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337 E. Bennett Avenue, Cripple Creek, CO 80813

**CRIPPLE CREEK CITY COUNCIL**

**OCTOBER 18, 2023**

**5:30 PM – REGULAR MEETING**

**IN-PERSON AND ONLINE VIA ZOOM**

**WORK SESSIONS 3PM DISCUSSION ON PARK AND REC BUILDING  
EXPANSION OPTIONS;  
4PM AFFORDABLE HOUSING**

**Join City Council Meeting By ZOOM**

**Meeting ID: 899 3864 5313**

**Passcode: 265098**

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**PUBLIC COMMENT**

**APPROVAL OF MEETING MINUTES** from the October 4, 2023, Regular Meeting  
**REPORTS**

**City Administrator**

**Finance Director**

**PRESENTATIONS, OATHS & PROCLAMATIONS**

**NEW BUSINESS**

- A. Presentation and Recommendation of Healthcare, Retiree Healthcare and Ancillary Benefits Renewal; Carol Stotts HR/Risk Management Director
- B. Consider Approval of Professional Services Agreement and Lease with Thin Air Theater Company for the Christmas Show at the Butte Theater; Zack Sztanyo, Butte Theater Director
- C. Consider Approval of Resolution 2023-40 a Resolution Opposing Proposition HH, an Undue Limitation on Municipal Budgets & Local Control of Property Tax Relief; Paul Harris, Finance Director
- D. Consider Approval of an Expenditure and Budget Transfer Request; Paul Harris, Finance Director
- E. Consider Approval to Enter into a One Year Agreement with Ice Castles, LLC; Jeff Mosher, Special Projects Director

Posted Monday October 16, 2023 at Cripple Creek City Hall, the Cripple Creek Post Office  
and on the City of Cripple Creek Website [www.cityofcripplecreek.com](http://www.cityofcripplecreek.com)

- F. Consider Approval of Resolution 2023-41 Approving Modifications to Resolution 2023-30 for a CUP Granted to Construct a Parking Lot in the BB Mixed Use Zone District at Certain Real Property Described as Lots 21-40 Block 8 Fremont Addition to Cripple Creek, County of Teller, Colorado; Ken Hartsfield, Planning Director
- G. Consider Approval of Resolution 2023-42 Approving Modifications to Resolution 2023-31 for a Special Exception Granted to Construct a Parking Lot in the BB Mixed Use Zone District at Certain Real Property Described as Lots 14-20 Block 17 Fremont Addition to Cripple Creek, County of Teller, Colorado; Ken Hartsfield, Planning Director

## **ADJOURNMENT**



## **OCTOBER 4, 2023, Regular Meeting Minutes**

Mayor Trenary called the Regular meeting of the City Council to order at 5:30 PM and led with the Pledge of Allegiance. Deputy Clerk Turner called roll. Staff present for the meeting were: Frank Salvato, City Administrator; Paul Harris, Finance Director; Malissa Gish, City Clerk; Ken Hartsfield, Building Official; Joe O'Connor, Fire Chief; Carrie Turner, Deputy Clerk; and Erin Smith, City Attorney; Steve DiCamillo, Public Works Director; Bud Bright, Police Chief.

### **PUBLIC COMMENT:**

Rich Ingold introduces Stephanie Egan as the new Director of Community of Caring. Ingold says that Stephanie will be helping Ted Borden.

**Approve Meeting Minutes** from the September 20, 2023, Regular Meeting.

**Motion** by Councilman Litherland and seconded by Councilman Bowman to approve the meeting minutes from the September 20, 2023, Regular Meeting. **Motion** passed unanimously.

### **REPORTS**

Salvato has no report.

Harris has no report.

### **PRESENTATIONS, OATHS, PROCLAMATIONS:**

City Clerk Gish administers the Oath of Office to Melissa Trenary as Acting Mayor.

Sol Malick gives a legislative update. Prop HH could change how taxes are administered.

### **NEW BUSINESS**

**Election of Mayor Pro Tem Per Cripple Creek Municipal Code Section 2-2-30**

**Motion by** Councilman Bowman and seconded by Councilman Litherland to elect Councilman Brown to take the seat of Mayor Pro Tem Per Cripple Creek Municipal Code Section 2-2-30 .

**Motion** passed unanimously.

**Consider Approval of a Sublease Agreement for the Basement of the Green House to Community of Caring**

Harris says that Mr. Ingold gave some good information on why the Community of Caring wants to continue utilizing the space, the agreement is for a Sub Lease for 1 year with a 30 day cancelation provision since the house and property are for sale the sub lease is for \$1.00. The sub lease expires October 25, 2024, unless the property sells.

**Motion** by Councilman Litherland and seconded by Mayor Pro Tem Brown to Approve a Sublease Agreement for the Basement of the Green House to Community of Caring. **Motion** passed unanimously.

**Consider Approval of a Revocable License Agreement for the Construction of a Flagpole with William Martin Representing the Cripple Creek Baptist Church**

Hartsfield explains the nature of the application and the placement of the flagpole in the city right of way, it does not impact circulation. The existing deck and stairway are in the right of way with the previous approved revokable license agreement. This would be in addition to that.

**Motion** by Councilman Bowman and seconded by Councilman Litherland to approve a Revocable License Agreement for the Construction of a Flagpole with William Martin Representing the Cripple Creek Baptist Church. **Motion** passed unanimously.

FIRST READING to Consider Approval of Ordinance 2023-12 an Ordinance of the City Council for the City of Cripple Creek, Colorado Amending the Signage Standards Contained in Article 2 of the City of Cripple Creek Development Code

Hartsfield states this is a first reading and revision to the sign Ordinance portion of the Development Code. We are currently under a moratorium and have several applications on hold while this is being reviewed and adopted. During the May work session, it was discussed to:

- Limit electronic window signs to 1.5 sf max for business frontages under 50 feet and 2 sf max for business frontages over 50 feet, instead of 1 sf max for frontages under 40 feet and 1.5 sf max for frontages over 40 feet. Lots in the City are multiples of 25.
- Allow backlit signs for B and BB zones. This type of illumination was not previously addressed in the Development Code.
- Allow signs on railings, one per business, 8 sf max. This signage was not previously addressed in the Development Code.
- Allow sandwich board on sidewalk along building frontage only during business hours. This signage was not thoroughly addressed in the Development Code.
- Permit off-premises signs in vacant buildings, 12 sf max in the B and BB zones only, with black backdrop covering entire window up to 8 ft in height to obscure view inside building. This signage was not allowed currently.
- Electronic signs only to be allowed in C1 and C2 Zone. Previously this was allowed in the BB Zone, but after input from the Council this has been modified.
- Limit temporary attention-getting devices to 30 days per calendar year and no more than 10 consecutive days per display period. This was not previously addressed in the Development Code.
- Prohibit inflatable balloon characters or symbols and devices designed to dance, wave, or flail. This type of sign was not previously addressed in the development code.
- Change to Certificate of Appropriateness process: in the case of requests for multiple signs for a parcel of land with its own Teller County Assessor Database account number, a single application shall be allowed. The applicant shall submit a base fee, with an additional fee for each additional sign.
- Two definitions have been added:
  - Backlit: Lighting accomplished via placing individually cut reverse channel letters against a surface and lighting them with reverse projection, creating a halo effect that outlines the letters.

Window signs illuminated: A sign displayed in a window that emits light through electronic means or contains a lighted digital display.

**Motion** by Mayor Pro Tem Brown and seconded by Councilman Bowman to approve on FIRST READING to Approve Ordinance 2023-12, an Ordinance of the City Council for the City of Cripple Creek, Colorado Amending the Signage Standards Contained in Article 2 of the City of



Cripple Creek Development Code with the following changes to Section 10: Banners can be displayed from 10 days to 20 days. **Motion** passed unanimously.

With no other business to be had, Mayor Trenary adjourned the regular meeting at 6:04 PM.

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Malissa Gish, City Clerk

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Melissa Trenary, Mayor

UNOFFICIAL



TO: Mayor and City Council

FROM: Carol Stotts, H.R./Risk Management Director  
Paul Harris, Finance Director

AGENDA ITEM: Presentation and Recommendation of Healthcare, Retiree Healthcare and Ancillary Benefits Renewal

DATE: October 18, 2023

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**Request:**

Staff are requesting approval of benefit plan offerings.

**Overview/Analysis:**

The City of Cripple Creek's employee benefits are voted upon annually by City Council, with a January 1<sup>st</sup> effective date.

Our benefits open enrollment window will run November 1<sup>st</sup> to November 17<sup>th</sup>, with a January 1<sup>st</sup> effective date. For the 2024 plan year, we will conduct a passive open enrollment and not require employees to actively elect coverage for 2024. This will be less burdensome for our employees, only requiring those who want to make changes to their plan elections to complete paperwork.

On a positive note, Plan A PPO had the family deductible and family out of pocket maximum adjusted lower to two times the individual rate, down from three times.

**Budget Impact:**

Inflation, healthcare worker shortages, and post-pandemic increased utilization are causing the highest trend in 15 years. Prior to being accepted into Public Sector Healthcare Group (PSHCG), our group was classified in the small group market (under 100 lives). The Colorado small group market, which includes the vast majority of PSHCG participating entities, is forecasted to increase by 11% and higher based on plan design, network, and location.

United Healthcare's (UHC) renewal with PSHCG for 2024 is an average increase of 3.26%, with the lowest increase at 2.65% and the highest at 3.7%. The reason for a different percentage depending on the tier is to slowly realign family rates. For employee only coverage, this equates to a monthly increase of \$24.05 for Plan A and an increase of \$18.88 for Plan C.

Uncertainty around benefit costs continues to be a concern; however, our continued participation in PSHCG has allowed for much more competitive rates/smaller cost increases, plans which we can count on renewing, and a more sustainable option.

Paul has accounted for all of the changes/increases outlined below in the 2024 budget.

Staff is so excited to share a new program being offered by PSHCG for 2024 - post employment retiree health insurance. The new program goes into effect January 1<sup>st</sup>, 2024. PSHCG post-employment retiree health insurance program <sup>1</sup>allows employees to retire between the ages of 55-65 and continue their health insurance benefits. The city's retirement plan with Colorado Retirement Association (CRA) has age 55 as normal retirement age and is the earliest an employee can apply for their benefits. In order to participate in this new coverage, an eligible employee must be between the ages of 55-65 and be employed a minimum of 5 full-time years while also having participated in the healthcare plan for 5 years.

As it relates to the post-employment health insurance, in the below chart, the highest contribution would go to those who wait until age 60 to retire and have a minimum of 25 years of service. For example, those who worked the longest for the city and wait until age 60, would have 80% of coverage paid for by the city. The city currently pays 100% of an employee's healthcare coverage, after the \$10.50 per pay period contribution.

	Age Range	Years of Service	Paid Coverage Amount
Level 1	60-65	25+	80%
Level 2	60-65	20-24	70%
Level 3	60-65	15-19	60%
Level 4	55-59	25+	70%
Level 5	55-59	20-24	60%
Level 6	55-59	15-19	50%

The post-employment healthcare program is a significant positive boost to the city's goal of attracting and retaining the best employees possible. A plan of this nature will lead the government sector in Teller County. A cost analysis by age and tenure was performed for the upcoming three years and Finance Director Harris has been able to include the cost related to this program in the 2024 budget. Under the post-employment program, the retiree would be responsible for paying the health insurance surcharge, a percentage of the cost directly related to the program, and the cost of dependent coverage. The city would contribute at the same level and manner as it does towards dependent coverage.

An optional and additional exciting enhancement is the ability to establish a 115 plan. Retirement Healthcare Funding Plans (115 Trusts) are unique accounts, allowing both employee and employer to set aside pre-tax dollars for retirement health care expenses such as co-pays, deductibles, dental, vision, chiropractic, co-insurance and premiums. These accounts are owned by the retiree and have no maximum contribution limits and no restrictions on account balance. PSHCG has partnered with the National Public Pension Fund Association (NPPFA) to provide Retirement Healthcare Funding Plans to member agencies. Staff would like to further pursue this option so that employees can contribute to the account through a payroll deduction.

MetLife is our current carrier for Dental, Vision, Life and Disability plans. Rates are holding for 2024. The PSHCG executive committee expects to conduct a market analysis for 2025 for dental and vision.

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<sup>1</sup> Public Sector Healthcare's new program is titled early retiree health insurance. However, per the city's CRA plan, it is not early retirement since that plan defines normal retirement age as 55. It is truly a post-employment retiree healthcare.

The city currently offers a GAP plan product through American Fidelity; however, we were notified early July that the product would be removed from the market December 31, 2023. Staff members were alerted to this change at that time as well. When American Fidelity filed their plan with the Division of Insurance (DOI) many years ago, it was priced accurately based on medical plans and cost of care; however, American Fidelity did not adjust with the rising cost of healthcare services, so utilization was much higher than anticipated. When American Fidelity approached the State DOI to refile the plan, the State instead told them they had to sunset the product.

Other more traditional carriers in the market have shifted to more accident, critical illness and hospital indemnity based plans. True GAP options like we had through American Fidelity are less available in the market. While we were able to obtain alternative options, it comes with a cost increase of a minimum of 103% to 172% of the current plan, with less of a payable benefit. Staff do not feel this is a positive return on investment. While it is difficult to remove a product we've offered for so long, the city has been left with minimal options to replace this plan. Staff recommends not pursuing GAP through another carrier and shift emphasis to the additional benefits of retiree healthcare and increased family contributions.

While it is an employee paid benefit, the city continues to offer employees the opportunity to purchase similar products through AFLAC. Open enrollment with AFLAC coincides with our open enrollment and benefit deductions are withheld from an employee's paycheck.

Staff recommends that the employee contribution remain the same. Finance Director Harris and City Administrator Salvato were consulted earlier in 2023 regarding financial support in increasing city contributions to dependent coverage. Staff recommends the city contribution be increased from \$3500 to \$4000 per year. This gradual incline is allowing our organization to become more competitive with family contributions; an aspect we've been lagging in for some time.

**Action Requested:**

Staff recommend approving the renewal increase in UHC's Medical Plans A and C, implementing the early retiree program as outlined above, no change to dental, vision, life and disability and to no longer offer a GAP product. While the \$500 increase in city contributions and early retiree health insurance premiums are accounted in the working budget, the contribution rates cannot be formally approved until a vote on the 2024 budget document.

**Attachment:**

Attachment A: United Healthcare Plan A and Plan C PPO

## Attachment A

MEDICAL	United Healthcare Plan A PPO	United Healthcare Plan A PPO	United Healthcare Plan C PPO	United Healthcare Plan C PPO
KEY POINTS SUMMARY	2023	2024	2023	2024
Dr. Office Copay	\$25 copay	\$25 copay	No copay	No copay
Specialist Copay	\$50 copay	\$50 copay	\$50 copay	\$50 copay
Preventive Care	Plan pays 100%	Plan pays 100%	Plan pays 100%	Plan pays 100%
Associated Lab Work	Plan pays 100% after copay	Plan pays 100% after copay	Plan pays 100% after copay	Plan pays 100% after copay
Prescription Drug Copays	\$10 / \$30 / \$60 / 25% max \$500	\$10 / \$30 / \$60 / 25% max \$500	\$5 / \$40 / \$60 / 25% max \$500	\$5 / \$40 / \$60 / 25% max \$500
	tier 1 / tier 2 / tier 3/ specialty	tier 1 / tier 2 / tier 3/ specialty	tier 1 / tier 2 / tier 3	tier 1 / tier 2 / tier 3 / specialty
Individual Deductible	\$1,000 in-network	\$1,000 in-network	\$3,000 in-network	\$3,000 in-network
Family Deductible	Max 3 per family	\$2,000 in-network	Max 2 per family	\$6,000 in-network
Co-Insurance Percentage	Plan pays 80% in-network	Plan pays 80% in-network	Plan pays 80% in-network/50% out	Plan pays 80% in-network/50% out
<b>(applied after deductible)</b>				
Individual Out of Pocket Max	\$4,500 per individual	\$4,500 per individual	\$6,500 per individual	\$6,500 per individual
Family Out of Pocket Max	\$12,700 per family	\$9,000 per family	\$13,000 per family	\$13,000 per family
<b>(after which plan pays 100%)</b>	(INCLUDES DEDUCTIBLE AND COPAYS)	(INCLUDES DEDUCTIBLE AND COPAYS)	(INCLUDES DEDUCTIBLE AND COPAYS)	(INCLUDES DEDUCTIBLE AND COPAYS)
Inpatient Hospital	Plan pays 80% after deductible	Plan pays 80% after deductible	Plan pays 80% after deductible	Plan pays 80% after deductible
Outpatient Surgery	Plan pays 80% after deductible	Plan pays 80% after deductible	Plan pays 80% after deductible	Plan pays 80% after deductible
Emergency Room	\$400 copay, <b>\$25 urgent care</b>	\$400 copay, <b>\$25 urgent care</b>	ER 80% Ded, Urgent Care \$0 copay	ER 80% Ded, Urgent Care \$0 copay
MRI, CT, PET Scans	Plan pays 80% after deductible	Plan pays 80% after deductible	\$750 copay	\$750 copay
<b>4 TIER OPTIONS</b>				
Employee Only	<b>\$751.37</b>	<b>\$775.42</b>	<b>\$589.85</b>	<b>\$608.73</b>
Employee & Spouse	<b>\$1658.05</b>	<b>\$1716.08</b>	<b>\$1302.16</b>	<b>\$1347.73</b>
Employee & Child(ren)	<b>\$1353.38</b>	<b>\$1403.45</b>	<b>\$1062.55</b>	<b>\$1101.86</b>
Employee & Family	<b>\$2,332.19</b>	<b>\$2,393.99</b>	<b>\$1,831.15</b>	<b>\$1,879.68</b>



TO: Cripple Creek City Council

FROM: Zack Sztanyo, Butte Theater Manager

DATE: October 12, 2023

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**REQUEST:** Approval of Professional Services Agreement and Lease with Thin Air Theater Company for the Christmas Show at the Butte Theater

**OVERVIEW & ANALYSIS:**

After the City cancelled the contract with Funky Little Theater Company, due to the loss of their actors, and the diminishing timeline before the Christmas Show is set to open, it is my recommendation that the City uses Thin Air Theater Company for the 2023 Christmas Show at The Butte Theater.

Thin Air Theater Company has a proven track record of Christmas shows at The Butte Theater being successful and well received by patrons.

**BUDGET IMPACT:** The proposed budget for this show is \$3500 higher than what we budgeted for in the 2023 Budget. Due to the cancellation of the Funky Little Theater contract, there is enough to cover the \$3500 overage of this show.

**STAFF RECOMMENDATION AND COUNCIL ACTION REQUESTED:** Staff recommends approval of the professional services agreement and the lease agreement with Thin Air Theatre Company.

## **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, effective October 18, 2023, by and between the City of Cripple Creek, a Colorado municipality, 337 East Bennett Avenue, P.O. Box 430, Cripple Creek, Colorado 80813 (the "City") and the Thin Air Theatre Company, Inc., P.O. Box 493 Cripple Creek, Colorado 80813 ("TATC").

WHEREAS, the City requires professional services for the production of a play during the professional theater season; and

WHEREAS, TATC has held itself out to the City as having the requisite expertise and experience to perform the required services; and

WHEREAS, the City owns facilities in the City of Cripple Creek known as the Butte Theater, Star Building and Victorian Lady (the "Facilities"), the addresses of which are set forth in Exhibit A; and

WHEREAS, the Butte Theater (also referred to herein as the "Butte") is used for theatrical productions, the Star Building is used for rehearsals, office space, and other theater-related purposes, and the Victorian Lady for actor housing; and

WHEREAS, the 2023 professional theater season is mid-October through December 31, 2023 (the "Professional Season"); and

WHEREAS, TATC desires: (1) to use the Butte Theater for production of professional theatrical events (each a "Show" or collectively, the "Shows") during Professional Season; (2) to use the Star Building for rehearsals, office space, storage, and other theater-related purposes; and (3) to use the Victorian Lady for actor housing; during the term of this Agreement; and

WHEREAS, during the Professional Season, the City shall be primarily responsible for the operation and maintenance of the Butte Theater (including front-house functions, such as managing the box office). TATC shall be primarily responsible for the production of the professional shows (including back-of-house functions, such as the back-stage areas); and

WHEREAS, The Friends of the Butte, through a separate agreement with the City will have the exclusive right to sell concessions and alcohol during the term of this Agreement; and

WHEREAS, the Parties share a mutual mission of maintaining and building on the Butte's reputation as a regional theater and TATC agrees to produce a professional theatrical production that present the Butte Theater and the City in the best light while maintaining each entity's separate identity (i.e. the Butte Theater as a separate entity from TATC); and

WHEREAS, the City desires to allow TATC to use the Facilities, subject to the terms of this Agreement.

NOW THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

## **I. SCOPE OF SERVICES**

A. TATC shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Work in **Exhibit A**, attached hereto and incorporated herein by this reference (the “Services”).

B. A change in the Scope of Services shall constitute a material change or amendment of services or work which is different from or additional to the Scope of Services. No such change, including any additional compensation, shall be effective or paid unless authorized by written amendment executed by the City. If TATC proceeds without such written authorization, then Consultant shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, *quantum meruit* or implied contract.

## **II. COMPENSATION**

A. In consideration for TATC performing the Services, the City shall pay TATC an amount not to exceed \$53,500.00 (excluding the \$5,000 performance bonus) in accordance with performance of the Payment Schedule milestones in **Exhibit B**, attached hereto and incorporated herein by this reference. The maximum amount specified herein shall include all fees and expenses incurred by TATC in performing the Services.

## **III. FACILITY USE**

A. Butte Theater. The City shall retain the right to use the Butte Theater and to authorize third parties, including other production companies, to use the Butte Theater during the Professional Season; provided such uses do not unreasonably interfere with TATC’s use of the Butte Theater, which TATC may determine in its sole judgment. TATC may use the Butte Theater for Shows and rehearsals during Professional Season. For the purpose of this agreement the City shall retain all rights and responsibilities not specifically mentioned elsewhere in this agreement, for all public areas including box office, lobby and house seating areas even during the Professional Season.

B. Star Building. TATC shall have exclusive use of the Star Building for rehearsal space, production and design offices, set construction, and storage of City-owned sets, props and costumes during the term of this Agreement, except that the City reserves the right to an office space for the exclusive use of the Butte Theater Manager. The City may terminate TATC’s right to use the Star Building upon thirty (30) days written notice at the City’s will. If the Star Building is not available to TATC for any reason, including the sale of the Star Building, the City shall use reasonable efforts to provide TATC with comparable space. The City reserves the right to condition the use of the Star Building (or replacement facility) upon the execution of a separate agreement, including but not limited to a lease or license agreement. The City will ensure all facilities are cleaned and organized by November 1, 2023. TATC will restore facilities to the



same condition by December 31, 2023

C. Victorian Lady. TATC shall have exclusive use of the Victorian Lady for actor housing from November 01, 2023 through January 04, 2024 for actor housing. The City reserves the right to condition the use of the Victorian Lady upon the execution of a separate agreement, including but not limited to a lease or license agreement. TATC shall pay a refundable cleaning and damage deposit of \$1000.00 prior to TATC occupying the Victorian Lady. TATC and a representative of the City shall perform a full photographic walk-through both prior to TATC occupation and following TATC vacating of the premises. Cleanliness of facility upon TATC vacating premises will be equal to that of the cleanliness of the facility upon TATC occupying of the facility. Damages will be assessed by the City representative using comparative photographs from the two photographic walk-throughs. For the purposes of this agreement “damages” excludes normal wear and tear. The City representative will present an invoice for any necessary cleaning and/or damages to TATC within 10 days of TATC vacating of premises; TATC will have the option of cleaning and/or repairing damages so that the facility is in as good or better condition than when they occupied premises or forfeiting the aforementioned deposit.

D. Tangible Personal Property. All tangible personal property provided by the City with the Facilities and those created in the course of the Shows (such as sets, props, and costumes) shall be the property of the City.

E. Marijuana and Tobacco Prohibited. There shall be no consumption or use of marijuana or any other tobacco products inside or outside in the yards of any of the Facilities.

F. Services. In addition to the TATC’s duties and obligations described in paragraphs A through E of this Article III, and A through D of Article V, TATC shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from **Exhibit A.**

#### **IV. CITY OBLIGATIONS**

A. Butte Theater.

1. *Equipment and Services.* The City shall provide the following at the Butte Theater, and keep equipment listed below in good working order:

- a. Stage equipment, including lighting equipment (such as board, dimmers, lamps, instruments and cables), sound equipment (such as board, speakers, microphones, and cables) Clavinova, curtains and rigging.
- b. A properly equipped scenic & costume shop with all the standard tools and equipment including but not limited to table saw, radial arm saw, drill press, router & standard bits, cordless drills, impact drivers, hammers, screw drivers, ratchet driver socket set, pliers, wrenches, stock scenery, etc and in the costume shop professional quality sewing machines, surger,

thread, needle, scissors, fabric, accessories, costume stock, etc.

- c. Standard stage supplies that are not specific to the Professional Season, such as gaffer's tape, standard color gels (cool and warm colors), and replacement lamps for theatrical lighting.
2. *Box Office Operations.* The City shall operate the box office for the Butte Theater, which shall include the following:
  - a. Managing all ticket sales and reservations, including an online ticketing system.
  - b. Operating reservation phone lines (currently operated out of the Heritage Center).
3. *Accounting.* The City shall account for all revenues and expenses related to the Professional Season.
4. *Marketing.* The City shall provide all marketing for shows during the professional season in collaboration with TATC. The City will generate and pay for all marketing materials for the shows. The City shall provide reasonable marketing and promotion of the Professional Season, by advertising in local and regional press and media, as well as including information relating to the shows in the general marketing plan for events in Cripple Creek. By way of example only, the City may market and promote the Shows as follows:
  - a. Inclusion of shows on posters and marketing materials promoting events and activities in Cripple Creek.
  - b. Promoting the Shows via photo-boards provided by TATC at the Heritage Center, the Welcome Center, and City Hall.
  - c. Using production photos provided by TATC on City brochures, mailers, posters, and other promotional material.
  - d. Listing the shows as a tourist attraction in City marketing material, including online media.
  - e. Provide show information and links to online ticketing on City owned websites.

B. Cancellation of Shows-Liquidated Damages. If, after one or more tickets have been sold for a Show, the City of Cripple Creek cancels such Show for any reason other than an Act of God or emergency order issued by Teller County Public Health Department, the City understands and agrees that as a result of such cancellation TATC will suffer substantial losses and damages, including the loss of portion of the producer fees based on KPI, potential loss of

other revenue incidental to such cancellation, reduced public confidence, adverse public relations and damage to Thin Air Theatre Company's reputation. In the event of any such cancellation by the City, for any reason other than an Act of God or emergency order issued by Teller County Public Health Department, the City agrees to pay TATC fees itemized in sections V.I-J as liquidated damages using the total number of performances performed at the time of City cancellation instead of the preplanned number of performances (28) to calculate AVG Attendance.

C. All Facilities.

1. *Utilities.* The City shall provide and pay for existing sewer, water, and electricity serving the Facilities.
2. *Care and Maintenance.* TATC acknowledges that the Facilities are in good order and repair, inclusive of Section VI.A of this Agreement. The City shall, at its own expense and at all times, maintain the Facilities in good and safe condition, including plate glass, electrical wiring, stairs & walkways, plumbing and heating installations and any other system or equipment upon the premises; provided that TATC shall be responsible for any damages directly attributable to TATC, or their employees, agents, or contractors.
3. *Housing.* The City shall provide housing for all TATC actors, staff & crew working on the production. Housing shall include single occupancy living quarters, fully functional kitchen, laundry facilities and be fully furnished including but not limited to linens, pillows, towels, cookware, plates, cutlery, etc. (in clean and good condition).

V. TATC OBLIGATIONS

A. Shows.

1. *Genres.* TATC shall produce at least One (1) Show during Professional Season at the Butte Theater. TATC hereby agrees and acknowledges that the City representative will be included, involved and shall have input into show selection and show scheduling. The City shall retain the right to make final decision on public rating of all shows.
2. The Shows shall be one of the following:
  - a. A Christmas show;
3. *Casting and Staffing.* TATC shall be responsible for recruiting and casting all performers, crew and staff necessary to produce the Show. Local talent will

also be given the opportunity to audition for and be considered for all Shows being produced during Professional Season. TATC is responsible for the actions of said cast, crew and staff (both professional and community volunteers) who are therefore answerable solely to TATC. It will be the sole responsibility of TATC to take appropriate and/or corrective action to ensure the professional quality and artistic integrity is maintained. TATC shall have final artistic and creative decision on all Community Shows, in which TATC cast, crew and staff are involved or participating.

4. *Community Participation.* TATC will cast community actors in the Professional Season to perform and give the local talent the opportunity to grow by working with the other actors, directors and other professional staff. During the Professional Season, TATC shall continue its pro-community policies and practices of having TATC staff work with community arts organizations, and schools, and by encouraging direct community involvement with the Professional Season.

B. Back-of-House Maintenance. TATC shall maintain the following areas during Professional Season:

1. Stage (including apron);
2. Backstage and wings;
3. Green Room;
4. Dressing Rooms; and
5. Stairs from Green Room to Stage.
6. TATC actors who work in concessions shall be responsible for cleaning the auditorium after each performance with assistance from Box Office Staff during two-show days.

C. No Concessions. TATC shall have no right to sell concessions or alcohol.

D. Marketing. TATC shall maintain its identity separate from The Butte Theater in the public eye. Accordingly, provided the billing does not conflict with or violate contractual stipulations included in royalty rights contracts, all marketing materials subsidized by the City of Cripple Creek shall read as follows:

The City of Cripple Creek's Butte Theater  
presents a  
Thin Air Theatre Company production...  
"Angel of the Christmas Mine"

a. TATC will create the artwork for marketing materials for the show to include, show posters, rack cards, programs, print ads, etc.; and provide the artwork to the Theater Manager to be used for the generation of materials for the marketing of the shows with local businesses and media contacts.

E. Production Meetings. The City representative and the TATC representatives will hold weekly production meetings, not to exceed 2 hours, in which all areas of the production will be discussed i.e. to discuss marketing strategies to collaborate on; or should need arise to trim, cut, or change elements of the show that are not maintaining the professional level of theater that TATC is being paid for; or should building or equipment elements of the Theater need to be fixed or updated.

F. Producer On-Sight. TATC is required to have a producer on-site for all performances. This producer must have the necessary background and skills relating to theater production to maintain the quality of the productions;

G. Financials. TATC shall provide, 30 days after the end of the show run a budget for the show, including but not limited to, salaries (broken down by individuals), materials, and projected expenses (the “Show Specific Budget”).

H. Marketing. City has final say on all marketing material and must approve of all proofs before printing.

I. Producer Fees. Both parties acknowledge and agree that \$10,000 of the \$53,500 fee described in Article II, Section A, is to be designated as “Producer Fee” to cover management salaries payable to producers of TATC. The City and TATC agrees that the Producer Fee will be paid in two (2) ways. First will be a flat fee of \$5000, payable at the signing of this contract. The remaining up to \$5000 will be paid at the end of the show in the amount shown in the table of Key Performance Indicators (KPIs) below. If the average attendance in the aggregate, meaning across the entire run of the show is less than 10% or the minimum average seats full is less than 18 the Producer Fee is \$0.00.

### **Key Performance Indicators (KPI) for 2023 Christmas Show**

*\*Successful KPI for TATC for 2023 is 40% AVG attendance of 184 seats, or an average of 74 tickets per show for the run of the Christmas show. For purposes of KPI all ticket types shall be used to calculate average attendance per show.*

AVG. Attendance	AVG Tickets/show	Producer Fee	%	Avg. Seats
40%	74	\$5000	40	73.6
30%-40%	55	\$4000	30	55.2
20%-30%	37	\$3000	20	36.8

10%-20%	18	\$2000	10	18.4
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J. Compensation for 75% Average Attendance. Should the TATC achieve a 75% or better average attendance per production, meaning across the entire show production, the City shall pay \$5,000 in addition to the \$10,000 Producer Fee.

K. Cancellation of Shows-Liquidated Damages. If, after one or more tickets have been sold for a Show, TATC cancels such Show for any reason other than an Act of God or emergency order issued by Teller County Public Health Department, TATC understands and agrees that as a result of such cancellation the City and the Butte Theater will suffer substantial losses and damages, including the loss of ticket sale revenue, loss of other revenue incidental to such cancellation, reduced public confidence, adverse public relations and damage to the City's and the Butte Theater's reputations. TATC agrees to pay the City as liquidated damages for any such cancellation \$2,200.00.

L. Marketing. TATC is responsible for posterizing and handing out rackcards and posters to local businesses in the Teller County and Colorado Springs area.

## VI. TERM

This Agreement shall be effective as of October 18, 2023, and shall terminate on December 31<sup>st</sup>, 2023; provided that the Parties may mutually agree in writing to subsequent annual renewals. Either party may terminate this Agreement only after giving 60 days written notice to the other party.

## VII. INTELLECTUAL PROPERTY RIGHTS

A. The City shall gain no intellectual property rights relating to the Shows by way of this Agreement.

B. TATC shall obtain all necessary rights and licenses to produce and perform the shows in accordance with this Agreement. As such, TATC shall have full discretion and final decision (after producer consults with City representative and giving full consideration to their input, feedback and suggestions) with respect to creative and artistic decisions concerning show production (including but not limited to casting, staffing, lighting, costuming, photography, music, staging, content and artwork [including promotional art]).

C. TATC shall not infringe any copyright, trademark or service mark right, trade dress right, artistic and moral rights, mask right, trade secret right, character right, right of publicity, privacy right, or any other proprietary right of any person or organization. TATC shall obtain all necessary rights and permissions to perform the Shows. The City has no obligation to obtain any rights or permissions for the Shows, and TATC assumes sole responsibility for

obtaining the required rights or permissions.

### **VIII. ALTERATIONS OR IMPROVEMENTS**

A. The Facilities shall be delivered "as is" with no warranties made relating to the condition of the Facilities. TATC shall not, without first obtaining the written consent of City, which the City may withhold in its sole discretion, make any alterations, additions, or improvements, in, to or about the Facilities.

B. TATC shall not suffer nor permit any mechanic's liens or public works claims to be filed against the Facilities by reason of work, labor, service or materials supplied or claimed to have been supplied to TATC as a result of an agreement with, or the assent of TATC. Nothing in this Agreement shall be construed as constituting the consent or request of City, expressed or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration, or repair of or to the Facilities or any part thereof. Nothing in this Agreement shall be construed as giving TATC any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanic's liens or public works claims against City's interest in the Facilities. If any such mechanic's lien or public works claims shall at any time be filed against the Facilities, TATC shall cause the same to be discharged of record within thirty (30) days after the date TATC has knowledge of such filing. If TATC shall fail to discharge such mechanic's lien or public works claims within such period, then, in addition to any other right or remedy of the City, the City may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien.

### **IX. NO JOINT VENTURE**

No joint venture is created by this Agreement. Neither party is an employee or agent of the other. Each Party shall be an independent entity. All personnel (cast, crew, staff & administrative) hired or assigned by TATC to perform work under the terms of this Agreement shall be, and remain at all times, employees, agents, or volunteers of TATC for all purposes. All personnel assigned by the City to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of the City for all purposes. Neither Party shall represent that it is an employee of the other, nor that it is a manager or supervisor of the employees of the other, or that any joint venture exists for any purposes.

### **X. INSURANCE**

A. TATC shall procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by TATC under this Agreement, including the following, at a minimum:

1. Worker's compensation insurance as required by law.
2. Commercial general liability insurance with minimum combined single limits of one million dollars (\$1,000,000) each occurrence and general aggregate

naming the City and the City's officers, employees, and consultants as additional insureds. The policy shall be with a carrier and in a form acceptable to the City at the City's sole discretion; and

B. Any insurance carried by the City, its officers, or its employees or contractors is excess and not contributory insurance to that provided by TATC. TATC shall be solely responsible for any deductible losses pertaining to staged productions. The City shall be solely responsible for any deductible losses pertaining to facilities, specifically the front-of-house, auditorium, restroom and lobby areas.

B. TATC shall provide to the City a certificate of insurance as evidence that required policies are in full force and effect.

## **XI. INDEMNIFICATION**

TATC agrees to indemnify and hold harmless the City and its officers, insurers, volunteers, representatives, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of TATC, any subcontractor of TATC, or any officer, employee, representative, volunteer, or agent of TATC, or which arise out of any worker's compensation claim of any employee of TATC or of any employee of any subcontractor of TATC.

## **XII. LIMITATION OF LIABILITY**

EXCEPT AS AGREED TO HEREIN, IN NO EVENT SHALL THE CITY, UNDER ANY CIRCUMSTANCES, BE LIABLE OR OBLIGATED IN ANY MANNER FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF THE CITY IS INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING. THIS LIMITATION IS SEPARATE AND INDEPENDENT OF ANY OTHER REMEDY LIMITATIONS AND SHALL NOT FAIL IF SUCH OTHER LIMITATIONS ON REMEDY FAILS. THIN AIR THEATRE COMPANY'S SOLE REMEDY IN THE EVENT OF A DEFAULT BY THE CITY SHALL BE TERMINATION OF THIS AGREEMENT.

## **XIII. MISCELLANEOUS**

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Teller County, Colorado.



B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the City shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. Integration. This Agreement and any attached exhibits constitute the entire Agreement between TATC and the City, superseding all prior oral or written communications.

C. Third Parties. There are no intended third-party beneficiaries to this Agreement.

E. Notice. Any notice under this Agreement shall be in writing and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the party at the address set forth on the first page of this Agreement.

F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. Modification. This Agreement may only be modified upon written agreement of the Parties.

H. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties hereto, shall be assigned by either party without the written consent of the other.

I. Governmental Immunity. The City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended, or otherwise available to the City and its officers or employees.

J. Rights and Remedies. The rights and remedies of the City under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the City's legal or equitable remedies, or the period in which such remedies may be asserted.

K. Subject to Annual Appropriations. Consistent with Article X, § 20 of the Colorado Constitution, financial obligations of the City, if any, not performed during the current fiscal year are subject to annual appropriation, and thus any obligations of the City hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement or liability beyond the current fiscal year.

[Signature Pages Follow]

# CITY OF CRIPPLE CREEK, COLORADO

10/17/23

## **EXHIBIT A SCOPE OF WORK**

Facilities Addresses: Butte Theater: 139 E Bennett Avenue, Cripple Creek, CO 80813

Star Building: 143 E Bennett Avenue, Cripple Creek, CO 80813

Victorian Lady: 127 W Carr Avenue, Cripple Creek, CO 80813

### **Shows:**

Beginning on October 18, 2023, Thin Air Theatre Company will provide The Butte Theater the following product(s) (collectively, the "Products") or service(s) (collectively, the "Services"):

- Christmas Show: 28 Performances.

### **Responsibilities:**

Thin Air Theatre Company will:

- Secure rights and permissions for each show.
- Contract Directors, Actors, Choreographers & Musical Directors for each Show.
- Hire and Contract Technical Specialists (i.e. Lighting, Sound, Set Design, Master Carpenter, Costumer, etc.)
- Hire and Contract Crew (i.e. Stage Manager, Production Assistant, Assistant Stage Manager, etc.)
- Design and Construct Set
- Sound Design for each Show
- Lighting Design for each Show
- Create or Source Costumes for each Show
- Create or Source Props for each Show
- Perform 28 Performances for the Christmas Show
- Assisting the Butte Theater in Marketing (Social Media, Postering, Sparking, etc.)

### **Project Schedule:**

Thin Air Theatre Company and The Butte Theater will engage in the project according to the following timeline:

<b>Milestone</b>	<b>Due Date</b>	<b>Responsible Party</b>
Set 2023 Christmas Show Schedule	October 20, 2023	City & TATC
Content for Local Audition	October 23, 2023	TATC
Locals Audition Print Ad (PP Courier, Jackpot)	October 25, 2023	City
Artwork for Posters, Rack Cards, Print Ads and Social Media	October 27, 2023	TATC

Hire/Contract Artistic & Designer Staff	October 31, 2023	TATC
Hire/Contract Cast & Crew	November 3, 2023	TATC
1 <sup>st</sup> – Run Jackpot Print Ad	November 1, 2023	City
Program Content	November 10, 2023	City & TATC
2 <sup>nd</sup> – Run Jackpot Print Ad	November 15, 2023	City
Start PP Courier weekly ad run through December	November 20, 2023	City
Opening Special Jackpot Print Ad	November 22, 2023	City
3 <sup>rd</sup> – Run Jackpot Print Ad	December 5, 2023	City

### **Period of Performance:**

The Services shall commence on October 18, 2023 and shall continue until the completion of services.

### **Acceptance Criteria:**

The products or services provided by Thin Air Theatre Company will be considered complete by The Butte Theater as long as the following conditions or criteria are met:

- Average attendance of 40% (74 Seats per Performance) to receive 100% of Producers Fees;
- All scheduled performances executed; and
- Adhering to the Show Specific Budget for that Show.

**EXHIBIT B**  
**PAYMENT SCHEDULE**

Payment shall be made to the Contractor in the total amount of \$53,500.00 according to the following schedule and provided that the KPI criteria in Section V.I. of this Agreement and the Acceptance Criteria provided in **Exhibit A** are met:

<u><b>Date/Event/Milestone</b></u>	<u><b>Payment Amount</b></u>
10/18/2023: Payment for Christmas Show	\$43,500.00
10/18/2023: Producer Flat Rate Fee	\$5,000.00
12/31/2023: KPI Producer Fee for Christmas Show	up to \$5,000.00
12/31/ 2023: Bonus Producer Fee if attendance is 75% or higher	\$5,000.00

## **RESOLUTION NUMBER 2023-40**

### **RESOLUTION OF THE CITY OF CRIPPLE CREEK OPPOSING PROPOSITION HH, AN UNDUE LIMITATION ON MUNICIPAL BUDGETS AND LOCAL CONTROL OF PROPERTY TAX RELIEF**

WHEREAS, the City of Cripple Creek is aware of the financial burden that increased property tax valuations may create and desires to provide locally-appropriate relief without negatively impacting its ability to provide needed services and programs;

WHEREAS, the City of Cripple Creek relies on property tax revenue to help fund Police, Dispatch, Fire, and Streets;

WHEREAS, the City of Cripple Creek annually prepares a budget and certifies a property tax mill levy through an open and public process under existing law;

WHEREAS, by Senate Bill 23-303, the Colorado General Assembly referred to voters Proposition “HH” that, among other things, would:

- lower property taxes compared to what would be owed under current law by temporarily lowering the assessment rates for residential and certain types of nonresidential property, applying value reductions for certain types of residential properties, and by creating new property tax exemptions;
- impose an unnecessary and arbitrary limit on the growth of property tax revenue for certain local governments (excluding school districts and home rule local governments) unless the governing body votes to exceed the limit after a public hearing and does not provide any opportunity for reimbursement of revenues lost due to the limit;
- permit the state to retain money that would be otherwise refunded to taxpayers under the Taxpayer’s Bill of Rights to be used for education, partial reimbursements to local governments for reduced property tax revenue, and rental assistance programs;

WHEREAS, after factoring in partial reimbursements of lost revenue, Proposition HH is estimated to decrease revenue to local governments statewide, on net, by at least \$100 million in 2024, \$350 million in 2025, and \$550 million in 2026, and is estimated to reduce the property tax revenue of the City of Cripple Creek by \$31,710;

WHEREAS, Proposition HH would unnecessarily constrain the ability of the City Council to control its budget and to provide locally-appropriate property tax relief;

WHEREAS, the long-term fiscal impact of Proposition HH on the City of Cripple Creek and other local governments that serve our community is unclear and will cause uncertainty in our budgeting process;

WHEREAS, the complexity of Proposition HH will impose unnecessary administrative burdens on the City of Cripple Creek;

**NOW, THEREFORE,** the City Council of the City of Cripple Creek opposes Proposition HH and strongly urges a vote of NO this November.

ADOPTED at Cripple Creek, Colorado, this 18<sup>th</sup> day of October, 2023.

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MELISSA TRENARY

Acting Mayor

ATTEST:

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Malissa Gish

City Clerk

APPROVED AS TO FORM:

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Erin M. Smith

City Attorney



TO: **City Council**  
**Frank Salvato, City Administrator**

FROM: **Paul Harris, Finance Director**

AGENDA ITEM: **Expenditure and Budget Transfer Request**

DATE: **10/10/2023**      **MEMO 2023-5**

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**REQUEST:**

The Street Department will not use the \$275K budgeted in 2023 for the purchase of a dump/plow truck. The department would like to use \$154,063.31 to purchase a new CATERPILLER Backhoe in 2023 and \$63,425 for a road condition survey, which will be completed this year. The two expenditures total \$217,448.31, leaving \$57,511.69 of the original \$275K unused. The dump/plow truck has been ordered, but will not be delivered until 2025.

**OVERVIEW & ANALYSIS:**

- See the attached documents which detail the CAT backhoe specifications and details of what will be completed by the engineering firm, Bohannon Huston, Inc. for the road condition survey. The road condition survey will allow the city to prioritize its paving expenditures for the coming years.

**BUDGET IMPACT:**

- Two new line items (Caterpillar Purchase and Street Condition Survey) will be established and budget dollars transferred from 01-45-6990.022 (Dump/Plow Truck).

**STAFF RECOMMENDATION AND COUNCIL ACTION REQUESTED:**

- Staff recommends, and asks the Council for, the approval of the two expenditures and budget transfers.





Quote 262464-01

Sep 27, 2023

CITY OF CRIPPLE CREEK  
PO BOX 430  
CRIPPLE CREEK, Colorado 80813

Attention: STEVE DICAMILLO

Dear Steve,

We would like to thank you for your interest in our company and our products and are pleased to quote the following for your consideration.

Caterpillar Model: 420 Backhoe Loader - LATE DECEMBER 2023 DELIVERY

**STOCK NUMBER: 508821      SERIAL NUMBER: TBD      YEAR: 2024      HOURS: 5**

We appreciate the opportunity to extend this quote. Pricing is subject to change based on manufacturer changes to cost and availability. If there are any questions, please do not hesitate to contact me.

Regards,

Kevin Dreher  
Sales Representative  
Wagner Equipment Co.  
(719) 313-8161

**Caterpillar Model: 420 Backhoe Loader - LATE DECEMBER 2023 DELIVERY****STANDARD EQUIPMENT**

**BOOMS, STICKS, AND LINKAGES** - BACKHOE - - 14'4" Centre pivot backhoe - 4.3 Meters -

**ELECTRICAL** - - External Power Receptacle (12v) - - Diagnostic ports for engine and - machine Electronic Control Modules -

**OPERATOR ENVIRONMENT** - - Interior rearview mirror - - ROPS canopy, Rear Fenders - - 2-inch (50mm) retractable seat belt - - Tilt steering column - - Steering knob - - Hand and foot throttle - - Automatic Engine Speed Control - - One Touch Low Idle - - Floor mat and Coat Strap - - Lockable storage area - - Air suspension seat -

**FLUIDS** - - Antifreeze - Extended Life Coolant - -20F (-30C)

**OTHER STANDARD EQUIPMENT** - - Standard Storage Box - - Transport tie-down points - - Ground line fill fuel tank with - 42.3-gal (160L) capacity & 5 gal (19L) - diesel exhaust fluid - - Rubber impact strips on radiator - guard - - CD-ROM Parts Manual - - Safety Manual - - Operations and Maintenance Manual - - Lockable hood - - Tire Valve Stem Protection

**BOOMS, STICKS, AND LINKAGES** - - Boom and swing transport locks - - Pilot operated backhoe and - electro hydraulic stabilizer controls - - Street type stabilizer shoes - - Anti-drift hydraulics (boom, stick, - and E-stick) - - Cat Cushion Swing(tm) system -  
**LOADER** - - Single Tilt Loader - - Lift cylinder brace - - Self-leveling loader with single - lever control - - Return-to-dig - (automatic bucket positioner) - - Transmission neutralizer switch - - Bucket level indicator

**POWERTRAIN** - - Water separator - - Thermal starting aid system - - Dry type axial seal air cleaner with - integral precleaner - - Automatic dust ejection system - - Filter condition indicator - - Hydraulically boosted multi-plate - wet disk brake with dual pedals & - interlock - - Differential lock - - Torque converter - - Transmission-four speed manual shift - - Neutral safety switch - - Spin-on filters for - Fuel - Engine oil - Transmission oil - - Outboard Planetary Rear Axles - - Diesel particulate filter - - Hydrostatic power steering

**HYDRAULICS** - - Pilot hoe and mechanical loader - controls - - Load sensing, variable flow system - with 43 gpm (162 L/min) axial piston - pump - - 6-micron hydraulic filter - - Caterpillar XT-3 hose - - Hydraulic oil cooler - - Pilot control shutoff switch - - Flow-sharing hydraulic valves - - Hydraulic suction strainer -

**ELECTRICAL** - - 12-volt electrical start - - Horn, front and rear - - Backup alarm - - Hazard flashers/turn signals - - Halogen head lights (2) - - Halogen rear flood lights (2) - - Stop and taillights - - Audible system fault alarm - - Key start/stop system - - 850 CCA maintenance free battery - - Battery disconnect switch -

**MACHINE SPECIFICATIONS**

420 07A BACKHOE LOADER CFG2  
CAB, DELUXE  
HYDRAULICS, MP, 6FCN/8BNK, ST  
PT, 4WD/2WS, POWERSHIFT  
STICK, EXTENDABLE, 14FT  
DISPLAY, TOUCH SCREEN  
WORKLIGHTS (8) LED LAMPS  
SEAT, DELUXE FABRIC  
AIR CONDITIONER, T4F  
PRODUCT LINK, CELLULAR, PLE643  
COUNTERWEIGHT, 1015 LBS  
RIDE CONTROL  
LINES, COMBINED AUX, E-STICK  
STANDARD RADIO (12V)  
COLD WEATHER PACKAGE, 120V  
AUTO-UP STABILIZERS  
PLATE GROUP - BOOM WEAR  
GUARD, STABILIZER  
ENGINE, 74.5KW, C3.6 DITA, T4F  
BELT, SEAT, 2" SUSPENSION  
TIRES, 12.5 80/19.5L-24, GY  
STABILIZER PADS, FLIP-OVER  
BUCKET-GP, 1.3 YD3, PO  
LOADER BUCKET PINS  
CUTTING EDGE, TWO PIECE  
BUCKET-ROCK, HD, 24", 7.0 FT3  
COUPLER, PG, MAN.D. LOCK, BHL  
THUMB, HYDRAULIC, NO TINE, BHL  
THUMB, TINE, A 4  
BEACON, MAGNETIC MOUNT, STROBE  
COMMUNICATION ADAPTER - 538-5051  
1 YEAR CAT ET SUBSCRIPTION  
INSTALL CAT THUMB

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SELL PRICE	\$154,063.31
<b>SUBTOTAL</b>	<b>\$154,063.31</b>
<b>TOTAL</b>	<b>\$154,063.31</b>

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**WARRANTY & COVERAGE**

Standard Warranty:	12 Months Unlimited Hours, Parts and Labor (Travel Time included for the first 6 months)
Extended Coverage:	420-72 MO/5500 HR POWERTRAIN + HYDRAULICS + TECH

**F.O.B/TERMS:**  
CRIPPLE CREEK, CO

**PAYMENT TERMS**

**Cash Invoice Terms**

CASH WITH ORDER

\$0.00



## SERVICE REQUEST

NO. \_\_\_\_\_

CONSULTANT: Bohannon Huston, Inc. (BHI)

PROJECT: City of Cripple Creek Pavement Inventory

IBIS SERVICE REQUEST dated; September 28, 2023, is an addendum to the Professional Services Agreement {"AGREEMENT"} for On-Call Engineering Services dated August 22, 2023, between the City of Cripple Creek ("CITY") and Bohannon Huston, Inc. (BHI) ("CONSULTANT").

WHEREAS, upon execution, this Service Request shall be considered a part of the AGREEMENT.  
and WHEREAS, this Service Request establishes the Scope of Work and compensation amounts for specific engineering and surveying services and authorizes CONSULTANT to proceed with the project.  
NOW, THEREFORE, the parties mutually agree as follows: See Attached Scope of Work

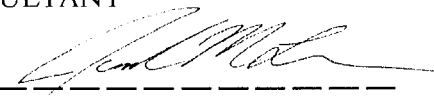
CITY agrees to compensate CONSULTANT for the required services in accordance with the terms of payment stipulated in the AGREEMENT and this Service Request. An itemized list of tasks and a detailed cost for the completion of the required services is attached hereto as Exhibit A to this Service Request No. 001. The cost for completion of the items of services shall not exceed Sixty-three thousand four hundred and twenty-five and no/100ths Dollars (\$ 63,425.00).

All services associated with this Service Request shall conform to the requirements of the AGREEMENT and this Service Request. The Service Request shall be completed to the satisfaction of CITY within 120 days of the Notice to Proceed.

Except as herein modified, all terms and conditions in the AGREEMENT remain unchanged and are in full force and effect.

CITY OF CRIPPLE CREEK, a municipal corporation      CONSULTANT

By: \_\_\_\_\_  
Steve DiCamillo  
Public Works Director

By:  \_\_\_\_\_  
Jared M Lee, P.E., LEED AP  
Sr. Vice President / Senior Project Manager

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

Date: September 28, 2023

September 28, 2023

Steve DiCamillo  
City of Cripple Creek  
Public Works Director  
207 County Road 89/PO Box 430  
Cripple Creek, Co 80813

Re: The City of Cripple Creek Pavement Inventory

Dear Mr. DiCamillo,

Per your request, Bohannon Huston, Inc. (BHI) has prepared the following scope and fee for the referenced project. The project includes the identification of asphalt roadway sections within City limits including site investigation of existing pavement to identify existing conditions and document distresses. Field data collected by BHI will be analyzed to generate a pavement condition index (PCI) for each roadway section. This data will then be compiled in an easily accessible spreadsheet, which will be translated into a stand-alone GIS data package for later use by the City as they determine to be necessary.

### **Task 1: Project Management and Administration:**

BHI will manage the work associated with the project and coordinate with the City to identify and integrate existing data. BHI will prepare a project schedule, conduct an onsite kick-off meeting with the City, and prepare meeting agendas and minutes for progress meetings as necessary as determined by the City. The project management task will also include coordination of site visits, travel arrangements, and other pertinent project communications.

### **Assumptions:**

- 1) The project duration is anticipated to be four months, with monthly virtual progress meetings as needed.

### **Deliverables:**

- 2) Project schedule, Meeting Minutes, and Monthly Invoices

### **Task 2: Pavement Assessment Data Collection**

BHI will identify and formalize roadway segments as agreed upon by the City. It is anticipated that the City possesses approximately 17 linear miles of existing paved roadways with 210 unique segments as identified by blue linework in the exhibit below.

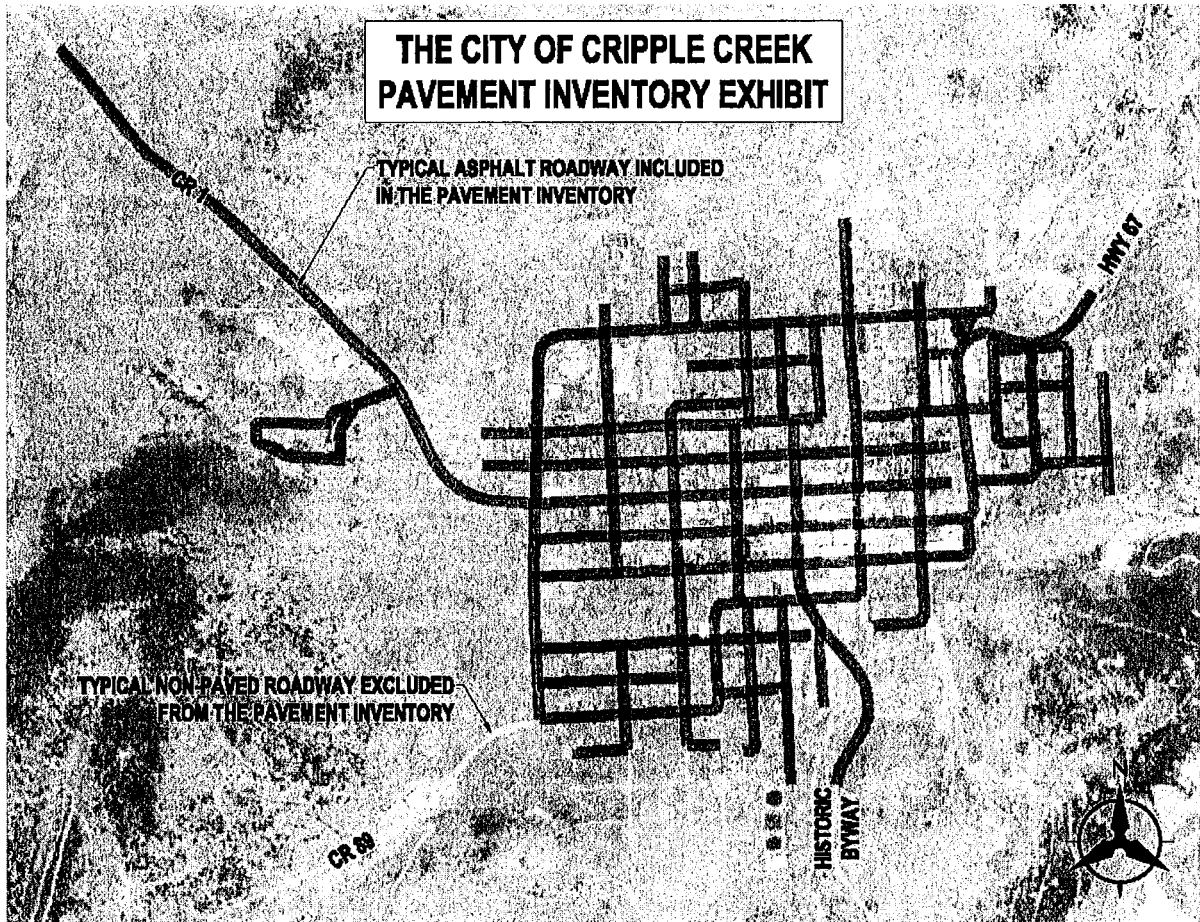
BHI will coordinate documentation requirements and sampling limits and methodologies with the City, prior to the development of a standardized pavement inventory form. The city-authorized pavement inventory form will be utilized on each city-approved roadway segment to document existing pavement surface conditions.

**Engineering ▲**

**Spatial Data ▲**

**Advanced Technologies ▲**

Each approved roadway segment will be inspected in person to quantify approximate paved areas, pavement types, severity and frequency of pavement surface distresses, and other pertinent information as supported by supplemental video and/or photo documentation.



**Assumptions:**

- 1) Roadway segments are anticipated to relate to intersections and other easily identifiable locations.
- 2) Pavement Inventory will be isolated to paved asphalt roadways within the public right-of-way; alleys, driveways, parking lots, concrete pavements, and non-paved roads will not be included.
- 3) Documentation of ancillary infrastructure including but not limited to drainage infrastructure, curb, gutter, sidewalk, curb ramps, pedestrian facilities, and utilities will not be included.

**Deliverables:**

- 1) Pavement Segments in .xlsx format
- 2) Pavement inventory form in .docx and .pdf formats
- 3) Video Documentation in .mp4 format

### Task 3: Data Analysis & Compilation

BHI will analyze the data collected during task 2 in addition to supplemental data provided by the City to generate Pavement Condition Index (PCI) ratings for each roadway segment. PCI ratings and pertinent roadway data will be compiled into a pavement inventory spreadsheet tailored to the unique needs of the City, an example is provided below.

Section ID	Street Name	Section Begin	Section End	Sec #	Last Inspect Date	PCI	**Surface	*Category	Last Major Work Date	Length, Ft	Width, Ft	Area Adjustment, Sq Ft	Section True Area, Sq Ft	% Load	% Climate	% Other

\*Category

- 1 Northeasterly Cripple Creek
- 2 Northwesterly Cripple Creek
- 3 Southwesterly Cripple Creek

\*\* Surface

- AC – Asphalt Cement
- AAC – Asphalt Cement Overlay
- PCC – Concrete Pavement

### Assumptions:

- 1) The City will provide supplemental information including but not limited to as-builts, construction dates, and other applicable information associated with roadway improvement projects.

### Deliverables:

- 1) Pavement inventory will be provided in .xlsx & .PDF formats

### Task 4: Data Package Deliverable

BHI will work with the city to coordinate the formatting and integration of data collected and generated, to align with the city's current systems, processes, and workflows. If no such current systems exist, BHI will work with the City to develop a standalone GIS package for later integration. This package will be implemented with the intent to provide the City the ability to document improvements and maintenance activities year over year. In addition, the provided data package will provide the City the ability to efficiently and effectively prepare communications related to future pavement maintenance/management operations to critical stakeholders including the City Council and the general public.

### Assumptions:

- 1) The City does not possess an existing pavement management software, GIS database, local control network, or associated coordinate system.
- 2) BHI will utilize the Colorado State Plane (COSP) coordinate system with Grid projection



**Deliverables:**

- 1) Data will be provided in .shp and/or .dwg file formats

**Fee:**

These services will be provided on a Time & Materials Not to Exceed (T&M NTE) basis per the attached fee schedule. An estimated level of effort is provided below and assumes a four-month project duration. Actual effort may vary as directed by the City.

<b>Task Description</b>	<b>Fee</b>
Task 1: Project Management and Administration	\$5,695.00
Task 2: Pavement Assessment Data Collection	\$29,980.00
Task 3: Data Analysis and Compilation	\$18,000.00
Task 4: Data Package Deliverable	\$9,750.00
<b>Total</b>	<b>\$63,425.00</b>

**Additional Services:**

The following can be provided as determined to be needed during the course of the project:

- Utility Locates and Potholes
- Geotechnical Investigation
- Pavement Design Recommendations
- Pavement Management Plan
- Pavement Plan Implementation
- Bidding Assistance

**Schedule:**

We understand that the schedule is a priority for this project and has been accounted for in our anticipated four-month schedule. Field work will be expedited upon notice to proceed to aid in mitigation of weather delays as feasible. Included below is a high-level breakdown of the anticipated project schedule.

Anticipated Project Schedule	Oct. 2023	Nov. 2023	Dec. 2023	Jan. 2024
Task 1: Project Management and Administration				
Task 2: Pavement Assessment Data Collection				
Task 3: Data Analysis and Compilation				
Task 4: Data Package Deliverable				

**Assumptions & Exclusions:**

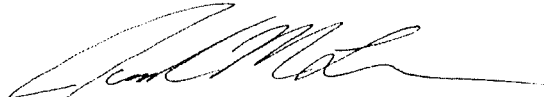
- 1) Permitting and associated fees are not required.
- 2) Traffic Control will not be required and is excluded.
- 3) Right-of-way and Design Surveys are excluded.
- 4) Subsurface utility investigation and potholing are excluded.
- 5) Public outreach and Council presentations are excluded.
- 6) Preparation and implementation of a comprehensive pavement management plan are excluded.
- 7) Geotechnical investigation and pavement recommendations are excluded and may be included as an additional service.

Steve DiCamillo  
Public Works Director  
September 28, 2023  
Page 5 of 5

We look forward to working with you on this project and ask that if you have any questions on scope, level of effort, or schedule please call us to discuss. We want to ensure that your expectations are met in the most efficient and effective way possible.

Thank you again for the opportunity to submit these materials. Should you have any questions, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jared M Lee', with a long horizontal flourish extending to the right.

Jared M Lee, P.E., LEED AP  
Sr Vice President/Senior Project Manager

cc: Brady Weingardt, BHI

**BOHANNAN HUSTON, INC.**  
**FEE SCHEDULE HOURLY RATES**  
**September 3, 2022**

	1	2	3	4	5	6	7
<b>ENGINEER</b> Civil, Structural, Mechanical, Electrical	\$115	\$130	\$150	\$170	\$195	\$230	\$255
<b>SURVEYOR</b>	\$115	\$130	\$150	\$170	\$195	\$230	\$255
<b>TECHNICAL MANAGER</b> IT, GIS, Spatial Data, Construction, Project Manager	\$115	\$130	\$150	\$170	\$195	\$230	\$255
<b>PLANNER</b> Community, Transportation	\$100	\$110	\$130	\$150	\$170	\$200	\$255
<b>GIS PROFESSIONAL</b> Geographic Information Systems	\$95	\$105	\$120	\$135	\$155	\$185	\$215
<b>PROJECT ADMINISTRATOR</b>	\$90	\$110	\$130	\$150	\$170	\$195	\$215
<b>CONSTRUCTION OBSERVER</b>	\$85	\$90	\$95	\$100	\$115	\$135	\$175
<b>TECHNICAL SPECIALIST</b> Engineering Tech, Survey Tech, Geospatial Analyst, Graphics Specialist	\$75	\$80	\$90	\$100	\$115	\$130	\$145
<b>MATERIALS TECHNICIAN</b> Field and Laboratory Materials Testing	\$60	\$70	\$80	\$90	\$100	\$130	\$150
<b>ADMINISTRATIVE PROFESSIONAL</b> Clerical Support	\$60	\$70	\$80	\$90	\$100	\$110	\$125

**MATERIALS AND REIMBURSABLE EXPENSES**

**Plotting, Printing and Binding** - As invoiced at cost of labor and materials

**Courier / Delivery Service** - As invoiced by provider

**Mileage** - As published for the IRS Standard Mileage Rate

**Per Diem/Travel** - **Field personnel** in accordance with the latest GSA Schedule based on location of service

**Office/Professional staff** travel costs, meals and lodging will be billed at cost

**Survey Equipment Charge** - \$28.00/Hour

**Survey Material Charge** - \$3.00/Hour

**GIS Equipment Charge** - Rates shall be negotiated based on the requirements of the contract

**sUAS Usage Charge** - Rates shall be negotiated based on the requirements of the contract

**Other Direct Project Expenses** - At Cost

**Overtime** - Performed upon request of the client; will be invoiced at 1.30 times the standard hourly rate

**Expert Witness** - Rates shall be negotiated based on the requirements of the contract with a minimum of four hours while in court

**Applicable Gross Receipts or Sales and Use Tax** - Added to all fees charged for professional services unless they are exempt and official documentation is on file with Bohannon Huston, Inc.



## MEMO

TO: Mayor Trenary & City Council  
FROM: Jeff Mosher, Special Projects Director  
AGENDA ITEM: Ice Castles, LLC Agreement  
DATE: October 18, 2023

---

**REQUEST:** Enter into a one-year agreement with Ice Castles, LLC to host their event within the city limits of Cripple Creek.

**OVERVIEW & ANALYSIS:** The City has worked with the owners and leadership of Ice Castles, LLC to host their world renown event in Cripple Creek. This will be one of six Ice Castle sites in the country and the only one being held in Colorado. Ice Castles have not been in Colorado for the past 3 years. They have an extremely devoted following and since announcing the event coming to Cripple Creek, it has gained significant media attention at the local, state, regional and national levels. This agreement was created to have a written document of verbal commitments made by Ice Castles, LLC and the City of Cripple Creek. The agreement covers issues such as land use, water, power, parking, sanitation, security, and liability.

**BUDGET IMPACT:** If the agreement is approved the City will commit to paying for 25% of the water costs at the residential rate of \$7.50. That expense will be additionally offset by donations from sponsors who will pay 25% of the water costs. Ice Castles will be responsible for paying 50% of the water costs. There will be staff time required for meetings and organization. Community meetings have taken place as well. There is a cost in road and street maintenance, including grading and snow removal of the parking areas. Some signage including no parking signs and installation will be paid for by the city as a way to support residents that live adjacent to the event venue. On demand bus transit services will also be made available during the event.

**STAFF RECOMMENDATION AND COUNCIL ACTION REQUESTED:** Sign the one-year agreement with Ice Castles, LLC to host their event in our community.

## EVENT AGREEMENT

**THIS EVENT AND PROPERTY USE AGREEMENT** (hereinafter referred to as “**Agreement**”), is entered into this \_\_\_\_ day of October 2023 (hereinafter referred to as the “**Effective Date**”), by and between ICE CASTLES, LLC, a Utah limited liability company, (hereinafter referred to as “**User**”) and the CITY OF CRIPPLE CREEK, a Colorado municipal corporation (hereinafter referred to as “**City**”; User and City sometimes individually referred to as “**Party**” and collectively “**Parties**”).

### RECITALS

**WHEREAS**, User produces seasonal ice castle attractions and related events

**WHEREAS**, the Parties have worked cooperatively to bring the Ice Castles attraction to the City; and

**WHEREAS**, the Parties desire to outline various terms of agreement related to the attraction event within the City.

**NOW, THEREFORE**, it is hereby and herein mutually agreed, in consideration of promises and considerations of Parties herein set forth, as follows:

1. **Incorporation.** The above Recitals and any attached exhibits are a material part of this Agreement and are incorporated herein.
2. **Premises.** The User has contracted with private property owners to utilize parcels of land that are located on Irene Avenue (the “**Premises**”) for the construction, maintenance, and operation of an ice castle and related activities (hereinafter referred to the “**Event**”), subject to terms and conditions herein. The Event shall not unreasonably interfere with the City’s use of the right-of-way and any property adjacent to the Premises.
3. **Term.** The term of this Agreement will commence on the Effective Date and shall terminate on May 31, 2024 (herein referred to as the “**Term**”), unless terminated earlier as provided for herein. It is anticipated that the Event could be open to the public starting late December, 2023, and close as late as early-March, 2024, dependent on weather (hereinafter referred to as “**Event Season**”).
4. **Water.** User agrees to meter its water use and to pay City at the rate of \$7.50 per thousand gallons. User will report its water usage monthly and shall be billed monthly for 50% of the calculated fee. The remaining 50% of the fee shall be paid for by the City and other event sponsors. The maximum water use in one day shall not exceed 350,000 gallons and may not reach the maximum for more than three consecutive days without prior approval (via email or text) from City. Any requests for water use in excess

of 350,000 gallons in one day must also be approved beforehand. User will assist City staff to control runoff of any water from the Premises and will promptly notify City Public Works if there are any issues with regard to drainage maintenance, earth berms, ice dams, culvert blockage, excessive erosion, or any other challenge presented by such runoff.

5. **Power.** User is responsible to pay for any power improvements to be made on the Premises. User shall also set up an account with the local power company and shall be responsible to pay for its power usage at the standard rates. In the event that a generator is used on the Premises to supplement power needs, User shall, at its own expense, make efforts to obtain a whisper model with low emissions. City reserves the right to require replacement generator(s) if existing generator equipment becomes a nuisance to direct residents.
6. **Parking.** User shall be responsible to contract for the use of exclusive parking areas near the Premises to suit its activities. User shall create a parking plan to review with the City, including providing parking attendants as needed, and maintaining a clear route for two-way vehicle traffic along Fourth Street from Meyers Avenue to Oriole Street, and on Whiting/Irene Street east of the train trestle (the “Access Route”). [User shall provide City with evidence showing that the owner(s) of the Premises have granted a temporary easement to User for use by the public of the Access Route.] City shall be responsible to maintain the Access Route and maintain the parking area including grading, sanding, and plowing.
7. **Sanitation.** User, at its own cost, will be responsible to maintain the Premises, adjacent parking areas, and general surroundings in a clean and orderly condition. To ensure this, User will provide adequate trash receptacles and proper staffing on at least a daily basis to monitor the impacted areas as well as contract with trash pickup services to schedule regular trash removal. Any large trash disposal needs can be coordinated with City public works staff as deemed necessary by the Public Works Director. At the conclusion of the event, User shall be responsible to ensure the Premises and general surrounding areas are free of any identifiable trash, and City shall have the right to inspect the general area as needed if any concerns are not appropriately addressed. User shall also be responsible to provide adequate portable restroom services at the Premises, including at least one ADA unit for every 8 regular units. User will schedule regular servicing of the units for the Term at its own expense.

8. **Security.** User will provide temporary construction fencing, or other similar fencing to enclose the Premises. All access points to the Premises will be secured during any times that User's staff are not on site. Security barriers surrounding the Premises will be maintained by User to ensure the integrity of any such barriers. User shall submit a conceptual plan of the site for the City to review for appropriate ingress/egress in the case of any emergencies.
9. **Ice Festival.** User agrees to provide an ice carving team as part of the City's Ice Festival event February 14-25, 2024 at no cost to the City. City agrees to recognize User as an event sponsor at the appropriate level for the participation of the carving team. Cash sponsorships will also be available to User for support of the Ice Festival.
10. **Indemnification.** User shall defend, indemnify, and hold harmless the City, its elected and appointed officials, employees, and agents (hereinafter referred to as the "**Indemnified Parties**"), against any and all actions, claims, demands, liabilities, injuries and damages, whether to persons or property or both, which may be imposed upon or incurred by the Indemnified Parties as a consequence of, or arising out of, any act, default or omission on the part of the User in connection with the Event or User's rights and obligations under this Agreement.
11. **Insurance.** The User shall provide, by the Effective Date and shall maintain at all times during the Term, the following insurance:
  - a. Public Liability and Property Damage. The User shall maintain commercial general liability (hereinafter referred to as "**CGL**") insurance with a limit of not less than \$1,000,000 per occurrence. The CGL insurance shall cover, without limitation, liability arising from public liability, personal injury, accidental death, property damage, and contractually assumed liability covering obligations assumed under this Agreement. The City shall be named as an additional insured on the policy and the policy shall contain a waiver of subrogation as to the City. The policy shall be primary and non-contributory as to any policy maintained by the City. Upon the Effective Date, the User shall provide the City with a Certificate of Insurance acceptable to the City. The certificate and the required

insurance policy shall contain a provision that the coverage afforded under the contract will not be cancelled or permitted to expire until at least 30 days written notice has been given to the City.

- 12. Notices.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder (hereinafter each referred to as a “**Notice**”) shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); or (b) when received or rejected by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (c) when received or rejected by the addressee if sent by United States Postal Service (receipt requested); provided, that notices may be sent by e-mail or telephone where expressly permitted by this Agreement. Notice must be sent to the respective Party at the following addresses (or at such other address for a Party as shall be specified in a Notice given in accordance with this Section):

If to City:

City of Cripple Creek  
Attn: \_\_\_\_\_  
337 E Bennett Ave  
Cripple Creek, CO 80813  
Email: \_\_\_\_\_  
Tel: 719-689-2502

If to User:

Ice Castles, LLC  
Attn: Kyle Standifird  
1280 S. 1380 W. #16  
Orem, UT 84058  
Email: kyle@icecastles.com

**13. Miscellaneous.**

- a. Attorney’s Fees. If any action is brought to enforce the terms of this Agreement and the City prevails, User will pay the City’s costs and reasonable attorneys' fees to be fixed by the Court.



- b. Agreement Effect. This Agreement and any other documents incorporated herein by reference constitutes the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. The terms and conditions of this Agreement shall be binding on and inure to the benefit of the Parties hereto, their respective successors and assigns.
- c. Governing Law and Venue. It is agreed that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Colorado. Any legal suit, action, or proceeding arising out of this Agreement shall be instituted in District Court for the County of Teller, and each Party irrevocably submits to the exclusive jurisdiction of such court in any such suit, action, or proceeding. The Parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.
- d. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their respective successors and assigns and nothing herein, express, or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- e. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.
- f. Time is of the Essence. Time is of the essence in the performance of the terms and obligations of this Agreement.
- g. Modification. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each Party or an authorized representative of each Party.

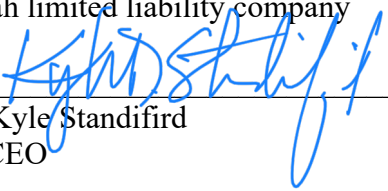
- h. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.
- i. Cumulative Rights. Each right, power, or remedy herein conferred upon the City is cumulative and in addition to every other right, power, or remedy, express or implied, now or hereinafter arising, available to the City, at law or in equity, or under any other agreement, and each and every right, power, and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City and will not be a waiver of the right to exercise at any time thereafter any other right, power, or remedy.
- j. Nothing herein shall be interpreted or construed as a waiver by the City of the rights and protections afforded the City under the Colorado Governmental Immunity Act, C.R.S. 24-6-101, et seq., as amended from time to time or any other applicable law.

IN WITNESS WHEREOF, the parties herein have executed this Agreement on the Effective Date.

**CITY OF CRIPPLE CREEK,**  
a Colorado municipal corporation

\_\_\_\_\_  
By: Frank Salvato  
Its: City Administrator

**ICE CASTLES, LLC,**  
a Utah limited liability company

  
\_\_\_\_\_  
By: Kyle Standifird  
Its: CEO

**STAFF REPORT  
PLANNING COMMISSION / CITY COUNCIL  
October 18, 2023**

**Applicant/Property Owners:** Baxter Lee for Full House Resorts-Colorado (FHR)  
**Request:** Approval of a Conditional Use Permit for the construction of a parking lot in the BB Zone District

**Location/Legal Description:** Lots 21-40 Block 8 Fremont Addition  
**Zone District:** BB Zone District

**Staff:** Ken Hartsfield, Planning Dept

**Summary of Request**

Bronco Billy's has requested modifications to Conditional Use Permit granted August 16, 2023 to expand its planned surface parking lot for the Chamonix Hotel on the north side of Carr Avenue.

The Special Exception was approved with the following five conditions:

1. The applicant is to submit grading and drainage plans for review and approval by City Staff.
2. The applicant is to provide a traffic analysis for Carr Avenue and surrounding streets.
3. Drawings and related construction documents be provided for review and approval by City Staff.
4. Update Photometric and lighting plans meeting the development Code requirements of 5 footcandles measure and 12-foot maximum height.
5. The Parking lot is to be open to the public.

The applicant requests that Condition #5 to make the parking lot open to the public be waived.

They are also requesting that Condition #4 be modified to allow the parking lot lights be up to 20'-0" tall and not limited to 12'-0".

**Site Description**

The proposed valet parking lot is on the north side of Carr Ave., east of 1st Street and west of 2<sup>nd</sup> Street. The Parking lot will be located at Lots 21 through 40, Block 8 Fremont Addition. These lots are in the BB zoning district.

**Project Description**

Bronco Billy's is currently in the process of building a new hotel and casino, the Chamonix Hotel. The applicant has requested additional parking space for the Chamonix building. By code standards, it is required to have 167 parking spaces for the hotel and casino combined. The current plans allow for 228 parking spaces, and the CUP and Special Exception requested would raise that number to 601.

**Parking lot Lighting**

The Development Code establishes a maximum light height of 12'-0" for parking lot lighting in the BB zone. The Condition of having a maximum light height of 12'-0" as included in the approved Conditional Use Permit is consistent with Development Code. The smaller parking lot that was originally proposed and approved with the Hotel design for the middle of the block was approved with 20'-0" tall parking lot lights. Placing more

restrictive requirements on projects requiring a Conditional Use Permit is allowed.

The employee parking proposed for the lot on the north side of the 200 block of Carr Avenue is also in the BB zone district. The approval granted by Council on September 6, 2023, allowed parking lot lighting to be up to 20'-0" high.

### **Public Use**

There is no requirement for the parking lot to be open to the public in the Development Code. The original application and comments at Council meeting by the applicant, the benefits of have additional public parking in the City was presented as an argument in favor of the expanded parking lot. This requirement was added in response to this proposed use by the applicant.

### **Analysis of Conditional Use and Findings**

Special Exception may be granted if the criteria listed below have been met. Council found that these criteria were satisfied at the August 16, 2023 Council Meeting when the Special Exception was granted, The requested modifications to the Conditions included in the approval do not affect the compliance with these criteria. are satisfied.

- a) The request is composed of a combination of benefits to the community's residents, visitors, and economy and the unique characteristics of the project not anticipated by the regulations;
- b) The request will not overburden public infrastructure or services in the proposed location;
- c) The proposed building and site design on the subject property, when compared with the uses or standards permitted by right in the zoning district, will not be detrimental to existing or planned adjacent uses;
- d) The proposal meets or exceeds the standards of the applicable zoning district except for the specific characteristics requiring relief from the standards of the zone district.
- e) The proposed or imposed additional design standards, that are otherwise not applicable in the zoning district are adequate to ensure compatibility with the surrounding area and to prevent any potential harm to the public health, safety, or general welfare;
- f) The specific application of the request to the site supports the Intent and Applicability of the zoning district and does not compromise the Intent and Applicability of any adjacent zoning.
- g) The applicant has established that the requirements of the district present a burden that is not in the best interest of the City.

### **Staff Recommendation**

1. Staff recommends approval of the modification to the use Conditional Use Permit to remove the requirement that the lot be open for public use.
2. Staff recommends denial of the request to increase that the allowable height of the light fixtures to be 20'-0" and that the height requirement remain at 12'-0" in compliance with the Development Code.
3. Staff recommends that the other three conditions remain as originally approved.

Exhibit A: Site Photos





September 15, 2023

## **NARRATIVE FOR CONDITIONAL USE PERMIT APPLICATION**

Mr. Frank Salvato  
Code Administrator  
Cripple Creek  
337 E. Bennet Ave.  
PO Box 430  
Cripple Creek, CO 80813

Mr. Ken Hartsfield  
Planning and Community Development Director  
Cripple Creek  
337 E. Bennet Ave.  
PO Box 430  
Cripple Creek, CO 80813

Dear Mr. Salvato and Mr. Hartsfield:

Please accept this letter as the required narrative for the attached Conditional Use Permit ("CUP") on behalf of our Client FHR-Colorado, LLC ("FHR") doing business as Bronco Billy's and Chamonix. This narrative addresses the required Code criteria below. As the approval of the CUP and the contemporaneously submitted SE will be heard jointly, the background information below contains reference to the totality of the submission.

Below are the addresses and Legal Descriptions for the property comprising the Guest Services Lot (North of Carr between 1<sup>st</sup> and 2<sup>nd</sup> Street) located in the BB Zone District.

### Addresses & Legal Descriptions.

1. 101 E. Carr Ave.
  - a. L21-24 B8 CR CK FREMONT ADD
2. 127 E. Carr Ave
  - a. L25-28 B8 CR Ck FREMONT ADD
3. No assigned Address: North of Carr Ave. between 1<sup>st</sup> and 2<sup>nd</sup> St.
  - a. L29 + 30 B8, CR CK FREMONT ADD

## HAND DELIVERED

Mr. Frank Salvato  
Mr. Ken Hartsfield  
September 15, 2023  
Page 2

4. No assigned address: North of Carr Ave. between 1<sup>st</sup> and 2<sup>nd</sup> St.
  - a. L31-34 B8 CR CK FREMONT ADD
5. No assigned address: North of Carr Ave. between 1<sup>st</sup> and 2<sup>nd</sup> St.
  - a. L35 & 36 B8 CR CK FREMONT ADD
6. 175 E. Carr Ave.
  - a. L37-40 B8 CR CK FREMONT ADD

### Prior Approval & Conditions.

On August 16, 2023, the expansions of the Valet Parking Lot and Guest Services Parking Lot were heard before City Council. The expansions of the lots were conditionally approved by Resolutions 2023-30 and 2023-31. Of the five conditions of approval, there are two that Bronco Billy's respectfully requests that City Council reevaluate and change. The changes are intended to allow these two lots to match the conditions in City Council's September 6, 2023 approval of Resolution No. 2023-35 related to the Employee Lot. This application is submitted in an effort to provide City Council a mechanism by which it may modify and remove the two identified conditions from the approval. Bronco Billy's respectfully requests that City Council:

1. Remove the requirement from the Resolutions requiring 12-foot street lights for the parking lots. Instead, adopt the language of Resolution 2018-08 which states:
  - a. Light fixtures shall fully shield the light source (full cut off fixture) to minimize glare and light trespass and to facilitate better vision at night. Mounting height shall be no taller than twenty (20) feet. Lots shall provide a minimum of one (1) foot-candle of illumination at five (5) feet above the ground surface. Lighting shall not shine onto adjacent property.
2. Remove the requirement that the Bronco Billy's expanded parking lots be open to the public.

Regarding the first request, City Council originally included a condition of approval that the lighting be no taller than 12 feet in height. We have since learned that such a condition would result in the need for a complete redesign of the parking lots in question, preventing Bronco Billy's from beginning construction this year. Bronco Billy's Lighting Study confirms that with the amended condition on lighting (see above #1), it will be able to meet Cripple Creek's Code regarding photometrics for average illumination. Thus, the request is to approve and readopt the language of the 2018-08 Resolution stated above.

The second condition of approval that Bronco Billy's requests that City Council remove is that the parking lots owned by Bronco Billy's be made open to the public. Upon review of City records after the August 16, 2023 hearing, the City Clerk confirmed that no other casino in town had been required

## **HAND DELIVERED**

Mr. Frank Salvato  
Mr. Ken Hartsfield  
September 15, 2023  
Page 3

to meet such a condition. As discussed below, several local casinos have considerably more parking spaces per hotel room than Bronco Billy's. Bronco Billy's respectfully requests that this condition be removed from its parking lot expansion approvals.

Thus, Bronco Billy's respectfully requests that the two conditions of approval included in the August 16, 2023, Resolutions 30 and 31 identified above be amended and removed respectively. This application is submitted in support of such an approval.

### Background.

Prior to the current expansion, Bronco Billy's hotel and casino employed 110 employees, and operated a 36 room hotel. The company had a total of approximately 285 surface parking spaces. These parking lots were completely filled and overflowing almost every weekend. In 2018, Bronco Billy's obtained approval for expansion of its casino and hotel (referred to as the "Chamonix Project") and a parking garage. At that time, Bronco Billy's sought, and received, permission for additional off-street commercial parking from the Cripple Creek City Council per Resolution Numbers 2018-07 and 2018-08. These parking lots were reviewed and approved by Historic Preservation Commission and this approval resulted in approximately 535 approved parking spaces.

Bronco Billy's now seeks to expand and improve the Guest Services parking areas so that the parking would extend to the property lines owned or controlled by FHR-Colorado, LLC. The previously approved lots that are contiguous with the expansion are included in this request so that the landscaping and site improvements can be reviewed in full context and if approved, they will be part of one permit instead of multiple.

Since the approvals in 2018, Bronco Billy's has purchased adjacent property on both sides of the 2018 approved surface parking lot on the North side of Carr Avenue comprising what is currently identified as the "Guest Services Lot", and the property West of the 2018 approved Valet Lot down to 1st Street, referred to as the "Valet Lot." These subsequent purchases included four (4) houses that were in a serious state of dilapidation, most of which were uninhabitable. Bronco Billy's sought, and was granted, approval to demolish all four (4) of the dilapidated houses. The sole reason to purchase these adjacent properties was to enhance the properties adjacent to Bronco Billy's existing surface parking lots, allowing for the opportunity to expand the original parking lots and eliminate unattractive buildings bordering the property.

There are several key reasons why additional parking is needed. Bronco Billy's sought and received approval in February 2021 from City Council to add Tower 3 (Tower 3 sits atop the parking garage). The additional hotel tower added 129 hotel guest rooms to the overall Chamonix Project. When fully built



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out, the Bronco Billy's existing casino and Chamonix hotel and casino will employ an additional 290 employees and add an additional 300 hotel rooms. Thus, when fully online, the Chamonix Project will include 336 hotel rooms and 400 employees.

Inclusive of the parking garage, the 30 garage spaces plus the additional 235 current surface commercial parking, will simply not have the capacity to accommodate the overnight guests, day trip guests, and employees. Bronco Billy's is already scheduling meetings and conventions for the new meeting spaces inside Chamonix, and many of these attendees will not be hotel or casino guests. They will be in town for a day for meetings and will need places to park.

Bronco Billy's has done an analysis of existing improved parking currently approved for various casinos in Cripple Creek to put this request in context. The chart below depicts the current number of parking spaces (garage and surface) for each of the casino properties in the City of Cripple Creek with a hotel and the number of parking spaces per hotel room for comparison to what is proposed. As you can see, this approval request places Bronco Billy's in line with other casinos in town and well below the City average number (3.75) of parking spaces per hotel room when Bronco Billy's and Chamonix are taken out of the equation. Worth noting, too, is that none of the other hotel casinos listed currently offer full-service meeting/convention/banquet space, a full-service spa, 4 full-service restaurants or multiple retail outlets – and Chamonix will offer all of these things to visitors of Cripple Creek. Additionally, after the August City Council hearing, City staff researched and confirmed that none of the other hotels in the City had to condition the approval of their parking spaces on making them open to the public.

Property	Garage Parking Spaces	Surface Parking Spaces	TOTAL Parking Spaces	# of Hotel Rooms	Parking Spaces per Hotel Room
Triple Crown Casinos	250	115	365	59	6.19
Century Casinos	0	259	259	21	12.33
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Double Eagle Casino	250	45	295	158	1.87
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<b>Chamonix (proposed)</b>	308	293	601	300	2.00

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In essence, Bronco Billy's is requesting to redesign the existing surface parking and contiguous undeveloped lots to maximize their usability.

As part of the prior submission, Bronco Billy's prepared an exhibit showing the project with and without the proposed parking. These graphics demonstrated the need for approval of a cohesive design for the Chamonix Project parking. Given the sizes, shapes and locations of the "residual" property surrounding the Guest Services Lot and the Valet Lot, there is no better use of this land than to expand the surface parking lots for visitors to Cripple Creek and to Bronco Billy's.

### Permit Criteria.

A) The request is composed of a combination of benefits to the community's residents, visitors, and economy and the unique characteristics of the project not anticipated by the regulations.

The proposed Guest Services Lot currently consist of dirt lots that are occupied by construction materials and equipment. The requested expansion of this lot benefits the residents and visitors by providing convenient paved and landscaped parking in close proximity to the Chamonix Project. The capacity of the current unpaved Guest Services and Employee Parking Lots was routinely and consistently exceeded when Bronco Billy's only had 36 hotel rooms and 110 employees. The existing dirt lots will be wholly inadequate to meet the demand of the additional 313 hotel rooms and 290 employees soon seeking parking (total of 349 hotel rooms and 400 employees).

This expansion also includes the construction of two additional cross walks that connect to the sidewalk south of Carr Avenue as an additional safety feature.

B) The request will not overburden public infrastructure or services in the proposed location.

The expansion site for the Guest Services Lot currently consist of dirt lots that are occupied by construction materials and equipment. As such, the expansion of the Guest Services Lot will have no appreciable negative impacts upon public infrastructure. The removal of unpaved dirt lots may decrease the burden on the public infrastructure by causing less mud and dirt to flow into the stormwater drainage system. Further, as the Chamonix Project comes fully online, Cripple Creek is undoubtedly going to experience increased business and economic growth in its downtown business district. Thus, far from burdening public infrastructure, the expansion of the Guest Services Lot will relieve the burden of inadequate parking.

C) The proposed building and site design on the subject property, when compared with the uses or standards permitted by right in the zoning district, will not be detrimental to existing or planned adjacent uses.



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The expanded Guest Services Lot is not detrimental to the existing and planned business use of adjacent properties. Rather, the Guest Services Lot will support ease of access to local businesses by providing easily accessible and readily available parking for the Chamonix Project patrons. Parking lots are contemplated within the BB zone district as an allowed use with the issuance of the CUP.

D) The proposal meets or exceeds the standards of the applicable zoning district except for the specific characteristics requiring relief from the standards of the zone district.

The Guest Services Lot is zoned "BB" or "Neighborhood Mixed-Use." The intent of the BB district is to house businesses of a communitywide scope; encouraging the formation and continuance of a compatible and economically healthy environment for business, financial service, and professional uses which benefit from being located in close proximity to each other and accommodating moderate-scale mixed-use development. The BB district serves as a transition area between the commercial areas of Cripple Creek and more residential areas. Parking that supports such local business and professional uses, such as the Chamonix Project, clearly aligns with the character of the BB district.

The portion of the BB district where the Lots are located buffers the "B" or Downtown district from the "R 3/4" district. The B district is intended for businesses of regional scope, such as the Chamonix Project. The B district is applicable to the commercial areas along Bennett Avenue, Carr Avenue and Myers/Masonic Avenue. (Cripple Creek Municipal Code p. 10).

Off-street commercial parking is allowed in the BB via a Special Use Permit. 1.3.3 Table 1-2. Thus, the Lots meet the standards for the BB Zone district. No relief from the City zoning codes is required.

E) The proposed or imposed additional design standards, that are otherwise not applicable in the zoning district are adequate to ensure compatibility with the surrounding area and to prevent any potential harm to the public health, safety, or general welfare.

The improvement of the Guest Services Lot will upgrade the current vacant land that may otherwise have appeared as blighted, to a useful and well-maintained parking lot that supports a core local business. The paving and landscaping of the Guest Services Lot will significantly upgrade the visual appearance of the lot from Carr Avenue. The Guest Services Lot design was fully vetted by the Historic Preservation Commission.

F) The specific application of the request to the site supports the Intent and Applicability of the zoning district and does not compromise the Intent and Applicability of any adjacent zoning districts.

As discussed above, the BB district serves as a transition district between the downtown/commercial core of the City and the more residential neighborhoods. The proposed Guest Services Lot expansion is

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supportive of the commercial uses of the downtown district, specifically the hotel, casino and ancillary services which all support the economic viability of Cripple Creek. The R 3/4 district to the north of the lots is "intended for a healthy mix of residential and commercial uses." The expansion of the Guest Services Lot supports this intent.

G) The applicant has established that the requirements of the district present a burden that is not in the best interest of the City.

The expansion of the Guest Services Lot proposed for approval here is appropriate and in alignment with the BB district use. The paving and landscaping of the lot will improve the overall quality and aesthetic of the area as well as provide critical support for the Chamonix Project within the BB zone district. The City's approval of the expansion of the Guest Services Lot will benefit all of Cripple Creek, and those visiting, providing the Chamonix Project overnight visitors with convenient and safe parking.

As set forth above, the two requested changes to the previously approved conditions in the August Resolutions would allow the Guest Services Lot and the Valet Lot to match the conditions in City Council's September 6, 2023 approval of Resolution No. 2023-35 related to the Employee Lot so they are all consistent.

Sincerely,

A handwritten signature in blue ink, appearing to read "Caitlin S. Quander", with a stylized flourish at the end.

Caitlin Quander, Esq.

**CITY OF CRIPPLE CREEK,**

**RESOLUTION NO. 2023-41**

**A RESOLUTION APPROVING MODIFICATIONS TO RESOLUTION 2023-30 FOR A CONDITIONAL USE PERMIT GRANTED TO CONSTRUCT A PARKING LOT IN THE BB MIXED USE ZONE DISTRICT AT CERTAIN REAL PROPERTY DESCRIBED AS LOTS 21-40 BLOCK 8 FREMONT ADDITION TO CRIPPLE CREEK, COUNTY OF TELLER, COLORADO.**

WHEREAS, the Applicant, Full House Resorts Colorado LLC had applied for, and was granted a Conditional Use Permit to allow a parking lot in the BB Mixed Use Zone District located at real property commonly legally described as Lots 21-40 Block 8 Fremont Addition to Cripple Creek and more particularly described in Exhibit A hereto (the “Property”); and

WHEREAS, the proposed parking lots are planned to be utilized for the Chamonix Hotel and Casino’s parking needs in Cripple Creek; and

WHEREAS, a public hearing on the application was held before the City Council of the City of Cripple Creek on September 18, 2023, preceded by public notice of such hearing as required by Sec. 4.6 of the City of Cripple Creek Development Code; and

WHEREAS, at the public hearing the City Council heard evidence from interested parties and considered the factors for approval of a Conditional Use Permit set forth in Section 4.5 of the City of Cripple Creek Development Code.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CRIPPLE CREEK;

Findings. The criteria to be used to determine the granting of a CUP and Special Exception are as follows:

**a) The request is composed of a combination of benefits to the community’s residents, visitors, and economy and the unique characteristics of the project not anticipated by the regulations;**

The request is composed of benefits to the community’s visitors and economy as well as the unique characteristics of the project not anticipated by the regulations.

**b) The request will not overburden public infrastructure or services in the proposed location;**

The requested additional parking will add no burden to public infrastructure or services.

**c) The proposed building and site design on the subject property, when compared with the uses or standards permitted by right in the zoning district, will not be detrimental to existing or planned adjacent uses;**

The additional parking will not interfere with or be detrimental to existing or planned adjacent uses.

**d) The proposal meets or exceeds the standards of the applicable zoning district except for the specific characteristics requiring relief from the standards of the zone district.**

The proposal exceeds the standards for the applicable zoning district, expanding the available parking to 601 spaces, when only 167 are required.

**e) The proposed or imposed additional design standards, that are otherwise not applicable in the zoning district are adequate to ensure compatibility with the surrounding area and to prevent any potential harm to the public health, safety, or general welfare;**

The design standards are adequate to ensure compatibility and prevent any harm to public health, safety, or welfare.

**f) The specific application of the request to the site supports the Intent and Applicability of the zoning district and does not compromise the Intent and Applicability of any adjacent zoning.**

The specific application supports the Intent and Applicability of the zoning district for the B Zone, but not the Gaming District, and could create a conflict with the adjacent zoning district of R-2, Limited Residential.

**g) The applicant has established that the requirements of the district present a burden that is not in the best interest of the City.**

The applicant has established that the requirements of the district present a burden that is not in the best interest of the City.

Approval. Resolution for a CUP for the parking lot is hereby modified with the conditions as listed in Exhibit B and the Council finds that the requirements and conditions of Section 4.6.2 of the City of Cripple Creek Development Code are met.

ADOPTED at Cripple Creek, Colorado, this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

---

Melissa Trenary  
Mayor

ATTEST:

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Malissa Gish  
City Clerk

APPROVED AS TO FORM:

---

Erin M. Smith  
City Attorney

## **Exhibit A**

### Legal Description:

#### **Parcel 1:**

Lots 21 through 24, Block 8, Fremont (now Cripple Creek), County of Teller, State of Colorado

Also known by street and number as 101. E Carr Avenue, Cripple Creek, CO

#### **Parcel 2:**

Lots 25 through 28, Block 8, Fremont (now Cripple Creek), County of Teller, State of Colorado

Also known by street and number as 127 E. Carr Ave., Cripple Creek, CO 80813

#### **Parcel 3:**

Lots 37 thru 40, inclusive, Block 8, Fremont (now Cripple Creek), Teller County, Colorado, more particularly described as follows:

Beginning at the Northeast corner of Lot 40 of said Block 8 as monumented on the ground by a 5 x 18" rebar w/plastic cap stamped "WALKER-PLS 6842" set at the northeast corner of a wood (or board) fence, thence Westerly along the Northerly line of said Lots 37 thru 40 (a 2" galvanized iron fence post (for a chain link fence) accepted as marking the location of the rear lot corners common to Lots 24 and 25 establishes the direction of the rear Lot lines of Lots 25 thru 40, inclusive) a distance of 102.23 feet to the rear corner common to Lots 36 and 37 of said Block 8 as monumented on the ground by a # 5 x 18" rebar w/plastic cap stamped "WALKER-PLS 6842", thence angle left 89 degrees 25 minutes 36 seconds along the side lot line common to lots 36 and 37 a distance of 125.00 feet to the front corner common to said Lots 36 and 37, as monumented on the ground by a #5 x 18" rebar with plastic cap stamped "WALKER-PLS 6842", thence angle left 90 degrees 34 minutes 24 seconds along the Southerly line of said Lots 36 thru 40 a distance of 101.56 feet to the Southeast corner of said Lot 40 as monumented on the ground by a #5 x 18" rebar w/plastic cap stamped "WALKER – PLS 6842", thence angle left 89 degrees 07 minutes 06 seconds along the Easterly line of said Lot 40 (and an existing wood fence) a distance of 125.00 feet to the point of beginning.

## **Exhibit B**

### Conditions of Approval

1. The applicant is to submit grading and drainage plans for review and approval by City

Staff.

2. The applicant is to provide a traffic analysis for Carr Avenue and surrounding streets.
3. Drawings and related construction documents be provided for review and approval by City Staff .
4. Update Photometric and lighting plans meeting the development Code requirements of 5 footcandles measure and 12-foot maximum height.



# City of Cripple Creek



## STAFF REPORT PLANNING COMMISSION / CITY COUNCIL October 18, 2023

**Applicant/Property Owners:** Baxter Lee on behalf of Full House Resorts-Colorado  
**Request:** revisions to the Special Exception for the construction of a parking lot in the B Zone Districts.  
**Location/Legal Description:** Lots 14-17 Block 17 Fremont Addition and;  
Lots 18-20 Block 17 Fremont Addition, Cripple Creek, CO  
**Zone District:** B Zone District  
**Staff:** Ken Hartsfield, Planning Dept

### Staff Recommendation:

#### Summary of Request

Bronco Billy's has requested modifications to the Special Exception granted August 16, 2023 to expand its planned valet parking lot for the Chamonix Hotel.

The Special Exception was approved with the following five conditions:

1. The applicant is to submit grading and drainage plans for review and approval by City Staff.
2. The applicant is to provide a traffic analysis for Carr Avenue and surrounding streets.
3. Drawings and related construction documents be provided for review and approval by City Staff.
4. Update Photometric and lighting plans meeting the development Code requirements of 5 footcandles measure and 12-foot maximum height.
5. The Parking lot is to be open to the public.

The applicant requests that the condition #5 to make the parking lot open to the public be waived.

They are also requesting that Condition #4 be modified to allow the parking lot lights be up to 20'-0" tall and not limited to 12'-0".

The Parking lot will be located at Lots 14-20 Block 17 Fremont Addition. These lots are in the Gaming District and will require a Special Exception for such use.

### **Site Description**

The proposed valet parking lot is on the south side of Carr Ave., east of 1st Street and west of the new Hotel. Parking will be north of the alley on vacant land. The existing houses and most of the trees have been removed.

### **Project Description**

Bronco Billy's is currently in the process of building a new hotel and casino, the Chamonix Hotel. The applicant has requested additional parking space for the Chamonix building. By code standards, it is required to have 167 parking spaces for the hotel and casino combined. The current plans allow for 228 parking spaces, and the CUP and Special Exception requested would raise that number to 601.

### **Parking lot Lighting**

The Development Code establishes a maximum light height of 20'-0" for parking lot lighting in the B zone. The Condition of having a maximum light height of 12'-0" as included in the approved Special Exception is more restrictive than the Development Code. Placing more restrictive requirements on projects requiring a Special Exception is permitted.

### **Public Use**

Valet parking is a service in which guests at a hotel, restaurant, etc., can have their cars parked by an employee. This parking lot is to be used as a valet parking lot which is controlled and operated by the Chamonix Staff. Declaring the lot as open to the public is contrary to the controlled operation of a valet parking service.

### **Analysis of Conditional Use and Findings**

Special Exception may be granted if the criteria listed below have been met. Council found that these criteria were satisfied at the August 16, 2023 Council Meeting when the Special Exception was granted, The requested modifications to the Conditions included in the approval do not affect the compliance with these criteria. are satisfied.

- a) The request is composed of a combination of benefits to the community's residents, visitors, and economy and the unique characteristics of the project not anticipated by the regulations;
- b) The request will not overburden public infrastructure or services in the proposed location;
- c) The proposed building and site design on the subject property, when compared with the uses or standards permitted by right in the zoning district, will not be detrimental to existing or planned adjacent uses;
- d) The proposal meets or exceeds the standards of the applicable zoning district except for the specific characteristics requiring relief from the standards of the zone district.
- e) The proposed or imposed additional design standards, that are otherwise not applicable in the zoning district are adequate to ensure compatibility with the surrounding area and to prevent any potential harm to the public health, safety, or general welfare;

f) The specific application of the request to the site supports the Intent and Applicability of the zoning district and does not compromise the Intent and Applicability of any adjacent zoning.

g) The applicant has established that the requirements of the district present a burden that is not in the best interest of the City.

**Staff Recommendation**

Staff recommends approval of the modification to the Special Exception for both increasing the allowable height of the light fixtures to 20'-0", and removing the requirement that the lot be open for public use.

## Site Plan



September 15, 2023

## **NARRATIVE FOR SPECIAL EXCEPTION APPLICATION**

Mr. Frank Salvato  
Code Administrator  
Cripple Creek  
337 E. Bennet Ave.  
PO Box 430  
Cripple Creek, CO 80813

Mr. Ken Hartsfield  
Planning and Community Development Director  
Cripple Creek  
337 E. Bennet Ave.  
PO Box 430  
Cripple Creek, CO 80813

Dear Mr. Salvato and Mr. Hartsfield:

Please accept this letter as the required narrative for the attached Special Exception ("SE") on behalf of our Client FHR-Colorado, LLC ("FHR") doing business as Bronco Billy's and Chamonix. This narrative addresses the required Code criteria below. As the approval of the SE and the contemporaneously submitted CUP will be heard jointly, the background information below contains reference to the totality of the submission.

Below are the addresses and Legal Descriptions for the property comprising the Valet Lot (South of Carr between 1<sup>st</sup> and 2<sup>nd</sup> Street) located in the B Zone District.

### Addresses & Legal Descriptions.

1. Valet Lot – South Side of Carr between 1<sup>st</sup> & 2<sup>nd</sup> Street
  - a. Address listed as "E. Carr Ave"
    - i. L18-20 B17 CR CK FREMONT ADD
  - b. 116 E. CARR AVE
    - i. L14-17 B17 CR CK FREMONT ADD
  - c. No assigned address: South Carr

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- i. L13 B17 CR CK FREMONT ADD
- d. No assigned address: South Carr
  - i. L12 B17 CR CK FREMONT ADD.
- e. No assigned address: S Carr
  - i. LOT 11 B17 CRC CK Fremont ADD
- f. No assigned address: S Carr
  - i. L10 B17 CR CK FREMONT ADD
- g. No assigned address: S Carr
  - i. L8 +L9 B17 CR CK FREMONT ADD

### Prior Approval & Conditions.

On August 16, 2023, the expansions of the Valet Parking Lot and Guest Services Parking Lot were heard before City Council. The expansions of the lots were conditionally approved by Resolutions 2023-30 and 2023-31. Of the five conditions of approval, there are two that Bronco Billy's respectfully requests that City Council reevaluate and change. The changes are intended to allow these two lots to match the conditions in City Council's September 6, 2023 approval of Resolution No. 2023-35 related to the Employee Lot. This application is submitted in an effort to provide City Council a mechanism by which it may modify and remove the two identified conditions from the approval. Bronco Billy's respectfully requests that City Council:

1. Remove the requirement from the Resolutions requiring 12-foot street lights for the parking lots. Instead, adopt the language of Resolution 2018-08 which states:
  - a. Light fixtures shall fully shield the light source (full cut off fixture) to minimize glare and light trespass and to facilitate better vision at night. Mounting height shall be no taller than twenty (20) feet. Lots shall provide a minimum of one (1) foot-candle of illumination at five (5) feet above the ground surface. Lighting shall not shine onto adjacent property.
2. Remove the requirement that the Bronco Billy's expanded parking lots be open to the public.

Regarding the first request, City Council originally included a condition of approval that the lighting be no taller than 12 feet in height. We have since learned that such a condition would result in the need for a complete redesign of the parking lots in question, preventing Bronco Billy's from beginning construction this year. Bronco Billy's Lighting Study confirms that with the amended condition on lighting (see above #1), it will be able to meet Cripple Creek's Code regarding photometrics for average illumination. Thus, the request is to approve and readopt the language of the 2018-08 Resolution stated above.



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The second condition of approval that Bronco Billy's request that City Council remove is that the parking lots owned by Bronco Billy's be made open to the public. Upon review of City records after the August 16, 2023 hearing, the City Clerk confirmed that no other casino in town had been required to meet such a condition. As discussed below, several casinos have considerably more parking spaces per hotel room than Bronco Billy's. Bronco Billy's respectfully requests that this condition be removed from its parking lot expansion approvals.

Thus, Bronco Billy's respectfully requests that the two conditions of approval included in the August 16, 2023, Resolutions 30 and 31 identified above be amended and removed respectively. This application is submitted in support of such an approval.

### Background.

Prior to the current expansion, Bronco Billy's hotel and casino employed 110 employees, and operated a 36 room hotel. The company had a total of approximately 285 surface parking spaces. These parking lots were completely filled and overflowing almost every weekend. In 2018, Bronco Billy's obtained approval for expansion of its casino and hotel (referred to as the "Chamonix Project") and a parking garage. At that time, Bronco Billy's sought, and received, permission for additional off-street commercial parking from the Cripple Creek City Council per Resolution Numbers 2018-07 and 2018-08. These parking lots were reviewed and approved by Historic Preservation Commission and this approval resulted in approximately 535 approved parking spaces.

Bronco Billy's now seeks to expand and improve the Valet Parking Lot. The previously approved lots that are contiguous with the expansion are included in this request so that the landscaping and site improvements can be reviewed in full context and if approved, they will be part of one permit instead of multiple.

Since the approvals in 2018, Bronco Billy's has purchased adjacent property on both sides of the 2018 approved surface parking lot on the North side of Carr Avenue comprising what is currently identified as the Guest Services Lot, and the property West of the 2018 approved Valet Parking Lot down to 1st Street, referred to as the "Valet Lot." These subsequent purchases included four (4) houses that were in a serious state of dilapidation, most of which were uninhabitable. Bronco Billy's sought, and was granted, approval to demolish all four (4) of the dilapidated houses. The sole reason to purchase these adjacent properties was to enhance the properties adjacent to Bronco Billy's existing surface parking lots, allowing for the opportunity to expand the original parking lots and eliminate unattractive buildings bordering the property.

There are several key reasons why additional parking is needed. Bronco Billy's sought and received approval in February 2021 from the City Council to add Tower 3 (Tower 3 sits atop the parking garage).

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The additional hotel tower added 129 hotel guest rooms to the overall Chamonix Project. When fully built out, the Bronco Billy's existing casino and Chamonix hotel and casino will employ an additional 290 employees and add an additional 300 hotel rooms. Thus, when fully online, the Chamonix Project will include 336 hotel rooms and 400 employees.

Inclusive of the parking garage, the 30 garage spaces plus the additional 235 current surface commercial parking, will simply not have the capacity to accommodate the overnight guests, day trip guests, and employees. Bronco Billy's is already scheduling meetings and conventions for the new meeting spaces inside Chamonix, and many of these attendees will not be hotel or casino guests. They will be in town for a day for meetings and will need places to park.

Bronco Billy's has done an analysis of existing improved parking currently approved for various casinos in Cripple Creek to put this request in context. The chart below depicts the current number of parking spaces (garage and surface) for each of the casino properties in the City of Cripple Creek with a hotel and the number of parking spaces per hotel room for comparison to what is proposed. As you can see, this approval request places Bronco Billy's in line with other casinos in town and well below the City average number (3.75) of parking spaces per hotel room when Bronco Billy's and Chamonix are taken out of the equation. Worth noting, too, is that none of the other hotel casinos listed currently offer full-service meeting/convention/banquet space, a full-service spa, 4 full-service restaurants or multiple retail outlets – and Chamonix will offer all of these things to visitors of Cripple Creek. Additionally, after the August City Council hearing, City staff researched and confirmed that none of the other hotels in town had to condition the approval of their parking spaces on making them open to the public.



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Property	Garage Parking Spaces	Surface Parking Spaces	TOTAL Parking Spaces	# of Hotel Rooms	Parking Spaces per Hotel Room
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City Totals without BBC/Chamonix	850	667	1517	405	3.75
<b>Chamonix (proposed)</b>	308	293	601	300	2.00

In essence, Bronco Billy's is requesting to redesign the existing surface parking and contiguous undeveloped lots to maximize their usability.

As part of the prior submission, Bronco Billy's prepared an exhibit showing the project with and without the proposed parking. These graphics demonstrate the need for approval of a cohesive design for the Chamonix Project parking. Given the sizes, shapes and locations of the "residual" property surrounding the Guest Services Lot and the Valet Parking Lot, there is no better use of this land than to expand the surface parking lots for visitors to Cripple Creek and to Bronco Billy's.

### Permit Criteria.

A) The request is composed of a combination of benefits to the community's residents, visitors, and economy and the unique characteristics of the project not anticipated by the regulations.

The proposed Valet Lot currently consist of dirt lots that are occupied by construction materials and equipment. The requested expansion of this lot benefits the residents and visitors by providing convenient paved and landscaped parking in close proximity to the Chamonix Project. The capacity of the current unpaved Guest Services and Employee Parking Lots was routinely and consistently exceeded when Bronco Billy's only had 36 hotel rooms and 110 employees. The existing dirt lots will be wholly inadequate to meet the demand of the additional 313 hotel rooms and 290 employees soon seeking parking (total of 349 hotel rooms and 400 employees).

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B) The request will not overburden public infrastructure or services in the proposed location.

The expansion site for the Valet Lot currently consist of dirt lots that are occupied by construction materials and equipment. As such, the expansion of the Valet Lot will have no appreciable negative impacts upon public infrastructure. The removal of unpaved dirt lots may decrease the burden on the public infrastructure by causing less mud and dirt to flow into the stormwater drainage system. Further, as the Chamonix Project comes fully online, Cripple Creek is undoubtedly going to experience increased business and economic growth in its downtown business district. Thus, far from burdening public infrastructure, the expansion of the Valet Lot will relieve the burden of inadequate parking.

C) The proposed building and site design on the subject property, when compared with the uses or standards permitted by right in the zoning district, will not be detrimental to existing or planned adjacent uses.

The expanded Valet Lot is not detrimental to the existing and planned business use of adjacent properties. Rather, the Valet Lot will support ease of access to local businesses by providing easily accessible and readily available parking for the Chamonix Project patrons. Parking lots are contemplated within the B zone district as an allowed use with the issuance of the SE.

D) The proposal meets or exceeds the standards of the applicable zoning district except for the specific characteristics requiring relief from the standards of the zone district.

The Valet Lot is zoned "B" or Downtown district. The B district is intended for businesses of regional scope, such as the Chamonix Project. The B district is applicable to the commercial areas along Bennett Avenue, Carr Avenue and Myers/Masonic Avenue. (Cripple Creek Municipal Code p. 10).

Off-street commercial parking is allowed in the B via a Special Exception Permit. 1.3.3 Table 1-2. Thus, the Lots meet the standards for the B Zone district. No relief from the City zoning codes is required.

E) The proposed or imposed additional design standards, that are otherwise not applicable in the zoning district are adequate to ensure compatibility with the surrounding area and to prevent any potential harm to the public health, safety, or general welfare.

The improvement of the Valet Lot will upgrade the currently vacant land that may otherwise have appeared as blighted, to a useful and well-maintained parking lot that supports a core local business. The paving and landscaping of the Valet Lot will significantly upgrade the visual appearance of the lot from Carr Avenue. The Valet Lot design was fully vetted by the Historic Preservation Commission.

**HAND DELIVERED**

Mr. Frank Salvato  
Mr. Ken Hartsfield  
September 15, 2023  
Page 7

F) The specific application of the request to the site supports the Intent and Applicability of the zoning district and does not compromise the Intent and Applicability of any adjacent zoning districts.

As discussed above, is intended for businesses of regional scope, such as the Chamonix Project.

The Valet Lot is adjacent to the BB district which serves as a transition district between the downtown/commercial core of the City and the more residential neighborhoods. The proposed Valet Lot expansion is supportive of the commercial uses of the downtown district, specifically the hotel, casino and ancillary services which all support the economic viability of Cripple Creek. The lot also serves to help prevent congested parking for nearby neighborhoods; thus meeting the purpose of the BB zone district.

G) The applicant has established that the requirements of the district present a burden that is not in the best interest of the City.

The expansion of the Valet Lot proposed for approval here is appropriate and in alignment with the B zone district use. The paving and landscaping of the lot will improve the overall quality and aesthetic of the area as well as provide critical support for the Chamonix Project within the B zone district. The City's approval of the expansion of the Valet Lot will benefit all of Cripple Creek, and those visiting, providing the Chamonix Project overnight visitors with convenient and safe parking.

As set forth above, the two requested changes to the previously approved conditions in the August Resolutions allow the Guest Services Lot and the Valet Lot to match the conditions in City Council's September 6, 2023 approval of Resolution No. 2023-35 related to the Employee Lot so they are all consistent.

Sincerely,



Caitlin Quander, Esq.



**CITY OF CRIPPLE CREEK,**

**RESOLUTION NO. 2023-42**

**A RESOLUTION APPROVING MODIFICATIONS TO RESOLUTION 2023-31 FOR A SPECIAL EXCEPTION GRANTED TO CONSTRUCT A PARKING LOT IN THE BB MIXED USE ZONE DISTRICT AT CERTAIN REAL PROPERTY DESCRIBED AS LOTS 14-20 BLOCK 17 FREMONT ADDITION TO CRIPPLE CREEK, COUNTY OF TELLER, COLORADO.**

WHEREAS, the Applicant, Full House Resorts Colorado LLC has applied for a Special Exception to allow a parking lot in the B Downtown Zone District, located at real property commonly legally described as Lots 14-20 Block 17 Fremont Addition to Cripple Creek and more particularly described in Exhibit A hereto (the “Property”); and

WHEREAS, the proposed parking lots are planned to be utilized for the Chamonix Hotel and Casino’s parking needs in Cripple Creek; and

WHEREAS, a public hearing on the application was held before the City Council of the City of Cripple Creek on August, 16, 2023, preceded by public notice of such hearing as required by Sec. 4.6 of the City of Cripple Creek Development Code; and

WHEREAS, at the public hearing the City Council heard evidence from interested parties and considered the factors for approval of a Conditional Use Permit set forth in Section 4.5 of the City of Cripple Creek Development Code.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CRIPPLE CREEK;

Findings. The criteria to be used to determine the granting of a Special Exception are as follows:

**a) The request is composed of a combination of benefits to the community’s residents, visitors, and economy and the unique characteristics of the project not anticipated by the regulations;**

The request is composed of benefits to the community’s visitors and economy as well as the unique characteristics of the project not anticipated by the regulations.

**b) The request will not overburden public infrastructure or services in the proposed location;**

The requested additional parking will add no burden to public infrastructure or services.

**c) The proposed building and site design on the subject property, when compared with the uses or standards permitted by right in the zoning district, will not be detrimental to existing or planned adjacent uses;**

The additional parking will not interfere with or be detrimental to existing or planned adjacent uses.

**d) The proposal meets or exceeds the standards of the applicable zoning district except or the specific characteristics requiring relief from the standards of the zone district.**

The proposal exceeds the standards for the applicable zoning district, expanding the available parking to 601 spaces, when only 167 are required.

**e) The proposed or imposed additional design standards, that are otherwise not applicable in the zoning district are adequate to ensure compatibility with the surrounding area and to prevent any potential harm to the public health, safety, or general welfare;**

The design standards are adequate to ensure compatibility and prevent any harm to public health, safety, or welfare.

**f) The specific application of the request to the site supports the Intent and Applicability of the zoning district and does not compromise the Intent and Applicability of any adjacent zoning.**

The specific application supports the Intent and Applicability of the zoning district for the B Zone, and the Gaming District.

**g) The applicant has established that the requirements of the district present a burden that is not in the best interest of the City.**

The applicant has not established that the requirements of the district present a burden that is not in the best interest of the City.

Approval. The application for a Special Exception for the parking lots is hereby granted with the conditions outlined in Exhibit B and the Council finds that the requirements and conditions of Section 4.6.2 of the City of Cripple Creek Development Code are met.

ADOPTED at Cripple Creek, Colorado, this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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MELISSA TRENARY  
Mayor

ATTEST:

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Malissa Gish  
City Clerk

APPROVED AS TO FORM:

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Erin M. Smith  
City Attorney

## **Exhibit A**

### Legal Description:

#### **Parcel 1:**

Lots 14 thru 17, inclusive, Block 17, Fremont now Cripple Creek, County of Teller, State of Colorado

#### **Parcel 2:**

Lots 18 through 20, Block 17, City of Fremont, (now Cripple Creek), County of Teller, State of Colorado

## **Exhibit B**

### Conditions of Approval:

1. The applicant is to submit grading and drainage plans for review and approval by City Staff.
2. The applicant is to provide a traffic analysis for Carr Avenue and surrounding streets.
3. Drawings and related construction documents be provided for review and approval by City Staff .
4. Update Photometric and lighting plans meeting the development Code requirements of 5 footcandles measure and 20-foot maximum height.