



337 E. Bennett Avenue, Cripple Creek, CO 80813

**CRIPPLE CREEK CITY COUNCIL
REGULAR MEETING AGENDA**

April 6, 2022

5:30 PM – IN PERSON AND ONLINE VIA ZOOM

**4:00 PM – WORK SESSION FOR A PRESENTATION BY
AECOM FOR STREETCAR PLANNING STUDY & PREDESIGN
OF THE TRANSIT FACILITY**

Join City Council Meeting By ZOOM

Meeting ID: 852 8615 1280

Passcode: 987271

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

PUBLIC COMMENT

APPROVAL OF MEETING MINUTES from March 16, 2022 Special Meeting and Executive Session, and March 16, 2022 Regular Meeting.

PROCLAMATIONS, PRESENTATIONS, UPDATES & OTHER REPORTS

Proclamation for Ukraine

REPORTS

1. City Administrator
2. Finance Director

PUBLIC HEARINGS

1. Janik Appeal – Consider the appeal of the denial for a business license to operate a VRBO due to the current moratorium on the creation and operation of new short-term rentals in Cripple Creek, which was established pursuant to Cripple Creek Ordinance No. 2021-16. Camille Krochta, Project Coordinator
2. Resolution 2022-06 a Resolution Acknowledging Completion and acceptance of Ownership of CDBG Community of Caring Interior Remodel Project, Malissa Gish, City Clerk. (Ted Borden; Aspen Mine Center)

NEW BUSINESS

- A. FIRST READING** for approval of Ordinance 2022-03 An Ordinance of the City of Cripple Creek, Colorado Amending Chapter 1, Article 4 of the Cripple Creek Municipal Code Relating to Community or Useful Public Service and approval of related Community Service Supervision Agreement Between the City of Cripple and Aspen Mine Center. Lara Loewenheim, Deputy City Clerk.

- B.** Consider Approval of the Expenditure and Budget Transfer to Run a Fiber Optic Line for the City's Computer Network; Paul Harris, Finance Director.
- C. SECOND READING** - to Consider Adoption of Ordinance 2022-02, an Ordinance Vacating that Portion of South 3rd St Right-of-Way Lying Northerly of the Northerly Right-of-Way Line of East Masonic Ave and Myers Ave and Southerly of the Southerly Line of the Alleys Within Blocks 21 and 22, Cripple Creek, Located in the South Half of Section 13 Township 15 South, Range 70 West of the 6th Principal Meridian, City of Cripple Creek, County of Teller, State of Colorado, Camille Krochta, Development Project Coordinator

ADJOURNMENT



Real Fun. Real Colorado.

Minutes From the Special Meeting and Executive Session March 16, 2022

SPECIAL MEETING called to order at 2:00 PM. Present during the meeting were Mayor Ashworth, Councilman Green, Councilman Solomone, Mayor Pro Tem Litherland, Paul Harris, Ray White, Frank Salvato and Erin Smith. Councilwoman Trenary recused herself and was not present during the Special Meeting or Executive Session.

Mayor Ashworth called to open **EXECUTIVE SESSION** at 2:04 PM pursuant to C.R.S. § 24-6-402(4)(b) for a conference with the city attorney for the purpose of receiving legal advice on specific legal questions related to device fees. MOTION by Mayor Pro Tem Litherland and seconded by Councilman Green to move into Executive Session pursuant to C.R.S. § 24-6-402(4)(b) for a conference with the city attorney for the purpose of receiving legal advice on specific legal questions related to device fees.; Motion carried unanimously by attending council members.

RECONVENE SPECIAL MEETING AND ADJOURNMENT. Mayor Ashworth reconvened the special meeting at 2:56 PM and there being no further business before the City Council, the meeting was adjourned.

Milford Ashworth, Mayor

Malissa Gish, City Clerk



March 16, 2022, 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, Mayor Pro Tem Litherland, Councilman Green, Councilwoman Trenary, Ray White, Frank Salvato, Malissa Gish, Charles "Bud" Bright, Camille Krochta, Ken Hartsfield, Joe O'Connor, Jeff Mosher, Paul Harris, Lara Loewenheim, Carol Stotts, Ted Schweitzer, Erin Smith.

Mayor Ashworth recognizes the people of Ukraine and call for a moment of silence.

PUBLIC COMMENT:

Jim Vance and Pat Martin comment on behalf of the Cripple Creek Care Center. They state that the center might close if they can't find CNA's to work in the facility. They claim housing for staff is a major contributor to the lack of employment. They are not asking for money, only support.

John Freeman, owner of The Creek, requested more than the allotted time of 3 min and apologized in advance to the Council and audience for his long comment. Freeman first requests that Bennett Avenue from City Hall to the entrance Johnny Nolan's Casino be a 2-hour parking lane; additionally, no business owners or employee parking. Second, Freeman addresses his concerns with the City budget siting the cancellation of Ice Fest "by the City," and the impact to business owners. Freeman continued regarding his misunderstanding of the City budget. Freeman continued to question the budget and asked for his questions to be answered. Jesse Welling, resident 228 W Eaton, voices his support for Mr. Freeman and other small business owners. Jesse echoes Mr. Freeman's concerns with the budget and questions Council's decisions with funding.

Council Approved Meeting Minutes

Motion to approve the Minutes from the February 11, 2022 Special Meeting/Executive Session and March 2, 2022 Regular Meeting by Councilwoman Trenary and seconded by Mayor Pro Tem Litherland. Motion passed unanimously.

Mayor Ashworth presents Ray White with a plaque for his dedicated service with the city in his role as Acting City Administrator.

Paul Harris and Carol Stotts also present Ray White with an honorary token of appreciation.

White thanked City Staff and Council.

Mayor Ashworth proceeded to swear in Frank Salvato as the City Administrator.

REPORTS

ADMINISTRATOR Frank Salvato thanks Council for the opportunity to come out of retirement and back to work. Salvato extends gratitude to Ray White for his willingness to guide him through a few weeks of trainings and meetings.

FINANCE DIRECTOR Paul Harris extends an invitation to the community regarding any concerns they have with the budget. He explains that Government finance is very different from for-profit finance. He encourages the public to attend the budget meetings and be active in the process. We have several meetings regarding the budget and few community members attend or show interest.

PUBLIC HEARING(S)

Consider Resolution 2022-04 Approving a Certificate of Appropriateness as a Project of Special Merit at Certain Real Property Legally Described as Lots 38-40 Block 21 and Lots 21-25, Block 22, Freeman Addition, City of Cripple Creek. Renee Mueller, Planning and Historic Preservation Coordinator. Mayor Ashworth opened the Public Hearing with the procedural steps to be followed. There were no questions regarding the procedure of the process. Camille Krochta informs Council that the City Attorney advised to go out of the order provided on the agenda. There are several requests by the same Applicant, therefor conducting both Public Hearings simultaneously, then taking Public Comment, followed by Staff recommendations would be advised. Krochta also requests the Applicant be permitted to conduct their presentation first. Larry Hill, CEO, Midnight Rose Hotel and Casino. Hill introduced his team of presenters Caitlin Quander, Gary Koerner and Jack Westergom. Caitlin begins the presentation with a slideshow, (added to the packet for permanent record), depicting the same information contained in the Staff Report along with slides of rendered interior photos, summary of hotel details, elevations, legal criteria as stated in the Staff Reports. Koener stresses the positive impact the boutique hotel will have on the city and small business. During the presentation, it is brought to Clerk Gish's attention that the Zoom audience is unable to view the slideshow. Gish asks for a moment to fix the issue. The meeting resumed after less than a minute. Koener resumed the slideshow presentation. Caitlin presented the legal portion of the slideshow, COA, Building Height Variance and ROW Vacation, also included in the packet. Renee Mueller states the Applicant's plans are in compliance with the HP guidelines and recommends Council's approval of the Resolution 2022-04 for the Certificate of Appropriateness as a Project of Special Merit with conditions which are outlined in her staff report on page 4.

Consider Resolution 2022-05 Approving the Application for a Height Variance to Allow a Maximum of 7 Stories in Place of the Required 5 Stories of the B-Downtown District at Certain Real Property Described as Lots 38-40, Block 21, Lots 21-25, Block 22, and the Vacated Right-of-Way of a Portion of 3r St as Described in Ordinance 2022-02, Freemont Addition, Cripple Creek, Colorado.

Camille Krochta states the Applicant's plans are in compliance with the Development Codes and criteria. Staff is recommending Council's approval of the Resolution 2022-05 for the Height Variance for the project with conditions outlined on page 3 of Resolution 2022-05.

Mayor Pro Tem Litherland asked if there is pedestrian walkway between the parking garage and the hotel on Myers. Planning states there is a 5' pedestrian walkway planned. He also wanted to clarify the height includes the basement. The utility floor is partially exposed but included in

the 7 stories. Snow removal issue was brought up; the plans include a snow melt system integrated into the road surface. If it fails, Midnight Rose states they “will shovel.”

Erin Smith, City Attorney states discussions with Council and herself regarding the snow removal led to the drafting of Revocable License. If the snow melt system fails or falls into disrepair, the city will shut off access to Third St.

Mayor Ashworth begins the conclusion of the Public Hearing asking if anyone in support of the Application to come forward. John Freeman, resident and small business owner, steps forward to commend the Applicant for their efforts with the project.

Mayor Ashworth calls for anyone against the project to speak. David Minter from Johnny Nolan’s expresses his concern regarding his property being on the other side of the proposed project. He feels he shouldn’t have to go through a private, controlled road to get to his property. Camille Krochta reiterates what Caitlin Quander explained earlier in the presentation; the road will remain open to the public and the city will remain in control of easements for public access.

Mayor Ashworth opens the podium for any further presentation from the Applicant. Being mindful of the hour, Caitlin Quander thanks council and the audience for their time and states she is willing to answer any further questions. Councilwoman Trenary asks about the delivery route access to the Grand remaining open to other establishments. The delivery access will remain open through the alley. Councilwoman Trenary asks about the aesthetics and lack of windows on the west wall. Quander states that elevation will not have windows. Gary Koerner states the guest rooms and restaurants will have windows. Councilwoman Trenary also asks about the possibility of receiving an Assurity Bond. Erin Smith assures Council there will be one. Councilman Green clarifies the road in from Bennett is one way, but a two way through from Myers.

Motion by Mayor Pro Tem Litherland and seconded by Councilman Green to close the Public Hearing and reconvene to the Regular Meeting. Motion passed unanimously.

Mayor Ashworth calls for a 5-minute recess.

Mayor Ashworth calls the meeting back to order. Erin Smith reminds Council they are to vote on the Public Hearing portion of the meeting.

Motion by Councilwoman Trenary and seconded by Councilman Green to Approve Resolution 2022-04 Approving a Certificate of Appropriateness as a Project of Special Merit at Certain Real Property Legally Described as Lots 38-40 Block 21 and Lots 21-25, Block 22, Freeman Addition, City of Cripple Creek. Motion carried unanimously.

Motion by Mayor Pro Tem Litherland and seconded by Councilman Solomone to Approve Resolution 2022-05 Approving the Application for a Building Height Variance to allow a Maximum of Seven (7) Stories in Place of the Required Five (5) Stories of the B-Downtown District at Certain Real Property Described as Lots 38-40, Block 21, Lots 21-25, Block 22 and the Vacated Right-of-Way of a portion of Third St as Described in Ordinance 2022-02, Fremont ADD, Cripple Creek, Colorado. Motion carried unanimously.

LEGISLATIVE UPDATE Sol Malick and Stephanie Hicks presented a short legislative update. Being in the 64th day of this year's session, 452 bills have been introduced to date and we can expect to see around 200 additional. The priority currently is to find revenue streams for the city, starting with infrastructure. Sol feels we will see legislature soon that will allot over \$100 million to the state and local governments. They are watching the bills that will introduce, Affordable Housing, Broadband bills and Economic Recovery.

NEW BUSINESS

A. First Reading to Consider Approval of Ordinance 2022-02, an Ordinance Vacating that Portion of South 3rd St Right-of-Way lying Northerly of the Northerly Right-of-Way Line of East Masonic Ave and Myers Ave and Southerly of the Southerly Line of the Alleys within Blocks 21 and 22, Cripple Creek, located in the South Half of Section 13 Township 15 South, Range 70 West of the 6th Principal Meridian, City of Cripple Creek, County of Teller, State of Colorado, Camille Krochta, Development Project Coordinator. Krochta points out the objection letter found in the packet. She states this objection has been addressed by Caitlin Quander. The Applicant has met all of the conditions for approval for the Vacation of Right-of-Way, Staff is recommending that Council approves Ordinance 2022-02 with conditions outlined on pages 1 and 2 of the documents. Motion by Councilman Green and seconded by Councilman Solomon to Approve Ordinance 2022-02, an Ordinance Vacating that Portion of South 3rd St Right-of-Way lying Northerly of the Northerly Right-of-Way Line of East Masonic Ave and Myers Ave and Southerly of the Southerly Line of the Alleys within Blocks 21 and 22, Cripple Creek, Located in the South Half of Section 13 Township 15 South, Range 70 West of the 6th Principal Meridian, City of Cripple Creek, County of Teller, State of Colorado. Motion passed unanimously.

B. First Reading to Consider Approval of Ordinance 2022-01, an Ordinance Amending Chapter 4, Article 5 of the Cripple Creek Municipal Code Increasing Device Fees ; Paul Harris, Finance Director. Councilwoman Trenary recused herself and exits the dais. Harris reminds Council this issue came before them in fall of 2021 and the item was tabled for further discussion. Harris summarizes the Ordinance and points out that device fees are used to defray the cost of the city's police department which employs 15 full time employees; dispatch, 9 full time employees; fire department, 14 full time employees; streets and snow removal crews are also included in the funding. Device fees have not been raised since their inception in the 1991 -92-time frame and has remained at \$300 per device per quarter, for almost 30 years. Harris reminds Council that fees were reduced by quarter, on the first 15 machines from 2004 through 2021. This break in fees provided the casinos with \$6,480,000 in relief. The Ordinance proposes an increase in 10% which will generate \$336,000 in additional revenue. On average the increase will cost, on average, \$28,000 per year to the casino. Harris adds that at in section 2 there is an additional annual increase scheduled for December 31st of each year based on CPI projections. This can be viewed on the DOLA website. Erin Smith advises to include the additional finding such as 1) The device fees were implemented in 1991 aimed to support the gaming industry and have not been increased despite inflation 2) Due to inflation and rising costs, the increase bears a reasonable relationship to City costs, including direct and indirect costs of providing services and to regulate gaming and establishments within the city. 3) The principal object is to defray the cost of operations needed to support gaming within the community. 4) In order to provide safe gaming facilities in the city these fees will support the above-mentioned Staff

positions. Additions are contained in the final Ordinance in its entirety on file. Motion by Councilman Green and seconded by Councilman Solomone to approve Ordinance 2022-01, an Ordinance Amending Chapter 4, Article 5 of the Cripple Creek Municipal Code Increasing Device Fees with the additional findings advised by City Attorney, Erin Smith. Motion passed with recusal of Councilwoman Trenary.

C. Consider Approval of the American Rescue Plan (ARP) Subaward Agreement for 2022; Ted Schweitzer, Transportation Director. Schweitzer requests the approval of the grant for \$351,843.00. Motion by Councilwoman Trenary and Seconded by Mayor Pro Tem Litherland to approve the American Rescue Plan (ARP) Subaward Agreement for 2022. Motion passed unanimously.

D. Consider Approval of the Bid from Native Sons for the TAP 18 Phase 1 Sidewalk Project; Steve DiCamillo, Public Works Director. DiCamillo explains that the Prospect Street portion of the project has been dropped due to funding reasons. Mayor Pro Tem Litherland inquired about the streetlamps. DiCamillo assured Council that there will be streetlamps, but another company will install them, and it was not part of this funding. Motion by Mayor Pro Tem Litherland and seconded by Councilman Green to approve the Bid from Native Sons for the TAP 18 Phase 1 Sidewalk Project. Motion passed unanimously.

E. Consider Approval for an Increase in Matching Funds for the DOLA Innovative Affordable Housing Strategies Planning Grant, Jeff Mosher, Special Projects Director. Mosher explains that his last presentation to Council was mathematically incorrect, and he is asking to consider an increase in the amount requested to match the grant previously approved. The initial request was for \$18,500 in matching money. There will be a need for an additional \$6,767.00 matching funds to receive the grant, bringing the total requested to \$25,267.00. The total of the grant budget will be \$167,000.00. Motion by Mayor Pro Tem Litherland and seconded by Councilwoman Trenary to approve an Increase in Matching Funds for the DOLA Innovative Affordable Housing Strategies Planning Grant. Motion passed unanimously,

ADJOURNMENT- No further business was presented before the Council. Mayor Ashworth adjourned the meeting at 7:44 PM.

Milford Ashworth, Mayor

Malissa Gish, City Clerk

NORTON & SMITH, P.C.

Charles E. Norton
Erin M. Smith

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Alicia M. Garcia
Emily B. Naes

Of Counsel
The Phillips Law Office, LLC

MEMORANDUM

TO: Mayor Pro Tem Litherland and City Council
FROM: Erin M. Smith, City Attorney
DATE: March 30, 2022
ITEM: Janik Appeal of Denial of Short Term Rental License

Dear Mayor Pro Tem Litherland and Council Members,

Description of Matter

The Council, sitting as the Board of Adjustment, will be considering Michael and Sarah Janik's appeal of the denial of short-term rental license. Affirming the denial preserves the status quo. In other words, the Janiks will not be able to operate a short term rental. Reversing the denial will allow the Janiks to operate a short term rental in Cripple Creek regardless of the current moratorium on the operation of new short term rentals.

Board of Adjustment Action

The Board of Adjustment, after a public hearing, will vote to either affirm or reverse the denial. The recommended form of the motion will be either:

I move that the Board of Adjustment {affirm} the denial of the short-term rental license and that the City Attorney prepare a resolution for consideration at a subsequent Board of Adjustment meeting.

OR

I move that the Board of Adjustment {reverse} the denial of the short-term rental license and that the City Attorney prepare a resolution for consideration at a subsequent Board of Adjustment meeting.

Background

Michael and Sarah Janik applied to the City for a Lodging Business License for a VRBO short term rental on January 21, 2022. The City's Zoning Administrator denied the license on the grounds that Ordinance No. 2021-16 prohibited the City from issuing the license. Ordinance No. 2021-16, adopted November 3, 2021, imposed a nine-month moratorium on the operation of a new short-term rental in the City of Cripple Creek. As a result of Ordinance 2021-16, the City Zoning Administrator's hands were tied, and she had no option other than to deny the license.

The Legal Criteria that Mr. and Mrs. Janik Must Meet in Order for the Board of Adjustment to Reverse the Denial

The Janiks must prove that the denial of their license creates practical difficulties or unnecessary hardships for them.

This will be a quasi-judicial hearing and so Council may not discuss this matter outside of the hearing.

cc: Frank Salvato, City Administrator
Malissa Gish, City Clerk
Camille Krochta, City Zoning Administrator

City of Cripple Creek

Planning and Community Development
337 E. Bennett Ave – P.O. Box 430, Cripple Creek, CO 80813
719-689-3905 ckrochta@cripple-creek.co.us



February 18, 2022

VIA U.S. MAIL

Michael and Sarah Janik
2132 39th Ave
Greeley, CO 80634

317 East Golden Ave
Cripple Creek, CO 80813

Re: Notice of Decision of the Zoning Enforcement Official, Lodging Business License Application Denial

Dear Mr. and Mrs. Janik,

This Notice of Decision is in response to your Lodging Business License Application (“Application”) dated January 21, 2022, attached hereto. Your application was for a property located at 317 East Golden Ave, Cripple Creek, CO 80813 and in the application, you noted that you intend to list the property for rent on VRBO, a website commonly used to advertise short-term rentals. In addition, you informed City Staff that while you intend to eventually move to the property permanently, in the interim you would like to off-set the cost of ownership with a short-term rental.

The Application was sent to the Planning & Zoning Department for review. Due to the current moratorium on the creation and operation of new short-term rentals in Cripple Creek, which was established pursuant to Cripple Creek Ordinance No. 2021-16, I am denying your application for the property located at 317 East Golden Ave, Cripple Creek, CO 80813.

The City of Cripple Creek Municipal Code provides that any person wishing to appeal a decision of the Zoning Enforcement Official must file a written notice of appeal with the City Clerk, to be accompanied by a fee of one hundred dollars (\$100.00). This fee may be waived or refunded in whole or in part upon a finding of economic necessity or substantial justification by the City Council.

The current moratorium on short-term rentals expires in August of this year unless otherwise repealed.

Regards,

Camille Krochta, Zoning Enforcement Official
City of Cripple Creek

WAIVER

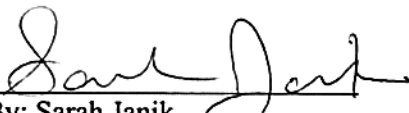
On February 27, 2022, the City of Cripple Creek received payment from Michael and Sarah Janik to appeal the denial of a Short-Term Rental Business License; and

WHEREAS, due to the publication schedule of the local newspaper and meeting schedule of the Cripple Creek City Council, it is not possible to provide notice and hold a meeting within 30 days as required by Cripple Creek Municipal Code Section 16-5-30.

I, Michael Janik hereby waive the 30-day requirement under Section 16-5-30 of the City of Cripple Creek Municipal Code and agree to the City of Cripple Creek conducting the hearing of appeal of the Decision of the Zoning Official denying a Short-Term Rental Business License at real property located at 317 East Golden Ave, Cripple Creek, Colorado outside of the 30-day window required by the Cripple Creek Municipal Code Section 16-5-30.


By: Michael Janik

I, Sarah Janik, hereby waive the 30-day requirement under Section 16-5-30 of the City of Cripple Creek Municipal Code and agree to the City of Cripple Creek conducting the hearing of appeal of the Decision of the Zoning Official denying a Short-Term Rental Business License at real property located at 317 East Golden Ave, Cripple Creek, Colorado outside of the 30-day window required by the Cripple Creek Municipal Code Section 16-5-30.


By: Sarah Janik

RESOLUTION NO. 2022-06

**A RESOLUTION ACKNOWLEDGING COMPLETION AND
ACCEPTANCE OF OWNERSHIP OF CDBG COMMUNITY OF CARING
INTERIOR REMODEL PROJECT**

WHEREAS, on or about August 4, 2021, the City of Cripple Creek entered into an agreement with Hartland-Reliant, JV LLC for the construction of the Community of Caring Interior Remodel Project; and

WHEREAS, such construction is complete and the City desires to accept the work as completed for the improvements and approve ownership of the improvements for the Community of Caring,

NOW THEREFORE, be it resolved by the City Council of the City of Cripple Creek, Colorado as follows:

Section 1. The project architect, Paulson Architects, PC, has certified to the City Council that the Community of Caring Interior Remodel Project has been constructed as designed and has been completed as of April 6th, 2022.

Section 2. The City Council by this resolution accepts completion of the project and transfer from Hartland-Reliant, JV LLC to the Community of Caring ownership of the Community of Caring Interior Remodel Project at 100 West Bennett Avenue.

PASSED, ADOPTED AND APPROVED THIS 6th DAY OF APRIL, 2022.

CITY OF CRIPPLE CREEK

ATTEST:

BY: _____
MILFORD ASHWORTH, MAYOR

BY: _____
MALISSA GISH, CITY CLERK



TO: Frank Salvato

FROM: Lara Loewenheim

AGENDA ITEM: Community Service Ordinance/Aspen Mine Center Agreement

DATE: 3/31/2022

REQUEST: Approve Community Service Program and Aspen Mine Center Agreement

OVERVIEW & ANALYSIS: The City of Cripple Creek does not currently have a Community Service program. Judge Colt would like to have the option to sentence Community Service in lieu fines, restitution, court cost etc. This is especially needed for our indigent defendants. Where these fines would most likely not be collectable.

BUDGET IMPACT: Little to no impact. This sentence would be imposed on defendants that would not be able to pay otherwise.

STAFF RECOMMENDATION AND COUNCIL ACTION REQUESTED: Approve Community Service Ordinance and The Aspen Mine Center Agreement.

**ORDINANCE NO. 2022-03
CITY OF CRIPPLE CREEK**

**AN ORDINANCE OF THE CITY OF CRIPPLE CREEK, COLORADO AMENDING
CHAPTER 1, ARTICLE 4 OF THE CRIPPLE CREEK MUNICIPAL CODE RELATING
TO COMMUNITY OR USEFUL PUBLIC SERVICE**

WHEREAS, the City of Cripple Creek ("City") is a municipal corporation possessing all powers granted to statutory cities by Title 31 of the Colorado Revised Statutes; and

WHEREAS, the City Council desires to amend the Municipal Code to establish a community or useful public service program pursuant to C.R.S. § 18-1.3-507; and

WHEREAS, the City Council finds that this Ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of the City.

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

Section 1. Section 1-4-20 of the Cripple Creek Municipal Code is hereby amended by the addition of a new subsection 1-4-20(c) to read as follows:

Sec. 1-4-20. – General penalty for violation

...

(c) Community service. In lieu of, or as part of, any punishment imposed for violation of this Code, a minor or adult may be required to perform community service as ordered by the Municipal Court. Community service shall be performed under the supervision of a community service provider approved by the City of Cripple Creek.

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

PASSED ON THE FIRST READING AND ORDERED PUBLISHED THIS ____ DAY
OF _____, 2022.

Malissa Gish, City Clerk

PASSED ON SECOND READING AND ADOPTED BY THE CITY COUNCIL THIS _
____ DAY OF _____, 2022.

Approved: _____
Milford Ashworth, Mayor

Attest: _____
Malissa Gish, City Clerk

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

COMMUNITY SERVICE SUPERVISION AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of April, 2022 by and between the City of Cripple Creek, Colorado, a statutory city (the "City") of the State of Colorado and The Aspen Mine Center, 166 E Bennett Ave, Cripple Creek, Colorado 80813, a Colorado 501(c)(3) non-profit corporation ("Aspen Mine").

WHEREAS, the City wishes to provide municipal code offenders with the ability to perform community service in lieu of fines; and

WHEREAS, Aspen Mine wishes to work with the City and act as the approved community service provider for offenders.

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

A. Aspen Mine shall, at no cost or expense to the City, supervise community service for municipal code offenders who are required to perform community service as ordered by the Municipal Court of the City of Cripple Creek.

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

C. Governmental Immunity/Limitation of Liability: Notwithstanding anything herein to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the "Colorado Governmental Immunity Act", C.R.S. §24-10-101, *et seq.*, as now or hereinafter amended. The parties understand and agree that the liability of the City for claims for injuries to persons or property arising out of negligence of City, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of C.R.S. §24-10-101, *et seq.*, as now or hereafter amended and the risk management statutes, C.R.S. §24-30-1501, *et seq.*, as now or hereafter amended. Any liability of the City created under any other provision of this contract, whether or not incorporated herein by reference, shall be controlled by, limited to, and otherwise modified so as to conform with, the above cited laws.

D. Termination: This Agreement may terminate for convenience by either party providing the other with thirty (30) days advance written notice.

INSURANCE

A. Aspen Mine agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Aspen Mine pursuant to this Agreement. Such insurance shall be in addition to any other insurance requirements imposed by law.

B. Aspen Mine shall procure and maintain, and cause any subcontractor to Aspen Mine to procure and maintain the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Worker's compensation insurance to cover obligations imposed by applicable law for any employee engaged in the performance of work under this Agreement, and Employer's Liability insurance with minimum limits of one million (\$1,000,000) each accident, two million dollars (\$2,000,000) disease – policy limit, and two million dollars (\$2,000,000) disease – each employee. Evidence of qualified self-insured status may be substituted for the worker's compensation requirements of this paragraph.

2. Comprehensive General Liability Insurance with minimum combined single limits of six hundred thousand (\$600,000) each occurrence and one million dollars (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products, independent contractors, products and completed operations. The policy shall contain a severability of interests provision, and shall be endorsed to include the City and the City's officers, employees, and Aspen Mine as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.

C. Any insurance carried by the City, its officers, its employees, or its consultants shall be excess and not contributory insurance to that provided by Aspen Mine. Aspen Mine shall be solely responsible for any deductible losses under any policy.

D. Aspen Mine shall provide to the City a certificate of insurance, completed by Aspen Mine's insurance agent, as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the City. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

E. Failure on the part of Aspen Mine to procure or maintain the insurance required herein shall constitute a material breach of this Agreement upon which the City may immediately terminate this Agreement.

MISCELLANEOUS

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

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

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

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

E. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail, addressed as follows:

The City: The City of Cripple Creek
 P.O. Box 430
 Cripple Creek, CO 80813

Aspen Mine: The Aspen Mine Center
 166 E Bennett Ave
 Cripple Creek, CO 80813

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

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

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

I. Independent Contractor: Aspen Mine is an independent contractor. Notwithstanding any provision of this Agreement, all personnel assigned by the Consultant to perform work under this Agreement shall be and remain at all times, employees of Aspen Mine for all purposes. THE INDEPENDENT CONTRACTOR IS

NOT ENTITLED TO WORKERS' COMPENSATION BENEFITS THROUGH THE CITY AND IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONIES EARNED PURSUANT TO THE CONTRACT RELATIONSHIP.

[SIGNATURE PAGE FOLLOWS]

**THE CITY OF CRIPPLE CREEK,
COLORADO**

- 5 -



TO: City Council
Frank Salvato, City Administrator

FROM: Paul Harris, Finance Director

A handwritten signature in blue ink that reads "Paul".

AGENDA ITEM: Approval of Expenditure Request for Fiber Optic Line

DATE: 3/30/2022 MEMO 2022-2

REQUEST:

Approval of expenditure, with two different vendors - Dillie & Kuhn, Inc. and Advanced Fiber Response, Inc., for a total of \$57,979.96 to run a fiber optic line so that the city's computer network system can continue to operate.

OVERVIEW & ANALYSIS:

- The city is having to run fiber optic cable to keep our computer network running. This is being done because shortly the Full House Resort's new building will block the city's current line of sight/dish system. When the line of sight is blocked, the city will have no phone system, email, internet, or software access between departments, the servers, and network communications. The city's IT provider, Phoenix Technologies, has identified/reviewed the two vendors that will complete the installation.
- The fiber line will run on existing Black Hills Energy power poles. An agreement between the city and Black Hills Energy was signed on February 15th, 2022, which allows the city to have contractors run the lines. A diagram of the fiber line route on the poles is attached.
- The city (Planning/Building Department) is currently researching if the cost that will be incurred is recoverable from Full House Resorts.

BUDGET IMPACT:

- The estimated \$58K project cost will be paid for using the General Fund's Contingency line item: 01-10-6409, which currently has a balance of \$159,000. A new line item for the project would be set up and the budget dollars from contingency would be transferred to it.

STAFF RECOMMENDATION AND COUNCIL ACTION REQUESTED:

- Staff recommends, and asks the Council for, the approval of the expenditure of \$40,000 to Dillie & Kuhn, Inc. and \$17,979.96 to Advanced Fiber Response, Inc. Staff also recommends transferring \$58,000 from the General Fund's contingency line item to a new line item established for the project in the Information Technology Department (01-27).

Dillie & Kuhn, Inc.

2875 Akers Drive
Colorado Springs, CO 80922
(719) 591-9900 FAX (719) 591-9915

March 25, 2022

A to Z Field Services
6385 Broadway
Denver, CO 80216

Cripple Creek Aerial Fiber Install Quote

1. Frame 53 poles.
2. Install roughly 7,500ft of 1/4" strand.
3. Install four fiber storage brackets.
4. Install snow shoes for cable storage at four locations.
5. Lash 9,000ft of 48F cable to new strand.
6. Penetrate and install fiber into four buildings.
7. Core drill Jail Museum.
8. Mobilization to Cripple Creek.

Labor = \$30,625.00

Material = \$9,375.00

Total Cost = \$40,000.00

- All materiel supplied minus fiber cable.
- Does not include traffic control or permits.
- Pole attach agreements provided by others.
- Does not include fiber splicing, termination or testing.

443734 04/11/22
C:\Users\j\Documents\A to Z Field Services\2022\04\11\443734.dwg
A to Z Field Services
6385 Broadway
Denver, CO 80216
(719) 591-9900 FAX (719) 591-9915

Dillie & Kuhn, Inc.

2875 Akers Drive
Colorado Springs, CO 80922
(719) 591-9900 FAX (719) 591-9915

TERMS AND CONDITIONS

Following is the Terms and Conditions which CONTRACTOR, hereby agrees to:

- CONTRACTOR will pay a standby rate of \$250.00per hour or \$3,000.00per day, whichever is the lower amount, for shutdowns not caused by or beyond the control of Dillie and Kuhn.
- All prices quoted are valid for 30 days.
- Applicable taxes not included.
- Dillie and Kuhn payment terms are 30 days from date of invoice.
- Interest will be charged after 45 days on all overdue balances at a rate of 24% annually.
- Legal costs for collection of non-payments will be the responsibility of CONTRACTOR.
- Work will not commence without a Quote which has been signed by authorized personnel and received by Dillie and Kuhn.
- Additional work not listed in this quote will not commence until written agreement on the additional costs are agreed upon by both CONTRACTOR and Dillie and Kuhn.
- No part of this Quote may be changed or cancelled except by a separate written agreement signed by both CONTRACTOR and Dillie and Kuhn.
- Terms and Conditions laid out above supersede all other contracts.

By signing this Quote, I/We hereby agree that I/We have read the Terms and Conditions laid out above and agree to abide by said Terms and Conditions.

Authorized Signature of Client: _____

Print Name & Position: _____

Date: _____ Client's P.O. #: _____

ADVANCED FIBER RESPONSE, Inc

Estimate

Please Remit Payments to:
Advanced Fiber Response, Inc
PO BOX 10
Raton, New Mexico 87740

Date	Estimate #
3/29/2022	201973777

Name / Address
CITY OF CRIPPLE CREEK PAUL HARRIS

Ship To

PROJECT		P.O. No.		PROJECT CODE
CITY OF CRIPPLE CREEK FIBER NETWORK				
Item	Description	Qty	Rate	Total
Labor	ISP Labor to include: Police Dept - Install backerboard and wall mount panel, fusion splice and OTDR test 24 fibers. Jail-Museum: Install backerboard and wall mount panel, fusion splice and OTDR test 12 fibers. City rec center: Install backerboard and wall mount panel, fusion splice and OTDR test 12 fibers. City Hall: Install rackmount panel, fusion splice and OTDR test 12 fibers. OTDR test analyzation & documentation included	1	6,382.00	6,382.00
Materials	Backerboard(s)	1	40.00	40.00
25671435	CORNING SPH-01P SMALL WALLMOUNT PANEL	3	85.79333	257.38
25671436	CORNING WCH-02P WALLMOUNT 2CCH PNL	1	176.40	176.40
25415405	CORNING CCH-01U	1	295.13	295.13
22054973	CORNING CCH-CP12-A9 CCH PNL W/6 LC DUPLEX SM	5	127.246	636.23
CENTRPRISES SUBP12LBXXXX X...	3M SM 12F LCUPC NON-JACKETED	5	90.314	451.57
Labor	OSP Labor to include: Jail-Museum & City rec center: Install new closure on aerial midspan entry with building lateral, splice 4	1	3,500.00	3,500.00
22110911	Commscope FOSC450-B6-6-NT-0B3V, FOSC 450B CLOSURE, 6 CABLE ENTRY PORTS, 6 CABLE ATTACHMENTS, NO SPLICE TRAY, STANDARD SLACK BASKET, 3 GROUND FEED-THROUGH LUGS, TEST VALVE	2	321.175	642.35
22081943	Commscope FOSC-ACC-B-TRAY-24, FOSC, SPLICE TRAY - 24 FUSION - CLOSURE B SIZE	2	21.39	42.78

Total

Signature

Please Remit Payments to:
Advanced Fiber Response, Inc
PO BOX 10
Raton, New Mexico 87740

Date	Estimate #
3/29/2022	201973777

Name / Address
CITY OF CRIPPLE CREEK
PAUL HARRIS

Ship To

PROJECT		P.O. No.		PROJECT CODE
CITY OF CRIPPLE CREEK FIBER NETWORK				
Item	Description	Qty	Rate	Total
25882077	S-OP-24-LT-A-3B-BK-OFX-CUT REEL 24F OUTDOOR SM DIELECTRIC LOOSETUBE	9,000	0.40068	3,606.12
Mobilization	Mobilization within 100 miles of Metro Denver	1	1,950.00	1,950.00

PLEASE NOTIFY US IMMEDIATELY IF THE JOB IS SUBJECT TO PREVAILING WAGES. Pricing herein is based upon the job being ready to complete in it's entirety without interruption and the work site being accessible to AFR upon the request of mobilization of AFR. The pricing herein is based upon the information provided as of the date of this Estimate. Prices are subject to change as the scope of work, term(s), conditions(s) or material(s) change. This Estimate is valid for ninety (90) days.

Total	\$17,979.96
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Signature _____



Splice for Jail Museum
Future Expansion

Splice for Wastewater
Future Expansion

**CITY OF CRIPPLE CREEK, COLORADO
ORDINANCE NO. 2022-02**

AN ORDINANCE VACATING THAT PORTION OF S. THIRD STREET RIGHT-OF-WAY LYING NORTHERLY OF THE NORTHERLY RIGHT-OF-WAY LINE OF EAST MASONIC AVENUE AND MYERS AVENUE AND SOUTHERLY OF THE SOUTHERLY LINE OF THE ALLEYS WITHIN BLOCKS 21 AND 22, CRIPPLE CREEK, LOCATED IN THE SOUTH HALF OF SECTION 13 TOWNSHIP 15 SOUTH, RANGE 70 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF CRIPPLE CREEK, COUNTY OF TELLER, STATE OF COLORADO

WHEREAS, the City of Cripple Creek, Colorado (“Cripple Creek” or the “City”) owns and maintains real property interests designated as Third Street, and more particularly described below; and

WHEREAS, Section 43-2-303, C.R.S., authorizes the City Council to vacate any roadway or part thereof located within the corporate limits of said city; and

WHEREAS, City Council finds that all relevant portions of Third Street lie entirely within the corporate limits of the City; and

WHEREAS, the Midnight Rose Hotel & Casino, Inc is the owner of lots adjacent to the above-described portion of right of way (the "Applicant") and has filed an application with the City requesting that the City vacate such right-of-way; and

WHEREAS, based on information submitted by the Applicant, they request the vacation to acquire a portion of right of way in order to feasibly develop the property to include lodging and commercial uses (the “Project”); and

WHEREAS, the City Council finds no reason to continue the right, title or interest of the City of Cripple Creek, (the "City"), in the portion of right of way described and depicted in Exhibit A hereto; and

WHEREAS, under the circumstances, the City Council for the City of Cripple Creek finds it appropriate to vacate the described portion of the right of way.

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

Section 1. Incorporation. The Cripple Creek City Council adopts the foregoing recitals and conclusions as facts and determinations and incorporates them by reference as if set forth in full herein.

Section 2. Vacate Portions of Third Street. Pursuant to C.R.S. § 43-2-301 et seq., the City of Cripple Creek hereby vacates and divests itself of right, title, and interest in and to that portion of the platted right of way described and depicted in Exhibit A hereto subject to the following conditions:

1. Title to the property described herein shall vest in accordance with C.R.S. § 43-2-302.
2. Owner shall reimburse the City for all legal and engineering fees, expenses, and costs

- incurred in connection with the Project.
3. The City reserves rights in, over, through and under the property described in Exhibit A for any and all existing and future public utility facilities, and for all existing utility facilities to the extent the Project requires the relocation of existing utility facilities as deemed necessary by the owners of said utility facilities.
 4. The City reserves rights in, over, through and under the property described in Exhibit A for easements for the purposes of drainage and for public access and ingress and egress to the extent such ingress and egress does not unreasonably interfere with the use of the property for its intended purpose as depicted and described in the Development Plan.
 5. The Applicant shall submit a plat amendment showing the reconfigured lot lines and easements described in paragraphs 3, 4 and 6 hereof and obtain the City's approval of said plat. No permits shall issue prior to the Applicant having obtained approval of said plat.
 6. The Applicant shall by dedication on the plat grant to the City an easement for drainage and for public access purposes and ingress and egress over Applicant's privately owned property encompassing the eastern portion of the Project.
 7. Applicant shall enter into a Revocable License Agreement with the City for maintenance of and allowing private improvements in the northern portion of S. Third St, south of E. Bennett Ave, abutting the vacated right-of-way and in the alley west and east of Third St. The intent of this Revocable License Agreement is to ensure that Applicant and its successors maintain the private improvements, including but not limited to the brick paving, walkways, street surface, landscaping, under-street heating system, and lighting. All walkways must be ADA accessible.
 8. Before second reading of this Ordinance, Applicant shall submit, and gain approval of a Development Plan suitable to the City.
 9. This street vacation is intended to facilitate the development of adjacent property as a luxury boutique hotel with amenities including a restaurant and function space. Should development of the adjacent property in substantial conformity with the Development Plan approved by the City not be substantially completed on or before November 30, 2024, title to the property described in Exhibit A hereto shall revert to the City. In the event the property reverts to the City, the Applicant shall reconstruct and reinstall street improvements and relocate any public utility facilities the City shall require in S Third St. to the City's standards. The letter of credit or performance bond required hereunder shall be in an amount adequate to secure the performance of said reconstruction and reinstallation.
 10. The Applicant is required to enter into a Development and Utility Relocation Agreement with the City and shall enter into relocation agreements with local utility companies to ensure the completion of the Project and to ensure improvements are made to the City's standards and the Applicant shall post a letter of credit or performance bond to secure the completion of the Project. If the Applicant cannot meet its obligations to construct all or part of the Project, the recorded documents effecting the vacation will revert the right-of-way to the City's full control.

Section 3. Recordation. The right-of-way vacation provided for herein shall not become effective until this Ordinance is recorded with the Office of the Clerk and Recorder of Teller County by the City.

Section 4. Waiver of Defects. In executing this document, Owner waives all objections it may have over the final disposition of the right-of-way vacation and its merger pursuant to state statute,

defects, if any, in the form of this document, the formalities for execution, or over the procedure, substance, and form of the ordinances or resolutions adopting this document.

Section 5. If any section, subsection, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and shall not affect the validity of the remaining portions thereof.

Unless otherwise modified, all material representations of the Applicant in its submittal material and in the public hearing(s) shall be considered binding.

INTRODUCED, FIRST READING, PASSED, AND ORDERED PUBLISHED THIS SIXTEENTH (16th) DAY OF MARCH 2022

Malissa Gish, City Clerk

PASSED ON SECOND READING, ORDERED PUBLISHED AND ADOPTED BY THE CITY COUNCIL THIS _____ DAY OF _____, 2022

CITY OF CRIPPLE CREEK, COLORADO

Milford Ashworth, Mayor

ATTEST:

Malissa Gish, City Clerk

APPROVED AS TO FORM:

Erin M. Smith City Attorney

CITY OF CRIPPLE CREEK, COLORADO
ORDINANCE NO. 2022-02
EXHIBIT A

THAT PORTION OF 3rd STREET RIGHT-OF-WAY LYING NORTHERLY OF THE NORTHERLY RIGHT-OF-WAY LINE OF EAST MASONIC AVENUE AND MYERS AVENUE AND SOUTHERLY OF THE SOUTHERLY LINE OF THE ALLEYS WITHIN BLOCKS 21 AND 22, CRIPPLE CREEK, LOCATED IN THE SOUTH HALF OF SECTION 13 TOWNSHIP 15 SOUTH, RANGE 70 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF CRIPPLE CREEK, COUNTY OF TELLER, STATE OF COLORADO

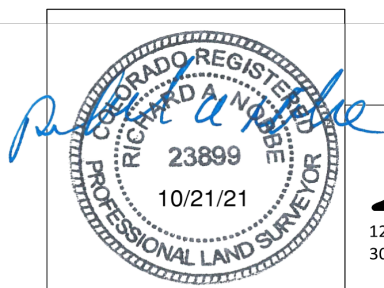
PREPARED BY RICHARD A. NOBBE PLS
FOR AND ON BEHALF OF:
MARTIN/MARTIN INC.
12499 W. COLFAX AVE.
LAKEWOOD, CO 80215
303 431-6100
OCTOBER 21, 2021
PROJECT# 19.0186



CITY OF CRIPPLE CREEK, COLORADO
ORDINANCE NO. 2022-02
EXHIBIT B



0 125 250
 SCALE: 1"=250'
 ALL LINEAL
 DIMENSIONS ARE IN
 U.S. SURVEY FEET



MARTIN/MARTIN
 CONSULTING ENGINEERS
 12499 WEST COLFAX AVENUE, LAKEWOOD, COLORADO 80215
 303.431.6100 MARTINMARTIN.COM

10.21.2021