



City of Trinidad, Colorado  
1874

CITY OF TRINIDAD  
TRINIDAD, COLORADO

S P E C I A L M E E T I N G

There will be a Special Meeting of the City Council of the City of Trinidad, Colorado, on Tuesday, May 28, 2013, immediately following Work Session at 1:30 p.m. in the Council Chambers at City Hall

The following item is on file for consideration of City Council:

- 1) Approval of Donation Agreement by and between Mendes Colorado, LLC, Empco Real Estate, LLC, and the City of Trinidad for donation of real property known as 219 West Main Street
- 2) Resolution endorsing efforts to maintain Amtrak's Southwest Chief Passenger Rail Service through the City of Trinidad, Colorado
- 3) Executive session – For the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under C.R.S. Section 24-6-402(4)(e); and/or for a conference with the City's attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b) – Discussion regarding status of ARPA litigation

Individuals with disabilities needing auxiliary aid(s) may request assistance by contacting Audra Garrett, City Clerk, 135 N. Animas Street, Phone (719) 846-9843, or FAX (719) 846-4140. At least a 48 hour advance notice prior to the scheduled meeting would be appreciated so that arrangements can be made to locate the requested auxiliary aid(s).



### COUNCIL COMMUNICATION

**CITY COUNCIL MEETING:** May 24, 2013  
**PREPARED BY:** Les Downs, City Attorney  
**DEPT. HEAD SIGNATURE:**  
**# OF ATTACHMENTS:** 1. *Les Downs*

**SUBJECT:** Approval of Donation Agreement by and between Mendes Colorado, LLC, Empco Real Estate, LLC, and the City of Trinidad for donation of real property known as 219 West Main Street

**PRESENTER:** Les Downs, City Attorney

**RECOMMENDED CITY COUNCIL ACTION:** Considering approving the agreement

**SUMMARY STATEMENT:** N/A

**EXPENDITURE REQUIRED:** Future expenditures will be necessary to renovate the building and make it ready for occupancy. Cost estimates are attached, excluding electrical costs estimated at \$5,000. Repairs to the heating system are likewise not included but are proposed at \$8,200.

Phasing of improvements could be as follows:

- 1) Clean up front of building by removing sign, old lights in windows and do some window treatment to improve aesthetics. This could include using it as a display space and or putting something in the front of the space to hide the rest of the building. This is a low cost item.
- 2) Repair the east wall of the building.
- 3) Remove/renovate to create a ready to improve shell. This would be the most expensive.

**SOURCE OF FUNDS:** To be determined.

**POLICY ISSUE:** N/A

**ALTERNATIVE:** Council could suggest alternative language

#### BACKGROUND INFORMATION:

Taking ownership of the building will ensure the building will be maintained instead of becoming an eyesore due to neglect since the owners do not see a benefit at this time to keeping the building up. The potential uses of the building could include the following.

- Historical Museum
- City Facility for offices in the future such as Main Street Program or Creative District
- Could be renovated over time and offered as office space for a start up
- Could be offered to a startup business who would do the renovation/improvements in lieu of rent

## DONATION AGREEMENT

This Donation Agreement (this “**Agreement**”) is made as of May \_\_\_\_, 2013 (the “**Effective Date**”), by and between MENDES COLORADO L.L.C., a Colorado limited liability company, EMPCO REAL ESTATE LLC, a Colorado limited liability company (collectively, the “**Donors**”) and the City of Trinidad, Colorado, (the “**City**”), an incorporated home rule municipality of the State of Colorado.

### RECITALS

**WHEREAS**, each of the Donors owns an undivided one-half (1/2) tenant-in-common interest in the property commonly known as 219 West Main Street, located in the city of Trinidad, State of Colorado (as legally described in Exhibit A, the “**Property**”), and each of the Donors desires to donate its respective interest in the Property to the City;

**WHEREAS**, the City is a qualified donee organization within the meaning of Section 170(c) of the Internal Revenue Code of 1986, as amended (the “**Code**”) and represents and acknowledges that the donation of the Property pursuant to this Agreement is made exclusively for public purposes (within the meaning of such term as set forth in Section 170(c) of the Code);

**WHEREAS**, the City desires to accept the Property in accordance with the terms and conditions contained in this Agreement;

**NOW THEREFORE**, for and in consideration of the foregoing recitals incorporated by this reference, the promises, mutual covenants, representations, warranties and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Donors and the City agree as follows:

1. Agreement to Convey. The Donors hereby agree to convey to the City pursuant to a quit claim deed, in a form attached hereto as Exhibit B (the “**Deed**”), and the City hereby agrees to accept all of the Donors’ interest in the Property, together with the Donors’ right, title and interest (if any) in the following (all of which shall be included in the defined term “**Property**”):
  - a. All buildings and improvements situated thereon;
  - b. The rights and appurtenances pertaining thereto, including any right, title, and interest of Donor in adjacent streets, roads, alleys and rights-of-way; and
  - c. All of Donors’ right, title and interest with respect to items of personal property located on the property.

The date upon which the Donors deliver the Deed to the City shall be referred to as the “**Conveyance Date**”.

2. “As-Is” Condition. The Property is being conveyed to the City in an “As-Is” condition and “With All Faults” as of the date of this Agreement. No representations or warranties have been made or are made and no responsibility has been or is assumed by the Donors or by any partner, officer, employee, person, firm, agent or representative acting or

purporting to act on behalf of the Donors as to the condition or repair of the Property or expense of operation, or income potential thereof or as to any other fact or condition which has or might affect the Property or the condition, repair, expense of operation or income potential of the Property or any portion thereof.

3. Indemnification of Assignor. The City shall indemnify, defend and hold harmless each of the Donors and their respective directors, officers, members, partners, shareholders, affiliates, agent, employees, successors and assigns (collectively the “**Donor Related Parties**”) from and against any and all loss, damage, cost, liability, expense, claim, suits, or proceedings (including, without limitation, reasonable attorneys’ fees) attributable to any obligations and liability relating to or arising from the Property that arise or accrue on or after the conveyance of the Property to the City.
4. Release. Effective as of the Conveyance Date, this Agreement shall act as a release by the City of each of the Donors and their respective Donor Related Parties of all actions, causes of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, liabilities, losses, costs, expenses, judgments, extent, executions, claims, demands whatsoever, in law, admiralty or equity, whether known or unknown (collectively, the “**Claims**”) arising prior to, on, or after the Conveyance Date in connection with the Property.
5. Closing Costs. The City shall pay all closing costs in connection with the conveyance of the Property to the City, including, but not limited to, title commitment or title policy charges, the cost of any survey, recording charges and any transfer taxes due in connection with such conveyance.
6. Valuation. The parties hereby acknowledge and agree that the value of the Property is as reflected in the forthcoming appraisal.
7. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.
8. Entire Agreement. This Agreement, reflects and constitutes the entire agreement between the parties and it supersedes all prior agreements, negotiations and discussions between the parties relative to the subject matter hereof.
9. Further Assurances. Each of the parties agrees to take such actions, including the execution and delivery of such documents (including without limitation the completion and execution of IRS Form 8283 (and any corresponding state or local forms), instruments, petitions and certifications as may become necessary or appropriate to carry out the terms, provisions and intent of this Agreement.

[Signature Page Follows]

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

CITY OF TRINIDAD, Colorado, an incorporated home rule municipality

MENDES COLORADO L.L.C., a Colorado limited liability company

By: \_\_\_\_\_  
Name: Bernadette Baca Gonzalez  
Its: Mayor

By: \_\_\_\_\_  
Name: Meredith W. Mendes  
Its: Managing Member

EMPCO REAL ESTATE LLC, a Colorado limited liability company

By: \_\_\_\_\_  
Name: Edith Oppenheimer  
Its: \_\_\_\_\_

**Exhibit A**  
**Legal Description**

**Part of Lot 3, Block 113 of the Original City of Trinidad, Los Animas County, Colorado, more particularly described as follows:**

**Beginning at a point on the North line of Main Street, which is 28.5 feet Westerly from the S.E. corner of said Lot 3; thence in a Northerly direction to a point on the South line of Church Street which is 28.5 feet Westerly from the N.E. corner of said Lot 3; thence in a Southerly direction along said Eastern boundary line of said Lot 3 to the Northerly line of Main Street; thence along the Northerly line of Main Street to the place of beginning.**

**Exhibit B**  
**Form of Quit Claim Deed**

**QUIT CLAIM DEED**

*No Consideration – Transfer is a gift by Grantors to Grantee*

**THIS DEED** made this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between **MENDES COLORADO, L.L.C.**, a Colorado limited liability company, having an address of 507 Cedar Street of the City of Winnetka, County of Lake, in the State of Illinois, and **EMPCO REAL ESTATE LLC**, a Colorado limited liability company having an address of 19 Chedworth Road of the City of Scasdale, County of Westchester, in the State of New York (together, the “**Grantors**”), each as to an undivided fifty percent (50%) interest as tenant in common (the Grantors are collectively conveying 100% of the tenant in common interests in the Property (as defined below) to the Grantee), and [City of Trinidad] (the “**Grantee**”).

**WITNESSETH**, that the Grantors, for and in consideration of the sum of One and No/00 DOLLARS (\$1.00) the receipt and sufficiency of which is hereby acknowledged, have remised, released, sold and QUIT CLAIMED, and by these presents **do hereby remise, release, sell and QUIT CLAIM, unto the Grantee, and its assigns, forever**, all the right, title, interest, claim and demand in the real property, together with improvements, if any, situate, lying and being in the County of Las Animas and State of Colorado and further described in **Exhibit A** attached hereto and made a part hereof (the “**Property**”).

**TO HAVE AND TO HOLD** the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever, of the Grantors, either in law or equity, to the only proper use, benefit and behoof of the Grantee, and its assigns, forever.

**[SIGNATURE PAGES FOLLOW]**





**EXHIBIT A**  
**LEGAL DESCRIPTION**

**Part of Lot 3, Block 113 of the Original City of Trinidad, Los Animas County, Colorado, more particularly described as follows:**

**Beginning at a point on the North line of Main Street, which is 28.5 feet Westerly from the S.E. corner of said Lot 3; thence in a Northerly direction to a point on the South line of Church Street which is 28.5 feet Westerly from the N.E. corner of said Lot 3; thence in a Southerly direction along said Eastern boundary line of said Lot 3 to the Northerly line of Main Street; thence along the Northerly line of Main Street to the place of beginning.**



CITY OF TRINIDAD, COLORADO  
1876

### COUNCIL COMMUNICATION

**CITY COUNCIL MEETING:** May 24, 2013  
**PREPARED BY:** Tom Acre, City Manager  
**DEPT. HEAD SIGNATURE:**   
**# OF ATTACHMENTS:** 1

**SUBJECT:** Resolution endorsing efforts to maintain Amtrak's Southwest Chief Passenger Rail Service through the City of Trinidad, Colorado

**PRESENTER:** Tom Acre, City Manager

**RECOMMENDED CITY COUNCIL ACTION:** Considering adopting the resolution for inclusion in a TIGER grant application that the Southwest Chief Coalition is preparing

**SUMMARY STATEMENT:** N/A

**EXPENDITURE REQUIRED:** No

**SOURCE OF FUNDS:** N/A

**POLICY ISSUE:** N/A

**ALTERNATIVE:** Council could suggest alternative language

**BACKGROUND INFORMATION:**

- Continuation of the service of Southwest Chief is important to Trinidad and southwestern Colorado
- TIGER funds are being sought for rail track maintenance



## RESOLUTION NO.

### A RESOLUTION OF THE CITY OF TRINIDAD, COLORADO, ENDORSING EFFORTS TO MAINTAIN AMTRAK'S *SOUTHWEST CHIEF* PASSENGER RAIL SERVICE THROUGH THE CITY OF TRINIDAD, COLORADO

WHEREAS, the *Southwest Chief*, one of Amtrak's premier passenger rail services, serves southeastern Colorado, western Kansas, and northern New Mexico as it travels between Chicago and Los Angeles on a host railroad line of BNSF Railway ; and

WHEREAS, eastbound and westbound *Southwest Chief* trains stop in the City of Trinidad daily and serve approximately 13,000 Colorado passengers each year; and

WHEREAS, the *Southwest Chief* and its famous predecessors (such as the Santa Fe Railroad's fabled *Super Chief*) have served this route since the late 1880s; and

WHEREAS, the train is a key economic contributor to southeastern Colorado and to the City of Trinidad, providing a transportation link that is of growing importance and will likely become critical as our citizens age and rising energy prices curtail the attractiveness of driving and flying; and

WHEREAS, the route of the *Southwest Chief* through Colorado is threatened inasmuch as an alternative route is under consideration that would re-route trains south from Newton, Kansas, through the Texas Panhandle to New Mexico, entirely bypassing Colorado; and

WHEREAS, the ownership of the track in northern New Mexico is under dispute between that state and BNSF Railway; consequently BNSF Railway freight traffic on this route has declined, reducing maintenance and forcing Amtrak to run the *Southwest Chief* at lower speeds; and

WHEREAS, the *Southwest Chief's* overall trip time has increased from 41 hours in 1991 to approximately 55 hours today; and

WHEREAS, BNSF wants Amtrak to pay the costs of improvement and the maintenance costs for the route if the train is to resume its normal speed; and

WHEREAS, Amtrak estimates this could amount to \$200 million over ten (10) years, including \$94 million at the front-end to bring the line back up to standards across Kansas, Colorado, and New Mexico; and

WHEREAS, Amtrak has indicated that it would like to undertake this improvement because the route is scenic and well-traveled, but current fiscal circumstances may impact its ability to do so; and

WHEREAS, there are local developments (e.g., the New Elk Coal Mine) that hold promise of increasing BNSF Railway freight traffic over the next several years, thereby changing the maintenance equation from Trinidad to Las Animas and perhaps through Raton Pass.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TRINIDAD, COLORADO:

1. The City Council recommends that Action 22 strongly endorse continuation of the Amtrak *Southwest Chief* route through Colorado.
2. The City Council calls upon the Governor of the State of Colorado to strongly endorse continuation of Amtrak's *Southwest Chief* route through Colorado.
3. The City Council calls upon the members of the legislature of the State of Colorado to strongly endorse continuation of Amtrak's *Southwest Chief* route through Colorado.
4. The City Council calls upon all local governments within the County of Las Animas to strongly endorse continuation of Amtrak's *Southwest Chief* route through Colorado.
5. The City Council calls upon the Board of Commissioners of Las Animas County to strongly endorse continuation of Amtrak's *Southwest Chief* route through Colorado.
6. The City Council calls upon representatives of Amtrak to strongly endorse continuation of Amtrak's *Southwest Chief* route through Colorado.
7. The City Council recommends that all community and civic leaders in southeastern Colorado connect with each other and their colleagues in western Kansas and northern New Mexico so that the three states can coordinate their efforts to protect the route of the Southwest Chief.

INTRODUCED, READ, AND ADOPTED this 28<sup>th</sup> day of May, 2013.

\_\_\_\_\_  
BERNADETTE BACA GONZALEZ,  
Mayor

ATTEST:

\_\_\_\_\_  
AUDRA GARRETT, City Clerk