

**AGREEMENT**

**THIS AGREEMENT** ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the **TOWN OF ERIE**, a Colorado municipal corporation, whose address is P.O. Box 750, Erie, Colorado ("Town"), and **CRESTONE PEAK RESOURCES HOLDINGS LLC**, a Delaware limited liability company and **LIBERTY ENERGY, LLC**, a Massachusetts limited liability company, whose address is \_\_\_\_\_ ("together referred to herein in the singular as "Crestone").

**WHEREAS**, in accordance with the Town of Erie Municipal Code ("Code"), the Town may provide water taps and water service to persons and property located outside of the corporate limits of the Town by written agreement with the Town, as authorized by the Town Board of Trustees; and,

**WHEREAS**, the Board of Trustees of the Town of Erie, by Resolution 17-\_\_\_\_, Series of 2017, adopted on February \_\_\_\_\_, 2017, did authorize the Town to furnish and provide water taps and water service to Crestone at the property located at 2797 County Road 6, Erie, Colorado 80516 ("Property") located outside of the corporate limits of the Town, subject to conditions; and,

**WHEREAS**, the Town and the Crestone desire to set forth herein their agreement pertaining to the supplying, purchase and use of a water taps and water service at the Crestone Property located outside of the corporate limits of the Town, and to set forth the conditions for providing the water taps and water service.

**NOW, THEREFORE**, in consideration of the above and the mutual covenants and commitments made herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Effective Date.** The effective date of this Agreement shall be February \_\_\_\_\_, 2017 ("Effective Date").

2. **Conditions.** The Board of Trustees of the Town of Erie hereby authorizes the Town to furnish and provide water taps and water service to Crestone at the Property located outside of the corporate limits of the Town, subject to the following conditions:

- A. Crestone shall pay the Town of Erie two (2) times the Water Tap Fee and two (2) times the Raw Water Fee specified in Section 2-10-4 and 2-10-6 of the Code prior to the Town issuing a water tap or providing water service to the Property.
- B. Installation of the water tap shall be in compliance with the Town of Erie Standards and Specifications for Public Improvements.
- C. Installation of the water tap requires the issuance of a building permit from the Town of Erie, and Crestone shall be required to obtain a building permit from the Town prior to installing the water tap at the Property.

D. Crestone shall enter into this Agreement prior to the Town issuing a water tap or providing water service to the Property.

3. Severability. If any portion of this Agreement shall be determined by a court of competent jurisdiction to be invalid, illegal, or unconstitutional, such determination shall not affect the validity of the remainder of the Agreement. If the validity, legality or constitutionality or performance of any portion of this Agreement shall be impeded or otherwise affected by any change in pertinent law or order of court, it is the desire and intent of the Parties to perform and comply with this Agreement as nearly as possible according to its spirit and expressed intent until the parties agree to changes consistent with and in accordance with the change in law or Court order, as applicable.

4. Planning for Performance. Crestone and the Town each acknowledge and understand that the other will henceforth engage in financial and other necessary planning and will otherwise act in expectation of and reliance upon complete good faith, cooperation and reasonable performance of the terms of this Agreement by the other.

5. Amendment. This Agreement may only be modified or amended by written agreement duly signed by both parties.

6. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their successors and assigns.

7. Notices. Any notice required hereunder shall be in writing and shall be sufficient if deposited in the United States mail, postage prepaid to:

Crestone: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Town: Town of Erie  
Attn: Town Administrator  
P.O. Box 750  
645 Holbrook  
Erie, CO 80516

Such notice shall be deemed to have been given when deposited in the United States mail.

8. No Assignment. Neither party shall assign any of the rights, nor delegate any of the duties created by this Agreement without the written consent of the other party.

9. Governing Law and Venue. The laws of the State of Colorado shall govern this Agreement. Venue for any action arising under this Agreement, or for the enforcement of this Agreement, shall be in the appropriate court for Weld County, Colorado.

10. Fund Availability. Financial obligations of the Town hereto after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

11. No Third Party Beneficiaries; No Waiver of Immunity. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to parties hereto and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties hereto that any person other than the parties hereto receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only. The Town by this Agreement does not waive nor does it intend to waive as to any third party the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101 *et seq.*, C.R.S., as from time to time amended, or otherwise available to the Town and its respective Trustees, officers, agents and employees.

12. Attorney's Fees; Interest. In any action brought to enforce the provision(s) of this Agreement, the prevailing party shall be entitled to an award of all reasonable attorney's fees and costs, including expert witness' fees, expended or incurred, to be recovered as part of the costs therein.

13. Waiver. Failure to insist upon strict compliance with any of the terms, covenants, and/or conditions hereof shall not be deemed a waiver of such terms, covenants or conditions, nor shall any waiver or relinquishment of any right or power hereunder at any one time or more times be deemed a waiver or relinquishment of such right or power at any other time or times.

14. Entire Agreement. This Agreement shall constitute the entire agreement between the parties hereto and shall supersede all prior contracts, proposals, representations, negotiations and letters of intent, whether written or oral, pertaining to the items addressed herein.

15. Paragraph Headings. Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.

*[Signatures on Following Pages]*

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first set forth above.

**TOWN:  
TOWN OF ERIE,  
a Colorado municipal corporation**

By: \_\_\_\_\_  
Tina Harris, Mayor

**ATTEST:**

By: \_\_\_\_\_  
Nancy Parker, Town Clerk

**CRESTONE:**  
**CRESTONE PEAK RESOURCES HOLDINGS LLC,**  
**a Delaware limited liability company**

By: [Signature]  
Shea Kauffman, (name)  
Land Manager, (title)

**LIBERTY ENERGY, LLC,**  
**a Massachusetts limited liability company**

By: [Signature]  
Avtar Vasu, (name)  
Senior Vice-President, (title)

STATE OF Colorado )  
 ) ss.  
COUNTY OF Denver )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of February, 2017, Shea Kauffman as Land Manager of **CRESTONE PEAK RESOURCES HOLDINGS LLC, a Delaware limited liability company.**

WITNESS my hand and official seal.  
My commission expires: 11.14.20

[Signature]  
Notary Public

LAURIE J. WIZEMAN  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20104028615  
MY COMMISSION EXPIRES NOVEMBER 14, 2020

STATE OF Massachusetts )  
 ) ss.  
COUNTY OF Suffolk )

The foregoing instrument was acknowledged before me this 10 day of February, 2017, Avtar Vasu, as Senior Vice-President of **LIBERTY ENERGY, LLC, a Massachusetts limited liability company.**

WITNESS my hand and official seal.  
My commission expires: 8/3/2023

[Signature]  
Notary Public

LORI IPPOLITO  
NOTARY PUBLIC  
COMMONWEALTH OF MASSACHUSETTS  
MY COMMISSION EXPIRES 08-03-2023