

The regular meeting of the City Council of the City of Trinidad, Colorado, was held on Tuesday, August 7, 2012 at 7:00 p.m. in City Council Chambers at City Hall.

The Honorable Bruce A. Billings, Las Animas County Court Judge, administered the Oath of Office to Anthony Mattie as Council Member.

Councilmember Mattie offered his appreciation for the votes and support he received and said he prays he will be worthy of the same. He said since the election last Tuesday he has received a countless number of congratulations, and thanked those who took the time to do so. Often in conjunction with those well-wishes he was asked if he was nuts and why he wanted to serve on Council. He was also reminded that he is retired from the State Patrol and has a cushy job at the Courthouse and asked why he would screw that up. His answer, he said, is because it matters. What's happening to our City and school matters to him, and said he thinks it should to everyone who lives here. Another reason he said is because in a book he recently read about the flight of Italian immigrants in the early 1900s the author states "There's a special place in hell reserved for people who maintain their neutrality during times of moral crisis." Councilmember Mattie then shared another story with those present to further illustrate why he thinks it matters. He explained that on January 2, 2006, Cozette Henritze wrote a story in the Chronicle News whereby she was remembering two of her friends. One of them was Sister Isabella, the Principal of Trinidad Catholic School, and the other a local businessman. She wrote that the local businessman had taught her more than anyone she had ever dealt with about the rules and realities of the politics in Trinidad. The thing he wanted most to see was officials at the city and County, business people, organizations and community leaders work together to solve community problems rather than bicker over whose turf was being trampled, who was going to take the lead and who was going to get credit. Too often he didn't get his wish, no matter how hard he tried to mediate with his fellow councilmen when they dug their heels on a particular topic. He often told him that some day in addition to the Trinidad sign at either end of our city that welcomes people to our town he would like to see a sign that said "they work together here to make things happen." That businessman of whom Councilmember Mattie spoke was appointed to City Council on March 17, 1981 to fill a vacancy that was created by the resignation of a sitting member. That businessman was subsequently elected to and served on Council with honor and distinction for 14 years until he resigned in 1995. Over those years he served 12 as Mayor Pro-Tem and for a short while as the Acting Mayor. Councilmember Mattie said that businessman later died on his 86th birthday in 2005. He proudly identified him to be his uncle, Joe Garbo. Councilmember Mattie told those present that it is compelling to him that his uncle's vision was the same then as his is tonight, and that it is disheartening to him that a generation later the same stubborn, egomaniacal, and divisive mentalities that frustrated his uncle continue to stifle our own growth and prosperity. He suggested that perhaps that vision where people work together to make things happen can be brought to fruition beginning tonight. Maybe in the near future we can add the motto to our signs on the interstate where people truly work together to make things happen. Councilmember Mattie challenged every resident, starting tonight, he hoped it would finally matter and they will surrender their own neutrality and get involved in a positive way. In the interest of courtesy and stability, he said we need to step back, take a deep breath before we speak and act. Finally he suggested that we need to learn to live and work together in a compromising and meaningful way so that we will be able to lay honest claim to that motto of people working together to make good things happen. Councilmember Mattie addressed the Mayor, City Council, City Manager and City Attorney and told them that he was cloaked only in his determination to work to the best of his ability with each of them for the betterment of Trinidad. He added that he begins his service tonight with a clean slate, having trust, respect and appreciation for them and their opinions and anticipates that each of them will extend him the same courtesy.

There were present:	Mayor	Rino, presiding
	Councilmembers	Baca Gonzalez, Bolton, Bonato, Mattie, Shew, Velasquez
Also present:	Acting City Manager	Gagliardi
	City Attorney	Beatty
	City Clerk	Garrett

The pledge of allegiance was recited.

READING OF THE MINUTES. Regular Meeting of July 17, 2012 & Special Meeting of July 24, 2012. A motion to approve the minutes as submitted was made by Councilmember Bolton and seconded by Councilmember Shew. The motion carried by a unanimous roll call vote.

PETITIONS OR COMMUNICATIONS, ORAL OR WRITTEN. Terry Sears signed in to speak on the resolution concerning procedures for public petitions and communications, however deferred that comment until the item was considered.

REPORT BY CITY MANAGER. Welcome Center Grant. Acting City Manager Gagliardi deferred to Colorado Welcome Center Director Tara Marshall to tell Council of a grant just received. Ms. Marshall addressed Council. She said she was happy to announce the receipt of the Colorado Welcome Center grant from the National Scenic Byways program, which means \$280,904 in federal money coming to the City of Trinidad in the form of upgrades to the Welcome Center. Ms. Marshall pointed out the budget breakdown detailing the items to be completed with the grant funds provided to Council at their seating places. She said she is very excited and added that a statewide press release has been issued out of the Colorado Tourism Office. She said she also received a call from the Colorado Tourism Office to relay a message to Council that they are very excited and proud for Trinidad's Welcome Center, which was the first Welcome Center in Colorado, and that 26 years later the relationship between the City and the Tourism Office is still strong and Trinidad is still leading the way. Other Welcome Centers across the state will be looking at this grant to do the same thing – so Trinidad was once again the first. Ms. Marshall then called to Council's attention the spreadsheet provided them by Planning Director Louis Fineberg outlining the grants. She pointed out that with this grant award the City is right at \$700,000 in less than 12 months. Mayor Rino thanked Ms. Marshall and congratulated her on getting the grant.

AUGUST 7, 2012

Retirement. Acting City Manager Gagliardi advised Council that the City has received announcement of retirement of one of the longest termed employees of the City, Finance Director Rose Blatnik. He said he's had the pleasure of working with her, hopes to work with her until her retirement on September 14th, and has a lot to learn from her in that time. He thanked Ms. Blatnik and Mayor Rino echoed the appreciation on behalf of Council, adding that she'll be missed by all.

Opera House Walkway. Acting City Manager Gagliardi raised the issue of the Opera House walkway and sought Council's guidance. He asked what they'd like to have done with the walkway because it is not ADA certified. He said he's been told by the Building Inspector that it is not necessary to have it ADA certified. However he said he's looked into the possibility of having ramps installed. He noted that the original contractor has yet to be finished with the work. The Building Inspector sent a registered letter out Friday regarding that issue. He also noted that the contractor has not been paid and is not sure why he hasn't finished the job. He suggested the ramp could cost between \$1,500 to \$5,000. He said he's told the Building Inspector that he'd first determine if Council wants to proceed and then go out to bid. It is just a price range. Councilmember Shew asked if he had someone go look at the work because he saw someone taking measurements today. Acting City Manager Gagliardi said he'd rather not comment. Councilmember Baca Gonzalez said she wanted to encourage Council to look into the performance bond, if any, provided by the contractor that did the initial work. If the contractor is not able or willing to finish the work to the specifications...Acting City Manager Gagliardi said the work is to specifications, however it went from a five day job to four weeks. He reiterated that the contractor hasn't yet been paid, but the only work left to be done is the mesh on the front part of the building. He added that he had taken exception to the color it was painted because it was supposed to be white but looked like primer. The specifications called for one coat and it was in fact one-coat paint. Councilmember Bonato asked if ADA ramps were discussed when initiating the project. Acting City Manager Gagliardi answered that it was not according to the Building Inspector. Planning Director Fineberg said that the ramps may be able to be included as part of the larger CDOT project. There may be funds to take care of that, but it won't happen tomorrow. Acting City Manager Gagliardi suggested this is probably something that should get done. He said he noticed this afternoon a rather large person with a cane trying to climb up to the walkway and was unable to. He said he pulled over and told him to cross the street because it would be a lot easier. Acting City Manager Gagliardi said he feels that even though it is not required there are a surprising number of people who use that access and it can't cost that much. Councilmember Bolton asked if the contract included language on how long they had to complete the project. City Attorney Beatty answered that they had 30 days. Councilmember Bolton commented that they went well beyond that time. City Attorney Beatty said the work is substantially complete. They still have to install a roofing product and netting on the building as well as some tuck and pointing on the sandstone and brick. Acting City Manager Gagliardi corrected that what one sees on the overhang is the final product. The fabric they've installed on the roof is what was called for in the plans, not rolled roofing. This material is designed to better withstand weight and pressure. It is not nailed, rather it is rolled and stays. He reiterated that it is the final product. Acting City Manager Gagliardi pointed out that the chain link fencing still needs to be erected. Mayor Rino suggested the City look at installing ramps and staff come back with bids from local contractors. Acting City Manager Gagliardi said that is his recommendation. Mayor Rino added that it will be money well spent. He said the other problem is that this looks like it may be somewhat permanent. He asked how long the City is giving the owner of the building to do something with it. Acting City Manager Gagliardi commented that the owner got a sweet deal. Mayor Rino continued that there needs to be a time table and that he doesn't want to see it like that for two or three years. He added that he thinks it is important for people to know the time table, and although it is worthwhile to save the building, how long will it take. He directed City Attorney Beatty to look into it. Council concurred with the recommendation to seek bids to install ramps. Councilmember Baca Gonzalez added that she felt it essential that we assist not only our citizens with disabilities, but also mothers with strollers, etc. Acting City Manager Gagliardi said he'd start on it tomorrow.

Meetings with Department Heads. Councilmember Bolton inquired as to the status of the memorandum concerning Acting City Manager Gagliardi's meetings with department heads. Acting City Manager Gagliardi advised that he purposefully held off because of ongoing issues and that it is forthcoming.

REPORT BY CITY ATTORNEY. Election. City Attorney Beatty congratulated Anthony Mattie on his election to City Council and added that he appreciated his speech which was filled with enthusiasm and optimism. He also recognized the work of the City Clerk's office and staff in conducting the recent special election.

Arkansas River Power Authority (ARPA). City Attorney Beatty advised Council that the ARPA Board of Directors authorized going forward with a new claim or separate lawsuit for breach of fiduciary duties by the City of Trinidad. He pointed out that information regarding that claim had been provided to Council and wanted them to be aware that that occurred this morning.

COMMITTEE REPORTS. None.

UNFINISHED BUSINESS. None.

MISCELLANEOUS BUSINESS. Special events permit request (malt, vinous and spirituous) by Mount Carmel Health, Wellness & Community Center at 911 Robinson Avenue (tacos and tequila celebration). Scott Candland, Chief Operating Officer, told Council that this will be the first annual tacos and tequila celebration and thinks it will be a nice event that will be a welcome addition to the annual social calendar at Mt. Carmel for the City of Trinidad. It will be outside in the new west side park with the amphitheater. He said it will include a band and vendors, and ten tequila vendors. He reiterated that they think it will be a nice event. A motion to approve the permit was made by Councilmember Bolton and seconded by Councilmember Baca Gonzalez. The motion carried unanimously upon roll call vote.

Temporary modification of premises request by Gina Louise Lujan d/b/a El Rancho Café at 1901 Santa Fe Trail on August 25-26, 2012. Ms. Lujan addressed Council. She explained the event is the Blues Break and is a fundraiser for Trinidad Area Arts Council and Noah's Ark Animal Welfare Association. A motion to approve the temporary modification was made by Councilmember Shew and seconded by Councilmember Bolton. The motion carried by a unanimous roll call vote of Council.

Appointments to the City Tree Board. Mayor Rino said there are five people to be appointed, 1 for a 3 year term, 2

for 2-year terms and 2 for 1-year terms. Councilmember Bonato moved to appoint Will Duniho to the Tree Board. City Clerk Garrett advised that the board is to be comprised of five members and one or more tree professionals. Will Duniho and Robert Ingoldby both applied to be ex-officio members and are tree professionals. She added that the ordinance did not specify terms so presumably it would be for as long as they are willing to serve. Councilmember Mattie questioned whether they meet the requirements that they be residents and registered voters as stated in the public notice. Councilmember Bolton said neither of the tree professionals are City residents and pointed out that it doesn't apply because they are not to be true members of the board, rather just ex-officio members. Councilmember Shew moved to appoint both Will Duniho and Robert Ingoldby as ex-officio members of the Tree Board for as long as they wish to serve. Councilmember Bolton seconded the motion which carried unanimously upon roll call vote. Mayor Rino noted that if those who submitted letters of interest are appointed there would still be one vacancy. Councilmember Shew moved to appoint Francesca Villani to the three-year term. The motion was seconded by Councilmember Bolton and carried by unanimous vote. A motion to appoint Martha Fitzgerald to one of the two-year terms was made by Councilmember Bolton and seconded by Councilmember Shew. Upon roll call vote, the motion carried unanimously. Councilmember Shew moved to appoint Jennifer Laidig to the other two-year term. The motion was seconded by Councilmember Velasquez and carried unanimously. Councilmember Baca Gonzalez moved for the appointment of Peter Gintautas, Ph.D., to serve the initial one-year term and her motion was seconded by Councilmember Bolton. The motion carried by a unanimous roll call vote.

Appointments to the Parks & Recreation Advisory Committee. Councilmember Bolton moved to appoint the two applicants, Glenn Davis and Wayne Pritchard, to the Committee. Councilmember Baca Gonzalez seconded the motion. City Clerk Garrett asked for and received Council's concurrence to appoint the two to the longest of the terms. Roll call was taken and the motion carried unanimously.

Resolution updating the City of Trinidad Three-Mile Area Plan. A motion to approve the resolution updating the Three-Mile Area Plan was made by Councilmember Bolton and seconded by Councilmember Shew. The motion carried unanimously pursuant to a roll call vote.

RESOLUTION NO. 1391

A RESOLUTION OF THE CITY OF TRINIDAD, COLORADO, UPDATING THE CITY OF TRINIDAD THREE-MILE AREA PLAN

Consideration of grant Contract between the Colorado Historical Society and the City of Trinidad for Project #2012-AS-016, Archaeological Assessment of Fish Hatchery and Zoo at Monument Lake Park. Councilmember Baca Gonzalez moved for approval of the grant contract as presented. The motion was seconded by Councilmember Velasquez. Roll call was taken and the motion carried unanimously.

Resolution establishing procedures for public petitions and communications at all public meetings of the City Council. Terry Sears addressed Council. He commented that the resolution is well written. He said although it is not mentioned in the resolution, his understanding in reading the Charter is that citizens may address Council during special meetings. He suggested there should be a sentence to that affect in the resolution. He also stated that procedurally the way it is established currently is that if someone wishes to address Council during a work session they need to sign up in advance with the City Manager's secretary. He suggested that for all three meetings there be a simple sign-in sheet instead just as there is for the regular meetings. Mayor Rino said he thought it was identified in the work session that if an item is on the agenda a person could speak on it. Mr. Sears said he doesn't think most citizens know they can speak on the issues and if they haven't scheduled in advance with the secretary they can't do it. He reiterated his suggestion that a sign-in sheet be used for work sessions, regular meetings and special meetings. Councilmember Shew asked Mr. Sears if there is any update concerning the railroad. Mr. Sears said there isn't. There have been a couple of positive developments. The elements who are anti-train in the U. S. Congress, Congressman Flake from Arizona being one, had a motion up to try to cancel the food service on the cross-country trains, which is a big selling points for private rooms because it is included in your room. That got defeated. There was a \$400 million dollar repair item that they tried to cut as part of one of the budget deals, but it didn't get cut. As of right now the various cities are still working on it. We have some support. The Colorado Senate passed a resolution. Mr. Sears said he is trying to get the signatures of the Boy Scouts who use the Southwest Chief to go to the big camp in northern New Mexico, a cover letter, the resolutions from all of the cities, and submit it to somewhere he described as sounding totally outrageous so he kept it to himself. He concluded that those of us who are vitally interested in the matter are working behind the scenes, but there really is no new news that he's aware of. He offered to pass on to the City Council members through his e-mail contacts any updates he receives. Councilmember Bolton said she's had some issues with the resolution establishing procedures for public petitions and communications at all public meetings of the City Council brought to her attention. She moved, in light of the fact that they have a new Council member, that the resolution be tabled to next week's work session to re-visit. Councilmember Baca Gonzalez seconded the motion. City Attorney Beatty commented that the resolution as drafted probably incorporates what Mr. Sears is asking. The resolution allows petitions and communications at all public meetings of the City Council. He said he also believes it would be the expectation of Council that there be a sign-up sheet available for all public meetings. Roll call was taken on the motion to table the resolution and carried by a unanimous vote.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TRINIDAD, COLORADO, ESTABLISHING PROCEDURES FOR PUBLIC PETITIONS AND COMMUNICATIONS AT ALL PUBLIC MEETINGS OF THE CITY COUNCIL

Consideration of Security Services Agreement between the City of Trinidad and Trinidad School District Number One. Mayor Rino noted that this has been standard procedure for years with the Police Department providing security. A motion to accept the agreement was made by Councilmember Shew and seconded by Councilmember Bolton. Upon roll call vote, the motion carried unanimously.

AUGUST 7, 2012

North Lake Dam Project. Mayor Rino commented that the North Lake dam project has been at a standstill for a few days. He asked that it be put on a special meeting next Tuesday so Council can find out the direction of the project. Councilmember Bolton commented that she was going to make the same request. Mayor Rino suggested it can be discussed at a work session and considered at a special meeting after the work session. Acting City Manager Gagliardi called on Utilities Superintendent Fernandez to comment. Supt. Fernandez addressed Council and noted the presence of the contractor in the audience and said he has brought the contract with him to be signed. That can be done tonight and proceed with a meeting next week. Mayor Rino said he thought it best to meet next week so Council knows exactly what we are talking about. Councilmember Bolton said she felt Council needed to have the meeting before the contract is signed. Mayor Rino pointed out that it is not on the agenda and so they can't act on anything. He clarified that Council has already approved the contract, so if the contractor wants to sign it that's fine. However, he reiterated his opinion that it needs to be discussed at Tuesday's work session. City Attorney Beatty advised Council that the specifications set forth a timeline for the project, including the execution of the contract by Sun Construction, which is this Friday. The City would thereafter issue a notice to proceed. A pre-construction meeting with Sun Construction and the engineers is contemplated to get additional guidance for the timeframe of the project. It may require an addendum to the contract for substantial completion. The contract is a 365-day project and 180 days are allowed to attain substantial completion. Within the specifications it warns the contractor to anticipate adverse weather conditions. He surmised that it probably would be prudent for the City and Sun Construction to discuss the timeframe. He suggested that discussion be held next Tuesday. Acting City Manager Gagliardi reiterated that Sun Construction needs to sign the contract by Friday; they can't wait for a meeting. Councilmember Bolton re-stated the need for a meeting before the contract is signed since they've tagged on close to \$300,000 more. City Attorney Beatty clarified that isn't part of the original contract. Councilmember Bolton said Council has just been notified that the contractor is asking for an additional \$272,000. Council has discussed change orders and before the project is even started the contractor is in the door asking for close to \$300,000 more. She stated her opposition. Mayor Rino reiterated that Council has approved the signing of the contract. If Council wants to discuss the additional funding request it can come in as change orders. He added that there are always change orders. Sometimes they are necessary to complete a project. We've done that with Cimino Park, the flag project, etc. Councilmember Bolton opined maybe it is time to put a stop to extraneous change orders. Utilities Supt. Fernandez told Council that we have a deadline to get this contract signed of this Friday. He said his recommendation is that the contract be executed, clarifying that it does not include the additional dollar amount. Further he recommended that if indeed additional costs are realized, they be handled by change orders so the City will know exactly what expenses we are facing. He added that it would not be prudent to modify the contract up front without knowing the weather conditions. If the contract is not executed by Friday the contractor is going to forfeit his bid bond and would in effect lose the bid. We had 60 days from the day of the bid opening and that time is slipping away. The contract has already been approved by Council, so nothing changes. If Council wants to meet and discuss additional funding that can be done. If Council agrees to it, it would be a matter of amending the contract. The first thing that needs to be done is to get the contract executed. Supt. Fernandez said regarding the matter of change orders, the project is a \$1 million project and he can guarantee there will be change orders because no one can predict every element of work that has to take place. He emphasized that there will be changes, especially in a job of this magnitude. Councilmember Bolton asked if it is prudent to start this job this time of year. Supt. Fernandez answered that it is because if we don't we'll waste the rest of this year. The weather is usually good until the end of November for construction in the North Lake area. If we wait until next year we will jeopardize our position with the state regarding our capacity at North Lake. They could make us drop the level even lower than it is now. It would behoove us to get this project underway. If we encounter weather condition problems we can deal with that; however, he opined that we would be making a mistake to wait. Councilmember Bonato commented that the City has been talking about this dam for 10 to 12 years, since he was on Council previously. He said Councilmember Bolton is worried about \$272,000, whereas he is worried about the water that keeps the citizens alive in our City. Our water is our life stream. We've already lost five feet from having to lower the level, plus another two feet from lack of moisture. That's seven feet that North Lake is down already. He said he felt Sun Construction has given the City their honest and open bid, we signed the contract and we should go with the contract. We need to stop putting things off. We have \$4 million in reserve. If we have change orders we have change orders, but we need to proceed with this project by getting the contract signed by Friday. Acting City Manager Gagliardi corrected that the deadline to have the contract signed is actually Thursday. Councilmember Bonato said he thinks it is more important to this community to stop worrying about a \$272,000 change order and get this dam project taken care of, get things going and try to get this solved. He reiterated that this project has been ongoing for 10 to 12 years and urged that it be moved forward. Councilmember Bolton said let's get it done right. Councilmember Bonato said it is being done right. With respect to the additional \$272,000 that came up, with a major construction project you will always have change orders. He concluded that he believes we should move on and give the approvals to get the project done. Mayor Rino said his concern is if the contract isn't signed it becomes null and void and at that point we'd have to go out to bid again and the project would be prolonged another six to eight months. He said he can guarantee we wouldn't get another bid any cheaper, any better than the bid we have right now. At Acting City Manager Gagliardi's request, Supt. Fernandez read an e-mail from Bob Huziak, RJH Engineering, received this afternoon. He read: "Jim and Linda, the NTP (Notice to Proceed) provides 180 days starting on August 7th and ending on February 3rd. The contract documents state the contractor should plan on not working 12 days in November, not working 20 days in December, and not working 30 days in January because of weather." He pointed out that the weather has already been addressed in the contract documents, in the specifications. The e-mail continues "This means the City is actually saying the contractor has to do the work in 180 days, 62 of which they should plan on being weather days. So in reality the City is only giving the contractor 118 days to do the work. This doesn't seem reasonable and I believe could be bad for the City if or when the contractor cannot meet the schedule. One way to handle this may be to provide 285 days to substantial completion. This includes November, December, January, and 25 days in February and 18 days in March. Also there are some July 1 deadlines in the specs. Since the contract is being dated August this would push the deadline to July of 2013, so this will need to be adjusted." Supt. Fernandez said the point is that we are letting time slip away and are moving further and further into 2013. This \$272,000 figure we are talking about may or may not happen – it's an 'if', a possibility – we don't know for a fact that it's going to happen. He said that's why in his memo to Council he recommended we make no adjustment at this time. If those expenses do indeed arise and are a necessity, fine, let's do it by change order. That's the accepted methodology for dealing with contract and contractors. Steve Bolton asked if he's saying the job will take 180 days. Supt. Fernandez clarified that 180 days is to substantial completion. The contract is for a full year. Mr. Bolton said in the 365 days they will run over a winter period somewhere during that time anyway. He said he doesn't understand what the hurry is except they want the contract signed. Why are we rushing into this? Like Mr. Bonato said, we have been doing this for 15 years. He said he doesn't understand the cruciality of things running another six months. It's not going to kill us. Supt. Fernandez explained that it is because we are losing storage capacity day by day at

North Lake. North Lake is the City's primary drinking water for the entire community, so the sooner we get the project done the better we will be. An unnecessary delay is foolish. Why delay the project when we don't have to? We've got the grant and funding in place, the contractor selected, the contract is ready to go – there's no reason to delay the project. Mr. Bolton asked if the contract is just over \$900,000. Supt. Fernandez said that is the original amount for the original bid for about \$972,000. Mr. Bolton said the contractor has now thrown in \$272,000, which sounds like an absolute they are going to charge us because they have to work over winter months. He said he doesn't understand because they will have to work over winter months anyway. Mayor Rino clarified the contract has been approved by Council. All they are trying to do is get the contract signed by Thursday. After that we can discuss these issues at a work session on Tuesday. There's always things contractors run into that they didn't plan on. He said he's sure other contractors in the audience have had change orders. If it happens, we have money available. He said he doesn't want to delay the project any further. It needs to be signed and we need to proceed with the contract and the change orders as they come in. Acting City Manager Gagliardi pointed out that consideration needs to be given to the grant the City received. We will lose the grant if we don't proceed. Councilmember Bolton said she didn't think that was true. We have four years to complete this project. City Attorney Beatty corrected that we have until December 31, 2013. Councilmember Bolton argued that we have four years according to the grant/loan contract to complete the project. She asked why we are rushing into it since all we have faced are changes since the first day we approved that resolution to move forward in May. She said everything has changed, and without Council's consent. Council has just received memos saying what was being done. Councilmember Shew asked the contractor to explain why he's seeking a change order before any work was even done. Floyd Abeyta, Sun Construction, addressed Council. Mr. Abeyta said what happens is they have a dam and the first part of it has to have holes drilled down to set up a dewatering system to drain the water out. There is a sort of manifold on top and then there's an engine that sucks the water out and pumps it down the creek. He said in the pre-construction meeting it was discussed, and is in the contract notes, that the work was going to start at the end of May. Mr. Abeyta said when he looked at their schedule they didn't have much work so he anticipated getting started right away because they knew the dewatering system was going to be really crucial. Assuming they were starting in June he thought they could get everything done very quickly before the winter sets in. The minute they start getting into cold temperatures he said they can't dewater the way they want nor can they start equipment as easily. Basically the main pipe they have to cut and divert is going to be very crucial. They can't do that in the middle of a snow storm. They'll build the pipe from end to end and then they will have to cut the pipe and tie those two ends in to get the water running again. If there's a three-foot snow storm that's not going to happen. Mr. Abeyta said there's a lot that needed to happen in the summer time that they were anticipating. He decided that they will really have to accelerate this project in order to beat some of the cold weather. Once the piping is in and some of the lower apparatus in it won't be that big of a deal. Then they can do other things. It was basically a change in scope. He decided it will cost more money and offered to keep track of the extra equipment and crews to accelerate the project. He was asked what the cost might be. Mr. Abeyta said he provided that number. He said at that number he would assume all of the risk, won't bother for anything more to do with winter conditions and will get the project done. He reiterated that it is a change of scope. The project looks very different now as compared to if they would have been able to start in May. Steve Bolton asked if this is a matter of \$270,000 to get this done in the next six months rather than waiting until March or April and avoiding those winter problems. Are we going to spend \$270,000 or just wait six months to get started in the time of year where the contractor can get in there and get it done and done right without a bunch of change orders because of the weather? Councilmember Shew asked if he understood correctly that with the \$270,000 he wouldn't come back with any change orders. Mr. Abeyta said that was correct relative to any kind of winter conditions. Councilmember Shew noted that it doesn't include any re-mobilization costs for winter. Mr. Abeyta explained that it means if they get three foot of snow everything has to be shut down. He said he probably didn't read that in the spec book and it probably covers that in the spec book. He said after listening to him read that is that it is probably taken care of in the contract. Councilmember Shew asked the possible time frame for the contractor to do the work he just talked about. He asked if he could complete it between now and November. Mr. Abeyta said he could if he started now and put extra crews on it. He could be doing the sand filters, the pipe work, and the inlet all at the same time. He said he could really accelerate it and maybe be totally done with the exception of seeding and some final grade because the ground is frozen at the end of November. But, it is accelerated costs. The \$272,000 means he takes all the risk. If they T&M it and it ends up being a \$500,000 bill that's what the City will have to pay. He reiterated that he was asked to give the City a number and that's what he figured out that he'd be willing to take the risk for. City Attorney Beatty clarified to Council that the City has executed the contract and has issued the notice of award to Sun Construction, Inc. The contract is currently in Mr. Abeyta's hands for full execution, so it will be up to Mr. Abeyta at this point. As mentioned previously, Mr. Abeyta will have a pre-construction meeting with the City's engineer next Monday. They will have an opportunity to discuss time frames for the project and work through how this might best be addressed. He recommended the City await Mr. Abeyta's and Mr. Huziak's input before really giving much deliberation to this change order request. Councilmember Baca Gonzalez commented that what she's hearing is that the contract is already out there. Council approved it. Mr. Abeyta simply has to accept the contract. She said it appears that the City's delay in doing what it needed to do so Mr. Abeyta could begin on or about May 22nd – we missed that window of opportunity. So the blame if any is on the City for not getting the financing squared away and ready to go on May 22nd. Mr. Abeyta is saying he can accelerate the schedule and hopefully have work done by the end of November - critical things done. Because we caused the delay and didn't let him get started on May 22nd and here we are on August 7th, basically we are incurring that cost because of the City's mistake. She said the option about not honoring the contract is a not viable option and she doesn't want the City involved in a breach of contract. Councilmember Baca Gonzalez said she is very concerned and very upset that the City's delay has created additional potential expenses for our taxpayers. She said that is completely unacceptable and we have to be proactive and analyze contract documents and every aspect of a deal long before we get our backs up against the wall and we have no bargaining power or are obliged to proceed with circumstances that are a disadvantage that we basically created for ourselves. She estimated that Mr. Abeyta will likely sign the contract and present it and the City will have to go forward with steps and measures and take a hard look at the increased cost. Hopefully Mr. Abeyta will be straight up and fair with the City. City Attorney Beatty told Councilmember Baca Gonzalez he understood and accepted her statement. He added that it has been a difficult event for him. The Charter provision that became an issue in this matter has been in effect since 1994. The City has borrowed money on various occasions. That provision really never has been flagged before in the City's borrowing efforts. It was flagged this time and caused concern for the state of Colorado. He apologized that the delay occurred, but said the City persevered and tried to find the best resolution for our predicament. Because the City has \$4 million in the water fund reserves staff felt we could proceed without the loan component of the package. We sacrificed the loan in order to preserve the grant. The grant amount preserved is \$739,235 and he concluded that he just wants to see the project through. Mayor Rino concluded the discussion and said it will be discussed further on Tuesday.

AUGUST 7, 2012

BILLS. Councilmember Bonato questioned check #40800 on page 14 described as a tourism ad payable to the Raton Range in the amount of \$2,252.02. He asked what that consisted of. Steven Kelly who is on the board advised that he wasn't prepared to answer the question. Tara Marshall, CWC Director, recalled that it was for advertisement in the summer circular from the Raton Range in conjunction with the Trinidad Times Independent. She said the circular was sent to welcome centers throughout the state. It was about 25 pages and contained a calendar of events and the Tourism Board took out two full-page ads. She said she felt fairly certain that was what the allocation was for. Mr. Kelly agreed. A motion to approve the bills as presented was made by Councilmember Shew. The motion was seconded by Councilmember Baca Gonzalez. Roll call was taken on the motion to approve the bills and carried unanimously.

PAYROLL, July 21, 2012 through August 3, 2012. A motion to approve the payroll was made by Councilmember Bolton and seconded by Councilmember Bonato. The motion carried unanimously.

ADJOURNMENT. There being no further business to come before Council, a motion to adjourn the regular meeting was made by Councilmember Shew and seconded by Councilmember Bonato. The meeting was adjourned by unanimous voice vote of Council.

ATTEST:

JOHN RINO, Mayor

AUDRA GARRETT, City Clerk