



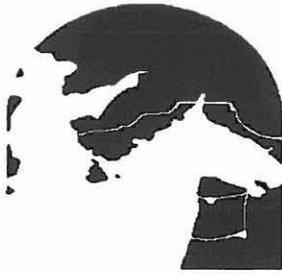
**CITY OF TRINIDAD  
TRINIDAD, COLORADO**

The City Council of the City of Trinidad, Colorado,  
will hold its regular Work Session on Tuesday, September 30, 2014 at 1:30 P.M.  
in City Council Chambers at City Hall, Third Floor, City Hall

**AGENDA**

1. Petitions and Communications, Oral or Written
2. Proposed Raton Basin Geothermal Project presentation by Global Geophysical Services
3. Non-Profit funding requests for fiscal year 2015
  - a. Trinidad-Las Animas County Economic Development, Inc.
  - b. Trinidad Area Arts Council
4. Review of proposed Development Incentives ordinance
5. Discussion regarding Contract modification request for the North Dam Rehabilitation Project submitted by RJH Consultants, Inc.
6. Discussion concerning gas supply charge – Michael McFadden, NPGA
7. Status of multi-modal project and other grant applications
8. Arkansas Basin Roundtable recommended appointment
9. Review of notes from visits to departments
10. Discussion of Council Norms
11. Discussion regarding lifting restriction on the allowable medical marijuana centers
12. CIP Project Review
13. Discussion of other agenda items

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).



CITY OF TRINIDAD, COLORADO  
1876

# COUNCIL COMMUNICATION

2

**CITY COUNCIL MEETING:** September 30, 2014  
**PREPARED BY:** Audra Garrett, ACM  
**DEPT. HEAD SIGNATURE:** *Audra Garrett*  
**# OF ATTACHMENTS:** 1

**SUBJECT:** Proposed Raton Basin Geothermal Project presentation by Global Geophysical Services

**PRESENTER:** Peter Geiser

**RECOMMENDED CITY COUNCIL ACTION:** Listen to presentation

**SUMMARY STATEMENT:** N/A

**EXPENDITURE REQUIRED:** N/A

**SOURCE OF FUNDS:** N/A

**POLICY ISSUE:** Discussion of possible project

**ALTERNATIVE:** N/A

**BACKGROUND INFORMATION:**

- A recent local presentation led to follow up discussion between Councilmember Michelle Miles and Peter Geiser of Global Geophysical Services who wishes to discuss a proposed project

2

## Tom Acre

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**From:** Michelle Miles [tireshopwines@gmail.com]  
**Sent:** Thursday, September 18, 2014 8:58 PM  
**To:** Joe Reorda; Carol Bolton; joe.bonato@trinidad.co.gov; Pat.fletcher@trinidad.co.gov; anthony.mattie@trinidad.co.gov; Liz Torres; Audra Garrett; Les Downs  
**Subject:** Fwd: Proposed Raton Basin Geothermal Project

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

**From:** Peter Geiser <[Peter.Geiser@globalgeophysical.com](mailto:Peter.Geiser@globalgeophysical.com)>  
**Date:** Wed, Sep 17, 2014 at 4:18 PM  
**Subject:** Proposed Raton Basin Geothermal Project  
**To:** "[michelle.miles@trinidad.co.gov](mailto:michelle.miles@trinidad.co.gov)" <[michelle.miles@trinidad.co.gov](mailto:michelle.miles@trinidad.co.gov)>  
**Cc:** "Paul Morgan ([morgan@mines.edu](mailto:morgan@mines.edu))" <[morgan@mines.edu](mailto:morgan@mines.edu)>, "Moore, Steven (Elkton)" <[Steven.Moore@atk.com](mailto:Steven.Moore@atk.com)>

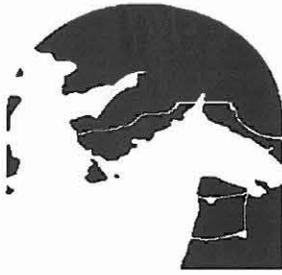
Hello Michelle,

We met briefly at the mid July meeting in Trinidad on the potential geothermal project to be funded by FORGE. As I understand from Paul Morgan he has made you aware that our group which consists of the ATK corporation, Johns Hopkins University, ASIR, a geothermal and geophysical group and my own LLC, G-O-Image, is completely separate from the FORGE project. We have put together a 4 phase project extending over 4 to 5 years that is to be privately funded. Initial funding will come from VC with whom we are currently working. Our goal is to initiate the project within a year.

The project includes the development of propellant fracturing which is a waterless fracturing technology, the application of Global Geophysical Services unique leading edge imaging technology (Tomographic Fracture Imaging) and new geophysical knowledge on the Earth's behavior, to develop an unique system for extracting geothermal energy. If we are successful this will allow the commercial production of electricity from the Raton Basin in significant quantities. At your earliest convenience, we would very much appreciate the opportunity to present our proposed project to the Trinidad town council as well as to the appropriate Las Animas County officials.

Sincerely,

Peter Geiser



## COUNCIL COMMUNICATION

**CITY COUNCIL MEETING:** September 30, 2014  
**PREPARED BY:** Audra Garrett, ACM  
**DEPT. HEAD SIGNATURE:** *Audra Garrett*  
**# OF ATTACHMENTS:** 3

3

**SUBJECT:** Non-Profit funding requests for fiscal year 2015

**PRESENTER:** Representatives from the non-profit entities

**RECOMMENDED CITY COUNCIL ACTION:** Consider funding request for non-profits for the 2015 fiscal year

**SUMMARY STATEMENT:** N/A

**EXPENDITURE REQUIRED:** Yes

**SOURCE OF FUNDS:** Miscellaneous Fund

**POLICY ISSUE:** The City has funded non-profit entities for many years to support their services to the citizens of the City

**ALTERNATIVE:** Council may choose not to continue funding

**BACKGROUND INFORMATION:**

- Non-profits were asked to submit their funding requests to the City by August 28, 2014.
- All requests were received by the deadline.
- This is a continuation of the presentation by two entities who were unable to be at the Work Session on September 23, 2014.

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CITY OF TRINIDAD  
NON-PROFIT FUNDING AWARDS/REQUESTS (Updated 9/24/2014)

<u>AGENCY NAME</u>	<u>2012 AWARD</u>	<u>2013 AWARD</u>	<u>2014 AWARD</u>	<u>2015 REQUEST</u>
a Trinidad & Las Animas County Chamber of Commerce	\$12,600	\$11,900	\$12,600	\$12,600
b Noah's Ark Animal Welfare Association	\$25,000	\$25,000	\$25,000	\$25,000
c Advocates Against Domestic Assault	\$6,970	\$6,970	\$7,000	\$14,000
d H. R. Sayre Senior Center	\$19,350	\$19,350	\$19,400	\$20,000
e Trinidad-Las Animas County Economic Development, Inc.	\$10,800	\$10,250	\$10,800	\$15,000
f Trinidad Arts & Cultural Advisory Commission	\$4,500	\$4,250	\$4,500	\$10,000
g Southern Colorado Repertory Theatre		\$1,000	\$1,000	\$5,000
h Southern Colorado Developmental Disabilities Services, Inc.	\$1,350	\$1,350	\$1,350	\$3,000
i Trinidad Area Arts Council	\$4,500	\$4,250	\$4,250	\$5,000
j Youth Advisory Council	\$3,917	\$2,484	\$3,995	\$5,000
k Farmers' Market	\$1,000	\$0		\$2,310
l A. R. Mitchell Museum		\$1,000	\$1,000	\$5,000
Rural Philanthropy Days			\$2,000	\$0
m Hometown Holidays				\$5,000
n Terra Firma Recycling				\$10,000
Misc. Donations				
	\$89,987	\$87,804	\$92,895	\$136,910
Crossroads Turning Points, Inc. *CONTRACT	\$24,000	\$26,000	\$26,000	\$26,000

August 26, 2014

Audra Garrett, Acting City Manager  
City of Trinidad  
P.O. Box 880  
Trinidad, CO 81082

Dear Ms. Garrett:

The recent notice of the City's effort to begin the 2015 Budget was recognized by Trinidad-Las Animas County Economic Development, Inc. (TLACED). On behalf of the Board of Directors and myself, Walter Boulden (Executive Director), I would like to request that the City of Trinidad make a \$15,000 investment in TLACED for fiscal year 2015.

This funding would be utilized as matching funds for city and county economic development, as well as obtaining other funding from State and Federal sources, which will allow TLACED to enhance and offer additional resources for surrounding businesses. It is crucial that TLACED be able demonstrate local support, so that the State and Federal sources will be more apt to offer their assistance as well.

As you know, a diversified business community cultivates a stable economy. Therefore, it is key that the city recognize that our mission is to increase community prosperity through economic enhancement activity in the City of Trinidad, the County of Las Animas and all communities therein. With your support, TLACED will be more readily available to follow through on all current and future endeavors.

We will have an audit completed for fiscal year 2013 and would be happy to provide you with a copy when it becomes available. I have included a summary of the TLACED 2014 budget and a copy of TLACED's goals, so you may see where the funding will be utilized.

Although we are aware of current budget restraints, we are requesting an investment of \$15,000 in 2015. This investment in TLACED is one that the city will benefit from, and is greatly appreciated by the residents of Trinidad and Las Animas County. I anticipate discussing this tremendous opportunity with you at your convenience.

Sincerely:



Walter Boulden  
Executive Director (TLACED)

**Attachment A**  
**TLACED 2014 Budget**

TLAC Economic Development 2014 Budget	2011	2012	2013	Projected 2014
<b>Income</b>				
<b>Opening Balance (In Operating Account Jan 2014)</b>				27076
City General Fund	10800	10800	10100	10800
County General Fund	8000	8000	5000	10000
Office Sub-Lease	0	0	500	0
Grant Funding	3750	3750	0	0
Fund Raising	0	0	750	1000
Transfer from Saving	60000	10000	28500	0
Industrial Park Revenue	10000	15000	15000	15000
Industrial Park Transfer - Receipts	0	0	18000	0
<b>Total Income</b>	<b>92550</b>	<b>47550</b>	<b>77850</b>	<b>63876</b>
<b>Expenses</b>				
501(c)3 990 Report	800	700	500	50
Periodic Report 990	10	10	50	10
Marketing/Web Site/Contributions	50	50	2800	750
D&O Insurance	1279	1279	1279	1280
Dues/Subscriptions	\$1,263.00	1263	950	0
Meals/Entertainment	1160	675	700	0
Payroll-Director	45500	40000	23400	0
Payroll - Admin	20800	20800	20800	20800
Payroll Company Tax Liability	4973	4560	3315	1560
Payroll Unemployment Tax	2040	2040	1560	1500
Worker's Comp Insurance	310	325	375	400
<b>Payroll Liabilities Subtotal</b>	<b>73623</b>	<b>67725</b>	<b>49450</b>	<b>24260</b>
QuickBooks On-line Subscription	1000	1050	1100	250
Rent	15000	15000	15000	15000
Office supplies,	3560	3250	525	360
Phone	2700	2700	2000	1800
Utilities	1560	1700	1200	1200
Copier Lease	2520	2400	2220	1140
Auditor Expenses- Audit Books 2013	0	0	0	5000
Outsource books	0	0	0	2100
<b>Total Expenses</b>	<b>104525</b>	<b>97802</b>	<b>77774</b>	<b>53200</b>
<b>Ending 2014 Balance</b>	<b>-11975</b>	<b>-50252</b>	<b>76</b>	<b>10676</b>

## Attachment B

### Trinidad-Las Animas County Economic Development

**Mission Statement:** *“Increase community and regional prosperity through economic enhancement activities in the City of Trinidad, the County of Las Animas, and all communities therein and to support and work on regionally beneficial economic development activities.”*

**Vision:** *Trinidad-Las Animas County Economic Development, Inc. will serve as a principle in the field of public policy development/implementation and effective leadership within our community, by consistently providing a reliable, efficient and dedicated forefront to the economic enhancement of all local and statewide businesses, city/county governmental agencies, and all community members.*

**Goals:**

- Build a larger economic development presence within and outside of the community to enhance the procurement of new business focusing on small industry and start-up business.
- Increase TLACED's out-of-area economic development marketing for the Trinidad Industrial Park, City of Trinidad and Las Animas County.
- Forge lasting business relationships within Las Animas County's rural communities by increasing TLACED's presence within these communities.
- Develop partnerships with community business leaders to form a coalition that will bring the area's business minds together with developmental ideas to assist TLACED in the solicitation of new business to the City of Trinidad and Las Animas County.
- Encourage entrepreneurship by identifying community businesses that are successful and build business teams from these successes to help potential new business start-ups in all phases of planning and execution of their new business.
- Work closely with the City of Trinidad and Las Animas County planners to develop strategic infrastructure, incentives and enhancements for potential new business opportunities.
- Actively solicit board members that will contribute to the TLACED's vision of increasing community prosperity through economic development.

Trinidad-Las Animas County Economic Development  
**Balance Sheet**  
As of August 31, 2014

	<u>Aug 31, 14</u>
<b>ASSETS</b>	
<b>Current Assets</b>	
<b>Checking/Savings</b>	
Bank of The West Restricted Fun	142,844.65
Century Savings and Loan	14,262.91
El Corozon Downtown Group	477.77
International Bank - Operating	<u>24,200.92</u>
<b>Total Checking/Savings</b>	<b>181,786.25</b>
<b>Total Current Assets</b>	<b>181,786.25</b>
<b>Fixed Assets</b>	
Accumulated Depreciation	-88,984.00
Furniture and Fixtures	7,128.57
Lots and Land	9,873.94
Machinery & Equipment	20,005.68
Phase II Project	<u>123,119.48</u>
<b>Total Fixed Assets</b>	<b>71,163.67</b>
<b>TOTAL ASSETS</b>	<b><u>252,949.92</u></b>
<b>LIABILITIES &amp; EQUITY</b>	
<b>Liabilities</b>	
<b>Current Liabilities</b>	
Accounts Payable	
Accounts Payable	<u>177.94</u>
<b>Total Accounts Payable</b>	<b>177.94</b>
<b>Other Current Liabilities</b>	
State Unemploy Liability	141.31
State WH Liability	<u>104.00</u>
<b>Total Other Current Liabilities</b>	<b>245.31</b>
<b>Total Current Liabilities</b>	<b><u>423.25</u></b>
<b>Total Liabilities</b>	<b>423.25</b>
<b>Equity</b>	
Prior Period Adjustments	-123.20
Retained Earnings	289,061.41
Net Income	<u>-16,411.54</u>
<b>Total Equity</b>	<b>252,526.67</b>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b><u>252,949.92</u></b>

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Accrual Basis

**Trinidad-Las Animas County Economic Development  
Profit & Loss YTD Comparison  
August 2014**

	Aug 14	Jan - Aug 14
<b>Ordinary Income/Expense</b>		
<b>Income</b>		
Board of Director Dues	0.00	80.00
City of Trinidad	0.00	10,800.00
Interest Income	0.00	14.08
Refunds-Allowances	0.00	45.62
Trinidad Industrial Park	1,297.23	10,231.80
<b>Total Income</b>	<u>1,297.23</u>	<u>21,171.28</u>
<b>Gross Profit</b>	1,297.23	21,171.28
<b>Expense</b>		
Advertising	0.00	280.00
Bank Charges	0.00	25.00
Charitable Contributions	0.00	500.00
Insurance	0.00	241.00
Insurance - Liability	0.00	525.00
Legal & Professional Fees	203.06	955.42
<b>Office Expenses</b>		
Canon Copier	156.62	1,378.79
Checks	0.00	91.02
Postage	0.00	26.73
Office Expenses - Other	0.00	0.00
<b>Total Office Expenses</b>	156.62	1,496.54
Office/General Administrative 0	0.00	0.00
Payroll Expenses	0.00	1,081.87
Payroll Tax Expense	122.40	1,292.32
Penalties	0.00	79.62
Professional Services	0.00	1,677.94
Promotional	25.00	25.00
Rent or Lease	1,000.00	8,500.00
Rent or Lease of Buildings	0.00	2,500.00
Repair & Maintenance	0.00	2,808.00
Salaries & Wages	1,600.00	13,600.00
Telephone	178.50	1,608.97
Utilities	68.21	554.74
<b>Total Expense</b>	<u>3,353.79</u>	<u>37,711.42</u>
<b>Net Ordinary Income</b>	-2,056.56	-16,540.14
<b>Other Income/Expense</b>		
<b>Other Income</b>		
Interest Earned	0.00	128.60
<b>Total Other Income</b>	<u>0.00</u>	<u>128.60</u>
<b>Net Other Income</b>	0.00	128.60
<b>Net Income</b>	<u><u>-2,056.56</u></u>	<u><u>-16,411.54</u></u>

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**Trinidad-Las Animas County Economic Development  
Check Detail  
August 2014**

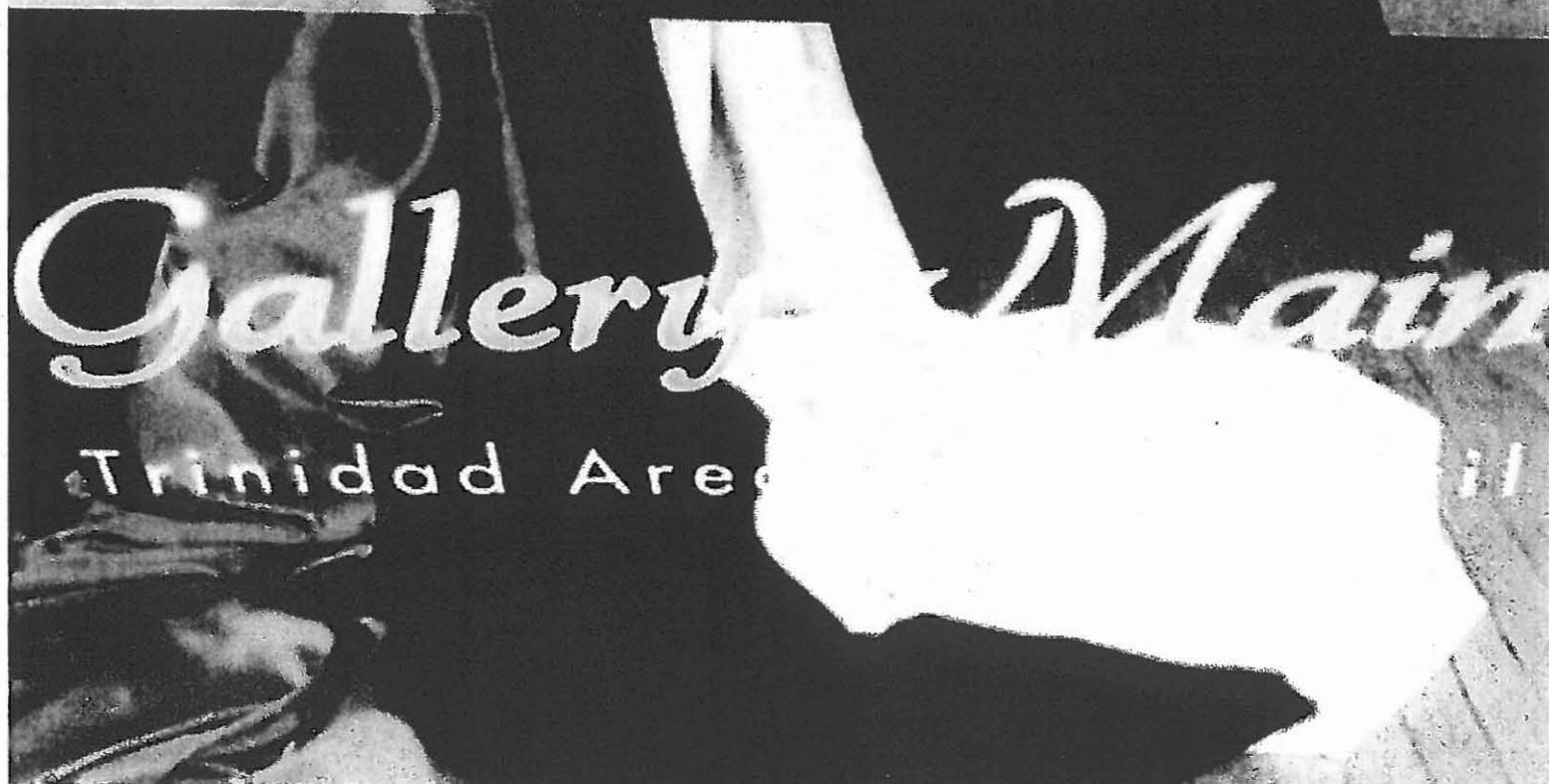
Type	Num	Date	Name	Account	Paid Amo...	Original A...
Check	wd1	08/13/2014	IRS	International Bank...		-189.18
				Federal FICA	-189.18	189.18
TOTAL					-189.18	189.18
Check	wd2	08/27/2014	IRS	International Bank...		-189.18
				Federal FICA	-189.18	189.18
TOTAL					-189.18	189.18
Check	wd3	08/20/2014	Mountain States Fl...	International Bank...		-203.06
				Legal & Profession...	-203.06	203.06
TOTAL					-203.06	203.06
Check	1976	08/01/2014	City of Trinidad	International Bank...		-68.21
				Utilities	-68.21	68.21
TOTAL					-68.21	68.21
Check	1977	08/07/2014	Gobln's Inc.	International Bank...		-49.55
				Canon Copier	-49.55	49.55
TOTAL					-49.55	49.55
Check	1978	08/08/2014	Susan Rollins	International Bank...		-646.02
				Salaries & Wages	-646.02	646.02
TOTAL					-646.02	646.02
Check	1979	08/14/2014	Trinidad Realty	International Bank...		-500.00
				Rent or Lease	-500.00	500.00
TOTAL					-500.00	500.00
Check	1980	08/14/2014	Trinidad Realty	International Bank...		-500.00
				Rent or Lease	-500.00	500.00
TOTAL					-500.00	500.00
Check	1981	08/22/2014	Susan Rollins	International Bank...		-646.02
				Salaries & Wages	-646.02	646.02
TOTAL					-646.02	646.02
Check	1982	08/20/2014	Artocade	International Bank...		-25.00
				Promotional	-25.00	25.00
TOTAL					-25.00	25.00
Check	1983	08/28/2014	Banc of America L...	International Bank...		-107.07
				Canon Copier	-107.07	107.07
TOTAL					-107.07	107.07

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09/09/14

**Trinidad-Las Animas County Economic Development**  
**Check Detail**  
**August 2014**

<u>Type</u>	<u>Num</u>	<u>Date</u>	<u>Name</u>	<u>Account</u>	<u>Paid Amo...</u>	<u>Original A...</u>
Check	1988	08/20/2014	SECOM	International Bank...		-178.50
				Telephone	-178.50	178.50
TOTAL					-178.50	178.50

# Trinidad Area Arts Council



*Gallery Main*

Trinidad Area Arts Council

Trinidad Area Arts Council

Audra Garrett  
Acting City Manager  
City of Trinidad  
P.O. Box 880  
Trinidad, CO. 81082

August 24, 2014

Dear Ms. Garrett,

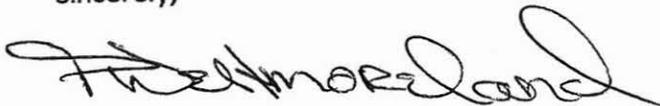
Trinidad Area Art Council greatly appreciates the opportunity to apply for funds from the City of Trinidad. TAAC has been offering art classes to the children of Trinidad at no cost on a consistent basis since 1989. We feel it is important to keep young minds active while providing them with a safe place to learn and create.

Trinidad Area Arts Council (TAAC) first started teaching art to children of the community in 1986 and was awarded the 501 (c) 3 status by the state of Colorado in 1989. Since that time, TAAC has offered classes to children under the age of 19 free of charge on a year round basis. The classes vary in style and classification in the visual and literary arts, with the combined goal to give to the children the means to express themselves and take pride in what they accomplish which will transfer their self-pride into their culture of the place where they live which will lead to the betterment of the community as a whole.

Along with exhibitions of various art shows in Gallery Main, paid adult classes and TAAC's own fund raising, we are asking from the City \$5,000 which will help expand the programs for children by acquiring more diverse projects and teachers as well as help TAAC retain a much needed Director to organize the classes and run operations of the facility on a full time basis.

If you have any questions, feel free to contact me directly at TAAC Tuesdays – Thursdays, 719-846-1441 or my email; pwestmoreland@gmail.com. Thank you again for considering Trinidad Area Arts Council in this grant cycle.

Sincerely,



Peggy Westmoreland  
Chair, TAAC  
130 E. Main St  
Trinidad, CO. 81082  
719-846-1441

## **Organizational History and Background of Trinidad Area Arts Council**

*Mission Statement: The purpose of this corporation is to promote a cultural, social and economic climate in Trinidad in which the artistic heritage and creativity of all people may find voice. This includes an emphasis on art appreciation and education targeted at the youth at no cost in accordance with the corporation's exempt purpose.*

TAAC follows the Mission Statement by offering classes in various areas of the artistic history of Southern Colorado as well as various art styles found around the world. TAAC creates economic equality by not charging for art classes offered to youth. In this way all children of various economic backgrounds are able to enjoy all offered classes without the fear of not being able to afford materials.

TAAC was formed in 1989 as a 501(c)3 non-profit cultural arts center, celebrating the visual, written and performing arts in the Southern Colorado town of Trinidad. TAAC remains as an organization which has offered classes in the arts to children of the community at no charge on a consistent basis. TAAC does run a gallery in which the students from the art classes may display their work in a professional setting. This March was the first showing of students work from Trinidad State Junior College. With 93 pieces of student art hung in the gallery, we plan on making this an annual event. Although TAAC did not profit from this show as the students were not charged any hanging fees or the usual 30% commission on any work that sold, TAAC was none the less thrilled to demonstrate our pride in the community's students and their ability to work for the realization of their dream.

The main feature of the gallery's August show, 3 Dimensions is the 10' x 10' sculpture of a praying mantis created from repurposed trash by children from this summer's Youth Arts Program. While creating this sculpture the children learned design, planning and perception skills. In putting the giant pieces together they learned the importance of weight and how it worked with balance and – gravity. They did a fantastic job and the sculpture will be featured in this year's ArtoCade.

Even though the reports show the economy has improved, funding for TAAC has continued to be challenging. But with the combined efforts of fund raising and grants from generous donors like the City of Trinidad, TAAC should be able to continue its goal to improve the venue for art in the community and by so doing, provide a place of community spirit and growth throughout the years.

### **Short and Long Term Goals**

Our short term goal is to continue to find funding to continue to provide quality educational programs at no cost to the children of our community and to maintain the gallery as a place of interest to present different forms of art for children to explore. This will require funding for basic operating expenses, materials for classes and to pay the salaries of qualified instructors

of the classes. TAAC has been without a Director for over a year. A Director is a very important part of servicing the community through organizing and public relations. It is TAAC's desire to be able to hire a Director in the near future. The long term goals are to expand the discipline area of art available to the children by including music and performance as well as having large projects for the older youth to participate in. This will require funding for qualified instructors and the equipment necessary to learn the complexities of the musical score and the confidence building of performance.

#### **Current Programs 2014**

In the summer months TAAC offers classes on a daily basis for the children of the community. This summer saw a full schedule with;

Arts & Crafts for ages 5-8. With the ever popular Vanessa Hillhouse as teacher, her class filled fast with 23 children. Her theme for the class was Pioneer Life. The children learned about the isolation of the pioneers through stories and photographs, then made reproductions of toys the children of the 1800's made for themselves to play with. Including clay cup & ball, rag stuffed leather balls for tossing and rag dolls. The children learned basic hand eye coordination, design as well as the important value of repurposing throw-a-ways.

Basic Drawing for ages 14-18. Ellie Hillhouse taught the class of 11 students, showing the importance of using shadowing and sizing to accomplish the three dimensional values of distance and proportion upon the two dimensional material. The understanding of such skill behind proportion will help students understand the complexities of computer analysis by processing a three dimensional idea into the two dimensional digital world.

Beaded Critters for ages 8-12. A three day class taught by beading expert, Lisa Ward, trained children in the value of thinking through each step before it is done in order to achieve the desired effect. Patience, that elusive virtue, was highly valuable in this class filled with bumble bees, lizards and mermaids as one small slip-up will send the child back to the beginning.

Repurposed Sculpture for ages 7-12. The children were barely aware of the skills they obtained through careful planning by making sure each individual piece made, fit together perfectly in order to achieve a balance through weight distribution in this giant ten foot praying mantis made of cardboard, a gallon milk jug, Styrofoam and a couple yards of duct tape. This was TAAC's first attempt at something so bold and we are very grateful for guidance of long time TAAC instructor Carol Blatnik-Barrows.

Creation for ArtoCade for all ages. This is an idea by Rich Columbo to jumpstart the children into participation in ArtoCade. What was accomplished was dependent on the age group of the kids. Those younger than seven decorated hub caps, 8-12 made plaques from car parts to be fixed onto the art car, and the older kids painted a design onto a peddle car. The last class had the kids putting the parts onto the body of the peddle car as well as the hub caps, which taught the children planning and cooperation.

Kumihimo Weaving for ages 7-12. Karen Agnello taught this class on the art of Japanese weaving of silk into cords. The children learned hand eye coordination by criss-crossing silk strands on a disk which formed a tightly woven cord for bracelets, necklaces and key chains. As handmade clay beads were added to the finished cords, the children were amazed at being able

to build something so strong from a few pieces of something as fragile as silk. A journey into future engineering.

During the school months TAAC offered Creative Fridays for the kids who were not attending school on Fridays to come and spend their free time productively in a safe environment. Clay was a popular medium for the kids with Christmas ornaments, Valentines and piggy/froggy banks being made. Clay bowls were made by the older kids from Holy Trinity Academy to be used in conjunction with the Empty Bowls Charity event each October. In 2014 the kids helped raise over \$1200 for the Soup Kitchen. Other classes included leather macramé and origami.

During the year, TAAC expects to see 200 – 250 children pass through our doors for the art classes. With every new project is a new opportunity to attract more children into the organization. However, the budget has proven to be unyielding so far. TAAC is in desperate need of a Director, who can organize and put into place larger and more diverse programs for the children including music and the written arts as well as manage the day to day operations of TAAC. A paid position of a Director would allow the gallery to be open throughout the week offering a greater chance of items from the gallery to sold, all the funds of which go directly into the children's programs. With the award of \$5,000 from the City, TAAC will be able to expand the programs offered and to reach more children in the community.

### **Collaborations**

TAAC has always been committed to seek out ways to work with other nonprofits and community leaders in the preservation and flourishing of the cultural aspects of life in Trinidad. The Empty Bowls Charitable Event each October features bowls made in the pottery studio at TAAC. Various clay artists from Trinidad as well as teenage students from GOAL Academy and the adolescent children from Holy Trinity Academy use the pottery studio at TAAC to make bowls for this event. The Empty Bowls Charitable Event brings together community members to purchase a handmade bowl filled with soup for a set price. The bowl is theirs to keep and all proceeds from the event are given the Community Soup Kitchen for operating costs. TAAC does not charge for the use of the pottery studio for this event.

TAAC is participating in collaborations with the Art Department of TSJC by hosting shows through Gallery Main. During this fall semester, 10% of the student grade will be for a design and installation into one of the showcase windows at Gallery Main. This provides the student with a venue to plan a display on a large scale and receive feedback from the community members who see the display. This project will provide the community with fresh ideas that are fun and thought provoking.

This September, TAAC will host an expansion Kids Creation Station as a way for the youth to participate in ArtoCade. Last year was Trinidad's first annual art car parade with pre and post parties and events. The fact that there wasn't much for kids to do during the festivities did not go unnoticed. So this September there will be tables and booths up and down East Main Street

featuring a different craft for children to take part in making an item to be attached to a donated bread truck for Trinidad’s first art car by kids. As the Creative District develops, TAAC will make sure the community’s children will have a place within it.

**How Grant Money Will Be Used**

The \$5,000 grant from the City of Trinidad will help fund Creative Friday classes, or Creative Saturdays if the kids attend school on Fridays in the 2015-2016 school year and the Summer Youth Arts Academy in 2015. TAAC would like to expand on the art classes with music and creative writing so TAAC would need to include qualified instructors for music and writing. We would also like to expand classes for the growing teen population in and around town. One Board Member is putting together a plan for a mural project for the teens to participate in. It is well understood that the Creative District will need help from the art community to put into place the various plans and installation and TAAC is willing to help in any and all aspects of development and execution of the Creative District

<u>Class</u>	<u>Salaries</u>	<u>Materials</u>
Creative Fridays/Saturday	\$3,500	\$1,000
Summer Youth Arts	\$3,500	<u>\$1,500</u>
Director	<u>\$20,000</u>	\$2,500
	\$27,000	
<b>Total</b>	<b>\$ 29,500.00</b>	

**Basic Operating Costs**

Rent .....	\$3,600.00
Utilities.....	\$4,000.00
Office Supplies.....	\$90.00
Advertising.....	<u>\$920.00</u>
<b>Total.....</b>	<b>\$5,010.00</b>

**Total estimated budget for 2015 - \$34,510.00**

**How the Success of the Project Will Be Measured**

The success of TAAC’s ability to offer art classes will be measured by the growing number of children coming to TAAC for the purpose of taking art classes and how those classes have enriched their minds and therefore aided their success in the world. This is difficult to put into concrete numbers however, there are examples. Alicia Campos started attending classes with TAAC in 2002 to deal with her boredom and, her father hoped, her lack of social skills as she was as shy as she was talented. Working together with youth of all ages, she learned the proper communication skills for dealing with people in order to complete a task. This was very difficult for her in the beginning and took quite a bit of effort on her part as well as her instructor for her to relate to the other children. Through perseverance and encouragement

she slowly came from her shell and became confident enough to share her talents with the other kids. She is now a successful college student living independently from home. Alicia is just one example of what TAAC does for the youth of our community on a daily basis.

### **Those Involved in the Project**

*Peggy Westmoreland, Chair*

Curator of Gallery Main and organizer of adult and youth classes.

*Risa Phelps, MFA*

Teaches the Wine, Women and Water Color Classes

Teaches various children's classes

Assists the Curator

*Vanessa Hillhouse, Certified art teacher in the state of Colorado*

Instructor for Summer Youth Arts Program

*Carol Blatnik-Barrows, Artist*

Instructor for Summer Youth Arts Program and Creative Fridays

*Richard Columbo, BFA, Certified art teacher in the state of Colorado*

Instructor for the Summer Youth Arts Program and organizer of Kids Creation Station

*Ann Miller, Artist*

Instructor for Creative Fridays

*Bobbi Masconni, Certified art teacher for the state of Colorado*

Instructor for the adult pottery class.

### **Summery**

Art has played an important role in civilization, from expression to mathematics. In young brains, art teaches spatial reasoning, geometry, chemistry and critical thinking as well as cooperative social problem solving by working with others toward a common goal. Without such stimulation, developing minds will wonder and become lost in the pantheon of destructive behavior. With the classes that TAAC offers, children are able to develop their minds and use thinking patterns over and over again until it becomes an everyday skill. In this way the children become pro-active students and learn to solve problems creatively instead of emotionally. From that, they grow into productive adults with leadership skills.

As children become aware of their possibilities, they are more likely to set and accomplish goals. When other children take notice and are more likely to follow in their footsteps. Success inspires others to seek a better, productive way of life which causes the entire community to grow and prosper. TAAC recognizes that it is imperative to have a Director to organize the

Trinidad Area Arts Council

functionality of TAAC, not just to keep the organization running but to help it grow to meet the needs of the community. With the added benefit of a Director, more fund raising events could be planned which would accomplish more self-sufficiency for the organization and therefore, less dependency upon grants and donations.

In conclusion, I appeal to the City of Trinidad to consider Trinidad Area Arts Council for the grant we ask for in order to keep a much useful and safe environment open and running for the youth of our beloved community.

Sincerely,

A handwritten signature in black ink, appearing to read "Peggy Westmoreland", written in a cursive style.

Peggy Westmoreland  
Chair, Trinidad Area Arts Council  
130 E Main St  
Trinidad, CO. 81082  
719-846-1441

Trinidad Area Arts Council

**Financial Statement for January 1, 2014 through July 31, 2014**

Revenue:

Membership	\$2,070.00
Donations	\$2,924.00
Grants	\$00.00
Entrée Fees	\$815.00
Gallery Sales	\$3,472.05
Adult Classes	<u>\$3,290.50</u>
<b>Total</b>	<b>\$12571.50</b>

Expenditures:

Rent	\$2,100.00
Utilities	\$1,646.39
Credit Card Service	\$253.60
BOA Credit Card	\$1,720.09
Insurance	\$517.50
Trash Removal	\$112.00
Internet/Phone	\$889.80
Instructors Total	\$3,102.50
Vanessa Hillhouse	\$560.00
Ellie Hillhouse	\$220.00
Risa Phelps	\$942.50
Rich Columbo	\$250.00
Carol Blanik-Barrows	\$470.00
Lisa Ward	\$120.00
Karen Agnello	\$160.00
Anne Miller	\$380.00
Advertising	<u>\$350.00</u>
<b>Total</b>	<b>\$10,341.88</b>

\*\*\*Office supplies, invitations, stamps and art supplies have been paid by the Board Members

Office Supplies	\$70.08
Invitations	\$245.00
Postage	\$385.00
Clay	\$183.45
Canvases	<u>\$150.00</u>
<b>Total</b>	<b>\$1,333.53</b>

Trinidad Area Arts Council

**Projected budget for 2015**

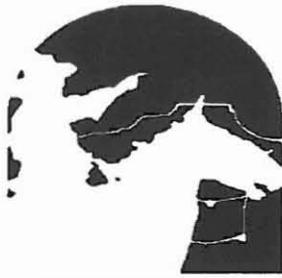
<u>Class</u>	<u>Salaries</u>	<u>Materials</u>
Creative Fridays/Saturday	\$3,500	\$1,000
Summer Youth Arts	\$3,500	<u>\$1,500</u>
Director	<u>\$20,000</u>	\$2,500
	\$27,000	

**Total \$ 29,500.00**

Basic Operating Costs

Rent .....	\$3,600.00
Utilities.....	\$4,000.00
Office Supplies.....	\$90.00
Advertising.....	<u>\$920.00</u>
<b>Total.....</b>	<b>\$5,010</b>

**Total estimated budget for 2015 - \$34,510.00**



CITY OF TRINIDAD, COLORADO  
1876

# COUNCIL COMMUNICATION

4

**CITY COUNCIL MEETING:** September 30, 2014  
**PREPARED BY:** Audra Garrett, City Clerk  
**DEPT. HEAD SIGNATURE:** *Audra Garrett*  
**# OF ATTACHMENTS:** 1

**SUBJECT:** Review of proposed Development Incentives ordinance

**PRESENTER:** Audra Garrett, ACM

**RECOMMENDED CITY COUNCIL ACTION:** Provide additional input on amended proposed incentive ordinance

**SUMMARY STATEMENT:** The proposed ordinance would allow for a clearer expansion on allowable incentives

**EXPENDITURE REQUIRED:** No

**SOURCE OF FUNDS:** N/A

**POLICY ISSUE:** Allowable business incentives

**ALTERNATIVE:** Consider other possible incentives; add or remove from the possibilities

**BACKGROUND INFORMATION:**

- The Charter encourages incentives
- The City hasn't had an established practice
- The ordinance has been amended since Council's review on September 23<sup>rd</sup> and Walt Boulden, TLACED Executive Director's review on September 25th

4



ORDINANCE NO.

AN ORDINANCE OF THE CITY OF TRINIDAD, COLORADO, REPEALING AND RE-ENACTING CHAPTER 7, FINANCE AND TAXATION, ARTICLE 6, ECONOMIC DEVELOPMENT FUND, TO RENAME IT ECONOMIC DEVELOPMENT INCENTIVES AND TO SET FORTH ALLOWABLE DEVELOPMENT INCENTIVES

WHEREAS, the Charter of the City of Trinidad, Colorado confers upon the City all powers of local self government and Home Rule possible for a city to have under the Constitution and laws of this state; and

WHEREAS, Chapter 12, Section 12.7, Economic Development, of the Home Rule Charter for the City of Trinidad, cites that the Council shall encourage economic development by providing innovative, creative and flexible inducement packages to potential industries or businesses seeking to establish, locate, or relocate in Trinidad. The offering of such packages shall be based on feasibility studies, benefit to expense ratios, and the opportunity for creation of new jobs; and

WHEREAS, the City Council of the City of Trinidad feels it is paramount to offer incentives to stimulate business growth for the improvement of the overall health of the City and that it is in the best interest of the citizens to offer, in certain cases and under certain guidelines, terms, and conditions, variable economic incentives to businesses wishing to locate within the City.

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

1. **Chapter 7, Finance and Taxation, Article 6, Economic Development Fund, is hereby repealed and re-enacted in its entirety as follows:**

**ARTICLE 6. ECONOMIC DEVELOPMENT INCENTIVES**

**Section 7-39. Economic Development Incentives.**

- (1) Development incentives may be considered as follows to encourage business location that will result in economic growth for the City:
  - (a) Conveyance of real property owned by the City at no or reduced consideration;
  - (b) Reduction, deferment, or abatement of outstanding property tax;
  - (c) Refund of general property tax, pursuant to CRS 39-30-107.5(1);

- (d) Refund of personal property tax, pursuant to CRS 31-15-903;
- (e) Property tax credit or Incentive Payment, pursuant to HB 02-1399;
- (f) Refund of sales tax levied by the City, pursuant to CRS 39-30-107.5(2);
- (g) Waiver or reduction of permit fees;
- (h) Waiver or reduction of utility tap fees;
- (i) Any other incentive deemed appropriate not specifically identified herein.

**Section 7-40. Economic Development Incentive Considerations.**

- (1) In making an initial determination as to the appropriateness and extent of a development incentive offer and whether it is in the best interest of the City, the following factors shall be considered:
  - (a) The size and fair market value of the improvements and business facilities that are proposed to be located in the City;
  - (b) The number of employees that are proposed to be employed at the business site, the proposed educational and/or training requirements of the employees to be employed, whether or not the employees will be those already retained by the business or will be recruited from the City and the surrounding communities, and the projected salaries of the employees;
  - (c) The impact that the proposed business will have on the City's resources and infrastructure. Particularly, the business shall provide information regarding the amount of water that may be required to operate the business, the projected discharge of wastewater, and special wastes produced by the business that would require the availability of additional resources by the City, whether the business would require increased law enforcement resources, and/or whether the business would produce significant amounts of odor, noise, or dust pollution, and other impacts upon the City's infrastructure due to the nature of the proposed business.
  - (d) The financial ability of the proposed business ownership to build the improvements, connect to City infrastructure, or other considerations. The business ownership may be required to provide proof of such financial ability as part of an agreement for the provision of development incentives by the City.
  - (e) Whether the proposed business is in conformance with the City's Comprehensive Plan and is of a character that is amenable to the City and the surrounding community.
  - (f) Whether the business would result in a contribution to the economic diversity of the City.
  - (g) Whether the proposed business will purchase materials and seek services from the City's existing businesses.
  - (h) Any other factors determined to be peculiar to the proposed business.

**Section 7-41. Negotiation; Determination.**

- (1) The City may contract with the Trinidad-Las Animas County Economic Development, Inc., to collect the necessary data; conduct the initial assessment of the appropriateness and extent of the development incentive offer, based on the factors outlined in Section 7-40(a) through (h); and make subsequent recommendations to the

City regarding whether granting the development incentive is advantageous to the City and warrants the pursuit of an agreement as described in 7-41(2).

(2) Upon determination that the granting of a development incentive is advantageous to the City and warranted pursuant to the considerations set forth herein, the business ownership shall enter into an agreement with the City setting forth the terms and conditions by which the development incentive will be allowed. Such agreement shall be approved by a majority of a quorum at a public meeting of the City Council.

2. **Validity.** If any part or parts of this ordinance is/are found to be invalid or unconstitutional, such determination shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts thereof, irrespective of the fact that any part or parts be declared invalid.

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_, READ AND ORDERED PUBLISHED this \_\_\_\_ day \_\_\_\_\_, 2014.

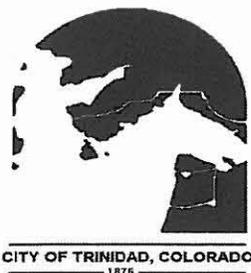
FINALLY PASSED AND APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2014.

THE EFFECTIVE DATE OF THIS ORDINANCE SHALL BE the \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
JOSEPH A. REORDA, Mayor

ATTEST:

\_\_\_\_\_  
DONA VALENCICH, Acting City Clerk



## Council Communication

City Council Work-session: September 30, 2014

Prepared on: September 26, 2014

Dept. Head Signature: *Will A. Peterson*

# of Attachments: 1

**SUBJECT:** North Lake Dam Rehabilitation Project- Engineering Contract Modification

**Presenter:** Mike Graber, RJH Consultants, Project Manager

**Recommended City Council Action:** Discussion of the RJH Contract Modification request and no formal action is required at the time.

**Summary Statement:** RJH is seeking an additional \$30,000 to compile the extensive construction documents required by the State Engineer. The total amount of the construction services contract will be increase from \$578,200 to \$608,200.

**Expenditure Required:** Monthly Pay Applications submitted by Engineer

**Source of Funds:** Water Department Reserve

**Policy Issue:** N/A

**Alternative:** N/A

**Background Information:** In June 2007, the engineering design phase of North Lake Dam Project began and was awarded to RJH Consultants in the amount of \$399,000. The construction began in August 2012, when Sun Construction began the construction of the project. In September 2013, RJH Consultants requested an additional \$245,000 for construction services because the project did not reach completion in September 2013 and they projected an estimated completion date in November 2013. Due to the timing of completion of the project, RJH is seeking an additional \$30,000 to compile the extensive construction documents required by the State Engineer. The total amount of the construction services contract will be increase from \$578,200 to \$608,200. As of August 2014, the city has paid RJH Consultants a total amount of \$968,405.58 for all services.

5

5



September 8, 2014  
Project 07104

Ms. Audra Garrett  
Acting City Manager  
City of Trinidad  
P.O. Box 880  
Trinidad, CO 81067

**Re: Revision to Scope of Work and Budget for Construction Field Engineering Services, North Lake Dam Rehabilitation Project**

Dear Ms. Garrett:

As you have discussed with Mr. Michael Graber, continuing delays by the contractor to complete the referenced project within the allotted contract time and actions of the contractor have increased the level of effort required by RJH Consultants, Inc. (RJH) to perform our work. This letter provides some of the assumptions used to develop our existing scope and budget, a summary of primary changes, and our requested budget modification. The assumptions used to develop the original project scope were transmitted to the City in a previous revision to the scope of work dated September 6, 2014 but since that time there has been a significant change in City staff associated with the project and it seemed appropriate to restate the assumptions for those staff members who may not have been aware of this information.

### **Original Scope**

RJH developed the original scope and budget for Construction Engineering Services based in part on the following assumptions:

- Construction would be performed over a 6-month period from approximately June through November 2012.
- The construction contractor will work one shift of not more than 10 hours per day, 5 days per week.

- The construction contractor would make appropriate work progress and execute the required work in a timely manner.
- Multiple evaluations of and responses to required contractor submittals would not be required.
- The contractor would not repeatedly submit alternate proposals and Requests for Information for the same project components.
- The contractor was experienced and well versed in the construction practices associated with dam rehabilitation.

### **Project Changes**

For circumstances beyond the control of RJH, many of the above assumptions were invalid for the following reasons:

- A delay in the contract award and notice to proceed by the City to the construction contractor resulted in dividing the project into two construction phases. Phase I, which was performed during a 3-month period in the fall of 2012, and Phase II, which started in May 2013 and was intended to be completed in October 2013. This resulted in a 6-month project being extended to over 1 year in length. The State Engineers Office (SEO) requires full-time construction field engineering services for a high hazard dam, which RJH is contracted to provide. This requirement and the increased time to complete the project did require significant additional labor, time, and expenses beyond the original 6-month estimated construction duration.
- The construction contractor did not complete or even start the new spillway during Phase I of the construction project. In the months of September, October, and November 2012, the contractor only removed and backfilled the existing spillway and grouted a low-level outlet pipe. This work, in our opinion, should have been completed in 3 to 4 weeks, not 3 months. However, because of SEO requirements, RJH was required to be onsite during this entire period. The additional construction duration resulting from this lack of progress has added additional labor, time, and expense for RJH beyond the original 6-month scheduled project budget.
- The contractor worked a significant number of 6-day work weeks. This work schedule required additional time for the RJH field staff above the original 5-day per week estimate.
- Many of the contractor submittals required multiple evaluations and responses by RJH because the submittals were incomplete and unacceptable. The poor quality of the contractor submittals required additional labor time beyond what was included in the original project budget.
- Shortly after construction began on the project, the contractor began requesting a change in the specified spillway pipe. The contractor then proceeded to submit alternate proposals and details related to the spillway pipe for approximately 6 months. RJH evaluated the information provided by the contractor and concluded that the contractor did not include the specified pipe in this bid and it is our opinion that the

contractor's motivation for requesting changes to the spillway pipe was to limit his loss related to this bid item. After many repeated evaluations of contractor proposals and communications related to this item and RJH stating that the contractor supply the spillway pipe as specified, it became apparent that the contractor had no intention of supplying the specified pipe. In an attempt to keep the project on schedule, RJH designed and detailed an alternate spillway pipe, which was completely encased in concrete. The alternate spillway pipe design and all of the time spent evaluating the contractor's multiple proposals has required significant additional RJH labor hours, which was not budgeted and could not have been foreseen.

- Based on the activities of the construction contractor, it appears they were unfamiliar with many of the requirements and procedures related to the types of specialized construction required for this project. This lack of expertise has necessitated significantly more direct project involvement by an RJH senior engineer than was originally budgeted. This involvement was needed to ensure that the work was being performed in substantial conformance with the contract documents. Even with this oversight, the contractor has been very difficult to work with, continually attempting to cut corners and perform work not in compliance with the specifications.
- The contractor has significantly exceeded the required project substantial completion date of September 13, 2013. Based on the percentage of work completed as of September 5, 2013 and the rate at which work was being completed at that time, RJH estimated the contractor would reach substantial completion by November 21, 2013. Due to the contractor not executing the work in a timely manner, substantial completion was not reached, as defined by the contract, until August 18, 2014. This exceptionally long delay in completing the project has resulted in substantial additional time and effort by RJH to meet our contractual obligations and SEO requirements.

### **Budget Modification**

For the above reasons, RJH requires an increase in our contract amount. Based on changes in the phasing of the project, the issues identified in this letter, and the exceptionally long delay in project completion, we are requesting an increase in our contract in the amount of \$30,000. This contract increase is based on the remaining work required to prepare the construction completion documentation required by the SEO and the assumption that no RJH staff will be required to review further contractor claims, participate in settlement discussions with the contractor, or provide information and testify for potential litigation related to the project. This will increase the total contract amount to \$608,200. The effort required by RJH to administer the contract and perform the required engineering services is highly dependent on the performance of the contractor, which for this project was very poor.

Ms. Audra Garrett

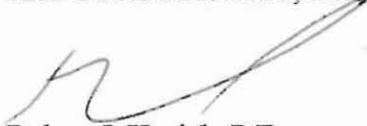
-4-

September 8, 2014

We look forward to continuing to work with you to bring this project to final completion and acceptance by the SEO. Please call Mike Graber or me if you have any questions, require further information, or would like to discuss this modification. If you concur with the information included in this letter, please sign and return one copy of this proposal.

Sincerely,

RJH CONSULTANTS, INC



Robert J. Huzjak, P.E.  
President

MLG/jmm

Joseph A. Reorda  
Name (Please Print)

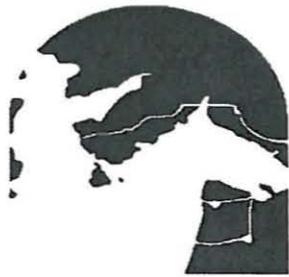
Mayor  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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CITY OF TRINIDAD, COLORADO  
1876

## COUNCIL COMMUNICATION

6

CITY COUNCIL WORK-SESSION: September 30, 2014  
PREPARED BY: Linda Vigil  
DEPT. HEAD SIGNATURE:   
# OF ATTACHMENTS: 2

**SUBJECT:** Consideration of proposed natural gas supply rate revision

**PRESENTER:** Michael McFadden, McFadden Consulting Group, Inc.

**RECOMMENDED CITY COUNCIL ACTION:** Consider the proposed natural gas rate revision. A first reading of an ordinance modifying the rates would be set for the October 7<sup>th</sup> regular meeting.

**SUMMARY STATEMENT:** The gas supply charge is a direct pass thru fee to our gas customers in order to recover the city's cost of purchasing natural gas for our customers. The gas supply charge was adjusted in September 1<sup>st</sup>, 2014 to \$0.4295/CCF and the recommendation is to increase the charge to \$0.4490/CCF as provided in the gas rate analysis.

**EXPENDITURE REQUIRED:** Purchase of natural gas for Trinidad's Gas Distribution System.

**SOURCE OF FUNDS:** Gas Department Budget

**POLICY ISSUE:** Gas Tariff, Section IV, Item 8

**ALTERNATIVE:** Council could not accept the recommendation and not approve the gas supply charge rate change.

**BACKGROUND INFORMATION:** The purpose of the gas supply charge is to recover the cost of purchasing natural gas for the City's customers. Such costs include the cost of upstream pipeline transportation, storage, and other services incurred to deliver the natural gas supplies to the City's distribution system at the City's Receipt Point. The City is required pursuant to its Gas Tariff adopted and effective December, 2008, to comply with the rules and regulations which reads: "The Gas Supply Charge shall be calculated on an annual basis and changes to it will be effective on November 1 of each year, unless otherwise approved by the City Council. Additionally, the Gas Supply Charge was adjusted on September 1<sup>st</sup> to \$0.4295/CCF. After review and consideration the recommendation is to increase the gas supply charge to \$0.4490/CCF. At this time, no changes shall be made to the delivery charge or meter & billing rates.

As required by state statute, a 30-day notice is required prior to the public hearing and letters must be sent to the City's extra-territorial gas customers. Therefore, first reading of the ordinance to change the gas supply charge shall be on October 7<sup>th</sup>, 2014, public hearing and 2<sup>nd</sup> reading on November 18<sup>th</sup>, 2014. Upon ordinance approval, the rate would be effective upon the effective date of the Ordinance, and reflected on utility bills issued on and after December 1<sup>st</sup>, 2014.

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City of Trinidad  
Gas Department  
Gas Supply Charge



City of Trinidad, Colorado  
1876

# Agenda

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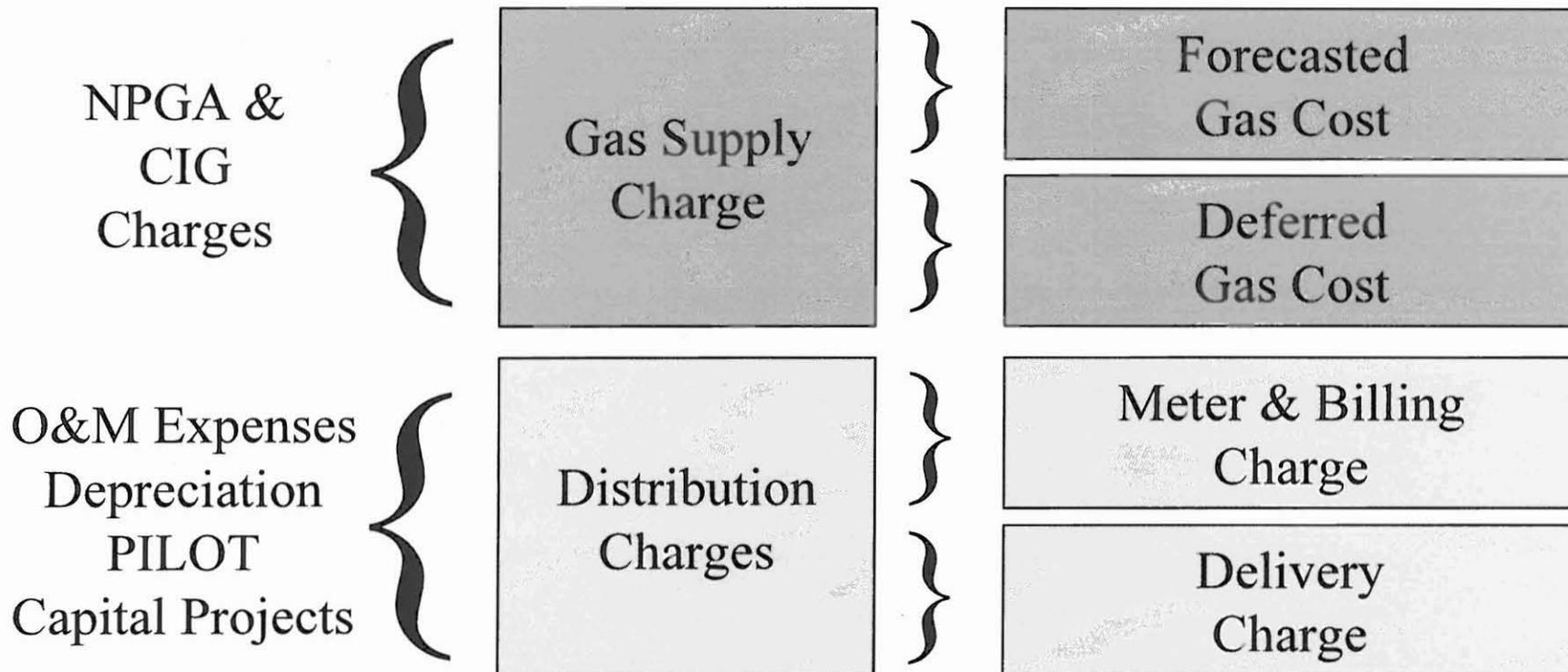
- Gas Supply Charge analysis
  - ✓ Recommended Gas Supply Charges effective
    - December 1, 2014

# Composition of Gas Rate



City of Trinidad, Colorado  
1876

## Total Gas Rate



# Gas Supply Charge

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City of Trinidad, Colorado  
1876

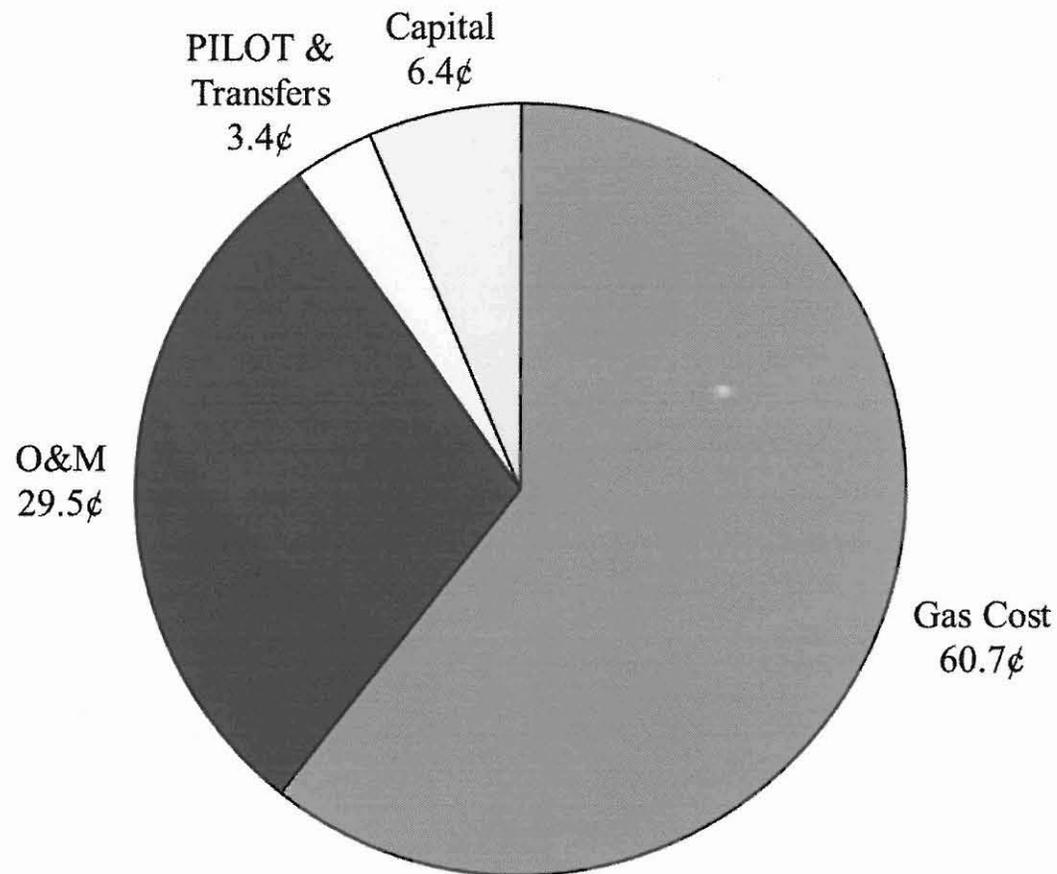
- Designed to recover all upstream gas supply, transportation, & storage costs
  - ✓ Costs not controlled by City
- Mechanism and initial GSC approved by City Council effective December 1, 2008
- Provides for annual true-up that assures dollar for dollar recovery of gas cost
  - ✓ Over- and under-recovery reflected in subsequent Gas Supply Charges
- Mitigates price volatility
  - ✓ NPGA's rates change monthly

# Cost of Gas Per Dollar of Revenue

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City of Trinidad, Colorado  
1876



# Change in Gas Supply Charge

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## *Residential, Commercial, & Special Contract Customers*

	Current	Proposed	Increase or (Decrease)
Gas Supply Charge	\$ 0.4295	\$ 0.4490	\$ 0.0195

# Change in GSC Components

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## *Residential, Commercial, & Special Contract Customers*

	Current	Proposed	Increase or (Decrease)
Projected Gas Cost	\$ 0.4295	\$ 0.4245	\$ (0.0050)
Deferred Gas Cost	\$ 0.0000	\$ 0.0245	\$ 0.0245
Gas Supply Charge	\$ 0.4295	\$ 0.4490	\$ 0.0195



City of Trinidad, Colorado  
1876

# Change in Total Rate

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## *Residential, Commercial, & Special Contract Customers*

	Current	Proposed	Increase or (Decrease)
Meter & Billing Charge	\$ 9.60	\$ 9.60	\$ 0.00
Delivery Charge	\$ 0.2095	\$ 0.2095	\$ 0.0000
Gas Supply Charge	\$ 0.4295	\$ 0.4490	\$ 0.0195

*Change in Total Rates is an increase of 2.7%*

# Impact on Customers' Average Monthly Bill

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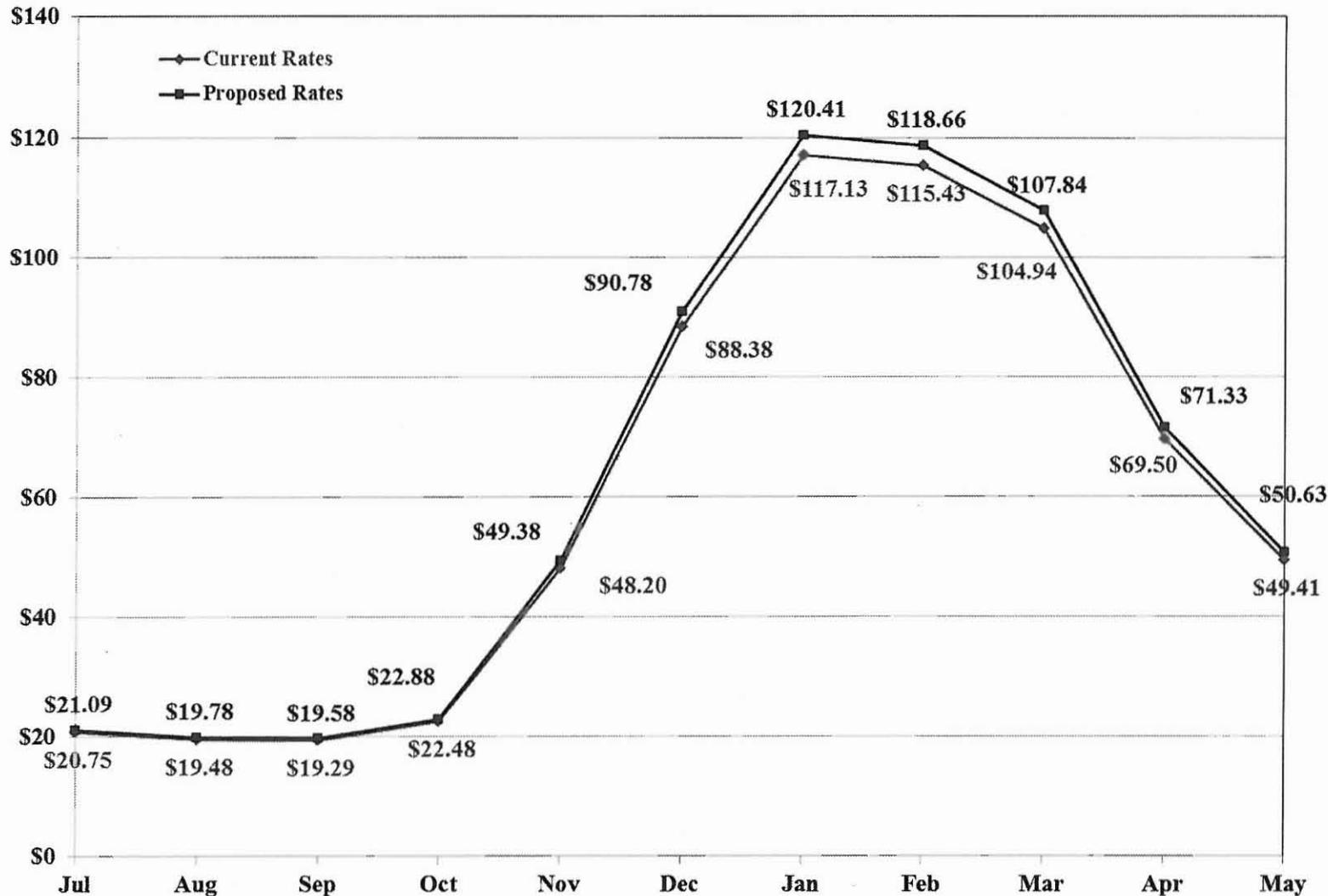


	Current	Proposed	Increase or (Decrease)
Residential	\$ 59.24	\$ 60.75	\$ 1.51
Commercial	\$ 245.17	\$ 252.36	\$ 7.19
Special Contract	\$ 8,361.61	\$ 8,616.48	\$ 254.87

# Impact on Residential Customers



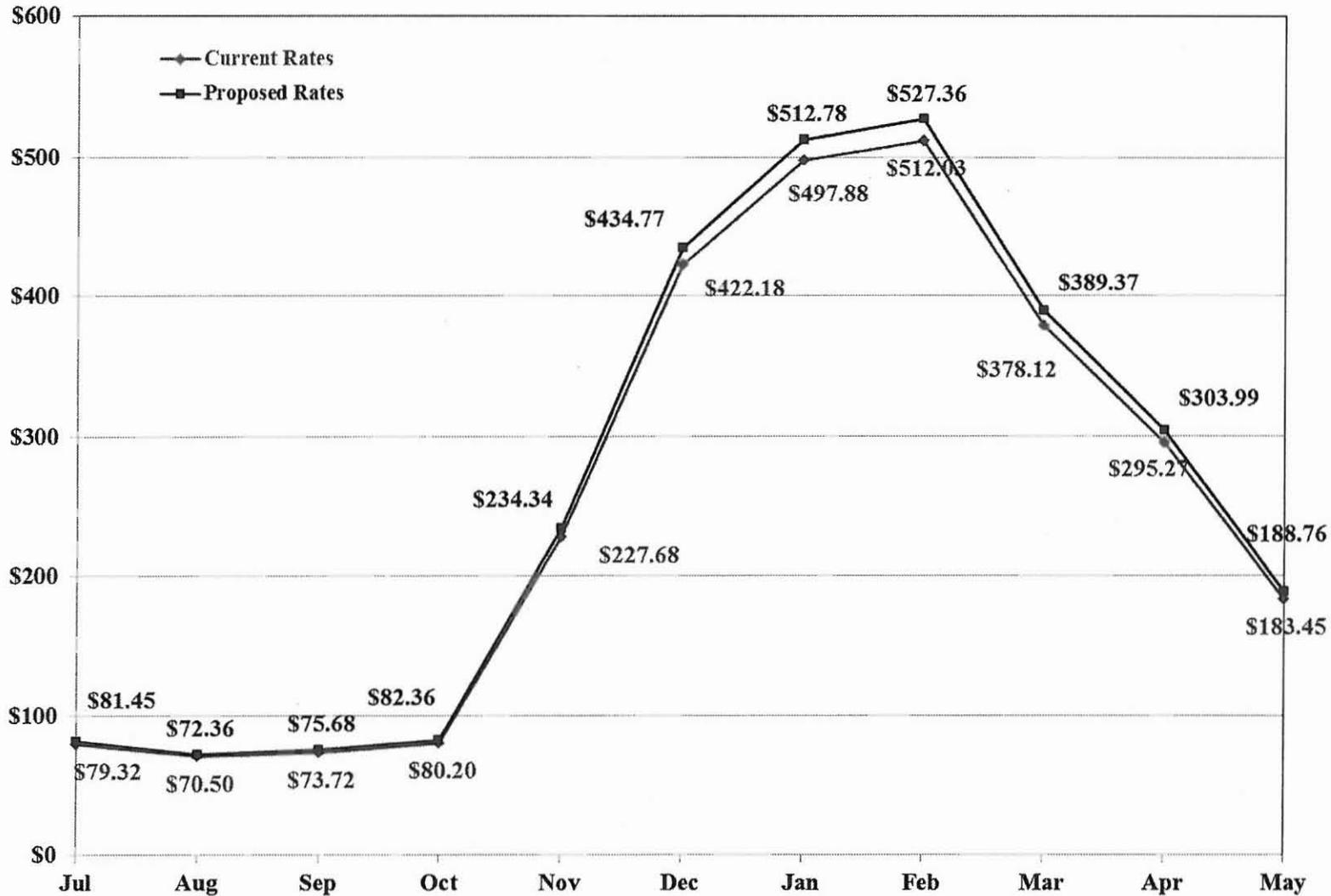
City of Trinidad, Colorado  
1876



# Impact on Commercial Customers

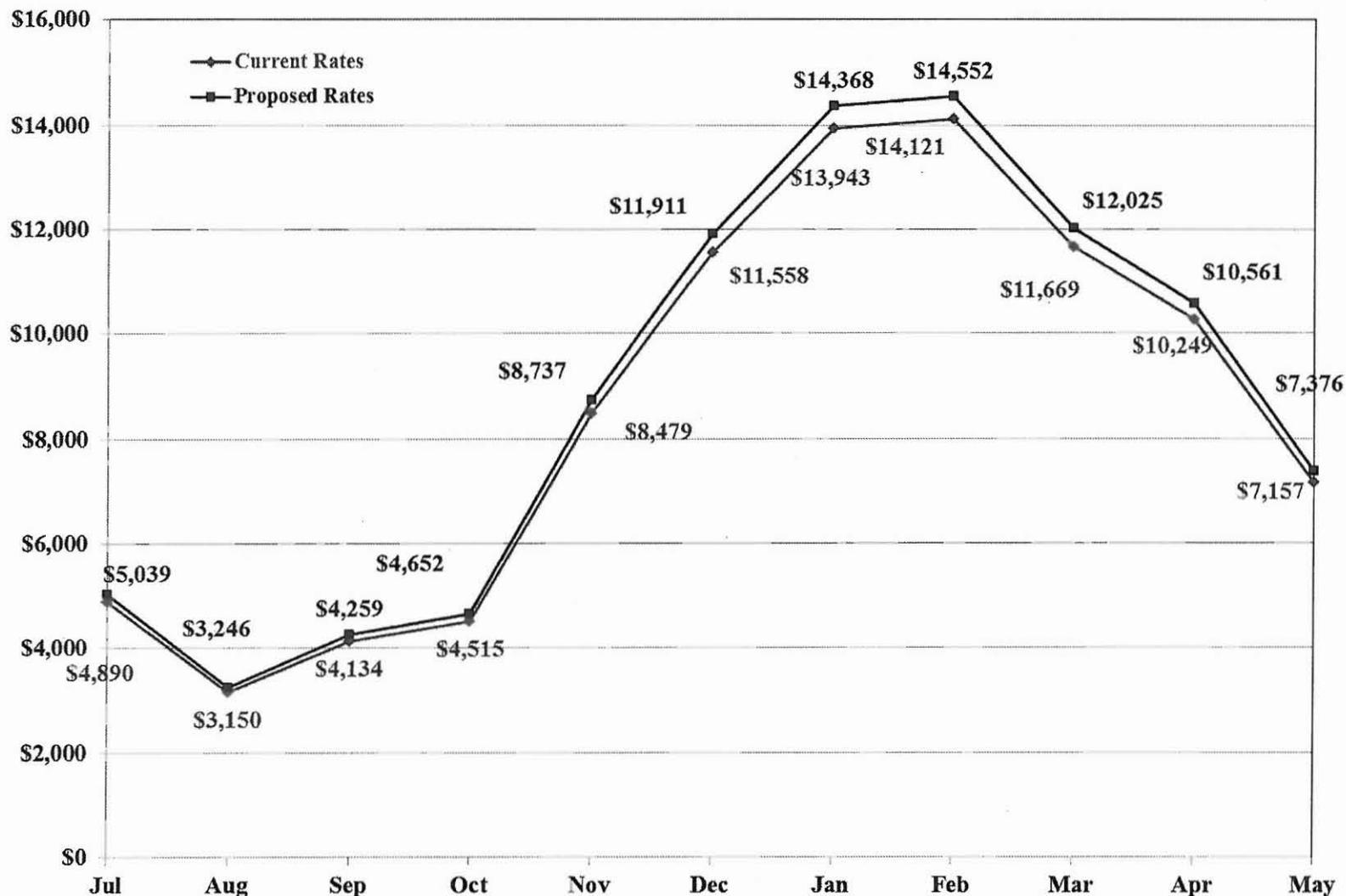


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# Impact on Special Contract Customer



# Impact on Gas Department Revenue

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	Current	Proposed	Increase or (Decrease)
Total Rate Revenue	\$4,127,092	\$4,238,701	\$ 111,609
<i>Percentage Decrease</i>			2.70%
Distribution Revenue	\$1,668,843	\$1,668,843	\$ 0



# Reason for Changes

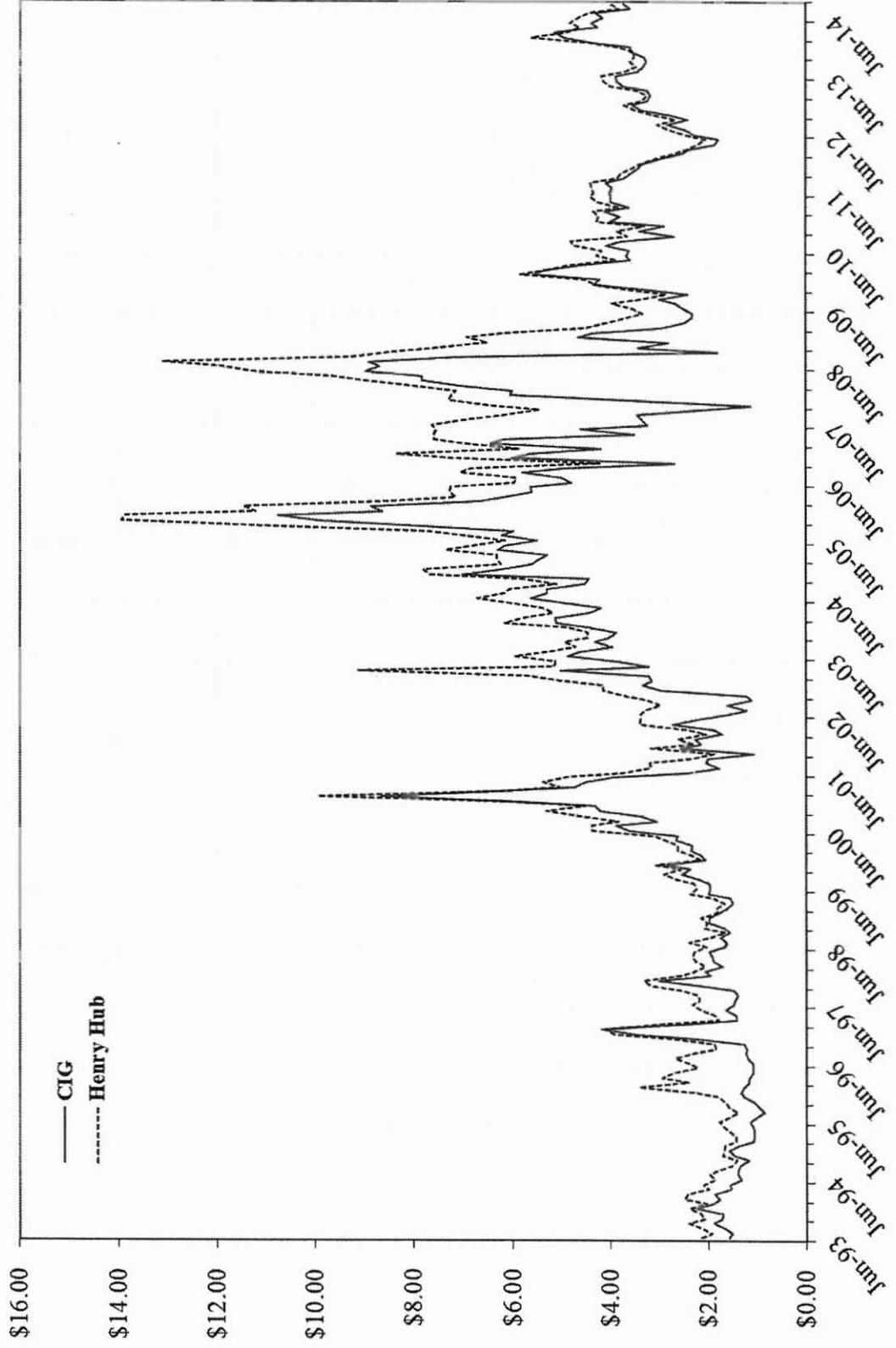
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- Lower Gas Prices
  - ✓ 12/1/2013 GSC forecasted cost was \$4.57/Dth
  - ✓ 12/1/2014 GSC forecasted cost is \$4.52/Dth
- Deferred Gas Cost
  - ✓ \$574,079 over-recovered in 12/1/2013 GSC
  - ✓ \$139,947 under-recovered in 12/1/2014 GSC
  - ✓ \$(0.0000)/CCF to \$0.0245/CCF



City of Trinidad, Colorado  
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# CIG & Henry Hub Prices



# History of Gas Supply Charge

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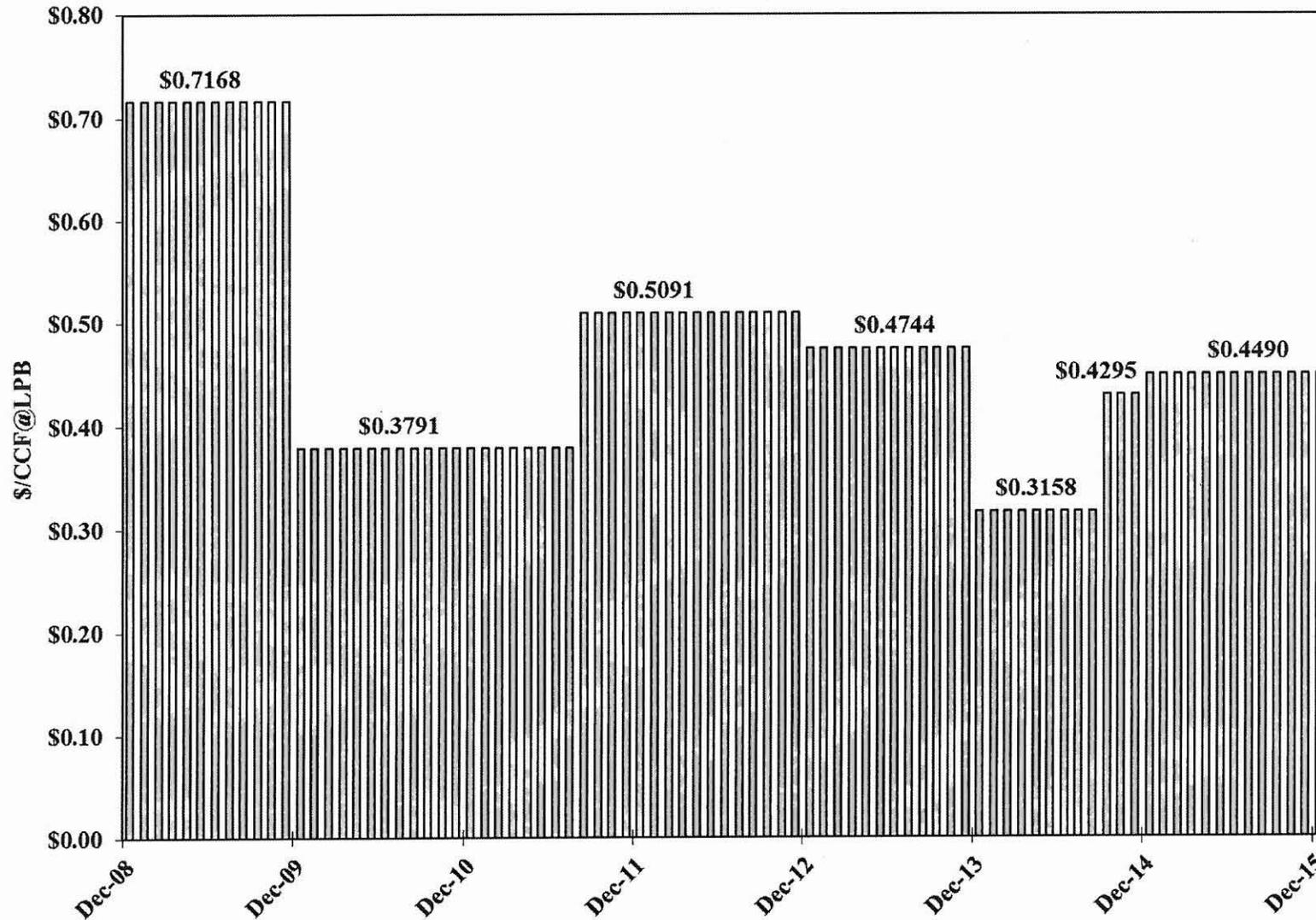


<b>Date</b>	<b>GSC</b>
12/1/2008	\$ 0.71680
12/1/2009	\$ 0.37910
8/1/2011	\$ 0.50910
12/1/2012	\$ 0.47440
12/1/2013	\$ 0.31580
9/1/2014	\$ 0.42950
12/1/2014	\$ 0.44900

# History of Gas Supply Charge (cont'd)



City of Trinidad, Colorado  
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# Recommendations

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- Approve the proposed 12/1/2014 Gas Supply Charge
- Closely monitor Deferred Gas Cost balance
  - ✓ If balance grows unreasonably over or under-recovered consider an interim adjustment in the Gas Supply Charge

# Next Steps

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City of Trinidad, Colorado  
1876

- Questions, Comments, Concerns, & Discussion



ORDINANCE NO. 1946

AN ORDINANCE OF THE CITY OF TRINIDAD, COLORADO, REGARDING THE PROVISION OF NATURAL GAS SERVICE BY THE TRINIDAD MUNICIPAL NATURAL GAS DEPARTMENT, AND DECREASING THE GAS SUPPLY CHARGE APPLICABLE TO ALL CUSTOMER SERVICE CLASSIFICATIONS

WHEREAS, Chapter XI, Section 11.1, of the Charter of the City of Trinidad, Colorado confers upon the City Council “all municipal powers relating to all utilities and franchises including, but without limitation to, all power and authority now existing and which may be hereafter provided by the Constitution or Statutes of the State of Colorado, or by ordinance or by this Charter,”; and

WHEREAS, by City Ordinance No. 1866 the City Council of the City of Trinidad, Colorado, previously adopted “Gas Tariff No. 1” to govern the provision of natural gas service by the Trinidad Municipal Natural Gas Department; and

WHEREAS, Gas Tariff No. 1 mandates the calculation of a Gas Supply Charge on an annual basis to recover the costs of purchasing natural gas for the City’s customers, which costs include the costs of upstream pipeline transportation, storage, and other costs incurred to deliver natural gas supplies to the City’s distribution system at the City’s receipt point; and

WHEREAS, based upon the Trinidad Municipal Natural Gas Department’s most recent Gas Supply Charge calculation, the City Council seeks to decrease the Gas Supply Charge applicable to all customer service classifications from \$0.4744 per one hundred cubic feet (“CCF”) to \$0.3158 per CCF effective December 1, 2013, and to increase the Gas Supply Charge from \$0.3158 per CCF to \$0.4295 per CCF effective September 1, 2014.

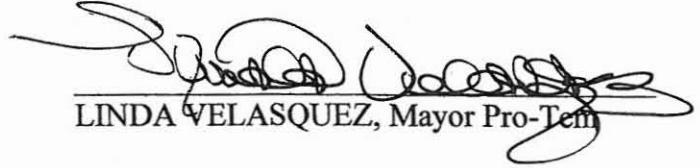
NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TRINIDAD, COLORADO, that:

1. **Gas Supply Charge.** The Gas Supply Charge applicable to all natural gas service classifications-Residential Sales (“RS”), Commercial Sales (“CS”), and Special Contract (“SC”) – of the Trinidad Municipal Natural Gas Department pursuant to Gas Tariff No. 1, as adopted by City Ordinance No. 1866, is hereby decreased from \$0.4744 per CCF to \$0.3158 per CCF, effective upon the effective date of this Ordinance, and shall be reflected on utility bills issued on and after December 1, 2013, and shall be increased from \$0.3158 per CCF to \$0.4295 per CCF on utility bills issued on and after September 1, 2014.

INTRODUCED BY COUNCILMEMBER BOLTON, READ AND ORDERED PUBLISHED this 6th day November, 2013.

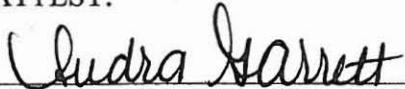
FINALLY PASSED AND APPROVED this 19<sup>th</sup> day of November, 2013.

THE EFFECTIVE DATE OF THIS ORDINANCE SHALL BE the 29<sup>th</sup> day of November,  
2013.



LINDA VELASQUEZ, Mayor Pro-Tem

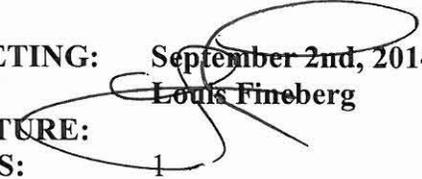
ATTEST:



AUDRA GARRETT, City Clerk



## COUNCIL COMMUNICATION

CITY COUNCIL MEETING: September 2nd, 2014  
PREPARED BY: Louis Fineberg  
DEPT. HEAD SIGNATURE:   
# OF ATTACHMENTS: 1

**SUBJECT:** Update on Multimodal Station

**PRESENTER:** Louis Fineberg, Planning Director

**RECOMMENDED CITY COUNCIL ACTION:** No action required.

**SUMMARY STATEMENT:**

An update on the status of the land acquisition for the multimodal station.

**EXPENDITURE REQUIRED:** NA.

**SOURCE OF FUNDS:** NA.

**POLICY ISSUE:** NA.

**ALTERNATIVE:** NA.

7

7

## BNSF RAILWAY COMPANY

### REAL ESTATE PURCHASE AND SALE AGREEMENT

This Real Estate Purchase and Sale Agreement (“**Agreement**”) is entered into as of the Effective Date (defined below) between the **City of Trinidad**, a State of Colorado municipality (“**Buyer**”) and **BNSF RAILWAY COMPANY** (“**Seller**” or “**BNSF**”). This Agreement shall not be binding upon either party unless and until both parties have executed and delivered this Agreement. The submission of this document by Seller to Buyer shall not constitute an offer to sell by Seller.

In consideration of the mutual covenants set forth in this Agreement and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

#### **GENERAL TERMS AND DEFINITIONS**

1. The following terms shall have the meanings set forth below:

Closing. The consummation of the transaction contemplated by this Agreement, which shall be deemed to have occurred when both parties have delivered the items contemplated in Section 4 of this Agreement.

Closing Date Notwithstanding, anything herein, this sale shall close on or before December 15, 2014. Seller shall have the right to extend the closing up to ninety (90) days, at Seller’s sole judgment.

Earnest Money The cash sum of Thirteen Thousand Six Hundred and 00/100 (\$13,600.00) made payable to The Bank of New York Mellon.

Effective Date The date of Seller’s execution of this Agreement as indicated below Seller’s signature hereto.

Property That parcel of land situated in or near the City of Trinidad, County of Las Animas and State of Colorado, shown hatched black on map marked Exhibit A dated January 23, 2013 attached hereto and made a part hereof, subject to revision as set forth below in Section 3.

Purchase Price The sum of Two Dollars Ninety Eight Cents (\$2.98) per gross square foot with the square footage to be determined by the Survey pursuant to Subsection 3(a).

Review Period The period commencing on the Effective Date and expiring at 5:00 p.m. central time on the date that is 45 days after the Effective Date.

#### **PURCHASE AND SALE**

2. (a) Subject to the terms and conditions set forth in this Agreement, Seller agrees to sell to Buyer, and Buyer agrees to purchase and accept from Seller, for the Purchase Price, all of Seller’s right, title and interest (if any), in and to the Property.

(b) Seller may assign its rights (but not its obligations) under this Agreement to Goldfinch Exchange Company LLC, (“Goldfinch”) an exchange intermediary, in order for Seller to effect an exchange under Section 1031 of the Internal Revenue Code. In such event, Seller shall provide Buyer

with a Notice of Assignment, attached as Exhibit B, and Buyer shall execute an acknowledgement of receipt of such notice. Buyer may also assign its rights (but not its obligations) under this Agreement to an exchange intermediary in order for Buyer to effect an exchange under Section 1031 of the Internal Revenue Code.

(c) Upon submission by Buyer to Seller of this Agreement signed by Buyer, Buyer shall deposit the Earnest Money with Goldfinch as escrow agent. Goldfinch shall hold the Earnest Money in escrow pursuant to the terms and conditions of this Agreement. The Earnest Money shall be refunded to Buyer if this Agreement is not executed and delivered by Seller within forty five (45) days after the date Buyer delivers this Agreement fully executed by Buyer and deposits the Earnest Money. Buyer shall not be entitled to any interest on the Earnest Money held by Goldfinch pursuant to this Agreement. Buyer acknowledges that receipt by Goldfinch of the Earnest Money shall not constitute acceptance of this Agreement or Buyer's offer provided, however, that Goldfinch shall return the Earnest Money to Buyer if Seller does not execute and deliver this Agreement within forty-five (45) days after Buyer deposits the Earnest Money. Goldfinch shall deliver the Earnest Money to the party entitled thereto pursuant to this Agreement, provided, however if there is a dispute between Buyer and Seller as to who is so entitled, Goldfinch may deposit the Earnest Money with a court of competent jurisdiction pending resolution of such dispute.

(d) The balance of the Purchase Price shall be paid at Closing as provided below.

## INSPECTION

3. (a) Buyer shall cause to be prepared a survey of the Property certified to Seller, Buyer and such other parties as Buyer may choose showing the boundaries of the Property and any improvements located thereon (the "Survey"). Said Survey shall be delivered to Seller no later than thirty (30) days prior to the Closing Date. Seller shall have the right to review the Survey and either (i) approve or (ii) request changes to the Survey, provided said change requests are delivered within twenty (20) days of receipt of Survey. If Seller does not agree that the description of the Property contained on the Survey is the Property Seller wishes to sell or otherwise objects to the Survey then Seller may terminate this Agreement by written notice to Buyer in which case the Earnest Money shall be refunded to Buyer and neither party shall have any further obligation hereunder except those that expressly survive termination. If Seller agrees in writing that the Survey description is accurate then the description thereon shall be the definition of the Property for all purposes under this Agreement. In the event a city, county, or other governing authority where the Property is located (a "Municipality") requires a survey or plat to convey the Property (a "Plat"), the Buyer shall obtain, at Buyer's sole cost and expense, such Plat and the approval of such Municipality. Seller's obligations hereunder are conditioned upon Seller's approval of the Plat approved by the Municipality. Buyer shall provide the proposed Plat to Seller prior to submission to the Municipality and prior to the expiration of the Review Period.

(b) Buyer shall have until the end of the Review Period to examine title to the Property. If Buyer elects to obtain a title commitment for the Property Buyer may deliver to Seller no later than the expiration of the Review Period written notice of any objections to the status of title or matters reflected on the Survey that Buyer may have together with a copy of such title commitment, Survey and all matters referenced therein. Seller shall have no obligation to cure any such objection. If Seller notifies Buyer in writing that Seller will cure any such objection Seller (a) shall make good faith efforts to cure such matter by the Closing Date and if not cured by such date Buyer may terminate this Agreement in which case the Earnest Money shall be refunded to Buyer and neither party shall have any further obligation hereunder except those that expressly survive termination, and (b) may effect such cure by causing the title company issuing the title commitment to remove such matter as an exception from coverage by paying additional premium therefor or otherwise. If Seller at any time notifies Buyer in writing that Seller is not willing or able to cure any of the

such objections (including those which Seller has previously endeavored to cure) then Buyer or Seller may terminate this Agreement by written notice to the other delivered within five (5) days after Seller so notifies Buyer that Seller is unwilling or unable to cure such objection. In the event of such termination, the Earnest Money shall be refunded to Buyer and neither party shall have any further obligation hereunder except those that expressly survive termination. If this Agreement is not so terminated, the parties shall proceed to Closing according to the remaining provisions of this Agreement.

(c) Prior to any entry upon the Property by Buyer, the surveyor preparing the Survey or other individuals on behalf of Buyer (which shall not be deemed to include Amtrak (as defined below)), Buyer shall execute and deliver to Seller an Entry and Confidentiality Agreement in the form attached hereto as Exhibit C and incorporated herein (the “**Entry Agreement**”). The terms and provisions of the Entry Agreement are incorporated herein, shall survive the Closing, shall not be merged into the Deed or any document delivered at Closing and shall survive any termination of this Agreement. Any breach by Buyer of its obligations under the Entry Agreement shall be deemed a breach by Buyer under this Agreement. Notwithstanding anything in this Agreement to the contrary, including the provisions of Section 6(a), nothing in this Agreement or the exercise of any remedy by Seller under this Agreement shall limit or affect in any manner any remedy available to Seller under the Entry Agreement in the event of a breach of Buyer’s obligations under the Entry Agreement.

(d) Notwithstanding the foregoing provisions of Section 3(b), Buyer shall not be entitled to object to any judgment against Seller which may appear of record as a lien against the Property. Seller shall pay such lien if and when it is judicially determined to be valid, and Seller hereby indemnifies the Buyer for all loss arising out of Seller's failure to have a judgment lien so settled and satisfied.

(e) Notwithstanding the foregoing provisions of Section 3(b), Buyer shall not be entitled to object to the lien of any of Seller’s mortgages. Seller shall deliver to Buyer, who shall place of record, good and sufficient releases of the liens of any mortgages on the Property securing indebtedness to which Seller is obligated to pay within one hundred eighty (180) days after the first meeting of Seller's Board of Directors held after the Closing. In the event Seller shall be unable to obtain said releases for any reason, Seller shall have the right to repurchase the Property from Buyer for the Purchase Price and Buyer shall reconvey the Property to Seller free and clear of defects or objections arising after the Effective Date upon which this Agreement shall terminate and neither party shall have any further rights or obligations hereunder except those that expressly survive termination.

## **CLOSING**

4. (a) Subject to the terms of this Agreement, the Closing shall occur on the Closing Date. On or before the Closing Date Buyer shall (1) pay the Purchase Price, less the Earnest Money to Seller in cash, by certified check made payable to The Bank of New York Mellon or by wire transfer to Seller's account as designated by Seller and the Earnest Money shall become the property of Seller and no longer subject to the terms of this Agreement, and (2) such other affidavits or certificates as are reasonably necessary or customary to consummate the transaction.

(b) After Buyer has delivered the foregoing items, Seller shall deliver to Buyer (1) a Quitclaim Deed in recordable form, subject to all matters of record and restating the exceptions and reservations set forth in Section 8, Section 9 and Section 10 (the “**Deed**”) conveying to Buyer Seller’s interest, if any, in and to the Property, (2) counterparts of the Exchange Assignment, and (3) such other affidavits and certificates as is reasonably necessary or customary to consummate the transaction in form and substance acceptable to Seller.

## **PRORATIONS AND CLOSING COSTS**

5. (a) Real estate taxes and assessments payable or paid in the year of Closing shall be prorated by Seller and Buyer as of the Closing Date on the basis of the most recent ascertainable taxes assessed against the Property. If the Property is not separately assessed for tax purposes then there shall be no proration of taxes between Buyer and Seller, the parties shall cooperate post-Closing to cause the Property to be separately assessed and each party shall indemnify the other for any failure to pay real estate taxes and assessments due with respect to the properties constituting the tax parcel to which the Property is a part. Notwithstanding the foregoing, there shall be no proration for taxes to the extent the payment of same has been assumed by a tenant under an existing lease to be assigned to Buyer. All outstanding assessments on the Property levied or due in the year of Closing and afterward shall be paid by Buyer.

(b) The parties shall cooperate so that utilities serving the Property that are not the responsibility of a tenant under a lease to be assigned to Buyer at Closing, to the extent feasible, shall be switched into the name of Buyer as of the Closing Date, so that a final statement can be issued to Seller for the billing period ending on the Closing Date, and so that the first day of the first billing cycle in Buyer's name can begin on the Closing Date. If, however, the final statement covering the final period of ownership by Seller also includes periods of ownership by Buyer, Buyer shall pay Seller at Closing the amount attributable to Buyer's period of ownership. Buyer shall be responsible to pay all utilities serving the Property due after Closing.

(c) Buyer shall pay all closing costs associated with Closing including, but not limited to, any escrow fees, documentary stamps and other recording costs associated with this transaction, excise taxes, the cost of any state, county or local transfer taxes, the cost of the Survey, and the costs associated with any title insurance obtained by Buyer.

(d) If any real estate broker or agent can establish a valid claim for commission or other compensation as a result of Buyer having used their services in connection with the purchase of the Property, all such commission or other compensation shall be paid by Buyer. Seller shall not be liable for any real estate commissions or finder's fees to any party with respect to the sale of the Property, except amounts due to Jones Lang LaSalle Brokerage Inc. ("**Broker**") pursuant to a separate agreement. Buyer acknowledges that Broker has advised, and hereby advises, Buyer that the Broker is acting on behalf of the Seller, with the duty to represent Seller's interest, and Broker is not the agent of the Buyer. If a policy of title insurance is to be obtained, Buyer should obtain a commitment for title insurance which should be examined prior to closing by an attorney of Buyer's choice. Prior to the execution of this Agreement, Broker has advised and hereby advises the principals of this transaction, that this Agreement is binding on them, and the principals hereby acknowledge that they have been so advised. Broker has no authority to execute any document on behalf of Seller, make representations on behalf of Seller or bind Seller in any manner.

(e) The obligations of the parties in this Section 5, to the extent incurred, shall survive any termination of this Agreement.

(f) On or prior to the Effective Date of this Agreement, Broker has advised and hereby advises Buyer, by this writing and by other means, and Buyer hereby acknowledges that Buyer has been so advised, that Buyer should have the title to the Property examined and should use legal counsel.

## **DEFAULT AND REMEDIES**

6. (a) In the event of a default by Buyer under the terms of this Agreement, Seller's sole and exclusive remedies shall be: (a) terminate this Agreement whereupon the parties shall have no further obligations hereunder except those that expressly survive termination, or (b) waive such default and proceed to Closing,

or (c) obtain specific performance of this Agreement. If Seller terminates this Agreement as provided in the previous sentence Seller shall be entitled to retain the Earnest Money. Notwithstanding the foregoing, nothing contained herein shall waive or diminish any right or remedy Seller may have at law or in equity for Buyer's default or breach of any obligation hereunder to be performed by Buyer after Closing. It is hereby agreed that Seller's damages in the event of a default by Buyer hereunder are uncertain and difficult to ascertain, and that the Earnest Money constitutes a reasonable liquidation of such damages and is intended not as a penalty, but as liquidated damages.

(b) In the event of a default by Seller under the terms of this Agreement, Buyer's sole and exclusive remedies hereunder shall be to terminate this Agreement and receive a refund of the Earnest Money plus an additional amount from Seller not to exceed ten percent of the Purchase Price equal to the out-of-pocket expenses (including attorneys' fees) incurred by Buyer in connection with this Agreement as evidenced by copies of third party invoices delivered to Seller. Upon such termination and the payment of such sums by Seller the parties shall have no further obligations hereunder except those that expressly survive termination. Notwithstanding the foregoing, nothing contained herein shall waive or diminish any right or remedy Buyer may have at law or in equity for Seller's default or breach of any obligation hereunder to be performed by Seller after Closing.

## NATURE OF SALE

7. (a) Buyer has been allowed to make an inspection of the Property. **BUYER IS PURCHASING THE PROPERTY ON AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, INCLUDING THOSE RELATING TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY, AND IS NOT RELYING ON ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM SELLER AS TO ANY MATTERS CONCERNING THE PROPERTY,** including, but not limited to the physical condition of the Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Property with Environmental Laws (defined below) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Property; the presence of any Hazardous Substances (defined below), wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, under, or in proximity to the Property; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Property; the condition of title to the Property, and the leases, easements, permits, orders, licenses, or other agreements, affecting the Property (collectively, the "**Condition of the Property**"). Buyer represents and warrants to Seller that Buyer has not relied and will not rely on, and Seller is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Property or relating thereto (including specifically, without limitation, property information packages distributed with respect to the Property) made or furnished by Seller, the manager of the Property, or any real estate broker or agent representing or purporting to represent Seller, to whomever made or given, directly or indirectly, orally or in writing. Buyer assumes the risk that Hazardous Substances or other adverse matters may affect the Property that were not revealed by Buyer's inspection and indemnifies, holds harmless and hereby waives, releases and discharges forever Seller and Seller's officers, directors, shareholders, employees and agents (collectively, "**Indemnitees**") from any and all present or future claims or demands, and any and all damages, losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort or asserting a constitutional claim) costs and expenses (including, without limitation fines, penalties and judgments, and attorneys' fees) of any and every kind or character, known or unknown, arising from or in any way related to the Condition of the Property or alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Property. Losses shall include without limitation (a) the cost of any investigation, removal, remedial, restoration or other response action that is required by any

Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) capital expenditures necessary to cause the Seller's remaining property or the operations or business of the Seller on its remaining property to be in compliance with the requirements of any Environmental Law, (c) losses for or related to injury or death of any person, (d) losses for or related to injury or damage to animal or plant life, natural resources or the environment, and (e) losses arising under any Environmental Law enacted after transfer. The rights of Seller under this section shall be in addition to and not in lieu of any other rights or remedies to which it may be entitled under this document or otherwise. This indemnity specifically includes the obligation of Buyer to remove, close, remediate, reimburse or take other actions requested or required by any governmental agency concerning any Hazardous Substances on the Property. The term "**Environmental Law**" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law relating in any way to human health, occupational safety, natural resources, plant or animal life or the environment, including without limitation, principles of common law and equity, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law. The term "**Hazardous Substance**" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

(b) To the fullest extent permitted by law, Buyer waives its municipal immunity and its sovereign immunity with respect to Seller for matters arising out of this Agreement and the Entry Agreement, including, without limitation, (i) for environmental and other conditions of the real property that Seller is quitclaiming to Buyer pursuant to this Agreement and of property related to the development of the Multimodal Facility (as defined below) that was formerly, but not currently, owned by Seller and Seller's predecessors-in-interest, including, without limitation, environmental remediation costs, if any; (ii) for claims arising out of work performed by Buyer or its contractors pursuant to the provisions of this Agreement, any agreement setting forth terms of the Multimodal Facility construction, the Entry Agreement and the Station Lease (as hereinafter defined); and (iii) for claims arising out of continuing rights of Buyer to enter onto property of Seller, including work performed by Buyer and Buyer's contractors on such property of Seller. Any lawful waiver of Buyer's sovereign immunity herein shall be in addition to, and not in limitation of, any lawful waiver of Buyer's sovereign immunity pursuant to the terms and provisions of this Agreement, the Entry Agreement and the Station Lease.

(c) The provisions of this Section 7 shall be binding on Buyer, and its heirs, successors and assigns, shall be included in the Deed and shall be covenants running with the land.

## RESERVATIONS

8. The obligations in this Section 8 shall be binding upon Buyer and its heirs, successors and assigns, shall be included in the Deed and shall be covenants running with the land benefiting Seller and Seller's successors and assigns. For purposes of this Section 8, Grantor shall mean Seller and Grantee shall mean Buyer. Buyer may object to the reservations set forth in Section 8(a) below in accordance with the provision of Section 3 and if Seller is unwilling or unable to cure such objection either party may terminate this Agreement as set forth in Section 3.

(a) Grantee's interest shall be subject to the rights and interests of Grantor, Grantor's licensees, permittees and other third parties in and to all existing driveways, roads, utilities, fiber optic lines, tracks, wires and easements of any kind whatsoever on the Property whether owned, operated, used or maintained by the Grantor, Grantor's licensees, permittees or other third parties and whether or not of public record. Grantor shall have a perpetual easement on the Property for the use of such existing driveways, roads, utilities, fiber optic lines, tracks, wires and easements by Grantor and Grantor's

licensees, permittees and customers. Grantor shall have a non-exclusive easement for the construction, maintenance and operation of one or more pipelines or fiber optic lines and any and all communications facilities as may be located in the future on the Property within 60 feet of the center line of any main track on or adjacent to the Property and as may be presently located on the Property. In the exercise of the reservations, rights, interests, and easements referenced herein, the exercising party shall not unreasonably interfere with the use or occupation of the Property by Grantee, its successors or assigns, National Railroad Passenger Corporation, its successors or assigns, or the tenants, invitees, passengers, employees, agents, or contractors of any of them.

(b) Grantee's interest shall be subject to a reservation to Grantor of all coal, oil, gas, casing-head gas and all ores and minerals of every kind and nature including sand and gravel underlying the surface of the Property, together with the full right, privilege and license at any and all times to explore, or drill for and to protect, conserve, mine, take, remove and market any and all such products in any manner which will not damage structures on the surface of the Property, together with the right of access at all times to exercise said rights. In the exercise of the reservations, rights, privileges and licenses referenced herein, Grantor and its successors and assigns shall not unreasonably interfere with the use or occupation of the Property by Grantee, its successors or assigns, National Railroad Passenger Corporation, its successors or assigns, or the tenants, invitees, passengers, employees, agents, or contractors of any of them.

(c) Any improvements constructed or altered on the Property after the date Grantor quitclaims its interest, if any, to Grantee shall be constructed or altered in such a manner to provide adequate drainage of water away from any of Grantor's railroad tracks on nearby property.

*(d) Grantor reserves unto itself, its successors and assigns, in perpetuity, any and all non-riparian water and water rights associated with the Property, including but not limited to, any and all ditches and ditch rights, water wells, springs, diversion works, water lines, pipes, pumps, motors, generators, electrical gear and wires, and any related equipment and improvements whatsoever, historically used upon or associated with the Property, including all mutual water company shares, ditch shares, water service agreements and contracts, and water claims, and including but not limited to, all unappropriated, undeveloped or unused water and water rights associated with or underlying the Property, and the exclusive right to develop and take water from the Property by any means, and including all appropriations, priorities, permits and certificates which are appurtenant to, associated with, used upon, flowing over, under, or lying on, in, or under the Property, together with the perpetual right to construct, install, operate, replace, rework, reconstruct, rehabilitate and maintain any and all water diversion, production, and transportation structures, equipment, improvements and piping, including but not limited to, headgates, diversion structures, water wells, water well houses, water well casing, water well screens, spring collection galleries, sumps, water pipes, and related electrical gear and wires, and to construct, install, operate and maintain water pumps and hydroelectric generation equipment and all equipment necessary, convenient or related to the production, transportation or delivery of water from, on, under or across the Property, or any portion thereof. In the exercise of the reservations and rights referenced herein, Grantor, and its successors and assigns shall not unreasonably interfere with the use or occupation of the Property by Grantee, its successors or assigns, National Railroad Passenger Corporation, its successors or assigns, or the tenants, invitees, passengers, employees, agents or contractors of any of them.*

(e) Grantee acknowledges and affirms that Grantor may not hold fee simple title to the Property, that Grantor's interest in all or part of the Property, if any, may rise only to the level of an easement for railroad purposes. Grantee is willing to accept Grantor's interest in the Property, if any, on this basis and expressly releases Grantor, its successors and assigns from any claims that Grantee or its successors may have as a result of an abandonment of the line of rail running over or adjacent to any portion of the

Property. In light of Grantor's disclosure that it may not hold a fee interest in all or part of the Property, Grantee agrees to indemnify, defend and hold Grantor harmless from any suit or claim for damages, punitive or otherwise, expenses, attorneys' fees, or civil penalties that may be imposed on Grantor as the result of any person or entity claiming an interest in any portion of the Property or claiming that Grantor did not have the right to transfer all or part of the Property to Grantee.

(f) Within 90 days after closing, Grantee shall, at its sole cost and expense, construct a protective chain link fence a minimum of six (6) feet in height upon, over and across the Property as shown X-X-X on the attached Exhibit "A" and by this reference made a part hereof. Grantee shall thereafter repair, maintain and renew said fence, so as to keep same in good repair at the sole cost of the Grantee. If fence is not constructed within this time frame, Grantor may construct said fence at the sole cost of Grantee and Grantee shall pay Grantor all associated costs within 10 days of receipt of bills.

(g) Grantor reserves unto itself, its successor and assigns, in perpetuity, the right, privilege and easement to maintain a 50' unobstructed sight zone or area over that portion of the premises shown on the attached Exhibit "A" and by this reference made a part hereof, including the right to remove any or all obstructions thereon that would interfere with the view between the railroad tracks and right of way of Grantor in the vicinity of said premises and any pedestrian or vehicular traffic on the roads or passageways approaching said railroad tracks or right of way. Grantee covenants and agrees to keep said area free of all buildings, structures, trees, shrubbery, fences or any other obstructions that will interfere in any way whatsoever with the view across said area, which covenant shall run with the land.

(h) Seller's Reserved Right to Repurchase the Property. In the event of a Repurchase Event (defined below), Seller shall have the right to repurchase the Property from Buyer at any time (the "Repurchase Right") commencing on the Closing Date and continuing for the Repurchase Period (defined below). For purposes of this Agreement, the "Repurchase Period" shall commence on the Closing Date and continue thereafter until the date that is the later of: (i) ninety-nine (99) years after the Closing Date or (ii) twenty-one (21) years less one day after the death of the last survivor of the lineal descendants of Queen Elizabeth II of England living on the Closing Date.

(1) A "**Repurchase Event**" as used herein shall mean either:

(i) Buyer's receipt of a bona fide third party offer to purchase or acquire any interest in the Property or any portion thereof on terms which Buyer desires to accept and/or Buyer's offering to sell or transfer any interest in the Property or any portion thereof to a third party on terms which such third party desires to accept (any of the above as may be contemplated being referred to herein as a "**Contemplated Transfer**") (*i.e.*, there shall be no sale or other transfer of any interest in the Property or any portion thereof without Seller having the right to exercise its Repurchase Right); or

(ii) Seller requires that ownership of the Property be transferred to Seller for railroad purposes or activities in order to comply with any law or regulation, or if Seller otherwise determines such ownership is necessary or desirable for railroad purposes as determined by Seller in its sole discretion ("**Railroad Need**").

(2) In the case of a Contemplated Transfer, Buyer must immediately provide written notice to Seller of the details of the Contemplated Transfer, including without limitation the name, address and background of the third party involved with the Contemplated Transfer, and a true and complete copy of any proposed purchase and sale agreement, letter of intent or other document evidencing the proposed terms under which the Contemplated Conveyance would

occur (the “**Contemplated Transfer Notice**”) (and following the Contemplated Transfer Notice, Buyer shall provide such other details regarding the Contemplated Transfer as Seller may reasonably request). Seller will have until thirty (30) days after the date Seller has received a Contemplated Transfer Notice (the “**Exercise Period**”) to decide whether or not to exercise its Repurchase Right to purchase the Property (or such lesser amount as may be contained in the Contemplated Transfer) and to provide Buyer with written notice of its decision (the “**Exercise Notice**”). In no event shall Buyer have the right to complete any Contemplated Transfer unless a Contemplated Transfer Notice has been given to Seller and Seller has elected not to deliver an Exercise Notice as provided above.

(3) If Seller exercises its Repurchase Right to purchase the Property (or such lesser amount as may be designated by Railroad in the Exercise Notice) because of a Railroad Need, the Closing Date designated in the Exercise Notice delivered to Buyer will be at least one (1) year from the date of the Exercise Notice. Notwithstanding the foregoing, however, if Seller must acquire the Property (or such lesser amount as may be designated by Seller in the Exercise Notice) sooner in order to comply with any law or regulation, Seller may designate an earlier Closing Date.

(4) Notwithstanding the foregoing, in any event, the Repurchase Right shall terminate upon: (i) Seller's exercise of the Repurchase Right to acquire all of Buyer's interests in and to the Property, or (ii) conveyance of all of Buyer's interests in and to the Property to a third party upon Seller's failure to exercise the Repurchase Right. If Buyer conveys a portion of Buyer's interests in and to the Property to a third party upon Seller's failure to exercise the Repurchase Right with respect to such portion, then Seller's Repurchase Right shall expire with respect to such portion conveyed to a third party.

(5) If Seller decides to exercise its Repurchase Right, then the purchase price for Seller's repurchase of the Property (the “**Repurchase Price**”) shall be the lesser of:

- (i) the purchase price contained in the Contemplated Transfer Notice, or
- (ii) the Purchase Price (or a pro-rated amount based on square footage for less than all of the Property).

(6) If Seller exercises its Repurchase Right with respect to a Contemplated Transfer, then the closing of such repurchase (“**Repurchase Closing**”) will occur sixty (60) days from the date of the Exercise Notice, or such earlier date as may be specified by Seller in the Exercise Notice (the “**Repurchase Closing Date**”). At the Repurchase Closing:

- (i) Seller shall tender the Repurchase Price to Buyer;
- (ii) Buyer shall convey the Property to Seller in accordance with the terms and conditions of the Contemplated Transfer; provided, however, that Buyer agrees to execute Seller's standard Real Estate Purchase and Sale Agreement (“**Purchase Contract**”) modified to incorporate the terms of the Contemplated Transfer; and
- (iii) all other obligations contained in the Contemplated Transfer and the Purchase Contract shall be performed by the respective parties in accordance with the terms and conditions contained therein.

(7) If Seller exercises its Repurchase Right with respect to a Railroad Need, then the Repurchase Closing will occur one (1) year from the date of the Exercise Notice, or such earlier date as may be specified by Seller in the Exercise Notice. At the Repurchase Closing:

- (i) Seller shall tender the Repurchase Price to Buyer;
- (ii) Buyer shall convey the Property to Seller; provided, however, that Buyer agrees to execute Seller's standard Purchase Contract; and
- (iii) all other obligations contained in the Purchase Contract shall be performed by the respective parties in accordance with the terms and conditions contained therein.

(8) During the term of the Repurchase Right, any leases by Buyer of some or all of the Property to third parties, except Buyer's lease with Amtrak's, its successors and assigns, shall expressly state in such leases that such lease rights are subject and subordinate to Seller's Repurchase Right and any such lease rights are subject to termination upon a reconveyance of the Property from Buyer to Seller pursuant to a Repurchase Closing.

(9) Seller has the right to freely assign the Repurchase Right at any time during the term to any party without Buyer's consent. For purposes of this Section 8(h), all references to Seller shall include Seller's assignee of its Repurchase Right. A memorandum of the Repurchase Right ("**Memorandum of Repurchase Right**") in the form attached hereto as Exhibit "D" shall be filed in the Las Animas County Records at Closing.

#### **AMTRAK DEED PROVISIONS**

9. The obligations in this Section 9 shall be binding upon Buyer, its successors and assigns, and Seller, its successors and assigns, and shall be included in the Deed and shall be covenants running with the land benefiting Seller, its successors and assigns, Buyer, its successors and assigns, and Amtrak, its successors and assigns. For purposes of this Section 9, Grantor shall mean Seller and Grantee shall mean Buyer. The Deed shall contain the following provisions ("**Amtrak Deed Provisions**"):

Grantor and Grantee acknowledge that the National Railroad Passenger Corporation, its successors, assigns (collectively, "Amtrak") currently uses portions of the [**Demised Premises\***] for operation of passenger rail services and that the continued use by Amtrak of the [Demised Premises] for such uses is of benefit to both Grantor and Grantee. This Deed is hereby restricted and Grantor, for itself, its successors and assigns and for Amtrak, hereby reserves rights and the transfer of the [Demised Premises] shall be subject to, the right to use the [Demised Premises] or a portion thereof, for the operation of passenger rail services and railroad business which shall include, but in no way shall be limited to: depots, platforms, canopies, parking areas, railroad servicing facilities, waiting rooms, ticket offices and the right of continued, unrestricted ingress and egress to the [Demised Premises] and to such passenger rail services, railroad operations, business and facilities, for consideration of one dollar (and no additional charge), for as long as Amtrak desires to utilize such portion of the [Demised Premises] for passenger rail services, railroad purposes or business. Amtrak does not waive any rights it has pursuant to the Rail Passenger Service Act, 49 U.S.C. §§ 24101 et seq, as amended or as may be amended in the future ("Act") and all rights under the Act are hereby preserved for the benefit of Amtrak. Such restrictions, reservations and rights shall be permanent and

perpetual easements, rights and restrictions that shall run with the land until such time as Amtrak shall notify the then current owner that it no longer desires or intends to utilize such portions of the [Demised Premises] for railroad purposes or business. Grantee shall in no way interfere with such railroad purposes or business or use or reduce the portion of the [Demised Premises] that is currently used for railroad purposes or business or impede the ingress or egress to such facilities. Grantor hereby assigns to Amtrak, its successors and assigns, all of its rights, restrictions and reservations as set forth herein.

\*Conform to the terminology used in the deed.

## POST-CLOSING OBLIGATIONS

10. Buyer and Seller agree that the following “**Post-Closing Obligations**” shall survive Closing as follows:

(a) Multimodal Facility. The parties acknowledge that Buyer has authority to regulate the location of any proposed building, facility, parking lot or garage, or other structures constituting a multimodal facility (“**Multimodal Facility**”). Buyer shall cause any Multimodal Facility not fully constructed and in operation on the Effective Date hereof to be located twenty-five (25) feet from the northwesterly property line of the existing BNSF right of way area and the centerline of the closest existing BNSF track (“**Minimum Distance**”). Buyer shall ensure that the distance between any point on the exterior building line of the Multimodal Facility and any point on (i) the northwesterly property line of the BNSF right of way and (ii) the centerline of the closest existing track does not amount to less than the Minimum Distance. Any other structures installed, erected, or constructed in connection with the Multimodal Facility shall be located a minimum distance of twenty-five feet (25) from the northwesterly property line of the existing BNSF right of way area and the centerline of the closest existing BNSF track, as measured from the right of way property line and/or centerline point nearest said structure(s). Buyer agrees to submit for Seller's review plans, specifications and “as built” drawings to facilitate Seller's review of Buyer's compliance herewith.

(b) Sidewalk. Within 12 months of the Effective Date, Buyer shall build, at Buyer's sole cost and expense, a sidewalk within the Property, to be located northwest of the fenceline and running along the entire length of the Amtrak platform (“**Sidewalk Area**”), such Sidewalk Area to be generally located north and west of the fence area described in Section 8(f) herein and illustrated in Exhibit “A” attached hereto and made a part hereof.

(c) Utility Relocations. Buyer shall, at its sole cost and expense, relocate (or cause to be relocated) all utilities (whether of utility lines, poles, components or other appurtenant parts) that Seller requests in writing be relocated, the decision as to which utilities to be relocated being in Seller's sole and absolute discretion. For purposes of this Section (10)(c), utility relocation costs incurred in connection with Buyer's acquisition of or use of the Property, including the costs and expenses incurred as a result of the development of plans, reports or specifications prepared in connection with any relocation activity (all such costs and expenses, “**Relocation Costs**”) shall be borne by Buyer at its sole cost and expense.

(d) Flagging and Other Costs. Buyer shall not conduct any activities on, or be present on, any portion of the Premises or Seller's rail corridor or property that is within twenty-five (25) feet of any active railroad track, except in the presence of a flagman. In any case where a flagman or flagmen are required in connection with the presence of individuals on Seller's rail corridor or the Premises, Buyer shall provide as much advance notice as possible prior to any entry upon the Premises. Seller shall arrange for the presence of the flagman or flagmen as soon as practicable after receipt of such notice from Buyer. Buyer shall reimburse to Seller, within thirty (30) days following Buyer's receipt of each bill

therefor, Seller's costs in arranging for and providing the flagman or flagmen, which shall be billed to Buyer at Seller's then applicable standard rate. Buyer agrees to reimburse Seller (within thirty (30) days after receipt of a bill therefore) for all other costs and expenses incurred by Seller in connection with Buyer's use of the Premises or the presence, construction, maintenance, and use of any Improvements situated thereon. Notwithstanding the foregoing paragraph (d), Seller agrees to waive all costs associated with arranging for and providing flagging for a period of twenty-five (25) days, such waiver period beginning no later than 10 days after the Effective Date hereof.

## REPRESENTATIONS

11. (a) Buyer represents and warrants to Seller that if Buyer is other than a natural person or persons that it is a validly formed municipality under the laws of the State of Colorado; that it is in good standing in the state of its organization and in the state in which the Property is located; that it has all requisite authorizations to enter into this Agreement; and that the parties executing this Agreement on behalf of Buyer are duly authorized to so do. Buyer represents and warrants to Seller that it is not subject to any bankruptcy proceeding. Seller represents and warrants to Buyer that it is a validly formed corporation under the laws of the State of Delaware; that it is in good standing in the state of its organization and in the state in which the Property is located; that it is not subject to any bankruptcy proceeding; that it has all requisite corporate authorizations to enter into this Agreement; and that the parties executing this Agreement on behalf of Seller are duly authorized to so do. It shall be a condition of each party's obligations to close this transaction that the representations and warranties of the other party contained herein are true and accurate as of Closing, provided, however that if one party waives such condition by proceeding to Closing with knowledge that any of the second party's representations or warranties are inaccurate, the second party shall have no liability with respect to such inaccuracy known by the first party.

(b) Amtrak Agreements. Buyer acknowledges that the Property is subject to that certain agreement between National Railroad Passenger Corporation ("**Amtrak**") and Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company, dated September 1, 1996, as amended ("**Operating Agreement**"). Buyer also acknowledges that BNSF is obligated to provide property in the City of Trinidad, CO for intercity rail passenger use under the terms of the federal Rail Passenger Service Act (Title 49 United States Code Section 24308(a)). On or prior to the Closing, (i) Buyer shall enter into a lease with Amtrak that provides for Amtrak's use of the Property and the Multimodal Facility in Trinidad, CO on terms and conditions acceptable to Amtrak in its sole and absolute discretion and that is consistent with the Amtrak Deed Provisions (collectively, "**Station Lease**"), and (ii) Amtrak shall release BNSF in writing from all obligations under the Operating Agreement and applicable laws with respect to providing the Multimodal Facility for Trinidad, Colorado ("**Amtrak Release**"), which Amtrak Release shall be in form and substance acceptable to BNSF.

## MISCELLANEOUS

12. (a) Any notice under this Agreement must be written. Notices must be either (i) hand-delivered; (ii) placed in the United States certified mail, return receipt requested, addressed to the recipient; (iii) deposited with a nationally recognized overnight delivery service, addressed to the recipient as specified below; or (iv) telecopied by facsimile transmission to the party at the telecopy number listed below, provided that such transmission is followed with a copy sent by overnight delivery or regular mail to the address specified below. Any notice is effective upon deposit with the U.S. Postal Service or with the overnight delivery service, as applicable; all other notices are effective when received. All notices shall be addressed to the address of the recipient indicated below the signature of such party below. Either party may change its address for notice by proper notice to the other party.

(b) If the approval of any governmental agency is required for the sale of Seller's interest (if any) in the Property, it is understood and agreed that Seller's obligations under this Agreement are conditioned upon obtaining such approval and that both parties shall use good faith efforts to obtain such approval. If such approval cannot be obtained by the Closing Date, Seller may elect to extend the Closing Date to a date no later than ninety (90) days after the original Closing Date. In the event said approval cannot be obtained by such extended date, either party may terminate this Agreement without liability to the other, except that the Earnest Money shall be refunded to Buyer and thereafter neither party shall have any obligation hereunder except those that expressly survive termination.

(c) Nothing in this Agreement shall prevent Seller from discontinuing service over any railroad line or lines by which rail service may be provided to the Property.

(d) If, prior to Closing, the Property or any portion thereof is destroyed or damaged, or becomes subject to a taking by virtue of eminent domain to any extent whatsoever then either party may terminate this Agreement by written notice to the other within thirty (30) days after notice of such fact (but in any event prior to Closing). If so terminated, the Earnest Money shall be refunded to Buyer and neither party shall have any further obligations hereunder except those that expressly survive termination. If not so terminated the parties shall proceed with the Closing.

(e) Time is of the essence of each of the party's respective obligations under this Agreement. Whenever a date specified in this Agreement falls on a Saturday, Sunday, or federal holiday, the date will be extended to the next business day.

(f) This Agreement and, to the extent executed, the Entry Agreement, contains the entire Agreement between Seller and Buyer with respect to the Property. Oral statements or prior written matters not specifically incorporated into this Agreement are superseded hereby. No variation, modification, or change to this Agreement or the Entry Agreement shall bind either party unless set forth in a document signed by both parties. No failure or delay of either party in exercising any right, power or privilege hereunder shall operate as a waiver of such party's right to require strict compliance with any term of this Agreement. The captions above the section numbers of this Agreement are for reference only and do not modify or affect this Agreement. Each party has had the opportunity to have counsel review this Agreement and the Entry Agreement and, therefore, no rule of construction that any ambiguities are to be resolved against the drafting party is to be employed to interpret this Agreement, the Entry Agreement or any closing document. This Agreement and the Entry Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute the same Agreement. This Agreement and the Entry Agreement are intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any term or provision of this Agreement or the Entry Agreement or the application thereof to any person or circumstance shall for any reason and to any extent be held to be invalid or unenforceable, then such term or provision shall be ignored, and to the maximum extent possible, this Agreement and the Entry Agreement (to the extent executed) shall continue in full force and effect, but without giving effect to such term or provision.

(g) Buyer may not assign its interest in this Agreement or the Entry Agreement without Seller's prior written consent. The provisions of this Agreement and, to the extent executed, the Entry Agreement, shall bind Seller, the Buyer, and their heirs, executors, administrators, successors and assigns and shall inure to the benefit of the Seller, the Buyer and their heirs, executors, administrators, permitted successors and assigns. If Buyer is more than one person or entity, Buyer's obligations under this Agreement and, to the extent executed, the Entry Agreement, shall be joint and several.

(h) This Agreement relates only to land. Unless otherwise herein provided, any conveyance shall exclude Seller's railroad tracks and appurtenances thereto, Seller's buildings and any other improvements

on the Property, all of which may be removed by Seller within 90 days following conveyance of the Property, and if not removed, shall be deemed abandoned by the Seller without obligation on the Seller's part and shall thereafter be and become the property of the Buyer in place. Notwithstanding the foregoing, Seller shall not have to remove any improvements or fixtures for which an easement has been reserved hereunder or in the Deed.

(i) Seller is not a foreign person as the term is used and defined in Section 1445 of the Internal Revenue Code of 1986, as amended and the regulations promulgated thereunder. Seller shall, upon request of Buyer, complete an affidavit to this effect and deliver it to Buyer on or before closing of said sale.

(j) The provisions of Sections 5 through 10 and Section 12 of this Agreement shall survive Closing and shall not be merged into the Deed or any other document delivered at Closing. The provisions of Section 11 of this Agreement shall survive Closing for a period of one year and shall not be merged into the Deed or any other document delivered at Closing. Nothing in this section shall alter any requirement in any other Section of this Agreement for the provisions of such section to be incorporated into the Deed, such as Sections 7, 8, 9, and 10.

(k) If any action at law or in equity is necessary to enforce or interpret this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, costs, and discovery or investigation expenses in addition to any other relief to which that party may be entitled.

(l) SELLER AND BUYER IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO, THIS AGREEMENT.

#### **ADMINISTRATIVE FEE**

13. Buyer acknowledges that a material consideration for this agreement, without which it would not be made, is the agreement between Buyer and Seller, that the Buyer shall pay upon return of this Agreement signed by Buyer to Seller's Broker a processing fee in the amount of \$2,000.00 over and above the agreed upon Purchase Price. Said fee shall be made payable to BNSF Railway Company by a separate check.

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**IN WITNESS WHEREOF**, Buyer and Seller have executed this Agreement to be effective as of the Effective Date.

**BUYER:**

City of Trinidad

Buyer's name as it is to appear on deed  
(PRINTED/TYPED)

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

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

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

Buyer's Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

Fax: \_\_\_\_\_

Phone: \_\_\_\_\_

Buyer's SSN or EIN: \_\_\_\_\_

**SELLER:**

**BNSF RAILWAY COMPANY**

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

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

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

Seller's Address:

c/o Jones Lang LaSalle Brokerage Inc.

4300 Amon Carter Blvd., Ste 100

Fort Worth, Texas 76155

Attn: Transaction Manager

Fax: 817-306-8129

Phone: 817-230-2600

\_\_\_\_\_  
Date of Seller's Execution (Effective Date)

**EXHIBIT "A"**

[Attach Map showing Property cross-hatched in black]

**EXHIBIT "B"**

NOTICE OF ASSIGNMENT

**Goldfinch Exchange Company LLC**

*A Delaware limited liability company*

*40 Lake Bellevue Drive, Suite 275*

*Bellevue, WA 98005*

*425-646-4020*

*425-637-2873 fax*

**NOTICE OF ASSIGNMENT**

**TO:** City of Trinidad  
and any assignees or exchange intermediaries of Buyer

You and BNSF Railway Company (“BNSF”) have entered into the Real Estate Purchase and Sale Agreement, dated \_\_\_\_\_, 2014 for the sale of the real property described therein. You are hereby notified that BNSF has assigned its rights as Seller, but not its obligations, to Goldfinch Exchange Company LLC for the purpose of effecting a tax deferred exchange under Internal Revenue Code Section 1031. This is an assignment of rights only and BNSF will deed the property directly to you.

**ACKNOWLEDGED:**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "C"**

ENTRY AND CONFIDENTIALITY AGREEMENT

## ENTRY AND CONFIDENTIALITY AGREEMENT

**THIS ENTRY AND CONFIDENTIALITY AGREEMENT** (“**Agreement**”) is made as of the Effective Date (defined below) by **BNSF RAILWAY COMPANY**, a Delaware corporation (“**Railroad**”) and \_\_\_\_\_ (“**Permittee**”).

WHEREAS, Permittee as Buyer and Railroad as Seller have entered into that certain Real Estate Purchase and Sale Agreement (the “**Sale Contract**”) dated as of \_\_\_\_\_ [Insert Effective Date of Purchase and Sale Agreement] concerning the property(ies) set forth therein (the “**Property**”). Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Sale Contract.

WHEREAS, in order to evaluate the acquisition of the Property, Permittee has requested access to the Property to inspect the condition of the Property.

WHEREAS, Railroad is willing to permit such access only on the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated herein, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following:

1. **RIGHT OF ENTRY.** In accordance with the provisions of this Agreement, Railroad hereby grants Permittee a non-exclusive, revocable license, subject to all rights, interests, and estates of third parties including, without limitation, any leases, licenses, easements, liens, or other encumbrances, to enter the Property for the purpose of inspecting the Property for said potential acquisition and for no other purpose or use.

2. **RESTRICTIONS CONCERNING ENTRY.**

(a) Permittee shall enter the Property only during normal business hours and may inspect the condition thereof and conduct such surveys and to make such engineering and other inspections, tests and studies as Permittee shall determine to be reasonably necessary, all at Permittee's sole cost and expense. Notwithstanding the foregoing, Permittee shall not conduct or allow any physically intrusive testing of, on or under the Property and under no circumstances shall Permittee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Property unless Permittee has obtained prior written approval from Railroad, which approval may be withheld in Railroad's sole discretion.

(b) Permittee agrees to give Railroad notice at least five (5) business days prior to any such entry, examinations or surveys and Railroad has the right to be present during any such entry, examination or survey. Such notice shall be made to Railroad's Roadmaster at \_\_\_\_\_ [fill in address and phone # of Roadmaster] \_\_\_\_\_. Permittee agrees to conduct all examinations and surveys of the Property in a manner that will not interfere with the operations or improvements of Railroad or other lessees, Permittees or license holders and in such a manner and not at any time to be a source of danger to or interference with the existence or use of present or future tracks, roadbed or property of Railroad, or the safe operation and activities of Railroad.

(c) Permittee shall comply with, and cause its agents to comply with, any and all laws, statutes, regulations, ordinances, rules, orders, common law, covenants or restrictions (“**Legal Requirements**”) applicable to the Property and their activities thereon and any and all safety requirements of Railroad and if ordered to cease any activities upon the Property by Railroad’s personnel Permittee shall immediately do so. Notwithstanding the foregoing right of Railroad, the parties agree that Railroad has no duty or obligation to monitor Permittee’s activities on the Property to determine the safe nature thereof, it being solely the Permittee’s responsibility to ensure that Permittee’s activities on the Property are safe. Neither the exercise nor failure by Railroad to exercise any rights granted in this Section will alter the liability allocation provided by this Agreement.

(d) Permittee shall not harm or damage the Property or cause any claim adverse to Railroad.

(e) Permittee shall promptly reimburse Railroad for any additional costs/expenses incurred by Railroad in connection with such safety requirements (including, but not limited to, furnishing a flagman or flagmen if Railroad determines that furnishing a flagman or flagmen is necessary during any such examinations or surveys).

(f) Permittee shall not contact any governmental or quasi governmental authorities concerning the Property without Railroad’s prior written consent and Railroad shall have the right to be present during any such contacts.

(g) Permittee will not have more than 5 persons present on any individual Property at a one time. Any officer, employee, agent, contractor, consultant, lender, surveyor or attorney entering the Property on behalf of or at the direction of Permittee, shall be deemed agents of Permittee for purposes of this Agreement.

3. **TERM.** This Agreement shall commence on the date Railroad executes this Agreement as indicated below its signature (the “**Effective Date**”) and shall be in effect until the earlier of the date the Sale Contract is terminated pursuant to its terms, or the Closing Date. No expiration or termination of this Agreement shall release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events occurring prior to the date of termination or expiration.

4. **INSURANCE.** Permittee shall obtain and maintain the insurance required below:

A. **Commercial General Liability Insurance.** This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$1,000,000 each occurrence and an aggregate limit of at least \$ 2,000,000. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

B. **Business Automobile Insurance.** This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
  - ◆ Any and all vehicles owned, used or hired
- C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:
- ◆ Permittee's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
  - ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

Other Requirements:

Permittee agrees to waive its right of recovery against Railroad and Indemnitees (defined below) for all Liabilities (defined below) that could be insured against by the insurance required to be maintained hereby. In addition, its insurers, through the terms of the policy or policy endorsement, must waive their right of subrogation against Railroad for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Permittee further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under Permittee's care, custody or control.

All policy(ies) required above (excluding Workers Compensation) shall include a severability of interest endorsement and Railroad [*and Jones Lang LaSalle Brokerage, Inc.*] shall be named as an additional insured with respect to work performed under this agreement. Severability of interest and naming Railroad [*and Jones Lang LaSalle Brokerage, Inc.*] as additional insured shall be indicated on the certificate of insurance.

Prior to commencing any work or entering the Property, Permittee shall furnish to Railroad an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. In the event of a claim or lawsuit involving Railroad arising out of this Agreement, Permittee will make available any required policy covering such claim or lawsuit.

Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Permittee's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Permittee shall not be deemed to release or diminish the liability of Permittee including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage.

For purposes of this section, **Railroad** shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

5. COMPLETION OF INSPECTION. Upon completion of any inspection by Permittee or its agents on the Property or upon the expiration or termination of this Agreement, whichever shall occur first, Permittee shall, at its sole cost and expense:

- (a) remove all of its equipment from the Property;
- (b) report any damage to the Property arising from, growing out of, or connected with Permittee's entry upon the Property and restore the Property to their condition immediately prior to such entry by Permittee or its agents; and
- (c) remedy any unsafe conditions on the Property created by Permittee or its agents.

6. INDEMNITY. TO THE FULLEST EXTENT PERMITTED BY LAW, PERMITTEE SHALL INDEMNIFY, RELEASE, DEFEND AND HOLD HARMLESS RAILROAD AND RAILROAD'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

- (a) ANY BREACH OF THIS AGREEMENT BY PERMITTEE INCLUDING, BUT NOT LIMITED TO, PERMITTEE'S OBLIGATION TO COMPLY AND CAUSE ITS AGENTS TO COMPLY WITH LEGAL REQUIREMENTS INCLUDING, BUT NOT LIMITED TO, WORKERS' COMPENSATION AND CERCLA,
- (b) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS AGREEMENT,
- (c) PERMITTEE'S OR ITS AGENTS ACTIVITIES UPON OR USE OF ANY OF THE PROPERTY, OR
- (d) ANY ACT OR OMISSION OF PERMITTEE OR PERMITTEE'S AGENTS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER,

EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH PERMITTEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.

7. CONFIDENTIALITY. Except to the extent otherwise required by Legal Requirements, Permittee shall not disclose to any third parties any information Permittee discovers or obtains concerning the Property as a result of any inspections, surveys, tests or other activities conducted with respect to the Property ("**Confidential Information**") including, but not limited to, any oral, electronic or written information provided by Railroad or on Railroad's behalf. Notwithstanding the foregoing, Buyer may disclose Confidential Information to those of Buyer's agents directly involved with Permittee with respect

to the acquisition of the Property, provided such individuals and firms have agreed to maintain the confidentiality of Confidential Information pursuant to this Agreement and provided further that Permittee shall be liable hereunder for any breach by such parties of such obligation. Confidential Information shall not include information that is or becomes in the public domain other than as a result of a breach by Permittee or its agents. If Permittee or any of its agents receive a request to disclose any part of the Confidential Information, Permittee shall (a) notify Railroad immediately of the existence, terms and circumstances of such request, (b) consult with Railroad on the advisability of taking legally available steps to resist or narrow such requests, and (c) if disclosure of such Confidential Information is required to prevent Permittee being held in contempt or subject to other penalty, shall (i) furnish only such information as is legally required to be so disclosed, and (ii) use its best efforts to obtain an order or other reliable assurance that confidential treatment will be afforded to the disclosed Confidential Information. If the transaction contemplated in the Sale Contract does not close for any reason then Permittee shall, promptly upon Railroad's request, forward to Railroad all Confidential Information without keeping any copies thereof.

8. DEFAULT. Permittee acknowledges and agrees that in the event of a breach of this Agreement, Railroad would be irreparably harmed and could not be made whole by monetary damages. Accordingly, in addition to any other remedy to which it may be entitled at law, in equity or under this Agreement, Railroad shall be entitled to injunctive relief (without the posting of any bond and without proof of actual damages) to prevent such breach and/or to compel specific performance. Permittee and its agents shall not oppose the granting of such relief. In the event of any breach by Permittee or its agents under this Agreement, Railroad may terminate this Agreement and shall be entitled to any other remedy available at law, in equity or under this Agreement. No failure or delay of either party in exercising any right, power or privilege hereunder shall operate as a waiver of such party's right to require strict compliance with any term of this Agreement.

9. GOVERNING LAW, JURY WAIVER. All questions concerning the interpretation or application of provisions of this Agreement shall be decided according to the laws of the State of Texas without regard to principles of conflicts of law. Any action relating to this Agreement may be brought in the courts of Tarrant County, Texas, Permittee hereby consenting to the jurisdiction and venue of such courts. PERMITTEE AND RAILROAD IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO, THIS AGREEMENT.

10. SALE CONTRACT. The provisions of this Agreement shall be deemed incorporated into the Sale Contract, shall survive the closing thereunder and shall not be merged into the deed conveying the Property or any other closing document, provided, however that nothing in the Sale Contract shall limit or modify any remedy available to Railroad under this Agreement for a breach by Permittee of its obligations under this Agreement. All notices hereunder shall be delivered in the manner set forth in the Sale Contract.

IN WITNESS WHEREOF, this Agreement has been duly executed as of the Effective Date.

PERMITTEE:

\_\_\_\_\_

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

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

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

RAILROAD:

BNSF RAILWAY COMPANY

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

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

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

\_\_\_\_\_  
Date of Execution by Railroad (Effective Date)

**EXHIBIT "D"**

**FORM OF**

**MEMORANDUM OF REPURCHASE RIGHT**

THIS MEMORANDUM OF REPURCHASE RIGHT ("**Memorandum**") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2014, by and between CITY OF TRINIDAD, COLORADO, a political subdivision of the State of Colorado, located at \_\_\_\_\_ (hereinafter referred to as "**Grantor**"), and BNSF RAILWAY COMPANY, a Delaware corporation located at 2600 Lou Menk Drive, Fort Worth, Texas 76131 (hereinafter referred to as "**Grantee**").

W I T N E S S E T H

WHEREAS, pursuant to that certain Real Estate Purchase and Sale Agreement dated the \_\_\_\_ day of \_\_\_\_\_, 2014, Grantee, as seller, conveyed to Grantor, as purchaser, certain real property (the "**Property**") located in the County of Las Animas, State of Colorado, the location of which is more particularly shown on **Exhibit "A"** attached hereto and made a part hereof.

WHEREAS, pursuant to that certain Real Estate Purchase and Sale Agreement dated the \_\_\_\_ day of \_\_\_\_\_, 2014 (the "**Real Estate Purchase and Sale Agreement**"), Grantee reserved to itself a right to repurchase the Property, including a right of first refusal ("**Repurchase Right**"), in accordance with the terms and conditions of that Real Estate Purchase and Sale Agreement.

NOW, THEREFORE, Grantor, for and in good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confirmed, does hereby acknowledge and agree with the terms of the Grantee's reservation of the Repurchase Right to be held by Grantee and to be exercised in accordance with the terms and provisions of the Real Estate Purchase and Sale Agreement.

This Memorandum has been entered into by Grantor and Grantee for purposes of recordation in the appropriate real property records of the County of Las Animas, State of Colorado, to provide notice to third parties of the existence of the Real Estate Purchase and Sale Agreement and the Repurchase Right contained therein and nothing contained herein shall be deemed or construed to amend, modify, change, alter, amplify, interpret or supersede any of the terms of the Real Estate Purchase and Sale Agreement or the Repurchase Right contained therein.

[THE REST OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

IN WITNESS THEREOF, the parties hereto have caused this Memorandum to be executed by their respective authorized representatives as of the date first above written.

**GRANTOR:**

CITY OF TRINIDAD, COLORADO

By:  
Name:  
Title:

**GRANTEE:**

BNSF RAILWAY COMPANY, a Delaware corporation

By:  
Name:  
Title:

STATE OF COLORADO           §  
  §  
COUNTY OF                   §

This instrument was acknowledged before me on \_\_\_\_\_, 2014 by  
(name) as (title) of CITY OF TRINIDAD,  
COLORADO, a Colorado political subdivision.

Notary Public

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 2014 by  
(name) as (title) of THE BURLINGTON  
NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation.

Notary Public

**Exhibit "A"**

*To Memorandum of Right to Repurchase in favor of BNSF*

**Description of the Property attached hereto.**

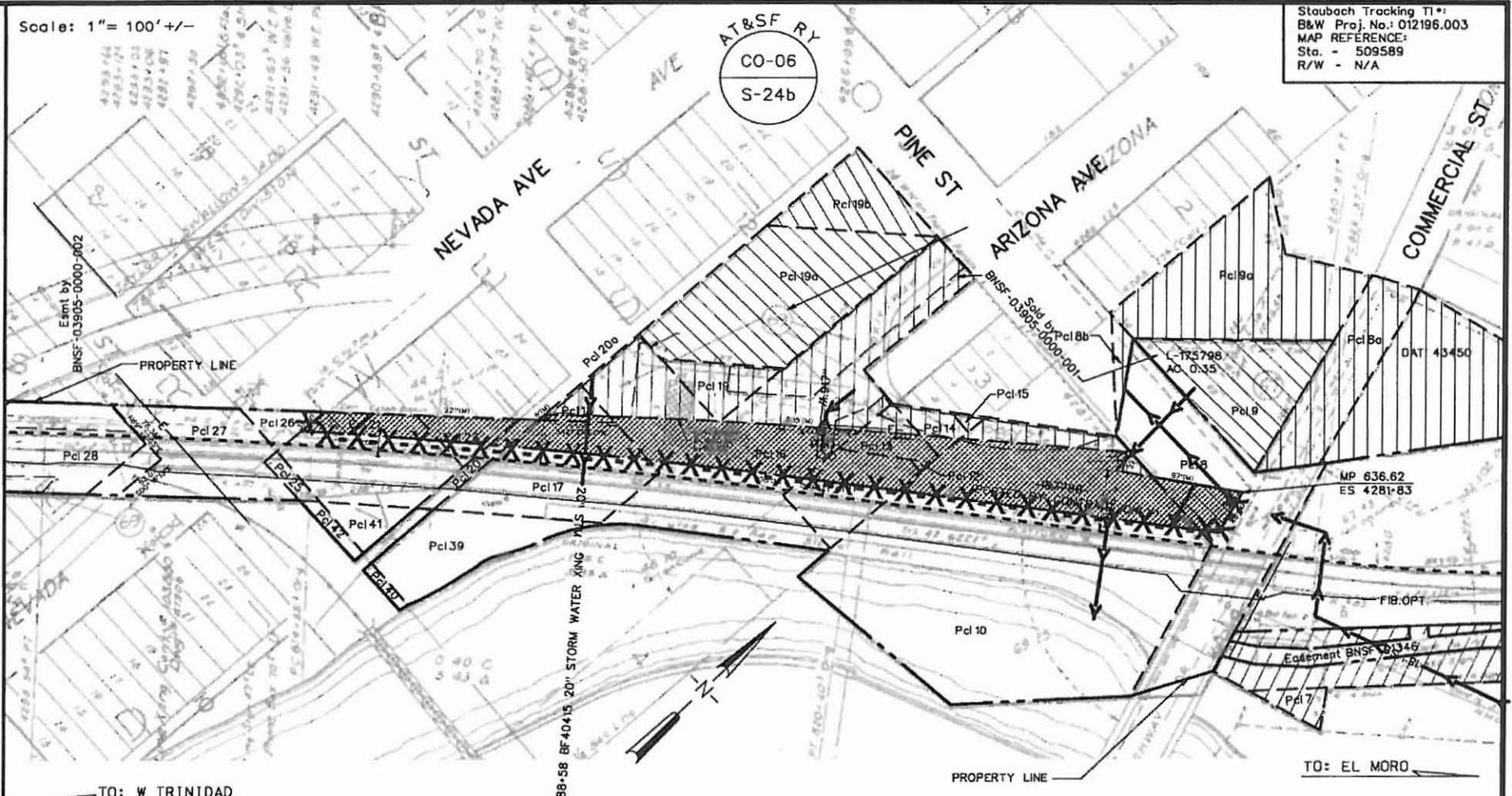
**EXHIBIT "A"**

Staubach Tracking T1:  
 B&W Proj. No.: 012196.003  
 MAP REFERENCE:  
 Sta. - 509589  
 R/W - N/A

Scale: 1" = 100' +/-

AT&SF RY  
 CO-06  
 S-24b

This map used by BNSF RAILWAY COMPANY in the ordinary course of business, but it is subject to audit and should be used only with the expressed understanding the BNSF make no representation whatsoever about the quality, accuracy, errors or omissions relating to this map.

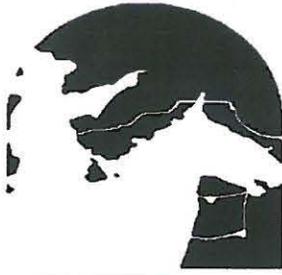


To: THE CITY OF TRINIDAD  
 At: TRINIDAD  
 LAS ANIMAS COUNTY  
 CO

Legend:  
 Sale Area  
 Sight Esm't  
 X-X-X Fence

MEASUREMENTS BASED ON PROVIDED SURVEYS  
 (S) MEASUREMENTS TAKEN OFF SURVEY  
 (M) MEASUREMENT

SOUTHWEST DIVISION  
 RATON SUBDIVISION - L.S. 7300-6  
 Val. Sec. 43020  
 AT&SF RY CO-06, Map S-24b  
 Sec. 13, T33S, R64W 6PM  
 OCT. 16, 2012 REV. JAN. 10, 2013  
 JAN. 23, 2013 M.P. 636.62 ANB



CITY OF TRINIDAD, COLORADO  
1876

## COUNCIL COMMUNICATION

8

**CITY COUNCIL MEETING:** September 30, 2014  
**PREPARED BY:** Audra Garrett, ACM  
**DEPT. HEAD SIGNATURE:** *Audra Garrett*  
**# OF ATTACHMENTS:** 3

**SUBJECT:** Arkansas Basin Roundtable recommended appointment

**PRESENTER:** Audra Garrett, ACM

**RECOMMENDED CITY COUNCIL ACTION:** Consider the recommendation to forward to the next regular meeting

**SUMMARY STATEMENT:** N/A

**EXPENDITURE REQUIRED:** N/A

**SOURCE OF FUNDS:** N/A

**POLICY ISSUE:** A City representative appointment is available from Las Animas County on this board

**ALTERNATIVE:** Choose someone else

**BACKGROUND INFORMATION:**

- Attached is a proposed letter to be submitted to the Las Animas County Commissioners for their action
- Also attached is a current roster and the by-laws
- Mr. Ramirez is willing to serve in this capacity

8



# CITY of TRINIDAD

P. O. Box 880  
TRINIDAD, COLORADO 81082  
TELEPHONE (719) 846-9843  
FAX NO. (719) 846-4140

October 7, 2014

Board of County Commissioners  
Las Animas County  
c/o LeeAnn Fabec, County Administrator  
200 E. First Street, Room 110  
Trinidad, CO 81082

Re: Arkansas Basin Roundtable Appointment

Dear Honorable Commissioners:

Please accept this letter of recommendation for the County's consideration of Gilbert Ramirez's appointment to serve as a representative for Trinidad and Las Animas County on the Arkansas Basin Roundtable. Mr. Ramirez is infinitely aware of the water needs of our community, as well as every other facet of local water matters and particulars.

We are certain Mr. Ramirez will represent the community well. Thank you for your consideration.

Respectfully,

Joseph A. Reorda  
Mayor

## Arkansas Basin Membership List

Seat	First Name	Last Name	Email Address
At-Large Representative	Gerald	Barber	barbergl@aol.com
At-Large Representative	Reeves	Brown	brownreeves@gmail.com
At-Large Representative	Garry	Clark	gclark@rural-com.com
At-Large Representative	Reed	Dils	kdils@me.com
At-Large Representative	Dan	Henrichs	henrichscattle@prodigy.net
At-Large Representative	John	Proctor	proctor_rhett@msn.com
At-Large Representative	John	Schweizer	jsfarms@rural-com.com
At-Large Representative	Rich	Werner	rwerner@pedco.org
Baca County	Pete	Dawson	pdawson@bacacountyco.gov
Baca Muni	Max	Smith	cmxsmith@hotmail.com
BOR (liaison)	Roy	Vaughan	rvaughan@gp.usbr.gov
BOR(liaison)	Ed	Warner	ewarner@uc.usbr.gov
Chaffee County	Dennis	Giese	dgiese@chaffecounty.org
Chaffee Muni	Jay	Moore	jaymoore44@aol.com
Crowley County	Rick	Kidd	rickkidd@kiddengineering.com
CSU Extension Service (liaison)	Jeff	Tranel	jeffrey.tranel@colostate.edu
Custer County	Keith	Hood	tdelta@wetmountainvalley.us
Custer Muni	Chris	Haga	stoneedge11@gmail.com
CWCB member	Alan	Hamel	achamel1942@gmail.com
Division of Water Resources(liaison)	Steve	Witte	steve.witte@state.co.us
Division of Wildlife(liaison)	Jay	Skinner	jay.skinner@state.co.us
Division of Wildlife(liaison)	John	Tonko	john.tonko@state.co.us
El Paso County	Betty	Konarski	bkonarski@earthlink.net
El Paso Muni	Brett	Gracely	bgracely@csu.org
Environmental Representative	SeEtta	Moss	seettam@gmail.com
Fremont County	Tim	Payne	tim.payne@fremontco.com
Fremont Muni	Mannie	Colon	m.colon@bresnan.com
Huerfano County	Sandy	White	sandyw@white-jankowski.com
Huerfano County WCD	Kent	Mace	kentmace@cswoods.com
Huerfano Muni	Al	Tucker	altucker63@gmail.com
Lake County	Mike	Bordogna	bordognam@yahoo.com
Lake Muni	Bud	Elliott	lvmayor@leadville-co.gov
Las Animas County	Tom	Verquer	tomverquer@dishmail.net
Las Animas Muni	James	Fernandez	jim.fernandez@trinidad.co.gov
Lincoln County	Dave	Taussig	DaveT@white-jankowski.com
Lincoln Muni	Dave	Stone	dstone@townoflimon.com
Local Domestic Water Provider	Rego	Omergic	katreg@yahoo.com
Lower Arkansas Valley Conservation	Jay	Winner	jwinner@centurytel.net
Non-Voting At Large Member	Loretta	Kennedy	
Non-Voting At Large Member	Phil	Overeynder	philo@ci.aspen.co.us
Otero County	Kevin	Karney	kkarney@oterogov.org
Otero Muni	Joe	Kelley	jkelly@ci.la-junta.co.us
Prowers County	Henry	Schanble	hschnable@prowerscounty.net
Prowers Muni	Josh	Cichocki	josh.cichoki@ci.lamar.co.us
Pueblo Muni	Terry	Book	tbook@pueblowater.org

## Arkansas Basin Membership List

Seat	First Name	Last Name	Email Address
Purgatoire River WCD	Jeris	Danielson	jeris_danielson@hotmail.com
Upper Arkansas WCD	Terry	Scanga	manager@uawcd.com
Southeastern Colorado Water Conservancy	James	Broderick	jwb@secwcd.com
U.S. Forest Service (liaison)	Misty	DeSalvo	mdesalvo@fs.fed.us
U.S. Forest Service (liaison)	Deb	Entwistle	dentwistle@fs.fed.us

# BYLAWS FOR THE ARKANSAS BASIN ROUNDTABLE

Adopted March 8, 2006

## PREAMBLE

In Colorado, water is among the state's most important issues. The ability to successfully address the challenges and opportunities related to water requires a basin-driven, collaborative approach. To facilitate continued discussions within and between basins on water management issues, and to encourage locally driven collaborative solutions to water supply challenges, the Colorado Water for the 21<sup>st</sup> Century Act created nine permanent basin roundtables. These roundtables include the following: (1) South Platte Basin; (2) Arkansas Basin; (3) Rio Grande Basin; (4) Gunnison Basin; (5) Colorado Basin; (6) Yampa-White area; Dolores, San Miguel, and San Juan Basins; (8) Metro area; and (9) North Platte area.

Legitimacy requires that anyone potentially affected by the actions of a roundtable should have an opportunity to participate or, at a minimum, each affected group of stakeholders should have a like-minded representative participating as a member of the roundtable organization. Only by working together can Colorado's 21<sup>st</sup> century water issues be resolved.

## ARTICLE I NAME AND MISSION

Section 1. Name. The name of the organization shall be the Arkansas Basin Roundtable, with its principal office located as agreed by the Roundtable as an administrative decision. The Pueblo Board of Water Works is the current office location, 319 W. 4th St, P.O. Box 400, Pueblo, Colorado, 81002 and will distribute information to the Roundtable.

Section 2. Mission. The mission of the Arkansas Basin Roundtable is to work collaboratively, from both an inter-basin and intra-basin perspective, to provide an assessment of agricultural, recreational, municipal, industrial and environmental water supply needs and to identify projects and methods to meet those needs in sustainable, balanced ways. This roundtable will also serve as a forum for public involvement on water matters.

## ARTICLE II GOALS AND OBJECTIVES

Section 1. Communications. Improve communications by providing a forum to facilitate the coordination of decisions made among affected landowners, concerned citizens and representatives of local, state and federal agencies.

Section 2. Cooperation. Facilitate cooperation and the voluntary exchange of information in order to identify and address intra-basin and inter-basin water concerns in a proactive manner.

Section 3. Framework for Coordination. Provide a basin-wide framework for coordination, cooperation and citizen involvement in promoting and improving the appropriate use of the state's waters.

Section 4. Facilitate Participation. Facilitate the Arkansas Roundtable area's participation in statewide water issues by selecting two individuals to represent the Roundtable on the Interbasin Compact Committee.

Section 5. Facilitate Assessment. Facilitate continuing assessment of the basin-wide water needs of the Arkansas River Basin.

Section 6. Seek Involvement and Input. Seek the involvement of all interested parties and stakeholders in the Roundtable Process, and actively solicit their input during the development of a basin-wide water needs assessment.

Section 7. Necessary Data. Facilitate the identification, compilation and evaluation of necessary data and information to support the basin-wide water needs assessment.

Section 8. Methods or Projects. Propose methods or projects, both structural and non-structural, for meeting any future needs.

Section 9. In-Basin Conflicts. Encourage the use of the Roundtable Process to help remedy existing or potential intra-basin conflicts between stakeholders.

Section 10. Education and Public Outreach. Provide a meaningful source of education and public outreach concerning the operations of the Arkansas Basin Roundtable and the activities of the Interbasin Compact Committee.

Section 11. Protection, Conservation and Use. Promote the protection, conservation and use of water in the Arkansas River Basin.

Section 12. Sustainability. Promote the multifaceted socio-economic sustainability of the Arkansas River Basin.

Section 13. Protection of the Natural Environment. Promote the protection and conservation of the natural environment.

### **ARTICLE III DEFINITIONS**

Section 1. Act. The Colorado Water for the 21<sup>st</sup> Century Act passed during the 2005 Legislative Session *Concerning the Negotiation of Interbasin Compacts Regarding the Equitable Division of the*

*State's Waters*. Also known as House Bill 05-1177, now codified as Sections 37-75-101, *et seq.*, Colorado Revised Statutes (2005).

Section 2. Bylaws. The bylaws governing the Arkansas Basin Roundtable.

Section 3. Basin, Arkansas Basin, Arkansas River Basin or Roundtable Area. The Arkansas River Basin within Water Division 2, as defined in Section 37-92-201(1)(b).

Section 4. Candidate. A member in good standing of the Roundtable who voluntarily offers him/herself for election as Interbasin Compact Committee Representative.

Section 5. Chairperson or Chairman. The presiding officer of the Arkansas Basin Roundtable.

Section 6. Colorado Open Meetings Law. Sections 24-6-401 and 24-6-402, C.R.S. (2005).

Section 7. Consensus. A process in which each member is given fair opportunity to be heard, where each member fairly listens to the others and where complete discussion of the issue is held. Consensus is understood to mean that all Roundtable members believe their views on a particular issue have been satisfactorily heard and agree not to block the group's decision on the issue.

Section 8. Interbasin Compact Committee (IBCC). A twenty seven (27) member committee, created pursuant to the Act, for the purpose of facilitating the process of interbasin compact negotiations.

Section 9. Local Public Body. Any board, committee, commission, authority, or other advisory, policy-making, rule-making, or formally constituted body of any political subdivision of the state and any public or private entity to which a political subdivision, or an official thereof, has delegated a governmental decision making function but does not include persons on the administrative staff of the local public body.

Section 10. Members. Individuals who have been appointed or selected pursuant to Article IV, Section 1 and Article IV, Section 2, to serve on the Arkansas Roundtable through the process specified in the Act.

Section 11. Non-Voting Members. Individuals selected by the members pursuant to Article IV, Section 3 of the Act and the bylaws.

Section 12. Owner of an Adjudicated Water Right. An individual who owns a real property interest in a direct flow water right, a share of a mutual irrigation company or an adjudicated groundwater well.

Section 13. Person. An individual, corporation, partnership, incorporated association, and the like and shall have no gender and the singular shall include the plural.

Section 14. Recorder. The recorder of the Roundtable.

Section 15. Representative. Individuals who have been appointed by the Roundtable to the represent the Roundtable on the IBCC.

Section 16. Roundtable. The Arkansas Roundtable created through the process specified in the Act.

Section 17. Stakeholder. Any person or entity in the Roundtable area that is interested in or impacted by the decisions of the Roundtable.

Section 18. Vice-Chairperson. The officer(s) next in rank to the chairman of the Arkansas Roundtable.

Section 19. Water Management District. Those districts established by the Division of Water Resources and depicted on maps published by the Division.

#### **ARTICLE IV ROUNDTABLE MEMBERSHIP**

Section 1. How Established. The Roundtable shall be appointed or elected, act as liaisons or otherwise participate as described in the Act.

Section 2. Standing of Roundtable Membership. All Roundtable members identified by the Act shall have such standing in the conduct of affairs as allowed under the Act and these bylaws. The Roundtable shall consist of those members who are duly appointed or elected as that group may exist and change from time to time. The Recorder will keep a record of filled and vacant positions of Roundtable members so the establishment of a quorum or balloting may be readily conducted by the Roundtable in accordance with the following schedule:

A. One member appointed by the governing body of each county within the borders of the Basin Roundtable:

1) Baca County; 2) Bent County; 3) Chaffee County; 4) Cheyenne County; 5) Crowley County; 6) Custer County; 7) Elbert County; 8) El Paso County; 9) Fremont County; 10) Huerfano County; 11) Kiowa County; 12) Lake County; 13) Las Animas County; 14) Lincoln County; 15) Otero County; 16) Prowers County; 17) Pueblo County; 18) Saguache County; and, 19) Teller County.

B. One municipal member for each county located in whole or in part within the Basin Roundtable, who shall be appointed jointly by the governing bodies of all municipalities of:

1) Baca County; 2) Bent County; 3) Chaffee County; 4) Cheyenne County; 5) Crowley County; 6) Custer County; 7) Elbert County; 8) El Paso County; 9) Fremont County; 10) Huerfano County; 11) Kiowa County; 12) Lake County; 13) Las Animas County; 14) Lincoln County; 15) Otero County; 16) Prowers County; 17) Pueblo County; 18) Saguache County; and, 19) Teller County.

- C. One member Appointed by the Board of Directors of each Water Conservancy District within the borders of the Roundtable:  
1) Arkansas Conservancy District; 2) Huerfano County Water Conservancy District; 3) Lower Arkansas Valley Water Conservancy District; 4) North La Junta Water Conservancy District; 5) Pueblo Conservancy District, 6) Purgatoire River Water Conservancy District; 7) Southeastern Colorado Water Conservancy District; and, 8) Upper Arkansas Water Conservancy District.
- D. Ten at-large members appointed by the Roundtable members in consultation with the Director of Compact Negotiations five of whom shall be own a water right pursuant to Article II, Section 12 and these Bylaws, including:  
1) One representative of agricultural interests; 2) One representative of a regionally, state-wide or nationally recognized environmental conservation organization that has operated in Colorado for at least five (5) years; 3) One representative of industrial interests; 4) One representative of a local domestic water provider, and; 5) One representative of recreational interests.
- E. One member appointed by mutual agreement between the chairpersons of the Senate Agriculture, Natural Resources and Energy Committee and the House Agriculture, Livestock and Natural Resources Committee.
- F. The member of the Colorado Water Conservation Board who resides within the borders of the Basin Roundtable who shall act as a liaison (non-voting).

Section 3. Non-Voting Members. Non-Voting members shall be added to the Roundtable by the members in a regular meeting or an annual meeting, in which there is a quorum, by a simple majority vote of the members present. The Act specifies that non-voting members should represent entities outside the basin who own water rights within the basin, or alternatively in the absence of such entities, individuals from outside the basin who have interest in and are knowledgeable about water matters. The addition of non-voting members shall be determined by majority vote of the members and shall not be fewer than three (3) if possible.

Section 4. Liaisons. Other liaison representatives from within the borders of the Basin Roundtable (non-voting) including:

- 1) Bureau of Land Management; 2) Colorado Geological Survey; 3) Colorado State University Cooperative Extension ; 4) Division of Wildlife; 5) Division of Water Resources; 6) Forest Service; 7) Fort Carson; 8) Fish and Wildlife Services; and, 9) Army Corp of Engineers.

Section 5. Term of Office. Members shall serve a term of five (5) years. Staggering of terms shall occur through the natural turnover in membership.

Section 6. Voting. For purposes of voting on Roundtable business, all members shall have one (1) vote and must be present to cast their vote.

Section 7. Annual Meeting. An annual meeting of the members shall be held during the month of October in each year at a date, time and place determined by the members. Each member and the public shall be notified as set forth in Article VII of these bylaws.

Section 8. Non-Represented Interests. Government agencies, individuals, local governments and other organizations not directly represented by a member of the Roundtable are encouraged to participate in the Roundtable's meetings; however, non-represented interests will not act as members of the Roundtable.

Section 9. Substitutes and Proxies members shall not send a substitute or proxy to a Roundtable meeting.

## ARTICLE V ROUNDTABLE LEADERSHIP

Section 1 General Powers. The Roundtable leadership shall have the power, consistent with these bylaws, to manage as necessary the business and affairs of the Roundtable. In addition to the powers and authorities expressly conferred upon it, the Roundtable leadership may perform all lawful acts which are not directed to be done by statute or by these bylaws.

Section 2. Number, Election and Qualifications. The Roundtable leadership shall consist of one (1) chairperson, two (2) vice chairpersons and one (1) recorder. The chairperson, vice chairpersons and recorder shall be voting members elected to office by a two-thirds (.67) of the members present at the annual meeting.

Section 3. Term of Office and Term Limits. The chairperson, vice chairpersons and recorder shall be elected for a one (1) year term. Each person so elected shall hold office until the resignation of such person or a successor shall be duly elected and qualified, until the death of such person, or until removal of such person in the manner herein provided. An individual may serve no more than two (2) consecutive terms in the same elected position but there is no limit on the total number of terms served by an individual in the same office. There is no limit on the number of terms served in any office.

Section 4. Removal. Any member of the Roundtable leadership may be removed by the Roundtable from his or her leadership position whenever, in the Roundtable's judgment as expressed by secret ballot, the best interest of the Roundtable would be served thereby. Such removal shall be by a two-thirds (.67) vote of the members present at a regular meeting of the Roundtable.

Section 5. Vacancies. A vacancy in any Roundtable leadership position because of death, resignation, removal, disqualification or otherwise may be filled by the Roundtable for the unexpired portion of the term.

Section 6. The Chairperson of the Roundtable. The Roundtable shall elect a chairperson. The chairperson shall preside at all meetings of the Roundtable. The chairperson shall be entitled to vote

on all matters that come before the Roundtable. The chairperson shall also see that all notices are duly given in accordance with the law and the provisions of the Bylaws.

Section 7. The Vice Chairpersons of the Roundtable. The Roundtable shall elect two (2) vice chairpersons. In the absence of the chairperson or in the event of the death or inability or refusal to act of the chairperson, one of the two vice chairpersons shall perform the duties of the chairperson and when so acting shall have all the powers of and be subject to all the restrictions upon the chairperson. In the event of the resignation of the Roundtable chairperson, one of the two vice chairpersons shall be selected as the new chairperson by majority vote.

Section 8. The Recorder of the Roundtable. The Roundtable shall elect a recorder. The recorder shall be custodian of the Roundtable's records, and shall keep a list of the address of each member. The recorder shall also perform, or cause to be performed: 1) all record keeping of the Roundtable; 2) official recording of formal decisions of all Roundtable proceedings, and, 3) any other duties as may be assigned by the Roundtable.

Section 9. Salaries. Neither the chairperson nor the vice chairpersons nor the recorder shall receive a salary for their work on behalf of the Roundtable.

Section 10. Resignation. The chairperson, vice chairpersons and recorder may resign from their office at any time by submitting a resignation in writing. Such resignation takes effect from the time of its receipt by the Roundtable unless a date or time is fixed in the resignation, in which case it will take effect from that time. Acceptance of the resignation shall not be required to make it effective.

## **ARTICLE VI DECISION MAKING**

Section 1. Policy Decisions. A concerted effort will be made by the Roundtable to reach policy decisions by consensus.

A. Consensus. The goal of consensus is to respect and protect minority opinions on all issues. When making a decision, the chairperson will poll the Roundtable to determine: 1) Each member has understood and believes he or she is understood by the other members concerning the issue, and; 2) Each member expects to support, even if only by remaining neutral and not actively undermining, the consensus of the Roundtable on that issue, such willingness to support, not to be construed as agreement. In other cases, one or more individuals might wish to express a minority opinion, which shall be entered into the record, but the item under discussion shall then move forward as approved in any case.

B. Shift to voting. If the Roundtable cannot reach consensus, its members will use the following procedure. The Roundtable may change its decision-making process from one seeking consensus for or agreement on an issue or proposal in question to a majority/minority vote. The shift from one decision-making procedure to another will require a seventy-five percent or greater majority attending the meeting in favor of the shift. In addition, all

Roundtable members must have been given the opportunity to be present at the meeting at which the vote to shift decision-making procedures is taken and properly notified of the proposed action. If a seventy-five percent majority of the Roundtable members attending the meeting do not approve changing the decision-making process deliberation may continue.

C. Voting as fall back. If a seventy-five percent majority of the Roundtable members attending the meeting vote to shift the Roundtable's decision-making process to voting, a decision by vote may be made at the next regularly-scheduled Roundtable meeting. An agreement will be considered to have been reached if a seventy-five percent majority of Roundtable members attending the meeting vote in favor of the proposal on the table. All Roundtable members must have been given the opportunity to be present at the meeting at which the vote is taken and properly notified of the proposed action. Following the vote, majority and minority reports will be prepared. Reports will indicate the number of Roundtable members that support each view. Reports will be made available to the general public.

Section 2. Administrative Decisions. So long as a quorum is established, decisions regarding the ordinary business of the Roundtable may be made by a vote of a majority of members present. Such administrative decisions include, without limitation:

- A. Approval of agenda
- B. Approval of minutes
- C. Motions for a recess
- D. Scheduling of future meetings
- E. Motions to lay aside temporarily (to table)
- F. Motions to take a matter from the table
- G. Motions to postpone to a certain time
- H. Motions to refer to a committee
- I. Motions to bring a matter before the Roundtable
- J. Motions to adjourn the meeting
- K. Motions calling for a ballot to remove a member
- L. Motions calling for a ballot to remove a member from a position of Roundtable leadership

Section 3. Disclosure of Interests. The validity of consensus is derived from the collective understanding of each member concerning both the issue and the perspective of fellow members on that issue. Members may have interests other than those for which they have been appointed or elected to the Roundtable and these may influence how the member stands and presents positions on issues. Therefore, it is the responsibility of each member to disclose any individual or representative interests pertinent to an issue at the earliest point in the Roundtable decision-making process.

## ARTICLE VII MEETINGS AND GOVERNANCE

Section 1. Annual Meeting. An annual meeting of the Roundtable will be held in October of each year to include at a minimum selection of Roundtable leadership, annual reports, other business pertinent to the Roundtable, and for purposes of the Colorado Open Meetings Law, decide which place or places will be deemed the public location(s) for the posting of notice of Roundtable meeting times and locations.

Section 2. Regular Meetings. A regular meeting of the Roundtable shall be held at least once a quarter. The Roundtable may provide, by resolution, for additional regular meetings, including setting a meeting schedule for a calendar year that specifies monthly meetings on the same day of the month for each month of that calendar year. The notice of the meeting must be posted and distributed in such a manner so as to comply with the Colorado Open Meetings Law.

Section 3. Special Meetings. Special meetings of the Roundtable may be called by or at the request of the chairperson or vice chairpersons or any five (5) members of the Roundtable upon not less than ten (10) day's notice to the remaining members. The person or persons authorized to call special meetings of the Roundtable may fix any place, which must be within the State of Colorado, as the place for holding any special meeting of the Roundtable called by them. The notice of the meeting must be posted and distributed in such a manner so as to comply with the Colorado Open Meetings Law.

Section 4. Telephonic Meetings. Members of the Roundtable may participate in meeting of the Roundtable only by being present in person. Members of the Roundtable may participate and be deemed present at committee meetings by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other at the same time.

Section 5. Open Meetings Law. The Roundtable shall be deemed to be a local public body for purposes of the Open Meetings Law. The Roundtable must have at least 24-hour notice of any meeting, which is posted in public place or places to be determined by the Roundtable. A meeting agenda shall be published and posted with the notice.

Section 6. Minutes. The Recorder shall be responsible for keeping accurate minutes of all Roundtable meetings. All minutes shall be subject to approval at the subsequent Roundtable meeting. Only a member may ask to edit the minutes regarding that member's comments or actions as reflected in the minutes submitted for approval by the Roundtable. These minutes shall be stored at the Roundtable's principal office and made available to the public upon request.

Section 7. Quorum.

A. Regular Meetings. Except as provided for below in Special Actions, a quorum shall be that number of members present equivalent to two-thirds (2/3) of the voting members of the Roundtable duly appointed and in good standing, calculated as the whole number equal to or the next whole number less than the sum of the number of voting members multiplied by .67 (for example, if there are 52 voting members, the calculation  $52 \times .67 = 35.84$ , therefore the number for a quorum is 35 members; if the Roundtable has 54 voting members,  $54 \times .67 = 36.18$ , then the quorum is 36 members). If there is no quorum at any meeting or adjournment

thereof, a majority of the members present may adjourn the meeting without further notice. Given the diverse geography and climate of the Arkansas River Basin, the chairman may, at his or her sole discretion, declare that a quorum does not exist if adverse weather conditions may have reasonably prevented members from one region of the Arkansas River Basin from attending a meeting.

B. Special Actions

1) Election of Interbasin Compact Committee representatives. For purposes of election of Interbasin Compact Committee representatives, the quorum requirement shall be three-fourths of the voting members of the Roundtable duly appointed and in good standing, calculated as the whole number equal to or the next whole number less than the sum of the Number of voting members multiplied by .75 (for example, if there are 52 voting members, the calculation  $52 \times .75 = 39$ , therefore the number for a quorum is 39 members; if the Roundtable has 54 voting members,  $54 \times .75 = 40.50$ , then the quorum is 40 members).

2) Approval or amendment of the bylaws. For purposes of approving or amending the bylaws, the quorum shall be three-fourths (.75) of the voting members of the Roundtable duly appointed and in good standing.

Section 8. Action by Consent of All Members. Any action required to be taken, or which may be taken at a meeting of the Roundtable may be taken without a meeting, if consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof. Such written consent or consents shall be filed with the minutes of the Roundtable. Such action by written consent of all entitled to vote shall have the same force and effect as a unanimous vote of such members at a meeting at which a quorum is present. As an alternative to physical delivery of written consent, any signed document may be delivered in electronic form by facsimile or electronic mail subject to verification by physical signature of that individual to the consent recorded with the minutes within a reasonable time after the electronic delivery of the signature.

Section 9. Subcommittees, Sub-Roundtables or Other Mechanisms. The Roundtable shall have the ability to establish committees, sub-roundtables or other mechanisms to facilitate dialogue and resolution of issues and conflicts within the basin. These mechanisms may be permanent or temporary, and may be established to negotiate compacts, examine negotiated compacts, develop projects, represent geographically different area within the Roundtable area, or any other reason the Roundtable sees fit. Membership on committees shall not be restricted, any member may participate, therefore the Roundtable should honor the work of a committee.

Section 10. Attendance at Meetings. If a member of the Roundtable has two consecutive unexcused absences (as agreed administratively by the Roundtable, for example, inclement weather) from regular meetings of the Roundtable, or three unexcused absences from regular meetings within any twelve (12) month period, it shall create a presumption that such member is neglecting his or her duties as a member. If the truant member is a member appointed pursuant to Article IV, Section 2, A, B, or C., the chairman of the Roundtable shall send written notice of the member's absences to the appointing entity requesting that action be taken by the entity to assure attendance by its appointee.

If the truant member is an at-large member, after written notice to the truant member and an opportunity for the member to be heard, the members of the Roundtable may vote on removal of such member. A two-thirds (.67) vote of the appointed members then present shall be required for removal. In the event of removal, the vacancy shall not be filled until the next regular meeting of the Roundtable, to allow public notice of the vacancy so that interested persons may apply to fill the vacancy.

Section 11. Vacancies. Any vacancy occurring in the Roundtable shall be filled according to the statutory scheme of the Act.

Section 12. Compensation. The Members shall receive no compensation for their service as a Member to the Roundtable. However, nothing will preclude a Member from receiving reimbursement for the Roundtable for actual expenses incurred and incident to the performance of the duties as authorized by the Roundtable.

Section 13. Resignation by Member. Any Member may resign from the Roundtable at any time by submitting a resignation in writing to both the Roundtable and, if so appointed, to the appointing body described in Article IV, Section 2. Such resignation takes effect from the time of its receipt by the Roundtable unless a date or time is fixed in the resignation, in which case it will take effect from that time. Acceptance of the resignation shall not be required to make it effective.

Section 14. Participation by Non-Members. Public participation in the Roundtable process is encouraged by expressing views and opinions to Members. Members may take into account these views and opinions when deciding how the Roundtable business shall proceed. The chairperson, when conducting a meeting in furtherance of Roundtable business, may limit public comment, pursuant to the Open Meetings Act, to a reasonable time. The chairperson may limit the discussion of any topic or issue of Roundtable business to Roundtable members, liaisons and non-voting members only.

Section 15. Rule of Conduct. The Roundtable shall conduct its business in accordance with the Act and these Bylaws.

## **ARTICLE VIII ROUNDTABLE POWERS**

Section 1. Interbasin Compacts. Upon the approval of the Interstate Compact Charter by the General Assembly, the Roundtable shall have the powers defined within the Charter and established under the Act. In order for it to become valid and binding, the Roundtable shall, by consensus, agree to any compact that is negotiated.

Section 2. Interbasin Compact Committee. The Roundtable shall select two individuals to represent the Roundtable on the IBCC in accordance with the following:

A. IBCC Representative Voting Guidelines

- 1) A quorum of three-fourths (.75) of the voting roundtable members must be present to select the IBCC representatives. The chairman may, at his/her discretion, postpone the selection if the attendance of members is hampered by weather.
- 2) Members of the roundtable must be present to cast their vote.
- 3) Candidates for IBCC Representative:
  - a. Must be a roundtable member;
  - b. Do not have to be present to be selected;
  - c. Are requested to make a presentation of his/her qualification at the selection meeting, if possible. Please limit the presentation to a maximum of five (5) minutes.

**B. Initial IBCC Representative Voting Procedures**

- 1) Voting will be by secret ballot with a tally provided by a neutral party of the chairman's selection.
- 2) When two representatives are to be selected, each voting roundtable member will vote for two different persons on the 1<sup>st</sup> Ballot.
  - a. If any candidate receives two-thirds (2/3) of the vote, that person is elected as an IBCC Representative for an initial term of three (3) years. If two candidates receive two-thirds (2/3) of the votes each, the candidate receiving the largest number of votes shall serve a three (3) year term and the other representative will serve a two (2) year term.
- 3) If no candidate receives two-thirds of the votes, the number of candidates will be reduced by one by eliminating the candidate that received the least number of votes. Voting roundtable members will follow the procedures in B. 2) above, voting again for two persons (and in the case of no candidate receiving two-thirds (2/3), reducing by one the number of candidates in turn), until at least one (1) candidate receives two-thirds (2/3) of the vote or only two (2) candidates remain.
- 4) After one (1) IBCC has been selected for a three (3) year term via the procedures above, the voting roundtable members shall vote for one(1) candidate of the then remaining candidates (only those not yet eliminated) for a two (2) year term.

**C. Subsequent IBCC Representatives Voting**

- 1) When an IBCC Representative's Term expires, the voting members of the roundtable will reelect the representative or select a new representative by a two-thirds margin using the procedures outlined above.
- 2) If and when the number of Candidates, in sequential balloting, has been reduced to two (2), the representative will be selected by simple majority.

**D. IBCC Representatives Term**

- 1) Each IBCC Representative will serve a two (2) year term, except for the initial three (3) year term described above.
- 2) IBCC Representatives are discharged from their position of representation if:
  - a. There being a quorum as determined by the Chairman, three-fourths (3/4) of the voting members present vote to recall a representative, or;
  - b. An IBCC Representative has three (3) consecutive, unexcused absences from the Interbasin Compact Committee meetings.

**E. IBCC Representative Alternate**

Following the procedures of Article VI, Section 2, paragraph 1, the Roundtable may determine by a majority vote of an established quorum to elect an alternate to the IBCC Roundtable. Election of such an alternate shall be in accordance with the above identified procedures for the election of an IBCC representative. An alternate shall be elected for a two year term, and may serve for no more than two full consecutive terms.<sup>1</sup>

Section 3. Basin-Wide Water Needs Assessment. The Roundtable shall develop a basin-wide water needs assessment to fulfill the provisions of the Act. This assessment shall look at the consumptive and non-consumptive needs of the Roundtable areas, and propose projects or methods (both structural and nonstructural) for meeting any identified needs and utilizing unappropriated waters where appropriate.

- A. The Statewide Water Supply Initiative (SWSI). The basin-wide needs assessment will use data and information from SWSI and other appropriate sources as the foundation for the assessment. Where data, information and research gaps are identified the Roundtable will work with the members, on-going SWSI activities and other resources coordinated by the Office of Interbasin Compact Negotiations.
- B. Other Data. In addition to the data and information from the SWSI, any and all relevant sources of information deemed appropriate for consideration by the Roundtable may be considered. Data and information from the SWSI shall not be given priority over other sources of data and information.
- C. Cooperation with Local Governments, Water Providers and Stakeholders. The basin-wide needs assessment will be developed in cooperation with local governments, area water providers and Basin stakeholders.
- D. Proposed Projects or Methods. Any proposed projects or methods resulting from the basin-wide needs assessment will be forwarded to the IBCC by the Representatives.

Section 4. Voting Members. The Roundtable may establish procedures to confer voting rights on individuals who are not members of the Roundtable in order to satisfy local needs.

Section 5. Public Education and Outreach. The Roundtable shall serve as a forum for public involvement on water matters in the Roundtable area. The Roundtable will serve as a forum for education and debate regarding: the goals, objectives and operation of the Roundtable; the development of the basin-wide water needs assessment, and; proposed projects or methods for meeting water supply needs.

## ARTICLE II REPRESENTATIVES – ATTENDANCE, REPORTING, AUTHORITY

Section 1. Attendance. The Representatives shall attend each meeting of the Roundtable and the IBCC. The truancy standards for members set forth in Article VII, Section 10 shall apply to representatives' attendance at Roundtables and IBCC meetings.

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<sup>1</sup> Amended and approved by the Roundtable 8/9/06

Section 2. Reporting. The representatives shall make regular reports to the Roundtable of the proceedings of the IBCC.

Section 3. Authority. The representatives shall:

- A. Represent the views and interest of the Basin on the IBCC and shall strive in all events to conserve, protect and defend the waters of Colorado for the use, benefit and enjoyment of the people of Colorado;
- B. Have the power to negotiate, approve and amend the IBCC Bylaws;
- C. Have the power to negotiate approve and amend the IBCC Charter, and,
- D. Participate in the development of the IBCC's public education and outreach process.

Section 4. Limitation of Authority. The Representatives shall not provide affirmative support for any compact without approval by a consensus of the Members.

#### **ARTICLE X CONTRACTS, LOANS, CHECKS AND DEPOSITS**

Section 1. Contracts The Roundtable may authorize the chairperson or vice chairpersons, agent or agents, to enter into any contract on behalf of the Roundtable and such authority may be general or confined to specific instances.

Section 2. Checks, Drafts, Etc. The Roundtable shall neither issue nor accept checks, drafts, or other forms of payment from private parties.

#### **ARTICLE XI FISCAL YEAR**

The fiscal year of the Roundtable shall begin on the first day of July and end on the last day of June in each year, unless otherwise designated by the Roundtable.

#### **ARTICLE XII WAIVER OF NOTICE**

Whenever any notice is required to be given to any member of the Roundtable, under the provisions of these bylaws or under the provisions of the Articles or under the provisions of the applicable laws of the State of Colorado, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before, at or after the time stated therein, shall be deemed equivalent to the giving of such notice.

#### **ARTICLE XIII INDEMNIFICATION**

The Roundtable shall have the power to indemnify any chairpersons, vice chairpersons, recorder, member, employee or agent of the Roundtable to the fullest extent permitted under Colorado Law.

**ARTICLE XIV  
AMENDMENTS**

The Roundtable's bylaws shall be reviewed annually. These bylaws may be altered, amended, repealed or replaced by new bylaws by the Roundtable at any annual, regular or special meeting of the Roundtable pursuant to Article VII, Section 7. B.2. of these bylaws. All members shall have received written notice of any and all proposed changes to the bylaws at least two (2) weeks prior to the date such changes are to be voted upon.

**ARTICLE XV  
UNIFORMITY OF INTERPRETATION AND SEVERABILITY**

These Bylaws shall be so interpreted and construed as to conform to the statutes of the State of Colorado, and where conflict between these bylaws and a statute has arisen or shall arise, the bylaws shall be considered to be modified to the extent, but only to the extent, conformity shall require. If any bylaw provision or its application shall be deemed invalid by reason of the said nonconformity, the remainder of the bylaws shall remain operable in that the provisions set forth in the bylaws are severable.

**ARTICLE XVI  
RATIFICATION OF BYLAWS**

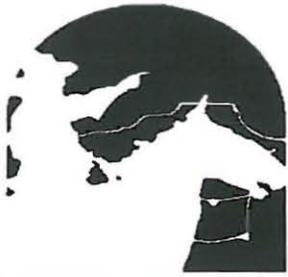
These bylaws shall become valid and binding after ratification by a two-thirds (.67) vote pursuant to Article VII, Section 7. B.2. of these bylaws.

These bylaws are hereby ratified by the members of the Arkansas Basin Roundtable effective this 8th day of March, 2006; revised 8/9/06; and revised 1/10/07.

By: \_\_\_\_\_  
Chairperson, Arkansas Basin Roundtable

Attest:

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



CITY OF TRINIDAD, COLORADO  
1876

## COUNCIL COMMUNICATION

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**CITY COUNCIL MEETING:** September 30, 2014  
**PREPARED BY:** Audra Garrett, ACM  
**DEPT. HEAD SIGNATURE:** *Audra Garrett*  
**# OF ATTACHMENTS:** 5

**SUBJECT:** Review of notes from visits to departments

**PRESENTER:** Audra Garrett, ACM

**RECOMMENDED CITY COUNCIL ACTION:** Review the notes and discuss any matters that arose from the visits

**SUMMARY STATEMENT:** N/A

**EXPENDITURE REQUIRED:** N/A

**SOURCE OF FUNDS:** N/A

**POLICY ISSUE:** N/A

**ALTERNATIVE:** N/A

**BACKGROUND INFORMATION:**

- Earlier this year Council made visits to the different City departments and talked to the employees
- Councilmember Fletcher was kind enough to take notes from the visits and share them with Council and staff; department heads were recently provided a copy of those notes as well
- Also attached is a list of current certification pay; proposed certification pay, and potential cost

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## Notes on City Department visits done Monday, July 7, 2014

### Department: Library

1. wish list: developing a community room downstairs where community events could be held.
2. wish list: library expansion. Fletcher informed her that the Catholic Church has expressed interest in selling land so library could expand to the east (next to the gym over to the end of the carport).

### Department: Parks and Recreation

1. plans to house Parks and Rec in building on the corner of San Pedro and Kansas completed. Will share with police department when training is needed for them

2. Need: new time clock
3. After burglary last month, got new locks that can't be cut with bolt cutters. Insurance paid 100% of equipment loss at today's market value.
4. Need more staff with all the trail additions to the parks system. Grounds maintenance crew is at 7; need 3 or 4 more to cover what is required.
5. Gazebo needs major repair
6. For Louis Fineberg: In working out the additions to the parks, keep in mind such things as the capability of a mower to get around impediments (ex: boulders at Los Ninos Park). If flower beds were to be considered, for another example, keep in mind additional personnel necessary for up-keep.
7. The prisoners do help the city out a lot.
8. Issue: It is necessary to have full staff in seasons outside of summer, but not for other months. Joe R. asked if Parks and Rec might be able to loan workers to other departments as needed during the off months.
9. Need: New ATV's with mower/snow plow attachments.

## **Department: City Garage**

1. From Joe R.: Department heads should be compensated with higher salaries now that their responsibilities have increased.
2. Mechanics only make \$17.00/hr. They can make much more in private sector. Need to keep them...
3. City garage facility needs upgrade. Can see daylight through the concrete blocks. New building would be nice.
4. No complaints on condition of tools and equipment
5. City garage maintains total city fleet of 280 vehicles/units using 3 workers plus a supply clerk. City council members present gave praise for saving the city money in keeping the vehicles and other equipment in working order
6. Issue brought up with fleet vehicles maintenance; most recently, a brake problem with the van that had not been taken care of in a timely fashion. Now it will cost much more to replace damaged brake parts that would not have been necessary if the vehicle had been brought in at first sign of brake wear. From Joe R: can city garage create a maintenance schedule for the city's vehicles?
7. Idea: Have those that drive the vehicles come to a meeting with city garage to discuss better maintenance of fleet.

## **Department: Gas**

1. Housed in nice building; been there since 1996; rebuilt in 2008 following damage to roof.
2. Staff there commented that we need stability in our city making it more inviting for people to move here
3. Need: replace one truck. Last time they got trucks (Pioneer) was 2008. From Joe: Pioneer an option currently? Answer: no, all their acquisitions now are CNG...From Joe: Check with Jay Cimino on prices.
4. Issue: certification pay upgrade/differential. Promised but not fulfilled. It takes much effort to keep up certifications without much compensation. Last time there was a CP/OQ certification consideration was in 2008 and that was a 30-cent/hr. pay increase.
5. Last across-the-board raise for city employees was in 2008.
6. Can city's retirement plan be reviewed and perhaps revamped?

## **Department: Water**

1. They feel they are adequately staffed right now with 11 employees.
2. From Marc: willing to loan out his guys to other departments when needed, no problem
3. They feel all the departments are working cooperatively.
4. Two projects that should have been completed by now but weren't: Segundo Water line (has been put out to bids) and Santa Fe Trail Waterline (needs to be put out to bid) There are over 10 leaks on the Santa Fe Trail Waterline.

## **Overall impressions from council members after tour:**

1. We need to prioritize raises for city employees in the coming year.
2. There are definitely noticeable differences between the "Haves" and "Have-Nots" in the city departments. The departments need to be on equal footing.
3. There should be a more specific accounting procedure that shows individual entries for the individual departments rather than to just throw everything into the general fund. Question for Lonnie: will the new software be able to do that? Example: Because depts. like city garage/street and bridge don't bring in revenue, is that a good reason to keep their conditions sub-standard? This is a persistent perception.
4. From Michelle: Can we implement incentives for employees, not necessarily performance incentives, but rather to reward cost-saving ideas?
5. Currently, expenditures over \$25.00 requires a PO; can it be raised to \$50.00? Would save time. Expenditures over \$200.00 require approval from finance director or city manager. Can that also be raised for the same reason? Takes time to drop everything and go over to city hall for such things.
6. All of us agree Street and Bridge building is in deplorable, if not downright dangerous, shape. Something needs to be done, pronto.
7. All of us agree that keeping in communication with employees/staff is very important and want to keep the lines open in that area

## Notes on City Department visits done Monday, July21, 2014

### Department: Power and Light

1. They need more help-down 5 employees. There are currently 6 on staff. Hiring experienced people is preferred. Suggestion: see who has taken the lineman program at TSJC and contact them to see if interested. They believe the reason there hasn't been hiring is the ARPA expense in litigations.
2. They make far less for doing similar jobs than San Isabel employees (San Isabel pays around \$15 more per hour). We need to budget raises to keep qualified staff. Compared to even Monte Vista (\$38 average per hour), we are far behind in our pay schedule
3. They are proud to be a tightly knit group. Example; they got together and helped Chuck Mason when he became so ill
4. Their equipment is antiquated, roughly 12-15 years old and desperately in need of replacement/update. Example: PCA (poly current analyzers) purchased in 2002-very old-they need to replace 91 of them
5. Vehicles acquired via a lease program. Dean suggested leasing on a rotation basis. Ditch witch needs to be replaced (over 20 years in use)
6. Wiring: 90% is above ground and 10 % is underground
7. Lighting being converted to LED. We were showed a display comparing actual traditional lighting with LED lighting. Very impressive. The library is going to be all LED soon. Community Center and Senior Center already have all LED.

### Department: Power Plant

1. There are 4 operators and one mechanic currently employed
2. Power plant not strictly in use-their purpose is emergency stand-by
3. One big problem is that the ARPA generators are not up to par. They operate on diesel and come on line when power goes out

### Department: Police

1. Chief Glorioso and Tara Marshall have city's emergency plans worked out. They need to work on EOC-having an emergency command plan
2. They want to move into Rice School and ask that it be included in budgeting process
3. They are ok with Parks and Rec sharing their training center
4. They need 5 new portable radios and 5 mobile radios. Can get a better deal changing from Motorola to another company they have in mind
5. They are out of room in the dispatch center
6. They are getting body cameras-one for each officer

7. Vehicles: They have 4 relatively new ones on the lease program and had one older model recently painted

8. Need new tasers which are good for only 5 years; TPD is now going on 7 years with same tasers. They can be acquired on lease/purchase basis at \$205 per unit per year; would be \$900 per unit to buy

9. Training: There is one officer (Brandon) in charge of all training. He is fully certified in all the areas of training the PD is required to have

10. One problem is that they were promised a stipend for the SWAT officers due to the extra training required. They never got it

11. Need: 10 new SWAT vests at \$1700 each

12. Personnel: Need one code officer and one dispatcher

Rest of tour (Waste water and landfill) cancelled due to having so few of us present and Fire Department had been cancelled due to them not being available due to training. We will do those plus re-visit the PD at a later date.

## Notes on City Department visits done Monday, July 28, 2014

### **Department: Police Department (continuation of last meeting with them)**

1. Chief showed how incident reports go over to the DA's office via computer each day
2. Question: Why no police blotter in the Chronicle News? Answer: police action sent to the Chronicle News each day, too but they claim not enough staff to print anything
3. Chief emphasized they're running out of room-need to get in Rice School site ASAP.
4. Need new, larger communication center ( dispatch). Evident on tour that they definitely need to expand dispatch
5. Emergency Management Plan: Tara Marshall, Fire Chief, and Police Chief were tasked to write up the EMP, but past city manager Tom Acre took it over. Needs to be completed.
6. Brandon Berry showed the armaments the PD owns. He certifies officers in firearms qualifications and taser instruction. Brandon demonstrated how the taser works.
7. Charile showed the SWAT vests that are out of date. It is mandated they stay current
8. Officer Knetzal certifies officers for radar recertification and pressure points tactics
9. Down one officer and two more set to leave. Will need to replace
10. There's been no raise in 12 years for the chief's position
11. Starting pay for new officer is \$17.01. It's much higher in other pd's in state.
12. Per the chief, the ambulance district needs to carry their end and put more \$ towards the dispatch.
13. Chief expressed desire for CFO to not budget him for what is spent in the past to what he will receive now. Needs at the pd change. Pat told him there may be a new priority-based budget process that will address such concerns

### **Department: Water Treatment Plant**

1. Need new centrifuge @ \$320,000
2. Would like to have LED lighting to save money
3. The camera used to do sewer inspection is 13 or 14 years old. Had budgeted \$45,000 for a new one which had been approved but they never got it. It will now cost \$60,000-70,000 for a new one.
4. Their jet vac is ok, but need a new one. The current one was purchased in 2003. Cost would be upwards of \$200,000
5. "Muffin Monster" is needed for the Wal-Mart area. They seem to flush oversize items (mop) that clog system. Cost is \$5000-8000 per unit
6. There are 4 lift stations: Commercial, Wal-Mart, Moore's Canyon, and the jail
7. When asked what condition the infrastructure appears to be (between 1-10), it is at 8 or 9. Very antiquated.
8. They've had no raises in 8 years.
9. Equity in management positions discussed-there is none
10. The drainage during rain was addressed for the front area of the office. People have fallen because water collects and then ices over

## **Department: Fire Department #1 and 2**

1. FD 1 building remodeled in 2001. Is adequate. FD2 building needs to be insulated. Very cold  
In winter

2. Trinidad FD has mutual aid agreement w/ volunteer fire departments in the county. They don't  
charge to assist

3. Their ladder truck is 40 years old. A new one would cost around a million dollars.

4. The newest pumper is 12 years old and is always in need of repair. New one would be \$300,000  
minimum

5. Chief suggested rotation of fleet good idea on a lease/buy program. It would cost \$ 80,000 per year  
for a lease on each. Could be set up to where one vehicle is gotten via this program every 5 years, straddled.

6. The ISO (Insurance Service Organization) sets people's insurance rates in the community. Rates can  
be higher if they don't meet up to requirements for firefighting standards. Haven't been inspected in 13 years;  
due for an inspection this month. Expect areas that need attention.

7. Chief pointed out that no mechanic on the city garage staff is certified to work on emergency  
vehicles. He said it is possible to require such certification (Emergency Vehicle Technician) on future job  
postings or someone currently there could get certified.

8. Manpower ok, understaffed by national standards. Has a total of 15 employees

9. Chief showed hazmat equipment-bought with grants

10. Would like a separate building behind #2 firehouse.

11. They have 15 grants in process; need 5% matching from city

## **Department: Landfill**

1. Maniscalco agreement still being discussed. Audra needs to check on liability insurance

2. Have 3 employees; could use one more person

3. Priority: new loader. They are borrowing one from street and bridge for now, as they are with 4  
more. Need some of their own

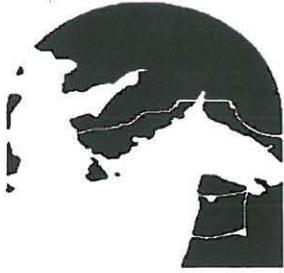
4. Their Caterpillar bulldozer is 35 years old but still running.

CITY CERTIFICATION FEES PAID  
AS OF 9/2014

<u>FUND</u>	<u>DEPARTMENT</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	TOTAL
GENERAL	City Garage	\$0.00	\$0.00	\$0.00		\$0.00
	Finance	\$0.00	\$0.00	\$0.00		\$0.00
	Police Sworn	\$0.17	\$0.00	\$0.00		\$0.17
	Police Dispatch	\$0.15	\$0.00	\$0.00		\$0.15
	Fire	\$0.17	\$0.27	\$0.54	variables	\$0.98
	Street & Bridge	\$0.15	\$0.15	\$0.15		\$0.45
	Parks	\$0.14	\$0.14	\$0.14		\$0.42
	Sports	\$0.14	\$0.14	\$0.14		\$0.42
	Landfill	\$0.00	\$0.00	\$0.00		\$0.00
GAS	Gas	\$0.28	\$0.40	\$0.51		\$1.19
WATER	Water	\$0.28	\$0.40	\$0.51	\$0.65	\$1.84
SEWER	Sewer	\$0.27	\$0.40	\$0.52	\$0.65	\$1.84
POWER & LIGHT	Power Plant					
	Chief Operator	\$0.57	\$0.90	\$0.90		\$2.37
	Maint. Mechanic	\$0.40	\$0.84	\$0.75		\$1.99
	Plant Operator	\$0.80	\$0.67	\$0.67		\$2.14
	Line Crew					
	Supervisor	\$0.71	\$0.93	\$0.99		\$2.63
	Asst Supervisor	\$0.85	\$2.07	\$1.41		\$4.33
	Lineman 1,2,3	\$0.57	\$0.67	\$0.68		\$1.92
	Journeyman	\$0.82	\$2.07	\$0.96		\$3.85
	Lineman 4	\$0.74	\$2.24	\$1.13		\$4.11
	Elect. System Tech	\$0.36	\$0.71	\$0.71		\$1.78
	Storekeepr/Grndman	\$0.53	\$0.83	\$0.83		\$2.19
	Meter Serviceman	\$0.45	\$0.87	\$0.87		\$2.19

CITY CERTIFICATION FEES PAID  
AS OF 9/2014

<u>FUND</u>	<u>DEPARTMENT</u>	<u>1</u>	<u>2</u>	<u>3</u>	TOTAL	EES
GENERAL	City Garage	\$0.30	\$0.30	\$0.30	\$0.90	
	Finance	\$0.30	\$0.30	\$0.30	\$0.90	
	Police Sworn	\$0.30	\$0.30	\$0.30	\$0.90	
	Police Dispatch	\$0.30	\$0.30	\$0.30	\$0.90	
change not recommended	Fire	\$0.00	\$0.00	\$0.00	\$0.00	
	Street & Bridge	\$0.30	\$0.30	\$0.30	\$0.90	
	Parks	\$0.30	\$0.30	\$0.30	\$0.90	
	Sports	\$0.30	\$0.30	\$0.30	\$0.90	
	Landfill	\$0.30	\$0.30	\$0.30	\$0.90	
GENERAL	City Garage	\$0.30	\$0.30	\$0.30	\$0.90	4
	Finance	\$0.30	\$0.30	\$0.30	\$0.90	3
	Police Sworn	\$0.13	\$0.30	\$0.30	\$0.73	23
	Police Dispatch	\$0.15	\$0.30	\$0.30	\$0.75	7
	Fire	\$0.00	\$0.00	\$0.00	\$0.00	
	Street & Bridge	\$0.15	\$0.15	\$0.15	\$0.45	8
	Parks	\$0.16	\$0.16	\$0.16	\$0.48	8
	Sports	\$0.16	\$0.30	\$0.30	\$0.76	4
	Landfill	\$0.30	\$0.30	\$0.30	\$0.90	3
						\$86,361.60



CITY OF TRINIDAD, COLORADO  
1876

# COUNCIL COMMUNICATION

10

**CITY COUNCIL MEETING:** September 30, 2014  
**PREPARED BY:** Les Downs, City Attorney  
**DEPT. HEAD SIGNATURE:**  
**# OF ATTACHMENTS:** 1

**SUBJECT:** Discussion of Council Norms

**PRESENTER:** Les Downs, City Attorney *Les D. Downs*

**RECOMMENDED CITY COUNCIL ACTION:** Consider Council Norms and whether you wish to adopt them

**SUMMARY STATEMENT:** Rules of Council

**EXPENDITURE REQUIRED:** N/A

**SOURCE OF FUNDS:** N/A

**POLICY ISSUE:** Adopting Council Norms will provide a guideline for Council's function

**ALTERNATIVE:** N/A

**BACKGROUND INFORMATION:**

- Council has raised the issue of adopting Council Norms several times in the past
- Norms are designed to provide a guideline

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## CITY COUNCIL NORMS OF OPERATION

### Section 1. OPERATION OF CITY COUNCIL MEETINGS

- A. City Council Meetings shall be run following the outline listed in Section 6.B. of this document. Each item shall be introduced by the Mayor and heard in accordance with the Rules of Parliamentary Procedure attached hereto as Exhibit A.
- B. The Mayor may place an item anywhere on the agenda. Two City Council members may place an item on the agenda.
- C. A single City Council Member may place an item on the agenda under City Council Member Items. Items under this manner shall have a limited staff report, if appropriate. No significant resources (more than three hours of staff time) shall be used by staff until the Council gives direction on the item. The Mayor shall determine when three hours of effort has been utilized.
- D. If an item appears again in a future Council meeting, it shall be heard under Old Business. Items placed under public hearings shall only be those that are defined by law as requiring a special notice and a public hearing or those called by City Council on its own volition.
- E. In order to ensure that all members of the public have an opportunity to speak and that the Council is able to complete its business, there will be a three-minute limitation on comments by the public except for applicants and appellants at public hearings or as otherwise provided by law. In order to effectively enforce this rule, the City Clerk will monitor the time for each speaker with an electronic timer. The timer will beep at the one-minute remaining point, and again at the three-minute point. If there are more than twenty (20) identified speakers for one item at the beginning of the public comment period or public hearing, the Mayor may adjust the three-minute time down to two minutes per speaker.
- F. Closed sessions of the City Council shall generally be conducted prior to the 7:00 p.m. business portion of regular meetings. If necessary, Closed Sessions not completed prior to the 7:00 p.m. business portion will be considered at the conclusion of the business portion of the meeting, or as otherwise determined by the City Council. Special Council Meeting may be called by the Mayor with proper public notice.
- G. Members of Council should not engage in debate with a member of the public or Staff at Council meetings since these debates seldom resolve concerns and many times inflame feelings at a public meeting. Any concerns by a member of Council over the behavior or work of a City employee during a Council meeting should be directed to the City Manager privately to ensure the concern is resolved.
- H. Prior to the close of the public hearing or comment period Councilmembers may ask questions of anyone in the audience. The public hearing and comment period are the times for Council to receive evidence. Once the hearing or comment period is closed, the

Council deliberates based on that evidence. While Council may elect to re-open a hearing or comment period (assume no prejudice to the rights of an applicant or appellant) it should make every effort to get all the information it needs while the hearing or comment period is still open. If the Council asks questions after the final presentation of the applicant/appellant in a permit-related hearing the Council would need to provide the applicant/appellant with an opportunity to rebut the answers to the questions. While these rules need not apply as strictly to hearings where due process is less of an issue (i.e., an ordinance amendment) a uniform set of rules for all public hearings and comment periods is desirable.

- I. The Mayor may, with Council concurrence, schedule Council review of agenda items out of their prescribed order on the printed agenda if a large number of the public are present to speak on agenda item.

## Section 2. CITY COUNCIL RELATIONS WITH CITY STAFF

- A. There shall be mutual respect from both Staff and Councilmembers of their respective roles and responsibilities when and if expressing criticism in public session.
- B. City Staff shall acknowledge the Council as policy makers and the City Council shall acknowledge Staff as administering the Council's policies.
- C. All written requests for information or questions by City Councilmembers to Staff shall be directed to the City Manager, City Attorney, City Clerk, or Department Managers (with a copy to the City Manager). All complaints should be submitted to the City Manager or, if a complaint concerns the City Manager, to the City Attorney.
- D. All written informational material requested by individual Councilmembers shall be submitted by Staff to all Councilmembers with the notation indicating which Councilmember requested the information.
- E. Council shall not attempt to coerce Staff in the making of appointments, the awarding of contracts, the selection of consultants, the processing of development applications, the granting of City licenses or permits. The Council shall not attempt to change or interfere with the operating policies and practices of any City department.
- F. Mail that is addressed to the Mayor and City Council shall be circulated by the City Clerk to the City Council with a comment as to which Staff person will be assisting the Mayor in preparing a response. The Mayor's response, in addition to the original communication, will be submitted to the City Council for their information.
- G. The City Clerk shall not open mail addressed to an individual Councilmember unless requested to do so by the Councilmember.
- H. Individual Councilmembers shall not direct Staff to initiate any action or prepare any report that is significant in nature or initiate any project or study. All such direction shall be

provided by the City Manager or by action of a majority of the City Council at a City Council meeting. Councilmembers may ask for limited resources and information for items that are on an agenda as long as any information is distributed to all City Councilmembers

Section 3. CITY COUNCIL RELATIONSHIP WITH CITY COMMISSIONS AND OTHER BODIES

- A. Members of the City Council should not attempt to influence or publicly criticize commission recommendations, or to influence or lobby individual commission members on any item under their consideration. It is important for commissions to be able to make objective recommendations to the City Council on items before them. Members of Council that attempt to strongly influence commission positions on an item may prejudice or hinder their role in reviewing the commission's recommendation as a member of the City Council.
- B. Individual Councilmembers shall have the right to attend meetings but shall refrain from speaking or becoming involved in the meeting's discussions. If asked a question, the Councilmember person should indicate that he/she can only provide a personal opinion and does not speak for the Council as a whole.
- C. If a member of the City Council appears before another governmental agency or organization except as member of outside agency appointed by the City Council to give a statement on an issue affecting the City, the Councilmember should first indicate the majority position and opinion of the Council (if any). Personal opinions and comments may be expressed only if the Councilmember clarifies that these statements do not represent the position of the City Council.

Section 4. CITY COUNCIL HANDLING OF LITIGATION AND OTHER CONFIDENTIAL INFORMATION

- A. City Councilmembers shall keep all written materials and verbal information provided to them on matters that are confidential under State law in complete confidence to insure that the City's position is not compromised. No disclosure or mention of information in these materials shall be made to anyone other than Councilmembers, the City Attorney or City Manager.
- B. All negotiations and other contacts concerning matters that have come before the City Council in closed session (including, but not limited to, property acquisition or disposal, a pending claims or litigation, and/or employee negotiations) with the other party and/or party's agents or other representatives shall be limited to, and made by, the designated City staff representative handling the negotiations, claim or litigation unless the City Council has directed that a specific Council member to assist staff in negotiations. Except as authorized above, no Councilmember who has participated in any closed session shall have any contact or discussion with the other party or its agents or representatives concerning the matter under consideration except during public meetings of the City Council. All public statements, information and press releases shall be handled

exclusively by the City's designated spokesperson.

## Section 5. BUSINESS OF THE CITY COUNCIL

- A. Seating Arrangement of the City Council – The Mayor shall be seated on the left of the five members of the City Council. The Vice Mayor shall be seated to the right of the Mayor. The Councilmember with the most seniority shall be seated to the right of the Vice Mayor and the remaining Councilmember shall be seated to the right of the most senior Council member. The outgoing Mayor shall be seated to the far right of the Vice Mayor. When there is no outgoing Mayor the remaining Councilmembers shall be seated based upon length of service on the City Council with the most senior member seated to the right of the Mayor. In the case of members having been elected at the same time, seniority shall be determined by the number of votes received at the election. The highest vote getter shall be considered senior and so on. The City Clerk shall arrange nameplates at the Council dais at all Council meetings to assure this seating arrangement is followed.
- B. City Council Reorganization – The City Council Reorganization shall be held at the beginning of the first regular meeting of December unless the City Council calls and holds a special meeting on the Tuesday immediately preceding the first regular meeting of December. The floor shall be open to nominations for the purpose of electing a Mayor and Vice Mayor to serve for the following year. Such elections shall be made by majority vote of the Council members present at the meeting. The Mayor and Vice Mayor shall assume the duties of their respective offices immediately upon election. The Mayor and Vice Mayor shall serve a one-year term at the pleasure of the Council. In election years the date of the special meeting referenced above may be changed by the City Clerk as necessary to ensure compliance with State election laws.
- C. Mayor and Council Roles – The Mayor shall act as the primary spokesperson and official representative of the City Council, unless such responsibility is delegated by the Mayor, or otherwise assigned by a majority vote of the City Council. The Mayor shall preside at all regular, adjourned, and special meetings of the City Council, including joint meetings with commissions and closed sessions. The Mayor shall execute all official City documents, warrants and correspondence approved by City Council. The Mayor shall serve as the primary contact for the City Manager to provide direction and advice regarding routine planning and operational issues (i.e. meeting schedules, dispositions of correspondences, etc.) Nothing in this section is intended to suggest that the position of Mayor wields formal power or authority in excess of the other members of the City Council. Rather, the person serving as Mayor is to be recognized as the leader of the Council, or first among equals. The Vice Mayor shall serve and perform the functions as Mayor in the absence of the duly elected Mayor.
- D. Council Committee/Agency Assignments  
Every December immediately following the City Council reorganization the Mayor shall announce that new appointments for Committee/Agency Assignments are necessary. A list of committee/agency assignments shall be given to each Councilmember and each Councilmember shall provide the City Clerk with a list of the Committee/Agency

Assignments in which the Councilmember is interested. The Mayor shall propose appointments for Council approval at the City Council meeting immediately following the reorganization.

E. Ex Parte Communications

An Ex Parte Communication occurs when a Council member receives information from a member of the public outside of a public meeting concerning a matter to be heard by the City Council. Ex Parte communications are an inherent part of the City of Saratoga's commitment to allowing City residents ample opportunity to consult with elected officials both inside and outside of public meetings. At the same time, the City is committed to the principle that the business of the public should be conducted in public, to ensure that citizens are afforded the opportunity to participate in the making of decisions that affect their lives, and the means to evaluate choices made by the City and its officers.

Where a City Councilmember has received information outside of a public meeting that the Councilmember believes has a bearing on the decision and that is not reflected in the staff report presented to the Council and the public, the Councilmember should provide that information to the rest of the Council and the public following the staff report and prior to beginning of public testimony on the matter. This will allow the public and other members of the Council to consider the information in forming their views on the decision at hand.

In addition, persons affected by the decision will also have the opportunity to know the evidence on which the decision is to be based and have an opportunity to comment on it and, if need be, to rebut it. This approach allows all members of the public access to elected officials and to the rationale for decisions made by those officials.

F. Issuing Proclamations and Commendations

A proclamation is prepared at the discretion of the Mayor to proclaim a specific date or event. Proclamations are prepared for signature by the Mayor. They may be presented at a City Council meeting or at an event or meeting outside the City Council meeting.

A commendation is prepared at the discretion of the Mayor. A commendation may be issued for accomplishments such as:

- Athletic/academic accomplishments
- Act of heroism
- Youth Accomplishments
- A Community Organization's Citizen of the Year
- A Community Organization's Business Person of the year
- Outgoing elected officials
- Outgoing City Commissioners

Commendations are prepared for signature by the Mayor. They may be presented at a City Council meeting or at an event or meeting outside the City Council meeting.

#### G. City Sanction of Community Events

Periodically, one or more Council members and/or one or more City residents seeks City sanction of a community event. "Community event" includes a gathering, celebration, visit from official delegation, memorial, arts/cultural production, holiday, installations, dedication, athletic event and/or other occasion.

City sanction of a community event generally entails one or more of the following:

- A request for the use of City-owned property
- A request for the use of City staff time, funding, equipment, materials and/or supplies, including the City logo, website and/or City publications
- Commemoration of historic occasions related to the City
- Meetings with official visiting delegations
- Direct involvement of a specified number of Council members in the planning and/or implementation of the event
- Invitations distributed to City Council, City staff, committees, commissions, and/or affiliated community organizations; and

The City Council has determined that City sanction of an event should be based upon whether the event:

- Fosters a unique sense of place;
- Builds a sense of community pride;
- Enhances quality of life and well-being for community members;
- Contributes to local economic vitality;
- Promotes multi-cultural awareness;
- Promotes the arts; and/or
- Upholds stewardship of limited public resources.

In order for the City to consider sanction a community event, either:

- One or more Council members must agree to seek sanction of an event, and must receive concurrence for the sanction from the Mayor, (or Vice Mayor if the Mayor is sanctioning the event); or
- A City resident must submit a completed "City Sanction of Community Event" application form (example attached) to City staff, who in turn will review the application and provide a recommendation about City sanction of the event to the City Council at the earliest available City Council meeting.

### Section 6. RULES OF ORDER AND PROCEDURE FOR CITY COUNCIL MEETINGS

#### A. Time of Meetings

Regular meetings of the City Council shall be held on the first and third Wednesday of each month in the Civic Theater commencing at 7:00 p.m. Special meetings shall be held as necessary and convenient on the second or fourth Tuesday of the month commencing at 7:00 p.m. or at such other time as may be necessary or convenient.

#### B. Order of Agenda

The following is the usual order of agenda items for regular Council meetings. The Mayor with the concurrence of Council can change the order in which items on the agenda are heard.

- Open Session – The Mayor opens the meeting in the Administration Conference Room at City Hall, to allow the public an opportunity to comment on closed session items before the Council adjourns to Closed Session, as required by law. Commission interviews are also done at this time.
- Joint Meeting with City Commissions – Reserved time for Commission members to meet with the City Council for their yearly update.
- Closed Session – Immediately following open session, the Council adjourns to closed session in the Administration Conference Room at City Hall. Start times may vary depending on volume of closed session items and the estimated time required to conduct the closed session. The items are listed on the agenda as required by law; however this meeting is not open to the public.
- Mayor's Report on Closed Session – The Mayor is required to announce any action taken during closed session before reconvening to the open session of the regular meeting.
- Call to Order – the Mayor calls the regular meeting to order.
- Pledge of Allegiance - The Mayor may lead or call upon a member of the public or staff to lead the pledge.
- Roll Call – A quorum constituting 3 of the 5 members of the Council is required to conduct any Council meeting. The City Clerk calls the roll.
- Report of Posting of the Agenda – The City Clerk reports on the posting of the agenda as required by law.
- Oral Communications – During this portion, any persons who wish to address the City Council on a subject not on the agenda may do so. Oral communications are not intended as the means for debate or decision-making, but only for making a presentation in person. Comment shall be limited to three minutes for members of the public who wish to speak
- Communications from City Commissions – Reserved time for Commission Chairs, or designated representative, to report information to the City Council or request direction.
- Council Direction to Staff –Reserved time for the City Council to request follow up on Oral/Commission Communications.
- Announcements - Reserved time for the Mayor to make special announcements.
- Ceremonial Items–These items include presentation of proclamations, commendations, appointments, administration of Oath of Office and special introductions.
- Special Presentations – reserved time for groups, agencies, persons to speak to the Council on special items.
- Consent Calendar–These items are routine and non-controversial items of business. Items in this section will be acted in one motion, unless removed by the Mayor or a Councilmember. Any member of the public may speak to an item on the Consent Calendar, or request the Mayor remove an item for discussion. Resolutions concerning decisions made at previous meetings are for the purpose of memorializing the decision to assure the accuracy of the findings, the prior vote, and any conditions imposed.
- Public Hearings – There are two kinds of public hearings, those required by law and those called by the City Council of its own volition. In either event, the purpose is to provide an opportunity for all interested persons to be heard.

Applicants/Appellants and their representatives have a total of ten minutes maximum for opening statements. Members of the public may comment on any item for up to three minutes. Applicant/Appellants and their representatives have a total of five minutes maximum for closing statements

- Old Business – These are general items, which have been considered by the Council at a previous meeting.
- New Business – These are general items, which have not been previously considered by the Council.
- Council Reports on Committees– Provides members of the Council an opportunity to report on agency/commission assignments.
- City Councilmember Items – Provides members of the Council an opportunity to introduce discussion/action on items not currently before the Council for consideration.
- City Manager Items – City Manager or City Attorney may bring up other items of interest or make announcements under this section.
- Adjournment–The Mayor may adjourn the meeting to a date specific. If no date specific is announced, the next meeting will be the next regularly scheduled Council meeting.

C. Disruptive Comments and/or Conduct

No person who addresses the Council shall make any belligerent, personal, impertinent, irrelevant, redundant, slanderous, loud, threatening, abusive or disparaging remark, statement or commentary toward the Council, staff or other individuals in a manner which disrupts, disturbs or otherwise impedes the orderly conduct of the Council meeting, nor shall any person engage in any other disorderly conduct which so disrupts, disturbs or impedes the orderly conduct of the meeting. Any violation of this rule shall be grounds for terminating the person's comment period. Continued inappropriate behavior or comments, after having been directed to discontinue, also shall be grounds for removal from the meeting. Council shall not be belligerent or make disparaging commentary toward the speaker. Nothing in this section shall prohibit or discourage orderly criticism of any City decision or policy within the limits of these rules. If a member of the public fails to follow these rules after being warned once, the Council may bar that individual from further testimony for the evening or remove the person from the meeting.

**APPLICATION FOR CITY OF SARATOGA SANCTION OF A COMMUNITY EVENT**

NAME: \_\_\_\_\_ DATE: \_\_\_\_\_

PHONE Home: (408) \_\_\_\_\_ Cell: (\_\_\_\_) \_\_\_\_\_

E-MAIL: \_\_\_\_\_

EVENT DESCRIPTION: \_\_\_\_\_

EVENT DATE: \_\_\_\_\_

PROPOSED LOCATION(S): \_\_\_\_\_

**PURPOSE OF EVENT:**

- Fosters a unique sense of place
- Builds a sense of community pride
- Enhances quality of life and well-being for community members
- Contributes to local economic vitality
- Promotes multi-cultural awareness
- Promotes the arts
- Upholds stewardship of limited public resources
- Commemoration of historic occasion related to the City
- Meeting with official visiting delegations

**REQUEST FOR CITY SUPPORT:**

- Request for the use of City-owned property
- Request for use of:
  - City staff time (Estimated # of hours) \_\_\_\_\_
  - Funding (Estimated cost) \$ \_\_\_\_\_
  - City equipment, materials and/or supplies (includes City logo, website and/or City publications – circle appropriate items)
- Direct involvement of Council members in the planning and/or implementation of the event
- Distribution of invitations to City Council, City staff, committees, commissions, and/or affiliated community organizations

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**Staff Use Only:**

Reviewed by: \_\_\_\_\_ Reviewed by: \_\_\_\_\_

Staff Recommendation:  Approve City Sanction  Approve City Sanction with Conditions  
 Do Not Approve City Sanction

Comments: \_\_\_\_\_

## CITY OF SARATOGA RULES OF PARLIAMENTARY PROCEDURE<sup>1</sup>

Saratoga's rules of parliamentary procedure are supported by the following four principles:

1. Rules should establish order. **The first purpose of the rules of parliamentary procedure is to establish a framework for the orderly conduct of meetings.**
2. Rules should be clear. **Simple rules lead to wider understanding and participation. Complex rules create two classes: those who understand and participate and those who do not fully understand and do not fully participate.**
3. Rules should be user-friendly. **That is, the rules must be simple enough that citizens feel they have been able to participate in the process.**
4. Rules should enforce the will of the majority while protecting the rights of the minority. **The ultimate purpose of the rules of procedure is to encourage discussion and to facilitate decision-making by the body. In a democracy, the majority rules. The rules must enable the majority to express itself and fashion a result, while permitting the minority to also express itself (but not dominate) and fully participate in the process.**

### **The Chairperson Should Take a Back Seat During Discussions**

While all members of the governing body should know and understand the rules of parliamentary procedure, it is the chairperson (chair) who is charged with applying the rules of conduct. The chair should be well versed in those rules, because the chair, for all intents and purposes, makes the final ruling on the rules. In fact, all decisions by the chair are final unless overruled by the governing body itself.

Because the chair conducts the meeting, it is common courtesy for the chair to take a less active role than other members of the body in debates and discussions. This does *not* mean that the chair should not participate in the debate or discussion. On the contrary, as a member of the body, the chair has full rights to participate in debates, discussions and decision-making. The chair should, however, strive to be the last to speak at the discussion and debate stage, and should not make or second a motion unless he or she is convinced that no other member of the body will do so.

### **The Basic Format for an Agenda Item Discussion**

All City Council and Commission meetings have a written, published agenda. The meeting is governed by the agenda and the agenda constitutes the agreed-upon road map for the meeting. Each agenda item should be handled by the chair in the following basic format.

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<sup>1</sup> These rules of parliamentary procedure are based on "*Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century*" written by Dave Rosenberg and published by the League of California Cities in 2003. The procedures set forth in *Rosenberg's* have been modified slightly to reflect custom, practice, and specific code requirements in Saratoga. While these rules have been drafted to conform to requirements of State law and the Saratoga City Code, in the event of a conflict between these procedures and those laws, the laws shall govern.

**First**, the chair should clearly announce the agenda item number and should clearly state what the subject is. The chair should then announce the format that will be followed. If any member of the body has a conflict of interest, that member announces the conflict and need for recusal and leaves the dais at this time.

**Second**, following that agenda format, the chair should invite the appropriate people to report on the item, including any recommendation they might have. The appropriate person may be the chair, a member of the governing body, a staff person, or a committee chair charged with providing information about the agenda item.

**Third**, the chair should ask members of the body if they have any technical questions for clarification. At this point, members of the governing body may ask clarifying questions to the people who reported on the item, and they should be given time to respond.

**Fourth**, the chair should invite public comments or, if appropriate at a formal public hearing, open the hearing. Speakers are typically limited to 3 minutes; shorter time limits may be imposed if numerous members of the public indicate a desire to speak to the subject. At the conclusion of the public comments, the chair should announce that public input has concluded (or that the public hearing, as the case may be, is closed).

**Fifth**, the chair should invite members of the body to make remarks on the matter. This is an opportunity for members of the body to state their views on the subject before any formal motions are made.

**Sixth**, the chair should invite a motion from the governing body members. The chair should announce the name of the member who makes the motion.

**Seventh**, the chair should determine if any member of the body wishes to second the motion. The chair should announce the name of the member who seconds the motion. It is normally good practice for a motion to require a second before proceeding with it, to ensure that it is not just one member of the body who is interested in a particular approach. However, a second is not an absolute requirement, and the chair can proceed with consideration and a vote on the motion even when there is no second. This is a matter left to the discretion of the chair.

**Eighth**, if the motion is made and seconded, the chair should make sure everyone understands the motion. This is done in one of three ways:

1. The chair can ask the maker of the motion to repeat it;
2. The chair can repeat the motion; or
3. The chair can ask the secretary or the clerk of the body to repeat the motion.

**Ninth**, the chair should now invite discussion of the motion by the members of the governing body. If there is no desired discussion or the discussion has ended, the chair should announce that the body will vote on the motion. If there has been no discussion or

a very brief discussion, the vote should proceed immediately, and there is no need to repeat the motion. If there has been substantial discussion, it is normally best to make sure everyone understands the motion by repeating it.

**Tenth**, the chair takes a vote. Simply asking for the "ayes" and then the "nays" is normally sufficient. If members of the body do not vote, then they "abstain." Unless specific laws or procedures provide otherwise, a simple majority determines whether the motion passes or is defeated.

**Eleventh**, the chair should announce the result of the vote and should announce what action (if any) the body has taken. In announcing the result, the chair should indicate the names of the members, if any, who voted in the minority on the motion. This announcement might take the following form: "The motion passes by a vote of 3-2, with Smith and Jones dissenting. We have passed the motion requiring 10 days' notice for all future meetings of this governing body."

### **Motions in General**

Motions are the vehicles for decisionmaking. It is usually best to have a motion before the governing body prior to discussing an agenda item, to help everyone focus on the motion before them.

The chair usually initiates the motion by:

1. Inviting the members to make a motion: "A motion at this time would be in order."
2. Suggesting a motion to the members, for example: "A motion would be in order that we give 10-days' notice in the future for all our meetings."
3. Making the motion.

As noted, the chair has every right as a member of the body to make a motion, but normally should do so only if he or she wishes a motion to be made but no other member seems willing to do so.

### **The Three Basic Motions**

Three motions are the most common:

4. **The basic motion.** The basic motion is the one that puts forward a decision for consideration. A basic motion might be: "I move that we create a five-member committee to plan and put on our annual fundraiser."
5. **The motion to amend.** If a member wants to change a basic motion that is under discussion, he or she would move to amend it. A motion to amend might be: "I move that we amend the motion to have a 10-member committee." A

motion to amend takes the basic motion that is before the body and seeks to change it in some way.

6. **The substitute motion.** If a member wants to completely do away with the basic motion under discussion and put a new motion before the governing body, he or she would "move a substitute motion." A substitute motion might be: "I move a substitute motion that we cancel the annual fundraiser this year."

Motions to amend and substitute motions are often confused. But they are quite different, and so is their effect, if passed.

A motion to amend seeks to retain the basic motion on the floor, but to modify it in some way.

A substitute motion seeks to throw out the basic motion on the floor and substitute a new and different motion for it.

The decision as to whether a motion is really a motion to amend or a substitute motion is left to the chair. So that if a member makes what that member calls a motion to amend, but the chair determines it is really a substitute motion, the chair's designation governs.

#### **When Multiple Motions Are Before The Governing Body**

Up to three motions may be on the floor simultaneously. The chair may reject a fourth motion until the three that are on the floor have been resolved.

When two or three motions are on the floor (after motions and seconds) at the same time, the first vote should be on the last motion made. So, for example, assume the first motion is a basic "motion to have a five-member committee to plan and put on our annual fundraiser." During the discussion of this motion, a member might make a second motion to "amend the main motion to have a 10-member committee, not a five-member committee, to plan and put on our annual fundraiser." And perhaps, during that discussion, a member makes yet a third motion as a "substitute motion that we not have an annual fundraiser this year." The proper procedure would be as follows.

First, the chair would deal with the third (the last) motion on the floor, the substitute motion. After discussion and debate, a vote would be taken first on the third motion. If the substitute motion passes, it would be a substitute for the basic motion and would eliminate it. The first motion would be moot, as would the second motion (which sought to amend the first motion), and the action on the agenda item would be complete. No vote would be taken on the first or second motions. On the other hand, if the substitute motion (the third motion) failed, the chair would proceed to consideration of the second (now the last) motion on the floor, the motion to amend.

If the substitute motion failed, the chair would then deal with the second (now the last) motion on the floor, the motion to amend. The discussion and debate would focus strictly on the amendment (should the committee be five or 10 members). If the motion to amend passed, the chair would now move to consider the main motion (the first motion) as amended. If the motion

to amend failed, the chair would now move to consider the main motion (the first motion) in its original format, not amended.

Third, the chair would now deal with the first motion that was placed on the floor. The original motion would either be in its original format (five-member committee) or, if amended, would be in its amended format (10-member committee). And the question on the floor for discussion and decision would be whether a committee should plan and put on the annual fundraiser.

### **To Debate or Not to Debate**

The basic rule of motions is that they are subject to discussion and debate. Accordingly, basic motions, motions to amend, and substitute motions are all eligible, each in their turn, for full discussion before and by the body. The debate can continue as long as members of the body wish to discuss an item, subject to the decision of the chair that it is time to move on and take action. There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire of the body to move on. The following motions are not debatable (that is, when the following motions are made and seconded, the chair must immediately call for a vote of the body without debate on the motion):

**A motion to adjourn.** This motion, if passed, requires the body to immediately adjourn to its next regularly scheduled meeting. This motion requires a simple majority vote.

**A motion to recess.** This motion, if passed, requires the body to immediately take a recess. Normally, the chair determines the length of the recess, which may range from a few minutes to an hour. It requires a simple majority vote.

**A motion to fix the time to adjourn.** This motion, if passed, requires the body to adjourn the meeting at the specific time set in the motion. For example, the motion might be: "I move we adjourn this meeting at midnight." It requires a simple majority vote.

**A motion to table.** This motion, if passed, requires discussion of the agenda item to be halted and the agenda item to be placed on "hold." The motion may contain a specific time in which the item can come back to the body: "I move we table this item until our regular meeting in October." Or the motion may contain no specific time for the return of the item, in which case a motion to take the item off the table and bring it back to the body will have to be taken at a future meeting. A motion to table an item (or to bring it back to the body) requires a simple majority vote.

**A motion to limit debate.** The most common form of this motion is to say: "I move the previous question" or "I move the question" or "I call for the question." When a member of the body makes such a motion, the member is really saying: "I've had enough debate. Let's get on with the vote." When such a motion is made, the chair should ask for a second to the motion, stop debate, and vote on the motion to limit debate. The motion to limit debate requires a two-thirds vote of the body. Note that a motion to limit debate could include a time limit. For example: "I move we limit debate on this agenda item to 15 minutes." Even in this format, the motion to limit debate requires a two-thirds vote of the body. A similar motion is a motion to object to consideration of an item. This

motion is not debatable, and if passed, precludes the body from even considering an item on the agenda. It also requires a two-thirds vote.

### **Majority and Super-Majority Votes**

In a democracy, decisions are made with a simple majority vote. A tie vote means the motion fails. So in a five-member body, a vote of 3-2 passes the motion. A vote of 2-2 with one abstention means the motion fails. If one member is absent or recused and the vote is 2-2, the motion still fails.

All motions require a simple majority, but there are a few exceptions. The exceptions occur when the body is taking an action that effectively cuts off the ability of a minority of the body to take an action or discuss an item. These extraordinary motions require a two-thirds majority (a super-majority) to pass:

**Motion to limit debate.** Whether a member says, "I move the previous question," "I move the question," "I call for the question" or "I move to limit debate," it all amounts to an attempt to cut off the ability of the minority to discuss an item, and it requires a two-thirds vote to pass.

**Motion to close nominations.** When choosing officers of the body, such as the chair, nominations are in order either from a nominating committee or from the floor of the body. A motion to close nominations effectively cuts off the right of the minority to nominate officers, and it requires a two-thirds vote to pass.

**Motion to object to the consideration of a question.** Normally, such a motion is unnecessary, because the objectionable item can be tabled or defeated straight up. However, when members of a body do not even want an item on the agenda to be considered, then such a motion is in order. It is not debatable, and it requires a two-thirds vote to pass.

**Motion to suspend the rules.** This motion is debatable, but requires a two-thirds vote to pass. If the body has its own rules of order, conduct or procedure, this motion allows the body to suspend the rules for a particular purpose. For example, the body (a private club) might have a rule prohibiting the attendance at meetings by non-club members. A motion to suspend the rules would be in order to allow a non-club member to attend a meeting of the club on a particular date or on a particular agenda item.

### **The Motion to Reconsider**

There is a special and unique motion that requires a bit of explanation all by itself: the motion to reconsider. A tenet of parliamentary procedure is finality. After vigorous discussion, debate and a vote, there must be some closure to the issue. And so, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to reconsider is made. The standards for reconsideration are set forth in the City Code.

## Courtesy and Decorum

The rules of order are meant to create an atmosphere where the members of the body and the members of the public can attend to business efficiently, fairly and with full participation. And at the same time, it is up to the chair and the members of the body to maintain common courtesy and decorum. Unless the setting is very informal, it is always best for only one person at a time to have the floor, and it is always best for every speaker to be first recognized by the chair before proceeding to speak.

The chair should always ensure that debate and discussion of an agenda item focus on the item and the policy in question, not on the personalities of the members of the body. Debate on policy is healthy; debate on personalities is not. The chair has the right to cut off discussion that is too personal, too loud or too crude.

Debate and discussion should be focused, but free and open. In the interest of time, the chair may, however, limit the time allotted to speakers, including members of the body. Can a member of the body interrupt the speaker? The general rule is no. There are, however, exceptions. A speaker may be interrupted for the following reasons:

**Privilege.** The proper interruption would be: "Point of privilege." The chair would then ask the interrupter to "state your point." Appropriate points of privilege relate to anything that would interfere with the normal comfort of the meeting. For example, the room may be too hot or too cold, or a blowing fan might interfere with a person's ability to hear.

**Order.** The proper interruption would be: "Point of order." Again, the chair would ask the interrupter to "state your point." Appropriate points of order relate to anything that would not be considered appropriate conduct of the meeting; for example, if the chair moved on to a vote on a motion that permits debate without allowing that discussion or debate.

**Appeal.** If the chair makes a ruling that a member of the body disagrees with, that member may appeal the ruling of the chair. If the motion is seconded and after debate, if it passes by a simple majority vote, then the ruling of the chair is deemed reversed.

**Call for orders of the day.** This is simply another way of saying, "Let's return to the agenda." If a member believes that the body has drifted from the agreed-upon agenda, such a call may be made. It does not require a vote, and when the chair discovers that the agenda has not been followed, the chair simply reminds the body to return to the agenda item properly before them. If the chair fails to do so, the chair's determination may be appealed.

**Withdraw a motion.** During debate and discussion of a motion, the maker of the motion on the floor, at any time, may interrupt a speaker to withdraw his or her motion from the floor. The motion is immediately deemed withdrawn, although the chair may ask the person who seconded the motion if he or she wishes to make the motion, and any other member may make the motion if properly recognized.

## Special Notes About Public Input

The rules outlined here help make meetings very public-friendly. But in addition, and particularly for the chair, it is wise to remember three special rules that apply to each agenda item:

**Rule One:** Tell the public what the body will be doing.

**Rule Two:** Keep the public informed while the body is doing it.

**Rule Three:** When the body has acted, tell the public what the body did.

Public input is essential to a healthy democracy, and community participation in public meetings is an important element of that input. The challenge for anyone chairing a public meeting is to accommodate public input in a timely and time-sensitive way, while maintaining steady progress through the agenda items. The rules presented here for conducting a meeting are offered as tools for effective leadership and as a means of developing sound public policy.

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# COUNCIL NORMS - 2012

## Overview

The City Council's group norms define the Council's purpose, vision, goals, priorities, expectations, relationships and how the Council conducts its day-to-day business. These norms will naturally be questioned, discussed, and adjusted as new members become part of the Council.

The areas covered by the group norms include:

- I. Council Purpose
- II. Council Vision
- III. Council Values
- IV. Council Guiding Principles
- V. Council Engagement Model
- VI. Council Priorities
- VII. Council Expectations
- VIII. Council Relationships
- IX. Council Policy Documents
- X. Appendix A – FY2011 Council Goals
- XI. Appendix B – Council Engagement Model
- XII. Appendix C – Staff Expectations
- XIII. Appendix D – Agendas, Meetings, Work Sessions
  - Exhibit 1 – Presentation Guidelines
- XIV. Appendix E – Office Procedures

## I. Council Purpose

The Ogden City Council exists to establish the laws and policies of the City through plans and ordinances, to determine what services should be provided and at what level, to establish tax rates and fees, to provide oversight of City functions, to conduct financial and management audits, to respond to the needs of the

citizens of the City, and pass resolutions as deemed appropriate.

## II. Council Vision

Ogden City is the community of choice. It has a thriving economy, stable and safe neighborhoods with actively involved citizens, quality activities accessible to all, and is well known for our rich natural environment. Promote the Council vision by:

- Creating an ongoing, self-sustaining, local economic engine by incubating small businesses, promoting new downtown businesses, and strengthening all business centers.
- Continuing to establish ourselves as the high adventure mecca and promoting additional activities
- Developing processes to encourage and prioritize responsible home ownership, stepping up efforts to encourage quality home rentals, and supporting historic preservation.
- Focusing initiatives to reduce crime and gang-related activities through prevention, intervention programs, and by strengthening community policing.
- Promoting effective transit alternatives throughout the City to connect our community.
- Encouraging neighborhood and community gatherings
- Encouraging community-wide service.
- Utilizing innovative methods to inform the public.
- Supporting diverse community activities and events.
- Improving the quality of parks and recreational amenities.

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# COUNCIL NORMS - 2012

- Utilizing the natural resources found in our community.
- Protecting, maintaining and preserving rivers, hillsides, and trails.
- Enhancing and promoting environmentally-friendly high adventure activities, amenities and infrastructure.

## III. Council Values

The Ogden City Council will focus on the following four core values to build community and strengthen public trust while establishing a framework for policy discussion – all four values need to be considered when creating policy:

Liberty  
Equality  
Community  
Prosperity

**Liberty includes:** freedom, choice, information, access, autonomy, mobility, openness, transparency, individual rights, voluntary, opportunity, individuality, exemptions, privacy, due process, independence, personal responsibility, self-determination, self-sufficiency.

**Equality includes:** fairness, justice, tolerance, acceptance, diversity, equity, inclusion, representation, equal rights, equal opportunity, equal treatment, equal results, grandfathering, level playing field.

**Community includes:** safety, security, belonging, identity, connection, sense of place, attractive, appealing, healthy, aesthetics, preservation, restoration, conservation, tradition, customs, the

sacred, uniformity, regulation, social and moral order, quality of life.

**Prosperity includes:** economy, efficiency, growth, productivity, profit, cost reduction, development, incentives, competition, consolidation, centralization, privatization, standardization, specialization, performance measurement, benchmarking, return on investment, market rules, quality of life.

## IV. Council Guiding Principles

Each year, the Council develops annual goals related to issues important to the legislative body (see Appendix A).

The City Council and Administration also periodically develop joint goals.

The Council maintains general goals that do not change from year to year. They are defined in the following statements:

**Accomplish the Council's legislative responsibilities in an exceptional manner by:**

- Receiving and studying all available information upon which to base decisions.
- Making decisions based on what is best for the citizens of Ogden.
- Being responsive to our constituents.
- Working to maintain the public's trust.
- Receiving assistance from Council Staff.
- Understanding the structure of Ogden's municipal government and the Council's legislative roles.

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# COUNCIL NORMS - 2012

- Defining the budgetary expectations within the Council's "Legislative Intents."
- Establishing a clear process for reviewing policy and budget proposals that are centered on specific goals.
- Setting clear expectations as necessary for the Council Executive Director and expecting the Executive Director to do the same for the rest of the staff.

## **Make well-informed decisions for the greatest good of Ogden citizens by:**

- Gathering information necessary to have a clear perspective and understanding of the issues.
- Striving to involve all stakeholders in the decision making process.
- Making a reasonable effort to understand the advice and recommendations of advisory committees, boards and commissions.
- Receiving input from Council Staff and/or the Administration.
- Receiving public input.
- Discussing opportunities and challenges with the other Council Members.

## **Ensure there are informative, efficient and effective Council meetings by:**

- Studying and preparing before each meeting.
- Preparing possible questions, asking them, and ensuring they are answered.
- Receiving public comment as appropriate.

- Explaining Council actions to the public and/or the Administration.
- Sharing individual Council member opinion or position, especially if an opposing vote is made.
- Acting with courtesy among Council members, the Administration, and the public.

## **Develop policies and positions that provide consistent, clear, fair, and optimal outcomes for the City by:**

- Analyzing proposals from the Administration and citizens and making recommendations to the Council.
- Following adopted policies for the selection of management and financial auditors.
- Developing communications for the Council or Council members that increases the effectiveness of communications from the Council.

## **Support the General Plan Goals in the decisions that are made by the Council by:**

- Providing community facilities and services that provide individuals with a healthy, safe and secure community and quality education.
- Supporting a community identity that is distinguished by its people-friendly environment, unique historic, artistic and architectural assets, cultural diversity and outstanding physical appearance.

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# COUNCIL NORMS - 2012

- Creating economic development that focuses on expanding and diversifying the economy, revitalizing older business areas and raising the standard of living – in a business friendly environment.
- Ensuring that our environmental resources – mountains, rivers, green spaces and air – are preserved, reclaimed and enhanced.
- Ensuring that housing is well-maintained, varied in cost, and mixed density and creates safe, stable and revitalized neighborhoods throughout the City.
- Establishing land use that emphasizes revitalization of the community, creates a safe and vibrant downtown, expands business opportunities, encourages appropriate mixed uses, preserves and enhances neighborhoods and includes a pleasing green environment.
- Establishing neighborhoods in which residents are involved in creating a safe, livable and attractive environment.
- Ensuring there are parks and recreation facilities that are well-maintained, safe, clean, accessible and inviting, with a citywide network of multi-use paths and other facilities that provide a variety of activities appropriate to their settings.
- Creating transportation choices that are safe, environmentally responsible, accessible and adequate – in a

pleasing setting and connected to the region.

## IV. Council Engagement Model

The Council Engagement Model defines process options for joint efforts of the Council and Administration.

This model is designed to serve as a template throughout joint processes and to incorporate public participation into these efforts. Components of the model may be used when the Council is engaging with other groups.

See Appendix B—Council Engagement Model for details.

## V. Council Priorities

The priorities of the Council are created to direct Council Staff and Council Leadership when planning all schedules, meetings, work sessions, etc. in order to ensure that the most important issues are considered first.

**The current Council priorities are:**

1. Policy issues
2. Budget issues
3. Vision and goal issues
4. Oversight issues
5. Relationship issues
6. Neighborhood planning issues
7. Infrastructure issues
8. Transportation issues
9. Other Issues

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# COUNCIL NORMS - 2012

## VI. Council Expectations

The Council desires to continually maintain clear expectations for the following relationships:

- **Council members** are expected to:
  - Uphold the office of Council member with respect and dignity.
  - Raise questions and proactively address them by communicating with other Council members, Council staff, and Administrative staff.
  - Follow up on all personalized constituent's requests within a reasonable period of time.
  - Review city e-mails on a daily basis. When controversial actions are being considered, review emails more frequently than once per day.
  - Look at each decision and new proposal in light of what is best for Ogden City, while keeping in mind the established goals, policies and adopted plans.
  - Be willing to share ideas in open sessions, asking good questions and actively expressing concerns.
  - Develop strong policies that are consistent with the Council's goals.
  - Review annually the "Council Staff Expectations" and make sure that

expectations of staff are well defined.

- Follow the "Office Procedures" as defined in Appendix D – Office Procedures and to review those policies at least annually.

- **Council Leadership** is expected to:

- Follow-up on all generic constituent's requests or delegate them to an individual Council or staff member within a reasonable period of time.
- Report back to the entire Council all important information made available to Council Leadership in the next available work session or closed executive session as appropriate.

- **Council staff** expectations are defined in Appendix B – Council Staff Expectations.

## VII. Council Relationships

### Council Participation on Committees and Work Groups

#### *City Advisory Committees*

- The Council members will not participate as appointed or ex-officio members on any ongoing City committees. Council Staff will provide agendas and minutes of City advisory committees for Council review when available /or requested by Council members. Council members may attend

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# COUNCIL NORMS - 2012

these meetings as any other members of the public.

- From time to time, it may be advantageous for Council members to serve on a City ad hoc committee or an ongoing committee focused on solving specific problems. Their participation and the intent of their participation on such a committee will be outlined in the resolution or ordinance establishing such a committee.

## *City Coordinating Committees and Work Groups*

- Council Members may serve on coordinating committees and work groups as determined by the Council. Typically those Council Members with an interest in the subject matter participate. The maximum number of Council Members per committee or work group is three (3).

*Intergovernmental Committees.* See Appendix C – Other Meetings for further information.

## **City Administration**

- The Council will strive to maintain a strong working relationship with the Administration. Among other efforts the Council will develop a cooperative set of goals and action

plans and coordinate often concerning urgent issues.

## **City Attorney and Outside Legal Counsel**

- Confidential information exchanged with Council members verbally or in writing from the Ogden City Attorney's office or outside legal counsel is subject to attorney-client privilege and should not be disclosed or made public.

## **Planning Commission**

### *Attending Planning Commission Meetings*

- Council members are encouraged to attend Planning Commission meetings if they are interested in items on the Commission's agenda.

*To avoid any type of "chilling effect" or risk of legal liability, Council members agree:*

- To not speak during the Planning Commission meeting.
- Not to talk to the Commission members immediately after the meeting.

### *Calling the Planning Commission*

- The Council, in its deliberation and consideration of the issue, may call individual Planning Commissioners to get their views.

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# COUNCIL NORMS - 2012

Also, the Council and Commission as a whole may wish to meet in a joint work session to discuss an issue and the Planning Commission recommendations.

## *Professional Courtesy*

- When the Council chooses to take action which differs from the Commission's recommendation, the Council is encouraged to be specific as to the reasons for the change so the public record is definite as to the Council's legal findings.
- If the Council differs from the Commission on a major issue, the Council will draft a letter to the Planning Commission outlining the reasons the Council chose a different course of action.

## **Other Governmental Agencies and Community Organizations**

- The Council desires to maintain good working relationships with Weber County, the Ogden School District, Weber State University, and other governmental agencies and community organizations such as Hill Air Force Base, Chamber of Commerce, the Convention and Visitors Bureau, Downtown Ogden Inc., etc.

## **Speaking for the Council**

- Public statements regarding Council action only are expressed if there is a consensus of the Council. The Chair will speak for the Council when and as directed by that body. Otherwise, each Council member will express their individual views themselves.
- If a Council member or Council Staff observes other Council members speaking for the Council, they should bring it to the attention of that individual or inform the Council Chair, Vice Chair, or Council Executive Director.
- Each Council member will express his or her own individual ideas to the press.
- Once an issue has been decided at a regular Council meeting, each Council member may express his or her views on the vote.

## **VIII. Council Policy Documents**

The Council adopts policy in ordinances and sets expectations in resolutions. The following ordinances are adopted or updated periodically:

- Annual Action Plan
- Capital Improvement Plan
- General Plan
- Community Plans
- Redevelopment Agency Policy and Orientation Manual

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- Redevelopment Project Area Plans and Budgets
- Council Policy Manual
- Annual Budget (including legislative intents)

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## IX. Appendix A – Council FY2011 GOALS

### Having a sustainable thriving economy by:

1. Creating an ongoing, self sustaining, local economic engine by incubating small businesses, promoting new downtown businesses, and strengthening all business centers
  - a) Develop a communications plan to educate people about buying in Ogden
  - b) Develop a strong retail corridor along 12<sup>th</sup> Street and North Wall
  - c) Encourage additional retail city wide
  - d) Establish ourselves as an aerospace industry nucleus
  - e) Recruit and maintain high paying, skilled jobs in a wide range of fields
2. Continuing to establish ourselves as the high adventure recreation mecca and promote additional activities
  - a) Support High Adventure infrastructure that will enhance the economy and desirability for people to work and live here

### Having stable and safe neighborhoods by:

3. Developing processes to encourage and prioritize responsible home ownership, stepping up efforts to encourage quality home rentals, and supporting historic preservation

- a) Strategically focus resources in targeted geographical areas
4. Focusing initiatives to reduce crime and gang-related activities through prevention, intervention programs, and by strengthening community policing
  - a) Support proven, effective programs to deal with gangs, drugs, and crime
  - b) Promote neighborhood watch and other community initiatives to encourage safe neighborhoods
  - c) Support the continued use of technological advances to fight crime
5. Promoting effective transit alternatives throughout the City to connect our community

### Having actively involved citizens by:

6. Encouraging neighborhood and community gatherings
  - a) Support two community fairs
7. Encouraging community wide service
  - a) Promote "Make-A-Difference Day" as an annual event
8. Utilizing innovative methods to inform the public
  - a) Conduct at least two Council meetings in the community

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## **Having quality activities accessible to all by:**

9. Supporting diverse community activities and events
  - a) Invest in City owned recreation facilities for all residents regardless of age, including the Marshall White Center, the Golden Hours Senior Center, Lorin Farr pools, and the Centennial and Bonneville trails
10. Improving the quality of parks and recreational amenities
  - a) Evaluate options for improving parks; request recommendations from the Parks and Recreation Advisory Committee

## **Being well known for our rich natural environment by:**

11. Utilizing the natural resources found in our community

12. Protecting, maintaining and preserving rivers, hillsides, trails, etc.

- a) Develop "Green Ogden" goals and policies
- b) Develop an open space plan

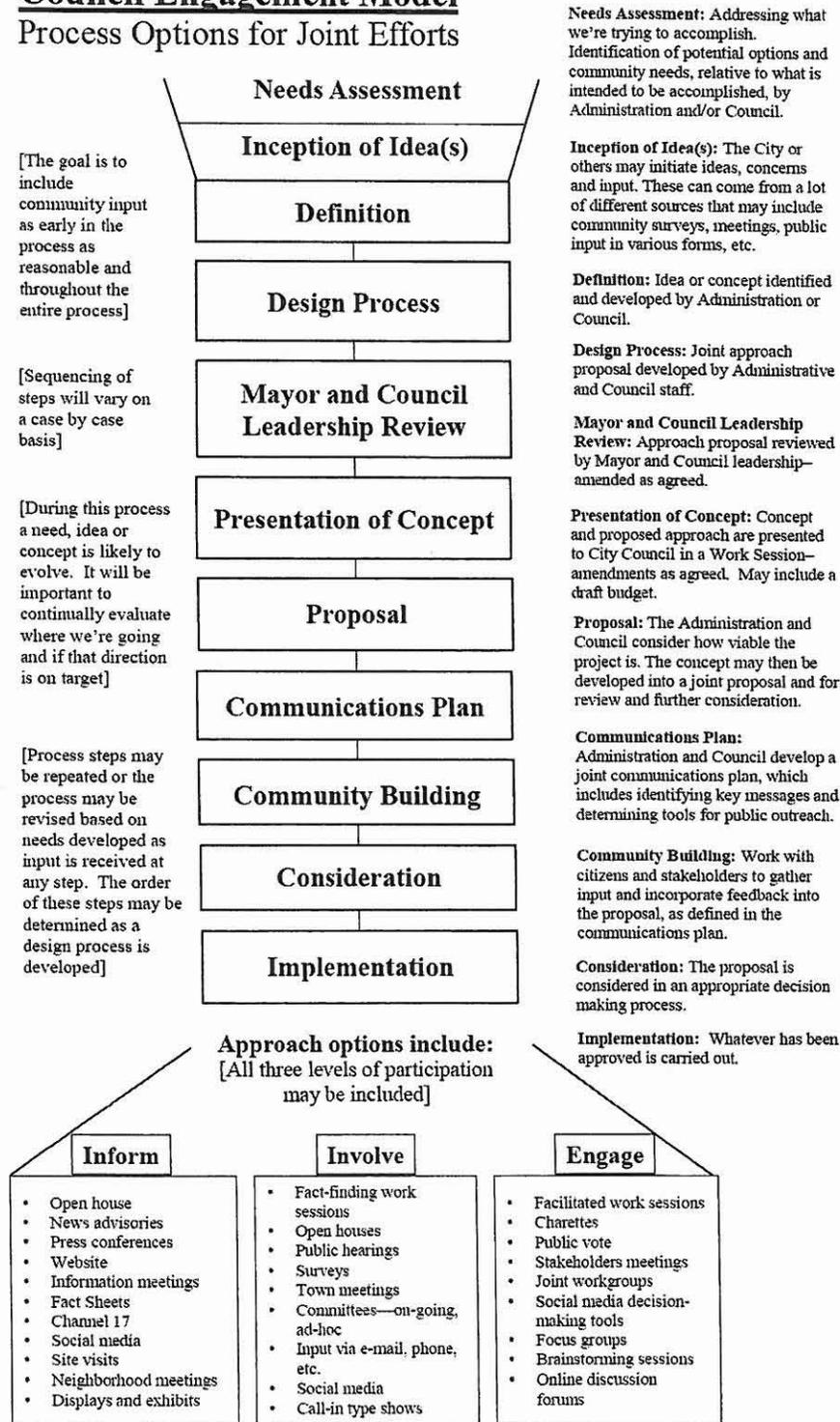
13. Enhancing and promoting environmentally-friendly high adventure activities, amenities and infrastructure

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## X. Appendix B – Council Engagement Model

### Council Engagement Model

#### Process Options for Joint Efforts



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## XI. Appendix C – Council Staff Expectations

Topics covered in this appendix include:

1. Council Staff Responsibilities
2. Staff Administration

### 1. Council Staff Responsibilities

Council staff exists to assist the Council in accomplishing the work of the Council through adherence to the Council's norms, rules of procedure, legislative intents, processes, schedules, and work plan.

The Staff has the following specific responsibilities:

- To serve each Council member and to be fair to each.
- Respond to Council member requests within the guidelines set by Council.
- Assist individual members with meetings related to Council business and where the Staff's professional expertise is needed.
- Prepare and maintain Council Orientation and Policy Manuals.
- Assist Council members in establishing Council policies.
- Facilitate work sessions.

- Assist the Council in establishing Council policies and programs by putting consensus in writing.
- To establish effective working relationship with the Administration by:
  - Meeting weekly with the CAO.
  - Arranging joint meetings with Mayor and Council leadership and/or Council as a whole.
  - Reviewing proposals submitted for the City Council agenda and suggesting additional information which might be helpful to the Council.
  - Discussing with the Administrative Staff how they might help to enhance the effectiveness of City Council meetings.
- Provide mechanisms to track Council requests.
- Assist the Council in understanding their responsibilities and opportunities that exist within the separation of powers.

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- Assist in the development and analysis of policies for the city as a whole.
- Provide balanced information to the Council upon which they can base decisions and answer constituent's questions.
- Develop or analyze proposed policy.
- Draft policies, as directed by City Council.
- Evaluate recommendations of the Administration and the community when proposed to the City Council.
- Track policy as it is being developed and implemented.
- Analyze budget proposals from the Administration and make recommendations to the Council.
- Follow adopted policies regarding selecting management and financial auditors.
- Make recommendations regarding how to enhance the Council's image and effectiveness.
- Develop publications which explain how the Council and City government work.
- The Communications Coordinator, with prior approval from the Executive Director, will assist the City Council in sending global (city wide) emails on important and time sensitive issues that impact Ogden City employees.
- Assist the Council in creating decision making processes that can be clearly understood by the public.
- Create and implement an ongoing communications plan for the Council.
- Follow the "Office Procedures" outlined in Appendix D.
- Be involved in the community in both Council-related projects and community organizations.
- Attend community functions, where appropriate.

## **2. Staff Administration**

### **Office Administration**

- The Council Office will be managed by an Executive Director whose primary duties are to support the Ogden City Council in managing processes and in facilitating its administrative responsibilities.

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- The Executive Director is responsible for monitoring the quantity and quality of work produced by the Council Office, establishing appropriate priorities, and allocating the workload amongst staff.
- The Executive Director has the responsibility of hiring individuals for the Council staff positions.
- The Executive Director shall be responsible for the performance evaluations, supervision, increase, and necessary disciplinary action for other Council staff.
- When a Council member wishes to have staff assistance with setting up neighborhood meetings, mass mailings to constituents, etc., the Council member will discuss the project with the Council at a work session.
- The Council as a whole will determine the appropriate staff support and costs for the proposed activity.
- If not reviewed by the Council, the Council member will reimburse the Council budget for the costs of any materials and staff time.

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## XII. Appendix D – Agendas, Meetings, Work Sessions

Topics covered in this appendix include:

1. Agenda Meetings
2. Council Meetings
3. Study Sessions
4. Work sessions
5. Other Meetings
6. Presentations to the Council

### 1. Agenda Meetings

#### Reports Coming from Administration

The agenda meeting is a meeting to review the agenda items and work session materials being proposed for action or consideration by the City Council.

- Agenda meetings are held weekly on Tuesdays at 8:30 am in the Council Office
- Participants include: Chief Administrative Officer, Council Executive Director, City Recorder, City Attorney, Council staff, other Administrative staff as deemed appropriate by the CAO.
- All proposed agenda and work session items are reviewed and discussed in the agenda meeting. Agenda Item Reports are transmitted to the City Council Executive Director during this meeting.
- All materials being presented at the Council meeting or work session (including overheads, Power Point presentations, maps, etc.) are to

comply with the Presentation Guidelines in Exhibit 1.

#### Agenda Guidelines

##### *Common consent items*

- Common consent items are usually straightforward and it is assumed no further discussion is necessary.
- If a Council member wishes to discuss an item further, s/he can request the item be removed from Common Consent before the vote is taken.
- As a general rule, no ordinance presented for the first time is placed on Common Consent.

##### *No Council meeting on the 5<sup>th</sup> Tuesday of the month*

- The Council may take specific action to schedule items on the 5<sup>th</sup> Tuesday of the month or agree to do so when polled by Council staff.
- If asked by Administration to schedule an item, the Council staff will review the request with the Council Chair and Vice Chair and get their permission. If such a meeting is scheduled, the agenda will be for those items which cannot wait to the following week.

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## *Agenda Item*

- An agenda item is an action that requires specific discussion and a decision at a City Council meeting. This decision constitutes a “formal” action of the City Council.
- The agenda item is submitted by the Chief Administrative Officer (CAO) at the weekly agenda meeting.

## *Agenda Item Report*

- Each agenda item is presented in a specified format called the Agenda Item Report.

## *Information Items*

- Information provided to keep the Council informed and updated on topics and issues that do not require specific Council action.

*All agenda items for City Council meetings must meet the following criteria. If all of the criteria are not met, the agenda item will be considered when submitted in a manner which meets the criteria.*

- The Agenda Item Report is complete and accurate.
- The timelines required by law (federal, state, ordinance, etc.) can be met.
- If the agenda item or work session topic is large or complex, an Executive Summary is to be provided

that highlights the key elements of the request.

- All appropriate supporting documents are provided, e.g., ordinances, resolutions, agreements, etc.
- Proposed actions are described in an ordinance or resolution that has been approved by the City Attorney’s Office unless it is not appropriate to do so.

*The Agenda Item Report is to include the following information and be in the same format for each agenda item for all Departments.*

- Transmittal – the transmittal format includes the information prescribed.
- Executive Summary – if the agenda item or work session topic is large or complex, highlights of the key elements of the request are to be provided as an executive summary.
- Supporting Documents – these documents will be provided electronically when possible and included: resolution, ordinance, contract, other legal documents, detailed description of the proposal, consultant reports, maps, diagrams, photos, etc.

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*Council Staff reviews the agenda or work session item to ensure all supporting documents are provided, all information is materially accurate, and identifies issues and questions.*

- A Council Staff Review is completed for each agenda and work session item unless an exception is authorized by the Council Executive Director. Council Staff may call the "Staff Contact" indicated on the transmittal to ask questions and clarify information.
- The Council Staff Review is reviewed at a work session with the Council, if appropriate, and distributed electronically on Fridays along with the Agenda Item Report or work session materials as appropriate.

## *Agenda Preparation and Distribution*

- The City Council Executive Director, with direction from the Council Chair and Vice Chair, sets the meeting agenda.

In the event that a time-sensitive situation arises that requires agenda amendments and Council Leadership is not available to approve the amendments, the Council Executive Director (or designee) is authorized to make the decision. The Council Executive Director will contact each Councilmember as soon as possible to explain the amendment. If Council Leadership disagrees with the

amendment, it may take further appropriate actions to amend the agenda.

- The Recorder's Office assigns a recorder for each meeting who is responsible for electronically preparing, posting and distributing the agenda. This person also attends the meeting and prepares, posts and distributes the minutes as required.
- Electronic agenda packets for Council meetings and work sessions are e-mailed on Friday afternoon before the week that the meeting will be held.

## *Council Meeting and Work Session Minutes*

- Draft minutes from Council Meetings, Work Sessions, and Closed Executive Sessions are only to be released to Council staff for review when formally adopted by the Council in a Council meeting.
- Recordings of open public Council meetings are available to the public via the City Council's microsite web page (<http://councilmeetings.ogdencity.com>) / or in the Recorders Office the day following the meeting.
- The Recorder's Office is responsible for creating, posting, storing and releasing all minutes.

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- Council staff compiles and posts "Meeting Results" on the Council's website no later than the day following a regular or special Council meeting. The results include a description of all action items, the actual results (passed, failed, tabled, etc.), and the number of supporting and/or opposing votes. All meeting results will be indicated in a red font for clear identification.

## What is not placed on the agenda?

The following items are not placed on the Council's agenda:

- Political candidates (elected official are okay, but the purpose needs to be business not just to talk generally during election time).
  - Persons wishing to talk about religious issues.
  - Persons who wish to criticize the Administrative staff (such concerns should be referred to the Mayor). If a citizen has talked with Administration and still feels like they want to address the Council, the Council staff then will place them on the agenda.
  - Persons wishing to entertain.
  - Persons who have presented their issue to the Council before and no new ideas are being proposed.
- If individuals wish to do any of the above, they may (as any citizen may) address the Council under Public Comments at the end of the agenda.

## Scheduling of Closed Executive Sessions

Closed Executive sessions will only be conducted in accordance with State law and the following guidelines.

- The Council staff will not schedule a Closed Executive Session unless they have received a memo from Administration in enough detail to describe what will be discussed in the closed session and had enough time to prepare a Council Staff Review.
- At the meeting, the Council Chair will ask the City Attorney whether the purpose of the Closed Executive Session is consistent with the State law. Section 52-4-205 of the Utah Open and Public Meetings Law defines reasons that Closed Executive Sessions can be held as:
  - a) Discussion of character, professional competence, or physical or mental health of an individual;
  - b) Strategy session to discuss collective bargaining;
  - c) Strategy session to discuss pending or reasonably imminent litigation;
  - d) Strategy session to discuss the purchase, exchange, or lease of real property;

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- e) Strategy session to discuss the sale of real property;
  - f) Discussion regarding deployment of security personnel, devices or systems;
  - g) Investigative proceedings regarding allegations of criminal misconduct.
- After getting the City Attorney's assurance that it does, the Council will adjourn to a Closed Session.
  - The Council Chair entertains a motion and second to adjourn to closed session. The Council approval is taken by a roll call vote.
  - Closed Sessions are held in Council conference room #310. The room is cleared of persons who do not relate to the topic under discussion.
  - Once in the Closed Session, the Council Chair will ask what the purpose of the session is and what end result the Administration is expecting before the item is discussed. This allows the City Council to determine if they concur with the topic being consistent with State Law.
  - The Council Chair will ask Administration to introduce individuals who may not be known to the City Council.
- All information discussed in a Closed Executive Session must be held in strict confidence. This information can not be shared with anyone not invited to participate in the meeting including City employees, family, friends, and the media.
  - The Utah Open and Public Meetings Law is discussed in detail in Section 15 of the Council Policy Manual.

## 2. Council Meetings

### When to begin meetings

- Council meetings start on time.
- Council members are expected to be in their seats prior to the starting time, unless previously excused.
- When the City Council meeting is going late or when several long discussion items are scheduled for the same night, the Council may wish to take a brief break. If so, a specific time for them to return will be indicated before breaking.

### During the Council meetings

- Utah Open and Public Meetings Law will be followed. See Council Policy Manual for State Law requirements of all Council meetings.
- Council Rules & Procedures – the Council has adopted a list of Rules & Procedures which address

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agenda items, election of Chair & Vice Chair, etc.

## Protocol during meetings

- The tone is set through cordiality. Not what is said, but the way it is said will determine the Council's image during a meeting and out in the public. Also, if Council members feel so inclined, an occasional thank you to City Staff is appreciated by those who serve you.
- How the Council and Mayor are addressed in meetings. The Council is referred to individually as Council Chair, Vice Chair, or Council Member...; the Mayor as Mayor or Your Honor; the Staff is referred to by their last names, i.e., Mr...Ms....

## When Advisory Committee reports are presented

- Thank the committee for their time and effort.
- Read reports and ask questions.
- Determine which recommendations the Council can support.
- State specific reasons why the Council members cannot support those items which were changed or deleted, so members of the advisory committee will understand why they will not be implemented.

## Approval of the minutes

- The Council minutes are not official until the Council approves them in a regular meeting. Copies of the minutes may not be provided, used, or released to the public or press until this approval has been given by the Council.
- When a Council member has proposed changes to draft minutes that are being considered for approval, the Council member requests that the draft minutes be removed from the agenda. This request can occur prior to the scheduled meeting by contacting the Council Executive Director or during the meeting.

The proposed changes are provided to the Council Executive Director who coordinates with the Recorder's Office and, if necessary, the City Attorney's Office to determine if the changes are appropriate.

If the changes are appropriate the Recorder's Office amends the draft minutes and reschedules them for consideration of approval. If the proposed changes are not appropriate the Council Executive Director communicates the reasons to the Council member.

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## Conducting the meeting

- According to the Council Rules & Procedures, the Chair conducts the meeting and in his/her absence, the Vice Chair presides.
- In those instances when both the Chair and Vice Chair are unable to be present, the immediate past Chair presides.

## Public Hearings/Public Input

- Administrative Staff will give a brief presentation explaining what is under consideration by the Council during the hearing.
- During a public hearing/public input, Council members will present additional information before the Council closes the hearing. This is to assure the decisions made by the Council are based on information presented during the hearing and not later, when the public does not have an opportunity to respond.

## Roll call versus voice votes

### *Roll call votes are used for:*

- Ordinance adoption.
- Resolution adoption (does not apply to ceremonial resolutions and proclamations).
- A decision to set a closed executive session.

- A vote which has a significant legal impact.

### *Voice votes may be used for:*

- Minutes adoption.
- Procedural questions (e.g., adjournment, tabling, setting public hearings).
- Preliminary decisions (e.g., voting on an amendment to a motion under consideration, or a segment of a community plan which still awaits final adoption as a total package).

## How ceremonial resolutions and proclamations are handled

- An individual or group may receive an honorary resolution or proclamation if they have met one or more of the following criteria:
  - Have received state or national recognition
  - Earned a state or national title
  - Provided, or continues to provide, a significant benefit or contribution to the City
  - Is celebrating a notable anniversary of an organization or historic event
- Any Council member may ask a resolution or proclamation be drawn.

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- Council member requests are to include:
  - The name of the individual or group that he or she would like recognized
  - The purpose of the recognition
  - The name and phone number of a person to contact to allow Council Staff to make arrangements
- If Council Leadership determines an honorary resolution or proclamation is not appropriate, a letter of recognition or acknowledgement may be drafted by staff and sent to the individual or group that was proposed to be recognized.
- The Staff:
  - Prepares the item of recognition.
  - Places it on the Council agenda.
  - Calls the individual to invite them to the meeting, lets them know the item is at the first of the agenda, indicates they may bring family and friends, and lets them know they may leave once the presentation is made, if they choose.
- If a Council member has a problem with what is written in a resolution or proclamation, they call the Council Staff before the meeting to ask for changes.
- The Staff will acquire the necessary signatures on the original resolution or proclamation, frame the document, and have it on the Chair's desk before the meeting.
- The Council member who requested the resolution or proclamation also will read it at the Council meeting. His/her name will be listed on the agenda sheet. For those items of recognition that a particular member did not request, the reading of these will be rotated.
- At the meeting:
  - The individual being honored is asked by the Chair to step to the podium.
  - The Council member who requested the resolution or proclamation be drafted, reads this or defers to another Council member.
  - The Council member who reads the resolution or proclamation makes a motion to adopt it, there is a second, and the Council votes.
  - The person being honored (or member of the family/business) is asked to comment.
  - The Council Chair asks the person to come forward and receive their proclamation or resolution. This gives the

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opportunity for the Council to congratulate them.

- Council members stand and shake the person's hand.

## Ordinance Adoption

- An ordinance is adopted by a roll call vote.
- When a change is made to a proposed ordinance during the Council meeting, the Council needs to be very specific as to the wording of the change. Otherwise, ask the Staff to work on the wording and bring it back for adoption by the Council (e.g., legal descriptions) at a future Council meeting.
- Utah State Law requires all ordinances have a preamble which gives the reasons for the ordinance. This essentially states the legislative intent or findings.

## Advice and Consent

- The names recommended by the Mayor for appointment will be circulated by the Council staff to the Council for their review.
- If there are any concerns with the individuals proposed, the Council member(s) will request Council staff to set up a closed executive session to discuss the concerns with the Mayor.
- If the Council has no concerns with the individuals

recommended by the Mayor, the names will be placed on the following week's agenda for formal approval.

- Committee members are invited to attend the Council meeting where they are recognized by the Chair. Each newly appointed or reappointed committee member is given an opportunity to share appropriate brief thoughts regarding their appointment.
- Council Staff provides each newly appointed committee member with a welcome letter and Ogden pin.

## How to deal with controversial meetings

The following steps are followed in handling controversial proposals:

- Introduction of the issue is given by the Chair.
- Administrative or Council staff gives an overview.
- Applicant/petitioner makes his/her presentation.
- The public is asked to comment.
- The Council votes to close the public hearing.
- Discussion amongst the Council members.
- Action by the Council: approve, not approve, approve with changes, or table/continue.

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- The Chair then asks if the public or Administration has any questions about the action taken by the Council.
- No clapping, booing, or other ungracious behavior by the public will be allowed during the discussion of a proposal.

## *Disrupting a meeting*

- If a person disrupts a public meeting they are in violation of State law. Disrupting a public meeting can be a Class B misdemeanor under either Section 76-9-304 (Disturbing Legislative or official meeting) or 76-8-103 (Disrupting a meeting or procession) of the Utah Code, both of which have been adopted as Ogden City ordinance.
- Ogden City Municipal Code section 5-3A-1 defines "disorderly conduct" as: Any illegal or improper diversion or any use of insulting, profane, indecent, immoral, lewd or obscene language, or any indecent, insulting, tumultuous, immoral, lewd or lascivious conduct or behavior, or any disturbance or breach of the peace or fighting, or challenging or threatening to fight, or any mendicancy or larceny."
- If a person fails to obey the lawful order of a police officer to leave a public place the person may also be violating the provisions on disorderly conduct. If prosecuted

under this provision it would involve a Class C misdemeanor.

- The City Council Chair will determine the action(s) to be taken in a Council meeting with regard to a disruptive person.

## *Review of Citizen Input*

- Citizen input that is received prior to a meeting will be made available for Council member review 10 minutes prior to the meeting.
- Information received at the meeting will be distributed to the council members by Council staff.
- Members of the audience should not approach the dais.

## **Tabling**

- If two Council members wish to postpone an item to get more information about the proposal, the Council may table this item to a certain date. This applies to tabling the issue for one time only.
- The maker of the motion to table an item needs to specify what information is requested and state why this information was not available previously.
- The vote to table must be a majority vote to be approved.

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## 3. Study Sessions

- A Council Study Session will be held prior to each scheduled regular or special meetings for the purpose of reviewing the agenda for the meeting which begins at 6:00 p.m. and to conduct Council Business. Study Sessions begin at 5:30 p.m.

## 4. Work Sessions

- A work meeting held for the benefit of Council members to discuss issues, options and proposals and to provide an opportunity for the Council, Council staff and Administration to ask clarifying questions to ensure a comprehensive understanding of what is being presented. Information provided in a work session is "advisory" to the Council.
- If the work session will be more than four (4) hours in length, the work session will be split into two (2) work sessions.

### Work Session Format

- Although work sessions are open meetings, they do not allow comments from the audience unless authorized by the Council Chair. The work session is held for the benefit of the Council members.

- From time to time Council may hold a Fact Finding Work Session where specific topics are addressed and outside interest groups are invited to provide input to the Council. Public input with a limit of three minutes may be allowed during a Fact Finding Work Session.
- Information presented in a work session is considered advisory to the Council. The Council does not take formal action on any official item nor give "head-nods" or implied approvals in work sessions. Direction (guidance or instruction) can be given at work sessions on miscellaneous administrative matters if deemed appropriate by the Council.
- All official decisions are made in regular or special Council meetings. These official council meetings provide the requisite noticing of all items listed on the meeting agenda.
- All work session materials are presented at the agenda meeting for the following week e.g., if the agenda meeting is held on the 5<sup>th</sup> of the month the work session materials are submitted for the 12<sup>th</sup> and 14<sup>th</sup> work session dates. Exceptions may occur with items that are unforeseen or are an emergency.
- Questions will be asked by Council members and Council staff during work session presentations. When requested,

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answers to questions asked in or prior to a work session (in a Council Staff Review) are to be provided by the Department in writing prior to action being taken.

- In some cases the department director or designated staff member will be asked clarifying questions via e-mail or telephone.
- If questions arise after the work session and before a decision is made in a Council meeting, the questions and their answers should be communicated via the Council Executive Director. This will help ensure that all Council members receive the answers.
- Council members may ask new or further questions during the meetings or work sessions.
- The Council Executive Director determines when work sessions are required for proposed agenda items. He or she will communicate the need for a work session and the proposed date to the CAO as early as possible to provide time for the Administration to prepare for the work session.
- Outside groups that are presenting within a work session must submit information to the Council Executive Director by Tuesday of the week prior to the work session. The outlined policies (see Presentations to the Council below) also apply to the

information being provided by these groups as well.

## 5. Other Meetings

### Coordinating Committees and Workgroups

- Coordinating committees and workgroups are created to facilitate a high level of communication with the Administration or other groups concerning important issues. Each committee/workgroup is to have a stated purpose and goal.
- These forums provide an opportunity for Council members to be involved in the formulation of proposals and to help facilitate efficiencies in the process.
- Attending Council members may give direction (guidance or instruction) on administrative matters at these meetings. They are then responsible to report direction given and summary information from the meeting to the Council at the next available Council work session.
- The Council as a whole will consider all official decisions at a regular or special Council meeting with the requisite noticing.

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## Intergovernmental Committees

- Council Members are assigned to participate in intergovernmental committees in January each year. Alternate Council Members are also assigned where appropriate.
- Each January the Council reviews its representation on intergovernmental committees and work groups. It is the intent to spread these assignments around to protect the Council and each Council member.
- During deliberation, the Council shall discuss how such membership serves the City's interests, who is to represent the Council, and any special position the Council representative holds on each board.
- While it is recognized that the Council Chair and Vice Chair have additional responsibilities, assignments to committees and work groups will be assigned as equally as possible so that no Council member has an excessive amount of committee meetings to attend.
- Council members should not accept assignments to committees if they will be unable to attend their meetings on a regular basis.
- The assigned Council member is responsible to report on the activities of the intergovernmental committee at the next available Council Business work session.
- Council members are expected to communicate the vision, goals and priorities of the Council to the assigned intergovernmental committees.
- See also Council *Rules of Procedure*
  - Intergovernmental Committee Appointment Process

## 6. Presentations to the Council – See Exhibit 1

## Exhibit 1 – Ogden City Council Presentation Guidelines



# Ogden City Council Presentation Guidelines

### Overview

The City Council is committed to reading and absorbing all of the information provided to them in preparation for meetings. The Council forms questions and/or concerns from the information they are given. The volume, complexity and sensitivity of this information require that presentations be concise, accurate, professional and understandable.

### **Presentations by the Public (*Citizens, community groups, organizations, etc.*)**

Anyone from the public may request or be invited to make a presentation during a City Council meeting. Individuals will be given ten (10) minutes to make a presentation, unless otherwise specified by the Council's Executive Director.

Requests to make a presentation during a City Council meeting will be considered as outlined below:

- A presentation request must be submitted in writing to the City Council office via email, fax or mail. Requests should include the topic of discussion, and the name, address, telephone number and email address of the individual wishing to make a presentation.
- Council Leadership will determine whether a request is approved to be placed on an agenda.
- The Council Executive Director will provide notification of whether or not a request has been approved.
- If approved, the presentation will be scheduled for a specific date. Topics

not approved for presentations may be addressed during the public comments portion of a City Council meeting where individuals are given three (3) minutes to address the Council.

The following will not be placed on the Council's agenda:

- Political candidates seeking a forum for their political platform
- Religious organizations or representatives seeking a forum for religious proselyting
- Individuals or organizations who have previously presented their issue to the Council
- Individuals or organizations whose sole purpose is to entertain
- Individuals or organizations seeking to criticize Administrative staff (such concerns should be discussed with the Mayor or Chief Administrative Officer).
- Presentations related to potential or pending litigation with the City

The three minute public comment period held each Council meeting may be used to address the Council on any issue or topic, including issues that may not be placed on an agenda.

### **Presentations by City Officials and Staff**

City officials and staff may use presentations to describe issues that are discussed and considered by the Council. These presentations are welcomed and can be helpful as materials are presented in a clear and concise manner.

### **Guidelines for Scheduled Presentations**

The following expectations are provided to help all those who provide information to the Council and who make presentations at City Council, Redevelopment Agency and Municipal Building Authority meetings, work sessions or study sessions.

- Content in presentations should be easy to see. Everyone needs to be able to clearly see or read what is displayed on the screen, regardless of their location in the room.
- Electronic and overhead materials must be at least 24 point font size. The use of colors should be pleasing to the eye, and text colors should contrast with background colors to ensure clear visibility. *(Note that **not all** PowerPoint templates meet these requirements)*
- Key points or compelling images should be the main focus of a presentation. The amount of text used in a presentation should be limited and contain only central messages. No more than six lines of text should be presented at a time through electronic and overhead materials.
- All presentation materials must be provided to Council staff by the Thursday before a meeting, unless otherwise approved by the Council's Executive Director. This allows time for Council members to review this information in advance, for staff to preload electronic presentation materials and for presenters to test meeting room equipment to ensure legibility and full functionality.

- Requests to test room equipment and presentation materials may be sent to: [citycouncil@ogdencity.com](mailto:citycouncil@ogdencity.com). Equipment is to be tested no later than 2:00 p.m. on the day of the presentation. *(Note meeting room equipment only supports PowerPoint and PDF presentation formats. Presenters may contact Council staff to learn which video and audio software is supported)*
- Presenters are to bring one hard copy of all overhead and presentation materials for the City Recorder's office so these can be included as part of the official meeting record.

### **Guidelines for Public Comments**

- Individuals participating in the public comment portion of a meeting may not use PowerPoint presentations, but printed overhead materials are appropriate. This is to improve the effectiveness of presentations and to avoid disruptions. Those wishing to provide a PowerPoint presentation may instead make a request to be on the agenda.

This aligns with Administrative Policy which requires I.T. approval before connecting any device to the City's system, and that electronic files loaded from an outside source onto City-owned equipment must first be scanned for viruses.

## **XIII. Appendix E – Office**

Topics covered in this appendix include:

1. Council Salary and Benefits
2. Council budget and expenditures
3. Invitations to Council members
4. Pioneer Days tickets
5. Travel
6. Council Office operations
7. Council emergency preparedness
8. Filling a vacancy
9. Legal actions against Council Members
10. Outside Legal Counsel

### **1. Council Salary and Benefits**

#### **Salary and Benefits**

- Prior to fiscal year 2001, the monthly salaries of the City Council were fixed.
- Beginning in fiscal year 2001, the Council approved cost-of-living adjustments to equal those received by the Mayor and Ogden City employees.
- The council chair, vice chair and members of the city council shall be reimbursed for real and actual expenditures they may make relating to official duties conducted outside of the city, in addition to monthly salary compensation.
- Reimbursement for out of town expenditures, except for per diem, shall be paid upon submission of documentation and claims.

## **Procedures**

- In FY2011, the monthly salary of the Council Chair is \$909.74; Council Vice Chair is \$821.69; and Council members is \$733.66.
- Effective January 3, 2012, per ordinance #2010-18, the annual salary of council chair, the vice chair, and members of the city council will be; council chair, \$13,884; vice chair, \$12,888; council members, \$11,880.
- Beginning in FY2014, and every four years thereafter, subject to approval by the Council, the 2012 salaries shall be modified, as necessary, based on benchmarking of other Utah cities.

#### **Meeting Meals**

An Internal Revenue Service (IRS) ruling has determined that meals furnished during City Council meetings are taxable to Council members. Rather than tracking specific attendance for this purpose, each Council member will be assumed to have attended each City Council meeting where a meal is served. The average cost per meal is determined annually on a calendar year basis. The FY2013 cost per meal is \$4.85. The costs will be accumulated quarterly and provided by Council staff to the Payroll Clerk for inclusion as compensation for tax purposes.

## Wellness Program

- Council Members may participate in the City's Wellness Program (i.e. gym membership, wellness lunches, contests, etc.) Those interested should contact the Executive Assistant. This is considered an employee benefit and may show as earned income on your check stub for participation in certain programs.

## Electronic Equipment

- Council members and Council staff are provided with iPads to ensure access to City e-mail accounts, meeting information packets and other pertinent information related to City business.
- Documents, files and e-mail messages used on iPads are typically considered public records and may be subject to the Utah Government Records and Management Act (GRAMA).
- iPads are intended to be used for legitimate City related purposes with the goal of improving the Council's service to the public. iPads may not be used for operating a business for personal gain, sending chain letters, soliciting money for religious or political causes, or any other purpose that interferes with normal City business activities.
- iPad applications that are needed to perform legitimate City related purposes will be provided to Council members and Council staff. This list of applications will be determined by the Council

Executive Director and approved by Council leadership.

Applications desired for additional personal purposes may also be used on iPads, so long as these are acquired and maintained through a personal iTunes account.

- The City's iPad devices offer many benefits and can enhance the productivity of Council members and staff. However, these tools can also pose risks to the City's data and systems if appropriate security measures are not maintained. Council members and staff should not download files from sources which could be untrustworthy or open and read files attached to e-mails unless these knowingly come from a trustworthy source. Council members and staff are required to maintain password protected screens in order to ensure adequate security.
- iPads are not to be used to organize, solicit funds for, or otherwise actively participate in a fundraising function for a partisan political party or candidate.
- iPads are to be returned to Council staff when a Council member's term of service has ended.

## 2. Council Budget and Expenditures

### Telephone

- Telephones are provided at each Council work station and throughout the Council office for use by individual Council members.

- Long distance calls made from these locations should relate to Council business only
- A cellular phone may be made available for the Council Chair and Vice Chair.
- Long distance calls regarding Council business made by Council members from their personal telephones may be reimbursed upon receipt by Council Staff of documentation (i.e., telephone bills).

#### **Official Expense Account**

- The Official Expenses account is available to conduct Council business, e.g., meals for work sessions and night meetings, a Council member's meal when attending an event representing the Council.
- When a Council member or Council staff is sent to a luncheon/dinner or meeting to represent the City Council, his/her meal and travel outside the City will be reimbursed from the Official Expenses Account.
- Council member's expenses for the Chamber (February) and Weber Area Council of Governments (WACOG) dinners (January) will be paid from the Council Official Expense account budget.
- Any Council member wishing to attend an event or function (excluding all fund raising events) as a representative of the Council must bring their request to the

Council for approval if City funding is being sought. If there is a consensus by the Council, the associated expenses will be deducted from the combined Travel/Education budget.

- Expenses charged to the City for family members (e.g., dinners) will be reimbursed to the City within 30 days of the event.

#### **Memberships**

- Monies are available in the budget for the Council staff's professional dues, e.g., American Planning Association, American Society for Public Administration, etc.
- Memberships for Council members with outside organizations need to be approved by the Council for the initial membership, with annual renewals not requiring approval.
- Memberships for Council staff require approval from the Executive Director.

#### **Signature Authority**

- As part of the ongoing operations of the Council Office (and as outlined in City ordinance), the Executive Director may sign requisitions up to and including \$30,000 (as approved by ordinance #2011-30).
- All requisitions over \$30,000 shall be signed by the Council Chair once the requisition is initialed by the Director (to assure monies are available within the particular account being charged).

- The two Policy Analysts may sign requisitions of \$1,000 or less as authorized by the Executive Director via letter of certification with the finance officer identifying the authorized staff and the dollar limit.
- All payroll forms shall be signed by the Executive Director or his/her designee.
- Professional Service Agreements and contracts solely for legislative purposes, in an amount that does not exceed \$30,000, may be signed by the Executive Director.

### 3. Invitations to Council Members

- Council members should not assume the Staff will receive a copy of the same notices or invitations Council members do. If a Council member thinks an event is one that every Council member should attend, they may call the Staff and ask them to poll the Council.
- For those events where all City Council members may not be attending as a group, each individual Council member is responsible for making his/her own appointment and for canceling reservations. As what one does reflects on all Council members, an individual Council member who makes a reservation or appointment is expected to show up or call to cancel.
- When a Council member receives an invitation, he or she will determine whether it relates to a Municipal Ward or the City as a

whole. If from the Ward, the Council member from that Ward will determine whether they can attend. If he or she cannot attend another Council member is contacted to represent the Council.

- All Council members are invited to ride in City parades. The Council also may ride in the parades of other cities to show their support.
- Every year, the Executive Director and Executive Assistant will work to set up a Christmas event. This event is for Council members, their Staff, and their partners only. Gift exchange amongst Council members is not encouraged.

### 4. Pioneer Days Tickets

- Each Council member may receive up to a maximum of eight (8) reserved seating tickets to the Pioneer Days Rodeo each year. Each Council staff member may receive a maximum of two (2) reserved seating tickets to the Pioneer Days Rodeo each year. These tickets are paid for through the Council Office budget. No free general admission tickets will be made available.
- If the maximum number of tickets and/or passes allowed are not requested, the unused tickets/passes may not be redistributed amongst Council members or Council staff.
- Additional reserved seating or general admission tickets for the requested nights can be arranged at the same time but must be

purchased by the individual Council member or Council staff at regular admission prices.

- One (1) VIP parking pass is available for each Council member and Council staff member for the Pioneer Days Rodeo.
- Each Council member may receive a maximum of two (2) tickets for the VIP Hospitality Cabin at the Pioneer Days Rodeo. The passes are for the exclusive use by the Council member and one guest that specific evening. These passes are not to be distributed to or used by other family members or guests.
- Each Council member may receive up to a maximum of eight (8) VIP reserved seating tickets for the Pioneer Days Parade. Council staff may also request reserved seating tickets for the parade as deemed appropriate by the Council Executive Director.

## 5. Travel

### Who defines what is appropriate travel?

- As the Council budget is the responsibility of all Council members, the Council as a whole will approve each trip taken by the Council as a group or by individual Council members.
- The Council and Council Staff's travel allotment will be set during the budgetary process for the City.
- Upon return, a report from the attending Council member(s) needs to be provided to the full Council at the earliest opportunity.

- Council staff will keep a combined log of expenditures for Council members and Council Staff.

### What are the purposes for travel?

- Education
- City responsibilities/programs
- Promotion, marketing and public relations
- Professional sharing
- Professional responsibility, e.g., policy committees
- Meeting with people, e.g., lobbying
- Site visits

### Out of State Travel

*The Council approves out-of-state travel.*

- Except for the pre-approved conferences (e.g., National League of Cities) all Council members and Executive Director requests for out-of-state travel will be presented to the Council for approval.
- The Council will review, on a case-by-case basis, the overall conference registration, extra costs for workshops, orientations, and special events. For example, if a special event is a social which costs are not included in the registration, the Council will determine whether that event is necessary for professional sharing or just entertainment. The City might pay for the first, but not the second.
- The American Planning Association, Utah League of Cities & Towns, and National League of Cities conferences (November/

December and March) are approved as conferences related to Council business.

- A meeting with the City's federal lobbyist will be scheduled for Council members and staff that attend the NLC Conference in Washington D.C. in March.
- Attending the conferences also has value as it allows the Council to meet with other elected officials; share professional experiences/test ideas; learn about other cities; and meet/hear national leaders.
- Council members who are leaving office in January do not attend conferences in November/ December unless s/he is a voting member of a policy committee.
- Council members-elect are encouraged to attend conferences in November/ December prior to her/him taking office.

## In-State Travel

### *Educational/conference opportunities*

Requests for attendance at such meetings, if City funding is to be sought, must be brought before the Council for review and approval.

- The Utah League of Cities & Towns conferences (September/April) are pre-approved as conferences related to Council business.
- Typically for conferences within proximity of Ogden (e.g., SLC), the Council members do not stay overnight at the conference. If a

Council member wishes to stay overnight, they will request the Council approve the stay (needs to be done before the conference).

- Purposes for staying overnight may include more effective interaction with other elected officials and staff, having greater responsibilities as an elected representative of the organization sponsoring the conference, and safety.
- If an emergency situation occurs or an opportunity arises, the Council member may discuss the circumstances with the Council after the action to request approval for funding. It is assumed the individual will pay for the costs under these circumstances, unless the Council chooses to approve them.
- If a Council member shares his/her banquet ticket with another Council member in order for them to take a guest, the second Council member will reimburse the City the portion of the ticket which is a cost to the City and not include in the registration.
- If the Council requests a Council member to represent the City it is anticipated the reimbursement for expenses will be covered from the Council office budget. If an individual Council member wishes to represent the City s/he must bring the proposal to the Council for review and approval. Otherwise, the Council member pays the associated costs.

## Non-Conference Travel

- The Council will review the details of any non-conference travel requests (public relations, site visits, etc.) and consider approval on a case-by-case basis.
- The requesting Council member is responsible to describe the intent and benefit of the travel request and provide the anticipated total expenditure to include cost of registration, per diem, lodging, airfare/mileage, field trips, and any known miscellaneous costs.

### *Council expectations at conferences*

Council members are expected to:

- Attend meetings. Each Council member is expected to attend sessions and/or make contact with people of other cities to learn more about how their cities handle the various responsibilities of a city council and/or city programs.
- Coordination of sessions. Council members will attempt to coordinate in order to cover many different sessions (this may change for various reasons while at the conference) and report on what has been learned during the conference or at the Council's weekly work session meetings (Council members may request Staff to duplicate handouts).

### *Elected/Appointed Officer*

- The Ogden City Council supports those who serve as officers and/or committee members in a national

or state organization related to City business. Council member participation in such activities brings exposure for the City, insider information, contacts, professional sharing, and good public relations for the Council within Ogden City itself.

- The City is willing to use City funds to support such an effort. If a Council member wishes to run for office, s/he will discuss this potential with the Council and the Council as a whole will outline how and the extent to which City funds may be used. The Council will only cover costs not paid by the national or state organization.

### *Travel arrangements*

- Hotel
  - An individual room will be provided for each Council member.
  - A reasonable rate will be obtained based on what options are available, the location vis-à-vis the conference sessions, availability, and safety.
  - Unless otherwise requested, every effort will be made to house Council members in the same hotel for ease of coordinating and communicating what they are learning.
  - Telephone expenses will be reimbursed as they relate to City business only.

- No additional expenses (such as eats from a mini-bar, movies, etc.) will be reimbursed. Room service is expected to come from the Council member’s per diem expenses.
- Hotel nights beyond those normally necessary for a conference or lobbying (e.g., travel day and during conference) will be paid by the individual Council member. This may be done when leaving the hotel or may be reimbursed to the City by the individual Council member within 10 days following the return from the trip. Any exceptions must be approved by the City Council.
- Airlines
  - Council members are expected to travel the most direct route taking into account the Council members other obligations to work, family, etc.
  - If a Council member or staff is bumped for any reason, the City will pay for any extra expenses beyond that paid by the airline. To get reimbursement, the ticket stub will need to be presented with a reimbursement request.
  - The City will pay full coach airfare or mileage at a maximum of the rate allowed by IRS regulations. Mileage reimbursement is not to exceed the average cost of airfare available between the hours of 6 am and 6 pm.
- The cost savings will be taken into consideration if a rental car is required.
- Parking of private vehicle at a parking lot at or near the airport or train station, when a personal vehicle is used to get to that transportation facility, will be reimbursed by the City.
- If a Council member travels to an additional destination route or leaving the City of business, that Council member will reimburse the City for any additional costs.
- Over night stays at National conferences or locations near Ogden may be paid for when:
  - The City saves money.
  - It is more effective for City purposes.
  - The opportunity leads to other City-related experiences.
  - Other responsibilities of the Council member are fulfilled.
  - The Council directs the individual Council member to represent them at particular meetings/events/purpose.
  - Over night stays must be approved by the City Council.
- Per diem
  - Per diem will be paid at the Federally authorized rate for the city in which the conference, convention, or

meeting is located.

- Per diem for the days of departure and return will be paid at 75% of the daily allowable rate.

■ Vehicle rental

- No car will be rented for pleasure.
- The Council may rent a car when:
  - Taking ground transportation is more expensive than the car rental (in such cases, the Council will ride together as much as possible to cut down on costs).
  - Geographical location makes getting around very difficult.
  - City officials have an opportunity to tour projects in order to review how other cities handle similar City problems, lobby legislators, and/or conduct other city-related business.

■ Proper documentation for reimbursement.

- A vehicle rental receipt must be submitted if reimbursement is requested.
- Parking fees and tolls also will be reimbursed when receipts are presented.
- Special circumstances when approved by the City Council as a whole.

■ Ground transportation

- The City provides money to cover ground transportation while traveling (e.g., taxis, buses) to and from City-related business while on a trip.
- The Council Chair and Staff will coordinate the ground transportation when the Council travels as a group.
- These funds are not used to travel to or from social and entertainment activities.

■ Mileage reimbursement

- For use of personal vehicle for Council or staff who do not receive a monthly vehicle allowance the City will pay mileage at the maximum rate allowed by the IRS unless the mileage rate exceeds the average cost of airfare between the hours of 6 a.m. and 6 p.m. in which the most cost effective amount will be reimbursed.
- For use of personal vehicle for Council or staff who do receive a monthly vehicle allowance all travel within a fifty (50) mile radius to and from the Ogden City limits shall be considered covered by any vehicle allowance paid by the city. Only miles traveled beyond the fifty (50) mile radius to and from the Ogden City limits will be compensated at the rate authorized by the IRS. Mileage reimbursement is not to exceed the average cost of airfare available between the hours of 6 a.m. and 6 p.m. in which the

most cost effective amount will be reimbursed.

- The Council will not approve reimbursement for trips taken within a 50-mile radius of Ogden unless the Council member has obtained prior approval of the City Council.
- An exception to this provision would be when attending a conference in Salt Lake City approved by the City Council. In this case, it is expected the Council member will pay for the mileage to and from Salt Lake and parking for the first day of the conference. Thereafter, the City will pay for mileage and parking costs incurred for additional days of that conference.
- Reimbursement for books, DVD's, CD's and electronic downloads.
  - The City will reimburse Council members or staff for tapes and books related to Council and/or local government responsibilities. In order to be reimbursed, an individual must submit a receipt to the Council staff. Once the Council member is through reading the materials, the materials will be housed in the Council Office for the use by others.
  - If a Council member returns from a conference and would like CD's, DVD's, electronic downloads and books ordered, they should request Council Staff to acquire the materials.
- Family expenses
  - Airline tickets for family members shall be placed on individual credit cards and not charged to City accounts.
  - Expenses charged to the City for family members (e.g., meals with legislators) will be reimbursed to the City within 10 days of returning from the conference.
  - Any expenses incurred by family members while traveling as a group (e.g., taxis) shall be paid by those individuals.
- Submission of travel reimbursement forms.
  - The Council will follow adopted City policies regarding travel, per diem, reimbursements, etc. The reimbursement forms and receipts must be submitted within 10 days of returning from the trip.
- Pooling funds.
  - Council and Council Staff travel funds are pooled and utilized jointly. Council staff monitors expenditures.
  - Council Staff travel (in state and out-of-state) requests are approved by the Executive Director as defined by individual training plans as part of the performance review process.

- Civic leader tours.
  - These are tours given by various groups to expose community leaders to a diversity of programs. Depending on the proposed tour, they have value for both information and public relations reasons.
  - Each member will determine whether the particular tour is of value to the City.
  - The tours have a set fee (no per diem, travel expenses, etc. are necessary) which the City will pay.
  - The returning Council member will share the information at the weekly work session meetings.

## 6. Council Office Operations

### Council work space in the Council Office

- Each Council member has an individual cubicle to do research, make telephone calls, filing, etc.

### Use of Stationery

- All correspondence signed by a Council member will be on the City Council stationery.
- Letters for individual Council members are placed on stationary indicating the City logo, but without Council members names listed.
- Letters reflecting approval of the entire Council are placed on Council stationery which lists the names of all Council members and

are signed by the Council Chair or his/her designee.

- All correspondence by Council Staff or regarding Council committees is placed on Office of the City Council stationary.
- Note cards for each member may be used at their own discretion.
- Staff may be asked to draft letters related to City Council business only.
- All stationery listing names will have Council member's names only (not the Mayor or Council Staff).
- Letters of reference may use City Council stationery where the individual is requesting the letter because s/he is on the Council. In such cases, the Council stationery which does not list the names Council members is used.
- Council stationery (with or without names) may not be used for correspondence which does not relate to City business.

### Council Chambers and Third Floor Conference Rooms

- As this is a City office, the Council Chambers and third floor conference rooms are made accessible to all City functions and employees. Scheduling is to be done by the Council staff.
- The Council Chambers and conference rooms located on the third floor are available for use by the Council or Administration for City-related business (e.g., committee meetings, employee

training, United Way, insurance orientations, etc.).

- These meeting rooms also may be used where a meeting is not City business, but involves City elected officials and/or staff (e.g., Staff explaining to Boy Scouts how the City government works).
- Council members are encouraged to call the Council Office to reserve a conference room for a meeting to assure it is not being used by others.
- The meeting rooms are not available to outside agencies, groups or individuals for meetings which are not directly related to Ogden City objectives or programs.
- **Exception for Political Parties, per State Code UCA 20A-8-404 -** Political Parties may request the use of Council Chambers and Conference Room 310 at least 30 calendar days before the day on which the use by the political party will take place. Billing is based on Ogden City Facilities after hours rate of \$35 per hour. Meeting room usage policy described in the Reservation Guidelines apply.
- Food and drinks within the Council Chambers is discouraged but allowed in conference rooms.

#### **Expression of Sympathy/Concern**

- There are occasions when the Council may wish to express sympathy or concern to others given deaths, illness, etc., which

affect others within the Ogden City community. On such occasions the Council will discuss what level of expression is appropriate.

- In January of every year, the Council members and Staff donate \$20 to a “sunshine fund” which is used to cover expenses of cards, flowers, and other items to be sent from the Council Office.

#### **Gifts**

- From time to time, the Council will purchase City mementos (e.g., pins, keys) to give to guests, dignitaries, etc. These may be used by any Council member or Council Staff.
- It is assumed Administration will do the same and, therefore, such mementos will not be available for distribution to either the Mayor or Administrative staff.

### **7. Council Emergency Preparedness**

- This section describes the responsibilities and activities of the Ogden City Council in the event of a public disaster.
- Each city officer must provide an emergency interim successor to establish a clear line of authority and succession assuming the unavailability, temporarily or permanently, of that elected official in order to ensure a lawful continuity of government and a prompt response to an emergency situation.
-

## Definitions

- Emergency Interim Succession is the temporary replacement or filling of offices within Ogden City government by a designated successor to meet the demands of emergency response as a result of a natural phenomenon or disaster.
- The period of succession shall extend beyond that required to formally provide for the filing of a vacancy by current statutory and constitutional provisions, or until the officer or emergency interim successor earlier in the order of succession is available and which shall not exceed thirty (30) days.
- Emergency Interim Successor is a person designated under Section 12-15-10 of the Ogden Municipal Code to exercise the powers and discharge the duties of a City Office when the person legally exercising the powers and duties of such is unavailable.

## Succession in Elected and Appointed Offices

- It is by City ordinance and the requirements of State law that all elective offices and executive offices of City government provide for interim succession in the event the office holder or official is unavailable as defined by this policy.
- Each elected and appointed officer within City government is instructed to provide a list of at least three (3) emergency interim successors for each position in the order of succession to the

Emergency Management Coordinator within thirty (30) days after enactment of this policy and by July 1<sup>st</sup> of each year if there are changes.

- An emergency interim successor should be familiar with the duties of the office and the requirement of that office. All successors if not already sworn in are required to take an oath of office at their succession. The City Recorder is directed to effectuate this procedure.
- Emergency interim successors shall exercise the powers and duties of the office until the vacancy is filled in accordance with the Constitution or statutes – or the City officer, deputy or emergency interim successor that is earlier in the order succession becomes available to exercise the powers and duties of the office.

## Council Chair

- The Vice Chair, during the absence of the Chair, shall have and perform all the duties and functions of the Chair.
- In the event of the absence of or disability of both the Chair and the Vice Chair, the immediate past Chair, if still serving on the Council shall temporarily serve as Chair until the Chair or Vice Chair so absent or disabled shall return or the disability shall be removed, as the case may be.

In the event the immediate Past Chair is absent or disabled, or is no longer serving on the Council. The

City Council shall elect a temporary Chair to serve until the Chair or Vice Chair so absent or disabled shall return or the disability shall be removed, as the case may be. In such event, Past Chair or the temporary Chair shall have all the powers and perform the functions and duties assigned to the Chair.

### **Filling a Vacancy in the Event of an Emergency**

- It is the policy of the Ogden City Council that whenever a vacancy occurs on the Council, either through death or resignation, a new Council member will be appointed by the Council within thirty (30) days to hold the position until the next municipal election, as stipulated by Utah State Law.
- In the event of a disaster the Emergency Interim Successor fills the position until an appointment is made as described above – a maximum of 30 days.

### **Duties and Powers of the City Council during an Emergency**

- The duties and powers of the City Council during an emergency are the same as during non-emergency times as follows:
  - Policy
    - Adopts policies and ordinances.
    - Adopts general plans.
    - Approves zoning and rezoning of property.
    - Approves annexations and vacations.

- Approves interlocal agreements.

- Budget

- Appropriates funds, i.e., adopts the budget, approves amendments.
- Prescribes general rules by ordinance as to how the executive branch performs its duties.

- Oversight

- Conducts oversight – reviews City Administration and has the power to investigate.

### **Positions that Require Emergency Interim Successors**

- There are seven (7) elected positions within the Ogden City Council; Municipal Ward 1, Municipal Ward 2, Municipal Ward 3, Municipal Ward 4, At Large Seat A, At Large Seat B, At Large Seat C. All of these positions require Emergency Interim Successors.
- The City Council Executive Director also requires Emergency Interim Successors that are designated as the incumbent employers in the position of Policy Analyst.

### **Emergency Responsibilities**

- The City Council is a “support agency” in the areas of “direction and control” and “public information.”

The Council approves Interlocal agreements that are deemed essential to the Emergency

Operations Plan and reviews the plan along with revisions or improvements annually (the plan is due to the Council by October 31<sup>st</sup> of each year).

- During the period of an emergency declaration, public notice requirements of the Open and Public Meetings Act are suspended for actions of the City Council. The City Council may convene in regular or special meetings as deemed appropriate.

## 8. Filling a vacancy

- It is the policy of the Ogden City Council that whenever a vacancy occurs on the Council, either through death or resignation, a new Council member will be appointed by the Council within thirty (30) days to hold the position until the next municipal election, as stipulated by Utah State Law. (First adopted by resolution 95-49, October 10, 1995).
- Filling a vacancy will be considered an interim appointment to fill a two-year term if two years of the vacated term will remain after the first Monday of January following the next Municipal Election (UCA 20A-1-510(2)(a)).

### Procedures

- Within one week of the vacancy, a request for resumes and/or letters of interest and qualifications from residents of the affected municipal ward, or in the case of an at-large position from the entire City, will be published in the Standard-

Examiner through an official press release. The deadline for receipt of resumes and/or letters of interest and qualification will be within two weeks following the vacancy.

- On the day following the application deadline, copies of the information received from interested parties, along with all letters of recommendation received to that date, will be distributed to the Council members.
- A Special Council meeting is then scheduled that includes a presentation by each applicant. The following guidelines will be followed:
  - Information packets regarding the Council are made available to all applicants prior to the presentation.
  - A copy of a list of questions is provided to each applicant as he or she enters the Council Chambers.
  - The presentation order will be determined by lot either prior to or at the meeting with one name being drawn at a time.
  - The Council Executive Director provides an overview of responsibilities and duties of Council Members.
  - Answers to the questions may be limited as to time based on the number of applicants.

- Immediately following the presentations, the Council will meet in Closed Executive Session to narrow the field of applications to a maximum of five (5) finalists to be interviewed individually. The procedure for discussion concerning applicants is as follows:
  - The Council members shall candidly discuss the applicants, sharing their personal reactions and feelings about any aspect, positive or negative, or the candidates' qualifications, ability to perform, and/or any other information/concerns they wish to voice.
  - The Council returns to the open meeting, a motion is made and voted on to select the five finalists.
- The Council Executive Director will notify the finalists of the date, time and place of their formal interview.
- Finalists will be interviewed by the City Council at a subsequent special Council meeting.
  - The meetings will be held on a different night than the regularly scheduled Council meeting and in the Council Chambers.
  - One at a time, the individuals will be invited to approach the podium, make general remarks, and be interviewed by the Council. A list of questions may be provided for the finalists to respond to. The order of the interviews is by lot at the

- meeting with one name selected at a time.
  - The public is welcome to hear the discussion, but will not be invited to participate.
  - The Council members will evaluate the applicant based on:
    - Their qualifications;
    - Their understanding of city government;
    - The degree of comfort with each applicant's personal style, abilities and goals; and
    - Other concerns determined by each Council member.
- After the interviews, the Council holds a closed executive session where the Council discusses the results of the interviews. The Council returns to open session and selects an appointee which must be by a majority vote. If there is not a majority vote the top two candidates are re-interviewed and another vote takes place. If still no majority the selection is by lot between the two applicants. The new Council Member is sworn in by the City Recorder.

### **Application**

- Minimum requirements for appointees. All applicants must meet the requirements for qualification for public office as specified by Utah State Law and City ordinance. All applicants will be screened by the City Recorder's office regarding the following criteria:

- Must have resided in the City for the previous 12 consecutive months. For those interviewing for a specific ward, the individuals must have been a registered voter of that ward for 30 days prior to the deadline for submitting one's name for that position;
  - Must have no other compensated employment with Ogden City. If the individual does have other compensated employment with Ogden City, the applicant must sign a commitment to resign that employment upon appointment; and
  - Must be a registered voter and an elector in Ogden City.
- The applicant names are not released to the public or press until all applicants have been certified as meeting the criteria by the City Recorder's office.
  - Resumes and letter of interest. The City Council requests the following be submitted as the minimum information necessary to qualify as an indication of interest:
    - Resumes indicating name, street address, telephone numbers, occupation, background.
    - Letters of interest which describe why the applicant feels he or she is qualified for serving on the City Council.

### **Applicant information available to the public**

- It is the policy of the Ogden City Council to keep application materials confidential similar to other employee application materials.
- Applicants are free to make whatever information about themselves available to the press or other interested parties.
- A press release will be issued that includes the applicants name and address after certification by the City Recorder's office.

### **9. Legal Actions Against Council Members**

Whenever officers or individual employees are named in legal actions as a result of their employment or position with Ogden City, the following procedures need to be followed before s/he can be defended by the City.

- Within one (1) business day of being served contact both the Ogden City Attorney's Office at 629-8145 and the Risk Management Office at 629-8750. Provide the date you were served and exactly how you received the legal documents.
- Within three (3) business days of being served submit all of the original documents you were served to Ogden City Risk Management, 2549 Washington Blvd., Suite 820, Municipal Building. The documents will be inspected, copied and forwarded

to the City's insurance and defense representatives.

- Complete the Request for Defense form, available from the Council Office, and submit it to the Ogden City Risk Management Office. Risk Management will forward copies to the City's insurance and defense representatives and provide the original to the Ogden City Attorney.

## 10. Policy – Outside Legal Counsel

Circumstances when outside legal counsel is appropriate.

- A conflict of interest exists for the City Attorney as determined jointly by the City Attorney and Council Executive Director.
- A Council member requests an outside legal opinion and Council leadership feels that the outside legal opinion is justified.
- Confidential information exchanged with Council members verbally or in writing from the Ogden City Attorney's office or outside legal counsel is subject to attorney-client privilege and should not be disclosed or made public.

### Process

- 1) The Council budget may include funding for professional services including outside legal counsel as adopted by the Council annually.

- 2) The Council Executive Director negotiates a professional services agreement with one or more appropriate outside legal firms.
- 3) The Council or City Council Executive Director approves the professional services agreement as defined by City ordinance.
- 4) Any Council member can request an outside legal opinion.
- 5) The Council Executive Director discusses the request with the City Attorney.
- 6) The request is considered by Council leadership to determine if the request is justified.
- 7) Council leadership discusses the request confidentially with each Council member.
- 8) If four or more Council members request outside legal counsel, Council leadership may direct the Council Executive Director to request the opinion.
- 9) All Council members receive a copy of the opinion. The City Attorney receives a copy of the opinion when appropriate as determined by the Council Executive Director.
- 10) Council leadership determines if the opinion becomes a public document and who receives it.

11) Additional follow-up occurs as appropriate.

Revised: 9/25/12, Resolution #2012-22

Revised: 6/19/12, Resolution #2012-17

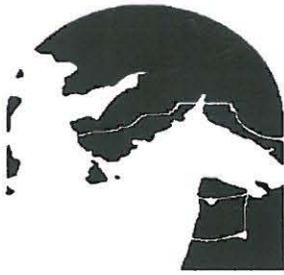
Revised: 12/20/11, Resolution #2011-26

Revised: 12/21/10, Resolution #2010-25

Revised: 12/15/09, Resolution #2009-32

Revised: 09/23/08, Resolution #2008-22

Adopted November 2003, Resolution #2003-48



CITY OF TRINIDAD, COLORADO  
1876

## COUNCIL COMMUNICATION

**CITY COUNCIL MEETING:** September 30, 2014  
**PREPARED BY:** Les Downs, City Attorney  
**DEPT. HEAD SIGNATURE:**  
**# OF ATTACHMENTS:** 1

**SUBJECT:** Discussion regarding lifting restriction on the allowable medical marijuana centers

**PRESENTER:** Les Downs, City Attorney *Les D. Downs*

**RECOMMENDED CITY COUNCIL ACTION:** Consider amending the ordinance

**SUMMARY STATEMENT:** Medical Marijuana Center licensing

**EXPENDITURE REQUIRED:** N/A

**SOURCE OF FUNDS:** N/A

**POLICY ISSUE:** This ordinance limits the number of medical marijuana centers that may be licensed

**ALTERNATIVE:** Leave the language as it currently exists

### BACKGROUND INFORMATION:

- Through the adoption of Ordinance No. 1958 the City limited the number of licenses that may be approved for Medical Marijuana Centers.
- The issue that arises with that limitation is one of entitlement / property ownership
- So as to avoid a possible mis-application/misinterpretation of the ordinance, Council may consider removing the language that limits the number of license applications for centers that may be considered.



**CITY OF TRINIDAD, COLORADO**

**ORDINANCE NO. 1958**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TRINIDAD, COLORADO, AMENDING THE NUMBER OF MEDICAL MARIJUANA LICENSES THAT MAY BE ISSUED WITHIN THE CORPORATE CITY LIMITS**

WHEREAS, on March 4, 2014, the Trinidad City Council approved Ordinance No. 1955 which established regulations and licensing requirements for medical marijuana businesses; and

WHEREAS, a requirement of the regulations was the acquisition of a conditional use permit by the applicants to be included with their local license application; and

WHEREAS, there was an unanticipated interest from those who wished to pursue these licenses realized through the number of conditional use permit applications received by the City; and

WHEREAS, to encourage free enterprise and to make the process fair to applicants, City Council wishes to amend Ordinance No. 1955 to allow for the processing of additional licenses beyond the original five identified in said ordinance.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TRINIDAD, COLORADO, that Article 11, Chapter 14, Section 14-202, License Required, is hereby repealed and re-enacted in its entirety as follows:

**14-202. License Required.**

It is unlawful for any person to own or operate a medical marijuana business, as that term is defined in this ordinance, without first obtaining a license as provided in this article. The following three types of business operations as defined in the Colorado Medical Marijuana Code C.R.S. 12-43.3-101 et seq. may be licensed hereunder: Medical marijuana centers and medical marijuana-infused products manufacturing and optional premises cultivation operation. All applications for conditional use permits received by the City Planning Department by 5:00 p.m. on March 28, 2014, for the purpose of licensure under this Article, and which are ultimately approved by the Planning, Zoning and Variance Commission, may be considered by the local authority for a medical marijuana business license. Thereafter, no additional applications for medical marijuana centers shall be received or acted upon by the local authority.

INTRODUCED BY COUNCILMEMBERS BOLTON/MILES, READ AND ORDERED PUBLISHED, this 8th day of April, 2014.

FINALLY PASSED AND APPROVED this 22<sup>nd</sup> day of April, 2014.

EFFECTIVE DATE OF THIS ORDINANCE SHALL BE the 2nd day of May, 2014.

  
JOSEPH A. REORDA, Mayor

ATTEST:

  
AUDRA GARRETT, City Clerk



## COUNCIL COMMUNICATION

12

**CITY COUNCIL MEETING:** September 30, 2014  
**PREPARED BY:** Audra Garrett, Acting City Manager  
**DEPT. HEAD SIGNATURE:** *Audra Garrett*  
**# OF ATTACHMENTS:** 1

**SUBJECT:** CIP Project Review

**PRESENTER:** Lonny Medina, Finance Director and Audra Garrett, ACM

**RECOMMENDED CITY COUNCIL ACTION:** Provide input into the CIP project list for formulation of the five-year plan

**SUMMARY STATEMENT:** Section 9.3 of the Home Rule Charter requires the City Manager to present a program of proposed capital projects for the ensuing year and the four fiscal years thereafter.

**EXPENDITURE REQUIRED:** Yes

**SOURCE OF FUNDS:** CIP Fund

**POLICY ISSUE:** Capital Investment planning

**ALTERNATIVE:** N/A

### BACKGROUND INFORMATION:

- Attached is a proposed CIP budget for 2015. The five-year plan can be formulated using the 2015 proposed budget as a basis for future year planning.
- Council's input is requested.

12

**CAPITAL PROJECTS FUND  
BUDGET REVENUE SUMMARY**

<b>REVENUE SOURCE</b>	<b>2013 ACTUAL</b>	<b>2014 BUDGET</b>	<b>2014 PROJECTED</b>	<b>2015 BUDGET</b>
<b>Sales Tax Receipts</b>	<b>\$ 1,149,770</b>	<b>\$ 1,200,000</b>	<b>\$ 1,150,000</b>	<b>\$ 1,170,000</b>
<b>Cdot (Hist Loop)</b>	-	-	-	450,000
<b>Cdot (Sopris Trail)</b>				-
<b>Cdot (Regional Signage)</b>				333,000
<b>Cdot (Wayfinding 2&amp;3)</b>				-
<b>Local Govts (Regional Signage)</b>				55,000
<b>Dola (Commercial St 1&amp;2)</b>				1,720,000
<b>Dola (Housing Authority Corazon)</b>			749,000	
<b>Dola (Commercial St 3)</b>				75,000
<b>State Historical (Monument Lake)</b>	-	-	-	30,000
<b>State Historical (Hughes Lumber)</b>				232,000
<b>State Historical (Water Works)</b>				35,000
<b>State Trails (Ped Bridge)</b>	-	-	-	198,000
<b>State Trails (Trail Plan)</b>			45,000	-
<b>GOCO (Sopris Trail Land)</b>	-	-	-	-
<b>CO Parks &amp; Wildlife (Trout Habitat)</b>	-	-	-	60,000
<b>National Scenic Byways(CWC)</b>	-	-	-	281,000
<b>Grant Revenue</b>	-	-	794,000	3,469,000
<b>Other Contributions</b>	-	-	1,500	1,500
<b>Interest Income</b>	7,707	7,500	7,000	7,000
<b>Total Revenues</b>	<b>\$ 1,157,477</b>	<b>\$ 1,207,500</b>	<b>\$ 1,952,500</b>	<b>\$ 4,647,500</b>

**CAPITAL PROJECTS  
BUDGET EXPENSE SUMMARY**

#	PROJECT	2013 ACTUAL	2014 BUDGET	2014 PROJECTED	2015 BUDGET
<b>9010</b>	<b>LAND</b>				
7301	Acquisition Old Sopris Trail	\$ -	\$ 300,000	\$ -	\$ -
				30,000	1,320,000
7303	Boulevard Addition Nature Park	14,871	238,400	258,000	-
	<b>Total Land</b>	<b>14,871</b>	<b>538,400</b>	<b>288,000</b>	<b>1,320,000</b>
<b>9020</b>	<b>MUNICIPAL BUILDINGS</b>				
7410	City Garage	-	310,000	-	-
7420	Community Cntr Bldg/Lot Imprv	22,680	50,000	-	50,000
7422	Community Cntr Irrigation	-	8,000	-	-
7440	Renovation Municipal Buildings	36,271	460,000	100,000	-
7476	Water Works Bldg Rehab	1,295	50,000	5,000	49,000
	Street & Bridge/City Garage Facilit	-	-	-	500,000
	Visitors Welcome Center	-	-	-	352,000
	Hughes Lumber (Docs & Structural	-	-	-	350,000
	<b>Total Municipal Buildings</b>	<b>60,246</b>	<b>878,000</b>	<b>105,000</b>	<b>1,301,000</b>
<b>9030</b>	<b>STREET IMPROVEMENTS</b>				
7501	Brick St Renovation	-	2,115,000	200	-
7505	City Wide Paving & Seal Coating	493,395	600,000	670,000	600,000
7515	City Wide Storm Drainage	71,755	100,000	10,000	250,000
7530	56 Flag Memorial	-	-	-	-
7550	Way Finding Signage	248	95,200	60,000	100,000
7551	Way Finding Signage-Match 2&3	-	299,300	-	-
7552	Asphalt Plant Improvements	-	350,000	-	-
7553	ADA Accessible Intersections	-	10,000	3,500	82,000
7554	Historic Brick Street Renov Design	-	100,000	1,300	-
7555	Topeka Avenue Widening	-	40,000	-	100,000
7556	Street Sign Unification	-	10,000	-	10,000
	Regional Signage	-	-	-	405,000
	Street Lighting (LED)	-	-	-	275,000
	Downtown Infrastructure(Cmcl/Hisl	-	-	-	3,445,000
	<b>Total Street Improvements</b>	<b>565,398</b>	<b>3,719,500</b>	<b>745,000</b>	<b>5,267,000</b>
<b>9040</b>	<b>PARKS &amp; RECREATION</b>				
7615	Citywide Tree Program	2,288	3,500	3,000	-
7616	Citywide Tree Migitation	6,311	152,000	10,000	-
7641	Veteran's Park Improvements	-	44,200	-	-
7643	Monument Lake	7,638	60,000	10,000	43,000
7665	Trail Drainage/Access Comrl Street	-	25,000	59,000	-
	Colorado Island Improvements	-	-	-	200,000
	Purgatorie River Clean-up	-	-	-	50,000
	Purgatorie River Trout Habitat Imp	-	-	-	124,000
	Pedestrian Bridge	-	-	-	302,000
	City Wide Park Maintenance	-	-	-	15,000
	Central Park Lower Field Restroom	-	-	-	100,000

	<b>Dog Park</b>				<b>50,000</b>
	<b>Old Sopris Trail</b>	-	-	-	-
	<b>Total Parks &amp; Recreation</b>	<b>16,237</b>	<b>284,700</b>	<b>82,000</b>	<b>884,000</b>
<b>9050</b>	<b><u>MISCELLANEOUS</u></b>				
7901	Demolition of Dangerous bldgs	10,802	10,000	-	-
7903	CDOT Downtown Improvements	14,598	581,300	10,000	-
7905	Downtown Improvements	-	150,000	-	-
7920	Landfill Deficiency Compliance	11,650	80,000	-	-
7941	Regional Interpretive Signage	-	350,000	-	-
	Historic Train Repainting	-	-	-	50,000
	Corazon Square			749,000	
	Emergency Warning Siren	-	-	-	50,000
	<b>Total Miscellaneous</b>	<b>37,050</b>	<b>1,171,300</b>	<b>759,000</b>	<b>100,000</b>
	<b>Total Expenditures</b>	<b>\$ 693,802</b>	<b>\$ 6,591,900</b>	<b>\$ 1,979,000</b>	<b>\$ 8,872,000</b>

**CAPITAL PROJECTS FUND  
STATEMENT OF REVENUES, EXPENSES AND CHANGES IN FUND BALANCE**

	<u>2013 ACTUAL</u>	<u>2014 BUDGET</u>	<u>2014 PROJECTED</u>	<u>2015 BUDGET</u>
<b>Revenues</b>				
<b>Sales Tax Receipts</b>	\$ 1,149,770	\$ 1,200,000	\$ 1,150,000	\$ 1,170,000
<b>Grant Revenue</b>	-	-	794,000	3,469,000
<b>Other Contributions</b>	-	-	1,500	1,500
<b>Interest Income</b>	<u>7,707</u>	<u>7,500</u>	<u>7,000</u>	<u>7,000</u>
<b>Total Revenues</b>	<u>1,157,477</u>	<u>1,207,500</u>	<u>1,952,500</u>	<u>4,647,500</u>
<b>Expenditures</b>				
<b>Capital Projects</b>	<u>693,802</u>	<u>6,591,900</u>	<u>1,979,000</u>	<u>8,872,000</u>
<b>Operating Income (Loss)</b>	<u>463,675</u>	<u>(5,384,400)</u>	<u>(26,500)</u>	<u>(4,224,500)</u>
<b>Change in Fund Balance</b>	463,675	(5,384,400)	(26,500)	(4,224,500)
<b>Fund Balance - January 1</b>	<u>2,065,869</u>	<u>2,458,669</u>	<u>2,529,544</u>	<u>2,503,044</u>
<b>Fund Balance - December 31</b>	<u>\$ 2,529,544</u>	<u>\$ (2,925,731)</u>	<u>\$ 2,503,044</u>	<u>\$ (1,721,456)</u>

## CIP Considerations

1. Tennis courts (2) at country club
2. Addition/upgrade to community center
  - indoor tennis/handball/racquetball court
  - ATV trail development
  - Sledding/tubing trails
3. Construction of road to connect Commercial to Pine Street
4. Upgrade decorations downtown
  - hanging flower baskets spring to summer
  - new Christmas decorations
5. Sandblast / repair facades downtown & clean/replace broken stone, glass, etc
6. Signage directing travelers into town, ie, to dog park, riverwalk

Received from  
Councilmember  
Pat Fletcher  
9/25/14