

337 E. Bennett Avenue,



Cripple Creek, CO 80813

*Real Fun. Real Colorado.*

## **CREEK CITY COUNCIL REGULAR MEETING AGENDA**

**February 16, 2022**

**4:00 PM – WORK SESSION TO HEAR A PRESENTATION FROM  
THE CRIPPLE CREEK GAMING ASSOCIATION REGARDING  
ALTERNATE CITY REVENUE SOURCES**

**5:30 PM – IN PERSON AND ONLINE VIA ZOOM**

**Join City Council Meeting By ZOOM**

**Meeting ID: 892 4019 6481**

**Passcode: 322470**

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**PUBLIC COMMENT**

**APPROVAL OF MEETING MINUTES** from December 15, 2021, meeting

City Administrator

Finance Director

**PUBLIC HEARINGS/UPDATES/PRESENTATIONS**

Presentation by Teller County Commissioners

**NEW BUSINESS**

- A.** Consider Approval of Resolution 2022-01 Establishing the Designated Public Locations for the Posting of City Meeting Notices as Required by the Colorado Open Meetings Law; Malissa Gish, City Clerk
- B.** Request approval of appointment of J.R Gatlin to HP Commission seat and Sofia Balas to the Alternate seat of the Historic Preservation Board; Renee Mueller Planning and Historic Preservation Coordinator.
- C.** Request approval for reappointment of existing HP Commissioners; Reed Grainger changed from 3 year to 1 year term, Mike Gross from two year to a three-year term, Dixie Clair from 1 year to a 2 year and reappointment of Jeff Regester to a 2year term; Renee Mueller Planning and Historic Preservation Coordinator.

- D.** Consider Approval of Financing Firm and Lease Agreement for Acquisition of a Street Sweeper; Paul Harris, Finance Director
- E.** Consider Renewal of Lease for 2022 with Edge Wellness and Rehabilitation at the City's Medical Building; Paul Harris, Finance Director
- F.** Consider a Request to Change Budgeted Funding Use for the District Museum; Paul Harris, Finance Director
- G.** Consider Approval to Accept a Grant from Innovative Affordable Housing Strategies Planning Grant; Jeff Mosher, Special Projects Director
- H.** Request to Consider Approval of Resolution 2022-03 Regarding the Personnel Handbook as Presented; Carol Stotts HR/Risk Management Director
- I.** Election of Mayor Pro Tem Per Cripple Creek Municipal Code Section 2-2-30; Milford Ashworth, Mayor

## **ADJOURNMENT**

Posted Monday, February, 14, 2022 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)



## **December 15, 2021, Regular Meeting Minutes**

Mayor Ashworth called the regular meeting of the City Council to order at 5:30 PM. Present in Council Chambers were Councilman Solomone, Councilwoman Trenary, Mayor Pro Tem Litherland, Councilman Green, Ray White, Assistant City Attorney Emily (via zoom), Malissa Gish, Charles "Bud" Bright, Renee Mueller, Ken Hartsfield, Lara Loewenheim, and Camille Krochta.

**PUBLIC COMMENT:** Annie Durham, CTE coordinator of CCV school district, gave an update on the district's CTE programs and thanked Mayor Ashworth for his Mayor's choice award at the Christmas Parade.

Council Approved Meeting Minutes from December 1, 2021, Regular Meeting as written. Motion carried unanimously.

### **REPORTS**

**City Administrator Ray White** White introduced the new member of the planning and zoning department, Ken Hartsfield to the Council. White reported the Teller County Heath will be establishing a COVID test site in Cripple Creek. Tentatively to be located on 1<sup>st</sup> street near Memorial Park. They are intending to staff this several days per week beginning after the 1<sup>st</sup> of the year. This will include free testing, drive up and approximately a 2 day turn around of test results. White stated that he and Camille Krochta will be meeting Tuesday with Shomps Coda (Previously Colorado Code) regarding continuing relationship moving forward. We may contract with them on various projects. Also, Tuesday the mobile COVID vaccine vehicle will be here and again on the 28<sup>th</sup>. White released Paul White, Finance Director to go home due to the weather. White gave Harris' COVID update in his absence. Positive numbers to report. 1 week cumulative is 193.7 down from last report of 306.7. 2 week cumulative of 504.5 down from 625.6. The 1 week positivity rate is 5.6% down from 8.6%.

### **NEW BUSINESS**

- A. Consider approval of the Proposed Update to the Rules and Regulations of Mount Pisgah Cemetery, Renee Mueller, Planning and Historic Preservation Coordinator. Mueller presented an outline of the updated Cemetery regulations, which had not been updated since 2003. The regulations define a "resident", the rates and fees were changed to reflect inflation; including indigent rates, burial procedure have been updated, internment fees updated, transferring of a plot no longer approved to nonresidents for free, Committee approved domestic pet cremains along with an

individual. Motion by Councilwoman Trenary and seconded by Councilman Green to approve the update to the rules and Regulations of Mount Pisgah Cemetery. With the refusal of Mayor Pro Tem Litherland, Motion by Councilwoman Trenary and seconded by Councilman Green to approve the Proposed Update of the Rules and Regulations of Mount Pisgah Cemetery. Motion Passed. Mayor Pro Tem Litherland thanked the Board for their time and efforts on this project.

- B. SECOND READING** to consider adoption of Ordinance 2021-21, an Ordinance of the City of Cripple Creek, Colorado amending Chapter 2, Article 4 of the Cripple Creek Municipal Code relating to collections of unpaid fees, costs, and fines assessed by the Municipal Court, approval of the Collection Service Agreement with Integral Recoveries for collections of unpaid Municipal Court Fees, Fines, and Costs related to Municipal Court and authorizing the City Administrator to sign the agreement. Emily Naes; Assistant City Attorney. Naes presented the first two items related to collecting unpaid traffic fines and fees by alternative means, using the Agency with approval of the agreement with the collection Agency. Motion by Mayor Pro Tem Litherland and seconded by Councilman Solomone to adopt Ordinance 2021-21, an Ordinance of the City of Cripple Creek, Colorado amending Chapter 2, Article 4 of the Cripple Creek Municipal Code relating to collections of unpaid fees, costs, and fines assessed by the Municipal Court, approval of the Collection Service Agreement with Integral Recoveries for collections of unpaid Municipal Court Fees, Fines, and Costs related to Municipal Court and authorizing the City Administrator to sign the agreement. Motion carried unanimously.
- C.** Consider approval of a Facility Use Agreement with Thin Air Theatre Company. Ray White; City Administrator. White presented the agreement with TATC to authorize them to use the designated locations. This is the same agreement used the previous year with the exception of updated dates. The amount of compensation was authorized by Council in the 2022 budget. Motion by Councilman Green and seconded by Councilwoman Trenary to approve. Motion carried unanimously.

**ADJOURNMENT-** No further business was presented before the Council. Mayor Ashworth adjourned the meeting at 5:55 PM.

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Milford Ashworth, Mayor

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Malissa Gish, City Clerk

**CITY OF CRIPPLE CREEK, COLORADO**

**RESOLUTION NO. 2022-01**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CRIPPLE CREEK, COLORADO, DESIGNATING THE PLACE FOR THE POSTING OF PUBLIC NOTICES FOR MEETINGS OF THE CITY COUNCIL, THE PLANNING COMMISSION, AND CITY ADVISORY BOARDS, COMMITTEES AND COMMISSIONS.

WHEREAS, Section 24-6-402(2)(c), C.R.S., (part of the Colorado “Sunshine Law”) requires that the City Council annually designate at its first regular meeting of each calendar year the public place or places for the posting of notice of its meetings; and

WHEREAS, the City Council of the City of Cripple Creek wishes to continue providing public notice to its citizens at several convenient locations.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF CRIPPLE CREEK, COLORADO:

**Section 1.** The following public places are those designated during calendar year 2021 for posting of meeting notices as required by the Colorado Open Meetings Law:

1. Cripple Creek City Hall – 337 E. Bennett Avenue
2. Cripple Creek Post Office – 319 W. Carr Avenue
3. City of Cripple Creek Website – [www.cityofcripplecreek.com](http://www.cityofcripplecreek.com)

**Section 2.** The City Clerk, or other designated City Staff, shall be responsible for posting the required notices no less than twenty-four (24) hours prior to the holding of a meeting.

**Section 3.** All meeting notices shall include specific agenda information where possible.

ADOPTED at Cripple Creek, Colorado, this 16<sup>th</sup> day of February, 2022.

CITY OF CRIPPLE CREEK, COLORADO

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Milford Ashworth, Mayor

ATTEST:

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Malissa Gish  
City Clerk

**Sent:** Tuesday, September 21, 2021 11:00 AM  
**To:** Renee Mueller <rmueller@cripple-creek.co.us>  
**Subject:**

[Sent from Yahoo Mail on Android](#)

----- Forwarded message -----

Historic Preservation Commission

I, JR Gatlin, am volunteering to fill a vacancy on the Commission, having served in many city government positions such as the Planning Commission for the City of Louisville, Board of Adjustment, City Of Broomfield, and the Utility Advisory Board for Woodland Park.

My background includes a Bachelor's Degree in Architectural Engineering and a Licensed Realtor. Being a resident of Cripple Creek for over 4 years in a home built in 1896, I've enjoyed maintaining and improving its appearance. There is an appreciation for the intrinsic value these buildings afford the city.

Respectfully submitted,

JR Gatlin

Sofia Balas

P.O.Box 159  
Cripple Creek, CO 80813  
303.547.6083  
sofibal@yahoo.com

September 21, 2021

Historic Preservation Commission  
337 Bennett Avenue  
Cripple Creek, CO 80813

Dear Members of the Historic Preservation Commission,

It is to my understanding that a seat is available on the HPC. I am interested in filling that seat as a volunteer to the commission.

I have always been interested in the history of Cripple Creek and live in an historic house for close to 10 years. Coming to live here was a dream come true. I believe historic preservation is an important part of the growing of our town.

I have a Masters degree in arts with a major in conservation and restoration, and I believe I could add through my own experience, a positive contribution to Cripple Creek. It is exciting to me to participate in your mission and I will be honored to be part of it.

Sincerely,

A handwritten signature in blue ink that reads "Sofia Balas". The signature is written in a cursive, flowing style.

Sofia Balas

Historical Preservation would like to Request approval for reappointment of existing HP Commissioners; Reed Grainger changed from 3 year to 1 year term, Mike Gross from two year to a three-year term, Dixie Clair from 1 year to a 2 year and reappointment of Jeff Regester to a 2year term.



**Street Sweeper****Five Year Financing Period (2022, 2023, 2024, 2025, 2026)**

	<b>TYMCO</b>	<b>CNFG</b>	<b>Public Sector Capital</b>
Interest Rate	2.90%	2.76%	2.82%
Annual In Advance Payment	42,097	41,985.59	42,036
Total Payments	210,484	209,928	210,179
Total Principal Payments	198,950	198,950	198,950
Total Interest Payments	11,534	10,978	11,229
<b>Total Payments</b>	<b>210,484</b>	<b>209,928</b>	<b>210,179</b>
\$ from TYMCO		(556)	(306)
% from TYMCO		-0.26%	-0.15%

Notes:

- CNFG stands for Centennial National Financial Group, they will be using Signature Bank for the financing.

Staff recommends financing the vehicle with TYMCO, since they are  
the manufacturer of the sweeper and the cost difference is negligible.

# QUOTATION

## INTERMOUNTAIN SWEEPER CO

Mountain West's Premier Sales and Service Center for Sweepers and Scrubbers

6972 South Airport Road  
West Jordan, UT 84084  
(801) 955-6280  
Fax (801) 969-6048  
Toll Free Outside S.L. 1-800-748-5456

TO ▪ Steve Dicamillo  
Town of Cripple Creek  
337 E. Bennett Ave.  
Cripple Creek, Co 80813

QUOTATION DATE 12/17/21	SALESPERSON Mike
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TERMS	SHIPPED VIA	F.O.B.	ESTIMATED SHIPPING DATE	OPTION PRICES	AMOUNT
Net 10	Bestway	Destination	120-180 Days ARO		\$198,950.00
<b>Tymco Model 435 Regenerative Air Sweeper</b> <b>Mounted on Isuzu NQR Diesel Chassis (17,950 GVW)</b> <b><u>BUILT IN VALUE INCLUDES</u></b> 56 HP Kubota Turbo charged auxiliary engine Tier 4 Lo oil, high temperature shutdown system Donaldson PowerCore Filter on aux engine Four yard hopper with 72" dump height and in cab dump switch Abrasion wear package Linear actuated throttle control system -Electric throttle Dust control system with 150 gallon capacity and air purge cleanout Separate water switches - head, gutter brooms, hopper Rear storage boxes and center storage with dual access doors Left gutter broom-steel digger type sectional In cab left gutter broom hydraulic tilt Duo skids with 2 year warranty Reverse pick up head chains for reversing with head down Big Mouth Hopper Door with attached screens for easy cleanout Rubber lined blower housing and rubber faced blower for long life In cab deluxe back lit control console Hydraulic sight gauge and auxiliary electro hydraulic system Leaf pressure bleeder for light debris H.D. steel rear bumper and dual rear flashing lights and work light Back up alarm, tachometer, hour meter Air conditioned cab with AM/FM stereo White urethane paint Operator training DVD					

WE ARE PLEASED TO SUBMIT THE ABOVE QUOTATION FOR YOUR CONSIDERATION. SHOULD YOU PLACE AN ORDER, BE ASSURED IT WILL RECEIVE OUR PROMPT ATTENTION. THIS QUOTATION IS VALID FOR \_\_\_\_\_ DAYS. THEREAFTER IT IS SUBJECT TO CHANGE WITHOUT NOTICE.

QUOTED  
BY \_\_\_\_\_

Intermountain Sweeper Co.

ACCEPTED BY \_\_\_\_\_ DATE \_\_\_\_\_

PURCHASE ORDER # \_\_\_\_\_

THANK YOU! WE APPRECIATE YOUR BUSINESS.



# QUOTATION

## INTERMOUNTAIN SWEEPER CO

Mountain West's Premier Sales and Service Center for Sweepers and Scrubbers

6972 South Airport Road  
West Jordan, UT 84084  
(801) 955-6280  
Fax (801) 969-6048  
Toll Free Outside S.L. 1-800-748-5456

TO ▪ Steve Dicamillo  
Town of Cripple Creek  
337 E. Bennett Ave.  
Cripple Creek, Co 80813

QUOTATION DATE

12/17/21

SALESPERSON

Mike

TERMS	SHIPPED VIA	F.O.B.	ESTIMATED SHIPPING DATE	
Net 10	Bestway	Destination	With Unit	
DESCRIPTION			OPTION PRICES	AMOUNT
Tymco Model 435 Options			Included	
Camera System backup and head intake			Included	
Abrasion Protection Package			Included	
Hopper Deluge Cleanout			Included	
Auto Sweep Interrupt System			Included	
Auxiliary Suction Hose with Wand			Included	
Auxiliary Suction Hose extension hose 10'			Included	
Air purge on water system for freezing conditions			Included	
In cab gutter broom hydraulic tilt-Included on left, option on dual GB right side			Included	
Drop down gutter broom in front of head (req. tilt and Isuzu cab)			Included	
Hopper drain system SS			Included	
Reverse drag links			Included	
Dual gutter brooms			Included	
Removable Suction Transition			Included	
H.O. Rear flashers—amber LED			Included	
Cab light bar—full length LED 10 modules			Included	
Gutter broom water switch, Extra hopper water			Inc. W/Dust Cntrl	
SRE Noise reduction package			N/A	
In cab dump switch			Included	
Hi low wash down system with CAT water pump			Included	
Hopper load indicator			Included	
Stainless Steel blower housing for maximum wear			Included	
Stainless steel hopper, separator, screens, blower housing			Included	
In cab remote controlled and heated mirrors (Isuzu)			Included	
Hydraulic Curtain lifter			Included	
Curb View Camera System Right Gutter Broom			Included	
Variable speed gutter brooms			Included	
High Output Water system with dual switches			Included	
Chip seal screen			\$1,200.00	
Rear Arrow Stick Directional LED with in cab controller				

WE ARE PLEASED TO SUBMIT THE ABOVE QUOTATION FOR YOUR CONSIDERATION. SHOULD YOU PLACE AN ORDER, BE ASSURED IT WILL RECEIVE OUR PROMPT ATTENTION. THIS QUOTATION IS VALID FOR \_\_\_\_\_ DAYS. THEREAFTER IT IS SUBJECT TO CHANGE WITHOUT NOTICE.

QUOTED BY

Intermountain Sweeper Co.

ACCEPTED BY

DATE

PURCHASE ORDER #

THANK YOU! WE APPRECIATE YOUR BUSINESS.



January 26, 2022

Mr. Steve DiCamillo, Public Works Director  
City of Cripple Creek  
337 E. Bennett Ave.  
Cripple Creek, CO 80813

RE: Municipal Lease/Purchase of one new TYMCO Model 435 street sweeper

Dear Mr. DiCamillo:

Enclosed you will find the lease/purchase documents for the above described TYMCO Model 435 street sweeper that the City is purchasing from our dealer, Intermountain Sweeper Co. We are glad to be able to provide the financing and hope the experience is a positive one. The following is a list of the enclosed documentation:

1. Lease/Purchase Agreement - pages 1-7
2. Exhibit A - Municipal Certificate
3. Exhibit B - Legal Opinion
4. Exhibit C - Payment Schedule
5. Amortization Schedule - Supplement to Exhibit C
6. Exhibit D - Acceptance Agreement
7. Security Agreement
8. Sample Certificate of Insurance
9. Tax Form 8038-G to be filed with the IRS
10. TYMCO Invoice – for the 1<sup>st</sup> payment of \$42,096.87 due on or before delivery, payable to TYMCO Inc.

Upon review by your legal counsel, please have the following documents executed by the appropriate authorities:

1. Lease/purchase document – page 7
2. Municipal Certificate - Exhibit A, pages 1 & 2
3. Legal Counsel Opinion - Exhibit B, page 1
4. Payment Schedule - Exhibit C, page 2
5. Certificate of Acceptance – Exhibit D – page 1
6. IRS Form 8038G – bottom of page
7. Security Agreement – bottom of page

After reviewing, please have all the above executed and overnight to TYMCO, my attention. You may have your insurance carrier fax the Certificate of Insurance to us at 254-799-2722. TYMCO, Inc. should be listed as both the ***Additional Insured*** and ***Loss Payee*** with replacement value set at the full cost (**\$198,950.00**) of the equipment on the Certificate. Please be sure to include the Certificate of Insurance with the lease documents. The down payment (made out to TYMCO Inc.) needs to be sent Fed-Ex or UPS overnight directly to TYMCO. Our physical address is: 225 E. Industrial Blvd, Waco, TX 76705. We must have the signed lease documents, first payment and Certificate of Insurance in place prior to or upon delivery of the equipment.

Upon receipt of the lease, we will sign off on it and send you a copy for your records. Should you have any questions, please feel free to contact me, or if I am unavailable ask for Brent Kimbrough, CFO/Controller, at 1-800-258-9626.

Thank you very much – we greatly appreciate your business.

Sincerely,  
TYMCO, Inc.



Brent A. Baker  
Administrator/Property Manager

Enclosures



**TYMCO, Inc.**  
*Sweeping the World Over*

P.O. Box 2368  
Waco, TX 76703-2368  
254-799-5546

INVOICE

**INVOICE NO: 20220126**  
**DATE: January 26, 2022**

**To:**  
City of Cripple Creek  
Attn: Accounts Payable  
337 E. Bennett Ave.  
Cripple Creek, CO 80813

**Ship to (if different address):**

SALESPERSON	YOUR P.O. #	DATE SHIPPED	SHIPPED VIA	F.O.B. POINT	TERMS
				Waco, TX	Due on/prior to Delivery

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
1	1st annual pmt. for (1) new TYMCO Model 435 REGENERATIVE AIR STREET SWEEPER financed through TYMCO Municipal Lease Purchase program.  5 year, annual, in advance @ 2.90% apr		\$ 42,096.87
SUBTOTAL			\$42,096.87
SALES TAX			0.00
SHIPPING & HANDLING			0.00
TOTAL DUE			<b>\$42,096.87</b>

**Make all checks payable to: TYMCO, Inc.**  
P.O. Box 2368  
Waco, TX 76703-2368

**If you have any questions concerning this invoice, call: Brent A. Baker, 254-799-5546 ext.230**

**THANK YOU FOR YOUR BUSINESS!**

Customer No. 320700  
Agreement No. 20220126  
Dealer No. 601600

## LEASE/PURCHASE AGREEMENT

**TYMCO, INC.**  
TAX-EXEMPT FINANCING

### LESSEE

City of Cripple Creek  
3337 E. Bennett Ave.  
P.O. Box 430  
Cripple Creek, CO 80813  
719-689-2502  
Federal Tax ID #84-600576

### LESSOR

TYMCO, Inc.  
225 E. Industrial Blvd.  
P. O. Box 2368  
Waco, TX 76703-2368  
254-799-5546  
Federal Tax ID# 74-1693738

### DESCRIPTION OF EQUIPMENT

Quantity	(Type, Model and Serial Number)	Unit Price	Amount
1	TYMCO Model 435 Regenerative Air Street Sweeper Sweeper Serial No. Truck Serial No. Sales Tax (if any) Finance Amount		\$198,950.00    <u>\$198,950.00</u>

Type of Entity (County, City, School District, etc.): City

Full Lease Term	Rent Payable	Annual Percentage Rate	Rental Payment Schedule	
5 Year after commencement date.	XX Advance Arrears Monthly Quarterly Semi-Annually XX Annually	APR: 2.90%	Advance Payments 1 @ \$42,096.87	Remaining Payments 4 @ \$42,096.87

### EQUIPMENT LEASE/PURCHASE AGREEMENT

In consideration of the mutual covenants hereinafter contained, the parties agree that Lessee shall lease from the Lessor the property described above (the "Equipment"), subject to the terms and conditions set forth herein. The Lease Purchase Agreement is made upon the following terms and conditions:

1. RENTAL. Lessor and Lessee understand and intend that the obligation of Lessee to pay rent hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of Lessee. Lessee shall pay rent exclusively from legally available funds, in the amounts set forth both above and on the rent due dates set forth in the Schedule of Payments (Exhibit C) attached to the Certificate of Acceptance (Exhibit D), executed by Lessee, by mailing the same to Lessor at the address specified in Section 14(a). For purposes of making computations under applicable regulations and rulings under federal income tax law, and as set forth in the Schedule of Payments, a portion of each rent payment is paid as, and represents payment of, interest, and the balance of each rent payment is paid as, and represents payment of, principal. Each year's rental payment is for the consideration actually furnished that year and each rental payment is supported by the use of the equipment in each year. The obligation of Lessee to make payment of rent, and to perform and observe the agreements contained in the Agreement, shall be absolute and unconditional in all events,

to the extent permitted by law and except as expressly provided herein, including the annual appropriation provision set forth in Section 2(e). Notwithstanding any dispute between Lessee, Lessor, and any other person, Lessee shall make all rent payments when due and shall not withhold any rent payments pending final resolution of such dispute, nor shall Lessee assert any right of set off or counterclaim against its obligation to make such payments required under this Agreement, Lessee's obligation to pay rent shall not be abated through accident or unforeseen circumstances.

2. LEASE TERM. (a) Commencement of Lease Term. The lease terms shall commence on the date on which the Equipment is accepted by Lessee as indicated on the Certificate of Acceptance (the Commencement Date), and shall terminate on the last business day of Lessee's then current fiscal budget period (such period being hereinafter referred to as the "Original Term"); provided, however, that this Agreement shall be effective from and after the date of execution hereof.

(b) Renewal of Lease Term. Upon expiration of the Original Term, this Lease shall automatically renew on a year-to-year basis for the number of budget periods necessary to comprise the Full Lease Term as set forth in Exhibit C attached hereto and made a part hereof, unless Lessee gives written notice to Lessor not less than 90 days prior to the end of the then current term pursuant to subpart (e) of this section or Section 10, as the case may be. Each renewal period is hereinafter referred to as a "Renewal Term", and all Renewal Terms, together with the Original Term, shall comprise the "Full Lease Term". The terms applicable to any Renewal Term shall be the same as the terms applicable to the Original Term, except that the rent shall be as provided in the Schedule of Payments in Exhibit C.

(c) Termination of Lease Term. The Lease Term will terminate upon the earliest to occur of any of the following events: (1) the expiration of the Original Term or any Renewal Term and the non renewal thereof in accordance with the terms hereof including if sufficient funds are not appropriated by the Lessee's governing body in any given year; (2) the purchase of the Equipment by Lessee pursuant to Section 8 or 10; (3) a default by Lessee or Lessor's election to terminate this Agreement under Section 12; or (4) the payment by Lessee of all rentals authorized or required to be paid by Lessee hereunder. Notwithstanding the foregoing, the decision whether or not to appropriate funds or to renew the Lease through any Renewal Term is within the sound discretion of the governing body of the Lessee.

(d) Continuation of Lease Term by Lessee. Lessee intends, subject to the non-appropriation provisions of subpart (e) of this section, to continue the Lease Term through the Original Term and all Renewal Terms for the Full Lease Term and to pay the rent hereunder. Lessee further intends and covenants to do all things lawfully within its power to obtain and maintain funds from which the rent may be paid, including making provision for such rent to the extent necessary in each budget submitted and adopted in accordance with law, to use its bona fide best efforts to have such portion of the budget approved, and to exhaust all available reviews and appeals in the event such portion of the budget is not approved.

(e) Non-appropriation. As required by Article X, Section 20 of the Colorado Constitution, any obligation not performed in the current fiscal year shall be subject to annual appropriations of the Lessee's governing body. In the event sufficient funds are not appropriated for the payment of the rent required to be paid in the next succeeding Renewal Term, then Lessee may terminate this Agreement at the end of the Original Term or the then current Renewal Term, as the case may be, and Lessee shall not be obligated to make payment of the rent beyond the then current term except for any deferred interest that may have accrued for the then current period and is considered part of the next rental payment. Lessee agrees to deliver notice to Lessor of such termination at least 90 days prior to the end of the then current term. If this Agreement is terminated under this sub-part, Lessee agrees, at Lessee's cost and expense, peaceably to deliver the Equipment to Lessor. In addition, Lessee agrees, at Lessee's cost and expense, to incur the necessary costs and expenses to bring the returned sweeper and truck chassis up to factory remarketing standards. To the extent lawful, Lessee covenants that it will not, until the date on which the next succeeding Renewal Term would have ended, expend or commit any funds for the purchase or use of equipment to be used for the same purpose as, or a purpose functionally equivalent to, the Equipment. Notwithstanding anything in this Agreement to the contrary, the provisions of this sub-part shall survive termination of this Agreement.

3. REPRESENTATIONS AND COVENANTS OF LESSEE. Lessee represents, covenants and warrants to Lessor as follows: (a) Lessee is an entity described in Section 103(a) of the Internal Revenue Code of 1986, as amended; and will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as such an entity. (b) Based upon the representations, covenants and warranties of Lessor, the execution and delivery of this Agreement by Lessee and performance of this obligations hereunder is not prohibited by the constitution and laws of the state specified



on the Certificate of Acceptance (the "State"), and has been duly authorized by resolution of the governing body of Lessee (a certified copy of which shall be attached to the opinion of Lessee's counsel); and Lessee has obtained such other approvals as are necessary to consummate this Agreement. All requirements have been met, and procedures have occurred, necessary to ensure the enforceability of this Agreement against Lessee, and Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the acquisition by Lessee of the Equipment hereunder. (c) Lessee has determined that a present need exists for the Equipment which need is not temporary or expected to diminish in the foreseeable future. The Equipment is essential to and will be used by Lessee only for the purpose of performing one or more governmental functions of Lessee consistent with the permissible scope of Lessee's authority and will not be used in a trade or business of any person or entity. (d) Lessee will annually, upon request, provide Lessor with a letter from the City's accountant stating that funds have been appropriated in the City's annual budget to continue this lease for the next renewal term. (e) The Equipment is, and shall remain, personal property and when subject to use by Lessee under this Agreement will not be or become fixtures.

The Lessee further warrants that this lease will not constitute a "private activity bond" within the meaning of Section 141 of the Internal Revenue Code in that Lessee will not sublease the Equipment, nor will Lessee enter any management, output, or similar types of contracts where more than 10 percent of the proceeds of the lease purchase agreement will be used for one or more private business uses or where the payment of the principal of, or interest on, more than 10 percent of the proceeds of this Lease will be made, either directly or indirectly by payments, property, or monies borrowed by private business users. (The term "private business use" means any direct or indirect use in a trade or business carried on by an individual or entity other than a state or local governmental unit, including use by the Federal Government or any agency thereof. A special exemption is provided for "exempt facility bonds and 501(c) (3) "tax exempt organization bonds".

4. TITLE TO EQUIPMENT; SECURITY INTEREST. During the Full Lease Term, the Lessee shall be listed as the Owner on the Equipment Title with Lessor listed as 1<sup>st</sup> Lienholder. Upon exercise by Lessee of the purchase option granted in Section 10 of this Lease, Lessor shall deliver to Lessee by appropriate documents the title to the Equipment, free and clear of all liens and encumbrances. In the event of a default as set forth in Section 12 or non appropriation as set forth in Section 2(e), Lessee will surrender possession of the Equipment to Lessor as required by Section 2(e) and release all claim or right to said Equipment accordingly.

To secure the prompt payment and performance as and when due of all of Lessee's obligations hereunder, and all other obligations of Lessee to Lessor, both now in existence and hereafter created, Lessee hereby grants to Lessor a first security interest in the Equipment, and all replacements, substitutions and alternatives therefore and thereof and accessions thereto and all proceeds (cash and non-cash), including the proceeds of all insurance policies, thereof. Lessee agrees that with respect to the Equipment Lessor shall have all of the rights and remedies of a secured party under the Uniform Commercial Code as in effect in the State. Lessee may not dispose of any of the Equipment without the prior written consent of Lessor, notwithstanding the fact that proceeds constitute part of the Equipment.

5. USE AND MAINTENANCE. Lessee shall use the Equipment in a manner consistent with the requirements of all applicable insurance policies and will not change the location of any Equipment as specified in the Certificate of Acceptance without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Lessee shall not attach the Equipment to any other item of equipment in such a manner that the Equipment may be deemed to have become an accession to or a part of such other item of equipment. Lessee, at its own expense, will maintain the Equipment in as good operating condition as when delivered to Lessee hereunder, ordinary wear and tear resulting from proper use thereof alone excepted, and will make all repairs reasonably necessary for such purpose. In addition, if any component of the equipment shall become damaged beyond repair, Lessee at its own expense, will within a reasonable time replace such component, with replacement components which are free and clear of all liens or right of other and have a value and utility at lease equal to the components replaced. All components which are attached to the Equipment which are essential to the operation of the Equipment or which cannot be detached from the Equipment without materially interfering with the operation of the Equipment or adversely affecting the value and utility which the Equipment would have had without the addition thereof, shall immediately be deemed incorporated in the Equipment and subject to the terms hereof as if originally leased hereunder, and subject to the security interest of Lessor in the Equipment. Lessee shall not make any material alterations to the Equipment without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Upon reasonable advance notice, Lessor shall have the right to inspect the Equipment and all maintenance records with respect thereto, if any, at any reasonable time during normal business hours.

6. FEES; TAXES; OTHER GOVERNMENTAL AND UTILITY CHARGES. The parties contemplate that the Equipment will be used for a governmental purpose of Lessee and that the Equipment will be exempt from all taxes presently assessed and levied with respect to personal property. In the event that the use, possession or acquisition of the Equipment is found to be subject to taxation in any form (except for net income taxes of Lessor), Lessee will pay as they come due all taxes, titling, recordation, documentary stamp, other fees and governmental charges of any kind that may be assessed or levied against the Equipment, as well as all utility and other charges incurred in the operation, maintenance and use of the Equipment.

7. INSURANCE. At its own expense, Lessee shall keep the Equipment covered against loss due to fire and the risks normally included in extended coverage, malicious mischief and vandalism, for not less than the Full Insurable Value of the Equipment; and Lessee shall also carry automobile insurance, including bodily injury liability and property damage liability with a single limit of not less than \$1,000,000 per occurrence, or such greater or lesser amount as Lessor may from time to time require on notice to Lessee. As used herein, "Full Insurable Value" means the full replacement value of the Equipment or the then applicable Purchase Price designated as such on the Schedule of Payments, whichever is greater. All insurance shall be in form and amount and with companies reasonably satisfactory to Lessor. All insurance for loss or damage shall provide that losses shall be payable to Lessor and Lessee, as their interests may appear, and Lessee shall utilize its best efforts to have all checks to such losses delivered to Lessor. Lessor shall be named as an additional insured with respect to such liability insurance. Lessee shall pay the premiums and deliver to Lessor evidence satisfactory to Lessor of such insurance coverage. Each insurer shall agree, by endorsement furnished to Lessor, that (a) it will give Lessor 30 days prior written notice of the effective date of any material alteration or cancellation of such policy; and (b) insurance as to the interest of any named additional insured or loss payee other than Lessee shall not be invalidated by any actions, inactions, breach of warranty or conditions or negligence of Lessee with respect to such policy. If Lessee insures similar properties against casualty loss by self-insurance, Lessee may satisfy its obligations with respect to casualty insurance hereunder by providing self-insurance with respect to the Full Insurable Value of the Equipment by means of an adequate insurance fund. Lessee shall carry workmen's compensation insurance covering all employees working on, in, near or about the Equipment, or demonstrate to the satisfaction of Lessor that adequate self-insurance is provided, and shall require any other person or entity working on, in, or near or about the Equipment to carry such coverage, and will furnish to Lessor certificates evidencing such coverage throughout the Lease Term. The Net Proceeds of the insurance required hereby shall be applied as provided in Section 8. As used herein "Net Proceeds" means the amount remaining from the gross proceeds of any insurance claim or condemnation award after deduction of all expenses (including attorney's fees) incurred in the collection of such claim or award.

8. DAMAGE, DESTRUCTION AND CONDEMNATION: USE OF NET PROCEEDS. If prior to the termination of the Lease Term (a) the Equipment is damaged in whole or in part by casualty; or (b) title to, or the temporary use of, the Equipment or the estate of Lessee or Lessor in the Equipment shall be taken under the exercise of the power of eminent domain by any governmental body or by any person acting under governmental authority; Lessee and Lessor will cause the Net Proceeds of any insurance claims or condemnation award to be applied to Lessee's obligations by this section. If the Equipment is not deemed to be a total loss, Lessee shall, at its expense (after the application of the Net Proceeds of any insurance claims or condemnation award), cause the repair or replacement of the Equipment. In the event of total destruction of the Equipment, Lessee shall pay to Lessor on the next rent due date (as set forth on the Schedule of Payments) which succeeds the date of such loss, an amount equal to the purchase price of the equipment less the total amount of all rents which represented equity in the equipment previously paid under this Agreement, plus rent due on such date, plus any other amounts then payable by Lessee hereunder. Upon such payment, the Lease Term shall terminate, any security interest of Lessor in the Equipment shall terminate, and Lessee will acquire unencumbered title to the Equipment as provided in Section 10. If Lessee is not then in default hereunder, any portion of the Net Proceeds in excess of the amount required to pay in full Lessee's obligations as set forth in this Section shall be for the account of the Lessee. Lessee agrees that if the Net Proceeds are insufficient to pay in full Lessee's obligations as set forth in this Section, Lessee shall make such payments to the extent of any deficiency.

9. WARRANTY. Products and parts manufactured by TYMCO, INC. and all services performed by TYMCO, INC., are subject to the applicable Warranty currently published by TYMCO, INC., which Warranty is, by this reference, incorporated herein. Copies of said Warranty may be obtained from any office of TYMCO, INC., or from any authorized TYMCO, INC. dealer. LESSOR MAKES NO OTHER WARRANTY EXPRESS OR IMPLIED REGARDING THE



CAPACITY OF THE REQUIREMENT OR THAT THE EQUIPMENT WILL SATISFY THE REQUIREMENTS OF ANY LAW, REGULATION OR SPECIFICATION OR THAT THE EQUIPMENT WILL BE FIT FOR ANY PARTICULAR PURPOSE.

10. PURCHASE OF EQUIPMENT BY LESSEE. The Lessee will have an option to purchase and can exercise that option to acquire title free and clear of all liens, and this Agreement will terminate provided Lessee is not then in default upon the occurrence of either of the following events: (a) the end of the Full Lease Term, upon payment in full of all rent and other amounts payable by Lessee hereunder for the Full Lease Term; or (b) at the end of the Original Term or any Renewal Term, or any month within such Original Term or any Renewal Term, as set forth in the column entitled "Principal Balance" within Exhibit C incorporated herein by this reference, upon payment by Lessee of the then applicable Purchase Price plus all other sums then due by Lessee hereunder.

11. ASSIGNMENT: INDEMNIFICATION. (a) Assignment. This Agreement and the interest of Lessee in the Equipment may not be sold, assigned, sublet or encumbered by Lessee without prior written consent of Lessor. This Agreement, and the obligations of Lessee to pay rent hereunder, may be assigned and reassigned in whole or in part to one or more assignees by Lessor subject to their terms of this Lease/Purchase Agreement at any time without the necessity of obtaining the consent of Lessee. Lessor agrees to give notice of assignment to Lessee and upon receipt of such notice, Lessee agrees to make all payments to the assignee designated in the assignment, notwithstanding any claim, defense or set off (whether arising from a breach of the Agreement or otherwise) that Lessee may have against Lessor's assignees. Notwithstanding the foregoing, the decision to appropriate funds or not is within the sound discretion of the governing body of the Lessee. Lessee agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements which may reasonably be requested by Lessor or its assignees to protect their interests in the Equipment and in this Agreement.

12. EVENTS OF DEFAULT AND REMEDIES. (a) Events of Default. The following shall be "events of default" under this agreement and the term "default" shall mean any one or more of the following events: (1) failure by Lessee to pay any rent or other payment required to be paid hereunder at the time specified herein; or (2) failure by Lessee to observe and perform any other conditions as stated in this Agreement on its part to be observed in such time prior to its expiration; (3) any statement contained herein or furnished with respect hereto by or on behalf of Lessee proving to have been false in any material respect at the time that it was made; or (4) the filing by Lessee of any petition or answer seeking reorganization, arrangement composition, readjustment, liquidation, moratorium or similar relief under any existing or future bankruptcy, insolvency, or other similar insolvency or other similar laws shall be filed and not withdrawn or dismissed within 60 days thereafter.

(b) Remedies on Default. Whenever any event of default shall have occurred and be continuing, Lessor shall have the right, at its sole option without any further demand or notice, to exercise any one or more of the following remedies: (1) with or without terminating this Agreement, retake possession of the Equipment and dispose of the Equipment for the account of Lessee, with the net amount of all proceeds received by Lessor to be applied to Lessee's obligations hereunder, holding Lessee liable for the excess (if any) of (i) the rent payable to Lessee hereunder to the end of the Original Term or then current Renewal Term, whichever is applicable, and any other amounts then payable by Lessee hereunder, including but not limited to attorney's fees, expenses and costs of repossession, over (ii) the net proceeds received in connection with the disposition of the Equipment; provided that the excess of the amounts referred to in clause (ii) over the then applicable Purchase Price and amounts referred to in clause (i) shall be paid to Lessor; (2) require Lessee at Lessee's risk and expense promptly to return the Equipment in the manner and in the condition set forth in Sections 2(e) and 5; (3) if Lessor is unable to repossess the Equipment for any reason, the Equipment shall be deemed a total loss and Lessee shall pay to Lessor the amount due pursuant to Section 8; and (4) exercise any other right or remedy which may be available to it under applicable law or proceed by appropriate court action to enforce the terms of this Agreement or to recover damages for the breach of this Agreement as to any or all of the Equipment. Nothing contained herein shall be construed to provide any remedy of acceleration of the rental payments.

(c) No Remedy Exclusive. No remedy available to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right accruing upon any default shall impair any such right or shall be constructed to be a waiver thereof, but any such right might be exercised from time to time and as often as may be deemed expedient.

13. TAX ASSUMPTION; COVENANTS. The parties assume that Lessor can exclude from Federal gross income the interest portion of each Lease Payment set forth in the amortization schedule under the column captioned "Interest Paid".

Lessee covenants that it will (i) register this Lease and transfers thereof in accordance with Section 149 (a) of the Code and the regulations thereunder, (ii) timely file a statement with respect to this Lease in the required form in accordance with Section 149(e) of the Code, (iii) not permit the property financed by this Lease to be directly or indirectly used for a private business use within the meaning of Section 141 of the Code, (iv) not take any action which results, directly or indirectly, in the interest portion of any Lease Payment not being excludable from Federal gross income pursuant to Section 103 of the Code and will take any reasonable action necessary to prevent such result, and (v) not take any action which results in this Lease becoming, and will take any reasonable action to prevent this Lease from becoming (a) an arbitrage obligation within the meaning of Section 148 of the Code or (b) federally guaranteed within the meaning of Section 149 of the Code.

Lessee represents that in accordance with the above, it will report this Lease to the Internal Revenue Service by filing form 8038-G or 8038-GC, whichever is appropriate. Lessee understands that failure to do so will cause the Lease to lose its tax exempt status. Therefore, Lessee agrees that if it fails to file the appropriate form, the interest rate set forth in the payment schedule will be adjusted to an equivalent taxable interest rate. Notwithstanding the earlier termination or expiration of this Lease, the obligations provided for in this Section 13 shall survive such earlier termination or expiration.

14. MISCELLANEOUS. (a) Notices. All notices (excluding billings and communications in the ordinary course of business) hereunder shall be in writing, sent by certified mail, return receipts requested, addressed to the other party at its respective address stated on the first page of this Agreement or at such other address as such party shall from time to time designate in writing to the other party; shall be effective from the date of mailing.

(b) Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

(c) Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the County of McLennan, State of Texas.

(d) Entire Agreement Severability. This Agreement constitutes the entire Agreement between Lessor and Lessee. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing signed by both parties, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. There are no understandings not specified herein regarding this Agreement or the Equipment leased hereunder. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

(e) Lessor's Right to Perform for Lessee. If Lessee fails to perform or comply with any of its agreements contained herein, Lessor shall have the right, but shall not be obligated, to effect such performance or compliance, and the amount of any out of pocket expenses and other reasonable expenses of Lessor incurred in connection with the performance of or compliance with such Agreement, together with interest thereon at the rate of twelve percent (12%) per annum (or such lesser amount as may be permitted by law), shall be payable by Lessee upon demand.

(f) No Third Party Beneficiaries. No third parties are intended to be beneficiaries of this Agreement. This Agreement is intended to be fully integrated.

(g) No Waiver of Governmental Immunity. Lessee does not waive any rights or protections it may have under the Colorado Governmental Immunity Act. C.R.S. §24-10-101 et seq.

(h) Non-Appropriation. As required by Article X, Section 20 of the Colorado Constitution, any obligation of the Lessee not performed in the current fiscal year shall be subject to annual appropriation of funds by the Lessee's governing body. Notwithstanding Lessor's rights and remedies as stated in Sections 2(e) and 12 of the Agreement, should sufficient funds not be appropriated for the Lessee's performance in future fiscal years, this Lease Agreement shall terminate and be of no further force or effect.

IN WITNESS WHEREOF, Lessee has caused this Lease to be duly executed under seal.

LESSEE: City of Cripple Creek, CO

By: \_\_\_\_\_ (SEAL)

**Complete all blank lines to this point before submitting to Lessor**

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

LESSOR: TYMCO, Inc.

By: \_\_\_\_\_ (SEAL)

225 E. Industrial Blvd.  
Waco, Texas 76705



LESSOR: TYMCO, Inc. • P.O. Box 2368 • Waco, TX 76703

Agreement No. 20220126

LESSEE: City of Cripple Creek • 337 E. Bennett Ave. • Cripple Creek, CO 80813

## EXHIBIT A MUNICIPAL CERTIFICATE

I, the undersigned, the duly appointed, qualified and acting \_\_\_\_\_ (Clerk or Secretary) of the above captioned Lessee do hereby certify this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ that Lessee is a public body corporate and politic duly organized and existing under the Constitution and laws of the State of Colorado with full power and authority to enter into, be bound by and perform its obligations under the above captioned equipment lease/purchase agreement (the "Agreement").

I further certify that the Lessee did, at a \_\_\_\_\_ (regular or special) meeting of the governing body of the Lessee held \_\_\_\_\_, \_\_\_\_\_, by motion duly made, seconded and carried, in accordance with all requirements of law, approve and authorize the execution of the Agreement by the following named representative of the Lessee, to wit:

---

Name

Title

Signature

I further certify that the above named representative of the Lessee had at the time of such authorization and has at the present full and complete authority to execute the Agreement and that I have full and complete authority to attest the execution of the Agreement by such representative of the Lessee.

I further certify that the meeting of the governing body of the Lessee at which the Agreement was approved and authorized to be executed was duly called, regularly convened and attended throughout by a majority of the members thereof and that the action approving the Agreement and authorizing the execution thereof has not been altered or rescinded.

I further certify that the Lessor has fully and satisfactorily performed all of its covenants and obligations under the Agreement.

I further certify that the Equipment will perform an essential use and public function which the Lessee, its agencies and departments are authorized by law to perform.

I further certify that all insurance required in accordance with the Agreement has been secured by the Lessee and the required coverage will be maintained throughout the term of the Agreement and the renewal, if any, thereof.

I further certify that any notice or demand to be given the Lessee may be given to the Lessee at the above referenced address of the Lessee.

I further certify that the date of this Municipal Certificate shall constitute the Commencement Date of the Agreement in accordance with Section 2 of the Agreement.

In compliance with Section 265(b)(3)(D) of the Internal Revenue Code of 1986 (the Code), Issuer hereby represents that the Issuer will not designate more than \$10,000,000 of obligations issued by the Issuer in the calendar year during which the Lease is executed and delivered as such "qualified tax-exempt obligations".

I further certify that in compliance with the requirements of Section 265(b)(3)(C) of the Code, the Issuer hereby represents that the Issuer (including all "subordinate entities" of the Issuer within the meaning of Section 265(b)(3)(E) of the Code) reasonably anticipated not to issue in the calendar year during which the Lease is executed and delivered, obligations bearing interest exempt from federal income taxation under Section 103 of the Code other than "private activity bonds" (as defined in Section 141 of the Code) in an amount greater than \$10,000,000.

IN WITNESS WHEREOF, I hereunto set my hand and the seal of the governing body of the Lessee the day and year first above written.

By: \_\_\_\_\_

\_\_\_\_\_  
(Printed or typewritten name)

(SEAL)

(If no seal, initial here: \_\_\_\_\_)

Subscribed to and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_.

**EXHIBIT B  
LEGAL COUNSEL OPINION**

Date: January 26, 2022

TYMCO, Inc.  
P.O. Box 2368  
Waco, TX 76703

RE: Municipal lease/purchase of one (1) TYMCO Model 435 street sweeper

Gentlemen:

As legal counsel to the \_\_\_\_\_, (the "Buyer"), I have examined (1) an executed counterpart of a certain Equipment Lease/Purchase Agreement (the "Agreement") dated \_\_\_\_\_, 2022, by and between , TYMCO, Inc., as Seller, and the Buyer, which, inter alia, provides for the sale to and purchase by the Buyer of certain property (the "Property"), (2) an executed counterpart of Resolution No. \_\_\_\_\_ dated , \_\_\_\_\_, \_\_\_\_\_, of the Buyer which, inter alia, authorizes the Buyer to execute the Agreement and (3) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions.

Based upon the foregoing, it is my opinion that:

- (1) The Agreement and the other documents either attached thereto or required therein have been duly authorized, approved and executed by and on behalf of the Buyer and the Agreement is a valid and binding obligation of the Buyer enforceable in accordance with its terms;
- (2) The authorization, approval and execution of the Agreement and all other proceedings of the Buyer relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, public bidding laws and all other applicable state or federal laws;
- (3) To my knowledge, there is no proceeding pending in any court or before any governmental authority or arbitration board or tribunal which, if adversely determined, would adversely affect the transactions contemplated by the Agreement or the security interest of the Seller or its assigns, as the case may be, in the Property.

Respectfully submitted,

\_\_\_\_\_

By: \_\_\_\_\_



**EXHIBIT C**  
**SCHEDULE OF PAYMENTS**

Date: January 26, 2022

Agreement No. '20220126

THIS SCHEDULE is issued pursuant to the Equipment Lease/Purchase Agreement dated as of \_\_\_\_\_, (the "Agreement") between the parties to the Agreement to authorize installation of the Equipment listed herein. All terms used herein have the meanings ascribed to them in the Agreement.

- A. Payments. The payments required under the Agreement for the Equipment designated on this Schedule are \$ beginning \_\_\_\_\_, and continuing the \_\_\_\_ day of each September, annually, thereafter for the duration of the lease term (the "Agreement Payment Period"). The payments required under this Schedule are made up of the total finance amount to the \_\_\_\_\_ of \$ and deferred interest charges to maturity of \$ for a total Agreement price of \$.
- B. Deferred interest to maturity. Deferred interest charges to maturity as set forth herein consist of services and other charges, plus interest at the annual rate of \_\_\_\_% on the sum of the aforementioned service charges and other charges and the Equipment purchase price.
- C. Late payments. There will be a charge of 1.00% per month based on the amount of any late payments (10 days past the date due) calculated from the 11<sup>th</sup> day past the due date thereof until paid.
- D. Fiscal year. The fiscal year of the undersigned Lessee is from \_\_\_\_\_ to \_\_\_\_\_.
- E. Prepayment and purchase schedule. The purchase price as provided in the Agreement is as follows (to be prorated for dates not specified) plus any accrued interest.

Period	The Principal Balance Amount as of the End of that Period is:
Original Term: 09/01/2022 through 12/31/2022	\$156,853.13
Renewal term 1 01/01/2023 through 12/31/2023	119,305.00
Renewal term 2 01/01/2024 through 12/31/2024	80,667.98
Renewal term 3 01/01/2025 through 12/31/2025	40,910.48
Renewal term 4 01/01/2026 through 12/31/2026	00.00
Renewal term 5	

- F. Insurance. The Lessee hereby confirms that it has obtained the insurance coverage required by Section 7 of the Agreement and it covenants and agrees that such coverage shall be maintained in accordance with the terms and conditions of the Agreement.

G. Equipment description. The Equipment subject to the Agreement is as follows:

Quantity	Description/Serial No.	Finance Amount
One (1)	TYMCO Model 435 REGENERATIVE AIR STREET SWEEPER Sweeper Serial # Truck VIN	\$198,950.00

THE TERMS GOVERNING THIS SCHEDULE ARE CONTAINED IN THE AGREEMENT REFERENCED ABOVE AND APPLY WITH THE SAME FORCE AND EFFECT AS IF SET FORTH FULL HEREIN.

The Agreement shall not be effective unless this Schedule is signed by Lessee and received by TYMCO, Inc. within thirty (30) days of the date first above stated. In addition, neither party shall be bound by the Agreement until this Schedule is executed by an authorized officer of the Lessee and Lessor.

Lessee: City of Cripple Creek, CO

Lessor: TYMCO, Inc.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Kenneth J. Young

Title: \_\_\_\_\_

Title: President

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

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

City of Cripple Creek, CO  
5 Yr. Annual, Advance, 2.90%

Municipal Lease/Purchase  
Supplement to Exh.C

Customer #320700  
Agreement#20220126

Date	Pmt No.	Beg Bal	Int.#8062	Prin.#1200	P & I	End Bal
On Delivery	1	\$198,950.00	\$0.00	\$42,096.87	\$42,096.87	\$156,853.13
9/1/2023	2	\$156,853.13	\$4,548.74	\$37,548.13	\$42,096.87	\$119,305.00
9/1/2024	3	\$119,305.00	\$3,459.85	\$38,637.02	\$42,096.87	\$80,667.98
9/1/2025	4	\$80,667.98	\$2,339.37	\$39,757.50	\$42,096.87	\$40,910.48
9/1/2026	5	\$40,910.48	\$1,186.39	\$40,910.48	\$42,096.87	\$0.00
TOTALS:			\$11,534.35	\$198,950.00	\$210,484.35	

**EXHIBIT D**  
**CERTIFICATE OF ACCEPTANCE**

TYMCO, Inc.  
P.O. Box 2368  
Waco, TX 76703

Agreement #20220126

Gentlemen:

In accordance with the terms of the Equipment Lease/Purchase Agreement dated \_\_\_\_\_, (the "Lease") between TYMCO, Inc. ("Lessor"), and the undersigned ("Lessee"), Lessee hereby certifies and represents to and agrees with Lessor as follows:

1. The Equipment, as such term is defined in the Lease, has been delivered, installed, and accepted on the date indicated below.
2. Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.
3. No Event of Default, as such term is defined in the Lease, and no event which with notice or lapse of time, or both, would become an Event of Default, has occurred and is continuing at the date hereof.

LESSEE: City of Cripple Creek, CO

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

Sweeper Model : TYMCO Model street sweeper

Sweeper Serial No.:

Truck Serial No.:

Lessee Physical Location: 337 E. Bennett Ave., Cripple Creek, CO 80813

Lessee' s Location Phone No.: 719-689-2502

# EQUIPMENT SECURITY AGREEMENT

Date: 01-26-2022

Name: City of Cripple Creek Street Address: 337 E. Bennett Ave.

City: Cripple Creek County: Teller State: Colorado hereinafter called "Debtor," hereby grants to TYMCO Inc., 225 E. Industrial Blvd., City of Waco, County of McLennan, State of Texas, hereinafter called "Secured Party," a security interest in the following described personal property:

One (1) TYMCO Model 435 REGENERATIVE AIR STREET SWEEPER  
Sweeper Serial # \_\_\_\_\_ Truck VIN \_\_\_\_\_

together with all additions, accessions and substitutions thereto or therefore, and all similar property hereafter acquired, hereinafter called "collateral." Proceeds of Collateral are also covered but this shall not be construed to mean that Secured Party consents to any sale of such Collateral.

## DEBTOR WARRANTIES AND COVENANTS WITH SECURED PARTY AS FOLLOWS:

- The Collateral covered by this agreement is to be used by Debtor primarily for  
☐ Personal, family or household purposes ☐ Farming operations ☒ Business other than farming operations.
- The Collateral is ☒ Now owned by the Debtor ☐ Being acquired with the proceeds of the advance evidenced by this agreement.
- Debtor's residence is ☒ At the address shown above or ☐ At \_\_\_\_\_
- The Collateral will be kept at ☒ Debtors residence as shown above or ☐ At \_\_\_\_\_
- Debtor's chief place of business is ☒ In the county of Debtor's residence or ☐ At \_\_\_\_\_

This security interest is given to secure: (1) Payment of a Municipal Lease/Purchase Agreement and executed and delivered by Debtor to Secured Party in the principal sum of \$198,950.00, payable as to principal and interest as therein provided; (2) future advances to be evidenced by like notes to be made by Secured Party to Debtor at Secured Party's option; (3) all expenditures by Secured Party for taxes, insurance, repairs to and maintenance of the Collateral and all costs and expenses incurred by Secured Party in the collection and enforcement of the note and other indebtedness of Debtor; and (4) all liabilities of Debtor to Secured Party now existing or hereafter incurred, matured or unmatured, direct or contingent, and any renewals and extensions thereof and substitutions therefore. **DEBTOR EXPRESSLY WARRANTS AND COVENANTS:**

**OWNERSHIP FREE OF ENCUMBRANCES.** Except for the security interest granted hereby, Debtor now owns or will use the proceeds of the advances hereunder to become the owner of the Collateral free from any prior lien, security interest or encumbrance, and Debtor will defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein.

**FINANCING STATEMENTS.** No financing statement covering the Collateral or any proceeds thereof is on file in any public office and Debtor will join with Secured Party in executing one or more financing statements in form satisfactory to Secured Party.

**INSURANCE.** Debtor will insure the Collateral with companies acceptable to Secured Party against such casualties and in such amounts as Secured Party shall require. All insurance policies shall be written for the benefit of Debtor and Secured Party as their interests may appear, and such policies or certificates evidencing the same shall be furnished to Secured Party. All policies of insurance shall provide at least ten (10) days prior written notice of cancellation to Secured Party.

**MAINTENANCE.** Debtor will keep the Collateral in good condition and free from liens and other security interests, will pay promptly all taxes and assessments with respect thereto, will not use the Collateral illegally or encumber the same and will not permit the Collateral to be affixed to real or personal property without the prior written consent of Secured Party. Secured Party may examine the Collateral at any time wherever located.

**REIMBURSEMENT FOR EXPENSES.** At its option Secured Party may discharge taxes, liens, security interests, or other encumbrances on the Collateral and may pay for the repair of any damage to the Collateral, the maintenance and preservation thereof and for insurance thereon. Debtor agrees to reimburse Secured Party on demand for any payments so made and until such reimbursement, the amount of any such payment with interest at ten (10%) per cent per annum from date of payment until reimbursement, shall be added to the indebtedness owned by Debtor and shall be secured by this security agreement.

**CHANGE OF RESIDENCE OR LOCATION OF COLLATERAL.** Debtor will immediately notify Secured Party in writing of any change in Debtor's residence, and Debtor will not permit any of the Collateral to be removed from the location specified herein without the written consent of Secured Party.

**EVENTS OF DEFAULT.** Debtor shall be in default under this agreement upon the happening of any of the following events or conditions:

- Default in the payment or performance of any obligation, covenant or liability contained or referred to herein;
- Any warranty, representation or statement made or furnished to Secured Party by or in behalf of Debtor proves to have been false in any material respect when made or furnished;
- Any event which results in the acceleration of the maturity of the indebtedness of Debtor or others under any indenture, agreement or undertaking;
- Loss, theft, substantial damage, destruction, sale or encumbrance to or of any of the Collateral, or the making of any levy, seizure or attachment thereof or thereon;
- Any time the Secured Party believes that the prospect of payment of any indebtedness secured hereby or the performance of this agreement is impaired;
- Death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver for any part of the Collateral, assignment for the benefit of creditors or the commencement of any proceeding under any bankruptcy or insolvency law by or against Debtor or any guarantor or surety for Debtor.

**REMEDIES.** Upon such default and at any time thereafter Secured Party may declare all obligations secured hereby immediately due and payable and may proceed to enforce payment of the same and exercise any and all of the rights and remedies provided by the Uniform Commercial Code as well as all other rights and remedies possessed by Secured Party. Secured Party may require Debtor to assemble the Collateral and make it available to Secured Party at any place to be designated by Secured Party which is reasonably convenient to both parties. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Secured Party will give Debtor reasonable notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is to be made. The requirements of reasonable notice shall be met if such notice is mailed, postage prepaid, to the address of Debtor shown at the beginning of this agreement at least five days before the time of the sale or disposition. Expenses of retaking, holding, preparing for sale, selling or the like shall include Secured Party's reasonable attorneys' fees and legal expenses.

No waiver by Secured Party of any default shall operate as a waiver of any other default and the terms of this agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto. Signed and delivered the day and year first above written.

SECURED PARTY: TYMCO Inc.

DEBTOR: City of Cripple Creek, CO \_\_\_\_\_

(Name)

By: Kenneth J. Young, President \_\_\_\_\_  
(Name, Title)

(Name)

By: \_\_\_\_\_  
(Name)

**Information Return for Tax-Exempt Governmental Bonds**

► Under Internal Revenue Code section 149(e)

► See separate instructions.

Caution: If the issue price is under \$100,000, use Form 8038-GC.

► Go to [www.irs.gov/F8038G](http://www.irs.gov/F8038G) for instructions and the latest information.

OMB No. 1545-0047

<b>Part I Reporting Authority</b>		Check box if Amended Return <input type="checkbox"/>
1 Issuer's name City of Cripple Creek		2 Issuer's employer identification number (EIN)
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)		3b Telephone number of other person shown on 3a
4 Number and street (or P.O. box if mail is not delivered to street address) 337 E. Bennett Ave.	Room/suite	5 Report number (For IRS Use Only) 3
6 City, town, or post office, state, and ZIP code Cripple Creek, CO 80813		7 Date of issue 09-01-2022
8 Name of issue Municipal Lease/Purchase of a Street Sweeper		9 CUSIP number
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information		10b Telephone number of officer or other employee shown on 10a 719-689-2502

**Part II Type of Issue (Enter the issue price.)** See the instructions and attach schedule.

11 Education	11	
12 Health and hospital	12	
13 Transportation	13	
14 Public safety	14	
15 Environment (including sewage bonds)	15	
16 Housing	16	
17 Utilities	17	
18 Other. Describe ► Public Works Dept	18	198,950.00
19a If bonds are TANS or RANs, check only box 19a <input type="checkbox"/>		
b If bonds are BANs, check only box 19b <input type="checkbox"/>		
20 If bonds are in the form of a lease or installment sale, check box <input checked="" type="checkbox"/>		

**Part III Description of Bonds.** Complete for the entire issue for which this form is being filed.

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	09-01-2026	\$ 198,950.00	\$ 0	5 years	2.90 %

**Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)**

22	Proceeds used for accrued interest	22	0
23	Issue price of entire issue (enter amount from line 21, column (b))	23	0
24	Proceeds used for bond issuance costs (including underwriters' discount)	24	
25	Proceeds used for credit enhancement	25	
26	Proceeds allocated to reasonably required reserve or replacement fund	26	
27	Proceeds used to refund prior tax-exempt bonds. Complete Part V	27	
28	Proceeds used to refund prior taxable bonds. Complete Part V	28	
29	Total (add lines 24 through 28)	29	0
30	Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30	0

**Part V Description of Refunded Bonds.** Complete this part only for refunding bonds.

31	Enter the remaining weighted average maturity of the tax-exempt bonds to be refunded	years
32	Enter the remaining weighted average maturity of the taxable bonds to be refunded	years
33	Enter the last date on which the refunded tax-exempt bonds will be called (MM/DD/YYYY)	
34	Enter the date(s) the refunded bonds were issued (MM/DD/YYYY)	

**Part VI Miscellaneous**

- |            |  |   |
|------------|--|---|
| <b>35</b>  |  | 0 |
| <b>36a</b> |  | 0 |
| <b>37</b>  |  | 0 |
- 35** Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) . . . . .
- 36a** Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC). See instructions . . . . .
- b** Enter the final maturity date of the GIC ► (MM/DD/YYYY) \_\_\_\_\_
- c** Enter the name of the GIC provider ► \_\_\_\_\_
- 37** Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units . . . . .
- 38a** If this issue is a loan made from the proceeds of another tax-exempt issue, check box ► ☐ and enter the following information:
- b** Enter the date of the master pool bond ► (MM/DD/YYYY) \_\_\_\_\_
- c** Enter the EIN of the issuer of the master pool bond ► \_\_\_\_\_
- d** Enter the name of the issuer of the master pool bond ► \_\_\_\_\_
- 39** If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box . . . . . ► ☐
- 40** If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box . . . . . ► ☐
- 41a** If the issuer has identified a hedge, check here ► ☐ and enter the following information:
- b** Name of hedge provider ► \_\_\_\_\_
- c** Type of hedge ► \_\_\_\_\_
- d** Term of hedge ► \_\_\_\_\_
- 42** If the issuer has superintegrated the hedge, check box . . . . . ► ☐
- 43** If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box . . . . . ► ☐
- 44** If the issuer has established written procedures to monitor the requirements of section 148, check box . . . . . ► ☐
- 45a** If some portion of the proceeds was used to reimburse expenditures, check here ► ☐ and enter the amount of reimbursement . . . . . ► \_\_\_\_\_
- b** Enter the date the official intent was adopted ► (MM/DD/YYYY) \_\_\_\_\_

**Signature and Consent**

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.

Signature of issuer's authorized representative	Date	Type or print name and title
---	------	------------------------------

**Paid Preparer Use Only**

Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
Firm's name ►	Firm's EIN ►		Phone no.	
Firm's address ►				

# SAMPLE CERTIFICATE OF INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

## COMPANIES AFFORDING COVERAGE

PRODUCER	COMPANY LETTER	A	<b>NOTE: Company must be rated A- or better by Best's Key Rating Guide. SHOW RATING next to company name.</b>
	COMPANY LETTER	B	
	COMPANY LETTER	C	
INSURED	COMPANY LETTER	D	
	COMPANY LETTER	E	

**COVERAGES:** This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Limits shown may have been reduced by paid claims.

CO LTR	INSURED	POLICY NUMBER	Date Policy Effective (MM/DD/YY)	Date Policy Expires (MM/DD/YY)	ALL LIMITS IN THOUSANDS	
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> Commercial General Liability <input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence <input type="checkbox"/> Owner's & Contractors Protection  Deductible \$				General Aggregate	\$
					Products/Comp/Ops Aggregate	\$
					Personal & Advertising Injury	\$
					Each Occurrence	\$
					Fire Damage (Any One Fire)	\$
					Medical Expense (Any One Person)	\$
	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> Any Auto <input type="checkbox"/> All Owned Autos <input type="checkbox"/> Scheduled Autos <input type="checkbox"/> Hired Autos <input type="checkbox"/> Non-Owned Autos <input type="checkbox"/> Garage Liability Deductible \$				CSL	\$ 1,000.00
					Bodily Injury (per person)	\$
					Bodily Injury (per accident)	\$
					Property Damage	\$
	<b>EXCESS LIABILITY</b>  <input type="checkbox"/> Other Than Umbrella Form				Each Occurrence	Aggregate
					\$	\$
	<b>WORKERS COMPENSATION AND EMPLOYER'S LIABILITY</b>				<b>STATUTORY LIMITS</b> \$ (Each Accident) \$ (Disease Policy Limit) \$ (Disease-Each Employee)	
	<b>OTHER: Collision Coverage AND Comprehensive or Specified Causes of Loss</b>				<b>Actual Cash Value of Sweeper with Collision Ded. of \$ (Note: Ded. must be no greater than \$1,000.00)</b>	

### DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS:

**TYMCO Inc.** is added as an **Additional Insured** to the Liability Coverage and as a **Loss Payee** for Physical Damage Coverage

### CERTIFICATE HOLDER

TYMCO Inc.  
P.O. Box 2368  
Waco, TX 76703

### CANCELLATION

Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the Certificate Holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives

Authorized Representative

**TYMCO Requirements**



## LEASE AGREEMENT

**THIS LEASE AGREEMENT** is entered into this day of, January 19, 2022, by and between the **CITY OF CRIPPLE CREEK, COLORADO**, a Colorado municipal corporation whose address is 337 E. Bennett Avenue, P.O. Box 430 80813 (herein called Lessor) and Matt Marchman Edge Wellness and Rehabilitation, 2150 Hollowbrook Drive, Suite 100, Colorado Springs, CO, 80918 (herein called Lessee).

Lessee hereby agrees to lease from Lessor the premises situated in the City of Cripple Creek, County of Teller and State of Colorado, described as a physical and occupational therapy office located at: 1101 Teller County Road 1, Cripple Creek, CO 80813, upon the following TERMS and CONDITIONS:

**1. Term and Rent.** Lessor leases the above premises for a term of one year, commencing on January 1, 2022 and terminating on December 31, 2022, at the [monthly] rental of \$500.00 (five hundred dollars) per month payable by the 5th day of each month for that month's rental, during the term of this lease. All rental payments shall be made to Lessor, at the address specified above.

**2. Use.** Lessee shall use and occupy the premise solely for the purpose of The Operation of a Physical and Occupational Therapy Practice. Lessor represents that the premises may lawfully be used for such purpose.

**3. Common Area Maintenance Costs.** All Common Area Maintenance Costs [CAM Charges] for the property will be the responsibility of the City of Cripple Creek and the rent paid by the Lessor shall help offset those costs.

**4. Alterations.** Lessee shall not, without first obtaining the written consent of Lessor, make any alterations, additions, or improvements, in, to or about the premises, other than non-structural alterations reasonably necessary to the uses of the premises identified in paragraph 2 above.

**5. Ordinances and Statutes.** Lessee shall obtain all necessary licenses and permits for its business and comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force or which may hereafter be in force, pertaining to the premises, occasioned by or affecting the use thereof by Lessee.

**6. Assignment and Subletting.** Lessee shall not assign this lease or sublet any portion of the premises without prior written consent of the Lessor, which may in the absolute authority of the City be withheld. Any such assignment or subletting without consent shall be void and, at the option of the Lessor, may terminate this lease.

**7. Utilities.** See item #3 Common Area Maintenance Costs.

8. Entry and Inspection. Lessee shall permit Lessor or Lessor's agents to enter upon the premises at reasonable times and upon reasonable notice, for the purposes of inspecting the same, and will permit Lessor at any time within sixty (60) days prior to the expiration of this lease, to place upon the premises any usual "To Let" or "For Lease" signs, and permit persons desiring to lease the same to inspect the premises thereafter.

9. Possession. If Lessor is unable to deliver possession of the premises at the commencement hereof, Lessee shall not be liable for any rent until possession is delivered. Lessee may terminate this lease if possession is not delivered within 15 days of the commencement of the term as shown above.

10. Liability. Lessor shall not be liable for any damage or injury to Lessee, or any other person, or to any property, occurring on the leased premises or any part thereof, and Lessee agrees to hold Lessor harmless from any claim for damages. Nothing herein contained shall be deemed or construed to waive any of the protections afforded to Lessor by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq. (the "GIA").

11. Insurance. Lessee, at its expense, shall maintain public liability insurance including bodily injury in an amount not less than the limits of liability contained in the GIA as it may be amended from time to times. Lessee shall provide Lessor with a Certificate of Insurance showing compliance with this paragraph. The Certificate shall provide for a ten-day written notice to Lessor in the event of cancellation or material change of coverage. To the maximum extent permitted by insurance policies which may be owned by Lessor or Lessee, Lessee and Lessor, for the benefit of each other, waive any and all rights of subrogation which might otherwise exist. In addition, the Lessee shall name Lessor as "additionally insured" on Lessee's liability policy for a total of one million dollars (\$1,000,000.00).

12. Eminent Domain. If the premises or any part thereof or any estate therein, or any other part of the building materially affecting Lessee's use of the premise, shall be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent, and any additional rent, shall be apportioned as of the termination date, and any rent paid for and period beyond that date shall be repaid to Lessee. Lessee shall not be entitled to any part of the award for such taking or any payment in lieu thereof, but Lessee may file a claim for any taking of fixtures and improvements owned by Lessee, and for moving expenses.

13. Tax Increase. The City of Cripple Creek is tax exempt so there will be no real property taxes. Lessee shall be responsible for any personal property taxes.

14. Attorney's Fees. In case suit should be brought for recovery of the premises or for any sum due hereunder, or because of any act which may arise out of the possession of the premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including reasonable attorney's fee.

15. Notices. Any notice which either party may, or is required to give, shall be given mailing same, postage prepaid, to Lessee at the premises, or Lessor at the address shown below, or at such other places as may be designated by the parties from time to time.

16. Heirs, Assigns, Successors. This lease is binding upon and inures to the benefit of the heirs, successors in interest to the parties.

17. Non-appropriation. As required by Article X, Section 20 of the Colorado Constitution, any financial obligations of Lessor not to be performed during the current fiscal year contained in this Lease are subject to annual appropriation of sufficient funds by the Cripple Creek City Council. Should the City Council, in any year during the term of this lease, not appropriate sufficient funds for the performance of its obligations herein contained the premises shall be vacated and possession returned to the Lessor on the last day for which a valid appropriation exists.

18. Tenant Improvements. City agrees to provide lighting as built and outlets as needed for lessees requirements. In addition, the City is providing the standard floor covering providing the remainder of the building. Any additional improvement will be provided by the Leasee.

19. Tenant Licenses. The tenant agrees to maintain all professional licenses as required by the City of Cripple Creek.

20. Termination. Either party can terminate the lease, for any reason, by giving sixty days notice to the respective party.

21. Entire Agreement. The foregoing constitutes the entire agreement between the parties, there are no other agreements of any kind or nature and this lease may only be modified in a writing signed by both parties, and approved by the City Council.

LESSOR:  
CITY OF CRIPPLE CREEK,

LESSEE:

By: \_\_\_\_\_  
Milford Ashworth, Mayor

By: \_\_\_\_\_  
Matt Marchman

ATTEST:

\_\_\_\_\_  
Malissa Gish, City Clerk

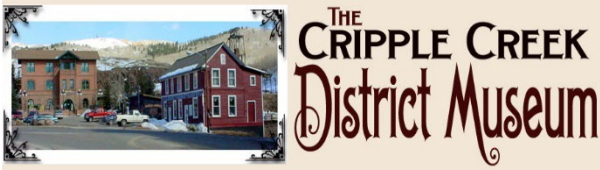
STATE OF COLORADO     )  
  ) ss.  
COUNTY OF TELLER     )

Before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, personally appeared  
\_\_\_\_\_, who acknowledged the above Lease.

{S E A L}

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public



**500 E. Bennett Avenue**

**Po Box 1210**

**Cripple Creek, Co. 80813**

**[www.cripplecreekmuseum.com](http://www.cripplecreekmuseum.com)**

**[director@cripplecreekmuseum.com](mailto:director@cripplecreekmuseum.com)**

**719-689-9540**

**Paul Harris**

**Finance Department**

**City of Cripple Creek**

Hi Paul,

As you may recall we applied for a grant with History Colorado for the retaining wall at the Museum Depot. We also asked the Cripple Creek City Council for a match of \$37,575 if we were awarded the grant and council approved this for the 2022 budget. Recently, we learned that the Cripple Creek District Museum was not awarded the grant due to the lack of funds and projects with a higher priority. We will apply for the grant again, but at this point we do not see this project being accomplished in 2022 since the earliest we would be notified of approval would be in the fall of this year.

We have decided that we must address the steps leading up to the Depot this year and received bids to replace the steps, 2 slabs of sidewalk and patch loose bricks and mortar for a total of \$5,750. In addition, another maintenance project of high priority for the CCDM is siding repair and paint to the Colorado Trading and Transfer Building. The T & T was due for maintenance, but hail damage in the spring of 2021 moved up our timeline on these repairs. Last month we applied for \$10,000 to Newmont's Community Investment Program and we were informed that we would receive \$5000 for the Trading and Transfer project.

Since we will not need the \$37,575 match for the retaining wall, we are requesting \$10,750 of those funds earmarked in the 2022 budget for the above work to the Depot steps and Colorado Trading and Transfer Building.

We thank you for your consideration!

Bill Burcaw

Director

Cripple Creek District Museum



**COLORADO**  
**Department of Local Affairs**  
Division of Local Government

January 27, 2022

The Honorable Milford Ashworth, Mayor  
City of Cripple Creek  
337 E. Bennett Avenue  
Cripple Creek, Colorado 80813

RE: IHOP-PLN27 Cripple Creek Housing Incentives and Land Trust Investigation

Dear Mayor Ashworth:

The Innovative Affordable Housing Strategies Planning Grant Program is an exciting new program, created by HB21-1271, that offers state assistance to local governments to promote the development of innovative affordable housing strategies in a manner that is compatible with best local land use practices. The Divisions of Local Government (DLG) and Housing (DOH) are partnering on this program to provide multi-disciplinary support to grantees. We thank you for your application and interest in this program.

Your project was reviewed based on a variety of factors such as its connection to readiness, capacity, impact on housing, political support, and equity, diversity, and inclusion in stakeholder and community engagement.

We regret to inform you your request was denied for a reduced match. If the City of Cripple Creek would like to move forward with the project, we would be happy to award the grant funds of \$75,800 contingent on the City providing the full match of 25% of the total project cost. If you are interested in pursuing this opportunity, please respond with a letter from Mayor Ashworth stating your request for the grant and the pledge of the full match. If you have any questions regarding this decision, feel free to contact your regional manager, Greg Winkler, or Community Development Office program staff member, Carrie Latimer at [Carrie.Latimer@state.co.us](mailto:Carrie.Latimer@state.co.us).

Sincerely,

Rick M. Garcia  
Executive Director

cc: Dennis Hisey, State Senator  
Mark Baisley, State Representative  
Jeff Mosher, City of Cripple Creek, Marketing & Events Director  
Clay Brown, DOLA Regional Manager  
Chris Furlong, DOH Development Specialist





TO: Mayor and City Council

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

AGENDA ITEM: Request to Consider Approval of Resolution 2022-03;  
Approving Personnel Handbook as Presented

DATE: February 10, 2022

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**Request:**

Staff is requesting approval of the City of Cripple Creek Personnel Handbook.

**Overview/Analysis:**

Please refer to the memorandum from Norton & Smith regarding the process and methods utilized in revising the handbook which is presented for your review and consideration.

While Norton & Smith's memo covers high-level, staff finds it appropriate to highlight a couple of specific matters which are discussed below, in further detail.

At the guidance of a prior City Council member, staff made it a priority to incorporate an anti-bullying section within the violence in the workplace policy. As Norton & Smith stated in their memorandum, staff worked closely with Charles Norton on this and other policies to follow best practices as suggested by the EEOC and to conform to existing law.

The next matter to mention is a change to the maximum accrual of sick leave an employee can maintain. As an example, the limits referenced are for a regular full-time employee, but the limits carry through for firefighters with different rates based on their specific classification or part-time employees.

The existing guideline allows a full-time employee to accrue up to a maximum of 960 hours or 24 weeks of leave. After years of assessment and evaluating specific scenarios, staff recommends this limit be reduced to 520 hours or 13 weeks of leave. Staff tends to believe that when the maximum accrual rate was established, the City did not have the generous benefits offered today. For example, the City provides and pays for a long-term disability (LTD) plan. LTD has what is called a 90-day elimination period before benefits can be paid. This is about 3 months or 12 weeks. The proposed new maximum would still allow an employee to earn enough leave that should they have to utilize the full amount, it would be enough to cover their wages before the LTD plan would begin payment. In addition, there is some flexibility in the maximum accrual to allow for occasional use of sick leave (the 40 hour difference). Further, staff has found it very difficult for

a manager to continue operations in their department when an employee can technically be out 24+ weeks in a continuous period of time. It is difficult to consider personnel action when an employee is off of work, yet has an accrued amount of leave remaining for utilization.

One law that should be considered when it comes to sick leave is the Family Medical Leave Act (FMLA). Under FMLA, a qualified employer cannot take adverse action against an employee while out on job protected leave, which is the equivalent of 12 weeks. After that time, an employee's absence is no longer job protected, yet they may likely still have accrued sick leave to utilize, under the existing guideline. This isn't intended to read that the City of Cripple Creek will automatically move in the direction of separating employment; however, entering into an interactive process to evaluate the specific circumstances.

Staff proposes that any employees who currently have greater than 520, not lose those hours; however, an employee in this scenario would not begin to accrue additional sick leave until they fell below the 520-accrual maximum. Sick leave is managed through ADP, and ADP has stated this could be achieved in their system. This method demonstrates to an existing employee with hours greater than 520, that the City values their work ethics in managing their sick leave, while not taking away something that was already earned.

The next matter staff would like to bring attention to is the adjustments on accruals for full-time fire staff. Upon analysis of the current accrual rates and the fire shift calendar, staff found that in most instances, fire is accruing at a greater rate than other full-time equivalents. Updates are found in both the vacation and sick leave sections. Finance Director Harris was consulted and he agreed upon the new figures as presented.

An additional change which has been modified is the benefit of allowing an employee to sell vacation time. This has been drafted to ensure an employee cannot bring their balance below 40 hours, nor can they sell greater than 80 hours in a calendar year.

An employee leave benefit that has been enhanced is the paid time allotment for bereavement due to the death of an immediate family member. The existing guideline allows for three working days and has been modified to read up to a maximum of the equivalent of an employee's regular work week.

Charles Norton of Norton & Smith expanded in more detail the changes to chapters 11 and 12.

It is our goal that the Handbook be effective in communicating with employees, serve as a tool for management in that it provides answers to questions likely sought by employees, ensures consistency and promotes the values and culture of the City of Cripple Creek.

The Handbook was reviewed by both a human resources professional and attorney with Employers Council; Norton & Smith, as well as Interim City Administrator White.

**Action Requested:**

Staff recommends that City Council approve the Personnel Handbook as presented.



**Attachment:**

Attachment A – Personnel Handbook

**RESOLUTION No. 2022-03**

**CITY OF CRIPPLE CREEK**

**A RESOLUTION APPROVING AND ADOPTING THE PERSONNEL HANDBOOK  
FOR THE CITY OF CRIPPLE CREEK.**

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

The Personnel Handbook for the City of Cripple Creek attached hereto is hereby approved and adopted by the City Council. It supersedes and replaces the Personnel Policies and Procedures Manual first approved in 2011, and subsequently amended.

ADOPTED at Cripple Creek, Colorado, this 16<sup>th</sup> day of February 2022.

APPROVED:

---

Milford Ashworth, Mayor

ATTEST:

---

Malissa Gish, City Clerk

APPROVED AS TO FORM:

---

Erin Smith  
City Attorney