any of Landlord's governmental immunity, Tenant shall have the right to specific enforcement of this Lease, in addition to Tenant's other remedies at law, in equity or under this Lease.

43. Time is of the Essence.

The Parties agree and acknowledge that time is of the essence in the performance by each Party of its obligations herein.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease as of the Effective Date.


LANDLORD:

TOWN OF CRESTED BUTTE



Ian Billick, Mayor

ATTEST:



Lynelle Stanford, Town Clerk



TENANT:

GUNNISON COUNTY ELECTRIC ASSOCIATION

By: 

Mike McBride, CEO

EXHIBIT A-1
LAND

A tract of land in Gunnison County, Colorado identified as parcel# 32-5500-000-129 and located within the north ½ of the northwest ¼ of Section 11, and the south ½ of the south ½ of Section 2, Township 14 South, Range 86 West, 6th Principal Meridian, as depicted below.



**EXHIBIT A-2
PREMISES**

A preliminary depiction of the Premises is depicted below, to be updated in accordance with the terms of this Lease:

EXHIBIT A-3

DITCH MAINTENANCE AREA

A preliminary depiction of the Ditch Maintenance Area is depicted below, subject to modification by Tenant in accordance with Section 8.2:

