



**TOWN OF LARKSPUR  
ORDINANCE NO. 3.110**

**AN ORDINANCE OF THE LARKSPUR TOWN COUNCIL  
APPROVING A SECOND AMENDMENT TO AN AGREEMENT DATED JULY 20,  
2006 BETWEEN THE TOWN AND ROCKY MOUNTAIN FESTIVALS, INC.**

**WHEREAS**, the Town Council of the Town of Larkspur negotiated an agreement between the Town (“Town”) and Rocky Mountain Festivals, Inc. (“CRF”), dated August 20, 2006 regarding, *inter alia*, utility rates and services to be provided by the CRF and a related property referred to as the Summerfest Property (the “Agreement”), and

**WHEREAS**, certain changed conditions warrant an amendment to the Agreement, and

**WHEREAS**, the Town and the CRF desire to extend the Agreement,

**NOW THEREFORE BE IT ORDAINED BY THE TOWN COUNCIL OF THE  
TOWN OF LARKSPUR, COLORADO AS FOLLOWS:**

1. The Agreement between the Town of Larkspur and Rocky Mountain Festivals, Inc., dated August 20, 2006, a copy of which was attached and incorporated to Ordinance 3.91 by reference, regarding, *inter alia*, utility rates and services to be provided by the CRF and a related property referred to as the Summerfest Property, was approved on July 20, 2006.
2. Attached hereto and incorporated herein by reference is a Second Amendment to the Agreement, which is hereby approved by the Town Council.
3. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Town Council hereby declares that it would have passed this ordinance and each part or parts thereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.
3. Repeal. Existing ordinances or parts of ordinances covering the same matters as embraced in this ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this ordinance.

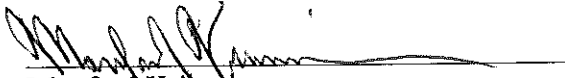
INTRODUCED, PASSED AND ADOPTED AT A REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF LARKSPUR AND SIGNED THIS 16<sup>th</sup> DAY OF July 2015.

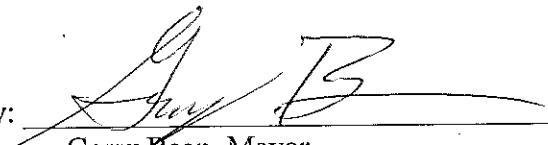


Votes Approving:	<u>7</u>
Votes Opposed:	<u>0</u>
Absent:	<u>0</u>
Abstained:	<u>0</u>

ATTEST:

TOWN COUNCIL OF THE  
TOWN OF LARKSPUR, COLORADO

  
Manfred Krimmer  
Town Clerk/Manager

By:   
Gerry Been, Mayor

## SECOND AMENDMENT TO THE "AGREEMENT"

THIS Amendment is made this 17<sup>th</sup> day of JULY, 2015 between the Town of Larkspur, Colorado, a Home Rule Municipal Corporation (the "Town") and Crete LLC, dba Rocky Mountain Festivals, Inc. (the "CRF"), owner and operator of the Colorado Renaissance Festival (the "Festival").

### Recitals

A. The CRF and the Town entered into an Agreement dated July 20, 2006, which was approved by Ordinance 3.91.

B. The Agreement outlined certain conditions and improvements to be undertaken by the CRF with regard to its water and wastewater systems at the Festival.

C. The Town has indicated that it is in the process of implementing certain improvements to the Town's water system which will improve water quality and add to the Town's water storage and distribution system.

D. The Town and the CRF desire to modify the Agreement only as set forth below, with all other terms and conditions of the Agreement remaining unaltered and in full force and effect.

## Agreement

THEREFORE, in consideration of the mutual promises contained herein, and with the intent to be legally bound hereby, the parties hereby modify paragraph 6, only, of the "Agreement" as follows:

6. Additional Consideration. The Town and the CRF agree as follows with respect to the Additional Considerations:

A. **[Unchanged]** The initial term of this Agreement shall be from June 1, 2007 through December 31, 2010 (the "Initial Term"). Upon the expiration of the Initial Term, this Agreement may be extended by the owner of the Property for a secondary term of (6) years from December 31, 2010 through December 31, 2016. The option to extend the Initial Term must be made on or before December 31, 2010. During the Secondary Term, the owner of the Property may terminate this Agreement as follows:

- i. If the owner provides the Town written notice of termination on or before October 31, 2012, the Agreement will terminate on December 31, 2012.
- ii. If the owner provides the Town written notice of termination on or before October 31, 2014, the Agreement will terminate on December 31, 2014.

- B. ***[Paragraph vii Modified]*** The Shareback Agreement shall expire on its own terms as of May 31, 2007. Notwithstanding such expiration:
- i. The CRF and the undersigned principals thereof agree to utilize their best efforts to operate the Festival within the Town of Larkspur during the Term upon the same general basis and in the same general format as currently exists. The CRF and the undersigned agree that the officers, directors and shareholders, or the wives or immediate family members thereof, shall not have an ownership or leasehold interest in, manage, operate, participate or derive any profit or income, either directly or indirectly, from the operation of any other renaissance type festival located within a one hundred and fifty (150) mile radius of the Property during the Term. The CRF and the undersigned agree that the officers, directors and shareholders, or the wives or immediate family members thereof, shall not have an ownership or leasehold interest in, manage, operate, participate or derive any profit or income, either directly or indirectly, from the operation of any other renaissance type festival located within the State of Colorado, but outside of a one hundred and fifty (150) radius of the Town, during the term of this Agreement without the prior written consent of the Town. For the purpose of obtaining such consent, the CRF will provide to the Town information concerning the proposed operation of another renaissance type festival, including size, dates of operation, number and type of

vendors and other pertinent information. The Town's decision to consent to the operation of such festival shall be based upon its assessment of whether or not such festival shall have a material adverse impact on the tax revenues received by the Town from the CRF. The Town will notify the CRF within forty five (45) days after the submission of information concerning the proposed renaissance type festival of its consent or rejection of the request. Except in the event of the death or disability of Jim Paradise, Sr., the Festival shall be operational during the initial term; in the event of such death or disability, the restrictive covenants set forth above shall nevertheless apply during the balance of the Initial Term;

ii. The parties agree that in the event of a breach of this agreement by the CRF, including but not limited to subparagraph 6(B) (i) above, damages would be extremely difficult to determine. Therefore, in addition and not in lieu of any other remedy available to the Town, the CRF agrees to pay liquidated damages upon the finding of such breach. Liquidated damages for any breach of the agreement by CRF shall be set as follows: the annual tax revenues the Town received as a result of the operation of the Festival for the two (2) years immediately preceding the year of the breach will be examined. The higher of those two numbers will then be selected and then multiplied by two in order to set the amount of the liquidated damages;

iii. As additional consideration for this Agreement, the Town agrees that during the Term, any incremental admissions taxes otherwise assessable based upon activities upon the Property or Summerfest in excess of six (6%) percent shall not be assessed against or collected from the CRF or any owner, lessee or user of the Property or Summerfest. For the purposes of this paragraph, Admissions Tax or any other reference to taxes herein shall be deemed to include any and all taxes or surcharges assessable as against the CRF, the Property, Summerfest or any other user based upon the use, ownership, or operation of the Festival or any component thereof, including concert activity upon Summerfest, but specifically excluding, however, real property taxes;

iv. As additional consideration for this Agreement, the Town agrees that during the Term, any incremental sales taxes otherwise assessable upon sales made upon or from the Property or Summerfest in excess of four (4%) percent shall not be assessed against or collected from the CRF or any owner, lessee or user of the Property or Summerfest. Nothing in this Agreement shall be construed to prohibit the Town from assessing and collecting business license or transient merchant license fees from businesses or transient merchants operating upon the property pursuant to the ordinances in effect as of the date of this Agreement;

v. By execution and performance of this Agreement, the Town

does not in any manner become obligated, directly or indirectly, as surety or guarantor of any of the development or financial obligations of the CRF. No legal relationship of partner, joint venturer or co-obligor is created by this Agreement;

vi. Except as otherwise specified herein, the law of the State of Colorado shall control and all disputes shall be litigated in Douglas County, Colorado;

vii. All notices to the Town shall be sent to

Town of Larkspur  
P.O. Box 310  
Larkspur, CO 80118

With a copy to:

Dan Krob  
8400 Prentice Ave, Penthouse  
Greenwood Village, CO 80111

All notices to the CRF shall be sent to:

Colorado Renaissance Festival  
409-F S. Wilcox Road  
Castle Rock, CO 80104

With a copy sent to:

T.R. Rice  
Rice LLC



5575 DTC Parkway, Suite 210

Greenwood Village, CO 80111

Addresses for such notices may be changed from time to time by providing written notice of such change to the other party.

viii. Should any provision hereof be determined to be illegal or contrary to public policy by any court of competent jurisdiction, the remainder of this agreement shall remain in force and effect except in the event such provision is determined to be an essential purpose of the Agreement, in which case the affected party may rescind the same.

- C. **[Unchanged]** Unless authorized by the other party in writing, the parties shall forbear in publicizing the terms and conditions of this Agreement except as otherwise required by law.
- D. **[New]** In further consideration of the Agreement for Water Line Easement, the Town represents that the clearing, trenching, laying, installing, and constructing waterlines, pipelines, or appurtenances thereto from the new well (AR-3) site shall have no effect on the water pressures enjoyed by the CRF since the execution the Agreement and passage of Ordinance 3.91.
- E. **[New]** Upon approval by the Town Council as contemplated herein, Town shall pay to the CRF the sum of \$5000 and the CRF is afforded

the option to extend the term of the "Agreement" affixed to Ordinance 3.91 and as amended by Ordinance 3.92, three (3) times for periods of three (3) years each from December 31, 2016, thus potentially extending the term of the "Agreement" through December 31, 2028. The first option shall be deemed to be exercised upon CRF's receipt and negotiation of the foregoing \$5000 payment from the Town, thus extending the Agreement through December 31, 2019. Any subsequent exercises of the option shall occur by no later than October 31, 2022 and October 31, 2025.



ATTEST: Manfred Krimmer  
 Manfred Krimmer  
 Town Clerk/Manager

TOWN OF LARKSPUR, COLORADO

By: Gerry Been  
 Gerry Been, Mayor

ROCKY MOUNTAIN FESTIVALS, INC.

By: Jim Paradise, Sr.  
 Jim Paradise, Sr., President

ATTEST: \_\_\_\_\_  
 Secretary

STATE OF COLORADO )

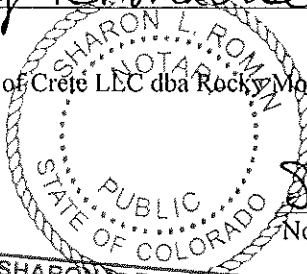
COUNTY OF DOUGLAS )

The foregoing instrument was subscribed and sworn to before me this 17th day

of July, 2015, by Jim Paradise Sr. as

President of Crete LLC dba Rocky Mountain Festivals Incorporated.

Witness my hand and official seal.



Sharon L. Roman  
 Notary Public

My Commission Expires:

SHARON L. ROMAN  
 NOTARY PUBLIC  
 STATE OF COLORADO  
 NOTARY ID 20064019812  
 MY COMMISSION EXPIRES MAY 03 2010