



## **CITY OF TRINIDAD TRINIDAD, COLORADO**

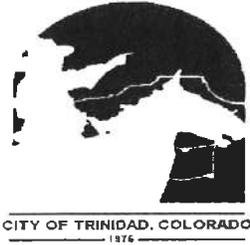
The City Council will hold its regular Work Session on  
Tuesday, July 26, 2011 at 1:30 p.m.  
City Hall Council Chambers, Third Floor, City Hall

### **AGENDA**

1. Presentation of "Flags Along the Purgatoire" Project – Ed Gil de Rubio, City Manager/  
Mike Valentine, Public Works Director
2. Discussion regarding LED Lighting for the City of Trinidad – Ed Gil de Rubio, City  
Manager
3. Consideration of extension of Water Works Plus, LLC Extraterritorial (Commercial)  
Water Tap – Jim Fernandez, Utilities Superintendent
4. Consideration of an Assignment and Amendment of Agreement to Provide Untreated  
Water for the Cougar Canyon Golf Links – Jerod Beatty, City Attorney
5. Consideration of an Estoppel Certificate regarding the Annexation and Development  
Agreement dated April 18, 2001, for Stone Ridge (a/k/a "Cougar Canyon") – Jerod  
Beatty, City Attorney
6. Consideration of Request for Additional Water from New Elk Coal Company, LLC –  
Jerod Beatty, City Attorney
7. Consideration of an Ordinance submitting proposed Home Rule Charter revisions  
regarding elections, elected officials, City Council procedure, and related definitions to  
the registered electors of the City at the regular municipal elections to be held on  
November 1, 2011 – Jerod Beatty, City Attorney
8. Discussion of other agenda items

ITEM #2 WILL BE  
PROVIDED AT  
TIME OF WORK  
SESSION

2



City of Trinidad  
Office of Utilities Superintendent  
P.O. Box 880  
Trinidad, Colorado 81082  
Telephone (719) 846-9843  
Fax (719) 846-4140  
[www.historictrinidad.com](http://www.historictrinidad.com)

**M E M O**

TO: Ed Gil de Rubio, City Manager  
Mayor Jennie Garduno  
Member of City Council

FROM: James Fernandez, Utilities Superintendent *JF*

DATE: July 21, 2011

RE: Baros Extraterritorial (Commercial) Water Tap

Mr. Fred Baros of Water Works Plus, LLC contacted our office requesting a six-month extension on his water resale (commercial) tap. The original application was approved on July 20, 2010. The additional time would allow for purchasing and installing the facility on his property located on Highway 12. If the six-month extension were approved, the new deadline would be January 20, 2012.

3

July, 13, 2011

Jim Fernandez  
Trinidad City Water and Sewer Superintendant  
135 N. Animas  
Trinidad, CO 81082

Dear Jim,

Per our discussion today in your office I am writing this request for extension of approval for the 2" commercial water tap that was approved by Trinidad City Council in July of 2010. The physical water distribution station equipment is not installed todate due to the general downturn of the economic climate nationally and in Las Animas County specifically during the last year. I have the payment required for the water tap and prefer to make this payment immediately. It was my hope/preference to proceed with payment for the water tap and subsequently complete construction of the distribution station.

At your direction I am requesting an extension to the time limit recommended by City Council for a minimum of another six months. It is my belief that funding can be generated and construction completed for the station by January 20<sup>th</sup> 2012.

This request for extension also entails the request to have this matter presented to the city council working session on July 26<sup>th</sup> and subsequently placed on the agenda for the August 2nd City Council meeting.

Sincerely,



Fred Baros  
President – Water Works Plus, LLC

3-2

AFTER RECORDING, RETURN TO:

Caroleen F. Jolivet, Esq.  
Mulliken Weiner Karsh Berg & Jolivet, P.C.  
102 South Tejon Street, Suite 900  
Colorado Springs, CO 80903

**ASSIGNMENT AND AMENDMENT OF  
AGREEMENT TO PROVIDE UNTREATED WATER**

This Assignment and Amendment of Agreement to Provide Untreated Water (the “Assignment and Amendment”) is effective this \_\_\_\_\_ of July, 2011 between the **City of Trinidad**, a municipal corporation of the State of Colorado (the “City”), **Colarelli International Resorts & Fine Living, LLC**, a Colorado limited liability company (“CIR”), **National Servicing and Administration, LLC**, a Minnesota limited liability company (“NSA”), and **Trinidad Golf, LLC**, a Colorado limited liability company (“Trinidad Golf”).

**Recitals**

- A. The City and Coastal/Trinidad, LLC, a California limited liability company (“Coastal”), entered into the Agreement to Provide Untreated Water dated May 21, 2002 (the “Agreement”). The Agreement has not been previously amended.
- B. Coastal assigned its rights under the Agreement to Trinidad Golf pursuant to the Assignment of Agreement to Provide Untreated Water dated December 21, 2004.
- C. Trinidad Golf executed the Collateral Assignment of Agreement to Provide Untreated Water, dated November 15, 2007 (the “Initial Collateral Assignment”), in favor of Bank of Wyoming (the “Bank”) and its successor, NSA. The City consented to the Initial Collateral Assignment by means of the City Acknowledgment and Consent dated November 7, 2007.
- D. Neither the Bank nor NSA as its successor has invoked the provision within Section 3 of the Initial Collateral Assignment that allows them to succeed to Trinidad Golf’s position under the Agreement by giving three days prior notice to the City.
- E. As evidenced by a Notice of Default served on Trinidad Golf by the City dated May 16, 2011 (the “Date of Notice”), Trinidad Golf is in default of the Agreement for non-payment of funds pursuant to Section 4.2 of the Agreement.
- F. CIR and NSA, along with an affiliate of each, shall enter into a Settlement Agreement and Release (the “Settlement Agreement”) whereby CIR will become the fee simple owner of certain real property served with raw water pursuant to the Agreement (the “Golf Course Property”) by means of a conveyance by deed.

G. Trinidad Golf shall assign all its rights, title and interest in the Agreement to CIR pursuant to an Assignment of Water Agreement (the “Trinidad Golf Assignment”).

H. Pursuant to the terms of the Settlement Agreement, CIR shall execute a collateral assignment of the Agreement to NSA (the “Second Collateral Assignment”).

I. The terms of the Settlement Agreement require that, within one year of the execution of the Settlement Agreement, CIR shall obtain a loan (the “Take-Out Loan”) from a third party lender (“Third Party Lender”). The proceeds from the Take-Out Loan will be used to fully repay all amounts owed to NSA by CIR under the Settlement Agreement.

J. CIR anticipates that in conjunction with obtaining the Take-Out Loan it will be required to execute a collateral assignment of the Agreement to the Third Party Lender (the “Third Collateral Assignment”).

### Agreement

THEREFORE, in consideration of the foregoing, the parties hereby agree to the following:

1. The City and NSA consent to the Trinidad Golf Assignment.
2. The City consents to the Second Collateral Assignment.
3. The City consents to the Third Collateral Assignment.
4. CIR shall provide the City with fully-executed copies of the Trinidad Golf Assignment, Second Collateral Assignment and Third Collateral Assignment within 10 days of each document’s individual execution. The Trinidad Golf Assignment, Second Collateral Assignment and Third Collateral Assignment shall include the name, address, telephone number and email address of the person to whom the City must provide any notices pursuant to Article XVII of the Agreement.
5. The City shall not invoke the provision of Article XIV of the Agreement that authorizes the City, at its option, to require payment of any principal amounts due and owing pursuant to Section 4.2(a), upon the execution of the the Trinidad Golf Assignment, the Second Collateral Assignment, or the Third Collateral Assignment. Accordingly, there will be no acceleration in the due date of any amount owed pursuant to Section 4.2(a) of the Agreement. Payments pursuant to Section 4.2(a) of the Agreement shall be due on March 28<sup>th</sup> of each year, which is the anniversary of the Initial Payment under the Agreement.
6. Nothing in this Assignment and Amendment shall be construed as the City consenting to the assignment of the Agreement from CIR to a subsequent purchaser of the Golf Course Property. All subsequent assignments of the Agreement shall be subject to approval of the City, which shall not be unreasonably withheld. If and/or when CIR assigns the Agreement to a subsequent purchaser of the Golf Course Property, any principal amounts due and owing

42

pursuant to Section 4.2(a) as shown on Exhibit D of the Agreement shall be immediately due and payable at the City's option.

7. Section 13.1 of the Agreement requires the City to provide Trinidad Golf with an additional notice of a continuing default on or after August 15, 2011 and allows Trinidad Golf an additional 90 days to cure the default before the Agreement automatically becomes null and void. Notwithstanding Section 13.1, the parties hereby agree that if Trinidad Golf, NSA and/or CIR do not pay the full amount currently due and owing under the Agreement by August 15, 2011, then the Agreement shall automatically terminate and be null and void, and the City shall be relieved of all of its obligations thereunder. The City shall retain all funds previously paid to the City pursuant to Article IV of the Agreement, and no other party shall have any claim whatsoever to said funds. The parties agree that, as of August 2, 2011, the amount due and owing equals \$116,211.14 and that interest continues to accrue at the rate of \$37.00 per day.

8. All provisions of the Agreement shall remain in full force and effect, unless specifically modified by this Assignment and Amendment.

9. Within ten (10) days of the mutual execution of the Assignment and Amendment, Trinidad Golf, NSA, and/or CIR shall reimburse the City for its reasonable, out-of-pocket legal expenses in this matter, up to Two Thousand Five Hundred Dollars (\$2,500.00).

10. The signatories to this Assignment and Amendment affirm and warrant that they are fully authorized to enter into and execute this Assignment and Amendment on behalf of their respective entities.

IN WITNESS WHEREOF, the parties hereto have signed and delivered this Assignment and Amendment as of the Effective Date, which may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same instrument.

4-3

“CITY”

**City of Trinidad,**  
a municipal corporation of the State of Colorado

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

ATTEST:

\_\_\_\_\_  
City Clerk

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF \_\_\_\_\_        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2011, by \_\_\_\_\_, as \_\_\_\_\_ of the **City of Trinidad**, a municipal corporation of the State of Colorado.

Witness my hand and official seal.

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

(SEAL)

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

4-4

“CIR”

**Colarelli International Resorts & Fine Living, LLC**, a Colorado limited liability company

By: **Colarelli Construction, Inc.**,  
a Colorado corporation, as Manager

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

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF EL PASO         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2011, by \_\_\_\_\_, as \_\_\_\_\_ of **Colarelli Construction, Inc.**, a Colorado corporation, as Manager of **Colarelli International Resorts & Fine Living, LLC**, a Colorado limited liability company.

Witness my hand and official seal.

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

(SEAL)

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





**ESTOPPEL CERTIFICATE**  
**(Annexation and Development Agreement)**

This Certificate is given to **Colarelli International Resorts & Fine Living, LLC**, a Colorado limited liability company ("CIR"), its lenders, including National Servicing and Administration, LLC, and their respective successors and assigns, by **The City of Trinidad**, a municipal corporation of the State of Colorado (the "City"), with the understanding that CIR, its counsel or any third party, including any lender of CIR, will rely on this Certificate regarding the Annexation and Development Agreement dated April 18, 2001 (the "Agreement") between the City and Coastal/Trinidad, LLC, a California limited liability company ("Coastal").

The City, to the best of its knowledge, hereby certifies to CIR as follows:

1. The real property described on **Exhibit A** attached hereto and incorporated by herein by this reference (the "Property") was and remains subject to the Agreement.
2. The Agreement remains in full force and effect.
3. The individual executing this Estoppel Certificate on behalf of the City has the authority to do so.

**CITY OF TRINIDAD,**  
a municipal corporation of  
the State of Colorado

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

5

**EXHIBIT A**

**LEGAL DESCRIPTION**

PARCEL A:

HOTEL TRACT, "PHASE 3" COUGAR CANYON ADDITION TO THE CITY OF TRINIDAD, COUNTY OF LAS ANIMAS, STATE OF COLORADO, AS SHOWN ON THE PLAT RECORDED JUNE 20, 2007 IN BOOK 1068 AT PAGE 1400 OF THE LAS ANIMAS COUNTY RECORDS, COUNTY OF LAS ANIMAS, STATE OF COLORADO.

PARCEL B:

GOLF COURSE TRACT, COUGAR CANYON ADDITION SUBDIVISION, A REPLAT OF GOLF COURSE AND LOT 1, COUGAR CANYON ADDITION TO THE CITY OF TRINIDAD, COUNTY OF LAS ANIMAS, STATE OF COLORADO, ACCORDING TO THE PLAT RECORDED APRIL 3, 2007 IN BOOK 1066 AT PAGE 1296 OF THE LAS ANIMAS COUNTY RECORDS, COUNTY OF LAS ANIMAS, STATE OF COLORADO

AND

PARCEL C:

THOSE EASEMENT RIGHTS CREATED BY INSTRUMENT RECORDED NOVEMBER 26, 2007 IN BOOK 1073 AT PAGE 244 OF THE LAS ANIMAS COUNTY RECORDS, COUNTY OF LAS ANIMAS, STATE OF COLORADO.

5-2



## City of Trinidad, Colorado

Office of the City Attorney  
135 North Animas Street  
Trinidad, CO 81082  
P: (719) 846-9843  
F: (719) 846-4140  
jerod.beatty@historict Trinidad.com

### MEMORANDUM

To: Mayor Garduno and Members of City Council  
From: Jerod Beatty   
Re: Notice of Request for Additional Water from New Elk Coal Company  
Date: July 21, 2011

---

Dear Mayor Garduno and Members of City Council:

Following this cover memorandum, please find attached a "Notice of Request for Additional Water" from New Elk Coal Company, LLC, addressed to City Manager Gil de Rubio. In substantial accordance with our recently-executed Water Lease Agreement, a copy of which is also attached, New Elk is requesting up to 200 acre-feet of additional water for delivery through March 31, 2012. The Water Lease Agreement provides that the City shall have thirty (30) days to render a decision regarding the request, but that a lack of response by the City to respond within thirty (30) days is assumed to be a declination of the request.

To assist you in your evaluation of New Elk's request, please also find attached an analysis from the City's water engineer, Mr. Gary Thompson, regarding the Army Corps of Engineers' planned implementation of a new capacity table for Trinidad Lake Reservoir, which will require adjustment to one or more accounts due to higher-than-expected silt and sediment accumulation in the Reservoir.

Regarding potential concerns raised by the Purgatoire River Water Conservancy District ("PRWCD") about the City's water leasing program, the City received favorable feedback from the Colorado Attorney General's office, as summarized in an attached e-mail message from Ms. Eve McDonald, Assistant Attorney General.

6

---

# NEW ELK COAL COMPANY



July 11, 2011

Mr. Ed Gil De Rubio  
City Manager, City of Trinidad, Colorado  
135 North Animas Street  
P.O. Box 880  
Trinidad, CO 81082

RE: Notice of Request for Additional Water

Dear Mr. Gil De Rubio

This letter serves as notice to the City of Trinidad ("City") for New Elk Coal Company's ("Company") request for additional water pursuant to the parties' water lease agreement ("Agreement"), specifically, as it pertains to paragraphs 4b and 4c (Tier 2 & 3 Water). The request is made for an amount up to 200 acre-feet, to be leased to the Company, in addition to the 50 acre-feet (Tier 1) already leased under the Agreement.

In the Agreement, New Elk Coal Company is allowed to request up to 100 acre-feet of Tier 2 and Tier 3 water, respectively. The Company recognizes that notice terms for leasing Tier 2 are different than those outlined for Tier 3 (namely, the timing of the notice), but given that the Tier 2 terms do not apply during the first year of the Agreement, the Company is making a request to incorporate the totals allowed under paragraph 4b and 4c of the Agreement – for an amount of 200 acre-feet.

The Company fully recognizes that these requests are subject to the City's water availability, and this request is for delivery only through March 31, 2012. All other terms of this notice are in compliance with the Agreement, and the Company understands that the payment and carry-over considerations remain the same.

122 W. First Street  
Trinidad, CO 81082

PHONE | (719) 845-0090  
FAX | ((719) 845-0077  
E-MAIL | ronthompson@newelkcoal.com

6-2

Pursuant to the Agreement, within the 30 days of the receipt of this request, the City shall provide notice to the Company regarding the amount of water to be leased. However, it is the Company's desire to meet with the City during this 30-day period to review this request, and discuss the 2012-2013 Company water requirements.

Please feel free to contact me - or the Company's consultant, Paul Flack - for any further information.

Sincerely,

A handwritten signature in cursive script that reads "Ron Thompson". The signature is written in black ink and is positioned above the typed name.

Ron Thompson, Manager  
New Elk Coal Company

6-3

## WATER LEASE AGREEMENT

**1. PARTIES.** The parties to this Water Lease Agreement ("Agreement") are the **CITY OF TRINIDAD**, a Colorado municipal corporation ("City"), and **NEW ELK COAL COMPANY, LLC**, a Kansas limited liability company ("Lessee").

**2. RECITALS.** Lessee is planning to operate the New Elk Metallurgical Coking Coal Mine ("Mine") located near Weston, Colorado. The Mine needs water for its operations. The City has certain water in storage in Trinidad Reservoir ("City's Water") that may be utilized by exchange at the Mine. Thus, Lessee would like to lease a certain amount of the City's Water and have the ability to request the lease of additional amounts of the City's Water on an annual basis. The City is willing to enter into such a lease with the Lessee.

**NOW, THEREFORE**, the parties agree:

**3. TERM.** The term of this Agreement shall begin upon the mutual execution of the Agreement by the parties and shall automatically expire on December 31, 2014, unless renewed pursuant to paragraph 10 below.

**4. WATER LEASE.** The City will lease and consider leasing the following amounts of the City's Water to Lessee:

**A. TIER 1 WATER.** The City will lease fifty (50) acre-feet of the City's Water to Lessee on an annual basis ("Tier 1 Water"). Lessee shall make payments for Tier 1 Water leased in 2011 upon its execution of this Agreement. On or before January 31 of 2012, 2013 and 2014, Lessee shall pay to the City Twenty Five Thousand Dollars (\$25,000) per year for the lease of the Tier 1 Water. No invoice or statement shall be provided by the City for this payment.

**B. TIER 2 WATER.** In addition to the Tier 1 Water specified in paragraph 4.A., Lessee may request to lease on an annual basis an additional amount of the City's Water up to one hundred (100) acre-feet ("Tier 2 Water"). On or before the date for payment of the Tier 1 Water in 2011, if applicable, and for 2012, 2013 and 2014 on or before November 1 of the previous year, Lessee shall give notice to the City of its desire to lease up to one hundred (100) acre-feet of Tier 2 Water. For 2011, the City shall confirm it can deliver Tier 2 Water within 30 days of notice of the request. For delivery of Tier 2 Water in 2012, 2013 and 2014, the City shall confirm the availability of Tier 2 Water by November 30 of the previous year, provided the Lessee has provided notice of its request by November 1. The price for Tier 2 Water shall be Five Hundred Dollars (\$500) per acre-foot. If Lessee requests Tier 2 Water in 2011, payment shall be due within 30 days of the City's confirmation of availability. For Tier 2 water to be delivered in 2012, 2013 and 2014, payment shall be made on or before January 31 of that year. The City is not guaranteeing or providing any priority for any Tier 2 Water and

may decline Lessee's request for Tier 2 Water within the time periods outlined above. A failure by the City to respond within the time period shall be assumed to be a declination by the City to lease Tier 2 Water.

**C. TIER 3 WATER.** In addition to the Tier 1 and Tier 2 Water specified in paragraphs 4.A. and 4.B., at any time during the term of this Agreement, Lessee may request to lease up to an additional one hundred (100) acre-feet of water (Tier 3 Water) by delivering notice of such request to the City. The notice shall specify the number of acre-feet of Tier 3 Water that Lessee desires to lease. Within thirty (30) days of the City's receipt of Lessee's notice, the City shall provide notice to the Lessee of the amount, if any, of Tier 3 Water that the City will lease to Lessee. Within thirty (30) days of the Lessee's receipt of the City's notice that the City will lease Tier 3 Water, Lessee shall pay to the City an additional lease fee equal to Five Hundred Dollars (\$500) per acre-foot. The City is not guaranteeing or providing any priority for any Tier 3 Water and may decline Lessee's request for Tier 3 Water within the time periods outlined above. A failure by the City to respond within the time period shall be assumed to be a declination by the City to lease Tier 3 Water.

**5. LESSEE'S RESPONSIBILITY.** The City shall make the City's Water available each year from the City's storage account in Trinidad Reservoir on an "as is" basis. The City's Water will be made available each year between April 1<sup>st</sup> and March 31<sup>st</sup>, which is the City's water year. The water to be released was the subject of a change of water rights in Case No. 88CW61, District Court, Water Division No. 2, State of Colorado. It shall be the responsibility of the Lessee to obtain any additional approvals necessary to use the leased water for Lessee's intended purposes, including but not limited to approvals by the Colorado Division of Water Resources. The City shall cooperate with Lessee in obtaining any required additional approvals from any entity. The City makes no warranties or guarantees that such approvals can be obtained.

**6. RELEASE OF WATER.** The City's Water will be made available for release from Trinidad Reservoir upon the request of the Water Commissioner or Division Engineer. It is the responsibility of Lessee to coordinate and contact the Water Commissioner and/or the Division Engineer to arrange the release of water for Lessee's benefit.

**7. NO GUARANTEE.** Because of the possibility of drought, mechanical failures at Trinidad Reservoir or other extraordinary circumstances beyond the parties' control, the City cannot guarantee delivery of the City's Water. In any year the City cannot deliver the leased water to Lessee, the City shall refund to Lessee the fee for any water requested and paid for but not delivered as requested by Lessee. Such a refund shall be Lessee's sole and exclusive remedy against the City for any breach or non-performance of any obligation under this Agreement.

6-5

**A. DROUGHT.** If the City determines that it will not be able to deliver water in any year because of drought, then the City shall provide the Lessee with written notice at the address listed in paragraph 12 as soon as practicable after making such determination.

**B. EXTRAORDINARY CIRCUMSTANCES.** For the purposes of paragraph 7, the term "extraordinary circumstances" includes, but is not limited to, a conflict or dispute by any entity, other than the Colorado Division of Water Resources or the Mined Land Reclamation Board, that results in the City's inability to release water for Lessee's use at the Mine. In such extraordinary circumstances, neither Lessee nor the City shall be considered to have breached this Agreement.

**8. NO CARRYOVER.** Any amount of water not called for release in any year shall not carry over for the benefit of Lessee into the next year.

**9. TERMINATION.** This Agreement shall terminate automatically on December 31, 2014, unless specifically renewed in writing by both parties pursuant to the terms and conditions contained in such renewal.

**10. REMEDIES.** Except as set forth in paragraph 7, in case of any default under this Agreement, a non-defaulting party shall be entitled to terminate this Agreement by giving written notice specifying such default. Upon the giving of such notice and if such default is not cured within thirty (30) days, this Agreement shall terminate and all right, title and interest of the defaulting party hereunder shall wholly cease and expire in the same manner and with the same force and effect as if the date of such notice was the expiration of the term herein originally granted. Termination of this Agreement pursuant to this paragraph will not limit or impair any remedies that the Parties may have at law or in equity with respect to any breach or default of any of the provisions of this Agreement. Neither Party shall be liable to the other in any case for any incidental, consequential, exemplary, special or punitive damages in connection with any claim for breach of this Agreement.

**11. REIMBURSEMENT OF EXPENSES.** Within ten (10) days of the mutual execution of this Agreement, Lessee shall reimburse the City for its reasonable, out-of-pocket legal and engineering expenses in this matter, up to Four Thousand Dollars (\$4,000). The City shall provide a statement for the expenses to Lessee prior to its execution of this Agreement.

**12. NOTICES.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if hand delivered or sent by overnight delivery service or certified or registered mail, postage and fees prepaid, addressed to the party to whom such notice is intended to be given at the addresses set forth below or hand delivered at such addresses, or at such other address as has been previously furnished in writing to the other party or

6-6

parties. Such notice shall be deemed to have been given when deposited in the U.S. Mail or hand delivered to the other party or parties.

**CITY:**

City of Trinidad  
Attn: Utility Superintendent  
135 North Animas Street  
P.O. Box 880  
Trinidad, CO 81082  
Fax: 719-846-4140

**LESSEE:**

New Elk Coal Company, LLC  
Attn: Mr. Ron Thompson, Mine Manager  
122 W. First Street  
Trinidad, CO 81082  
Fax: 719-845-0077

**COPY TO:**

Jeffrey J. Kahn, Esq.  
Madoline Wallace-Gross, Esq.  
Lyons Gaddis Kahn & Hall  
P.O. Box 978  
Longmont, CO 80502-0978  
Fax: 303-776-9100

**COPY TO:**

Robert Botts  
AAR & Botts LLC  
8301 East Prentice, Suite 300  
Greenwood Village CO 80111  
rbotts@AbgLegal.com

**13. CITY COUNCIL APPROVAL.** The City shall not be bound by the terms of this Agreement unless or until the Agreement has been approved by the City Council of the City of Trinidad at a regular or special meeting.

**14. COUNTERPARTS.** This Agreement may be simultaneously executed in any number of counterparts, each of which shall be deemed original but all of which constitute one and the same Agreement. A facsimile or e-mailed signature of this Agreement shall be deemed an original and binding upon the parties to this Agreement.

**CITY:**

**CITY OF TRINIDAD,**  
a Colorado municipal corporation

By: Jennie Garduno  
Its: Mayor  
Dated: 03/01/2011

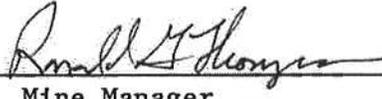
**ATTEST:**

Uluda Harrett  
City Clerk

67

**LESSEE:**

**NEW ELK COAL COMPANY, LLC, a Kansas  
limited liability company**

By:   
Its: Mine Manager

Dated: 03/04/2011

6-8

From: Eve McDonald [mailto:[Eve.McDonald@state.co.us](mailto:Eve.McDonald@state.co.us)]  
Sent: Tuesday, July 19, 2011 4:27 PM  
To: Woldridge, Julianne  
Cc: 'steve.witte@state.co.us'  
Subject: legal place of use of augmentation water

Julianne,

I have received confirmation from my office that it is correct to consider the place of use of augmentation water to be the location of its use to prevent injury, not the location of the out-of-priority beneficial use that it repairs/serves. We don't have any cases or policies to cite b/c it has not been an issue, but that has been our understanding and is the logical answer. (Of course, the water must be decreed for augmentation use and must be used in compliance with its decree.) The PRWCD's Operating Principles allow "M&I uses within the District." Aug use is an M&I use, and if it is occurring within Trinidad Reservoir then it is occurring within the District.

Please let me know if I may be of further assistance.

Regards,  
Eve

Eve W. McDonald  
Assistant Attorney General  
Natural Resources Section  
Colorado Attorney General's Office  
1525 Sherman St., 5th Floor  
Denver, CO 80203  
Ph: 303/866-5072  
Fax: 303/866-3558  
[eve.mcdonald@state.co.us](mailto:eve.mcdonald@state.co.us)

6-9

CITY OF TRINIDAD, COLORADO

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF TRINIDAD, COLORADO, SUBMITTING PROPOSED HOME RULE CHARTER REVISIONS REGARDING ELECTIONS, ELECTED OFFICIALS, CITY COUNCIL PROCEDURE, AND RELATED DEFINITIONS TO THE REGISTERED ELECTORS OF THE CITY AT THE REGULAR MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 1, 2011**

WHEREAS, in accordance with Article XX of the Constitution of the State of Colorado, the registered electors of the City of Trinidad adopted a Home Rule Charter on November 2, 1993, to reserve unto the citizens of Trinidad the right and power of self-government; and

WHEREAS, the City Council of the City of Trinidad has conducted a review of the City's Home Rule Charter; and

WHEREAS, the City Council has determined that revisions to the Home Rule Charter should be submitted for consideration by the registered electors of the City.

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

**Section 1.** That the following proposed repeal and reenactment, with amendments, of Chapter III ("Elections") of the Home Rule Charter for the City of Trinidad, Colorado, be submitted to the registered electors of the City at the regular municipal election to be held on Tuesday, November 1, 2011:

**CHAPTER III**

**ELECTIONS**

- 3.1 Colorado Municipal Election Laws Adopted.** City elections shall be governed by the Colorado Municipal Election Code as contained in the State statutes, except as otherwise provided by this Charter or by ordinance. All regular and special elections shall be nonpartisan.
- 3.2 Regular Elections.** A regular election shall be held in November of each odd-numbered year on the date established by the State statutes for the regular elections of statutory cities. The Mayor and each Council Person shall take office at the first regular meeting in January following their election.
- 3.3 Special Elections.** A special election shall be called by a resolution adopted at least thirty (30) days prior to the election. The resolution calling a special election shall set forth the purpose of the election.
- 3.4 Conduct of Elections.** The City Clerk shall have charge of all activities and duties required pursuant to this Charter relating to the conduct of City elections. In any case where election procedure is in doubt, the City Clerk shall prescribe the procedure to be followed.

**3.5 Recall.**

- (a) The Mayor or any Council Person may be recalled from office pursuant to the State statutes which establish procedures for the recall of municipal elected officials, except as otherwise provided in this Charter.
- (b) If the office held by the person sought to be recalled would otherwise be filled at a regular City election scheduled to be held within ninety (90) days after submission of the recall petition, the petition shall not be accepted and no recall election shall be held.
- (c) If a regular City election is scheduled to be held within ninety (90) days after submission of the recall petition, even though that election is not the one at which the office held by the person sought to be recalled would otherwise be filled, the recall election shall be held at the same time as that regular City election.
- (d) If a general statewide election is scheduled to be held within ninety (90) days after submission of the recall petition, the recall election shall be held at the same time as that statewide election.

**3.6 Initiative.**

- (a) The registered electors of the City may initiate a proposed ordinance, pursuant to the initiative power reserved by Article V, Section 1(9) of the State Constitution, as to any legislative matter that is subject to said initiative power. Any initiated measure shall be in the form of an ordinance. The ordinance shall be initiated pursuant to the State statutes which establish procedures for a municipal initiative, except as otherwise provided in this Charter.
- (b) An initiative petition shall be signed by registered electors of the City equal in number to at least ten (10%) of the total number of electors of the City registered to vote as of the date established by the State statutes for determining such percentage.
- (c) The City Clerk shall not count as valid any signature on an initiative petition if the date of the signature is prior to the date the form of the petition was approved by the City Clerk.
- (d) The City Clerk shall not count as valid any signature on an initiative petition if more than ninety (90) days have elapsed between the date the form of the petition was approved by the City Clerk and the date of the signature.

**3.7 Referendum.**

(a) The registered electors may require an adopted ordinance to be referred to them at an election, pursuant to the referendum power reserved by Article V, Section 1(9) of the State Constitution, to the extent the ordinance constitutes a legislative matter that is subject to said referendum power. Such an ordinance shall be referred pursuant to the State statutes which establish procedures for a municipal referendum, except as otherwise provided in this Charter. The referendum power shall not apply to an emergency ordinance.

(b) A referendum petition shall be signed by registered electors of the City equal in number to at least ten percent (10%) of the total number of electors of the City registered to vote as of the date established by the State statutes for determining such percentage.

(c) The City Clerk shall not count as valid any signature on a referendum petition if the date of the signature is prior to the date the form of the petition was approved by the City Clerk.

**3.8 Prohibited Action by Council.**

(a) No initiated ordinance adopted by the registered electors of the City may be substantively amended or repealed by the Council during a period of four (4) years after the date of the election on the initiated ordinance, unless the amendment or repeal is approved by the affirmative vote of two-thirds (2/3) of the entire Council.

(b) No referred ordinance repealed by the registered electors of the City may be re-adopted by the Council during a period of one (1) year after the date of the election on the referred ordinance, unless the re-adoption is approved by the affirmative vote of two-thirds (2/3) of the entire Council.

**3.9 Withdrawal of Petition.** An initiative, referendum, or recall petition may be withdrawn at any time prior to thirty (30) days preceding the day scheduled for a vote by filing with the City Clerk a written request for withdrawal signed by a majority of the persons who are designated in the petition as representing the signers on matters affecting the petition. Upon the filing of such request, the petition shall have no further force or effect and all proceedings thereon shall be terminated.

**3.10 Petition Forms to Be Provided.** The City Clerk shall provide, upon request, sample forms of initiative, referendum, and recall petitions that conform to the requirements of this Charter.

**3.11 Single-Subject Requirement — Initiated and Referred Measures.**

(a) No measure proposing an amendment to the ordinances of the city by means of a petition for initiative or referendum shall be submitted to the registered electors of the City if the measure contains more than one subject.

(b) The City Clerk shall approve for petition circulation measures proposing referred ordinances or initiated ordinances only when such measures contain a single subject.

(c) As used in this section, the single subject requirement means that the matters in the measure submitted for voter approval are necessarily or properly connected and are not disconnected or incongruous.

7-3

**Section 2.** That, in connection with the changes set forth in Section 1 above, Sections 5.18 and 5.19 of the Home Rule Charter for the City of Trinidad, Colorado, be repealed, for the reason that said sections are subsumed within the changes set forth in Section 1 above.

**Section 3.** That the following question is hereby adopted for submitting the changes set forth in Sections 1 and 2 above to the registered electors at said election:

Proposed Charter Amendment No. 1: **SHALL CHAPTER III OF THE HOME RULE CHARTER FOR THE CITY OF TRINIDAD, COLORADO, BE REPEALED AND REENACTED, WITH AMENDMENTS, TO CONFORM MUNICIPAL ELECTION PROCEDURES GENERALLY TO THE STATE STATUTES CONCERNING MUNICIPAL ELECTIONS, AND TO ADDRESS CERTAIN MATTERS NOT COVERED BY SAID STATE STATUTES, SUCH AS THE WITHDRAWAL OF A PETITION BY PETITIONERS, THE PROVISION OF PETITION FORMS TO PETITIONERS, AND A SINGLE-SUBJECT REQUIREMENT FOR INITIATED AND REFERRED MATTERS; AND SHALL CONFORMING AMENDMENTS BE MADE TO THE CHARTER IN CONNECTION THEREWITH; ALL AS SET FORTH IN ORDINANCE NO. \_\_\_\_\_?**

**Section 4.** That the following proposed amendments to Chapter IV (“Elected Officials”), Sections 5.3, 5.10, 5.11, 5.14, and 5.15 of Chapter V (“Council Procedure”), and Section 12.2 of Chapter XII (“General Provisions”) of the Home Rule Charter for the City of Trinidad, Colorado, be submitted to the registered electors of the City at said election:\*

**CHAPTER IV**

**ELECTED OFFICIALS**

**4.1 ~~Elective Officers~~ CITY COUNCIL.** ~~The elective officers-~~ THE CITY COUNCIL of the City of Trinidad shall consist of one Mayor and six (6) Council Persons. ~~Any elected officer of the City of Trinidad may be recalled from office as previously specified.~~ THE CITY COUNCIL SHALL BE THE GOVERNING BODY OF THE CITY AND SHALL HAVE SUCH POWERS AS ARE POSSESSED BY THE CITY AND NOT CONFERRED BY THIS CHARTER ON OTHERS. ALL SUCH POWERS SHALL BE EXERCISED IN THE MANNER PRESCRIBED IN THIS CHARTER OR, IF NOT PROVIDED FOR HEREIN, IN SUCH MANNER AS SHALL BE PROVIDED BY ORDINANCE.

**4.2 Qualifications of Elected Officers OFFICIALS (Mayor and City Council Persons):**

(a) Each candidate for Council Person or Mayor when nominated and elected shall be ~~an eligible~~ ~~and~~ A registered elector of the City, a citizen of the United States for at least five (5) years and shall have been domiciled in the City for at least twelve (12) months immediately preceding the election.

(b) ~~Further, no~~ NO person shall be appointed to OR HIRED IN any City office, position, or employment for which compensation was increased or fixed by City Council while that person was a member thereof until one year from the date that person ceased to be a Council Person or Mayor.

\* Capital letters indicate new material added to existing Charter language; dashes through words indicate deletions from existing Charter language.

7-4

(c) No candidate for City Council or Mayor shall hold any other elective City office unless the term of such other elective office shall expire on or before the date on which such candidate would take office if elected. However, a person may simultaneously serve as a member of the City Council or Mayor, and as a member of a Home Rule Charter Commission of the City.

(d) Neither the Mayor nor any member of City Council PERSON may be a salaried AN employee or officer of the City during his/her term of office.

(e) No person may serve as an elected official of the City for a continuous period of more than eight (8) years. Any person who has held any elective office or offices for a continuous period of eight (8) years SO SERVED shall thereafter become ineligible to serve on City Council or as Mayor AS AN ELECTED OFFICIAL for a period of four (4) years.

**4.3** Council PERSONS. ~~There shall be a City Council of six (6) members who shall be elected at large from the entire City. EACH COUNCIL PERSON SHALL BE ELECTED AT LARGE BY THE REGISTERED VOTERS. The term of elective office for each EACH Council Person shall be ELECTED FOR A TERM OF four (4) years, and until his/her successor is elected and assumes office. Council Persons may be elected for a maximum of two (2) consecutive terms and thereafter, shall become ineligible to serve on City Council or as Mayor for a period of four (4) years. Three (3) Council Persons shall be elected at one Regular Municipal Election and the other three (3) Council Persons shall be elected at the next succeeding Regular Municipal Election.~~

**4.4** Terms of Office. ~~Those Council Persons serving or elected on the date of the final adoption of this Charter shall continue in office for the remainder of the respective terms to which they were elected.~~

~~In the Regular Municipal Election to be held in 1995, the three (3) candidates for City Council receiving the greatest number of votes shall be elected for four (4) year terms.~~

~~In the Regular Municipal Election to be held in 1997 and thereafter, the three (3) candidates for City Council receiving the greatest number of votes shall be elected for four (4) year terms.~~

**4.5** Powers of the Council. ~~The elected Mayor and elected City Council shall be the governing and legislative body of the City. Council shall have all powers established by the Colorado Constitution under Home Rule and hereinafter provided in this Charter.~~

**4.64** Mayor. The Mayor shall be elected at large by the registered voters of the entire City. The term of office for the Mayor shall be two (2) years. ~~The Mayor, if elected, may serve up to a maximum of four (4) consecutive elective terms. Thereafter, the Mayor shall become ineligible to serve as Mayor or on City Council for a period of four (4) years.~~ The Mayor shall preside at all meetings of the Council and shall have all of the powers, rights, and privileges of a Council member PERSON. The Mayor shall be recognized as the head of City government for all ceremonial and legal purposes, by the courts for serving civil process and by the government for purposes of military law.

~~The Mayor elected on the date of final adoption of this Charter shall continue in office for the remainder of the term to which he/she was elected.~~

**4.75** Mayor Pro-Tem. The Mayor Pro-Tem shall be appointed by the City Council from its membership at the first regular meeting after January 1 following each regular City election. The

term for Mayor Pro-Tem shall be two (2) years. The Mayor Pro-Tem shall not serve two (2) consecutive terms as Mayor Pro-Tem. In the absence of the Mayor, the Mayor Pro-Tem shall perform all duties and have all the powers of the Mayor AS WELL AS RETAINING ALL RIGHTS AND POWERS OF A COUNCIL PERSON. In the event of the absence of both the Mayor and the Mayor Pro-Tem, the Council shall appoint one other of its members to serve as Acting Mayor. The Acting Mayor, while serving, shall perform all the duties and have all the powers of the Mayor as well as retaining all ~~Council members~~ rights and powers OF A COUNCIL PERSON.

## CHAPTER V

### COUNCIL PROCEDURE

- 5.3 Voting.** A roll call vote by “Yes” and “No” shall be taken upon the passage of all ordinances and resolutions, and entered upon the minutes of the Council proceedings. Every ordinance shall require the affirmative vote on final reading of a majority of the entire Council for final adoption. Resolutions and motions shall require the affirmative vote of a majority of the members present. No member of the Council shall vote on any question on which he/she has a substantial personal or financial interest, as determined by a majority of the Council, other than the common public interest, or on any question concerning his/her own conduct, and in said instances the member shall disclose this interest to the Council. Failure of any MEMBER OF THE Council ~~member~~ to comply as specified shall be considered misconduct in office. On all other questions each member present at the meeting shall vote unless excused by the unanimous consent of the remaining members. Any other abstention, or refusal to vote, or absenting one-self from the room during the call for question shall be ruled a “yes” vote, recorded as such, and considered misconduct in office.
- 5.10 Special Meetings.** Special meetings shall be called by the Clerk upon written request of the Mayor or any two (2) ~~members of the~~ Council PERSONS with at least a twenty-four (24) hour written notice to each member of the Council, served personally or left at his/her usual place of residence. Notice of such meeting shall be posted in two (2) public places.
- 5.11 Compensation.** ~~The members of the~~ Council PERSONS shall receive such compensation and the Mayor such additional compensation as the Council shall prescribe by ordinance, provided, however, that they shall neither increase nor decrease the compensation of any member during his/her term of office. The Mayor and Council Persons may, upon order of the Council, be paid their actual and necessary expenses incurred in the performance of their duties of office.
- 5.14 Vacancies.** EACH Council ~~Persons~~ PERSON and the Mayor shall continue to hold office until his/her elected successor is duly qualified. ~~A Council seat or the Mayor's~~ THE office shall become vacant ~~whenever any officer~~ WHEN THE PERSON HOLDING THE SAME dies, becomes incapacitated, is judicially declared incompetent, resigns or ceases to be domiciled in the City, or is convicted of a felony. It shall be the duty of the Council to declare such a vacancy exists.

Within forty-five (45) days after a vacancy is declared the Council shall choose, by majority vote, a duly qualified person to fill such vacancy except as otherwise set forth in this Charter. He/she shall serve only until the next Regular Municipal Election at which time the Electors shall elect a ~~Council Person and/or Mayor~~ PERSON to succeed or serve the remainder of the unexpired term if applicable.

In the event City Council is unable to reach a decision as to a successor to fill an existent vacancy, a Special Election will be called, provided there will not be a Regular Municipal Election within ninety (90) days.

If three (3) or more vacancies exist simultaneously ON THE COUNCIL, the remaining ~~Council~~ ~~Persons~~ MEMBERS shall at the next regular meeting of the Council, call a Special Election to fill such vacancies, provided there will not be a Regular Municipal Election within ninety (90) days and provided that their successors have not previously been elected.

5.15 **Oath of Office.** Before entering upon the duties of his/her office, every ~~Council Person~~, the ~~Mayor~~ ELECTED OFFICIAL, City Clerk, Police Chief, Fire Chief, City Manager, Judge and City Attorney shall take, subscribe before and file with the City Clerk an oath or affirmation that he/she will support the Constitution of the United States, the Constitution of the State of Colorado, this Charter and the ordinances of the City and will faithfully perform the duties of the office.

## CHAPTER XII

### GENERAL PROVISIONS

12.2 **Definitions.** As used in this Charter the following words and phrases shall have the following meanings:

(a) **Appropriation.** The authorized amount of funds set aside or allocated for expenditure during a specified time and for a specified purpose.

(b) **Ballot.** Not limited to a piece of paper, but may include any mechanical OR ELECTRONIC means such as voting machines, through which a voter expresses and records his/her choice thereon.

(c) **City.** The City of Trinidad, Colorado, a municipal corporation.

(d) **Council.** The City Council of the City of Trinidad.

(E) ELECTED OFFICIAL. THE MAYOR OR A COUNCIL PERSON.

(e) (F) **Employee.** Any person in municipal service who is ~~not an officer~~ DESIGNATED AS AN EMPLOYEE IN THE PERSONNEL ENACTMENTS OF THE CITY.

(f) (G) **Franchise.** A special privilege granted by the City permitting the continuing use of public property such as City streets.

(g) (H) **May.** Construed as permissive.

(h) ~~Officer.~~ Any person who is elected to office or appointed by Council, including appointees to boards and commissions.

(i) **Person.** Is intended to have a broad definition not limited to such as is herein enumerated but to include at least the following: individual, corporation, association, political subdivision, state agency, singular or plural of each.

(j) Publication. Publication in any legal newspaper having a general circulation in the City.

(k) Public Utility. Public utility or public utility corporations shall mean any person, firm or corporation operating waterworks, light plants, telephone systems, power plants, transportation systems, heating plants, CATV and other television distribution systems, and any other public utilities or works or ways, in whole or part for use of said City and the inhabitants thereof. It shall not include any person, firm or corporation owning or operating sidetracks or switches for the accommodation of manufacturing plants and business houses, or private telephone lines, and shall not include municipally-owned utilities.

~~(l) Qualified Taxpaying Elector. Any qualified elector who in the twelve (12) months last preceding the election at which the vote is offered shall have paid a property tax on property in the City of Trinidad.~~

~~(m) Qualified Elector. A resident of the City who is qualified to vote under the Constitution and Statutes of the State of Colorado.~~

(n) Regular Election. The municipal election held every two (2) years at which candidates for elective offices of the City are voted upon.

(o) Shall. Construed as mandatory.

(p) Statutes. The applicable laws of the State of Colorado as they now exist or as they may be amended, changed, repealed or otherwise modified by legal procedure.

**Section 5.** That the following question is hereby adopted for submitting the changes set forth in Section 4 above to the registered electors at said election:

Proposed Charter Amendment No. 2: **SHALL CHAPTER IV, AND SECTIONS 5.3, 5.10, 5.11, 5.14, 5.15, AND SECTION 12.2 OF THE HOME RULE CHARTER FOR THE CITY OF TRINIDAD, COLORADO, BE AMENDED TO CLARIFY AND REVISE DEFINITIONS, DELETE OBSOLETE PROVISIONS AND DEFINITIONS, MAKE CONSISTENT USE OF DEFINED TERMS SUCH AS "OFFICIAL," "ELECTED OFFICIAL," AND "COUNCIL PERSONS," CLARIFY THAT THE MAYOR IS A MEMBER OF THE CITY COUNCIL, DELETE DUPLICATE LANGUAGE CONCERNING TERM LIMITATIONS FOR THE MAYOR, AND MAKE OTHER CLARIFYING AMENDMENTS; AND SHALL CONFORMING AMENDMENTS BE MADE TO THE CHARTER IN CONNECTION THEREWITH; ALL AS SET FORTH IN ORDINANCE NO. \_\_\_\_ ?**

**Section 6.** That the following proposed amendments to Section 4.2(c) of the Home Rule Charter for the City of Trinidad, Colorado, be submitted to the registered electors of the City at said election:\*

**4.2. Qualifications of Elected Officers OFFICIALS (Mayor and City Council Persons).**

~~(c) No candidate for City Council or Mayor shall hold any other elective City office unless the term of such other elective office shall expire on or before the date on which such candidate would take office if elected. However, a person may simultaneously serve as a member of the City Council or Mayor, and as a member of a Home Rule Charter Commission of the City. NO~~

\* Capital letters indicate new material added to existing Charter language; dashes through words indicate deletions from existing Charter language.

PERSON SHALL BE A CANDIDATE FOR MAYOR AND COUNCIL PERSON AT THE SAME ELECTION, OR HOLD BOTH POSITIONS SIMULTANEOUSLY.

**Section 7.** That the following question is hereby adopted for submitting the changes set forth in Section 6 above to the registered electors at said election:

Proposed Charter Amendment No. 3: **SHALL SECTION 4.2(C) OF THE HOME RULE CHARTER FOR THE CITY OF TRINIDAD, COLORADO, BE AMENDED TO REQUIRE THAT A COUNCIL PERSON RUNNING FOR MAYOR, OR A MAYOR RUNNING FOR COUNCIL PERSON, SHALL NOT BE REQUIRED TO RELINQUISH THE POSITION THAT THE PERSON CURRENTLY HOLDS, UNTIL AND UNLESS ACTUALLY ELECTED TO THE NEW POSITION; AND TO CLARIFY THAT A PERSON MAY NOT RUN FOR MAYOR AND COUNCIL PERSON AT THE SAME ELECTION; AND SHALL CONFORMING AMENDMENTS BE MADE TO THE CHARTER IN CONNECTION THEREWITH; ALL AS SET FORTH IN ORDINANCE NO. \_\_\_\_?**

**Section 8.** That the following proposed amendments to Section 4.2(e) of the Home Rule Charter for the City of Trinidad, Colorado, be submitted to the registered electors of the City at said election:\*

**4.2 Qualifications of Elected Officers OFFICIALS (~~Mayor and City Council Persons~~).**

(e) **SUBJECT TO THE PROVISIONS OF THIS SUBSECTION, NO ~~No~~ person may serve as an elected official of the City for a continuous period of more than eight (8) years. Any person who has ~~held any elective office or offices for a continuous period of eight (8) years~~ SO SERVED shall thereafter become ineligible to serve ~~on City Council or as Mayor~~ AS AN ELECTED OFFICIAL for a period of four (4) years. A PERIOD IN WHICH A PERSON WAS APPOINTED TO THE OFFICE FOR LESS THAN A FULL TERM OF OFFICE, OR WAS ELECTED TO A PERIOD THAT WAS LESS THAN A FULL TERM OF OFFICE, SHALL NOT BE INCLUDED IN THE LIMITATIONS OF THIS SUBSECTION. NO PERSON MAY BE APPOINTED MAYOR OR COUNCIL PERSON AFTER HE OR SHE HAS BEEN TERM LIMITED, UNLESS AT LEAST FOUR (4) YEARS HAVE PASSED SINCE LEAVING THE TERM LIMITED OFFICE.**

**Section 9.** That the following question is hereby adopted for submitting the changes set forth in Section 8 above to the registered electors at said election:

Proposed Charter Amendment No. 4: **SHALL SECTION 4.2(E) OF THE HOME RULE CHARTER FOR THE CITY OF TRINIDAD, COLORADO, BE AMENDED TO CLARIFY THAT THE PERIOD OF APPOINTMENT TO A PARTIAL TERM OF OFFICE, OR THE PERIOD OF ELECTION TO A PARTIAL TERM OF OFFICE, SHALL NOT BE INCLUDED IN THE TERM LIMITATIONS APPLICABLE TO THE MAYOR AND COUNCIL PERSONS; AND SHALL CONFORMING AMENDMENTS BE MADE TO THE CHARTER IN CONNECTION THEREWITH; ALL AS SET FORTH IN ORDINANCE NO. \_\_\_\_?**

**Section 10. Severability.** If any section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

\* Capital letters indicate new material added to existing Charter language; dashes through words indicate deletions from existing Charter language.

**Section 11. Effective Date.** This ordinance shall be published and become effective ten (10) days after final passage, as provided in § 5.5 of the Home Rule Charter for the City of Trinidad, Colorado.

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_; READ AND ORDERED PUBLISHED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

THE EFFECTIVE DATE OF THIS ORDINANCE SHALL BE the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF TRINIDAD, COLORADO

\_\_\_\_\_  
JENNIE GARDUNO, Mayor

ATTEST:

By: \_\_\_\_\_  
AUDRA GARRETT, City Clerk

7-10