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**CITY COUNCIL AGENDA  
WEDNESDAY, SEPTEMBER 4, 2019**

**5:30 PM – REGULAR MEETING**

**Location:** Council Chambers, City Hall  
337 E. Bennett Avenue, Cripple Creek, Colorado 80813

**CALL TO ORDER  
INVOCATION  
PLEDGE OF ALLEGIANCE  
ROLL CALL  
APPROVAL OF MINUTES FROM PRIOR MEETING  
A. AUGUST 7, 2019 REGULAR MEETING  
PUBLIC COMMENT  
ADMINISTRATOR REPORT  
FINANCE DIRECTOR REPORT**

- 1. PRESENTATION BY THE BUTTE THEATER FOUNDATION REGARDING FUTURE PLANS AND 2020 FACILITY LEASE AGREEMENT; EMILY ANDREWS, EXECUTIVE DIRECTOR.**
- 2. WATER & WASTEWATER DEPARTMENT UPDATE; MICKEY GROVES, PLANT OPERATIONS DIRECTOR.**
- 3. ANNUAL REVIEW AND EVALUATION OF THE CITY ADMINISTRATOR; CAROL STOTTS, HR & RISK MANAGEMENT DIRECTOR.**
- 4. PRESENTATION BY BLACK HILLS ENERGY COMMUNITY AFFAIRS DEPARTMENT; JOHN VIGIL, SENIOR PROGRAM MANAGER.**
- 5. FIRST READING OF ORDINANCE 2019-06 GRANTING BLACK HILLS COLORADO ELECTRIC, LLC, D/B/A BLACK HILLS ENERGY, ITS LESSEES, SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE AND THE AUTHORITY TO CONSTRUCT, OPERATE, MAINTAIN AND EXTEND AN ELECTRIC DISTRIBUTION PLANT AND SYSTEM, AND GRANTING THE RIGHT TO USE THE STREETS, ALLEYS, AND OTHER PUBLIC PLACES WITHIN THE PRESENT OR FUTURE CORPORATE LIMITS OF THE CITY OF CRIPPLE CREEK, COLORADO; ERIN SMITH, CITY ATTORNEY.**
- 6. TO BE CONTINUED TO SEPTEMBER 18, 2019: SECOND READING AND PUBLIC HEARING TO CONSIDER APPROVAL OF ORDINANCE 2019-04 AMENDING SUBSECTION 4-5-10 OF THE CRIPPLE CREEK MUNICIPAL CODE RELATING TO GAMING DEVICE FEES TO AMEND THE DEFINITION OF GAMING DEVICE TO INCLUDE EACH STATION AT A MULTI-STATION SLOT MACHINE; PAUL HARRIS, FINANCE DIRECTOR.**
- 7. ADJOURN TO EXECUTIVE SESSION PURSUANT TO C.R.S. § 24-6-402(4)(a) TO DISCUSS THE PURCHASE, ACQUISITION, LEASE, TRANSFER, OR SALE OF ANY REAL, PERSONAL, OR OTHER PROPERTY INTEREST; C.R.S. § 24-6-402(4)(e) TO DETERMINE POSITIONS RELATIVE TO MATTERS THAT MAY BE SUBJECT TO NEGOTIATIONS, DEVELOPING STRATEGY FOR NEGOTIATIONS, AND INSTRUCTING NEGOTIATORS; AND C.R.S. § 24-6-402(4)(b) FOR A CONFERENCE WITH LEGAL COUNSEL FOR THE PURPOSE OF RECEIVING LEGAL ADVICE ON SPECIFIC LEGAL QUESTIONS; ALL RELATED TO AGREEMENTS CONCERNING AGREEMENT BETWEEN THE CITY AND THE BUTTE THEATER FOUNDATION.**
- 8. RECONVENE REGULAR MEETING AND ADJOURNMENT.**

**CALL TO ORDER:** Mayor Brown called the regular meeting of the City Council to order at 5:30 PM having previously been noticed in accordance with Colorado Open Meetings law.

**PLEDGE OF ALLEGIANCE:** Mayor Brown led the Pledge of Allegiance.

**ROLL CALL:** City Clerk Sciacca called the roll. Present were Mayor Bruce Brown, Mayor Pro Tem Chris Hazlett, and Councilmembers Tom Litherland, Meghan Rozell, and Melissa Trenary. Staff present were City Administrator Mark Campbell, City Clerk Janell Sciacca, City Attorney Erin Smith, Finance Director Paul Harris, HR & Risk Management Director Carol Stotts, Planning & Development Director Bill Gray, Public Works Director Steve DiCamillo, Chief of Police Mike Rulo, Fire Chief Dean O’Nale and Fireman Randy Munch.

**PUBLIC COMMENT:** There was no public comment.

**APPROVAL OF MINUTES:** MOTION by Councilman Litherland and seconded by Councilwoman Rozell to approve the minutes of the July 17, 2019 Regular Meeting as written. Motion carried unanimously.

**ADMINISTRATOR’S REPORT:** Administrator Campbell stated his report was in the packet. He then clarified that agenda items 3 & 4 regarding Black Hills were removed to the September 4 meeting. Campbell also reported that Peak Internet acquired the old cable network and fiber in the City and would soon be providing internet service to Cripple Creek. HR & Risk Management Director Carol Stotts recognized Fireman Sam Hedges for 10 years of service and Custodial Manager Deb Hack for 25 years of service to the City. Campbell introduced Interim Marketing & Events Director Jeff Mosher. Mosher stated he looked forward to working with Staff and Council and appreciated the opportunity.

**FINANCE DIRECTOR’S REPORT:** Finance Director Harris stated his item was on the agenda.

**PRESENTATION BY CRIPPLE CREEK ELKS CLUB TO FIRE DEPARTMENT CADET PROGRAM:** Chief O’Nale introduce Fireman Munch who gave a brief introduction on the Cadet program. Munch stated it is a 4 year rotation and at the end of a student’s Senior year he/she can test and certify as a Firefighter and Paramedic. Munch expressed excitement about the future of the program and Cripple Creek Elks Club Exalted Ruler Steve DiCamillo presented Munch with a \$2,500 check to purchase cadet gear and supplies. Munch introduced Cadets Julie Kisserbeth and Dawson Murray. Both are in their 2<sup>nd</sup> year. O’Nale commended Munch as well as Firemen Ortega and Brown on establishing the program which the Fire Department hoped would be \$0 cost to the City.

**CONSIDER REQUEST FROM NORTH STAR TURQUOISE FOR FREE WATER TAP:** Clinton Cross presented and overview of his request and clarified he was not asking for free water, just the tap. Cross responded to questions from the Council related to safety improvements made at his expense that are of benefit to the City. Public Works Director DiCamillo recommended the City grant the request for a free water tap and clarified Cross would still pay for metered outside water usage. DiCamillo stated that the improvements potentially saved the City’s water line from damage and if made by the City itself could have cost \$60,000-\$70,000. City Attorney Smith clarified that the questions asked by Council and the evidence presented establishes the record to support a motion or the Council could direct Staff to prepare a resolution. MOTION by Mayor Pro Tem Hazlett and seconded by Councilwoman Trenary to grant North Star Turquoise a free water tap based on the evidence presented. Motion carried unanimously.

**PRESENTATION BY BLACK HILLS ENERGY COMMUNITY AFFAIRS DEPARTMENT:** Item was removed to the September 4, 2019 Regular Meeting.

**FIRST READING OF ORDINANCE 2019-06 GRANTING BLACK HILLS COLORADO ELECTRIC, LLC, D/B/A BLACK HILLS ENERGY , ITS LESSEES, SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE AND THE AUTHORITY TO CONSTRUCT, OPERATE, MAINTAIN AND EXTEND AN ELECTRIC DISTRIBUTION PLANT AND SYSTEM, AND GRANTING THE RIGHT TO USE THE STREETS, ALLEYS, AND OTHER PUBLIC PLACES WITHIN THE PRESENT OR FUTURE CORPORATE LIMITS OF THE CITY OF CRIPPLE CREEK, COLORADO:** Item was removed to the September 4, 2019 Regular Meeting.

**FIRST READING OF ORDINANCE 2019-04 AMENDING SUBSECTION 4-5-10 OF THE CRIPPLE CREEK MUNICIPAL CODE RELATING TO GAMING DEVICE FEES TO AMEND THE DEFINITION OF GAMING DEVICE TO INCLUDE EACH SEAT AT A MULTI-SEAT SLOT MACHINE:** Finance Director Harris presented stating the proposed change was being requested in order to keep up with gaming device developments. It only applies to slot-type gaming devices. Mayor Brown opened the floor to public comment. Colorado Grande and Johnny Nolon’s owner David Minter suggested changing the word “seat” to “station” and stated from his discussions with other owners, these units were already accounted and paid for as individual devices. Harris agreed with Minter’s suggested wording change. There being no further comment, the floor was closed to public comment.

MOTION by Councilwoman Rozell and seconded by Councilman Litherland to approve Ordinance 2019-04 on first reading as amended. Motion carried unanimously.

**2ND READING AND PUBLIC HEARING TO CONSIDER APPROVAL OF ORDINANCE 2019-03 REPEALING AND REENACTING CHAPTER 18 OF THE CRIPPLE CREEK CITY CODE AND ADOPTING BY REFERENCE THE 2018 EDITIONS OF THE INTERNATIONAL BUILDING CODE, INTERNATIONAL RESIDENTIAL CODE, THE MOST CURRENT EDITION OF THE INTERNATIONAL PLUMBING CODE AS ADOPTED BY THE STATE OF COLORADO, THE 2018 EDITIONS OF THE INTERNATIONAL MECHANICAL CODE, INTERNATIONAL FUEL GAS CODE, INTERNATIONAL ENERGY CONSERVATION CODE, INTERNATIONAL FIRE CODE, INTERNATIONAL EXISTING BUILDING CODE, THE MOST CURRENT EDITION OF THE NATIONAL ELECTRICAL CODE AS ADOPTED BY THE STATE OF COLORADO, THE 2018 EDITION OF THE INTERNATIONAL SWIMMING POOL AND SPA CODE, INTERNATIONAL PROPERTY MAINTENANCE CODE AND AMSE SAFETY CODE FOR ELEVATORS AS ADOPTED BY TELLER COUNTY; WITH CITY OF CRIPPLE CREEK LOCAL AMENDMENTS THERETO:** Planning and Development Director Gray presented requesting the City Council adopt the Ordinance as presented. There was no public comment. MOTION by Councilwoman Rozell and seconded by Mayor Brown to approve Ordinance 2019-03 on second reading as presented. Motion carried unanimously.

**CONSIDER APPROVAL OF RESOLUTION 2019-09 ADOPTING THE CITY OF CRIPPLE CREEK PLANNING AND COMMUNITY DEVELOPMENT BUILDING DIVISION FEE SCHEDULE:** Planning and Development Director Gray presented providing a brief introduction of the proposed request. He highlighted pertinent changes for the Council and viewing public's benefit and responded to brief questions from Councilmembers. There was no public comment. MOTION by Councilwoman Rozell and seconded by Mayor Pro Tem Hazlett to approve Resolution 2019-09 as presented. Motion carried unanimously.

**2ND READING AND PUBLIC HEARING TO CONSIDER APPROVAL OF ORDINANCE 2019-05 DETERMINING TO FOLLOW THE PROVISIONS OF THE UNIFORM ELECTION CODE FOR THE NOVEMBER 2019 REGULAR ELECTION:** City Clerk Sciacca presented providing a brief introduction and reminded the City Council this was a "house-keeping" item required by statute for the City's upcoming Regular Election that was being conducted as part of the November 5, 2019 Coordinated Election. Sciacca recommended approval as presented. There was no public comment. MOTION by Mayor Pro Tem Hazlett and seconded by Councilwoman Trenary to approve Resolution 2019-05 as presented. Motion carried unanimously.

**CONSIDER APPROVAL OF RESOLUTION NO. 2019-10 CALLING FOR THE NOVEMBER 5, 2019 REGULAR MUNICIPAL ELECTION TO BE CONDUCTED AS A COORDINATED ELECTION AND REFERRING BALLOT QUESTIONS TO THE CITY'S ELECTORS:** City Clerk Sciacca presented providing a brief introduction. She reviewed the three questions being submitted to the Cripple Creek voters – two questions asking for approval to post public notices required for approval of ordinances and expenditures instead of publishing them in the paper; and one question in conjunction with the Statewide ballot issue seeking to allow sports betting in the gaming communities. The requests to post rather than publish were being proposed to save the City money and provide better service to citizens. Sciacca recommended approval as presented. There was no public comment. MOTION by Councilwoman Rozell and seconded by Councilman Litherland to approve Resolution 2019-10 as presented. Motion carried unanimously.

**CONSIDER APPROVAL OF INTERGOVERNMENTAL AGREEMENT WITH TELLER COUNTY CLERK & RECORDER FOR 2019 COORDINATED MAIL BALLOT ELECTION:** City Clerk Sciacca presented providing a brief introduction and reminded the City Council this was another "house-keeping" item for the City's upcoming Regular Election. It is the standard agreement as drafted by the County Attorney which has been presented for consideration in prior years. Sciacca recommended approval as presented. There was no public comment. MOTION by Mayor Brown and seconded by Councilman Litherland to approve the Intergovernmental Agreement with the Teller County Clerk & Recorder for the 2019 Coordinated Mail Ballot Election as presented. Motion carried unanimously.

**ADJOURNMENT:** There being no further business before the City Council, Mayor Brown adjourned the meeting at 6:22 PM.

APPROVED:

ATTEST:

\_\_\_\_\_  
Bruce Brown, Mayor

\_\_\_\_\_  
Janell Sciacca, City Clerk

**CITY OF CRIPPLE CREEK, COLORADO  
ORDINANCE 2019-06**

**AN ORDINANCE GRANTING BLACK HILLS COLORADO ELECTRIC, LLC, D/B/A BLACK HILLS ENERGY, ITS LESSEES, SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE AND THE AUTHORITY TO CONSTRUCT, OPERATE, MAINTAIN AND EXTEND AN ELECTRIC DISTRIBUTION PLANT AND SYSTEM, AND GRANTING THE RIGHT TO USE THE STREETS, ALLEYS, AND OTHER PUBLIC PLACES WITHIN THE PRESENT OR FUTURE CORPORATE LIMITS OF THE CITY OF CRIPPLE CREEK, COLORADO**

Be it ordained by the City Council of the City of Cripple Creek, Colorado, as follows:

Section 1. - Franchise Granted.

The City of Cripple Creek, Colorado (hereinafter referred to as "City" or "Grantor"), hereby grants a renewal of non-exclusive franchise to Black Hills Colorado Electric, LLC d/b/a Black Hills Energy, a Delaware limited liability corporation (hereinafter called "Grantee"), its lessees, successors and assigns, subject to the terms hereof. Grantee is hereby granted the right, privilege, franchise, permission and authority to construct, install, maintain, operate and extend in, along and across the present and future streets, alleys, avenues, bridges, public rights-of-way and public easements as are now within the present or future limits of said Grantor, an electric distribution system and all facilities necessary for the production, transmission and distribution of electrical power and energy for the purpose of carrying on a general power and light business and other operations connected therewith or incident thereto for all purposes to the inhabitants of said Grantor and consumers in the vicinity thereof, and for the distribution of electric power and energy from or through said Grantor to points beyond the limits thereof. Such facilities shall include, but not be limited to, poles, transmission lines, distribution lines, anchors, guy wires, cables, conduits, street lighting poles, transformers and all other apparatus and appliances necessary or incident thereto for all purposes described in this paragraph, and to do all other things necessary and proper in providing electric service to the inhabitants of Grantor and in carrying on such business.

Section 2. - Term.

This franchise shall take effect on the first day of the month following the date this Ordinance is finally approved by the Colorado Public Utilities Commission (the "Effective Date"), at which time Grantee will begin to collect the franchise fee set forth herein, and this franchise shall remain in effect for a period of ten (10) years from the Effective Date of this Ordinance.

Section 3. - Franchise Fee.

- (a) Grantor hereby establishes a franchise fee on Grantee. Grantee shall collect from its customers located within the corporate limits of Grantor as depicted on the Map (as defined below) including the City of Cripple Creek and pay to Grantor an amount equal to three percent (3%) of gross receipts Grantee derives from the sale, distribution or generation of electricity delivered within the present limits of Grantor. Gross receipts

as used herein are revenues received from the sale, distribution of electricity, after adjustment for the net write-off of uncollectible accounts and corrections of bills theretofore rendered.

- (b) The amount paid by Grantee shall be in lieu of, and Grantee shall be exempt all occupancy, occupation, and license taxes or other taxes on the rights to do business, or other special taxes, assessments, or excises upon the property of Grantee (except uniform taxes or assessments applicable to all taxpayers or businesses, including excavation and road cut fees). In the event Grantor imposes any such tax, assessment or excise, the payment to be made by Grantee in accordance with this Ordinance shall be reduced in an amount equal to any such tax, assessments or excises imposed upon the Grantee. Ad valorem property taxes or other taxes imposed generally upon all real and personal property within Grantor shall not be deemed to affect Grantee's obligations under this Ordinance.
- (c) Grantee shall report and pay any amount payable under this Ordinance on an annual basis. Such payment shall be made no more than thirty (30) days following the close of the period for which payment is due. Initial and final payments shall be prorated for the portions of the periods at the beginning and end of any franchise granted by Grantor of Cripple Creek, CO, to Grantee.
- (d) Grantee shall list the franchise fee collected from customers as a separate item on bills for utility service issued to their customers. If at any time the Colorado Public Utilities Commission or other authority having proper jurisdiction prohibits such recovery, Grantee will no longer be obligated to collect and pay the franchise fee until an alternate lawful franchise fee can be negotiated and implemented. In addition, with prior approval of Grantor, Grantee may reduce the franchise fee payable for electric distribution to a specific customer when such reduction is required to attract or retain the business of that customer.
- (e) Within ten (10) days of the date of this ordinance, or such later time as the parties may agree to in writing, Grantor shall provide the Grantee with a map of its corporate limits (the "Map"). The Map shall be of sufficient detail to assist Grantee in determining whether its customers reside within Grantor's corporate limits. The Map, or any corrected version of the Map to be supplied by Grantor at any subsequent time in the event the Map is found to be incorrect, along with Grantee's Geographic Information System ("GIS") mapping information shall serve as the sole basis for determining Grantee's obligation hereunder to collect and pay the franchise fee from customers. If the corporate boundaries of the Grantor are expanded during the term of this franchise, the Grantee shall, to the extent permitted by law, extend service to residents in the expanded area at the earliest practicable time. Service to the expanded area shall be in accordance with the terms of the Grantee's Tariffs and this franchise, including the payment of franchise fee. The Grantor shall endeavor to supply: (1) a copy of the annexation ordinance if its corporate boundaries are extended at the time such annexation is approved; (2) an updated map to Grantee if its corporate boundaries are extended; and (3) a list of addresses that are in such annexation; provided that until

Grantor supplies the updated map of its corporate boundaries to Grantee, Grantee shall be excused from any affirmative obligation to expand service to residents in the expanded area.

- (f) Grantor shall have access to and the right to examine, during normal business hours, Grantee's books, receipts, files, records and documents as is reasonably necessary to verify the accuracy of payments due hereunder; provided, that Grantor shall not exercise such right more than twice per calendar year. If it is determined that a mistake was made in the payment of any franchise fee required hereunder, such mistake shall be corrected promptly upon discovery such that any under-payment by Grantee shall be paid within thirty (30) days of recalculation of the amount due, and any over-payment by Grantee shall be deducted from the next payment of such franchise fee due by such Grantee to Grantor.

#### Section 4. - Governing Rules and Regulations.

The franchise granted hereunder is subject to all conditions, limitations and immunities now provided for, or as hereafter amended, and applicable to the operations of a public utility, by state or federal law. The rates to be charged by Grantee for service within the present or future corporate limits of Grantor and the rules and regulations regarding the character, quality and standards of service to be furnished by Grantee, shall be under the jurisdiction and control of such regulatory body or bodies as may, from time to time, be vested by law with authority and jurisdiction over the rates, regulations and quality and standards of service to be supplied by Grantee. Provided however, should any judicial, regulatory or legislative body having proper jurisdiction take any action that precludes Grantee from recovering from its customers any cost associated with services provided hereunder, then Grantee and Grantor shall renegotiate the terms of this Ordinance in accordance with the action taken. In determining the rights and duties of the Grantee, the terms of this Ordinance shall take precedence over any conflicting terms or requirements contained in any other ordinance enacted by the Grantor.

The right is hereby reserved to the Grantor to adopt, from time to time, in addition to the provisions herein contained, such ordinances as may be deemed necessary in the exercise of its police power, provided that such regulations shall be reasonable and not destructive of the rights herein granted, and not in conflict with the laws of the State of Colorado, or with orders of other authorities having jurisdiction in the premises. Grantee expressly acknowledges Grantor's right to enforce regulations concerning Grantee's access to or use of the streets, alleys, avenues, bridges, public rights-of-way and public places of Grantor. Grantee shall promptly and fully comply with all laws, regulations, permits, and orders enacted by Grantor.

#### Section 5. - Provision for Inadequate Energy Supplies.

If an energy supplier is unable to furnish an adequate supply of energy due to an emergency, an order or decision of a public regulatory body, or other acts beyond the control of the Grantee, then the Grantee shall have the right and authority to adopt reasonable rules and regulations limiting, curtailing or allocating extensions of service or supply of energy to any customers or prospective customers, and withholding the supply of energy to new customers,

provided that such rules and regulations shall be uniform as applied to each class of customers or prospective customers, and shall be non-discriminatory as between communities receiving service from the Grantee.

Section 6. - Construction and Maintenance of Grantee's Facilities.

Any pavements, sidewalks or curbing taken up and any and all excavations made shall comply with all laws, regulations, permits, and orders enacted by Grantor and shall be done with such a manner as to cause only such inconvenience to the inhabitants of Grantor and the general public as is reasonably necessary, and repairs and replacements shall be made promptly by Grantee, leaving such properties in as good as condition as existed immediately prior to excavation.

Grantee agrees that for the term of this franchise, it will use its best efforts to maintain its facilities and equipment in a condition sufficient to meet the current and future energy requirements of Grantor, its inhabitants and industries. While maintaining its facilities and equipment, Grantee shall obtain permits as required by ordinance and will fix its excavations within a commercially reasonable time period, except that in emergency situations Grantee shall take such immediate unilateral actions as it determines are necessary to protect the public health, safety, and welfare; in which case, Grantee shall notify Grantor as soon as reasonably possible. Within a reasonable time thereafter, Grantee shall apply and obtain, subject to the requirements of all laws, regulations, permits, and orders enacted by Grantor, any permits or authorizations required by Grantor for the actions conducted by Grantee during the emergency situation.

Section 7. - Tree Trimming.

Grantor grants Grantee the right, permission and authority to trim and remove trees upon, over, across and along all of the streets, alleys, avenues, bridges, public rights-of-way and public places of Grantor.

Section 8. - Street Lighting.

Grantee will furnish, erect, maintain, clean, repair and operate, and install such additional lights as Grantor may require from time to time, in accordance with the street lighting tariffs as approved from time to time by the Colorado Public Utilities Commission, street lights within the corporate limits of Grantor. Grantor will receive and pay for the street light service at the rates stipulated in the tariff. Grantor's payments for electricity used by such lights shall not be subject to the franchise fee specified herein. The Grantor and the Grantee will cooperate to identify a list of City accounts that are to be exempt from collection of the franchise fee.

Grantor may, from time to time, cause the number of street lights to be increased by making written request to Grantee, stating the number, capacity, and location desired. Such request is to be made at least ninety (90) days prior to the time such additional street lights are required by Grantor.

Section 9. - Use of Facilities by Grantor.

Grantor shall have the right to petition Grantee to use all poles and appropriate overhead structures within the City limits for any reasonable Grantor purpose; provided, however, that in the event Grantee grants permission for Grantor to use any of its structures within the City limits, Grantee will assume no liability of any nature therefor, directly or indirectly, or incur any expense by virtue of the use by Grantor of said poles and structures. Further, the use by Grantor shall in no way interfere with Grantee's use of said poles and structures in providing electric service within the City. Grantor's use of any pole or structure as of the date of this Agreement shall be deemed approved by Grantee.

Section 10. - Extension of Grantee's Facilities.

Upon receipt and acceptance of a valid application for service, Grantee shall, subject to its own economic feasibility criteria, make reasonable extensions of its distribution facilities to serve customers located within the current or future corporate limits of Grantor; provided however, nothing in this Ordinance shall require Grantee to install new facilities underground. In the event that Grantor shall order or request Grantee to underground existing facilities along any street, alley, avenue, bridge, public right-of-way or public place, Grantee shall have the right to recover from Grantor the difference in cost between placing facilities overhead and placing new facilities underground.

Section 11. - Relocation of Grantee's Facilities.

If Grantor elects to change the grade of or otherwise alter any street, alley, avenue, bridge, public right-of-way or public place for a public purpose, unless otherwise reimbursed by federal, state or local legislative act or governmental agency, Grantee, upon reasonable notice from Grantor, shall remove and relocate its facilities or equipment situated in the public rights-of-way, at the cost and expense of Grantee, if such removal is necessary to prevent interference.

If Grantor orders or requests Grantee to relocate its facilities or equipment for the primary benefit of a commercial or private project, or as a result of the initial request of a commercial or private developer or other non-public entity, and such removal is necessary to prevent interference, then Grantee shall receive payment for the cost of such relocation as a precondition to relocating its facilities or equipment.

Section 12. - Confidential Information.

Grantor acknowledges that certain information it might request from Grantee pursuant to this Ordinance may be of a proprietary and confidential nature, and that such requests may be subject to the Homeland Security Act or other confidentiality protections under state or federal law. If Grantee requests that any information provided by Grantee to Grantor be kept confidential due to its proprietary or commercial value, Grantor and its employees, agents and representatives shall maintain the confidentiality of such information, to the extent allowed by law. If Grantor is requested or required by legal or administrative process to disclose any such proprietary or



confidential information, Grantor shall promptly notify Grantee of such request or requirement so that Grantee may seek an appropriate protective order or other relief.

Section 13. - Force Majeure.

It shall not be a breach or default under this Ordinance if either party fails to perform its obligations hereunder due to force majeure. Force majeure shall include, but not be limited to, the following: 1) physical events such as acts of God, landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, equipment or distribution or transmission lines; 2) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars; 3) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, executive order, or regulation promulgated by a governmental authority having jurisdiction; and (4) any other causes, whether of the kind herein enumerated or otherwise not reasonably within the control of the affected party to prevent or overcome. Each party shall make reasonable efforts to avoid force majeure and to resolve such event as promptly as reasonably possible once it occurs in order to resume performance of its obligations hereunder; provided, however, that this provision shall not obligate a party to settle any labor strike.

Section 14. - Hold Harmless.

Grantee shall indemnify, defend and hold Grantor harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of or arising from the grant of this franchise, the exercise by Grantee of the related rights, or from the operations of Grantee within the City, and shall pay the costs of defense plus reasonable attorneys' fees. Notwithstanding any provision hereof to the contrary, Grantee shall not be obligated to indemnify, defend or hold Grantor harmless to the extent any claim, demand or lien arises out of or in connection with any negligence of Grantor or any of its officers or employees.

Nothing in this Section or any other provision of this Ordinance shall be construed as a waiver of the notice requirements, defenses, immunities and limitations Grantor may have under the Colorado Governmental Immunity Act (§ 24-10-101, C.R.S., *et seq.*) or of any other defenses, immunities, or limitations of liability available to Grantor by law. Grantee, during the term of this franchise, agrees to save harmless Grantor from and against all claims, demands, losses and expenses arising directly out of the negligence of Grantee, its employees or agents, in constructing, operating, and maintaining its distribution and transmission facilities or equipment; provided, however, that Grantee need not save Grantor harmless from claims, demands, losses and expenses arising out of the negligence of Grantor, its officers, employees, and agents.

Section 15. - Successors and Assigns.

All rights, privileges and authority granted to Grantee hereunder shall inure to the benefit of Grantee's lessees, successors and assigns, subject to the terms, provisions and conditions herein contained, and all obligations imposed upon Grantee hereunder shall be binding upon Grantee's lessees, successors and assigns.

**Section 16. - No Third Party Beneficiaries.**

This Ordinance constitutes a franchise agreement between the Grantor and Grantee. No provision of this Ordinance shall inure to the benefit of any third person, including the public at large, so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action for any person not a party hereto.

**Section 17. - Severability.**

If any clause, sentence or section of this Ordinance is deemed invalid by any judicial, regulatory or legislative body having proper jurisdiction, the remaining provisions shall not be affected.

**Section 18. - Non Waiver.**

Any waiver of any obligation or default under this Ordinance shall not be construed as a waiver of any future defaults, whether of like or different character.

**Section 19. - Repeal Conflicting Ordinances.**

This Ordinance, when accepted by Grantee as provided below, shall constitute the entire agreement between the Grantor and the Grantee relating to the franchise granted by Grantor hereunder, and the same shall supersede all prior ordinances relating thereto, and any terms and conditions of such prior ordinances or parts of ordinances in conflict herewith are hereby repealed.

**Section 20. - Effect and Interpretation of Ordinance.**

The captions that precede each section of this Ordinance are for convenience and/or reference only and shall not be taken into consideration in the interpretation of any of the provisions of this Ordinance.

**Section 21. - Effective Date and Acceptance.**

Upon final passage and approval of this Ordinance by the City, in accordance with applicable laws and regulations, Grantee shall file its acceptance by written instrument, within sixty (60) days of passage by the City Council, and filing with the Clerk of the City of Cripple Creek, Colorado. The Clerk of the City of Cripple Creek, Colorado shall sign and affix the community seal to acknowledge receipt of such acceptance, and return one copy to Grantee. If Grantee does not, within sixty (60) days following passage of this Ordinance, either express in writing its objections to any terms or provisions contained therein, or reject this Ordinance in its entirety, Grantee shall be deemed to have accepted this Ordinance and all of its terms and conditions.

Section 22. - Article 2 of the Cripple Creek Municipal Code, Electric Franchise, is hereby repealed and reenacted and replaced in its entirety by the foregoing.

PASSED ON THE FIRST READING AND ORDERED PUBLISHED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2019.

\_\_\_\_\_  
Janell Sciacca, City Clerk

PASSED ON SECOND READING AND ADOPTED BY THE CITY COUNCIL THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2019.

Approved: \_\_\_\_\_  
Bruce Brown, Mayor

Attest: \_\_\_\_\_  
Janell Sciacca, City Clerk

Approved as to form: \_\_\_\_\_  
Erin M. Smith, City Attorney

**CITY OF CRIPPLE CREEK, COLORADO  
ORDINANCE NO. 2019-04**

**AN ORDINANCE AMENDING SUBSECTION 4-5-10 OF THE CRIPPLE CREEK MUNICIPAL CODE RELATING TO GAMING DEVICE FEES TO AMEND THE DEFINITION OF GAMING DEVICE TO INCLUDE EACH STATION AT A MULTI-STATION SLOT MACHINE**

WHEREAS, the City of Cripple Creek (“City”) is a municipal corporation possessing all powers granted to statutory cities by Title 31 of the Colorado Revised Statutes, including the power to regulate businesses conducted within the City’s boundaries and impose fees pursuant to its Municipal Code; and

WHEREAS, slot machines, as that term is defined in Section 4-5-10 of the City’s Municipal Code, were traditionally single-station machines played by one individual; and

WHEREAS, slot machines are now being manufactured with multiple stations that allow for multiple players to sit at a single machine; and

WHEREAS, the City Council finds that this Ordinance is necessary for the preservation of property and the public health and welfare of the citizens of the City.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CRIPPLE CREEK, COLORADO, THAT:

Section 1. Subsection 4-5-10 of the Cripple Creek Municipal Code is hereby amended to read as follows:

**Sec. 4-5-10. - Definitions.**

The following definitions shall apply to the terms of this Article:

*Blackjack* means a card game played by a maximum of seven (7) players in which each player bets against the dealer. The object is to draw cards equal to or approaching twenty-one (21) without exceeding that amount, and when amounts bet, payable by the dealer, if the player holds cards more valuable than the dealer's cards.

*City* means the City of Cripple Creek, Colorado.

*Gaming device* means any SINGLE-STATION slot machine, ANY poker table and/or blackjack table, AND EACH STATION AT ANY MULTI-STATION SLOT MACHINE. The term *gaming device* shall include each table manned by a single dealer for the games of blackjack and/or poker and shall include each SINGLE STATION slot machine AND EACH STATION AT EACH MULTI-STATION SLOT MACHINE.

*Gaming device fee* means the fee, as set by the City Council from time to time, for the use and operation of a gaming device within the City limits.

*Gaming licensee* means that individual, partnership and/or corporation licensed to operate a gaming establishment pursuant to the rules and regulations of the Colorado Gaming Commission, and pursuant to the Ordinances of the City.

*Poker* means a card game played by players who are dealt cards by a nonplayer dealer. The object of the game is for each player to bet the superiority of his or her own hand and win the other players' bets by either making a bet so that other players are willing to match or proving to hold the most valuable cards when all betting is over. *Poker* includes, but is not limited to, draw, stud, lowball or any combination thereof.

*Quarter*, as used in this Article, shall mean calendar quarters: January 1, April 1, July 1 and October 1 of each year. For the purposes of this Article, the *quarter* shall commence at 8:00 a.m. on the first day of said calendar quarter.

*Slot machine* means any mechanical, electrical, video, electronic or other device, contrivance or machine which, after insertion of a coin, token or similar object, or upon payment of a required consideration whatsoever by a player, is available to be played or operated and which, whether by reason of the skill of the player application of the element of chance or both, may deliver or entitle the player operating the machine to receive cash premiums, merchandise, tokens, redeemable game credits or any other thing of value other than unredeemable free games, whether the payoff is made automatically from the machine or in any other manner. Ord. 1991-32 §1; Ord. 1994-16 §2; Ord. 2007-04 §1)

Section 2. Should any section, clause, or provision of this Ordinance be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of the balance of this Ordinance.

PASSED ON THE FIRST READING AND ORDERED PUBLISHED THIS 7TH DAY OF AUGUST, 2019.

\_\_\_\_\_  
Janell Sciacca, City Clerk

PASSED ON SECOND READING AND ADOPTED BY THE CITY COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

Approved: \_\_\_\_\_  
Bruce Brown, Mayor

Attest:

\_\_\_\_\_  
Janell Sciacca, City Clerk

Approved as to form: \_\_\_\_\_

Erin M. Smith, City Attorney