



CITY OF TRINIDAD  
TRINIDAD, COLORADO

The Regular Meeting of the City Council of the City of Trinidad, Colorado, will be held on Tuesday, January 6, 2015 at 7:00 P.M. in City Council Chambers at City Hall

The following items are on file for consideration of Council:

- 1) **ROLL CALL**
- 2) **APPROVAL OF MINUTES**, Regular Meeting of December 16, 2014 and Special Meeting of December 18, 2014
- 3) **PUBLIC HEARING**
  - a) New Retail Marijuana Store license application filed by M & M Distributing, LLC at 422 N. Commercial Street
  - b) New Retail Marijuana Cultivation Facility license application filed by M & M Distributing, LLC at 422 N. Commercial Street
  - c) New Retail Liquor Store license request by El Paso Liquor, Inc. d/b/a El Paso Liquor at 1101 E. Main Street
- 4) **PETITIONS OR COMMUNICATIONS, ORAL OR WRITTEN**
- 5) **COUNCIL REPORTS**
- 6) **REPORTS BY CITY MANAGER AND CITY ATTORNEY**
- 7) **UNFINISHED BUSINESS**
- 8) **MISCELLANEOUS BUSINESS**
  - a) Designation of locations for required posting of public meetings
  - b) Liquor store license renewal request by Linda T. Anderson Barron d/b/a Mountain Liquor & General Store at 1144 Robinson Avenue
  - c) Hotel and restaurant liquor license renewal request by Mission at the Bell Restaurant, Inc. d/b/a Mission at the Bell Restaurant at 134 W. Main Street, #14
  - d) Retail Marijuana Store license application filed by Emerald City Wellness, LLC d/b/a Emerald City at 520 Nevada Avenue
  - e) Retail Marijuana Cultivation Facility license application filed by Emerald City Wellness, LLC d/b/a Emerald City at 123 Pine Street
  - f) Appointment to the Planning, Zoning and Variance Commission
  - g) Memorial Resolution acknowledging the contributions of Herman J. Heise upon his passing.
  - h) Resolution adopting and entering into the Trust Agreement for the Colorado Firefighter Heart and Circulatory Benefits Trust and taking other actions in connection therewith
  - i) Ratification of Collective Bargaining Agreements – General Services – 1074-A, Police – 1074-B, and Fire – 1074-C, January 1, 2015 through December 31, 2017
  - j) Appointment to the Southern Colorado Economic Development District (SCEDD) Board of Directors (Louis Fineberg, Planning Director)
  - k) Announcement of City Manager finalists

- 9) **BILLS**
- 10) **PAYROLL**, December 20, 2014 through January 2, 2015
- 11) **EXECUTIVE SESSION** – For a conference with the City’s attorney(s) for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24- 6-402(4)(b) – Contract compliance
- 12) **ADJOURNMENT**

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

The regular meeting of the City Council of the City of Trinidad, Colorado, was held on Tuesday, December 16, 2014, at 7:00 p.m. in City Council Chambers at City Hall.

There were present:	Mayor	Reorda, presiding
	Councilmembers	Bolton, Bonato, Fletcher, Mattie, Miles, Torres
Also present:	Acting City Manager	Garrett
	City Attorney	Downs
	Asst. City Clerk	Valencich

The pledge of allegiance was recited.

**APPROVAL OF THE MINUTES.** Regular Meeting of December 2, 2014 and Special Meeting of December 2, 2014 and December 9, 2014. A motion to approve the minutes as presented was made by Councilmember Fletcher and seconded by Councilmember Torres. The motion carried unanimously excepting Councilmembers Bolton and Bonato who abstained from the Special Meeting minutes of December 9<sup>th</sup> due to their respective absences from that meeting.

**PUBLIC HEARING.** New Retail Marijuana Store license application filed by Daryl DeMarco and Diane Irwin d/b/a Southern Colorado Therapeutics at 1505 Santa Fe Trail. Mayor Reorda declared the public hearing open and called for comment. Mike Garrett addressed Council and reminded them of his background in reporting from 2003 to 2011. He said he thought it was time he spoke out about things he's read about in the paper and about what he talks to his friends and acquaintances about. The big concern is over the number of marijuana licenses City Council is granting. He said most of the people who are concerned are in his same age group. They don't want to see marijuana smoke hovering over the City. Mr. Garrett said when Bob Beauprex came here a few weeks ago to campaign he asked him what he would do if he were elected governor about Colorado's pot problem. Mr. Garrett asserted that we have a problem. He continued that all areas are seeing an influx of people moving here from out of state for better access to marijuana according to Colorado newspapers. Mr. Beauprex commented that the homeless shelters were seeing a huge influx of people here for pot. The shelters are the only place those people have to turn. He also said significant research has been done and show that regular users of marijuana have permanent brain damage from smoking pot. Mr. Garrett acknowledged the medical benefits, however he said most people smoke it to get high. He told Council that last Thursday he reached his 70<sup>th</sup> birthday and has never smoked a joint or even a cigarette. He said they couldn't find in any part of the country a 70 year old pot head who looks as good as he does now. City Attorney Downs interjected that he believed Mr. Garrett wanted to speak under Petitions and Communications rather than for this hearing as his comments are more general. Mr. Garrett concluded that there are a lot of people who are very concerned and suggested Council should limit the number of licenses granted because of the concern. City Attorney Downs advised that the application that is the subject of the hearing was in order and Mayor Reorda called Diane Irwin and Daryl DeMarco forward. To City Attorney Downs's questioning, the applicants testified that they make up Southern Colorado Therapeutics and there were before Council this evening for a Retail Marijuana Store license application. They are the two principals in this partnership and Southern Colorado Therapeutics will be the trade name of the business and the partnership name. They are the only two that make up the partnership. The address of the proposed facility is 1505 Santa Fe Trail. The building was formerly a Maytag Laundromat and it hasn't been in use for quite a while. They further testified that they have received their conditional use permit from the Planning, Zoning and Variance Commission. The application before Council was submitted by the two of them to the City Clerk's office and they paid the required fees. They filed a contemporaneous application with the state around October 20, 2014. Ann DeMarco has her key badge to be a key employee, however she is not in the partnership. They have submitted to background checks. Daryl DeMarco's criminal history came back clear. Diane Irwin has an entry from 2011 from Saguache County for an allegation of child abuse that was later dismissed. That makes up the totality of her potential criminal history. She has never been convicted of a crime in Colorado or anywhere else, nor has Daryl DeMarco. They have listed Dixon Schafer as a financial backer in the application. Daryl DeMarco said that Dixon Schafer is just a good friend who offered to loan them \$100,000 to open the business. He is not considered a part owner. He is someone they owe money to as indicated by the promissory note in the application. There are no other financial backers. Diane Irwin confirmed that in 2011 she filed for Chapter 13 bankruptcy and it is ongoing. City Attorney Downs pointed out that a Chapter 13 filing is a restructuring of debts. Ms. Irwin testified that she is complying with the plan and paying as she is required. She is in good standing with the bankruptcy trustee. The applicants testified that they are renting the building at 1505 Santa Fe Trail from William Kancillia and that he has given them permission to have a marijuana business at this address. He has signed a letter of intent and lease agreement. He is fully apprised and aware. The lease is for a one-year period and renewable year to year. The diagram is part of their application. They are not planning on cultivating; the building is not large enough for cultivation and a store front both. Diane Irwin owns 80 acres in Saguache County where they will have a grow operation. That application was submitted about one month ago. The Saguache County cultivation will be in support of the Trinidad store. The proposed premise is at least 1,000 feet from a school and is in an allowable zoning classification. The applicant further testified that they read over their completed application and both swore that all information in the application was correct and true to the best of their knowledge. They testified that they have not sold marijuana previously. They agreed to stay current and up to date with marijuana laws, ordinances, statutes and Department of Revenue regulations and comply in an ongoing fashion with the same, and to have all employees key badged before working. They acknowledged their ongoing obligation to inform the City Clerk's office of changes to the premises, application, owners, etc., and the state also. They have not yet dealt with the Chief Building Official for the City as the building needs quite a bit of work and is not ready. They understood that they have to do what is required of them by the Chief Building Official, Police Chief, Fire Chief, and City Attorney's office. All employees have to be trained. A security plan was provided and they've hired a security company. The applicants acknowledged, although they do not intend to cultivate, that in times of water shortage their water can be cut off. Mr. DeMarco noted that the only water they will use will be for the restroom. City Attorney Downs stated that the application appears complete and he didn't believe the entry of Diane Irwin on her criminal history for child abuse and Chapter 13 bankruptcy filing should be a hindrance or bar to her being a licensee. Councilmember Miles asked why. City Attorney

Downs answered that the Saguache County case was dismissed; it was not a conviction. Also, he stated that a Chapter 13 reorganization does not render her financially incapable of being a licensee on a marijuana application. Councilmember Miles asked if those matters speak to moral character. City Attorney Downs answered that he did not think so and suggested it might if it were a Chapter 7 bankruptcy filing and he may make more of it because it would be an outright discharge of debt. Chapter 13 is a restructuring of debt and they are paying back a portion of the debt. There are a lot of reasons why a person could have financial hardship, such as loss of a job, catastrophic medical bills. Councilmember Miles asked that Ms. Irwin explain. Diane Irwin told Council that she owned a hair salon for 17 years. There was a reorganization in her salon and she had to walk out and lost all of her employees. It put her in a really bad financial situation. She borrowed money to stay afloat but never could recover. Thereafter she sold the business but owed back taxes. She sold it to pay the back taxes. She said she did her best to get caught up with her creditors over the next couple of years, but couldn't do it. She went to an attorney who suggested she file for bankruptcy. Regarding the child abuse charge, Ms. Irwin stated she was surprised because she was told it wouldn't show up on her record because it was an invalid case and it was dismissed by the District Attorney. Councilmember Miles noted that she stipulated to some plan of remedial parenting, so it wasn't an invalid charge. Ms. Irwin said that she had to take a parenting class, and reiterated that it wasn't supposed to show up on her record. Councilmember Miles further pointed out that it is very unusual to have a financial backer give an unsecured note for give years with no interest. She said she was concerned that there may be more than meets the eye here. She added that she doesn't have friends that good. Mr. DeMarco said his friend was a business owner himself who wants to see them start the business and offered to loan them the money interest free. They just have to pay back the principal. Councilmember Miles reiterated the unusual arrangement. Mr. DeMarco agreed but said he is a good friend of his. Councilmember Fletcher asked how they plan to transport the products here. Mr. DeMarco answered that it will be in a company vehicle. The state has very strict laws about transporting. They have to keep a log per state requirements whereby they log in when they leave and when they arrive, the route they take and everything. They have to call when they leave and when they get to the destination. Councilmember Mattie asked the status of their license application in Saguache County and through the State for Saguache County. Mr. DeMarco answered that they have a hearing on January 28<sup>th</sup> before the Planning Commission. He added that he expects to hear from the state any day as their anticipated processing time is 45 to 90 days from the filing of the application. Councilmember Mattie asked should those licenses not come to fruition how it would affect their operation here. Mr. DeMarco answered that they'd look for a cultivation facility in Trinidad. Councilmember Mattie told the applicants that they are proceeding with the authorization of the Constitution of the State of Colorado under Amendment 64 and City ordinance, however the sale of marijuana continues to be regulated in the federal government's eyes. Therefore, the federal government could impose limitations that are stricter or deny the operation. He asked if they understood that. Mr. DeMarco answered that they are fully aware of it. Councilmember Bonato asked if they will have to pay taxes or anything to Saguache County. He also asked if they have to get together with both the City of Trinidad and Saguache County. What benefit is there to Saguache County for a grow facility there that product will brought here? Mr. DeMarco answered that they are only paying licensing fees to Saguache County. City Attorney Downs asked if Saguache County imposes any additional fees like Trinidad did with the square foot charge for the cultivation area and the gross amount of marijuana. Mr. DeMarco said he thinks there's only a sales tax. City Attorney Downs said he doesn't know what Saguache County does. Mayor Reorda called for further comment. There being none, the hearing was closed. Councilmember Mattie read the following into the record and made a motion to approve the license:

This matter came on for hearing on the application of Daryl DeMarco and Diane Irwin d/b/a Southern Colorado Therapeutics at 1505 Santa Fe Trail in Trinidad, Colorado, for a Retail Marijuana Store, before the City Council of the City of Trinidad, Colorado, acting in its capacity as the local licensing authority on December 16, 2014, in City Council Chambers in City Hall. The City Council having reviewed the application and supporting documents, reports of the City Clerk and other City staff, evidence at the hearing and testimony taken during the hearing, makes the following **FINDINGS**:

1. The application is complete and signed by the applicant, and the applicant has paid the appropriate application and license fees.
2. The application appears to be in substantial compliance with all the requirements of Article 11, of Chapter 14 of the Trinidad Municipal Code. The applicant has testified to their willingness to comply with any and all areas of said Article whereby compliance at this time cannot be fully attained or substantiated.
3. According to the testimony of the applicant, the application does not contain any material misrepresentations.
4. The proposed retail marijuana business complies with applicable zoning regulations. The City Council hereby finds that based upon the testimony of the applicant, the building in which the proposed retail marijuana business will be located will conform to the Trinidad City Codes, including the zoning code and all International Codes adopted by the City.
5. Daryl DeMarco and Diane Irwin testified in favor of granting the license. No one testified in opposition.
6. The applicant through the facts and evidence adduced as a result of the City's investigation and testimony provided, made a prima facie showing the members of the partnership are of good moral character and any employees of this entity will likewise be of good moral character.
7. The City Clerk's report showed that there are currently 11 medical and retail marijuana licenses overall approved within the City of Trinidad, with four ownerships, at four addresses.
8. Based on the evidence presented at the hearing and the investigative materials provided for the hearing, the City Council finds that the location of the businesses is appropriate, and that the applicant partners are of satisfactory moral character and there is a willingness by the applicant to fully cooperate with the officials of the City in the operation of these businesses.

THEREFORE, the City Council of the City of Trinidad, Colorado, as the local marijuana licensing authority, hereby approves and grants a Retail Marijuana Store License at 1505 Santa Fe Trail in Trinidad, Colorado. The issuance of said license shall be withheld until a certificate of occupancy is issued by the Chief Building Official and upon his absolute confirmation of compliance with all codes adopted by the City of Trinidad. Councilmember Fletcher seconded the motion. Upon roll call vote the following votes were cast and the approval of the license carried by majority:

Aye – Bolton, Fletcher, Mattie, Reorda  
Nay – Bonato, Miles, Torres

**PETITIONS OR COMMUNICATIONS, ORAL OR WRITTEN.** Jiminez, 1504 Grant Avenue. Mr. Jiminez addressed Council regarding windmills. First he told Council that the City just blacktopped an area next to his house and within a couple of days it started to crack. He suggested it will not last one season. He asked who checks that work after it is done because the City paid a lot of money and it was not done right. Secondly he said he talks to the City workers and they need pay raises and the parks need lights. He said he thought windmills to light up places would help a lot of people. It

would provide more money and income for everyone. He suggested windmills for Trinidad and asked if it is possible to get a grant. Councilmember Miles told Mr. Jiminez that the City is restricted in buying its full power requirements from ARPA. Any deal with windmills would have to go through ARPA. It is out of the City's control; a 1980's contract was signed for all requirements. Therefore we are limited on what we can do. We'd have to know more and windmills are difficult because of the intermittent load. They don't power something for 24 hours. Mr. Jiminez said little windmills could light up parks. Councilmember Miles commented that the wind typically doesn't blow much at night. Power from windmills would have to be augmented by the City. Windmills would not have a reliable generation, but she said the City could look into it. Mr. Jiminez concluded that the blacktop issue is very serious. Mayor Reorda stated that Public Works/Utilities Director Mike Valentine will look into it. Mr. Jiminez said he informed the office but Mr. Valentine didn't know about it until just recently so it worries him about things going on in the City.

**COUNCIL REPORTS.** Councilmember Mattie had nothing to report.

Councilmember Fletcher reported that she attended the most recent Library Board meeting tonight and she placed at Council's seating places some pens from Friends of the Library, library staff and the Board in honor of the library's 110<sup>th</sup> anniversary this year. She also reported on her attendance of the Conversations with Council meeting yesterday whereby certified local government was the topic of discussion. There was a good showing and Councilmember Miles chaired the meeting. Last week she said she attended the Community Foundation meeting which was well attended and seems to garner more attendees each time. Finally she asked that Council consider granting the City employees time off with pay on Friday, December 26<sup>th</sup> and Friday, January 2<sup>nd</sup>. She said the employees work hard and it would be a good thing for Council to do for them. Acting City Manager Garrett advised that continuous operations employees can be credited vacation balance so that there is no immediate financial impact to the City. She said she was sure the employees would appreciate it. Councilmember Bolton agreed that the offer would be a great showing of thanks and Council's gratitude to the employees. Councilmember Fletcher also pointed out that it doesn't happen every year. Council concurred with the suggestion.

Councilmembers Bolton, Bonato and Torres had nothing to report.

Councilmember Miles said she hosted the certified local government meeting and was happy to see that program put together with Main Street. There was a real good dialogue. The word is traveling about historic preservation tax credits. Local administration will come up before Council in January she thought. Next she reported that she had a call with ARPA regarding their upcoming mediation for the two lawsuits Lamar has filed. She reminded that one has to do with the budgeted amount for operations for next year and the second with a much broader suit against the plant and ARPA in general and whether it should shut down at all. Mediation will be held on January 15<sup>th</sup>. Regardless of what happens with Lamar, votes were cast to decommission or otherwise promptly dispose of the plant. She said she will be preparing for mediation in January as she has been asked to be a member of that mediation team. Finally she reported that herself, Councilmember Torres, Bonato and Mayor Reorda had lunch with Colorado Springs Mayor Bach and his Chief of Staff recently. One of his pet projects is to get southern Colorado interconnected with some sort of train line from Denver to Trinidad. It is a long-term thing, but they talked about it at length. They discussed how a tie between the Southern Colorado communities is essential. A lot of their talk was high level. They are planning a feedback follow up meeting to discuss economic development and what we can do jointly. She said she mentioned it to ED President Marsha Royle who may be interested in attending. They will also meet with Jim Reese who is the head of their Urban Renewal Authority. Councilmember Bolton talked to Chuck Murphy about that as well. She has exchanged e-mails with his Chief of Staff. The follow up meeting will likely be set up in January.

Mayor Reorda read a letter received from History Colorado: "Dear Mayor Reorda, It is my pleasure to announce the listing of the Monument Lake Park Building and Hatchery Complex in the National Register of Historic Places and the Colorado State Register of Historic Properties. The official designation took place on November 24, 2014 in recognition of this property's contribution to the heritage of the State of Colorado. A copy of the official notification of designation is enclosed." Councilmember Bonato asked if it might help us obtain more grant funding so we can redo the bathhouse.

**REPORTS BY CITY MANAGER.** Upcoming meetings. Acting City Manager Garrett reminded Council that on Wednesday at noon the Chamber luncheon will be held at the Pioneer Room at TSJC. On Thursday, Council will hold a special meeting at 1:30 p.m. for executive session to review City Manager applications and for legal advice. Also on Thursday before the meeting at 1:15 p.m., Pioneer Natural Resources will present the keys to the CNG vehicles the City recently purchased in support of the new CNG fueling station that will be opening. Finally on Friday she reminded of the Southwest Chief Commission meeting at 10:00 a.m. in City Council Chambers and of the retirement party for County Clerk Bernie Gonzalez from 11:00 a.m. to 3:00 p.m. at the County Courthouse.

Union Contracts. Acting City Manager Garrett advised that negotiations for the Union Contracts have been completed and that Council will be asked to ratify the contracts on January 6, 2015.

**REPORTS BY CITY ATTORNEY.** Chamber of Commerce. City Attorney Downs told Council that Tara Marshall resigned as Chamber President and he did as Vice President. However, both are still on the Board. Each of them served two years in their respective capacities. It had been too much for both of them but it was a wonderful experience.

Planning Commission. City Attorney Downs told Council that there had been a Planning Commission last Tuesday whereby CannaCo applied for three conditional use permits at 3019 Toupal Drive and they passed unanimously. Their resulting application is on Council's meeting agenda tonight.

Councilmember Miles asked about the Chamber's plan of succession. City Attorney Downs stated that John Schector from Digicare was named President and existing board members were elected to the other positions. Mr. Schector has been on the Board for years. Councilmember Fletcher noted that there are seats open on the Chamber Board. Mayor Reorda asked for a list of businesses who are not members of the Chamber so he could go visit with them. Councilmember Mattie suggested it may be easier to get a list of active members.

**UNFINISHED BUSINESS.** Public hearing for consideration of an ordinance appropriating certain sums of money out of the revenues of the City of Trinidad, Colorado, to defray and meet the liabilities of the City of Trinidad for the fiscal year beginning January 1, 2015 and ending December 31, 2015; said ordinance being termed the annual appropriation bill for the 2015 fiscal year. Mayor Reorda declared the public hearing open and called for comments. Acting City Manager Garrett pointed out at Council's seating places the 2015 budget that is complete upon their approval of the ordinance. There being no further comments, the hearing was closed.

Second reading of an ordinance appropriating certain sums of money out of the revenues of the City of Trinidad, Colorado, to defray and meet the liabilities of the City of Trinidad for the fiscal year beginning January 1, 2015 and ending December 31, 2015; said ordinance being termed the annual appropriation bill for the 2015 fiscal year. The ordinance title was read aloud. A motion to approve the ordinance on second reading was made by Councilmember Miles. Councilmember Torres seconded the motion which carried unanimously upon roll call vote.

ORDINANCE NO. 1973

AN ORDINANCE APPROPRIATING CERTAIN SUMS OF MONEY OUT OF THE REVENUES OF THE CITY OF TRINIDAD, COLORADO, TO DEFRAY AND MEET THE LIABILITIES OF THE CITY OF TRINIDAD FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2015 AND ENDING DECEMBER 31, 2015; SAID ORDINANCE BEING TERMED THE ANNUAL APPROPRIATION BILL FOR THE 2015 FISCAL YEAR

**MISCELLANEOUS BUSINESS.** New Retail Marijuana Store license application filed by Canna Company, Inc. d/b/a CannaCo Company at 3019 Toupal Drive. Councilmember Bolton made a motion to set the new retail marijuana store license application for public hearing on January 20, 2015 at 7:00 p.m. Councilmember Miles seconded the motion. Upon roll call vote the motion carried by majority with all Council members voting aye, excepting Councilmember Bonato who cast a dissenting vote.

New Retail Marijuana Cultivation Facility license application filed by Canna Company, Inc. d/b/a CannaCo Company at 3019 Toupal Drive. Councilmember Bolton made a motion to set the new retail marijuana cultivation facility license application for public hearing on January 20, 2015 at 7:00 p.m. Councilmember Torres seconded the motion. Upon roll call vote the motion carried by majority with all Council members voting aye, excepting Councilmember Bonato who cast a dissenting vote.

Modification of premises request by Rino's Restaurant, LLC d/b/a Rino's Restaurant at 400 E. Main Street. A motion to approve the modification was made by Councilmember Mattie and seconded by Councilmember Bonato. The motion carried unanimously upon roll call vote.

Consideration of NPGA Gas Supply Agreement for total Requirements. Councilmember Bolton made a motion to approve the gas supply agreement with NPGA for the City's total requirements. Councilmember Miles seconded the motion. Upon roll call vote the motion carried unanimously.

Consideration of a letter to Jay Cimino on behalf of Phil Long Toyota agreeing to prepare and submit an Energy Impact Assistance Fund grant request to the Colorado Department of Local Affairs for the proposed extension of Cedar Street from Commercial to Chestnut Street. Councilmember Bolton said since she missed the work session she missed the discussion of this item. She recalled the City's match to be \$300,000 to \$400,000 at a prior work session. The letter recites relocation of City utilities in the grant at an estimated cost of \$1.3 million. She asked if the relocation of the City's utilities is part of the grant funding. Mayor Reorda confirmed that it is. Councilmember Miles commented that nothing about the letter commits the City to the match. She stated that at the work session they talked about ways to get the match, such as enterprise credits. She reiterated that nothing says the City will commit to fill an empty vacuum. They need to exhaust all options on all fronts. Councilmember Mattie commented that he felt like Mr. Fentiman clearly understood that. Mayor Reorda said he thought the letter was more to let Toyota know that the City is in concert with the proposal. Councilmember Bonato made a motion to approve the letter and Councilmember Bolton seconded the motion. Upon roll call vote the motion carried unanimously.

No-Notice Storage and Transportation Delivery Service Agreement and Transportation Service Agreement Rate Schedule. Acting City Manager Garrett reminded Council that this is for the transportation and storage of the City's natural gas with Kinder Morgan, the only available provider. Councilmember Fletcher made a motion to approve the agreements and Councilmember Bolton seconded the motion. The motion carried by a unanimous roll call vote.

Resolution approving a grant contract between the City of Trinidad and the Colorado Department of Local Affairs/Division of Housing for the Corazon Square Rental Rehabilitation Project and giving Planning Director Louis Fineberg full signatory authority in regard to all contracts and corresponding documents associated therewith. Councilmember Bonato stated that he contacted Acting City Manager Garrett with concerns that there should be two people to sign off on checks. He suggested the resolution should read the City Manager or Acting City Manager should be in the capacity to sign checks. There should be two or three signatures on the checks. There was \$785,000 in grant funds applied for. Acting City Manager Garrett advised that in response to Councilmember Bonato's concern she spoke to Housing Authority Executive Director Rosemarie Shier who said she will look over what needs to be approved and will copy in the City Manager on any approvals that need to be given for Planning Director Fineberg's protection. Finance Director Lonny Medina pointed out to Council that with the money coming in through the City, the checks will be handled the same as is done for any City payment in that they will have three signatures. Planning Director Fineberg added that he will be signing off on documents and approving invoices with this grant – nothing more than what he does with any other grant the City has. Councilmember Fletcher moved to adopt the resolution and Councilmember Bolton seconded the motion. Upon roll call vote the motion carried unanimously.

RESOLUTION NO. 1446

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TRINIDAD, COLORADO, APPROVING A GRANT CONTRACT BETWEEN THE CITY OF TRINIDAD AND THE COLORADO DEPARTMENT OF LOCAL AFFAIRS/DIVISION OF HOUSING FOR THE CORAZON SQUARE RENTAL REHABILITATION PROJECT AND GIVING PLANNING DIRECTOR LOUIS FINEBERG FULL SIGNATORY AUTHORITY IN REGARD TO ALL CONTRACTS AND CORRESPONDING DOCUMENTS ASSOCIATED THEREWITH

Resolution approving Contract with Colorado Department of Transportation for Wayfinding Signage. Councilmember Bolton moved to adopt the resolution and Councilmember Bonato seconded the motion. Roll call was taken on the motion which carried unanimously.

RESOLUTION NO. 1445

A RESOLUTION OF THE CITY OF TRINIDAD, COLORADO, APPROVING CONTRACT #19858 BETWEEN THE CITY OF TRINIDAD AND THE COLORADO DEPARTMENT OF TRANSPORTATION – TRANSPORTATION ENHANCEMENT GRANT PROGRAM – FUNDING THE IMPLEMENTATION OF PRIORITY 2 AND PRIORITY 3 OF THE CITY OF TRINIDAD WAYFINDING SIGNAGE PLAN

Consideration of SGM Change Order to the Commercial Street Project for design of the Plum Street Pocket Park. A motion to approve the change order was made by Councilmember Bolton. Councilmember Fletcher seconded the motion which upon roll call vote carried unanimously.

Consideration of Professional Services Agreement for the Trinidad Historic District Loop right-of-way acquisition services. Councilmember Fletcher moved for the approval of the agreement and the motion was seconded by Councilmember Bolton. Upon roll call vote the motion carried unanimously.

Consideration of Bill of Charges concerning Planning, Zoning and Variance Commission Member Richard George. City Attorney Downs advised that as one or more Council members directed, a Bill of Charges was prepared and provided to Mr. George. It was mailed to his last known address. He noted the lack of Mr. George's presence this evening adding that he made it clear that he should be present. He also advised that he did not receive any phone calls, etc. from him. Councilmember Mattie stated that volunteers to our boards and commissions are a treasured resource. More than their obvious interests, they are selected to those positions they hold because of their knowledge and expertise that they can contribute to the furtherance of the City's goals and objectives. By their assignment to our boards and commissions Council confers volunteers the responsibility to draw on their individual skills to contribute to the governance process. More importantly those volunteers are entrusted with the confidence to Council to exercise good judgment and proper authority to legally represent the interest of the City in matters that come before them. However it becomes problematic when the idiosyncrasies of a certain personality or their unyielding commitment to their personal beliefs or their unwillingness to comply with lawful guidance and direction as provided by staff and counsel, overshadows the contributions that they make to the governing process. In situations when behavior of a member of a board, commission or a particular volunteer acting in their official capacity runs contrary to the good of the order and creates jeopardy for the City, City's goals, he said he believes Council is left with no alternative but to re-evaluate their service and if warranted replace them collectively or individually. Having reviewed the video and audio records of the two Planning and Zoning Commission hearings which resulted in appeals to Council, he said he and others were of the opinion that the services of Mr. Richard George merit such a review. He continued that he asked City Attorney Downs, pursuant to the ordinance, statute and legal counsel, to prepare a Bill of Charges regarding Mr. George as a commission member on the Planning and Zoning Commission during those two hearings. Subsequent to that request a process was begun where Council can convene to review and discuss the matter as was done on a couple of occasions in executive session and consider the Bill of Charges which were provided to them to therefore determine whether replacing Richard George on the Planning and Zoning Commission is warranted. Assuming Council has all read the Bill of Charges and there was no need for additional discussion he moved to thank Mr. George for his service and discharge him from service on the Planning, Zoning and Variance Commission. Councilmember Miles seconded the motion which carried with all Council members present voting aye except Councilmember Bonato who cast a dissenting vote.

**BILLS.** Councilmember Bolton moved to approve the bills and Councilmember Fletcher seconded the motion. The motion carried unanimously upon roll call vote.

**PAYROLL,** December 6, 2014 through December 19, 2014. A motion to approve the payroll was made by Councilmember Bonato and seconded by Councilmember Bolton. Roll call was taken and 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 Mattie and seconded by Councilmember Bolton. The meeting was adjourned by unanimous roll call vote of Council.

ATTEST:

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

\_\_\_\_\_  
DONA VALENCICH, Asst. City Clerk

The City Council of the City of Trinidad, Colorado met in Special Session on Tuesday, December 18, 2014, at 1:30 p.m. in City Council Chambers at City Hall pursuant to the following call:

CITY OF TRINIDAD  
TRINIDAD, COLORADO

SPECIAL MEETING

There will be a Special Meeting of the City Council of the City of Trinidad, Colorado, on Tuesday, December 18, 2014, at 1:30 p.m. in the Council Chambers at City Hall

The following items are on file for consideration of City Council:

- 1) Executive session
  - a) For a conference with the City's attorney(s) for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b) – potential litigation
  - b) For discussion of a personnel matter under C.R.S. Section 24-6-402(2)(f) and not involving: any specific employees who have requested discussion of the matter in open session; any member of this body or any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees – review of City Manager applications

The meeting was called to order at 1:36 p.m.

Roll call was taken.

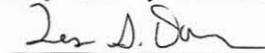
There were present: Mayor Reorda, presiding  
Councilmembers Bonato, Bolton, Fletcher, Mattie, Torres

Also present: Acting City Manager Garrett  
City Attorney Downs  
Acting City Clerk Valencich

Executive session - For a conference with the City's attorney(s) for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b) – potential litigation; and for discussion of a personnel matter under C.R.S. Section 24-6-402(2)(f) and not involving: any specific employees who have requested discussion of the matter in open session; any member of this body or any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees – review of City Manager applications. A motion to enter into executive session for the stated purposes was made by Councilmember Bolton. Councilmember Bonato seconded the motion. Upon roll call vote the motion carried unanimously. The executive session ensued at 1:37 p.m. Councilmember Miles entered the meeting at approximately 1:52 p.m. That portion of the executive session pertaining to personnel matters was electronically recorded as required by the Open Meetings Law.

*I, Les S. Downs, City Attorney for the City of Trinidad, do hereby attest that the executive session held on this 18th day of December, 2014, was permissible under CRS Section 24-6-402 (4)(b).*

*As City Attorney, it is my opinion that the discussion of the matter announced in the motion to enter into executive session constituted a privileged attorney-client communication. Therefore, it is my recommendation that no further record be kept of this executive session.*



Les S. Downs  
City Attorney

Upon conclusion of executive session at 3:50 p.m., Councilmember Fletcher moved to go out of executive session and resume the special meeting. Councilmember Bolton seconded the motion and upon a unanimous roll call vote, the special meeting resumed and was adjourned.

ATTEST:

JOSEPH A. REORDA, Mayor

DONA VALENCICH, Acting City Clerk



CITY OF TRINIDAD, COLORADO  
1876

## COUNCIL COMMUNICATION

3a

**CITY COUNCIL MEETING:** January 6, 2015  
**PREPARED BY:** Audra Garrett, ACM/City Clerk  
**DEPT. HEAD SIGNATURE:** *Audra Garrett*

**SUBJECT: PUBLIC HEARING**

- a) New Retail Marijuana Store license application filed by M & M Distributing, LLC at 422 N. Commercial Street

**PRESENTER:** Les Downs, City Attorney

**RECOMMENDED CITY COUNCIL ACTION:** Conduct the public hearing. City Council may take up to 30 days thereafter to render a decision on the application.

**SUMMARY STATEMENT:** N/A

**EXPENDITURE REQUIRED:** No

**SOURCE OF FUNDS:** N/A

**POLICY ISSUE:** This is an application for a new license.

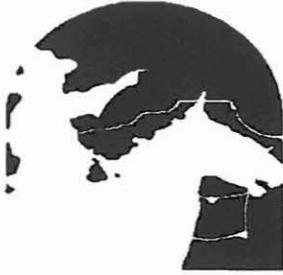
**ALTERNATIVE:** N/A

**BACKGROUND INFORMATION:**

- This is a quasi-judicial matter and as such Council should only consider evidence and testimony provided during the public hearing.

3a

36



CITY OF TRINIDAD, COLORADO  
1876

## COUNCIL COMMUNICATION

**CITY COUNCIL MEETING:** January 6, 2015  
**PREPARED BY:** Audra Garrett, ACM/City Clerk  
**DEPT. HEAD SIGNATURE:** *Audra Garrett*

**SUBJECT: PUBLIC HEARING**

- b) New Retail Marijuana Cultivation Facility license application filed by M & M Distributing, LLC at 422 N. Commercial Street

**PRESENTER:** Les Downs, City Attorney

**RECOMMENDED CITY COUNCIL ACTION:** Conduct the public hearing. City Council may take up to 30 days thereafter to render a decision on the application.

**SUMMARY STATEMENT:** N/A

**EXPENDITURE REQUIRED:** No

**SOURCE OF FUNDS:** N/A

**POLICY ISSUE:** This is an application for a new license.

**ALTERNATIVE:** N/A

**BACKGROUND INFORMATION:**

- This is a quasi-judicial matter and as such Council should only consider evidence and testimony provided during the public hearing.

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## INVESTIGATIVE REPORT

**Applicant:** M & M Distributing, LLC

**Business Name:** M & M Distributing, LLC – No Trade Name Registered

**Business Address:** 422 N. Commercial Street – Historic Preservation zoning

**Officers/Owners:** John Everett Micheliza, [REDACTED] Trinidad, CO  
81082  
Geraldine Marie DeAngelis, [REDACTED], Trinidad, CO  
81082

**Date of Application:** November 20, 2014

**Date Application Filed with Local Authority:** December 2, 2014

**Type of Request:** New License

**Type of License(s):** Retail Marijuana Store  
Retail Marijuana Cultivation Facility

**Hearing Date:** Tuesday, January 6, 2015, 7:00 p.m.

### APPLICATION CONTENTS -

**Applicant's Documents:** City of Trinidad Retail Marijuana License Application  
CUP Approval Letter  
Lease Agreement  
Verified Consent of Property Owners for the Submission of  
an Application for Medical Marijuana Business  
Articles of Organization  
Certificate of Good Standing

Applicant's Documents:

(Cont.)

Member Control Agreement  
Operating Agreement  
Sales Tax License  
Diagram of Premises  
Individual History Records  
Fingerprints  
Security Alarm Proposal  
Exterior Security Lighting Plan  
Colorado Business Retail Marijuana License Application  
Colorado Associated Person & Associated Key Retail  
    Marijuana License Applications  
Colorado Retail Marijuana License Bond

City Documents:

Notices of Public Hearing  
Certificates of Mailing  
Proof Publication on 12/15/14  
Certificates of Posting  
Departmental Reports

**LOCAL FEES -**

Local Fees Retail Marijuana Store:

Investigation	\$2500.00
License	<u>2500.00</u>
Total	\$5000.00

Local Fees Retail Marijuana Cultivation Facility:

Investigation	\$2500.00
License	<u>2500.00</u>
Total	\$5000.00

Local Fees

\$1.00 per square foot cultivation fee x 535 = \$535

**TOTAL                    \$10,535.00**

Local fees have been paid. Applicant has been advised the City's investigation fee is non-refundable and in the event the license is denied, license fees only shall be refunded.

## **ZONING –**

The proposed premise is zoned Historic Preservation, one of the appropriate zoning designations for location of a marijuana business pursuant to the Trinidad Municipal Code. Conditional Use Permit requests were heard by the Planning Commission on 7/12/14 and approved subject to five conditions identified within a letter dated 8/5/14 from Louis Fineberg, Planning Director. Abbreviated, the applicant must 1) comply with all state and local laws, rules, regulations relative to the operation of their business; 2) an air filtration plan must be submitted and approved by the Building Inspector; 3) the conditional use permit must be put into effect within one year or it will expire; 4) the applicant must comply with the reasonable requirements of all City officials with respect to establishment and operation of their business; 5) a new site plan showing the 3,000 square foot parking plan is required to be provided to the Planning Department. This requirement has been met.

## **LEASE AGREEMENT -**

The lease agreement is between John E. Micheliza, Geraldine DeAngelis, Nicholas Reyes, Michael Reyes and Alicia Reyes, Trustees of the Judith A. Reyes, Revocable Trust, U/T/D, landlord, and M & M Distributing, LLC, tenant. The term extends from March 12, 2014 through March 11, 2016. A verified consent of property owners for the submission of an application for a medical marijuana business was provided as required by the Trinidad Municipal Code.

## **CORPORATE DOCUMENTS –**

Dated-stamped Articles of Organization for M & M Distributing, LLC are provided, as well as a Certificate of Good Standing issued by the Colorado Secretary of State. The Member Control Agreement verifies the ownership interest of the limited liability company. The Operating Agreement dictates the operation of the business entity.

## **SALES TAX LICENSE -**

Sales Tax License #27964766-0000 was verified.

## **DIAGRAM OF PREMISES -**

The diagrams identify the proposed premises, which is a ground level facility. It identifies two office spaces, the Retail Store, a shared space with the Medical Center, whereby a person must enter the main entrance, check in and then be allowed into the Store or sit in the waiting room before being allowed into the Store. The Retail

Marijuana Cultivation Facility is shown as an area adjoining the Optional Premise Cultivation Operation all within the confines of 422 N. Commercial Street. Initial plans indicate the proposed location of the security cameras, however, based upon final inspection from the Colorado Marijuana Division and the City Building and Fire Departments, those locations are subject to change. The overall footprint of the building is approximately 22,000 square feet. A security alarm system and exterior security lighting plan proposal was submitted pursuant to the City's requirements.

#### **OWNERSHIP INFORMATION/BACKGROUNDS FINGERPRINTING -**

Fingerprint cards were submitted to CBI/FBI on 5/30/14. Results have been received for John Micheliza, Geraldine DeAngelis. Results are consistent with the information disclosed on the Individual History Record and the Police Department background check.

#### **RESIDENCY REQUIREMENT -**

Both members of M & M Distributing, LLC meet the two-year Colorado residency requirement to hold a marijuana license.

#### **COLORADO RETAIL MARIJUANA LICENSE DOCUMENTS -**

Copies of the entity's Colorado licensing documents were a required submittal with the City's application to obtain complete applicant information without redundancy. Those documents include the license application, optional premise cultivation license application, associated person and associated key license application, and license bond.

Joseph Angelo DeAngelis, 209 Estrella Street, Trinidad, Colorado, 81082, has applied for an employee key license to work for M & M Distributing, LLC, and has submitted to a background check. Fingerprint results are attached.

#### **NOTICES OF HEARING -**

Mailed to applicant – 12/11/14.

Published – 12/15/14.

Posted on the premises – 12/16/14

#### **DEPARTMENTAL REPORTS -**

Fire Chief Tim Howard indicated they were not ready for an inspection on 12/16/2014 and that a fire inspection is needed before opening for the Retail Cultivation Facility. An inspection is on file for the Retail Marijuana Store (since it is proposed to be a shared

space with the Medical Center).

Building Inspector Chris Kelley recommends the license issuance be withheld until a certificate of occupancy is issued by him, if the license application is approved for the Retail Cultivation Facility. He too indicated his approval of the Retail Marijuana Store as of 12/16/2014.

Police Chief Charles Glorioso advises that the Retail Cultivation Facility premises is to be inspected upon completion. A checklist illustrating compliance for the Retail Marijuana Store was included with a report date of 12/15/2014. All areas of compliance were approved except the display of the licenses or on-site keeping of the same or copies of the applications for licensing pending approval.

Periodic inspections will continue throughout the process.

## **OTHER REVELANT CONCERNS -**

### **SCHOOL DISTANCES –**

There is a 1,000-foot limitation from a school for any marijuana business. The nearest school property is Goal Academy which is 1,267.27 feet from the nearest point of this property.

### **LICENSED OUTLETS WITHIN THE CITY –**

The following licenses have been approved to date within the City limits:

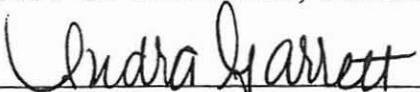
M & M Distributing, LLC, 422 N. Commercial Street	Medical Center
M & M Distributing, LLC, 422 N. Commercial Street	Medical Optional Premise Cultivation Operation
T.P. Main Street, LLC, 821 E. Main Street	Medical Center
T.P. Main Street, LLC, 821 E. Main Street	Medical Optional Premise Cultivation Operation
T.P. Main Street, LLC, 821 E. Main Street	Medical Infused-Products Manufacturer
Trinidad's Higher Calling U, LLC, 1000 Independence Rd.	Medical Center
Trinidad's Higher Calling U, LLC, 1000 Independence Rd.	Retail Store
Trinidad's Higher Calling U, LLC, 1000 Independence Rd.	Retail Cultivation Facility
Trinidad's Higher Calling U, LLC, 1000 Independence Rd.	Retail Product Manufacturing Facility
Trinidad's Higher Calling U, LLC, 1000 Independence Rd.	Medical Marijuana Optional Premise

Peaceful Herbs, Ltd., LLC, 124 Santa Fe Trail  
Southern Colorado Therapeutics, 1505 Santa Fe Trail

Cultivation Operation  
Retail Marijuana Store  
Retail Marijuana Store

Dated this 24th day of December, 2014.

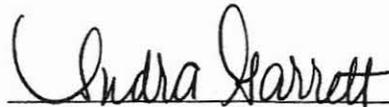
CITY OF TRINIDAD, COLORADO

  
\_\_\_\_\_  
Audra Garrett, City Clerk

## CERTIFICATE OF MAILING

I hereby certify that on the 24th day of December, 2014, I mailed a copy of the Investigative Report, by Certified Mail, to:

M & M Distributing, LLC  
422 N. Commercial Street  
Trinidad, CO 81082  
Certified Mail #7012 3050 0000 2305 4813

  
\_\_\_\_\_  
Audra Garrett, City Clerk



# CITY OF TRINIDAD

City Clerk's Office  
135 N Animas St  
P.O. Box 880  
Trinidad, Colorado 81082  
719-846-9843

RETAIL MARIJUANA LICENSE APPLICATION		
<input checked="" type="checkbox"/> New License Application Fee	\$2,500.00	<input checked="" type="checkbox"/> License Fee/Renewal Fee \$2,500.00
<input type="checkbox"/> Transfer of Ownership Application Fee	\$1,500.00	<input type="checkbox"/> Change of Location \$1,500.00
<input checked="" type="checkbox"/> \$1.00 per square foot cultivation fee	<u>535.</u>	Square feet = \$ <u>535.00</u>
<input type="checkbox"/> Expansion of cultivation area @ \$1.00 per square foot charge for that additional area \$ _____		
LICENSE TYPE		
<input checked="" type="checkbox"/> Marijuana Store	<input type="checkbox"/> Marijuana Product Manufacturing Facility	
<input checked="" type="checkbox"/> Marijuana Cultivation Facility	<input type="checkbox"/> Marijuana Testing Facility	
TYPE OF BUSINESS		
<input type="checkbox"/> Corporation	<input type="checkbox"/> Partnership	<input type="checkbox"/> Individual*
<input checked="" type="checkbox"/> Limited Liability Corporation	<input type="checkbox"/> Other	
*Sole Proprietorship (Individual) – Verification of Lawful Presence is required per State law (Signed Affidavit and Photo ID)		

Applicant M+M Distributing, LLC  
(Corporation/LLC)

Applicant \_\_\_\_\_  
(Sole Proprietor) First Name Middle Initial Last Name

Trade Name of Establishment (DBA) M+M Distributing, LLC

Address of Premise 422 N. Commercial ST., Trinidad, CO 81082

Mailing Address 422 N. Commercial ST., Trinidad, CO 81082

Telephone [REDACTED] Email Address [REDACTED]

Contact Person/Manager John Micheliza Title President

Telephone [REDACTED] Email Address [REDACTED]

Does the Applicant have legal possession of the premise for at least one (1) year from the date that this license will be issued by virtue of ownership, lease or other arrangement?

- Ownership
- Lease
- Other (explain in detail)

\_\_\_\_\_  
 \_\_\_\_\_

City of Trinidad

City Clerk's Office

If leased, list name of landlord and tenant, and date of expiration, EXACTLY as they appear on the lease.\*\*

Landlord see attachment Tenant see attachment Expires March 11, 2016

**\*\*If premises are leased, attach notarized consent by the owner of the property to the licensing of the premises for a retail marijuana facility.**

**ADDITIONAL DOCUMENTS TO BE SUBMITTED WITH APPLICATION**

Individual History Records attached and completed by each individual applicant, all general partners of a partnership, and limited partners owning 10% (or more) of a partnership; all officers and directors of a corporation, and stockholders of a corporation owning 10% (or more) of the stock of such corporation; all limited liability company *MANAGING* members, and officers or other limited liability company members with a 10% (or more) ownership interest in such company and all managers and employees of a Retail Marijuana License.

1. Fingerprinting by the Trinidad Police Department for: - *On file*
  - all general partners of a partnership and limited partners owning 10% (or more) of a partnership;
  - all officers and directors of a corporation, and stockholders of a corporation owning 10% (or more) of the stock of such corporation;
  - all limited liability company *MANAGING* members, and officers or other limited liability company members with a 10% (or more) ownership interest in such company; and
  - all managers and employees of a Retail Marijuana License with the appropriate fee payable to Colorado Bureau of Investigation (currently \$39.50, March, 2014)
  
2. Lease or Deed – Evidence of Possession
  
3. Conditional Use Permit approval
  
4. Copy of alarm system contract
  
5. Copy of state sales tax license
  
6. Certificate of Good Standing
  
7. Affidavit of Lawful Presence (Sole Proprietors only)
  
8. Diagram of Premises:
  - A floor plan, drawn to scale on 8-1/2 x 11" paper, showing the layout of the center and the principal uses of the floor area. Floor plan must include location of lighting and cameras required by state rules.

A one-time fee of \$1.00 per square foot of that portion of the licensed premises in which plants are located for cultivation purposes, including greenhouses, shall be due to the City. Any expansion of the licensed premises in which plants are located for cultivation purposes shall result in an additional \$1.00 per square foot charge for that additional area.
  
9. Copy of State Application with attachments

**LIST OF OWNERS, OFFICERS, MANAGERS, EMPLOYEES & OTHERS WITH DIRECT OR INDIRECT FINANCIAL INTEREST**

1. Name: John Micheliza Title: President  
Address: [REDACTED] Trinidad, CO 81082  
Financial Interest: 50 %

2. Name: Geraldine DeAngelis Title: Sec / Treas.  
Address: [REDACTED], Trinidad, CO 81082  
Financial Interest: 50 %

3. Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Financial Interest: \_\_\_\_\_

4. Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Financial Interest: \_\_\_\_\_

5. Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Financial Interest: \_\_\_\_\_

6. Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Financial Interest: \_\_\_\_\_

7. Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Financial Interest: \_\_\_\_\_

The applicant hereby acknowledges that the applicant and its owners, officers, and employees may be subject to prosecution under federal laws relating to the possession and distribution of controlled substances, that the City of Trinidad accepts no legal liability in connection with the approval and subsequent operation of the retail marijuana business; and that the application and documents submitted for other approvals relating to the retail marijuana business operation are subject to disclosure in accordance with the Colorado Open Records Act.

By accepting a license issued pursuant to this ordinance, a licensee releases the City, its officers, elected officials, appointed officials, employees, attorneys and agents from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of dispensary owners, operators, employees, clients or customers for a violation of state or federal laws, rules or regulations.

By accepting a license issued pursuant to this ordinance a licensee, jointly and severally if more than one, agrees to indemnify and defend the City, its officers, elected officials, employees, attorneys, agents, insurers, and self-insurance pool against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the operation of the retail marijuana business that is the subject of the license. The licensee further agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at its expense, and to bear all other costs and expenses related thereto, including court costs and attorney fees.

***I declare, under penalty of perjury, that this application has been examined by me; that the statements made herein are made in good faith and, to the best of my knowledge and belief, true, correct and complete.***

Signed: Geraldine DeAngelis Title: Sec/Treas  
(Must be signed by Individual Owner, Partner, or Officer)

Printed Name: Geraldine DeAngelis Date: 10/7/14



Lease

Landlord     John E. Micheliza  
                 Geraldine DeAngelis  
  
                 Nicholas Reyes  
                 Michael Reyes  
                 Alicia Reyes  
                 Trustees of the Judith A. Reyes Revocable Trust, U/T/D May 24, 2007

Tenant        M & M Distributing, LLC

Expires        March 11, 2016



City of Trinidad  
Planning Department  
135 N. Animas  
Trinidad, CO 81082  
Telephone (719)-846-9843 Ext 136  
Fax (719)-846-4140  
planning@trinidad.co.gov

M & M Distributing  
C/O John Micheliza  
44910 County Rd. 40.0  
Trinidad, CO 81082

August 5, 2014

RE: CUP Application #2014-RMS-05 and Application #2014-RMCF-05

Dear Applicant,

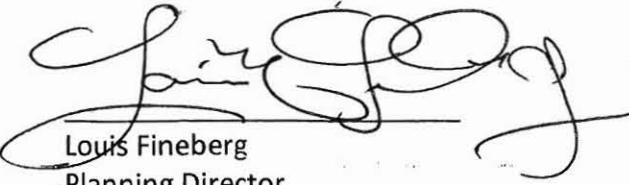
On July 12, 2014 the Planning, Zoning and Variance Commission approved your request for conditional use permits (CUP) to establish and operate a Retail Marijuana Center and Retail Marijuana Cultivation Facility at 422 N. Commercial Street subject to the following conditions.

1. The applicant must comply with all provisions outlined in Article 12 of Chapter 14 of the City of Trinidad Municipal Code of Ordinances as well as any and all applicable state and local statutes, ordinances, rules, and regulations regarding the operation of medical marijuana centers, and other statutes, ordinances, rules, and regulations for the operation of businesses within the City of Trinidad, including but not limited to City sales tax and the City's sign code.
2. The applicant must provide the City with an air filtration plan describing the filtration system and/or other method or methods to be used to minimize odors associated with the cultivation and sale of medical marijuana. Approval of said air filtration plan is subject to the approval of the City Building Inspector.
3. If the proposed conditional use is not established within one year of its approval, discontinued for at least one year, or replaced by another use of the land, the conditional use permit and all associated conditional use permits shall expire.
4. The applicant must comply with the reasonable requirements of all Trinidad Municipal Officials with respect to the establishment and operation of the proposed facility or facilities.

5. The applicant must provide a new site plan showing the additional 3000 square foot parking plan.

If you have any questions, please don't hesitate to contact me.

Thank you,



Louis Fineberg  
Planning Director

CC: Chris Kelley, Building Inspector  
Les Downs, City Attorney  
Audra Garrett, City Manager  
File

# M & M Distributing, LLC

122 North Commercial, Trinidad CO, 81082

September 19, 2014

City of Trinidad

Chris Kelley

125 N Animas Street

Trinidad, CO 81082

Re: Response to Conditional Use Permit Provisions letter dated September 3, 2014

Mr. Kelley,

We have completed the items requested in your letter. Attached please find our responses for items 1 through 9. We are hopeful that this information is sufficient for us to begin construction.

If you need further clarification or have any questions with the information provided, please do not hesitate to call.

Sincerely,



Gerri De Angelis

M & M Distributing, LLC

cc: Louis Fineberg, Planning Director  
Les Downs, City Attorney  
Audra Garrett, Acting City Manager



**CITY OF TRINIDAD**  
125 N. ANIMAS STREET, P.O. BOX 880  
TRINIDAD, CO 81082

TELEPHONE: (719) 846-9843 ext. 128  
FAX No. (719) 846-0952  
Chris.Kelley@Trinidad.co.gov

September 3, 2014

M & M Distributing  
c/o John Micheliza  
44910 County Road 40.0  
Trinidad, CO 81082

RE: Conditional Use Permit Provisions

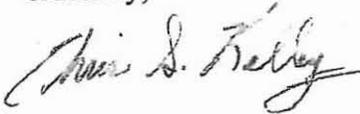
Dear Mr. Micheliza:

I have reviewed the letter sent to you by Louis Fineberg, Planning Director for the City of Trinidad on August 5, 2014 stipulating the conditions for the Conditional Use Permit (CUP) at 422 N. Commercial Street. In addition to the provisions set forth by Mr. Fineberg, the building inspection department for the City of Trinidad will require the following:

1. The applicant must provide the City with an air filtration plan describing the filtration system and/or other method or methods to be used to minimize odors associated with the cultivation and sale of medical marijuana. Approval of said air filtration plan is subject to the approval of the City Building Official. *As stated in Mr. Fineberg's letter as point #2.* ✓
2. The applicant must provide a new site plan showing the additional 3,000 square foot parking plan. *This is stated in Mr. Fineberg's letter as point #5.* ✓
3. The applicant must inform the building inspection department what types of fertilizers and pesticides will be used in the facility including all MSDS. ✓
4. The applicant must provide what type, if any, dechlorination system will be used and a detailed layout of the system. ✓
5. The applicant must provide a load calculation report for the electrical system. ○

6. The applicant must provide a plan for the location of all smoke and carbon monoxide detectors. *In Progress*
7. The applicant must provide a plan detailing the layout for the video camera system. ✓
8. The applicant must provide a plumbing plan to include floor drain locations. ✓
9. The applicant must provide specific information about what type of backflow prevention system, including specific details about devices i.e. make, model and serial number, is in place. ○

Sincerely,



Chris S. Kelley  
Chief Building Official

cc: Louis Fineberg, Planning Director  
Les Downs, City Attorney  
Audra Garrett, Acting City Manager

## LEASE AGREEMENT

THIS AGREEMENT OF LEASE is executed this 12<sup>th</sup> day of March, 2014, by and between John E. Micheliza; Geraldine DeAngelis; Nicholas Reyes, Michael Reyes and Alicia Reyes, Trustees of the Judith A. Reyes Revocable Trust, U/T/D May 24, 2007; hereinafter referred to collectively as the "landlord," and M & M Distributing, LLC, a Colorado limited liability company, hereinafter referred to as the "tenant."

WHEREAS: The parties have agreed upon a lease.

NOW, THEREFORE, it is agreed:

1. FORMATION AND PROPERTY DESCRIPTION:

The landlord hereby leases unto the tenant and the tenant hereby rents from the landlord the following premises and property located in the County of Las Animas, State of Colorado:

The real estate and improvement located at 422 N. Commercial, Trinidad, Colorado 81082 which is specifically described on the legal description attached hereto as **Exhibit A.**

2. COVENANT OF TITLE:

Landlord represents and warrants that landlord has title to the demised premises in fee simple, and that the lease has neither been assigned nor have the rentals payable under the lease been assigned. Landlord further covenants and warrants that landlord has full right and lawful authority to enter into this agreement for the extended term of the lease and that no consents of any nature whatsoever are required for landlord to enter into this agreement. Landlord warrants and represents that there are no liens or encumbrances or exceptions to title of any nature whatsoever.

3. TERM AND RENTAL:

A. The term of this lease shall be for a period of two (2) year commencing on March 12, 2014 and ending on March 11, 2016.

B. The base rental shall be the total sum of \$28,800 and shall be payable at the rate of \$1,200 per month in advance, commencing on March 12, 2014 and on the same day of each month hereafter.

C. Said rental shall be payable at 209 Estrella St., Trinidad, Colorado 81082.

4. PURPOSE AND USE:

A. The said premises are to be used and occupied by the tenant for retail sales, including the cultivation and sales of marijuana.

B. The tenant shall not use the premises during the term hereof for any purpose contrary to the laws of the State of Colorado or municipal ordinances.

C. The parties acknowledge that the cultivation, sale, and possession of marijuana is now unlawful under the laws of the United States of America. The tenant hereby releases landlord, its employees, attorneys, officers, members, and agents from any liability for injuries, damages or liability of any kind that result from any arrests or prosecution of marijuana dispensary owners, operators, employees, clients or customers for a violation of federal laws, rules or regulations. The tenant agrees to indemnify the landlord from all claims, injury, loss, or damage which arise out of, or in connection with the operation of, the marijuana facility. Tenant further agrees to investigate, handle, respond to, and to provide defense for and defend against any such liability, claims, or demands at its expense and bear all other costs and expenses related thereto, including court costs and attorney's fees.

5. UTILITIES:

The tenant shall be responsible, assume and pay, for all utilities on the premises, at tenant's own expense, including without limitation, gas, water, electricity, heat, garbage and sewer collection and other utilities.

6. TAXES:

A. The tenant shall be responsible for, and pay all, ad valorem taxes and charges upon the said tenant during the term of this lease. The tenant shall be responsible for all other taxes. In addition thereto, the tenant shall be responsible for all increase in taxes as a direct result of assessments resulting from the placing or holding of additional machinery, equipment, personal property or improvements placed upon the premises by the tenant.

B. The tenant shall be responsible and hold the landlord harmless from all sales, gross receipts, occupation, franchise, or other such excise or business taxes arising out of the use of the said premises.

7. MAINTENANCE AND UPKEEP:

A. The landlord shall be responsible for all major

structure repairs (meaning roofs, walls, floors, foundations, electrical and plumbing systems to the outlets), and the tenant shall be responsible for all other maintenance and repairs to the said premises and property during the term hereof. Landlord's responsibility shall not commence until and unless ten (10) days' written notice thereof shall have been delivered to landlord, specifying the major structure repair needed. The landlord shall not have the right to go upon the premises to make repairs without the express permission of the tenant, and the obligation of the landlord to make such structural repairs shall not be construed to impose upon the landlord any liability for damage or injury arising from the condition giving rise to the necessity of structural repairs until such time as the landlord is given notice, and written permission from the tenant to go upon the premises, to make such repairs pursuant to this paragraph.

B. The responsibility of the landlord to make major structure repairs shall not impose a duty upon the landlord to rebuild the demised improvements or any part thereof in the event of total or substantial destruction by fire, wind, or some similar, unusual or unforeseen occurrence. The duty contemplated to be hereby imposed upon the landlord shall extend only to repair or restoration of the demised premises in the event of fire damage or partial destruction rendering the premises temporarily untenable in landlord's opinion. Any decision of the landlord to carry fire insurance shall not be construed to impose any greater duty upon the landlord than is contained in the foregoing.

C. In the event of damage to the premises, which damage it is the obligation of the landlord to repair hereunder, then and in such event, the rent due to be paid by the tenant shall abate for a period during which he cannot occupy the premises due to the damage and repair. In the event of substantial or total destruction of the premises as hereinabove described, which destruction is not contemplated in landlord's determination to be within the scope of the landlord's duty to repair, then and in such event, this lease shall be automatically terminated and the tenant shall have no further obligation to pay rent beyond the time of such termination.

D. Notwithstanding any specific provisions hereinabove set forth, the tenant shall be responsible for any damage, loss, claim or repair occasioned, or the result of, the act of the tenant, or tenant's agents, employees, business invitees, guests and assigns.

E. The tenant shall not incur, or allow to be incurred or placed upon the premises, any lien or liens, or other encumbrance, and herewith agrees to hold the landlord harmless therefrom.

F. Tenant's Repairs. Tenant agrees to repair all damage to the leased premises caused by tenant's use other than ordinary wear

and tear and that on surrendering possession, it will leave the leased premises in good condition, allowance being made for ordinary wear and tear, damage by fire, the elements or other casualty, or resulting from the acts of persons other than tenant, or from defects therein, being excepted. Tenant may make such repairs, alterations and improvements to the leased premises as tenant deems desirable but tenant agrees not to permit any liens to stand against the leased premises for work done or materials furnished. Tenant may paint the interior of the building on the leased premises in such colors as tenant elects. Tenant shall have the exclusive right to paint, erect or authorize signs in, on or about the building on the leased premises and may, at any time, remove signs and color effects installed by tenant. On surrendering possession, tenant shall not be required to restore the leased premises to their condition at the commencement of the term, and landlord agrees to accept the leased premises with alterations and improvements made by tenant. Any exterior alterations or signs shall be subject to the approval of landlord which shall not be unreasonably withheld.

8. DAMAGE BY CASUALTY:

If the leased premises are damaged by fire, the elements, or other casualty, landlord shall promptly repair all damage and restore the leased premises to their condition just prior to the damage. If landlord is delayed in restoring the leased premises as a direct result of a strike, riot, insurrection, fire or act of God, or operation of law, governmental regulation or order, an extension of one (1) working day will be allowed landlord for each working day lost for such cause; providing, however, that in any and all events if the leased premises are not restored and all damage repaired within one (1) year after the date of damage, tenant may cancel this lease by notice to landlord. If tenant is deprived of the use of any substantial portion of the leased premises, either by reason of said damage or during restoration, the rent shall be abated or proportionately reduced according to the extent to which tenant is deprived of such use. Tenant agrees to keep in effect on the leased premises fire insurance with extended coverage endorsement in an amount not less than 90% or the insurable value of the building improvements thereof. Such insurance that tenant maintains pursuant to this paragraph 8, shall be written by a carrier or carriers acceptable to landlord or by a company or companies rated A, AAA, or Best's Manual. Said policy or policies of insurance to provide the payment for any losses covered under or by said policy or policies of insurance shall be made to landlord and/or tenant and/or mortgage and/or assignee designated by landlord from time to time as their respective interests may appear. If, during the lease term the leased premises are damaged by fire, the elements, or other casualty to the extent of 75% or more of the insurable value thereof, tenant may terminate this lease as of the date of damage by notice to the landlord within thirty (30) days after said date.

9. NON-LIABILITY OF LANDLORD; INDEMNIFICATION; INSURANCE:

A. Tenant accepts exclusive possession and control of the leased premises as of the date of commencement of this lease in the condition in which then found. Landlord shall not be liable thereafter for any injury or damage to any property or to any person on the leased premises caused by fire, bad condition, unsafe condition, or any other circumstance not herein specifically described, or caused by the use, misuse or abuse of the leased premises or any property now or hereafter thereon.

B. Tenant agrees to protect, indemnify, defend, hold and save landlord harmless from and against any and all claims, demands, liability, causes of action, loss or damage of any nature whatsoever on account of property damage, personal injury or wrongful death to any person or property arising directly or indirectly out of or caused by any accident, negligence, or other acts on or in connection with the leased premises or any part thereof, any nuisance made or suffered thereon, any use or occupancy of the leased premises by tenant or any person claiming by, through or under tenant, or any failure of tenant to maintain the leased premises in safe condition and in good order and repair, and tenant shall reimburse landlord for any attorneys' fees or other costs and expenses in connection with the defense of any claim relating thereto.

C. Tenant shall keep in effect during the term of this lease, and deliver a copy thereof to the landlord, a general comprehensive liability policy or policies written by responsible insurance companies authorized to conduct business in Colorado, covering the leased premises in the amount of \$1,000,000 personal injury, with property damage of \$500,000. Tenant shall cause its insurance company during the foregoing policy to provide landlord with an insurance certificate describing the insurance coverage as above set forth. The said insurance certificate hereinabove described shall also contain a statement by the insurer that no cancellation or change of the policy described will be made without at least ten (10) days written notice thereof to the landlord.

10. DEFAULT:

If tenant shall be in default for more than twenty (20) days after receipt of landlord's notice specifying such default, landlord may declare the term ended and re-enter the leased premises with or without process of law. If landlord shall be in default for more than twenty (20) days after receipt of tenant's notice specifying such default, tenant may incur any expense necessary to perform any obligation of landlord specified in such notice and deduct such expense from the rents thereafter to become due. The performance of each and every covenant and agreement by landlord herein contained shall be a condition precedent to lessor's right to collect rents or enforce this lease.

11. TERMINATION:

This agreement shall cease, determine and come to an end at the option of the landlord, thirty (30) days after notice in writing shall be personally served, or mailed, to the tenant, of the happening of any one of the following actions, conditions, failures, or omissions, to-wit:

A. The tenant fails to make the payments when due or omits to perform or violates any of the covenants and conditions of this lease by the tenant to be performed or observed, or if tenant shall fail to make reasonable efforts in the light of the surrounding circumstances to keep substantially all the premises occupied and open.

B. Abandonment of the premises.

C. The filing of execution or occurrence of a petition in bankruptcy by or against the tenant, adjudication as a bankruptcy, or insolvency in the bankruptcy equity sense, and assignment for benefit of creditors, petition or other proceedings for appointment of trustee, receiver, guardian or conservator, or the taking by any person of the leasehold created hereby or any part thereon upon execution, attachment or other process of law or equity.

D. The use of the premises for any purpose but the hereinabove authorized.

E. In addition to the foregoing, should default be made in the payment of rental sums due for a period of not less than ten (10) days, the landlord shall have the option forthwith to terminate this lease and to re-enter the premises and take possession thereof.

F. In any of the events of default or termination as is set forth in this paragraph, the landlord shall have the right and option to terminate the lease, to re-enter the premises and take possession thereof, remove all persons therefrom, with or without process of law, and to distraint for any rent, damages or other sums that may be due hereunder, any property belonging to the tenant and located on the premises. Whereupon the tenant shall quit and surrender peaceably the premises to the landlord and all of tenant's rights herein and to the premises shall be deemed forfeited.

G. A waiver by the landlord of any breach or breaches by the tenant of any one or more of the covenants and conditions hereof shall not constitute a waiver, nor shall the same affect the right of the landlord hereunder for any subsequent breach of or any such other covenants or conditions.

H. Both parties shall, without limitation as above set forth, have the right to any and all other legal remedies allowable by laws of the State of Colorado, together with costs and reasonable attorney's fees in enforcing the terms and provisions of this Lease Agreement or in terminating the same.

12. HOLDING OVER:

Any holding over by the tenant after the expiration of the term of this lease shall be deemed an extension or renewal of this lease for an additional thirty (30)-day period only, and thereafter such holding over shall be construed as a tenancy from month-to-month by extension of this lease under the terms and conditions of the lease.

13. NON-ASSIGNMENT:

The tenant shall not, in whole or in part, assign or sublet the said premises or this lease without having obtained the prior written consent of the landlord.

14. MISCELLANEOUS PROVISIONS:

A. This lease shall be governed by the laws of the State of Colorado.

B. Time is of the essence of each and every one of the conditions and terms of this agreement.

C. All prior negotiations and understandings between the parties are merged into this agreement which contains and defines all of the rights, duties and liabilities of the parties. There are no verbal agreements, or other writings, which in any manner affect or govern the agreement of the parties, and both parties do so state and agree.

D. Whenever the word "tenant" is used in this document, it shall be deemed to mean the named tenant, assignees, invitees, permittees, guests, agents and employees.

E. All damages and payments resulting from a taking, damaging or condemnation of the said premises under the right of eminent domain shall accrue to and belong to the landlord and the tenant shall have no right to any part thereof.

F. The tenant may, upon the written agreement of the landlord, make alterations, additions or improvements in or about the said demised premises. All such improvements which are attached to the walls, floors and premises shall immediately merge and become a permanent part of the realty and shall remain on the premises.

C. The tenant shall, subject to the rights of distraint and default as hereinabove set forth, have the right upon the termination of this lease to remove from the premises all equipment and personal property belonging to the tenant.

H. All notices to be given under this lease shall be deemed to have been properly delivered when personally delivered to either party, or deposited in the United States Mail with sufficient postage, addressed to the landlord at c/o John Micheliza, 44910 Co. Rd. 40, Trinidad, Colorado 81032; or addressed to the tenant at c/o Geraldine M. DeAngelis, 209 Estrella St., Trinidad, Colorado 81082.

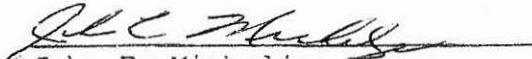
15. BINDING EFFECT:

The terms hereof shall extend to, and be binding upon, the heirs, administrators, executors successors and assigns of the parties.

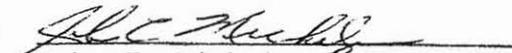
IN WITNESS WHEREOF, the parties have hereunto affixed their signatures the day and year first above written.

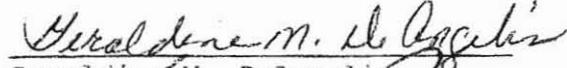
LANDLORD:

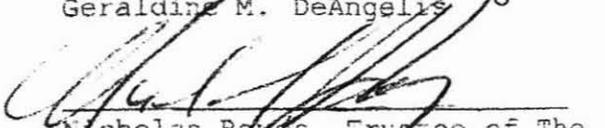
TENANT:

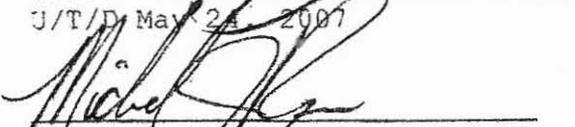
  
John E. Micheliza

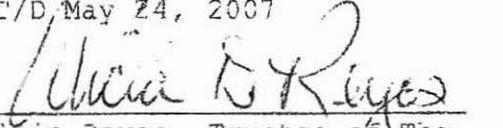
M & M DISTRIBUTING, LLC

By:   
John E. Micheliza, Manager

  
Geraldine M. DeAngelis

  
Nicholas Reyes, Trustee of The  
Judith A. Reyes Revocable Trust  
U/T/D, May 24, 2007

  
Michael Reyes, Trustee of The  
Judith A. Reyes Revocable Trust  
U/T/D, May 24, 2007

  
Alicia Reyes, Trustee of The  
Judith A. Reyes Revocable Trust  
U/T/D May 24, 2007

Beginning at a point on the easterly line of Commercial Street, said point being 138.9 feet north  $18^{\circ}55'$  west of the northeast corner of the intersection of Commercial Street and Cedar Avenue; thence continuing north  $18^{\circ}55'$  west, eighty-four (84) feet; thence north  $75^{\circ}18'$  east, forty-eight and two-tenths (48.2) feet; thence south  $18^{\circ}55'$  east, thirteen (13) feet; thence north  $75^{\circ}18'$  east, 133.7 feet; thence south  $18^{\circ}55'$  east, twenty-seven (27) feet; thence north  $71^{\circ}07'$  east, sixty-seven and five-tenths (67.5) feet; thence south  $18^{\circ}55'$  east, twenty-three and seven-tenths (23.7) feet; thence south  $71^{\circ}07'$  west 144 feet; thence south  $18^{\circ}55'$  east, ten (10) feet; thence south  $71^{\circ}07'$  west, 116 feet to the point of beginning, containing 13,880 square feet, more or less;

Beginning at a point on the easterly line of Commercial Street, said point being 138.9 feet North,  $18^{\circ}55'$  West of the northeast corner of the intersection of Commercial Street and Cedar Avenue; thence North  $71^{\circ}07'$  East, 260 feet; thence North  $18^{\circ}55'$  West, thirty-three and seven-tenths (33.7) feet to the true point of beginning; thence continuing North  $18^{\circ}55'$  West, six (6) feet, more or less, to a point that is ten (10) feet from the center line of the Railway Company's Track No. 72 when measured at right angles thereto; thence South  $84^{\circ}23'$  West, sixty-nine and six-tenths (69.6) feet along a line parallel with and ten (10) feet southerly from the center line of the Railway Company's track to a point; thence South  $18^{\circ}55'$  East, twenty-two (22) feet; thence north  $71^{\circ}07'$  East, sixty-seven and five-tenths (67.5) feet, more or less, to the true point of beginning, containing 945 square feet, more or less;

Beginning at a point on the easterly line of Commercial Street, said point being 138.9 feet North,  $18^{\circ}55'$  West of the northeast corner of the intersection of Commercial Street and Cedar Avenue; thence North  $71^{\circ}07'$  East, 116 feet to the true point of beginning; thence continuing North  $71^{\circ}07'$  East, 144 feet; thence North  $18^{\circ}55'$  West, ten (10) feet; thence South  $71^{\circ}07'$  West, 144 feet; thence South  $18^{\circ}55'$  east, ten (10) feet, to the true point of beginning, containing 1,440 square feet, more or less;

also known as street and number 422 N. Commercial

EXHIBIT A

Beginning at a point on the easterly line of Commercial Street, said point being 138.9 feet north  $18^{\circ}55'$  west of the northeast corner of the intersection of Commercial Street and Cedar Avenue; thence continuing north  $18^{\circ}55'$  west, eighty-four (84) feet; thence north  $75^{\circ}18'$  east, forty-eight and two-tenths (48.2) feet; thence south  $18^{\circ}55'$  east, thirteen (13) feet; thence north  $75^{\circ}18'$  east, 133.7 feet; thence south  $18^{\circ}55'$  east, twenty-seven (27) feet; thence north  $71^{\circ}07'$  east, sixty-seven and five-tenths (67.5) feet; thence south  $18^{\circ}55'$  east, twenty-three and seven-tenths (23.7) feet; thence south  $71^{\circ}07'$  west 144 feet; thence south  $18^{\circ}55'$  east, ten (10) feet; thence south  $71^{\circ}07'$  west, 116 feet to the point of beginning, containing 13,880 square feet, more or less;

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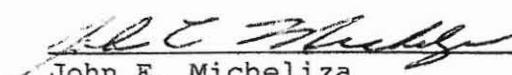
also known as street and number 422 N. Commercial

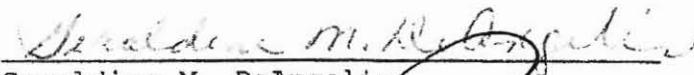
VERIFIED CONSENT OF PROPERTY OWNERS TO MARIJUANA BUSINESS

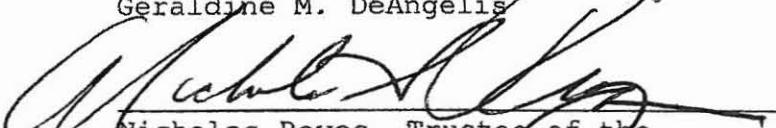
This consent is made and given by John E. Micheliza; Geraldine DeAngelis; and Nicholas Reyes, Michael Reyes and Alicia Reyes, Trustees of the Judith A. Reyes Revocable Trust U/T/D May 24, 2007; who are the owners of the property located at 422 N. Commercial St., Trinidad, Colorado 81082, which is specifically described on **Exhibit A** attached hereto, (hereinafter referred to collectively as "Property Owners").

The undersigned Property Owners understand that M & M Distributing, LLC, a Colorado limited liability company, will be submitting to the City of Trinidad and the State of Colorado application(s) for licensing as a marijuana business which grows and sells marijuana as allowed by Colorado Law. The undersigned Property Owners hereby consent to such use of the property.

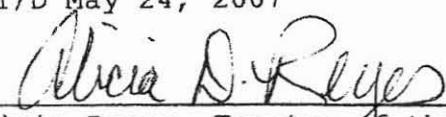
The Property Owners, as landlord, have entered into a Lease Agreement dated March 12, 2014 with M & M Distributing, LLC, as tenant, which acknowledges that the property at 422 N. Commercial St., Trinidad, Colorado, will be used for a marijuana business which cultivates, grows, produces and sells marijuana.

  
John E. Micheliza

  
Geraldine M. DeAngelis

  
Nicholas Reyes, Trustee of the  
Judith A. Reyes Revocable Trust,  
U/T/D May 24, 2007

  
Michael Reyes, Trustee of the  
Judith A. Reyes Revocable Trust,  
U/T/D May 24, 2007

  
Alicia Reyes, Trustee of the  
Judith A. Reyes Revocable Trust,  
U/T/D May 24, 2007

STATE OF COLORADO )  
 ) ss  
COUNTY OF LAS ANIMAS )

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of June, 2014 by John E. Micheliza.

Brett S. Hunt  
Notary Public  
My commission expires: 8/24/2018



STATE OF COLORADO )  
 ) ss  
COUNTY OF LAS ANIMAS )

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of June, 2014 by Geraldine M. DeAngelis.

Brett S. Hunt  
Notary Public  
My commission expires: 8/24/2018



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**  
**CIVIL CODE § 1189**

State of California

County of Orange }

On July 2, 2014 before me, Tammie S. Alsenz, Notary Public,  
Date Name and Title of the Officer

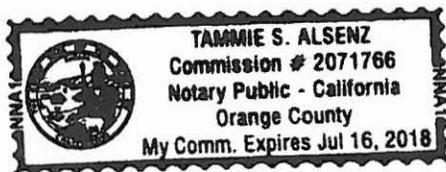
personally appeared Michael Reyes  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Tammie S. Alsenz  
Signature of Notary Public



Place Notary Seal Above

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: Verified Consent of Property Owners Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Individual  Attorney in Fact
- Trustee  Guardian or Conservator
- Other: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Individual  Attorney in Fact
- Trustee  Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**  
**CIVIL CODE § 1189**

State of California

County of Orange

On July 2, 2014 before me, Tammie S. Alsenz, Notary Public,  
Date Name and Title of the Officer

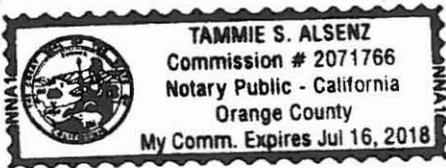
personally appeared Nicolas Reyes and Alicia Reyes  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Tammie S. Alsenz  
Signature of Notary Public



Place Notary Seal Above

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

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Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

*Not Attached See  
Notarial  
Certificate*

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of June, 2014 by Nicholas Reyes, Trustee of the Judith A. Reyes Revocable Trust, U/T/D May 24, 2007.

*sa*

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of June, 2014 by Michael Reyes, Trustee of the Judith A. Reyes Revocable Trust, U/T/D May 24, 2007.

*See  
Attached  
Notarial Certificate*

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

*See  
Attached  
Notarial  
Certificate*

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of June, 2014 by Alicia Reyes, Trustee of the Judith A. Reyes Revocable Trust, U/T/D May 24, 2007.

*sa*

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_



Colorado Secretary of State  
 Date and Time: 03/05/2014 09:34 AM  
 ID Number: 20141152343

Document must be filed electronically.  
 Paper documents are not accepted.  
 Fees & forms are subject to change.  
 For more information or to print copies  
 of filed documents, visit [www.sos.state.co.us](http://www.sos.state.co.us).

Document number: 20141152343  
 Amount Paid: \$50.00

ABOVE SPACE FOR OFFICE USE ONLY

**Articles of Organization**

filed pursuant to § 7-80-203 and § 7-80-204 of the Colorado Revised Statutes (C.R.S.)

1. The domestic entity name of the limited liability company is

**M & M Distributing, LLC**

*(The name of a limited liability company must contain the term or abbreviation "limited liability company", "ltd. liability company", "limited liability co.", "ltd. liability co.", "limited", "l.l.c.", "llc", or "ltd.". See §7-90-601, C.R.S.)*

*(Caution: The use of certain terms or abbreviations are restricted by law. Read instructions for more information.)*

2. The principal office address of the limited liability company's initial principal office is

Street address

**422 No. Commercial St.**

*(Street number and name)*

**Trinidad**

*(City)*

**CO**

*(State)*

**81082**

*(ZIP/Postal Code)*

**United States**

*(Province - if applicable)*

*(Country)*

Mailing address

*(leave blank if same as street address)*

**[REDACTED]**

*(Street number and name or Post Office Box information)*

**Trinidad**

*(City)*

**CO**

*(State)*

**81082**

*(ZIP/Postal Code)*

**United States**

*(Province - if applicable)*

*(Country)*

3. The registered agent name and registered agent address of the limited liability company's initial registered agent are

Name

*(if an individual)*

**Micheliza**

*(Last)*

**John**

*(First)*

**E.**

*(Middle)*

*(Suffix)*

or

*(if an entity)*

*(Caution: Do not provide both an individual and an entity name.)*

Street address

**[REDACTED]**

*(Street number and name)*

**Trinidad**

*(City)*

**CO**

*(State)*

**81082**

*(ZIP Code)*

Mailing address

*(leave blank if same as street address)*

**[REDACTED]**

*(Street number and name or Post Office Box information)*

\_\_\_\_\_  
(City) CO \_\_\_\_\_  
(State) (ZIP Code)

(The following statement is adopted by marking the box.)

The person appointed as registered agent has consented to being so appointed.

4. The true name and mailing address of the person forming the limited liability company are

Name  
(if an individual) Micheliza John E.  
(Last) (First) (Middle) (Suffix)

or

(if an entity)  
(Caution: Do not provide both an individual and an entity name.)

Mailing address [REDACTED]  
(Street number and name or Post Office Box information)

Trinidad CO 81082  
(City) (State) (ZIP/Postal Code)  
United States  
(Province - if applicable) (Country)

(If the following statement applies, adopt the statement by marking the box and include an attachment.)

The limited liability company has one or more additional persons forming the limited liability company and the name and mailing address of each such person are stated in an attachment.

5. The management of the limited liability company is vested in  
(Mark the applicable box.)

one or more managers.

or

the members.

6. (The following statement is adopted by marking the box.)

There is at least one member of the limited liability company.

7. (If the following statement applies, adopt the statement by marking the box and include an attachment.)

This document contains additional information as provided by law.

8. (Caution: Leave blank if the document does not have a delayed effective date. Stating a delayed effective date has significant legal consequences. Read instructions before entering a date.)

(If the following statement applies, adopt the statement by entering a date and, if applicable, time using the required format.)

The delayed effective date and, if applicable, time of this document is/are \_\_\_\_\_  
(mm/dd/yyyy hour:minute am/pm)

Notice:

Causing this document to be delivered to the Secretary of State for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed, or that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S., the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of that Part, the constituent documents, and the organic statutes.

This perjury notice applies to each individual who causes this document to be delivered to the Secretary of State, whether or not such individual is named in the document as one who has caused it to be delivered.

9. The true name and mailing address of the individual causing the document to be delivered for filing are

McConnell	Steven	L.	
<i>(Last)</i>	<i>(First)</i>	<i>(Middle)</i>	<i>(Suffix)</i>
300 Cook Ave.			
<i>(Street number and name or Post Office Box information)</i>			
P.O. Box 1148			
Raton	NM	87740	
<i>(City)</i>	<i>(State)</i>	<i>(ZIP/Postal Code)</i>	
	United States		
<i>(Province – if applicable)</i>	<i>(Country)</i>		

*(If the following statement applies, adopt the statement by marking the box and include an attachment.)*

- This document contains the true name and mailing address of one or more additional individuals causing the document to be delivered for filing.

**Disclaimer:**

This form/cover sheet, and any related instructions, are not intended to provide legal, business or tax advice, and are furnished without representation or warranty. While this form/cover sheet is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form/cover sheet. Questions should be addressed to the user's legal, business or tax advisor(s).

OFFICE OF THE SECRETARY OF STATE  
OF THE STATE OF COLORADO

**CERTIFICATE**

I, Scott Gessler, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

**M & M Distributing, LLC**

is a **Limited Liability Company** formed or registered on 03/05/2014 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20141152343.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 07/31/2014 that have been posted, and by documents delivered to this office electronically through 08/03/2014 @ 20:25:31.

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, authenticated, issued, delivered and communicated this official certificate at Denver, Colorado on 08/03/2014 @ 20:25:31 pursuant to and in accordance with applicable law. This certificate is assigned Confirmation Number 8918451.



A handwritten signature in black ink, appearing to read "Scott Gessler".

Secretary of State of the State of Colorado

\*\*\*\*\*End of Certificate\*\*\*\*\*

*Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Certificate Confirmation Page of the Secretary of State's Web site, <http://www.sos.state.co.us/biz/CertificateSearchCriteria.do> entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, <http://www.sos.state.co.us/> click Business Center and select "Frequently Asked Questions."*

## MEMBER CONTROL AGREEMENT

THIS AGREEMENT (the "Agreement") is made as of March 6, 2014, by and among M & M DISTRIBUTING, LLC, a Colorado limited liability company ("Company") and the parties set forth on the attached Schedule A.

### RECITALS:

A. The parties to this Agreement other than the Company are all of the members (individually a "Member" and collectively the "Members") of the Company.

B. This Agreement is a Member Control Agreement under Colorado law.

C. The parties are interested in the growth, development, and management of the Company and in the long term economic success of the Company and its business, and mutually desire to make certain agreements relating to the (i) management and control of the Company and its business, (ii) admission and termination of Company members, (iii) allocation of income, losses and distributions among the Members, and (iv) circumstances and terms upon which the Company will redeem the membership interests of the Members.

### AGREEMENTS:

NOW, THEREFORE, in consideration of the mutual promises and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

#### 1. INITIAL AND SUBSEQUENT MEMBERS

##### 1.1 Initial Members:

The Members of the Company listed on Schedule A are all of the Members of the Company as of the date of this Agreement.

##### 1.2 Subsequent Members:

Each person or entity which subsequently becomes a Member of the Company shall, in consideration of becoming a Member, execute a counterpart of this Agreement and shall be listed on Schedule A. No person or entity which has not signed a counterpart of this Agreement shall be admitted as a Member.

### 1.3 Former Members:

If a Member ceases to be a Member, Schedule A shall be revised to reflect the change in the roster of Members of the Company.

## 2. RELATION TO ARTICLES OF ORGANIZATION AND OPERATING AGREEMENT

### 2.1 Conflict With Articles of Organization:

Subject to the provisions of Colorado law, in the event of a conflict between the Articles of Organization and this Agreement, this Agreement shall be controlling.

### 2.2 Conflict With Operating Agreement:

Subject to the provisions of Colorado law, in the event of a conflict between the Articles of Organization or this Agreement, on the one hand, and the Operating Agreement, on the other, the Articles of Organization or this Agreement, as the case may be, shall be controlling.

## 3. BUSINESS CONTINUITY

### 3.1 Voluntary Dissolution:

Notwithstanding the period of existence stated in the Articles of Organization, the Company shall be dissolved, wound up and terminated upon the approval of Members owning a majority of all membership interests. The legal representative of the estate of a deceased Member who has exercised the Estate Option described in Section 11.6 to require the Company to purchase the Member's membership interest shall not be entitled to vote on any proposal to dissolve voluntarily made after exercise of the Estate Option. Following a decision to dissolve voluntarily, the Managers shall proceed with the winding up of the Company as provided by law. The Managers shall have the discretion to transfer the business of the Company to some other organization owned or controlled by one or more of the Members, but in such an event, existing Members who do not continue as owners of the business in the successor organization shall be entitled to receive payment for the fair value of their membership interests in the same manner as applies on the assertion of dissenters' rights, without any offset for damages.

### 3.2 Business Continuation at End of Term:

At the end of the period of existence specified in the

Articles of Organization, as amended from time to time, the Company shall be dissolved, wound up and terminated. At such time, the business of the Company shall be sold and/or liquidated, as determined by the Managers in their discretion, except that the business shall be continued in a successor limited liability company or some other organization upon the approval of Members owning a majority of all membership interests. If continuation of the Company's business is not approved by the Members, the Managers nevertheless shall have the discretion to transfer the business of the Company to some other organization owned or controlled by one or more of the Members.

### 3.3 Agreement to Give Dissolution Avoidance Consent:

Each Member shall have the power to give dissolution avoidance consent following any event of dissolution except a voluntary dissolution pursuant to Section 3.1 or dissolution at the end of the period of existence of the Company as provided in Section 3.2, but no agreement to give dissolution avoidance consent made prior to an event of dissolution shall be enforceable.

### 3.4 Business Continuation Following Dissolution During Stated Term:

The business of the Company shall be continued following any dissolution of the Company, other than a voluntary dissolution as provided in Section 3.1, upon the approval of continuation and the terms and conditions thereof by Members owning a majority of all membership interests. No business continuation agreement made prior to a dissolution shall be enforceable. Each Member hereby waives and agrees to waive all dissenters' rights in connection with continuation of the Company's business pursuant to this Section 3.4 following dissolution of the Company. Any Member who breaches this provision shall be liable to the Company and the other Members for damages to the full extent permitted by law.

### 3.5 Waiver of Dissenters' Rights and Court Decreed Dissolution:

Colorado law provides for dissenters' rights pursuant to which Members, under certain circumstances, may force the Company to purchase their membership interests at fair market value for cash, and petition to a court to dissolve the Company. The parties agree that irreparable damage would be done to the Members and to the Company and its business if any Member should bring an action in court to dissolve the Company or assert dissenters' rights as provided for in Colorado law. Each Member agrees that this Agreement provides for fair and just payments and payment terms to any Member whose membership in the Company terminates for any

reason. Accordingly, each Member accepts the provisions of this Agreement as the sole entitlement on termination of the Member's membership in the Company. Each Member hereby waives and renounces such Member's rights to seek a court decree of dissolution, seek appointment by a court of a liquidator for the Company, or assert dissenters' rights. Notwithstanding the preceding waiver, however, an assertion of dissenters' rights in breach of this waiver shall be valid in any circumstance in which dissenters' rights are made nonwaivable by law, with valuation of the breaching Member's membership interest and the amounts payable to the breaching Member to be reduced as provided by Colorado statute law.

#### 4. CLASSES OF MEMBERS

##### 4.1 Classes:

The Company shall have one class of Member interests as provided in the Articles of Organization. No change in the class of Member interests established in the Articles of Organization shall be made except by amendment of the Articles of Organization as provided therein.

##### 4.2 Register of Capital Contribution Values:

The Company shall maintain a register of the values accorded by the Managers to every capital contribution to the Company.

##### 4.3 Certificate of Member Interests:

The Company shall maintain a current certificate of member interests which shall reflect the percentage interest of each Member. A new certificate shall be prepared each time there is a contribution to capital, a transfer of a membership interest, or a partial or complete redemption of a membership interest and at other times as deemed appropriate. Distributions shall not affect Members' percentage interests unless such distributions are specifically designated by the Managers to be a partial or complete redemption of the Members' percentage interests or a partial liquidation of the Company. A copy of the initial Certificate of Member Interests for the Company is attached as Schedule B.

#### 5. CAPITAL CONTRIBUTIONS

##### 5.1 Initial Contributions:

Members' initial capital contributions are as set forth on Schedule A.

## 5.2 No Additional Capital Contributions:

No Member shall be required to make any contribution to the capital of the Company after the Member's initial contribution other than as provided in a contribution agreement or contribution allowance agreement between the Member and the Company.

## 5.3 No Preemptive Rights:

Members shall not have preemptive rights to make capital contributions for additional membership interest in the Company.

## 5.4 Capital Contributions Subsequent to Initial Contributions:

If there are capital contributions by existing or new Members, other than pro rata contributions by existing Members, made after the initial contributions at the inception of the Company, the Company shall make the record keeping and accounting adjustments provided for in Sections 5.5 and 5.6 as applicable.

## 5.5 Effect of Subsequent Contributions on Existing Membership Interests:

Each time the Managers accepts a capital contribution after the Members' initial, organizational capital contributions the percentage interest allocated to such contributor shall be determined by the Managers taking into consideration the fair value of the contributor's capital contribution and the fair value of the outstanding member interests. If the contributor is to receive an immediate percentage interest in capital and the same percentage interest in profits and losses, the membership interests of existing Members shall be revalued as provided by Colorado law. In all other cases, revaluation shall be by a reasonable method determined by the Managers. A new Certificate of Member Interests, reflecting the revaluation and contribution shall be prepared. If the value of existing membership interests is more or less than the value of such interests at the later of (i) the contribution date for such interests or (ii) the most recent adjustment pursuant to this provision, the difference shall constitute revaluation capital appreciation or depreciation and shall affect future tax item allocations as provided in Section 6.4. In addition, the Company may admit as initial members employees who provide services to the Company.

## 5.6 Contributed Property With Fair Market Value Different Than Basis:

If property contributed to the Company has a fair market

value different than its federal income tax basis to the contributing Member at the time of contribution, tax items subsequently arising with respect to such property shall be allocated in accordance with the requirements of Internal Revenue Code Section 704(c).

5.7 No Right of Withdrawal or Return of Capital.

No Member shall have a right to withdrawal or return of capital.

6. GUARANTEED PAYMENTS AND ALLOCATION OF INCOME AND LOSSES

6.1 Compensation for Services:

Members may perform services for or on behalf of the Company from time to time. Members may be compensated for the performance of services, and such compensation shall not be deemed an allocation of income or distribution of cash to them in their capacities as Members as long as such compensation is authorized by the Managers. Compensation for services pursuant to such authorization shall be a deductible expense of the Company in determining the income or loss allocable among the Members. Such compensation for services may be set without regard to the income or loss of the Company, or it may be fixed in relationship to the results of operations. Members and the Company may enter into contracts relating to the performance of services by Members, provided that such contracts are approved by the Managers and are fair and reasonable to the Company.

6.2 No Interest on Capital Accounts:

No Member shall be entitled to interest on any capital contribution.

6.3 Allocation of Income and Losses Among Members:

Income and losses shall be allocated among Members as provided on Schedule "D" attached hereto and not in proportion to the capital contributions of the members.

6.4 Variations From the General Profit and Loss Allocation Provisions:

Following a contribution of property the accorded value of which at the time of contribution differs from its tax basis to the contributor, the allocation of tax items with respect to that property shall take such difference into account as required by Internal Revenue Code Section 704(c). In the event that the Company

makes an election under Internal Revenue Code Section 754 to adjust the basis of its assets pursuant to either Section 734 or Section 743, allocations of tax items shall be adjusted to the extent required to comply therewith. If revaluation capital appreciation or depreciation is determined in accordance with Section 5.5, thereafter, the allocation of tax items with respect to the property with which the appreciation or depreciation was associated shall be in accordance with Reg. 1.704-1(b)(2)(iv) or a successor provision.

## 7. DISTRIBUTIONS

### 7.1 Authorization for Distributions:

Distributions of cash and property shall be made only by authorization of the Managers. Distributions upon the dissolution, termination and winding up of the Company may be in cash or in kind at the discretion of the Managers, but if in kind, in determining entitlement to shares of distributions, gain or loss shall be allocated to Members' capital accounts as if the property distributed in kind had been sold at its fair market value.

### 7.2 Allocation of Interim Distributions:

No Member shall have any right to interim distributions except as determined by the Managers. All interim distributions shall be in cash, not in kind, except as determined by the Managers.

### 7.3 Allocation of Termination Distributions:

Distributions upon the dissolution, winding up and termination of the Company shall be made based upon the capital account balances of the Members reflecting capital account maintenance throughout the life of the Company in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv), or a successor provision, after taking into account all gains and losses on taxable dispositions of property in connection with the termination and hypothetical gains and losses on distributions in kind in connection with the termination.

### 7.4 Guaranteed Payments:

Guaranteed payments pursuant to Section 6.1 are not distributions for purposes of the provisions of this Agreement.

## 8. GOVERNANCE AND MANAGEMENT

### 8.1 Members' Governance Rights in General:

Members' governance rights shall be as provided in the Articles of Organization.

#### 8.2 Managers:

The business and affairs of the Company shall be managed by or under the direction of the Managers. Members shall elect the Managers from time to time in the manner provided in the Articles of Organization and Operating Agreement.

#### 8.3 Matters for Membership Approval:

Members shall vote on those matters with respect to which a Member vote is required in the Articles of Organization, or by law.

### 9. ADMISSION OF MEMBERS

#### 9.1 Procedure and Limitations:

A Member may be admitted to the Company only (i) by majority vote of the Managers upon receipt of a contribution as provided in Section 9.2; (ii) pursuant to a contribution agreement as provided in Section 9.3; or (iii) by transfer of all or a portion of an existing membership interest as provided in Section 10.2. Admission of a Member by the making of a contribution may, but is not required to be, preceded by a contribution agreement or a contribution allowance agreement. No person shall become a Member of the Company without signing a counterpart of this Agreement.

#### 9.2 Admission by Contribution:

The Managers are authorized from time to time to accept contributions of cash, property, and/or services to or for the benefit of the Company for a membership interest in the Company from and with such persons, at such times and upon such terms and conditions as the Managers shall determine, subject only to restrictions expressed in this Member Control Agreement. In its acceptance, the Managers shall describe the contribution, including any terms of future performance, and state the value being accorded to the contribution. Immediately following such acceptance, the fact of contribution and the contribution's accorded value shall be recorded in the required records of the Company, and the Company shall prepare a Certificate of Membership Interests that sets forth the percentage interest in the Company of each member. Following the completion of the foregoing steps and the signing of a counterpart of this Agreement by the contributor, the contributor shall be a Member of the Company.

### 9.3 Admission by Contribution Agreement:

The Managers are authorized from time to time to authorize and accept contribution agreements to the same extent that it may accept contributions, as provided in Section 9.2. Upon completion of the steps set forth in Section 9.2, the person with whom the contribution agreement is made becomes a Member of the Company, subject, however, to the provisions and limitations of the contribution agreement and Colorado law until the contribution agreement has been performed in full.

### 9.4 Contribution Allowance Agreements:

The Managers are further authorized from time to time, subject to the restrictions applicable to the direct acceptance of contributions, to enter into contribution allowance agreements under which a prospective contributor has the right but not the obligation to make a contribution in the future and thereby to become a Member of the Company, under such terms, provisions and conditions, as are determined by the Managers at the time of authorization of the contribution allowance agreement.

## 10. RESTRICTIONS ON TRANSFERS OF MEMBERSHIP INTERESTS

### 10.1 Financial or Governance Rights Not Separately Transferable:

Members' financial or governance rights shall not be separately transferable except as (i) specifically provided as to financial rights in Article 11 with respect to the effects of events of dissolution, which shall, under the circumstances there described, result in the termination of the terminated Member's governance rights, leaving the former Member or the former Member's successor in interest, in the status of an assignee of financial rights, or (ii) approved by 60% in percentage interest of the Members.

### 10.2 Restrictions on Transfer of Membership Interests:

No Member's interest in the Company may be transferred, in whole or in part, to any person except (i) upon the consent by 60% in percentage interest of all other Members, or (ii) as provided in Article 11 with respect to financial rights only. Approval by the Members may be obtained either in writing or by vote at a duly called meeting of the Members.

### 10.3 Security Interests:

Except as permitted under Section 12.5(f), Members may

not grant a security interest in all or any part of their membership interest, or in the financial rights or governance rights comprising it, without first obtaining the approval of 60% by percentage interest of the other Members. Any purported grant of a security interest without such approval shall be null and void. If a court should determine that a security interest was granted notwithstanding failure to obtain such approval, or if such approval is obtained:

(a) If a security interest is granted in all or part of an entire membership interest, whether or not it refers specifically to governance rights and financial rights, the secured party may elect to foreclose only on the financial rights;

(b) If a secured party seeks to foreclose on its security interest, it shall first give notice of such intention to the Company. Such notice shall be in writing, shall specify the interest involved, the amount of consideration offered, shall identify the proposed transferee, and shall be delivered in accordance with Section 13.1. Delivery of such notice shall trigger a Company Option, as provided in Article 12, to purchase the entire membership interest. If the Company fails to exercise its option, the foreclosure may proceed except that the following restriction applies to foreclosures with respect to governance rights or entire interests;

(c) The governance rights may not be transferred upon foreclosure or in any other manner to any person except upon the consent of 60% in percentage interest of all other Members obtained as provided in Section 10.2.

## 11. TERMINATION OF MEMBERSHIP AND ITS CONSEQUENCES

### 11.1 General Consequences of Termination:

The specific causes and consequences of termination of membership in the Company are set forth in Sections 11.2 through 11.8.

(a) Any termination of a Member's membership is an event of dissolution of the Company that requires the dissolution, winding up and termination of the Company unless its dissolution is avoided through the granting of dissolution avoidance consent by a majority in interest of the remaining Members within ninety (90) days after the event of dissolution. If dissolution occurs because dissolution avoidance consent is not given following an event of dissolution, the Company will be wound up and liquidated by termination of the Company and the membership of each Member.

(b) Section 3.4 sets forth the circumstances under which the Company's business shall or may be continued following dissolution if dissolution is not avoided through the giving of dissolution avoidance consent.

(c) Following the termination of any Member's membership interest, the remaining Members shall proceed in accordance with Article 3 with respect to dissolution avoidance consent and business continuation.

#### 11.2 Voluntary Assignment of Governance Rights and Financial Rights:

Termination is caused by a Member assigning all of that Member's then remaining governance rights and financial rights. Such a voluntary assignment is not an event of dissolution if made pursuant to the approval of the Members, in compliance with Section 10.2, and there is no need to obtain dissolution avoidance consent separate from the approval of the assignment. Voluntary assignments must be in compliance with Article 10, and have the consequences set forth therein. A purported assignment that does not comply with Article 10 shall be void. An assignment of financial rights alone does not constitute termination. The granting of a security interest in all or part of a membership interest does not constitute termination.

#### 11.3 Resignation; Retirement.

(a) Termination of membership is caused by a Member resigning or retiring from membership in the Company. Resignation or retirement from active participation in or employment with the Company, without an explicit resignation from membership in the Company, is not resignation or retirement from membership in the Company and does not constitute termination. Resignation from membership in the Company is analogous to withdrawal from a partnership.

(b) Although each Member has the power to resign at any time, the parties agree that no Member will resign from membership absent the unanimous prior written consent to such resignation of all remaining Members. Any Member resignation in violation of this Article 11 shall be wrongful.

(c) If dissolution avoidance consent is given following a resignation in violation of Section 11.3(b), the status of the resigning Member shall be that of a holder only of financial rights. The resigning Member shall thereafter have no governance rights, and further shall have no right to demand payment for such Member's financial rights. The Company shall have a continuing

option to purchase the financial rights of such a resigning Member as provided in Article 12. If the option is not exercised, the resigning Member or successors in interest shall be treated as other Members with respect to termination distributions at the time of the dissolution, winding up and termination of the Company.

(d) If the Company dissolves as a result of a Member's resignation and the Company's business is continued as provided in Article 3, the Company shall purchase the resigning Member's membership interest as provided in Article 12.

#### 11.4 Complete Redemption:

Termination of membership is caused by the complete redemption of a Member's membership interest by the Company. The Company may redeem the membership interest of any Member, in whole or in part, upon the approval of the redemption and its terms and conditions by the Managers. In the event of a complete redemption, the Company and the Members shall proceed in accordance with Article 3 with respect to dissolution avoidance consent and business continuation. A complete redemption of a Member's membership interest is not a resignation or retirement by the Member from the Company.

#### 11.5 Bankruptcy:

(a) Termination of membership is caused by the bankruptcy of a Member. A Member's bankruptcy shall be deemed to occur on the date:

(i) The Member makes an assignment for the benefit of creditors; files a voluntary petition in bankruptcy; is the subject of an order for relief; files a petition or answer seeking any reorganization arrangement, composition, readjustment, or similar relief under any statute, law or regulation; files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in an involuntary bankruptcy case or in any proceeding of this nature; or seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of all or any substantial part of the Member's properties; or

(ii) Ninety (90) days after the commencement of any proceeding against the Member seeking an involuntary order for relief in bankruptcy, arrangement, composition, readjustment, or similar relief under any statute, law, or regulation, if the proceeding has not been dismissed; or within ninety (90) days after the appointment of a trustee, receiver, or liquidator of all or any substantial part of the Member's assets without the Member's

consent or acquiescence, if the appointment is not vacated or stayed; or within ninety (90) days after the expiration of any such stay, if the appointment is not vacated.

(b) Upon a Member's bankruptcy, the rights of the Member, the trustee or other successor in interest (hereafter the Member), and of the Company shall be as follows:

(i) If dissolution avoidance consent is given following a Member's bankruptcy, the status of the Member shall be that of a holder of financial rights only. The Member shall have no governance rights and shall have no right to demand payment for the financial rights. The Company shall have a continuing option to purchase the financial rights of the Member as provided in Article 12. If the option is not exercised, the Member shall be treated as other Members with respect to termination distributions at the time of the dissolution, winding up and termination of the Company.

(ii) If the Company dissolves as a result of a Member's bankruptcy and the Company's business is continued as provided in Article 3, the Company shall purchase the bankrupt Member's membership interest as provided in Article 12.

#### 11.6 Death:

(a) Termination of membership is caused by the death of a Member. Following the death of any Member, the legal representative of the deceased Member (the "Legal Representative") shall have an option to require the Company to purchase the membership interest of the deceased Member, and the Company shall have an option to purchase the membership interest of the deceased Member.

(b) The option of the Legal Representative (the "Estate Option") shall commence on the date of the deceased Member's death and continue until the later of ninety (90) days after the date of death or thirty (30) days after appointment of the Legal Representative. The option shall be to require the Company to purchase the membership interest owned by the deceased Member on the date of death as provided in Article 12. The Estate Option shall not be transferable.

(c) The option of the Company (the "Company Option") shall commence on the date that the Company receives notice of the Member's death. The Company Option shall be to purchase the membership interest owned by the deceased Member as provided in Article 12.

(d) If either the Estate Option or the Company Option is exercised, the price and payment terms shall be as provided in Article 12 regardless of whether dissolution is avoided, except that if the Company is dissolved, wound up and terminated as a result of the Member's death the Legal Representative shall only be entitled to receive termination distributions.

(e) If the deceased Member's membership interest is not purchased pursuant to the Estate Option or the Company Option, and the remaining Members give dissolution avoidance consent following the Member's death:

(i) the Estate or the beneficiaries of the Estate may be admitted as Members if 51% in percentage interest of the remaining Members agree;

(ii) If the Members do not consent to the admission of the Estate or the beneficiaries of the Estate as Members, then the Estate or the beneficiaries shall have the status of assignees of financial rights. They shall have no governance rights and no right to demand payment for the financial rights. Upon the dissolution, winding up and termination of the Company, they shall be entitled to receive termination distributions to the extent of their financial rights.

(f) If the deceased Member's membership interest is not purchased pursuant to the Estate Option and the Company Option, the Company dissolves as a result of the Member's death and the Company's business is continued as provided in Article 3, the Company shall purchase the entire remaining membership interest of the deceased Member as provided in Article 12.

#### 11.7 Dissolution of a Member:

(a) Termination of membership is caused by dissolution of any Member that is subject to dissolution.

(b) Although each Member subject to dissolution has the legal power to dissolve at any time, the parties agree that no Member will dissolve during the period of existence specified in the Articles of Organization unless the Members have voted to dissolve the Company pursuant to Section 3.1. Any dissolution in breach of this Agreement shall be wrongful and shall give rise to the consequences set forth in Section 12.9.

(c) If dissolution avoidance consent is given following dissolution of a Member, the status of the dissolved Member and any successor(s) in interest shall be that of an assignee of financial rights. They shall have no governance rights and no right to demand

payment for their financial rights. Commencing on the date that the Company receives notice of the Member's dissolution, the Company shall have a continuing option to purchase the financial rights of the dissolved Member as provided in Article 12, subject to reduction of the price for any damages as provided in Section 12.8. If the option is not exercised, the successors in interest shall be entitled to receive termination distributions to the extent of their financial rights at the time of the dissolution, winding up and termination of the Company.

(d) If the Company dissolves as a result of a Member's dissolution and the Company's business is continued as provided in Article 3, the Company shall purchase the dissolved Member's membership interest as provided in Article 12.

## 12. PROCEDURE ON OPTIONS AND TERMS FOR PURCHASES OF MEMBERSHIP INTERESTS

### 12.1 Procedure on Options:

(a) Length of Options: Unless otherwise specified, an option shall run for ninety (90) days from its commencement date. An option labeled a continuing option shall run for as long as the membership interest, or any part thereof, remains outstanding, unless a different expiration is provided.

(b) Manner of Exercise: Options shall be exercised by delivery of written notice of exercise to the Company (in the case of exercise of a Member option) or to the selling Member, the Member's Legal Representative, or the assignee or other holder of the membership interest being purchased (in the case of exercise of a Company option) in accordance with Section 13.1.

(c) Voting to Exercise Company Option: If the question of whether or not the Company should exercise a Company Option to purchase a membership interest hereunder is for any reason submitted to a vote of the Members or the Managers (if the prospective seller of such membership interest is a manager) of the Company, or if any other question relating to an option hereunder is submitted to the Members or the Board of Managers (if the seller of such membership interest is a manager) of the Company, the seller of such membership interest shall vote in the same manner as a majority (in voting power) of all other Members and managers may vote, as the case may be.

(d) Death of Member During Pendency of Option: If a Member, whose membership interest is subject to an option hereunder for any reason other than death, dies during an option period, the option shall immediately lapse and terminate, but such death shall

not terminate or otherwise affect rights or obligations arising out of the exercise, prior to such death, of any option.

(e) Transferability of Company Options: Company Options are transferable to one or more of the remaining members upon the approval of all of the remaining members.

#### 12.2 Definition of Effective Date of Purchase:

The "Effective Date of Purchase" of a Member's interest in the Company shall be the last day of the calendar month during which the event giving rise to the purchase occurs. The event giving rise to the purchase in any situation in which purchase is mandatory occurs on the date of occurrence of the event that makes the purchase mandatory. In the case of dissolution of the Company due to a failure to give dissolution avoidance consent, such event is the passage of ninety (90) days from the event of dissolution without dissolution avoidance consent having been secured. The event giving rise to the purchase in any situation in which purchase is optional occurs on the date of notice of exercise of the option under Section 13.1.

#### 12.3 Determination of Purchase Price of Membership Interests:

The purchase price for any membership interest purchased pursuant to this Agreement shall be the amount that would be payable in a termination distribution to the owner of the membership interest if (i) all of the assets of the Company were sold for cash at fair market value and (ii) all liabilities of the Company were paid off as of the Effective Date of Purchase. In determining the purchase price in the case of a membership interest in which only the financial rights are held and the governance rights no longer exist all of the value shall be placed on the financial rights and no separate value shall be attributed to the governance rights.

#### 12.4 Valuation of Company and Membership Interests:

(a) The fair market value shall be the Stipulated Value of the Company: The Stipulated Value of the Company is the value agreed to in writing by the Managers and not less than eighty percent (80%) in interest of the Members preceding the Effective Date of Purchase. If a Stipulated Value is in effect at the time of an event giving rise to an option or obligation to purchase that Stipulated Value shall govern the particular transaction, unless the membership interest is being purchased as a result of the Member's wrongful act as defined in Section 12.9. It is expected that the parties will periodically reconsider the Stipulated Value.

Subsequent Stipulated Values shall constitute amendments to this Agreement and shall be in a form comparable to the form attached as Schedule C.

(b) Agreed Upon Value: If no Stipulated Value of the Company is in effect, the fair market value of the membership interest shall be the value as then agreed upon by the Company and the holder of the membership interest being sold. If such value is not promptly agreed upon, the value shall be determined pursuant to the following subsection (c). In determining fair market value in the case of any purchase of a membership interest being purchased as a result of the Member's wrongful act as defined in Section 12.8, the agreed upon value shall be in accordance with the provisions of Section 12.9.

(c) Value Determined by Appraisal: If no Stipulated Value of the Company is applicable and if the buyer and seller are unable to agree upon the fair market value of the membership interest to be purchased, and assuming the purchase does not involve a membership being purchased as a result of a Member's wrongful act as defined in Section 12.9, either the buyer or the seller may request an appraisal by written notice delivered to the other (the "Request Date") and the fair market value shall be determined by appraisal as of the Effective Date of Purchase, which appraisal shall be final and binding on both the buyer and seller. The appraisal shall be conducted by an independent appraiser satisfactory to the buyer and seller. If a single independent appraiser cannot be agreed upon within thirty (30) days after the Request Date, the buyer and seller shall each designate one appraiser and shall deliver written notice of such designation to the other within forty-five (45) days after the Request Date, and the two appraisers so designated shall, within ten (10) days after their designation, jointly designate a third appraiser and deliver written notice of such designation to each of the buyer and seller. If a single appraiser cannot be agreed upon within the period provided for herein and if either (i) the two appraisers are unable to agree upon a third appraiser, or (ii) either the buyer or the seller is unable or unwilling to each appoint their respective appraiser within the period contemplated herein, such appraiser or appraisers shall, upon the petition of either the buyer or the seller, be designated by the District Court for Las Animas County, Colorado. All appraisers so designated shall be experienced in accounting, business, or partnership interest appraisal and valuation.

The appraiser or appraisers shall determine such value at a price which a willing buyer, being under no compulsion to buy, would pay for the Company, and which a willing seller, being under no compulsion to sell, would accept for the

Company, except that, in determining fair market value in the case of any purchase of a membership interest being purchased as a result of the Member's wrongful act as defined in Section 12.9, (i) it shall be assumed that each asset being valued must be sold for cash not later than the date on which the first payment for the membership interest must be made, and (ii) value attributable to goodwill or the like shall be separately identified. The value of any life insurance proceeds received by the Company by reason of the death of a Member in excess of the book value thereof shall be excluded. The appraisers shall accomplish their appraisal under such rules and procedures as they may reasonably establish, or if they are unable to agree on rules and procedures, such rules and procedures of the American Arbitration Association then in effect shall control.

The buyer and seller shall cooperate with such appraisers to the fullest extent. If one independent appraiser is agreed upon, the decision of such appraiser shall be rendered in writing within sixty (60) days after such independent appraiser's selection. If three independent appraisers are designated, the decision of the appraisers shall be rendered in writing within seventy-five (75) days after the selection of the third appraiser, and the value shall be the value agreed to by no fewer than two of the three appraisers. The fees and expenses of the appraiser or appraisers shall be shared one-half by the buyer and one-half by the seller.

If the purchase involves a membership interest being purchased as a result of a member's wrongful act, the provisions of Section 12.9 shall apply.

#### 12.5 Payment of Purchase Price by Insurance Proceeds:

If the company shall receive any proceeds of any insurance policy on the life of the decedent member, such proceeds shall be paid by the corporation to the decedent's Legal Representative to the extent of the value of the decedent's membership interest as determined under section 12.4, such payment to be deemed made on account of such purchase. Payment thereof shall be deferred until the expiration of forty (40) days after the decedent's death. Any excess insurance funds shall be paid to the estate of the decedent. The insurance proceeds shall not be a part of the value of the membership interest of the decedent.

#### 12.6 Payment of Purchase Price Where Price Exceeds Insurance Proceeds:

If the purchase price exceeds insurance proceeds there shall be an initial payment and a series of annual payments, with

the long term payment obligation bearing interest, evidenced by a promissory note, and secured by a security interest in the membership interest purchased, as set forth in this Section 12.6.

(a) Initial Payment: The initial payment shall be made on or before the Initial Payment Date in an amount equal to at least ten percent (10%) of the purchase price.

(b) Remaining Balance: Any balance of the purchase price remaining unpaid after the initial payment shall accrue interest on the unpaid balance at the rate described below from the Initial Payment Date until paid, and shall be paid to the extent of insurance payments, with the balance thereof paid in a series of thirty six (36) consecutive monthly installments of principal, plus interest accrued to date, commencing on the first anniversary of the Initial Payment Date.

(c) Interest Rate: The unpaid portion of the purchase price shall bear simple interest from the Initial Payment Date at a rate equal to 1.0% above the Prime Rate (as defined below) on the Initial Payment Date and adjusted on the date of the first installment of the purchase price as hereinabove described and adjusted annually thereafter to a rate equal to the Prime Rate on such adjustment date; provided, such rate (whether the initial rate or the adjusted rate) shall not be more than 8.0% per annum, and, provided further, such rate shall not be less than the minimum rate at which there will be neither original issue discount nor imputed interest for federal income tax purposes unless such minimum rate would exceed 5%. The "Prime Rate" shall be the rate announced by Bank of America in Albuquerque, from time to time, as its prime, reference, base, or index rate.

(d) Initial Payment Date: The "Initial Payment Date" as described herein shall be the 1st day following: 120 days from date of death.

(i) The date of the exercise of the option if the purchase price is based upon the Stipulated Value pursuant to subsection 12.4(a) (provided, if the membership interest being purchased as a result of a single event giving rise to such purchase is being purchased pursuant to the exercise of more than one option, and the value of the entire interest being purchased is based on the Stipulated Value, the Initial Payment Date shall be the 90th day following the date of the exercise of the last option involved in such purchase); or

(ii) The date on which the parties agreed upon a purchase price as determined under subsection 12.4(b); or

(iii) The date on which the written report of the appraiser(s) is delivered if the purchase price is based upon the appraised value as determined under subsection 12.4(c).

(e) Promissory Note: The obligation to pay the unpaid amount of the purchase price, including interest thereon, shall be evidenced by a duly executed promissory note payable to the order of the seller containing the aforesaid terms and such other terms as are customary for such instruments, including the right of prepayment, in whole or in part, without penalty, with partial prepayments to apply against payments due in chronological order.

(f) Security for Payment: The buyer shall pledge the membership interest purchased hereunder pursuant to the terms of a pledge agreement in customary form as security for payment of the obligations described in this Section 12.6. If the buyer is an individual, the Company shall execute a guaranty in customary form in favor of the seller of such membership interest as additional security for the performance of the obligations of the buyer thereof.

#### 12.7 No Other Payments:

The purchase price for a selling Member's membership interest determined and paid pursuant to this Article 12 shall be the only compensation or payment to which such Member shall be entitled for the Member's membership interest.

#### 12.8 Right of Offset:

If the selling Member shall owe the Company any amounts, the Company may make an offsetting credit therefor against the first amounts otherwise due the selling Member hereunder. This right of offset includes, without limitation, offset for any damages due from the selling Member as a result of the Member's wrongful act.

#### 12.9 Member's Wrongful Act and Consequences Thereof:

A Member's wrongful act includes, without limitation, breach of a waiver of dissenters' rights, wrongful resignation or retirement, or wrongful dissolution. The valuation of a Member's membership interest in connection with any purchase of the Member's membership interest triggered directly or indirectly by the Member's wrongful act shall be at the lesser of book value or the fair market value of the interest determined pursuant to Section 12.4 without taking into account any goodwill of the Company. Fair market value shall be determined on the assumption that each asset

must be sold for cash not later than 60 days after the requirement to purchase the interest arose. Any wrongful act shall make the resigning Member liable for damages to the Company and the other Members to the full extent allowed by law. Such damages shall include, without limitation, the Company's expenses incurred in attempting to secure dissolution avoidance consent from other Members, and in determining the amounts, if any, to be paid out to the breaching Member and any other Members; all financing and transaction costs in connection with such payouts; and any discount from fair market value that the Company incurred in liquidating assets to make such payments. The Company shall have the option, at the Managers' discretion, to demand immediate payment of damages, to deduct the damages from future distributions otherwise payable to the breaching Member, and/or to offset such damages against the amounts otherwise distributable to the breaching Member upon the dissolution, winding up and termination of the Company.

### 13. MISCELLANEOUS

#### 13.1 Notices:

All notices required or permitted to be given or served under the terms of this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person or three days after being deposited in the United States first class or certified mail, postage prepaid, and addressed (i) to a Member at the Member's personal residence or at such other address as a Member shall designate to the other parties in writing; (ii) to the chief manager of the Company at the Company's principal executive office; or (iii) to such other party at the address determined after reasonable investigation or as specified in writing by such other party.

#### 13.2 Amendment:

This Agreement may be amended only upon the agreement of seventy-five percent (75%) in percentage interest of the Members, provided, that without unanimous agreement, such amendment (i) shall not alter the interests in income and capital of the Members not so agreeing except to the extent such alterations are consistently applied to all Members and are as the result of the admission of additional Member(s) or the making of additional capital contributions and which is in either such case in accordance with this Agreement; (ii) shall not alter the terms of this Section; (iii) shall not alter the terms of any Section of this Agreement, which requires approval of a greater fraction in interest of the Members for action under such Section unless at least that greater fraction in interest of the Members agree to the amendment; and (iv) shall not be effective against Members not

joining in the amendment until fifteen(15) days following the mailing to all of them of written notice of such amendment. Any amendment duly adopted pursuant to this Section 13.2 shall be binding upon all Members even though not executed by dissenting Members.

#### 13.3 Scope of Agreement:

This Agreement shall be binding upon and enforceable by the parties hereto and their respective heirs, legal representatives, successors, and assigns who are obligated to take any action which may be necessary or proper to carry out the purpose and intent hereof.

#### 13.4 Counterparts:

This Agreement may be executed in several counterparts and shall be effective when there are attached together execution pages containing the signatures of each of the parties hereto, each of which counterpart shall be deemed to be an original, but all of which shall constitute one and the same instrument.

#### 13.5 Waiver:

No waiver, amendment, or modification of any term, condition, or provision of this Agreement shall be valid or in effect unless made in writing, signed by the parties to be bound, specifying with particularity the nature and extent of such waiver, amendment, or modification. Any waiver by any party or any default of another party hereto shall not affect or impair any right arising from any subsequent default.

#### 13.6 Governing Law:

This Agreement is made in and shall be interpreted and enforced in accordance with the laws of the State of Colorado, and each of the parties hereto irrevocably consents to personal jurisdiction in the State District Courts or the Federal Courts in the State of Colorado.

#### 13.7 Invalid, Unenforceable Provisions:

If any provision of this Agreement shall be finally judicially determined to be unlawful or unenforceable in whole or in part, such provision shall be given force to the fullest extent provided by law and the remainder of this Agreement shall be construed as if such illegal, invalid, unlawful, void, or unenforceable portion was not contained herein and this Agreement shall otherwise remain and continue in full force and effect.

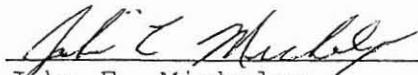
13.8 Arbitration:

Each dispute, claim and controversy (whether arising during or after the term hereof) arising out of our relating to this Agreement or the breach thereof (including but not limited to the validity of the agreement to arbitrate and the arbitrability of any matter) shall be settled, upon demand and written notice by any Member or the Company, by an arbitrator agreed to by the parties. If the parties are unable to agree, the dispute will be settled by three arbitrators, one of whom shall be chosen by the party making such demand, one by the other party, and the third arbitrator by the two so chosen. The party demanding arbitration shall in its demand for arbitration notify the other party of the identity of the arbitrator chosen by it. The other party shall, within fifteen (15) days after its receipt of such written demand for arbitration, likewise select its appointee and give written notice thereof. If the party receiving such demand for arbitration fails to notify the other party in writing of the identity of the arbitrator chosen by it within such 15-day period, or if the two arbitrators so selected are unable to agree on the selection of a third arbitrator within a period of fifteen(15) days after the appointment of the second arbitrator, any party may request that the District Court of Las Animas County, Colorado, appoint such arbitrator(s). The proceedings shall be conducted in accordance with whichever arbitration rules are selected by the arbitrator, or a majority vote of the arbitrators, to the extent such rules are not inconsistent with the provisions of this arbitration provision. The costs of the proceedings shall be shared equally by the parties. Unless otherwise agreed upon, the place of arbitration proceedings shall be in Las Animas County, Colorado. The decision of the arbitrator, or a majority of the three arbitrators, shall be final and binding on all parties.

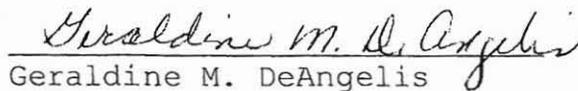
IN WITNESS WHEREOF, the parties hereto have executed this Agreement, effective as of the date first above written.

M & M DISTRIBUTING, LLC

By:

  
John E. Michelza  
Its Manager/C.E.O.

March 6, 2014

  
Geraldine M. DeAngelis  
Its Secretary/Treasurer

March 6, 2014

MEMBERS

John E. Micheliza  
John E. Micheliza

March 6, 2014

Geraldine M. DeAngelis  
Geraldine M. DeAngelis

March 6, 2014

**SCHEDULE A**  
**MEMBERS OF**  
**M & M DISTRIBUTING, LLC**

Admitted to Membership	Ownership Percentage	Date
John E. Micheliza	50%	March, 2014
Geraldine M. DeAngelis	50%	March, 2014

**SCHEDULE B**

**M & M DISTRIBUTING, LLC**

**CERTIFICATE OF MEMBER INTERESTS  
At Inception**

Name	Initial Capital Contribution	Interest
John E. Micheliza	\$20,000	50%
Geraldine M. DeAngelis	\$20,000	50%
<b>TOTAL</b>	\$40,000	100%

SCHEDULE C

Stipulated Value of Company

<u>Date</u>	<u>Stipulated Value</u>
March, 2014	\$40,000
March, 2015	\$
March, 2016	\$
March, 2017	\$
March, 2018	\$
March, 2019	\$
March, 2020	\$
March, 2021	\$
March, 2022	\$
March, 2023	\$
March, 2024	\$

The Stipulated Value of the Company was agreed to be as provided above as of the above dates pursuant to Section 12.4(a) of the Member Control Agreement.

The undersigned, Manager/C.E.O. of M & M Distributing, LLC, hereby certifies that the foregoing Stipulated Value of the Company was agreed to as of the foregoing date by a vote of not less than a majority in interest of the Members.

M & M DISTRIBUTING, LLC

John E. Micheliza  
John E. Micheliza, Member

John E. Micheliza  
Manager/C.E.O.

Geraldine M. DeAngelis  
Geraldine M. DeAngelis, Member

Attest:

Geraldine M. DeAngelis  
Secretary/Treasurer

SCHEDULE D

M & M DISTRIBUTING, LLC  
CERTIFICATE OF INITIAL ALLOCATION  
OF INCOME AND LOSSES

Member	Profits and Losses
John E. Micheliza	50%
Geraldine M. DeAngelis	50%

**M & M DISTRIBUTING, LLC  
OPERATING AGREEMENT**

**1. OFFICES**

1.1 The address of the registered office of the company shall be designated in the Articles of Organization, as amended from time to time. The principal executive office of the company shall initially be located at 422 No. Commercial, Trinidad, Colorado 81082, and the company may have offices at such other places within or without the State of Colorado as the managers shall from time to time determine or the business of the company requires.

**2. MEETINGS OF MEMBERS**

**2.1 Regular Meetings:**

Regular meetings of the members of the company shall be held on an annual or other less frequent basis as shall be determined by the managers; provided, that if a regular meeting has not been held, members holding forty percent (40%) or more of the voting power of all members entitled to vote may demand a regular meeting of members by written notice of demand given to the managers or the treasurer of the company. At each regular meeting, the members, voting as provided in the Articles of Organization and this Operating Agreement, subject to the provisions of the Member Control Agreement, shall elect qualified successors for managers who serve for an annual term or whose terms have expired or are due to expire within six months after the date of the meeting, and shall transact such other business as shall come before the meeting. No meeting shall be considered a regular meeting unless specifically designated as such in the notice of meeting or unless all the members entitled to vote are present in person or by proxy and none of them objects to such designation.

**2.2 Special Meetings:**

Special meetings of the members entitled to vote may be called at any time by the managers, the treasurer, or a member or members holding ten percent (10%) or more of the voting power of all members entitled to vote who shall demand such special meeting by giving written notice of demand to the manager or the treasurer specifying the purposes of the meeting.

**2.3 Meetings Held Upon Member Demand:**

Within thirty (30) days after receipt by the managers or the secretary/treasurer of a demand from any member or members entitled to call a regular or special meeting of members, the

managers shall cause such meeting to be called and held on notice no later than ninety(90) days after receipt of such demand. If the managers fails to cause such a meeting to be called and held, the member or members making the demand may call the meeting by giving notice as provided in Section 2.5 hereof at the expense of the company.

#### 2.4 Place of Meetings:

Meetings of the members shall be held at the principal office of the company or at such other place, within or without the State of Colorado, as is designated by the managers, except that a regular meeting called by or at the demand of one or more members shall be held in the county where the principal executive office of the company is located.

#### 2.5 Notice of Meetings:

Except as otherwise specified in Section 2.6 or required by law, a written notice setting out the place, date and hour of any regular or special meeting shall be given to each member entitled to vote not less than seven(7) days nor more than sixty(60) days prior to the date of the meeting; provided, that notice of a meeting at which there is to be considered a proposal to (i) dispose of all, or substantially all, of the property and assets of the company, (ii) adopt a plan of merger, exchange or consolidation or (iii) dissolve the company shall be given to all members of record, whether or not entitled to vote, at least fourteen(14) days prior thereto. Notice of any special meeting shall state the purpose or purposes of the proposed meeting, and the business transacted at all special meetings shall be confined to the purposes stated in the notice.

#### 2.6 Waiver of Notice:

A member may waive notice of any meeting before, at or after the meeting, in writing, orally or by attendance. Attendance at a meeting by a member is a waiver of notice of that meeting unless the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not be lawfully considered at such meeting, and does not participate in the consideration of the item at such meeting.

#### 2.7 Quorum and Adjourned Meeting:

The holders of a majority of the voting power of the members entitled to vote at a meeting, represented either in person

or by proxy, shall constitute a quorum for the transaction of business at any regular or special meeting of members. If a quorum is present when a duly called or held meeting is convened, the members present may continue to transact business until adjournment, even though the withdrawal of a number of members originally present leaves less than the proportion or number otherwise required for a quorum. In case a quorum is not present at any meeting, those present shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until the requisite number of members entitled to vote shall be represented. At any reconvening of such adjourned meeting, at which the required voting power of members entitled to vote is present, any business may be transacted which might have been transacted at the original meeting.

#### 2.8 Voting:

At each meeting of the members, every member having the right to vote shall be entitled to vote in person or by proxy duly appointed by an instrument in writing subscribed by such member. Each member shall have the number of votes equal to the member's percentage interest in ownership of the company except as may be otherwise provided in the Member Control Agreement. Upon the demand of any member entitled to vote, the vote for managers or the vote upon any question before the meeting shall be by ballot. All elections shall be determined and all questions decided by a majority vote of the voting power of members entitled to vote and represented at any meeting at which there is a quorum except in such cases as shall otherwise be required by statute, the Articles of Organization, this Operating Agreement, or the Member Control Agreement.

#### 2.9 Order of Business:

The suggested order of business at any regular meeting and, to the extent appropriate, at all other meetings of the members shall, unless modified by the presiding chairman, be:

- (a) Call of roll;
- (b) Proof of due notice of meeting or waiver of notice;
- (c) Determination of existence of quorum;
- (d) Reading and disposal of any unapproved minutes;
- (e) Reports of managers and committees;

- (f) Election of managers;
- (g) Unfinished business;
- (h) New business; and
- (i) Adjournment.

### 3. **MANAGERS**

#### 3.1 General Powers:

Except as authorized by the members pursuant to the Member Control Agreement or unanimous affirmative vote, the business and affairs of the company shall be managed by or under the direction of a manager or managers.

#### 3.2 Number, Term and Qualifications:

Initially there shall be two managers. The authorized number of managers may be increased or decreased by majority agreement of the members entitled to vote at any time. Each manager shall serve for an indefinite term that expires at the next regular meeting of members, and until his successor is elected and qualified, or until his earlier death, resignation, disqualification, or removal as provided by statute. Managers need not be members of the company.

#### 3.3 Vacancies:

Vacancies in the office of manager may be filled by the affirmative vote of a majority of the members.

#### 3.4 Quorum and Voting:

A majority of the managers currently holding office shall constitute a quorum for the transaction of business. In the absence of a quorum, a majority of the managers present may adjourn a meeting from time to time until a quorum is present. If a quorum is present when a duly called or held meeting is convened, the managers present may continue to transact business until adjournment even though the withdrawal of a number of managers originally present leaves less than the proportion or number otherwise required for a quorum. Except as otherwise required by law or the Articles of Organization, the acts of a majority of the managers present at a meeting at which a quorum is present shall be the acts of the manager.

### 3.5 Board Meetings; Place and Notice:

Meetings of the managers may be held from time to time at any place within or without the State of Colorado that the managers may designate. In the absence of designation by the managers, meetings shall be held at the principal executive office of the company, except as may be otherwise unanimously agreed orally, or in writing, or by attendance. Any manager may call a manager's meeting by giving 48 hours notice to all managers of the date and time of the meeting. The notice need not state the purpose of the meeting, and may be given by mail, telephone, telegram, or in person. If a meeting schedule is adopted by the managers, or if the date and time of a manager's meeting has been announced at a previous meeting, no notice is required.

### 3.6 Waiver of Notice:

A manager may waive notice of any meeting before, at or after the meeting, in writing, orally or by attendance. Attendance at a meeting by a manager is a waiver of notice of that meeting unless the manager objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate thereafter in the meeting.

### 3.7 Absent Managers:

A manager may give advance written consent or opposition to a proposal to be acted on at the manager's meeting. If the manager is not present at the meeting, consent or opposition to a proposal does not constitute presence for purposes of determining the existence of a quorum, but consent or opposition shall be counted as a vote in favor of or against the proposal and shall be entered in the minutes of the meeting, if the proposal acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the manager has consented or objected.

### 3.8 Compensation:

Managers who are not salaried managers of the company shall receive such fixed sum and expenses per meeting attended or such fixed annual sum or both as shall be determined from time to time by resolution of the managers. Nothing herein contained shall be construed to preclude any manager from serving this company in any other capacity and receiving proper compensation therefore.

### 3.9 Committees:

The managers may, by resolution approved by affirmative vote of a majority of the managers, establish committees having the authority of the managers in the management of the business of the company only to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent managers or other independent persons to consider legal rights or remedies of the company and whether those rights and remedies should be pursued. Each such committee shall consist of one or more natural persons (who need not be managers) appointed by the affirmative vote of a majority of the managers present, and shall, other than special litigation committees, be subject at all times to the direction and control of the managers. A majority of the members of a committee present at a meeting shall constitute a quorum for the transaction of business.

### 3.10 Order of Business:

The suggested order of business at any meeting of the managers shall, to the extent appropriate and unless modified by the presiding chairman, be:

- (a) Roll call;
- (b) Proof of due notice of meeting or waiver of notice, or unanimous presence and declaration by presiding chairman;
- (c) Determination of existence of quorum;
- (d) Reports of managers and committees;
- (e) Election of officers;
- (f) Unfinished business;
- (g) New business;
- (h) Adjournment.

## 4. OFFICERS

### 4.1 Numbers and Designation:

The company shall have one or more natural persons exercising the functions of the offices of Chief Executive Officer and Secretary/Treasurer. The managers may elect or appoint such

other officers or agents as it deems necessary for the operation and management of the company including, each of whom shall have the powers, rights, duties and responsibilities determined by the managers. Any of the offices or functions of those offices may be held by the same person.

#### 4.2 Election, Term of Office and Qualification:

At the first meeting of the managers following each election of managers, the managers shall elect officers who shall hold office until the next election of officers or until their successors are elected or appointed and qualify; provided, however, that any officer may be removed with or without cause by the affirmative vote of a majority of the managers present (without prejudice, however, to any contract rights of such officer).

#### 4.3 Resignation:

Any officer may resign at any time by giving written notice to the company. The resignation is effective when notice is given to the company, unless a later date is specified in the notice, and acceptance of the resignation shall not be necessary to make it effective.

#### 4.4 Vacancies in Office:

If there be a vacancy in any office of the company, by reason of death, resignation, removal, or otherwise, such vacancy may be filled for the unexpired term by the managers, collectively.

#### 4.5 Chief Executive Officer:

Unless provided otherwise by a resolution adopted by the managers, the Chief Executive Officer (a) shall have general active management of the business of the company; (b) shall exercise general supervision and direction over the more significant matters of policy affecting the affairs of the company, including particularly its financial and fiscal affairs; (c) shall preside at all meetings of the members and managers; (d) shall see that all orders and resolutions of the managers are carried into effect; (e) shall sign and deliver in the name of the company any deeds, mortgages, bonds, contracts, or other instruments pertaining to the business of the company, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the Articles, this Operating Agreement or the managers to some other manager or agent of the company; (f) may maintain records of and certify proceedings of the managers and members; (g) shall perform the duties of the Secretary if there is no Secretary; and (h) shall perform such

other duties as may from time to time be assigned to him by the managers.

#### 4.6 Secretary/Treasurer:

Unless provided otherwise by a resolution adopted by the managers, the Secretary/Treasurer (a) shall keep accurate financial records for the company; (b) shall deposit all monies, drafts, and checks in the name of and to the credit of the company in such banks and depositories as the managers shall designate from time to time; (c) shall endorse for deposit all notes, checks, and drafts received by the company as ordered by the managers, making proper vouchers therefor; (d) shall disburse company funds and drafts in the name of the company, as ordered by the managers; (e) shall render to the Chief Executive Officer and the managers, whenever requested, an account of all of his transactions as Secretary/Treasurer and of the financial condition of the company; and (f) the Treasurer may record the proceedings of such meetings in the minute book of the company and, whenever necessary, certify such proceedings. The Secretary/Treasurer shall maintain or see to the maintenance of the required records and information of the company as provided by law. The Secretary/Treasurer shall give proper notice of meetings of members and shall perform such other duties as may be prescribed by the managers or the Chief Executive Officer from time to time.

#### 4.7 Delegation:

Unless prohibited by a resolution approved by the affirmative vote of a majority of the managers present, an officer elected or appointed by the managers may delegate in writing some or all of the duties and powers of his office to other persons.

### 5. INDEMNIFICATION

5.1 The corporation shall indemnify members, managers and officers, for such expenses and liabilities, in such manner, under such circumstances, and to such extent, as permitted by C.R.S. §7-80-108, et seq. as now enacted or hereafter amended, or other applicable law.

### 6. REQUIRED RECORDS AND OWNERSHIP MATTERS

6.1 Required Records Regarding Ownership, Control, Management and Financial Results:

The company shall keep, at its principal executive office, or at another place or places within the United States determined by the manager, all of the records required by Colorado

law, as now enacted or hereafter amended. Such records shall include copies of the acceptances by the managers (or organizers if applicable) of all contributions showing the date of each contribution and of all records maintained in order to account for ownership interests as provided in Article 7 of this Operating Agreement. Each member of the company has an absolute right, upon written demand, to examine and copy any or all of the required records regarding ownership, control, management and financial results at any reasonable time, in person or by a legal representative.

#### 6.2 Other Records:

The company shall also keep such other records in connection with its business as the managers or officers determine are necessary or advisable. Such other records shall be maintained at such place or places as the managers determine. Each member of the company has a right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time such records as to which the member demonstrates a purpose reasonably related to the person's ownership interest.

#### 6.3 Evidence of Ownership:

Ownership of membership interests in the company shall be expressed in terms of the relative percentage interests of the members in the capital and income and losses of the company. Individual certificates of membership percentage interests shall not be issued, but the percentage interests of the members shall be reflected on a certificate of member percentage interests which shall be revised subsequent to each change in ownership of member percentage interests. The member in whose name a membership interest is recorded in the company's records shall be deemed the owner thereof for all purposes as regards the company; provided, that when any transfer of a membership interest shall be made as collateral security and not absolutely, such fact, if known to the company, shall be so expressed in the required records; and provided, further, that the managers may establish a procedure whereby a member may certify that all or a portion of the membership interest recorded in the member's name is held for the account of one or more beneficial owners. The Chief Executive Officer shall certify a member's percentage interest in the company at any reasonable time to any third party upon the member's request. A member's request that future requests by a third party be honored, or that a third party be advised of any change in the member's ownership interest in the company, shall be honored.

#### 6.4 Mechanics of Ownership Transfer:

Transfers of ownership of membership interests in the company are accomplished by being recorded in the required records of the company. Transfers of membership interests, or the separate financial rights or governance rights respecting a particular interest, may be initiated only by the member (or current assignee of financial rights), or the member's (or assignee's) legal representative or duly authorized attorney-in-fact.

### 7. GENERAL PROVISIONS

#### 7.1 Record Dates:

In order to determine the members entitled to notice of and to vote at a meeting, or entitled to receive payment of a distribution, the managers may fix a record date which shall not be more than sixty (60) days preceding the date of such meeting or distribution. In the absence of action by the managers, the record date for determining members entitled to receive a distribution shall be at the close of business on the day on which the managers authorizes such distribution.

#### 7.2 Distributions; Acquisitions of Membership Interests:

Subject to the provisions of law, the Articles of Organization and the Member Control Agreement, the managers may authorize the acquisition of membership interests in the company and distributions whenever and in such amounts as the managers deem advisable.

#### 7.3 Seal:

The company shall have such seal or no seal as the managers determine from time to time.

#### 7.4 Securities of other Organizations:

##### (a) Voting Securities Held by the Company:

Unless otherwise determined by the managers, the Chief Executive Officer shall have full power and authority on behalf of the company (i) to attend and to vote at any meeting of security holders of other companies in which the company may hold securities; (ii) to execute any proxy for such meeting on behalf of the company; and (iii) to execute a written action in lieu of a meeting of such other company on behalf of this company. At such

meeting, by such proxy or by such writing in lieu of meeting, the Chief Executive Officer shall possess and may exercise any and all rights and powers incident to the ownership of such securities that the company might have possessed and exercised if it had been present. The managers may from time to time confer like powers upon any other persons or persons.

(b) Purchase and Sale of Securities:

Unless otherwise determined by the managers, the Chief Executive Officer shall have full power and authority on behalf of the company to purchase, sell, transfer or encumber securities of any other company owned by the company which represent not more than ten percent (10%) of the outstanding securities of such issuer, and may execute and deliver such documents as may be necessary to effectuate such purchase, sale, transfer or encumbrance. The managers may from time to time confer like powers upon any other person or persons.

7.5 Member Control Agreements:

In the event of any conflict or inconsistency between this Operating Agreement, or any amendment thereto, and any member control agreement, such member control agreement shall govern. The members have executed a Member Control Agreement effective concurrently with the date of adoption of this Operating Agreement.

7.6 Fiscal Year:

The fiscal year of the company shall be a calendar year, ending December.

7.7 "Tax Matters Partner":

The member to serve as "tax matters partner" for federal income tax purposes shall be designated by the managers.

8. **MEETINGS**

8.1 Telephone Meetings and Participation:

A conference among managers by any means of communication through which the managers may simultaneously hear each other during the conference constitutes a manager's meeting, if the same notice is given of the conference as would be required for a meeting, and if the number of managers participating in the conference would be sufficient to constitute a quorum at a meeting. Participation in a conference meeting by that means constitutes

presence in person at the meeting. A manager may participate in a manager's meeting not heretofore described in this paragraph, by any means of communication through which the manager, other managers so participating, and all managers physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence in person at the meeting. The provisions of this section shall apply to committees and members of committees to the same extent as they apply to the managers.

#### 8.2 Authorization Without Meeting:

Any action of the members, the managers, or any committee of the company which may be taken at a meeting thereof, may be taken without a meeting if authorized by a writing signed by all of the members who would be entitled to vote on such action, by all of the managers or by all of the members of such committee, as the case may be, except that less than unanimous action is permitted in each case if permitted by the Articles of Organization, or, in the case of committees, if the Articles of Organization are silent but allow such less than unanimous action by the managers.

#### 9. AMENDMENTS OF OPERATING AGREEMENT

Amendments:

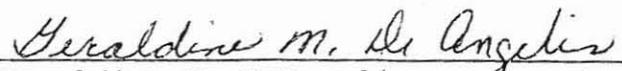
This Operating Agreement may be altered, amended, added to, or repealed by members entitled to vote in accordance with the provisions of the Articles of Organization.

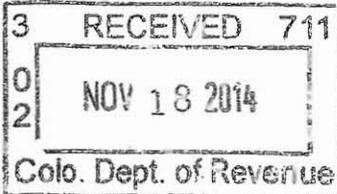
The undersigned, hereby certifies that the foregoing Operating Agreement was duly adopted by its initial Board of Managers as the Operating Agreement of the company by its first manager on the 6<sup>th</sup> day of March, 2014.

M & M DISTRIBUTING, LLC

  
\_\_\_\_\_  
John E. Micheliza, Manager/C.E.O.

Attest:

  
\_\_\_\_\_  
Geraldine M. DeAngelis,  
Secretary/Treasurer



CR 0100AP (09/03/14)  
 COLORADO DEPARTMENT OF REVENUE  
 Registration Control Section  
 PO Box 17087  
 Denver CO 80217-0087

## Colorado Sales Tax Withholding Account Application

You can now apply online, see page 3 for more information. If applying by paper, read the instructions (on page 4) before completing this form.

<b>A</b>	1. Reason for Filing This Application — Required			
	<input type="checkbox"/> Original Application	<input type="checkbox"/> Change of Ownership	<input checked="" type="checkbox"/> Additional Location	
Do you have a Department of Revenue Account Number?		If Yes, Account Number		
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		27964706		
2. Indicate Type of Organization. If you are not an individual you must have a FEIN number.				
<input type="checkbox"/> Individual <input checked="" type="checkbox"/> Limited Liability Company (LLC) <input type="checkbox"/> Corporation/S' Corp. <input type="checkbox"/> Government <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Liability Partnership (LLP) <input type="checkbox"/> Association <input type="checkbox"/> Joint Venture <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Limited Liability Limited Partnership (LLLP) <input type="checkbox"/> Estate/Trust <input type="checkbox"/> Non-Profit (Charitable)				
<b>B</b>	1a. Last Name or Business Name		First Name	Middle Initial
	m m Distributing LLC			
	1b. Proof of Identification (Requirements - See page 4)			
2a. Trade Name/ Doing Business As (If applicable, and for informational purposes only)		2b. FEIN (required)	2c. SSN	
		37-1751898		
<b>Physical Place of Business</b>				
3a. Principal Address (A Colorado address is required if a location in the state)			City	State Zip
422 N. Commercial			Trinidad	CO 81082
3b. County		3c. If business is within limits of a city, what city?		3d. Phone Number
Las Animas		Trinidad		[REDACTED]
<b>Mailing address — enter mailing address here if different than the physical address</b>				
4a. Last Name or Business Name		First Name	Middle Initial	4b. Phone Number
				( )
4c. Mailing Address			City	State Zip
5. List specific products ( you must list the products you sell) and/or services you provide and Explain In Detail in section 5a. below.				
Do you sell alcohol? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No      Do you rent out items for 30 days or less? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Do you sell tobacco products? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No      Do you sell Prepaid Wireless? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Is your business in a special taxing district? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No      Do you sell medical marijuana? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Do you rent motor vehicles for 30 days or less? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No      Do you sell adult usage marijuana? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
5a. List specific products and/or services you provide and Explain In Detail				
Sell Retail Marijuana				
6a. Owner/Partner/ Corp. Officer Last Name		Owner/Partner/ Corp. Officer First Name		Middle Initial
De Angelis		Geraldine		M
6b. Title	6c. FEIN	6d. SSN	6e. Phone Number	
Sec / Treas		[REDACTED]	[REDACTED]	
6f. Address		City	State	Zip
[REDACTED]		Trinidad	CO	81082
7a. Owner/Partner/ Corp. Officer Last Name		Owner/Partner/ Corp. Officer First Name		Middle Initial
Micheliza		John		E
7b. Title	7c. FEIN	7d. SSN	7e. Phone Number	
President		[REDACTED]	[REDACTED]	
7f. Address		City	State	Zip
[REDACTED]		Trinidad	CO	81082

(Form continued on page 2)

If you acquired the business in whole or in part, complete the following:

8a. Prior Last Name or Business Name	First Name	Middle Initial	8b. Date of Acquisition (MM/DD/YY)
--------------------------------------	------------	----------------	------------------------------------

8c. Address	City	State	Zip
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C

1. If seasonal, mark each business month:  Jan  Feb  Mar  Apr  May  Jun  Jul  Aug  Sep  Oct  Nov  Dec

2a. Filing Frequency: If sales tax is collected: <input type="checkbox"/> \$15.00/ month or less — Annually <input type="checkbox"/> Wholesale Only — Annually <input type="checkbox"/> Under \$300/ month — Quarterly <input checked="" type="checkbox"/> \$300/ month or more — Monthly	2b. First Day of Sales (MM/DD/YY) 12-1-14
---	--

3. Indicate which applies to you: <input checked="" type="checkbox"/> Retail-Sales <input type="checkbox"/> Wholesaler <input type="checkbox"/> Charitable <input type="checkbox"/> Retailers-Use	Revenue Registration Account Number (Dept. Use Only) 27964766-0001
---	---

D

1. Filing frequency If wage withholding amount is W2 (Withholding of \$50,000 plus see Section D page 6)  
 \$1 - \$6,999/Year — Quarterly  \$7,000 - \$49,999/Year — Monthly  \$50,000 +/ Year — Weekly

2.  W2 Withholding  1099 Withholding

1a. Filing frequency If wage withholding amount is 1099 (Withholding of \$50,000 plus see Section D page 6)  
 \$1 - \$6,999/Year — Quarterly  \$7,000 - \$49,999/Year — Monthly  \$50,000 +/ Year — Weekly

2a.  Oil/Gas Withholding

3a. First Day of Payroll, if applicable (MM/DD/YY)	3b. Payroll Records Phone Number ( )
--	--------------------------------------

E

Period Covered		Fees (see fees on page 3)			
From	To				
MM/YY	MM/YY				
		(0020-810)	State Sales Tax Deposit	(355)	\$ 00
12/14	12/15	(0080-750)	Sales Tax License	(999)	\$ 12 00
	12/	(0100-750)	Wholesale License	(999)	\$ 00
		(1000-750)	Wage W2 Withholding	(999)	\$ 00
		(1020-750)	1099 Withholding	(999)	\$ 00
	12/	(0160-750)	Charitable License	(999)	\$ 00
Mail to and Make Checks Payable to: Colorado Department of Revenue, PO Box 17087 Denver, CO 80261-0087				Amount Owed	\$ 12 00

The State may convert your check to a one time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is rejected due to insufficient or uncollected funds, the Department of Revenue may collect the payment amount directly from your bank account electronically.

F

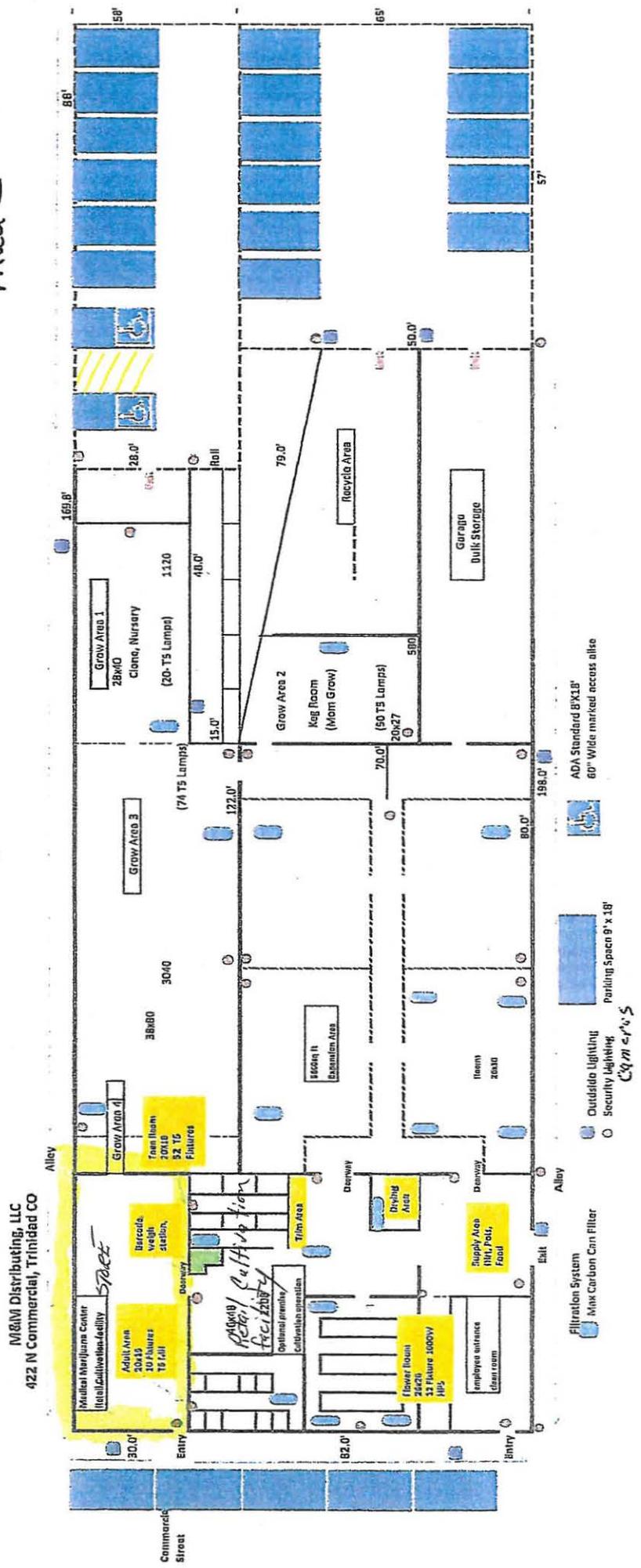
I declare under penalty of perjury in the second degree that the statements made in this application are true and complete to the best of my knowledge.

Signature of Owner, Partner, or Corporate Officer Required <i>Heraldine De Angelis</i>	Title <i>Sec / Treas</i>	Date (MM/DD/YY) <i>11-18-14</i>
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(See fees and additional information on page 3)

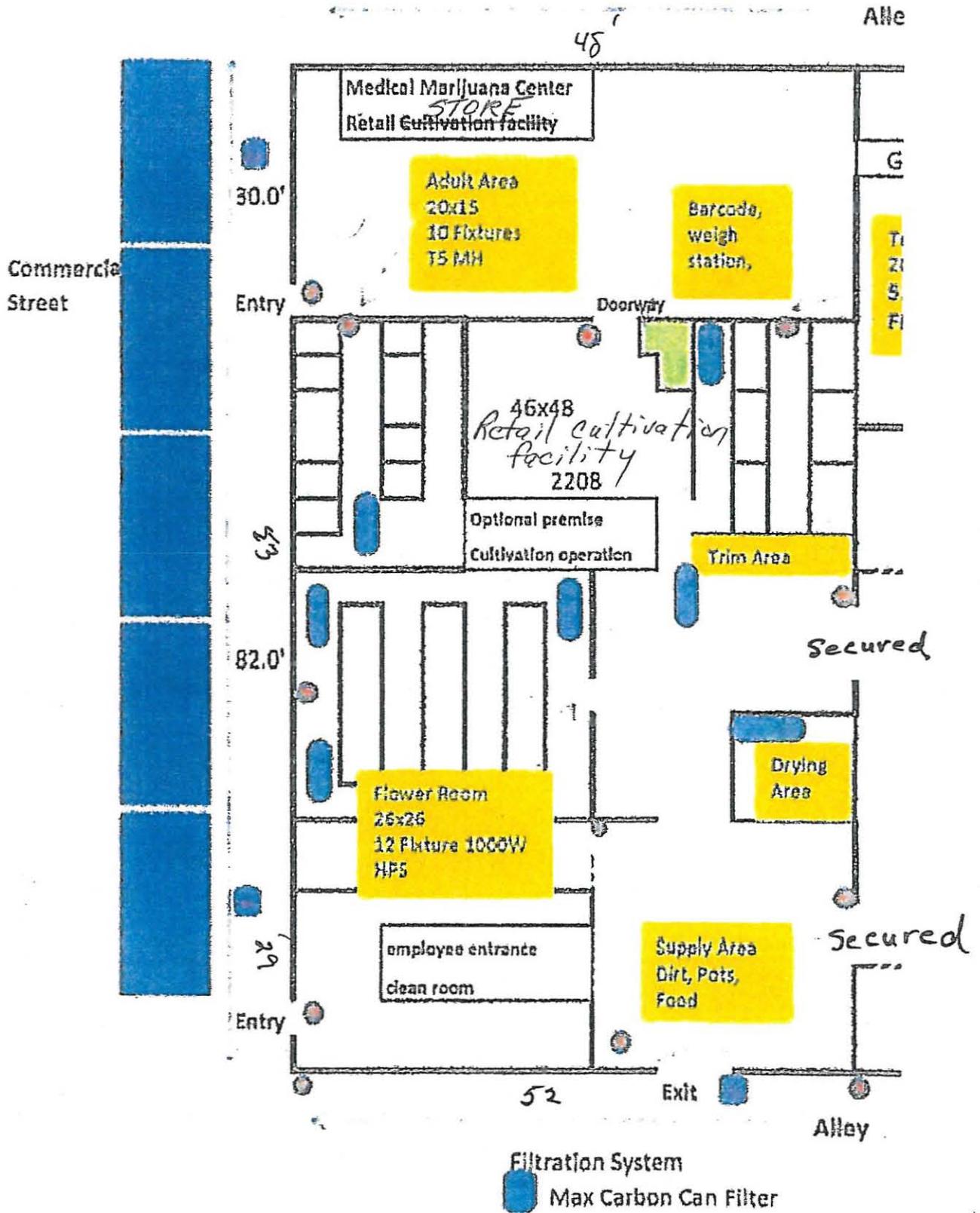


changes to be made -



Add 2nd floor  
(not being used for business)

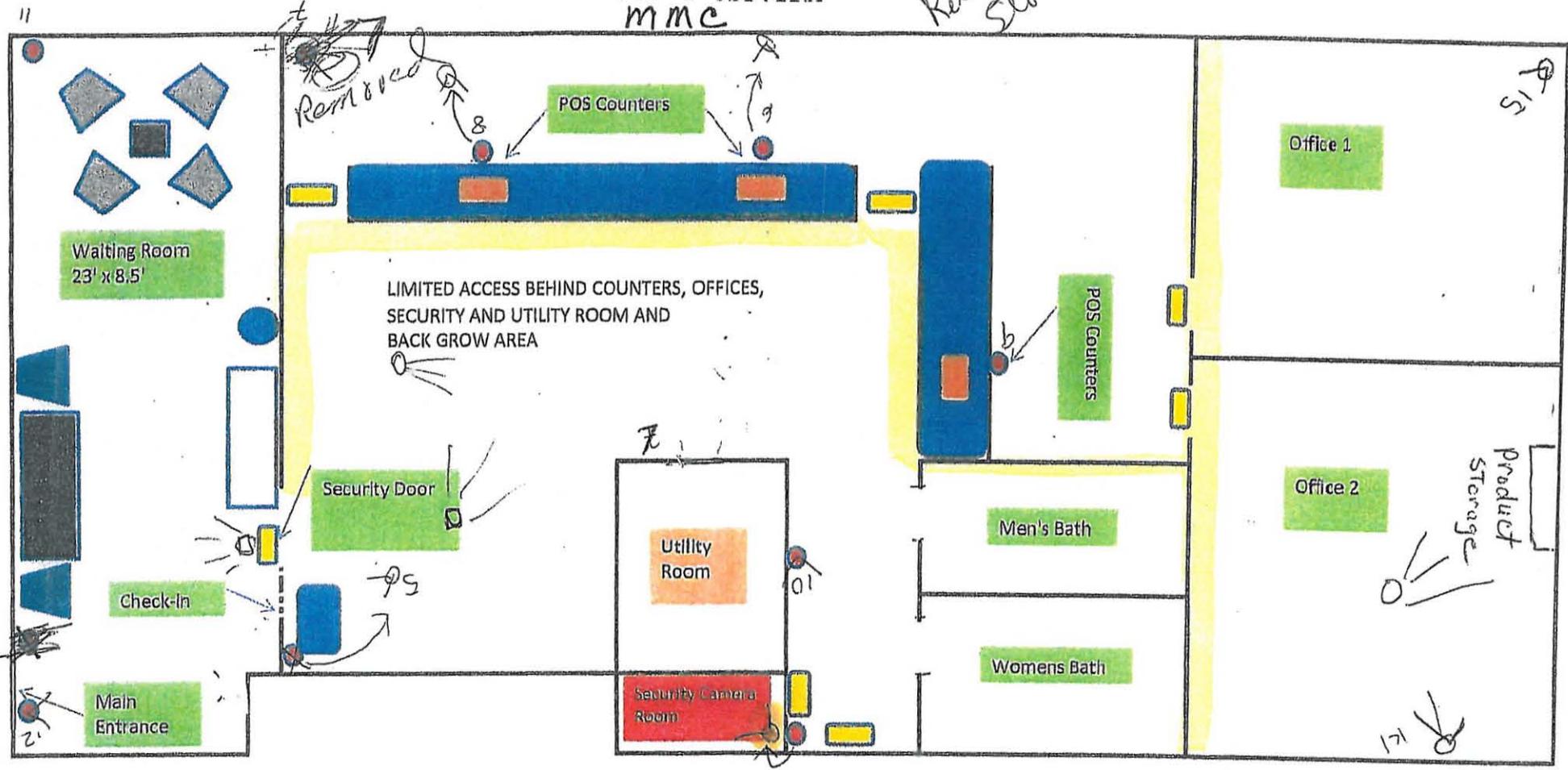
M&M Distributing, LLC  
422 N Commercial, Trinidad CO



M&M Distributing LLC,  
mmc

*Retail Store*

*Changes being made*



- Legend:
- Video Camera
  - ▭ POS System
  - ▭ Limited Access

M305 - Security Alarm System and Lock Standards Summary;  
 Installed by Alarm Inst. Company  
 All Perimeter entry points and perimeter windows  
 Continuously monitored, monitoring service ok.  
 Schematic of all security Zones

M306 Video Surveillance  
 Stored in secure location  
 Digital quality, still photo capable, print to color printer  
 4hr min., battery back-up  
 All limited access areas, point of Sale

**Locations:**  
 All Limited Access  
 Point of Sale  
 Security Room  
 All points of Ingress or egress  
 to limited access areas  
 Display Areas  
 All point of Ingress or egress  
 to exterior.  
 Entrance and Exits recorded  
 from both Indoor and outdoor  
 24 hrs./dy

*Remove camera 7  
 install 2 to face budtenders  
 install 1 to come into main  
 door - so face exposed  
 Additional sheet to  
 include unstairs*



Individual History Record  
City of Trinidad, Colorado

CONFIDENTIAL INFORMATION  
NOT FOR PUBLIC DISCLOSURE

**PLEASE PRINT CLEARLY IN BLACK INK**

To be completed by each individual applicant, all general partners of a partnership, and limited partners owning 10% (or more) of a partnership; all officers and directors of a corporation, and stockholders of a corporation owning 10% (or more) of the stock of such corporation; all limited liability company *MANAGING* members, and officers or other limited liability company members with a 10% (or more) ownership interest in such company and all managers and employees of a Retail Marijuana License.

**NOTICE: This individual history record provides basic information which is necessary for the licensing authority investigation. All questions must be answered in their entirety or your application may be delayed or not processed. EVERY answer you give will be checked for its truthfulness. A deliberate falsehood or omission will jeopardize the application as such falsehood within itself constitutes evidence regarding the character of the applicant.**

1. Owner/Company Name M + M Distributing, LLC.

2. D/B/A (Doing Business As) \_\_\_\_\_

3. Business address 422 N. Commercial ST, Trinidad Co 81082

4. Business License # \_\_\_\_\_

5. Your Full Name (last, first, middle)  
Micheliza John Everett

6. List any other names you have used  
\_\_\_\_\_

7. Mailing address (If different from residence)  
\_\_\_\_\_

8. Phone  
\_\_\_\_\_

9. List All Other Retail Marijuana Licenses issued to Applicant <sup>81082</sup>  
(Attach separate sheet if necessary)  
N/A

Location  
\_\_\_\_\_

10. Identify Retail Marijuana Cultivation Facility License, license number, and issuer of said license.  
None

11. List all residence addresses below. Include current and previous addresses for the past five years.

Current	STREET AND NUMBER	CITY, STATE, ZIP	FROM	TO
	_____	<u>Trinidad, Co 81082</u>	<u>1999</u>	<u>2014</u>

Previous	STREET AND NUMBER	CITY, STATE, ZIP	FROM	TO
	_____	_____	_____	_____
	_____	_____	_____	_____

12. List all current and former employers or businesses engaged in within the last five years (Attach separate sheet if necessary)

NAME OF EMPLOYER ADDRESS (STREET, NUMBER, CITY, STATE, ZIP) POSITION HELD FROM TO

Italico, LLC [REDACTED], Trinidad, CO 81082 President 2000-2014

m+m Distributing LLC - 422 N. Commercial - Trinidad, CO 81082 President 3/14 - 11/14

13. List the name(s) of relatives working in or holding a financial interest in the Colorado Marijuana Industry.

NAME OF RELATIVE RELATIONSHIP TO YOU POSITION HELD NAME OF LICENSEE

Geraldine DeAngelis Sister Sec/Treas m+m Distributing, LLC

14. Have you ever applied for, held, or had an interest in a State of Colorado Marijuana License, or loaned money, furniture or fixtures, equipment or inventory, to any Marijuana licensee? If yes, answer in detail.  YES  NO

Medical Marijuana License Approved 7/16/14  
Center 402-00949  
DPC 403-01495

15. Have you ever received a violation notice suspension or revocation, for a law violation, or have you applied for or been denied a Marijuana License anywhere in the U.S.? If yes, explain in detail.  YES  NO

16. Have you ever been convicted of a crime or received a suspended sentence, deferred sentence, or forfeited bail for any offense in criminal or military court or do you have any charges pending? Include all arrests. If yes, explain in detail; include date, charge and disposition.  YES  NO

17. Are you currently under probation (supervised or unsupervised), parole, or completing the requirements of a deferred sentence? If yes, explain in detail.  YES  NO

18. Have you ever had any STATE issued licenses suspended, revoked, or denied including a drivers license? If yes, explain in detail.  YES  NO

PERSONAL AND FINANCIAL INFORMATION

19a. Date of Birth [REDACTED] b. Social Security Number SSN [REDACTED] c. Place of Birth Trinidad, CO d. U.S. Citizen?  YES  NO

e. If Naturalized, State where N/A f. When [REDACTED] g. Name of District Court [REDACTED]

h. Naturalization Certificate Number N/A i. Date of Certification [REDACTED] j. If an Alien, Give Alien's Registration Card Number [REDACTED]

k. Permanent Residence Card Number N/A

l. Height 6'1" m. Weight [REDACTED] n. Hair Color Brown o. Eye Color Green p. Sex M q. Race W

r. Do you have a current Driver's License?  YES  NO If so, give State and Number [REDACTED]

14. Financial Information

*This section is to be completed by each individual applicant, all general partners of a partnership, and limited partners owning 10% (or more) of a partnership; all officers and directors of a corporation, and stockholders of a corporation owning 10% (or more) of the stock of such corporation; all limited liability company MANAGING members, and officers or other limited liability company members with a 10% (or more) ownership interest in such company*

20. Give name of bank where business account will be maintained; Account Name and Account Number; and the name or names of persons authorized to draw thereon.

International Bank  
320 N. Convent, Trinidad, CO 81082  
m+m Distributing, LLC [REDACTED]  
John Micheliza + Geraldine DeAngelis

AFFIDAVIT

State of Colorado )  
 ) ss.  
 County of Las Animas )

I, John Everett Micheliza, being first duly sworn, state that I am  
 Printed Name of Applicant

an applicant for a Retail Marijuana business for m+m Distributing, LLC  
 Name of Establishment

Located at 422 N. Commercial ST, Trinidad, Colorado;  
 Address of Establishment

and that in connection with said application, I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge.

In addition, I hereby state that I have not been convicted of a crime, fined, imprisoned, placed on probation, received a suspended sentence or forfeited bail for any offense in criminal or military court other than what has been reported within my application for said license, except traffic violations which did not result in suspension or revocation of my driver's license or conviction of driving under the influence of alcoholic beverages.

I fully understand that the Trinidad Police Department conducts a background investigation of all applicants (using this application for its beginning point), who are being considered for a Marijuana License. This investigation includes, but is not limited to, an investigation of past employment, financial stability, driving records and character. I hereby waive any and all rights that I may have to examine, review, or inspect any documents or information of whatever kind, form or nature, obtained in the course of the background investigation.

I hereby authorize any person who is contacted by the Trinidad Police Department's personnel to release any information to the Trinidad Police Department pertaining to the background investigation.

I also understand hereby that this application and any and all papers and other exhibits submitted by me or any person, government agency, former employer, private business, or any other individual or group of individuals become, upon submission to the Trinidad Police Department, the property of the City of Trinidad, State of Colorado, and can not and will not be returned to me under any circumstances whatsoever, and will not be disclosed to me.

I authorize the Trinidad Police Department to release any information or documents collected during the application process to any person or entity lawfully empowered to obtain this information or documents.

I further agree to release and hold harmless any person releasing such information to the Trinidad Police Department from any and all liability or claims that I may have against that person arising out of the release of such information.

I further agree to release and hold harmless the City of Trinidad, its elected officials, officers, agents and employees from any and all liability or claims which I may have arising out of the disclosure of such information to the Trinidad Police Department for use by the Trinidad Police Department in the consideration of my application for a Marijuana License, the disclosure or release of any information or documents by the Trinidad Police Department or agents thereof collected during the application process to any person or entity lawfully empowered to obtain such information or documents.

This Affidavit is made for purposes of inducing the Local Marijuana Licensing Authority of the City of Trinidad, Colorado, to approve the aforementioned Marijuana license application. This Affidavit is made with the knowledge and consent by me; and if this Affidavit for any reason proves to be false, the Trinidad Marijuana Authority may revoke the license previously issued to me in reliance upon this Affidavit and said revocation may be accomplished without the necessity of any hearing.

John C. Micheliza  
Signature of Applicant

The foregoing Affidavit was subscribed and sworn to before me this 23<sup>RD</sup> day of October, 2014, by Lorraine Williams

Witness my hand and official seal.

My commission expires August 21, 2018  
Lorraine Williams  
Notary Public

LORRAINE WILLIAMS  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20144032874  
COMMISSION EXPIRES AUGUST 21, 2018

**Owner/Manager Approval (Required)**

I, Geraldine DeAngelis, Owner/Manager of mvm Distributing LLC  
Owner or Manager's Name Printed Here Business Name Printed Here

acknowledge and approve the submittal of an application for John Micheliza  
Applicant's Printed Name Here

MMC-OPC  
EMPLOYEE



JOHN

Lic #: M17

Exp: 5/21/



DATE 06/04/2014

PD TRINIDAD  
2309 E MAIN ST  
TRINIDAD, CO 81082

RE: MICHELIZA, JOHN EVERETT  
SOC: [REDACTED]

DATE OF BIRTH: [REDACTED]

No Colorado record of arrest has been located based on above name and date of birth or through a search of our fingerprint files.

The Colorado Bureau of Investigation's database contains detailed information of arrest records based upon fingerprints provided by Colorado law enforcement agencies. Arrests which are not supported by fingerprints will not be included in this database. On occasion the Colorado criminal history will contain disposition information provided by the Colorado Judicial system. Additionally, warrant information, sealed records, and juvenile records are not available to the public.

Since a record may be established after the time a report was requested, the data is only valid as of the date issued. Therefore, if there is a subsequent need for the record, it is recommended another check be made.

Falsifying or altering this document with the intent to misrepresent the contents of the record is prohibited by law and may be punishable as a felony when done with intent to injure or defraud any person.

Sincerely,  
Ronald C. Sloan, Director  
Colorado Bureau of Investigation



Individual History Record
City of Trinidad, Colorado

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PLEASE PRINT CLEARLY IN BLACK INK

To be completed by each individual applicant, all general partners of a partnership, and limited partners owning 10% (or more) of a partnership; all officers and directors of a corporation, and stockholders of a corporation owning 10% (or more) of the stock of such corporation; all limited liability company MANAGING members, and officers or other limited liability company members with a 10% (or more) ownership interest in such company and all managers and employees of a Retail Marijuana License.

NOTICE: This individual history record provides basic information which is necessary for the licensing authority investigation. All questions must be answered in their entirety or your application may be delayed or not processed. EVERY answer you give will be checked for its truthfulness. A deliberate falsehood or omission will jeopardize the application as such falsehood within itself constitutes evidence regarding the character of the applicant.

1. Owner/Company Name M+M Distributing, LLC,
2. D/B/A (Doing Business As)
3. Business address 422 N. Commercial ST., Trinidad, CO 81082
4. Business License #

5. Your Full Name (last, first, middle) DeAngelis, Geraldine Marie
6. List any other names you have used Gerri

7. Mailing address (if different from residence)
8. Phone 719-846-3634

9. List All Other Retail Marijuana Licenses issued to Applicant (Attach separate sheet if necessary)
NIA
Location

10. Identify Retail Marijuana Cultivation Facility License, license number, and issuer of said license.
None

11. List all residence addresses below. Include current and previous addresses for the past five years.
Table with columns: Current, Previous, STREET AND NUMBER, CITY, STATE, ZIP, FROM, TO.
Entry: [Redacted], Trinidad, CO 81082, 1966, 2014

12. List all current and former employers or businesses engaged in within the last five years (Attach separate sheet if necessary)

NAME OF EMPLOYER	ADDRESS (STREET, NUMBER, CITY, STATE, ZIP)	POSITION HELD	FROM	TO
Italica LLC	[REDACTED], Trinidad, CO 81082	Sec / Treas	2000	2014
MJM Distributing LLC	422 N. Commercial, Trinidad, CO	Sec Treas	3/14	11/14

13. List the name(s) of relatives working in or holding a financial interest in the Colorado Marijuana Industry.

NAME OF RELATIVE	RELATIONSHIP TO YOU	POSITION HELD	NAME OF LICENSEE
John Micheliza	Brother	President	MJM Distributing, LLC

14. Have you ever applied for, held, or had an interest in a State of Colorado Marijuana License, or loaned money, furniture or fixtures, equipment or inventory, to any Marijuana licensee? If yes, answer in detail.  YES  NO

Medical Marijuana License Approved 7/16/14  
Center 402-00949  
OPC 403-01495

15. Have you ever received a violation notice suspension or revocation, for a law violation, or have you applied for or been denied a Marijuana License anywhere in the U.S.? If yes, explain in detail.  YES  NO

16. Have you ever been convicted of a crime or received a suspended sentence, deferred sentence, or forfeited bail for any offense in criminal or military court or do you have any charges pending? Include all arrests. If yes, explain in detail; include date, charge and disposition.  YES  NO

17. Are you currently under probation (supervised or unsupervised), parole, or completing the requirements of a deferred sentence? If yes, explain in detail.  YES  NO

18. Have you ever had any STATE issued licenses suspended, revoked, or denied including a drivers license? If yes, explain in detail.  YES  NO

PERSONAL AND FINANCIAL INFORMATION

19a. Date of Birth [redacted] b. Social Security Number SSN [redacted] c. Place of Birth Trinidad, CO d. U.S. Citizen? X YES \_\_\_ NO
e. If Naturalized, State where N/A f. When g. Name of District Court
h. Naturalization Certificate Number N/A i. Date of Certification j. If an Alien, Give Alien's Registration Card Number
k. Permanent Residence Card Number N/A
l. Height [redacted] m. Weight [redacted] n. Hair Color Brown o. Eye Color Green p. Sex F q. Race W
r. Do you have a current Driver's License? X YES \_\_\_ NO If so, give State and Number [redacted]

14. Financial Information

This section is to be completed by each individual applicant, all general partners of a partnership, and limited partners owning 10% (or more) of a partnership; all officers and directors of a corporation, and stockholders of a corporation owning 10% (or more) of the stock of such corporation; all limited liability company MANAGING members, and officers or other limited liability company members with a 10% (or more) ownership interest in such company

20. Give name of bank where business account will be maintained; Account Name and Account Number; and the name or names of persons authorized to draw thereon.

International Bank
320 N. Convent, Trinidad, CO 81082
M + M Distributing, LLC [redacted]
John Micheliza & Geraldine DeAngelis

AFFIDAVIT

State of Colorado )
) ss.
County of Las Animas )

I, Geraldine DeAngelis, being first duly sworn, state that I am
Printed Name of Applicant

an applicant for a Retail Marijuana business for M + M Distributing, LLC.
Name of Establishment

Located at 422 N. Commercial ST, Trinidad, Colorado;
Address of Establishment

and that in connection with said application, I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge.

In addition, I hereby state that I have not been convicted of a crime, fined, imprisoned, placed on probation, received a suspended sentence or forfeited bail for any offense in criminal or military court other than what has been reported within my application for said license, except traffic violations which did not result in suspension or revocation of my driver's license or conviction of driving under the influence of alcoholic beverages.

I fully understand that the Trinidad Police Department conducts a background investigation of all applicants (using this application for its beginning point), who are being considered for a Marijuana License. This investigation includes, but is not limited to, an investigation of past employment, financial stability, driving records and character. I hereby waive any and all rights that I may have to examine, review, or inspect any documents or information of whatever kind, form or nature, obtained in the course of the background investigation.

I hereby authorize any person who is contacted by the Trinidad Police Department's personnel to release any information to the Trinidad Police Department pertaining to the background investigation.

I also understand hereby that this application and any and all papers and other exhibits submitted by me or any person, government agency, former employer, private business, or any other individual or group of individuals become, upon submission to the Trinidad Police Department, the property of the City of Trinidad, State of Colorado, and can not and will not be returned to me under any circumstances whatsoever, and will not be disclosed to me.

I authorize the Trinidad Police Department to release any information or documents collected during the application process to any person or entity lawfully empowered to obtain this information or documents.

I further agree to release and hold harmless any person releasing such information to the Trinidad Police Department from any and all liability or claims that I may have against that person arising out of the release of such information.

I further agree to release and hold harmless the City of Trinidad, its elected officials, officers, agents and employees from any and all liability or claims which I may have arising out of the disclosure of such information to the Trinidad Police Department for use by the Trinidad Police Department in the consideration of my application for a Marijuana License, the disclosure or release of any information or documents by the Trinidad Police Department or agents thereof collected during the application process to any person or entity lawfully empowered to obtain such information or documents.

This Affidavit is made for purposes of inducing the Local Marijuana Licensing Authority of the City of Trinidad, Colorado, to approve the aforementioned Marijuana license application. This Affidavit is made with the knowledge and consent by me; and if this Affidavit for any reason proves to be false, the Trinidad Marijuana Authority may revoke the license previously issued to me in reliance upon this Affidavit and said revocation may be accomplished without the necessity of any hearing.

Heraldine De Angelis  
Signature of Applicant

The foregoing Affidavit was subscribed and sworn to before me this 23<sup>rd</sup> day of October, 2014, by Gerraine Williams

Witness my hand and official seal.

My commission expires August 21, 2018  
Gerraine Williams  
Notary Public

GERRAINE WILLIAMS  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20144032874  
COMMISSION EXPIRES AUGUST 21, 2018

**Owner/Manager Approval (Required)**

I, John E Micheliza, Owner/Manager of M+M Distributing LLC  
Owner or Manager's Name Printed Here Business Name Printed Here

acknowledge and approve the submittal of an application for Heraldine De Angelis  
Applicant's Printed Name Here

JAN 19 2001

MMC-OPC  
EMPLOYEE



GERALDINE

Lic #: M

Exp: 5/21



DATE 06/04/2014

PD TRINIDAD  
2309 E MAIN ST  
TRINIDAD, CO 81082

RE: DEANGELIS, GERALDINE MARIE  
SOC: [REDACTED]

DATE OF BIRTH: [REDACTED]

No Colorado record of arrest has been located based on above name and date of birth or through a search of our fingerprint files.

The Colorado Bureau of Investigation's database contains detailed information of arrest records based upon fingerprints provided by Colorado law enforcement agencies. Arrests which are not supported by fingerprints will not be included in this database. On occasion the Colorado criminal history will contain disposition information provided by the Colorado Judicial system. Additionally, warrant information, sealed records, and juvenile records are not available to the public.

Since a record may be established after the time a report was requested, the data is only valid as of the date issued. Therefore, if there is a subsequent need for the record, it is recommended another check be made.

Falsifying or altering this document with the intent to misrepresent the contents of the record is prohibited by law and may be punishable as a felony when done with intent to injure or defraud any person.

Sincerely,  
Ronald C. Sloan, Director  
Colorado Bureau of Investigation



# COMMERCIAL SCHEDULE OF PROTECTION PROPOSAL AND SALES AGREEMENT

Branch: 11315

Dan Baker

Today's Date: 10/03/2014

Customer Information			
Business Name:	M&M Distributing	Contact Phone:	719-422-8298
Address:	422 N Commercial St TRINIDAD, CO 81082	Billing Address:	422 N Commercial St TRINIDAD, CO 81082

Financial Summary
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**Total Equipment and Installation Charge: \$18,820.38**

Customer agrees to pay the Total Equipment and Installation Charge shown above, plus applicable taxes (collectively, the "Equipment Charges"). Simultaneously with the execution of this Agreement, Customer shall pay \$9,410.19 of these Equipment Charges, with a remaining balance of \$9,410.19 to be paid upon completion of the installation and as a precondition of activation of the Equipment and, if applicable, connection to the Central Station or direct connection service.

**Recurring Service Charges: \$39.95 per month**

In addition to the Equipment Charges, Customer agrees to pay the Recurring Service Charges shown above, plus applicable taxes (collectively, the "Service Charges") for the usage of any Protection One Owned Equipment and any other recurring services selected, such Service Charges to be paid Monthly, in advance. Customer has made an advance payment of Service Charges in the amount of \$0.00 at the time of sale.

Payment at Time of Sale			
Payment Type	Details	Amount Paid	Due at Install
Check	Check #: 1020	\$9,410.19	\$9,410.19

**ANY AND ALL EQUIPMENT AND/OR SERVICES PROVIDED BELOW ARE DESCRIBED IN AND SUBJECT TO THE MASTER TERMS AND CONDITIONS**

Site Location Information			
Location Name:	M&M Distributing		
Address:	422 N Commercial St TRINIDAD, CO 81082	Phone:	719-422-8298
		Cell:	[REDACTED]
Site #			

System Design Information			
System Design Name:	New	Job#:	

Transaction Type	
Outright Sale	
<b>Warranty Period</b>	<b>Extended Service Plan</b>
90 Days	Not Included

<b>Alarm System Services</b>	
N/A	
<b>Access Control Systems</b>	
N/A	
<b>Video Services</b>	
N/A	
<b>Signaling Equipment &amp; Services</b>	
<b>Device Type</b>	<b>Service Selections</b>
N/A	N/A
<b>Reporting and Supervision</b>	
<b>Inspections</b>	
N/A	
<b>IdentityProtection</b>	
N/A	

<b>Equipment List</b>		
Quantity	Material Code	Description
2	TV5242N	16 Channel DS DVR, 480fps, 960H with 2TB 700TVL EZ Network
7	TV3951N	Indoor Day/Night Mini-Dome Camera, 620TVL, 2.8-12mm
2	CA0308N	Surveillance power supply, 16 outputs, 12 VDC 12.5 A
1	BT1128N	Surge Protector w/Battery backup 7 outlet 600VA 6ft
5000	WR1615N	RG59 95% CCA BRD+18/2 STR BLCK 5C
13	TV4782N	Indoor Dome w/ IR & VF Lens, 600 TVL, 12VDC, White Housing 2.8 - 12mm
9	TV5021N	Color 600TVL Dome w/ Chameleon Cover, 2.8-12mm, 3-axis, Dual Voltage

<b>Equipment &amp; Installation</b>	<b>\$18,317.38</b>
<b>Monthly Fee</b>	<b>\$0.00</b>

<b>Scope of Work</b>
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Install a CCTV system to help protect the property and its occupants.  
 System will meet current MMED requirements.

Protection1 will install and warranty the equipment listed to meet current MMED regulations, program and network the DVRs and provide training.

Pull additional Cat5e cable for networking as per floor plan indicates.

Please see floor plan for placement.

Pull 2, 10'-20' VGA cables for monitors.

System Design Information		
System Design Name:	New	Job#:

Transaction Type	
Protection One Owned Equipment	
Warranty Period	Extended Service Plan
90 Days	Included in Rate

Alarm System Services
Burglary

Access Control Systems
N/A

Video Services
N/A

Signaling Equipment & Services	
Device Type	Service Selections
Alarm Communication by Conventional Telephone - Primary AlarmNet GSM	eSuite Premier SecureCell

Reporting and Supervision
Open/Close Logging Service

Inspections
N/A

IdentityProtection
N/A

Equipment List		
Quantity	Material Code	Description
1	PH1258N	Contact, Surface Mount, White with Logo
1	PH1258N	Contact, Surface Mount, White with Logo
1	PH1258N	Contact, Surface Mount, White with Logo
1	KP0701N	Pro1 Large Fix-Eng Keypad (Hardwire)
1	MH1214N	PIR, 35, 0/40/80 LBS PI
1	KT1232N	Kit, 320P1, Hardwire. Includes: 320P1, WAVE2, IS2535, ?620/621, battery, and video.
1	SR0401N	Siren/2 Tone/Indoor
1	CA1880N	AlarmNet GSM Digital Cell Communicator - Knockout Mount
1	CA0084N	Wired 8 - Zone Expander

Equipment & Installation	\$503.00
Monthly Fee	\$39.95

### Scope of Work

Install a new burglar alarm to help protect the property and its' occupants.

Install new security system place devices according to floor plan.

Protection1 will install a new security system, contact all entry points and use any existing hardwired devices.

Test system, train customer.

### Master Terms And Conditions

- 1. Premises.** Customer ("Customer" or "you"), as a commercial enterprise, may now or in the future have one or more physical business locations ("Premises") for which you desire to obtain from Protection One ("Protection One," "we" or "us") various Equipment and Services. Each of your Premises to be covered by this Agreement shall be listed and described in this Agreement or in a separate Additional Premises Rider which may be completed and executed by the parties. This Agreement will supersede and govern over any inconsistent provisions contained in any other prior agreements, written or oral, between the parties concerning any Premises covered by this Agreement.
- 2. Charges.** In consideration of the Equipment and Services we provide hereunder, you agree to pay Protection One the Equipment Charges and the Service Charges shown above, any activation or other fees, plus applicable taxes (collectively, the "Charges"), in accordance with the Payment Terms set forth above. **OUR CHARGES UNDER THIS AGREEMENT ARE BASED ON YOUR AGREEMENT TO RECEIVE AND PAY FOR THE SERVICES FOR AT LEAST THE FULL INITIAL TERM DESCRIBED IN PARAGRAPH 3 BELOW.** If you prepay the total amount due under this Agreement prior to the end of the Initial Term of this Agreement, then there is no penalty or refund except as otherwise provided herein. Payment of the Equipment Charges is a precondition to the activation of the Equipment and any Services you have selected. We may impose a one-time late charge on each payment that is more than ten (10) days past due, which shall be \$5.00 or the highest amount permitted by law, whichever is less. We may impose returned check charges of up to \$25.00 on each returned check. You consent and authorize us to: (i) report your payment performance under this Agreement to credit reporting agencies; (ii) obtain and transmit your Taxpayer ID Number to our affiliates and credit reporting agencies for purposes of verifying your credit history and rating; and (iii) record our telephone conversations with you and the users of the Equipment and Services for verification and quality control purposes. **YOU AGREE NOT TO SEND PROTECTION ONE PAYMENTS MARKED "PAID IN FULL," "WITHOUT RECOURSE", OR WITH SIMILAR LANGUAGE. IF YOU SEND SUCH A PAYMENT, WE MAY ACCEPT IT WITHOUT LOSING ANY OF OUR RIGHTS UNDER THIS AGREEMENT OR AT LAW, AND YOU WILL REMAIN OBLIGATED TO PAY ALL FURTHER AMOUNTS OWED TO US. ALL WRITTEN COMMUNICATIONS CONCERNING DISPUTED AMOUNTS, INCLUDING ANY CHECK OR OTHER PAYMENT INSTRUMENT THAT INDICATES THAT THE PAYMENT CONSTITUTES "PAYMENT IN FULL" OF THE AMOUNT OWED OR THAT IS TENDERED WITH OTHER CONDITIONS OR LIMITATIONS OR IN FULL SATISFACTION OF A DISPUTED AMOUNT, MUST BE MAILED OR DELIVERED TO US AT: PROTECTION ONE ALARM MONITORING, INC., ATTENTION: EXECUTIVE CUSTOMER RELATIONS, 800 E. WATERMAN, WICHITA, KS 67202**
- 3. Term.** The initial term of this Agreement shall be for Five (5) years (the "Initial Term"). The Initial Term shall begin on the date the Equipment is installed and is operational, and when any necessary communications connection is completed. In the case of the installation of Equipment or the performance of Services at multiple Premises, the Initial Term for each such individual Premises shall begin on the date the Equipment is installed and is operational at each such individual Premises. In the case of a system takeover or renewal of an existing agreement where no new equipment is installed, the Initial Term for each such individual Premises shall begin at each such individual Premises when any necessary communications connection is completed, or the date the new agreement is signed, whichever occurs last. The term of this Agreement and of each individual Premises shall automatically renew for successive one (1) year renewal terms unless we receive your written termination notice at least sixty (60) days before the end of the then current term. In the event that you terminate this Agreement or any individual Premises prior to the end of the then-current term, you agree to pay us, in addition to all other Charges due prior to termination, the Charges remaining to be paid for the unexpired portion of the term of this Agreement or of any individual Premises. Customer acknowledges and agrees that this amount is an agreed upon early termination charge in the nature of liquidated damages, and is not a penalty.
- 4. Increases in Charges.** We may increase our Service Charges for each Premises after the third year of the Initial Term for each such Premises (but no more than once in any twelve (12) month period) by giving you thirty (30) days prior written notice.
- 5. Additional Charges.** Additionally, you agree to pay, or to reimburse us if we pay, all false alarm fines and assessments, and all taxes, fees or other charges of any local governmental authority that relate to the Equipment or our Services, other than taxes assessed on our net income. You further agree to pay: (a) all telecommunications charges for area code, telephone numbering or other changes; (b) our then-current charge for reprogramming the Equipment to comply with any area code, telephone numbering or other changes; (c) any increases in our cost for facilities used for transmitting alarm signals under this Agreement; and (d) our charges resulting from services we may add to continue to provide the Services to you, due to police, fire or other emergency response policies of any governmental body, such as physical or visual alarm verification requirements. In addition, you shall be responsible for modifications to the Equipment due to changes in standards and regulations of governmental or regulatory authorities, including but not limited to, the Federal Communications Commission ("FCC"), any state or local Fire Marshal, the National Fire Protection Association, Underwriters Laboratories, fire or police department. You agree to pay a service charge if we respond to a service call or alarm at your Premises which is due to your failure to follow operating instructions or to properly lock or close a

window, door or other protected point, or improper or unauthorized adjustment to any of the Equipment. Payment for such additional charges is due upon receipt of our invoice for such charges.

**6. Installation and Sale.** (A) We install Equipment according to local codes and ordinances (if applicable) and according to your particular preferences. Installation of Equipment is subject to the following conditions: (1) We can access your Premises without interruption during our installer's normal working hours; (2) The installation may require drilling into various parts of your Premises; (3) You will provide 120V AC electrical outlets for power equipment in locations designated by the installer; and (4) You will be responsible for lifting and replacing carpeting, if required, for installation of floor mats or wiring. There may be areas where the installer determines that it is impractical to conceal equipment and wiring. You must within ten (10) days after the installation is complete, inspect the Equipment and notify us in writing of any problems. Otherwise, you will be deemed to have conclusively accepted the Equipment. If asbestos or other hazardous materials ("Hazardous Materials") are encountered during installation, then installation work will cease until you, at your sole cost and expense, remove such Hazardous Materials. Protection One shall not be responsible for securing any Premises during the period of installation. (B) Ownership of the Equipment that we install under this Agreement shall be described in the paragraph titled "Transaction Type" on page 1 of this Agreement, or on a separate Additional Premises Rider or Schedule of Protection, and shall be one of the following: (i) **Outright Sale.** If you have elected to purchase the Equipment, then, except as set forth below, you will own the Equipment we install at your Premises when you pay the full purchase price described on page 1 of this Agreement, or on a separate Additional Premises Rider or Schedule of Protection. Notwithstanding anything in this Agreement to the contrary, ownership of (a) any communication device that makes use of radio, cellular or internet communication paths (including without limitation, all equipment associated with AlarmNet<sup>®</sup>) shall be retained by Protection One or its owner, and (b) certain intellectual property associated with the Equipment and our Services, such as certain software, data and installer/programming codes, shall remain the property of their respective owners. (ii) **Protection One Owned Equipment.** We retain ownership of the Equipment we install at your Premises. Upon the termination of this Agreement or any individual Premises, you agree that we may enter your Premises and remove our Equipment (including external signs and decals) and/or disable the Equipment. Should you fail or refuse to allow us access to your Premises, you also agree to: (a) pay us our reasonable charges for the Equipment, and (b) reimburse us for any other costs (including reasonable attorneys' fees) that we may incur in seeking to gain access to remove the Equipment and/or to collect such charges. We have no obligation to repair or redecorate your Premises after any such removal. Our removal, disabling or abandonment of such Equipment does not constitute a waiver of our right to collect any unpaid Charges. (iii) **Third Party Financed Sale.** If you have elected to finance the purchase of some or all of the Equipment with a third party lender or leasing company, then title to the Equipment may be held by your lender/lessor as security for your loan/lease obligations. The terms of your agreement with the lender/lessor may require you to maintain insurance, may make you responsible for various other costs and fees, and may obligate you to pay the lender/lessor regardless of Protection One's performance hereunder. Protection One makes no recommendations on lending or leasing sources and is not responsible for your selection of a lending or leasing source, or the terms of your agreement with the lender/lessor, and Protection One hereby disclaims any and all liability in connection with your arrangements with your lender/lessor. (iv) **Conversion of Existing Equipment.** If you currently have existing and compatible equipment at your Premises, we may utilize such equipment. Such existing Customer owned equipment shall remain your property. We may elect to repair or replace your nonfunctioning existing equipment to provide our Services and you agree to pay us our then-current charges for any such replacement equipment, and you agree that any repairs needed to make the existing equipment operational will be performed on a time and materials basis at our then-current time and materials rates. We do not warrant equipment that we do not install. Our pricing and your costs under this Agreement are based on the assumption that any existing equipment in your Premises is compatible and is in good operating condition. If we determine that your existing equipment is incompatible or is not in good operating condition, then additional charges may apply. (C) **Risk of Loss.** Protection One is not liable or responsible for any damage, loss or casualty of or to any Equipment from any cause beyond our reasonable control. NO SUCH DAMAGE, LOSS OR CASUALTY WILL AFFECT YOUR RESPONSIBILITIES AND OBLIGATIONS UNDER THIS AGREEMENT. Unless you have purchased and paid the full purchase price for the Equipment, in which case the risk of loss to the Equipment is solely yours, you must keep the Equipment insured against all risks of loss in an amount equal to the replacement cost and, at our request, have us listed on the policy as the "loss payee."

**7. Termination of Services; Default.** (A) We may, at any time upon twenty-four (24) hours prior notice, terminate this Agreement and the Services at our option and without liability if: (1) Our Central Station, equipment or facilities, or the telephone network, are destroyed, damaged or malfunction so that it is impractical for us to continue the Services; (2) We cannot acquire or retain the transmission connections or authorization to transmit signals between your Premises and our Central Station or between our Central Station and any Emergency Response Providers; (3) We determine that it is impractical to continue our Services due to the modification or alteration of your Premises after installation of the Equipment; (4) The Equipment generates excessive false alarms due to circumstances beyond our reasonable control; or (5) You or your personnel fail to follow our recommendations to repair or replace any defective parts of the Equipment not covered under the Limited Warranty or Extended Service Plan (if applicable), or fail to follow operating instructions for, or tamper with, the Equipment. Additionally, upon thirty (30) days prior notice to you, we may terminate this Agreement for any other reason at our discretion. If we terminate this Agreement for any of these reasons, then we will refund any advance Service Charges for Services to be provided after the termination date, less any Equipment Charges still due, but we shall not be liable as a result of any such termination. (B) In addition, you shall be in breach, and we may, at our option, terminate this Agreement and exercise our remedies for the enforcement of this Agreement if: (1) You fail to pay any Charges or other amounts due hereunder or under any other agreement you have with us, and such failure continues for ten (10) days after we provide written notice to you; (2) Any representation you have made herein or in any other agreement you have with us is determined to be materially untrue; (3) you breach any warranty contained herein or in any other agreement you have with us; (4) you otherwise fail to comply with any non-monetary obligation or covenant contained herein or in any other agreement you have with us, and such failure continues for thirty (30) days after we provide written notice to you; (5) You deny us reasonable access to the Equipment located at any Premises; or (6) You become a debtor in a bankruptcy or other insolvency proceeding. We may charge you interest at the highest legal rate allowed on past due amounts. You agree to pay us all reasonable costs, fees and expenses incurred by us in connection with the enforcement of this Agreement, including collection expenses, court costs, and reasonable attorneys' fees. (C) Any default by you under this Agreement shall also be a default by you under any other agreement between you and us.

**8. Representations and Warranties.** You represent and warrant that you: (a) requested the Equipment and Services specified in this Agreement for use in commercial purposes and not for personal, family or household purposes or for or on behalf of a third party; (b) own the Premises or otherwise have the legal authority to authorize us to install the Equipment in the Premises; and (c) will comply with all laws, codes, and regulations pertaining to the Premises and your use of the Equipment or our Services.

9. **We Are Not an Insurer.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, YOU AGREE THAT: (A) WE ARE NOT AN INSURER OF YOU, PERSONS WORKING OR OTHERWISE PRESENT AT YOUR PREMISES, OR OF YOUR PREMISES OR ITS CONTENTS; (B) IT IS YOUR RESPONSIBILITY TO OBTAIN ADEQUATE INSURANCE COVERING YOU, YOUR PREMISES AND ITS CONTENTS, YOUR EMPLOYEES, INVITEES AND OTHER AFFECTED PERSONS AND PROPERTY; (C) OUR CHARGES ARE BASED ON THE DETERRENCE AND OTHER VALUE OF THE EQUIPMENT AND SERVICES WE PROVIDE AND OUR LIMITED LIABILITY UNDER THIS AGREEMENT, AND ARE NOT BASED ON THE VALUE OF YOUR PREMISES OR ITS CONTENTS, OR THE LIKELIHOOD OR POTENTIAL EXTENT OR SEVERITY OF PERSONAL INJURY (INCLUDING DEATH) TO AFFECTED PERSONS; AND (D) THE EQUIPMENT AND SERVICES MAY NOT ALWAYS OPERATE AS INTENDED FOR VARIOUS REASONS, INCLUDING OUR NEGLIGENCE OR OTHER FAULT. WE CANNOT PREDICT THE POTENTIAL AMOUNT, EXTENT OR SEVERITY OF ANY DAMAGES OR INJURIES THAT MAY BE INCURRED BY YOU AND OTHER PERSONS WHICH COULD BE DUE TO THE FAILURE OF THE EQUIPMENT OR SERVICES TO WORK AS INTENDED. AS SUCH: (I) YOU AGREE THAT THE LIMITS ON OUR LIABILITY AND THE WAIVERS AND INDEMNITIES SET FORTH IN THIS AGREEMENT ARE A FAIR ALLOCATION OF RISKS AND LIABILITIES BETWEEN YOU, US AND ANY AFFECTED THIRD PARTIES; (II) YOU WILL LOOK EXCLUSIVELY TO YOUR INSURER FOR FINANCIAL PROTECTION FROM SUCH RISKS AND LIABILITIES; AND (III) EXCEPT AS PROVIDED IN PARAGRAPH 10 BELOW, YOU WAIVE ALL RIGHTS AND REMEDIES AGAINST US, INCLUDING ALL RIGHTS OF SUBROGATION, THAT YOU, ANY INSURER OR ANY OTHER THIRD PARTY MAY HAVE DUE TO ANY LOSSES OR INJURIES YOU OR OTHERS MAY INCUR. THIS PARAGRAPH 9 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT AND YOUR ACCOUNT, AS WELL AS VOLUNTARY PAYMENT IN FULL BY YOU, ANY LEGAL PROCEEDINGS BY US TO COLLECT A DEBT OWED BY YOU, ANY BANKRUPTCY BY YOU, AND/OR ANY SALE BY US OF YOUR ACCOUNT.

**10. Indemnity; Limitation of Liability.**

(a) **Indemnity.** We will hold you, your officers, directors, agents and employees, harmless from any claim, demand, losses, damages, injuries (including death), liabilities or other expenses ("Losses") to the extent and only to the extent that such Losses result solely and directly from the negligent acts or omissions of Protection One, its agents or employees, during and within the scope of employment of such persons while present at a Premises; provided, however, that the terms of this Paragraph 10(a) shall not apply to, and we shall not in any event be liable for, Losses: (i) arising out of, resulting from, or in any way due or attributable to, the condition, nonfunctioning, malfunction, faulty design, faulty installation, or failure in any respect of the Equipment or Services to operate or perform as intended (collectively, "Alarm Failure Events"), regardless of whether such Alarm Failure Events arise out of the negligent acts or omissions of Protection One, its agents, employees, subcontractors and/or suppliers (including software suppliers); and/or (ii) any loss of or damage to any computer system or electronic data arising out of, resulting from, or attributable to, an Alarm Failure Event or your request for our technician to access your systems or program your firewalls, routers and switches. Any liability of Protection One for Alarm Failure Events or Losses arising out of Alarm Failure Events is strictly limited pursuant to Paragraph 10(b) below.

(b) **Limitation of Liability for Alarm Failure Events.** NEITHER WE NOR ANY PERSON OR ENTITY AFFILIATED WITH US SHALL BE LIABLE FOR ANY LOSSES ARISING DIRECTLY OR INDIRECTLY FROM ANY ALARM FAILURE EVENT. WE ARE NOT LIABLE UNDER ANY CIRCUMSTANCES FOR THE ADEQUACY OF THE EQUIPMENT DESIGN OR DESIGN CRITERIA ESTABLISHED BY YOU, YOUR DESIGN PROFESSIONAL, OR LOCAL CODE REQUIREMENTS. IF, NOTWITHSTANDING THE PROVISIONS OF THIS PARAGRAPH 10(B), WE OR ANY PERSON OR ENTITY AFFILIATED WITH US ARE DETERMINED TO BE RESPONSIBLE FOR ANY LOSSES ARISING FROM ANY ALARM FAILURE EVENT, YOUR CLAIMS AGAINST US AND/OR ANY PERSON OR ENTITY AFFILIATED WITH US SHALL BE LIMITED TO \$2,000.00. THIS AMOUNT IS YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY ALARM FAILURE EVENT, EVEN IF CAUSED BY PROTECTION ONE'S NEGLIGENCE OR THAT OF OUR AFFILIATES OR OUR RESPECTIVE EMPLOYEES OR AGENTS, BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, OR OTHER FAULT. AT YOUR REQUEST, WE MAY IN OUR SOLE DISCRETION AGREE TO ASSUME ADDITIONAL LIABILITY BY THE ATTACHMENT OF AN AMENDMENT TO THIS AGREEMENT STATING THE EXTENT OF OUR ADDITIONAL LIABILITY AND THE ADDITIONAL COST TO YOU. YOU AGREE THAT WERE WE TO HAVE LIABILITY GREATER THAN THAT STATED ABOVE, WE WOULD NOT PROVIDE THE EQUIPMENT OR SERVICES.

(c) **Intellectual Property Indemnification.** If Protection One has received from the manufacturers of the Equipment we install, an agreement to indemnify and/or defend any claim or suit or proceeding brought against Protection One based on a claim that the sale, use or transfer of any Equipment is an infringement of any third party's patent or property rights, then Protection One shall indemnify you and defend you against all such claims to the extent (and only to the extent) such an indemnity and/or defense is provided by the pertinent Equipment manufacturers. Should you receive notice that the Equipment allegedly infringes the rights of any third party, you shall promptly notify Protection One in writing, and shall give full authority, information and assistance to Protection One in connection with its investigation of the claim, and in connection with any settlement or compromise of such claim made with your consent, which shall not be unreasonably withheld, conditioned or delayed. In addition, Protection One may, at its sole cost and expense, elect to replace or modify the Equipment so that alleged infringement will not exist; provided, however, that such replacement equipment or modified equipment will continue to have at least the same functionality and performance specifications as the Equipment installed pursuant to this Agreement, and shall be acceptable to you in your reasonable discretion. Protection One shall not have any other liability to you with respect to claims of intellectual property infringement.

(d) **Consequential Damages.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL WE BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECULATIVE, SPECIAL, EXEMPLARY, OR OTHER INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS, PROFITS, USE, DATA, OR OTHER ECONOMIC ADVANTAGE, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(e) **Survival.** The terms of this Paragraph 10 shall survive the termination of this Agreement and of your Account, as well as voluntary payment in full by you, any legal proceedings by us to collect a debt owed by you, any bankruptcy by you, and/or any sale by us of your Account.

**11. Hold Harmless.** If any third party files any claim or legal action against us, or any other person or entity authorized to act on our behalf, arising from any Alarm Failure Event as defined in Paragraph 10(a) above, then you agree to indemnify, defend and hold us, completely harmless from any such actions, including all damages, expenses, costs, and attorneys' fees we incur. This indemnification shall apply even if such actions arise from our negligence, breach of contract, breach of warranty, strict liability or other fault (and/or the negligence, breach of contract, breach of warranty, strict liability or other fault of our subcontractors and/or suppliers, including our software suppliers), subject to our limited liability set forth above. This provision shall survive the termination of this Agreement and your Account, as well as voluntary payment in full by you, any

legal proceedings by us to collect a debt owed by you, any bankruptcy by you, and/or any sale by us of your Account.

**12. Customer Duties.** You agree to: (a) instruct all persons who use the Equipment on its proper use; (b) test the Equipment's protective devices and send test signals monthly to our Central Station; (c) turn off, control or remove all air conditioning systems, heaters and other items that interfere with alarm detection devices; (d) notify us immediately if a problem with the Equipment occurs; (e) obtain and keep in effect all permits and licenses that may be required for the installation and operation of the Equipment; (f) pay all usage fees imposed by any governmental authority in connection with the Equipment; (g) provide us a complete Monitoring Information Schedule so we may call your designated contacts in the event we reasonably believe there is an emergency at your Premises; (h) provide us any other emergency information we may request; (i) promptly update us in writing with any changes to your Monitoring Information Schedule; and (j) notify us prior to any change in your phone service, including, but not limited to a disconnection of your regular phone line or any change in vendors of your phone service. Your failure to perform under this Paragraph 12 is a material breach of this Agreement. You agree that we may provide the information on the Monitoring Information Schedule to any governmental authority having jurisdiction over us or the Equipment. **LOCAL AUTHORITIES MAY NOT RESPOND TO ALARM NOTIFICATIONS UNTIL ALL PERMITS AND LICENSES FOR USE OF THE EQUIPMENT HAVE BEEN OBTAINED, AND THEREFORE WE MAY NOT BEGIN MONITORING THE EQUIPMENT, AND MAY NOT DISPATCH EMERGENCY AUTHORITIES IN THE EVENT OF AN ALARM ACTIVATION, UNTIL YOU HAVE OBTAINED, AT YOUR EXPENSE, ALL NECESSARY PERMITS AND LICENSES, AND PROVIDED US WITH THE LICENSE OR PERMIT NUMBER.**

**13. Services.**

**A. Monitoring Services.** If you have subscribed to Monitoring, Signal Receiving and Notification Services, we shall program the Equipment to communicate to our monitoring facility ("Central Station"). When the Central Station receives an alarm signal from the Equipment (an "Alarm Event"), we will make reasonable efforts, consistent with local laws and our response policies, to contact the appropriate local emergency response provider ("Emergency Response Provider" or "ERP"), and the first person designated on your Monitoring Information Schedule. In the event a burglar alarm signal or fire signal registers at the Central Station, we may, in our sole discretion, endeavor to contact the Premises by telephone to verify that the Alarm Event is not a false alarm. Local governmental regulations and industry standards designed to reduce false alarms may result in conditions or restrictions on the dispatch of ERPs in response to an Alarm Event, and such conditions or restrictions may result in delays of notification of authorities or require that additional measures be taken to verify the Alarm Event before dispatch. We do not guarantee that such additional measures will be successful or that Emergency Response Providers will be dispatched should an Alarm Event occur. In the event a supervisory signal or trouble signal registers at our Central Station, we shall endeavor to notify the Premises or the first available person designated on your Monitoring Information Schedule. We may, without notice to you, in response to governmental or insurance requirements, or otherwise in our sole discretion, alter, amend or discontinue any of our policies and procedures for alarm response. Also, you acknowledge and agree that any special instructions provided by you for the handling of alarm signals must be presented and agreed to by us in writing. We may, in our sole discretion, reject your special instructions. You understand that any deviation from our normal Alarm Event handling procedures may result in increased risk of loss or damage to you and your Premises.

(i) **Telecommunications.** You agree to provide a traditional telephone connection to the Public Switched Telephone Network. Such connection shall have priority over any other telephone or other equipment, and shall be within ten (10) feet of the Equipment control panel. You acknowledge that your use of DSL, ADSL, Digital Phone, or Voice over Internet Protocol (VoIP), or other internet based phone services may cause signal transmission to our Central Station may be interrupted, and that we do not recommend use of such services for signal transmission unless supplemented by a backup service which may be provided by us for an additional charge. If the Equipment is configured to operate over such nontraditional service, or if you change your phone service to a nontraditional phone service after installation, then you acknowledge that signal transmission may be interrupted by irregularities or changes in that service, power outages, and other circumstances beyond our control. **ACCORDINGLY, IMMEDIATELY AFTER THE INSTALLATION OF DSL, ADSL, DIGITAL PHONE, VoIP, OR OTHER BROADBAND OR INTERNET PHONE SERVICE YOU MUST NOTIFY US AND MUST TEST THE EQUIPMENT'S SIGNAL TRANSMISSION WITH THE CENTRAL STATION.** At your request, we may provide alternative forms of alarm communication utilizing your broadband internet service or a radio or cellular based system. You authorize us, on your behalf, to request services, orders or equipment from a telephone company or other company providing signal transmission or reception services or facilities under this Agreement. These services include providing lines, signal paths, scanning, transmission and/or reception. You agree that the telecommunication provider's liability is limited to the same extent our liability is limited pursuant to the terms of this Agreement.

(ii) **Digital Communicator.** If connection to our Central Station is to be by Digital Communicator, you agree to provide a connection via a registered telephone jack to a telephone channel required for the Equipment. Such connection shall have priority over any other telephone or Customer equipment, and shall be within ten (10) feet of the Equipment control panel. At your request, and at your sole cost and expense, we will provide such connection. You also acknowledge that our Central Station cannot receive signals should your transmission mode become non-operational for any reason, and that signals from the digital communicator cannot be received if the transmission mode is cut, interfered with, or is otherwise damaged.

(iii) **Radio Interface.** If connection to our Central Station is to be by radio frequency, such as cellular or private radio, there may be times when the Equipment will be unable to acquire, transmit, or maintain an alarm signal, and that radio frequency transmissions may be impaired or interrupted by a variety of conditions and circumstances beyond our control, including storms and power failures. Accordingly, the utilization of an additional means of communications is recommended. Also, changes in rules, regulations and policies of the FCC and other governmental bodies may require discontinuation or modification of some or all of these Services.

**B. Internet Protocol Based Services.** If any of the Services you select communicate or transmit over an internet protocol based service, you acknowledge and agree that: (i) you will maintain 120V AC power supply for each device; (ii) we are not responsible for your network or internet services, which may be affected by conditions beyond our control, and that any interruptions in your network or internet service may cause the Services to fail to operate as intended; (iii) you may be required to maintain a static IP address, which may require you to incur additional costs, and that any changes to your IP address may cause a service interruption; (iv) you may be required to open certain port(s) on your firewall for proper communication; and (v) you are responsible for the configuration of your routers, firewalls, switches, and hubs, if applicable, to ensure communication with our Central Station.

C. **Limited Warranty.** Subject to the limitations and exclusions set forth below, during the Warranty Period following installation reflected on page 1 of this Agreement, or on a separate Additional Premises Rider or Schedule of Protection, we will at our cost, repair or, at our option, replace, any defective part of the Equipment we install, including wiring, and will make any needed mechanical adjustments. We will use new or reconditioned parts for replacements. Our obligations under this Paragraph are for your benefit only, and may not be enforced by any other person. The laws of your state may give you rights in addition to or different from those described herein.

D. **Extended Service Plan.** Subject to the limitations and exclusions set forth below, if you have subscribed to our Extended Service Plan, then in lieu of our Limited Warranty obligation, we will at our cost repair the Equipment we install for the duration of the term of such Extended Service Plan. Your participation in the Extended Service Plan will automatically renew for successive thirty (30) day terms at our then-current Extended Service Plan rates unless terminated by either party's written notice given at least thirty (30) days before the end of the then-current term. If you subscribe to the Extended Service Plan after the initial installation, the Equipment must be in good working condition at the time of subscription. To purchase our Extended Service Plan, call 1-800-GET-HELP.

E. **Cameras/Video.** We will install and connect the camera devices described in this Agreement at your Premises. You acknowledge and agree that: (i) the Equipment is being installed at your specific request and is for the safety and security of the employees, invitees and other persons at the Premises, and for no other purpose; (ii) the Equipment will only be installed in public areas within the Premises, and will not be installed or utilized in any area where persons have a reasonable expectation of privacy, such as bathrooms, etc.; and (iii) You will provide adequate illumination under all operational conditions for the proper operation of the video camera and will provide the 120 AC power supply where required. Based on the following service selections, the camera(s) will be configured as follows: (1) **e-Secure Video:** the camera(s) may (i) provide live streaming video which may be viewed from your Protection One account on a PC with adequate internet connectivity, or (ii) send video related to specific Alarm Events which may be forwarded to your e-mail account or mobile device. Protection One will not receive or store these video recordings. (2) **Verification Video Service:** the Equipment will be configured to send images to an alarm operator for verification of video images directly associated with fire, burglary, panic, or critical condition alarm signals. (3) **Remote Tours:** an alarm operator will review video images at regular intervals as scheduled by you for images associated with critical and non-critical events or conditions as defined by you and accepted by us.

F. **Radio/Cellular Service.** (i) **SecureCell®:** We will install and connect a radio or cellular transmission device to the Equipment. The transmission device will be a backup communication link with our Central Station in the event that your regular telephone service or primary communication link to our Central Station is disrupted. (ii) **PrimeCell™:** If you select PrimeCell™ service, a radio or cellular transmission device will be the Equipment's only communications link with our Central Station. If you have selected SecureCell or PrimeCell services, then you acknowledge that there may be times when the Equipment will be unable to acquire, transmit or maintain an alarm signal, and that radio frequency transmissions may be impaired or interrupted by a variety of conditions and circumstances beyond our reasonable control, including storms and power failures. Accordingly, the utilization of a backup means of communication with our Central Station is always recommended. Also, changes in rules, regulations and policies of the FCC and other governmental bodies may require discontinuation or modification of some or all of these Services. Should your cellular or radio transmitter malfunction, it could interfere with the proper operation of the entire network communicating with our Central Station and other communications transmissions. FCC regulations require that we or our contractors or designees have immediate access to your transmitter in the event of such a malfunction or emergency, and you agree to permit access to such persons in such an event. Should you refuse to provide such access, you agree we will be entitled to obtain an *ex parte* court order permitting access to either repair or remove the transmitter, or take such other steps as are appropriate under the circumstances. You agree to pay all reasonable expenses, including attorneys' fees, we incur in connection with such proceedings.

G. **e-Secure :** If you have subscribed to e-Secure services, you will have access to your monitoring account via an internet or other connection, and will be able to remotely arm, disarm and make changes to, and receive various notifications from, the Equipment. Based on your account configuration, you may also receive e-mail, text or video transmissions notifying you of selected events that occur with the Equipment. You agree that these notifications are not intended to replace our professional monitoring services and understand that there is inherent risk associated with response to potential Alarm Events. Under no circumstances will we be liable for any loss, injury or damage of any kind incurred as a result of your response to these notifications. We are not responsible for any software or hardware purchases necessary for you to remotely access the Equipment. Also, we are not responsible for your internet, cellular or telecommunication services, which can be affected by conditions beyond our reasonable control.

H. **Direct Connect Services.** If this Agreement so indicates, we will install a direct connection to the law enforcement, fire department or other agency shown on your Monitoring Information Schedule. Alarm signals transmitted by the Equipment will be monitored by the police and/or fire departments or other ERP's or their agents. You acknowledge and agree that such agencies are not the agents of Protection One. Protection One hereby disclaims any responsibility for the manner in which such signals are monitored, and/or the response, or lack of response, to such signals by the persons monitoring the Equipment.

I. **Inspections.** We will provide the number of inspections of the Equipment as specified in this Agreement during our normal working hours and subject to the conditions and exclusions set forth in Paragraph 14 below.

J. **Alarm Verification.** If your police or fire department now or in the future requires physical, visual or other verification of an emergency condition before responding to a request for assistance, then you agree to subscribe to such verification service, or otherwise comply with such requirements. We may charge an additional fee for such service.

K. **Device Verification Service.** If you subscribe to Device Verification service, Equipment will be installed which, as to certain locations in the Premises, requires the activation of two (2) or more sensing devices, requires a second activation of a single alarm sensor, or requires a continuous alarm event from a single sensor, in order for an alarm signal to be transmitted. You assume full responsibility for the operation of any and all bypass or switch units provided for disconnecting or reconnecting the alarm sounding and/or transmitting Equipment at the Premises.

L. **Vault Protection.** You represent and warrant to us that any vault covered under this Agreement by sound or vibration detection systems has the minimum construction characteristics prescribed by the Underwriters' Laboratories, Inc. You agree to test any ultrasonic, microwave, capacitance or other electronic equipment designated in this Agreement prior to setting the Equipment for closed periods according to procedures established from time to time by Protection One, and to notify us promptly in the event that such equipment fails to respond to the test.

M. **eSuite.** If you have subscribed to eSuite services you will have access to the eSuite online web portal where authenticated users have varying levels of visibility of alarm account activity, contact lists, reporting capabilities and electronic notification options. Level of functionality will depend on the level of eSuite that you have subscribed to.

N. **eVideo.** If you have subscribed to eVideo services and a compatible video alarm verification service from Protection 1, you will have access to view alarm incident video via an eVideo tab on your eSuite account page.

14. **Limitations on our Warranty, Extended Service Plan and Service Obligations.** We perform repair services only during our normal working hours which are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays. **IF YOU REQUEST US TO PERFORM REPAIR SERVICES OUTSIDE OF OUR NORMAL WORKING HOURS, THEN WE MAY REQUIRE YOU TO PAY FOR OUR SERVICES AT OUR THEN-CURRENT RATES FOR LABOR AND PARTS.** The Extended Service Plan shall apply to consumable items such as batteries, and to window foil, security screens and exterior mounted devices, only for the Warranty Period following installation. In addition, we have no obligation under our Limited Warranty or Extended Service Plan if we determine that any of the following conditions caused the need for service: (A) Damage resulting from storms, natural disasters, accidents, acts of God, strikes, riots, floods, terrorism or any other cause beyond Protection One's reasonable control; (B) Your failure to properly close or secure a door, window or other point protected by an alarm device, or to properly follow operating instructions; (C) Telephone line malfunctions or modifications to your telephone service that render it incompatible with the Equipment or our Central Station; (D) Your failure to provide ordinary maintenance to the Equipment or its components (repairs due to ordinary wear and tear are not excluded under our Extended Service Plan), or you permit anyone other than our authorized representative to perform service on the Equipment; (E) Physical alterations to your Premises or to the Equipment, or made necessary by damage to your Premises or the Equipment; or (F) Any of the reasons described in Paragraph 5 above. Our warranty applies only to Equipment installed by us. You must furnish the necessary electrical power at your expense to obtain warranty services. Charges for non-covered repairs will be at our then-current labor and material rates, including a minimum visit or trip charge. **OTHER THAN THE LIMITED WARRANTY AND OUR OBLIGATIONS UNDER THE EXTENDED SERVICE PLAN (IF SUBSCRIBED TO), WE MAKE NO GUARANTY OR WARRANTY OF ANY KIND WITH RESPECT TO THE SERVICES WE PERFORM OR THE EQUIPMENT WE PROVIDE UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, SUITABILITY, CONDITION, OR FITNESS FOR A PARTICULAR PURPOSE.**

15. **Delays.** We shall have no liability for delays in installation of the Equipment or for the consequences thereof, however caused, or for interruptions of Service or for the consequences thereof, due to strikes, riots, floods, acts of God, terrorism, or any other causes beyond the reasonable control of Protection One, and Protection One will not be required to provide Services or substitute services to you while any interruption of Services due to any such causes shall continue.

16. **Assignment.** You may not assign any of your rights or obligations hereunder, whether by operation of law or otherwise, without our prior written consent, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, provided you are not in default under this Agreement, you may assign this Agreement in its entirety, without our consent, in connection with a merger, acquisition, corporate reorganization, or a sale of all or substantially all of your assets, to a person or entity which expressly assumes and agrees to perform your obligations hereunder. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, and their respective successors and permitted assigns. We may assign this Agreement or subcontract any or all of our obligations under this Agreement without your consent and without notice to you. The provisions of this Agreement (i) apply to and inure to the benefit of each of our assignees, subcontractors and/or suppliers (including our software suppliers), and (ii) bind you to all such persons or entities with the same force and effect as they bind you to Protection One. This includes the protections set forth in Paragraphs 9, 10 and 11. In this Agreement, "Services" shall be deemed to include all alarm monitoring-related services, including but not limited to all such services provided, in whole or in part, though or in common with any software that we license from our software suppliers.

17. **Severability.** If any of the provisions of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, then the remaining provisions of this Agreement shall remain in full force and effect.

18. **Arbitration of Disputes.** In the event any claim or dispute, regardless of its basis, arises between you and us, including any claim or dispute relating to this Agreement, any of your Premises, the Equipment, our Services, or the Charges due hereunder, or under any other agreement between you and us (collectively, your "Account"), or the scope of this arbitration provision, you or we may elect to resolve the claim or dispute by binding arbitration. Neither you nor we shall be entitled to join or consolidate claims in arbitration, or arbitrate any claims as a representative or member of a class or in a private attorney general capacity. The filing of a lawsuit by any party shall not constitute a waiver of any rights under this arbitration provision. The arbitration shall be conducted by the American Arbitration Association in accordance with its procedures in effect when the claim is filed. This Paragraph 18 and any arbitration conducted hereunder shall be governed by the Federal Arbitration Act (FAA). Any arbitration hearing will take place in Dallas, Texas. The arbitrator shall follow applicable substantive law to the extent consistent with the FAA, and applicable statutes of limitations, and shall honor claims of privilege recognized at law. The arbitrator's decision will be final and binding, except for any appeal rights under the FAA, and except that if the amount in controversy exceeds \$100,000.00, any party may appeal the award within thirty (30) days to a three-arbitrator panel which shall review the award de novo. The prevailing party shall be entitled to reimbursement of all its costs and expenses, including reasonable attorneys' fees, from the non-prevailing party. Judgment upon any arbitral award may be enforced in any court having jurisdiction.

19. **Legal Actions.** All claims, disputes and legal actions arising under this Agreement (a "Legal Action") will be governed by the laws of the

State where your Premises is located and any applicable Federal laws, without regard to conflict of law principles. You agree to file any claim, dispute or Legal Action arising out of this Agreement, the Equipment or our Services (whether based in negligence, breach of contract, breach of warranty, strict liability, or other fault) within one (1) year after the date the cause of action for such claim accrued. This provision shall survive the termination of this Agreement and your Account, as well as voluntary payment in full by you, any legal proceedings by us to collect a debt owed by you, any bankruptcy by you, and/or any sale by us of your Account.

**20. Entire Agreement.** This Agreement is the entire agreement between you and us, and supersedes all previous contracts or agreements between you and us regarding alarm or similar services. You agree that we are not bound by any representation, promise, condition, inducement or warranty, express or implied, not included in this Agreement. The terms and conditions of this Agreement shall govern over the provisions of any other document, including but not limited to your purchase orders, with inconsistent terms.

**21. Execution.** This Agreement and any signatures on it may be transmitted and delivered by facsimile or other electronic means (such as e-mail), and all such signatures and electronic transmissions of this Agreement are to be treated as originals for all purposes and given the same legal force and effect as a signed paper contract. In addition, this Agreement may be signed and accepted electronically by both parties, and the mutually accepted version of this Agreement, whether printed or electronic, also is to be treated as an original for all purposes, with the same legal force and effect as a signed paper contract. Your obligations under this Agreement are binding on all authorized users of the Equipment. Each party has substantially participated in the drafting and negotiation of this Agreement, and no provision hereof shall be construed against either party by virtue of the fact that such provision was drafted by such party. Each party represents and warrants that it has the unqualified right to enter this Agreement, and that it has the right to perform all obligations under this Agreement.

**Protection One Alarm Monitoring, Inc. Licensing Information.** ALABAMA: Electronic Security Board of Licensure, 7956 Vaughn Road, Suite 392, Montgomery, AL 36116, Telephone 334-264-9388. AL: 643, 533, 744, 1018, 28211, A-0106; ARKANSAS: Arkansas Board of Private Investigators and Private Security 1 State Police Plaza Drive, Little Rock, AR 72209, 501-618-8600; #E97-122; ARIZONA: ROC190246; CALIFORNIA: Alarm company operators are licensed and regulated by the Bureau of Security and Investigative Services, Department of Consumer Affairs, Sacramento, California 95814. CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS STATE LICENSE BOARD, P.O. BOX 260000, SACRAMENTO, CALIFORNIA 95826, CA #ACO-3717, #626615, ACB 4570, ACB 4571, ACB 4572, ACB 4573, ACB 5039, ACB 5052, ACB 5054, ACB 5292; CONNECTICUT: #185782; DELAWARE: #1998200138 #97-54, CSRS-0029; FLORIDA: EF20000524; GEORGIA: LVA205766; IOWA: AC-0082, AI-0310; IDAHO: SC-21391; ILLINOIS: #127-001000, #128-000113, #128-000151, #128-000115; LOUISIANA: F713; MAINE: #MC60018702; MARYLAND: #03371885, #107-1603; MASSACHUSETTS: #7066C; MICHIGAN: #3601205122, #3602203841, #A-0378, #5103229; MINNESOTA: #TS00502; MISSISSIPPI: #15007478, 15007925; MONTANA: #162, #299; NEVADA: #0031668A, #F189; NEW MEXICO: #58345, 08-0040; NEW JERSEY: P01008, 0095786, BF 000354; NEW YORK: Licensed by the NYS Department of State. NY #12000261120; NORTH CAROLINA: #1285- CSA, 24466-SP-LV, BPN 001777P6; OHIO: #50-18-1493; #50-18-0003, 50-25-0001, 50-31-0001; OKLAHOMA: #621; OREGON: #CCB116325, #34-428CLE; PENNSYLVANIA: #PA003926; RHODE ISLAND: #9775; SOUTH CAROLINA: #BAC 5097, #FAC 3162; TENNESSEE: #638, 641, 642, 697; TEXAS: Complaints can be filed in Texas with the Texas Commission on Private Security, 5805 Lamar Blvd., Austin, Texas 78752. TX #ACR-1637, # B-08690; UTAH: #330634-6501; VIRGINIA: #11-2533, #2705, #105226A; WASHINGTON: PROTEO022K2, PROTEOA033BP, 601 354 926; WISCONSIN: 600-0000181681-01; WYOMING: #LV A 17.

(REMAINDER OF PAGE INTENTIONALLY BLANK - SIGNATURES ON FOLLOWING PAGE)

Signatures

**NOTICE:** Our charges under this agreement are based on your agreement to receive and pay for the services for a full Sixty (60) month term.

**IF THIS AGREEMENT IS TERMINATED BY YOU PRIOR TO THE END OF THE THEN-CURRENT TERM, EXCEPT AS OTHERWISE PROVIDED HEREIN, YOU AGREE TO PAY US THE SERVICE CHARGES THAT WOULD HAVE BEEN PAYABLE BY YOU FOR THE REMAINING TERM OF THE AGREEMENT BUT FOR THE EARLY TERMINATION HEREOF.**

ATTENTION IS DIRECTED TO THE WARRANTY, LIMITATION OF LIABILITY AND OTHER TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT.

This Agreement is not binding upon Protection One unless and until either signed by an Authorized Manager of Protection One, or we begin the installation of Equipment or provision of Services. You acknowledge that you may not receive a copy of this Agreement signed by Protection One's Authorized Manager, and that such lack of receipt shall not, in any way, invalidate or otherwise affect this Agreement.

- ? I am at least 18 years of age, and the information I have provided is true and correct to the best of my knowledge.
- ? I have read, understood, and agree to this Agreement, which contains important information regarding the Equipment and Services provided by Protection One.
- ? I understand and agree that the placement of my signature electronically on this page constitutes my electronic signature for this Commercial Schedule of Protection Proposal and Sales Agreement, which is a valid and binding signature under the Electronic Signatures in Global and National Commerce Act ("E-SIGN Act").

[[SertifiSStamp\_1]]

[[SertifiSStamp\_2]]

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Customer Signature

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Protection One Authorized Manager

## Colorado Marijuana Licensing Authority Retail Business License Application

License Types & Fees (See Application Checklist for details on license types and fees.)			
<input checked="" type="checkbox"/> Retail Marijuana Store  <input type="checkbox"/> Retail Marijuana Cultivation  <input type="checkbox"/> Retail Marijuana Test Facility	<input checked="" type="checkbox"/> Tier 1 = 3600 or fewer plants  <input type="checkbox"/> Tier 2 = 3601 – 6000 plants  <input type="checkbox"/> Tier 3 = 6001–10200 plants	<input type="checkbox"/> Retail Marijuana Products Manufacturer <input type="checkbox"/> Conversion <input checked="" type="checkbox"/> Retail/Medical Marijuana Combined Use <input type="checkbox"/> Affiliated Business	
Applicant's Legal Business Name (Please Print) <b>M &amp; M Distributing, LLC</b>		Marijuana License Number (Assigned by Division) <b>MMC 402-00949</b>	
Trade Name (DBA) (Provide Trade Name Registration)		Website Address	
<b>Physical Address</b>			
Street Address of Marijuana Business <b>422 N. Commercial St.</b>			City <b>Trinidad</b>
Business Phone Number <b>(719) 422-8298</b>			State <b>CO</b>
Business Fax Number		Email Address [REDACTED]	
<b>Mailing Address (if different from Business Address)</b>			
Address		City	State
Primary Contact Person for Business <b>John E. Micheliza</b>		Title <b>President</b>	ZIP <b>81082</b>
Primary Contact Address (city, state ZIP) [REDACTED] <b>Trinidad, CO 81082</b>		Primary Contact Phone Number [REDACTED]	
Primary Contact Address (city, state ZIP) [REDACTED] <b>Trinidad, CO 81082</b>		Primary Contact Fax Number <b>(719) 846-7896</b>	
Federal Taxpayer ID <b>37-1751898</b>	Colorado Sales Tax License # <b>27964766-0000</b>	Email Address [REDACTED]	
<b>Type of Business Structure</b>			
<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Partnership	<input type="checkbox"/> Limited Partnership	<input checked="" type="checkbox"/> Limited Liability Company
<input type="checkbox"/> C Corporation	<input type="checkbox"/> S Corporation	<input type="checkbox"/> Publicly Traded Corporation	<input type="checkbox"/> Trust <input type="checkbox"/> Other _____
State of Incorporation or Creation of Business Entity <b>Colorado</b>			Date <b>3/5/2014</b>
Date of Qualification to Conduct Business in Colorado (Provide Certificate of Good Standing from the Colorado Secretary of State's Office) <b>3/5/2014</b>			
If a Corporation, List all States Where the Corporation is Authorized to Conduct Business <b>N/A</b>			
List all Trade Names used by the Business Entity (other than above) <b>N/A</b>			
Attach copies of all articles of incorporation, bylaws, articles of organization, or a true copy of any partnership or trust agreement, including any and all amendments to such.  If a corporation, attach copies of all annual and bi-annual reports, SEC filings, if any, and all minutes from all corporate meetings for the past 12 months.			

1. Is the applicant (including any of the partners, if a partnership; members or manager if a limited liability company; or officers, stockholders or directors if a corporation) or manager under the age of twenty-one years? Yes No

2. Has the applicant (including any of the partners, if a partnership; members or manager if a limited liability company; or officers, stockholders or directors if a corporation) or manager ever (in Colorado or any other state);

(a) been denied a privileged license (ie: Liquor, Gaming, Racing and Marijuana)?

(b) had a privileged license (ie: Liquor, Gaming, Racing and Marijuana) suspended or revoked?

(c) had interest in another entity that had a privileged (ie: Liquor, Gaming, Racing and Marijuana) license denied, suspended or revoked?

If you answered yes to 2a, b or c, explain in detail on a separate sheet.

3. Has a Marijuana license ever been issued to the applicant (including any of the partners, if a partnership; members or manager if a limited liability company; or officers, stockholders or directors if a corporation)?  
If yes, identify the name of the business and list any current or former financial interest in said business including any loans to or from a licensee.

4. Does the applicant have legal possession of the premises by virtue of ownership, lease or other arrangement? Attach all documentation showing legal possession. Deed, Title, sale or lease agreements etc.  
 Ownership  Lease  Other (Explain in Detail) \_\_\_\_\_

(a) If leased, list name of landlord and tenant, and date of expiration, EXACTLY as they appear on the lease:

Landlord See attachment	Tenant	Expires 3/11/2016
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Attach a diagram of the premises to be licensed and outline or designate the area (including dimensions) which shows the limited access areas, walls, partitions, entrances, exits and what each room shall be utilized for in this business, including security equipment locations. This diagram should be no larger than 8 1/2" X 11". (It does not have to be to scale)

5. Who, besides the owners listed in this application (including persons, firms, partnerships, corporations, limited liability companies, trusts), will loan or give money, inventory, furniture or equipment to or for use in this business; or who will receive money or profits from this business. Attach a separate sheet if necessary.

Name	Date of Birth	FEIN OR SSN	Interest
N/A			

Attach copies of all notes and security instruments, and any written agreement, or details of any oral agreement, by which any person (including partnerships, corporations, limited liability companies, etc.) will share in the profit or gross proceeds of this establishment, and any agreement relating to the business which is contingent or conditional in any way by volume, profit, sales, giving of advice or consultation.

**Local Licensing Authority (To be filled out by Applicant)**

Local Licensing Authority/Department Audra Garrett	Address 135 No. Animas St., Trinidad, CO 81082
Local Licensing Authority contact name Audra Garrett	Contact Phone (719) 846-9843
	Contact Email audragarrett@trinidad.co.gov
Date of application with local authority 11/17/14	Date of approval from local authority, if any

Are you requesting a concurrent review?  Yes  No

6. Has the Applicant filed for a retail marijuana cultivation? Yes No

What City or County? (Fill out a separate and complete application)  
Trinidad, CO 81082

7. Does the Retail Applicant have evidence of a good and sufficient bond in the amount of \$5000.00 in accordance with 12-43.4-303 C.R.S. (Include evidence with application)?

Printed Legal Business Name M & M Distributing, LLC	Printed Trade Name (DBA)
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**Ownership Structure**

List all persons and/or entities with any ownership interest, and all officers and directors, whether they have ownership interest or not. If an entity (corporation, partnership, LLC, etc.) has interest, list all persons associated with such entity, their ownership in the entity, and their effective ownership in the license. List all parent, holding or other intermediary business interest. An Associated Key License Application form must be submitted for all persons in a privately held company or a publicly traded corporation, and all officers and directors.

Name John E. Micheliza		Title President		SSN/FEIN [REDACTED]		DOB [REDACTED]		App submitted? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Address [REDACTED]		City Trinidad		State CO		ZIP 81082		Phone Number [REDACTED]	
Business Associated with (Parent business or sub-entity) M & M Distributing, LLC				Own. % Business Associated with Geraldine DeAngelis			Effective Own. % in Applicant 50%		
Name Geraldine M. DeAngelis		Title Sec/Treas		SSN/FEIN [REDACTED]		DOB [REDACTED]		App submitted? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Address [REDACTED]		City Trinidad		State CO		ZIP 81082		Phone Number [REDACTED]	
Business Associated with (Parent business or sub-entity) M & M Distributing, LLC>				Own. % Business Associated with John Micheliza			Effective Own. % in Applicant 50%		
Name		Title		SSN/FEIN		DOB		App submitted? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Address		City		State		ZIP		Phone Number	
Business Associated with (Parent business or sub-entity)				Own. % Business Associated with			Effective Own. % in Applicant		
Name		Title		SSN/FEIN		DOB		App submitted? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Address		City		State		ZIP		Phone Number	
Business Associated with (Parent business or sub-entity)				Own. % Business Associated with			Effective Own. % in Applicant		
Name		Title		SSN/FEIN		DOB		App submitted? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Address		City		State		ZIP		Phone Number	
Business Associated with (Parent business or sub-entity)				Own. % Business Associated with			Effective Own. % in Applicant		
Name		Title		SSN/FEIN		DOB		App submitted? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Address		City		State		ZIP		Phone Number	
Business Associated with (Parent business or sub-entity)				Own. % Business Associated with			Effective Own. % in Applicant		
Name		Title		SSN/FEIN		DOB		App submitted? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Address		City		State		ZIP		Phone Number	
Business Associated with (Parent business or sub-entity)				Own. % Business Associated with			Effective Own. % in Applicant		
<p>Are there any outstanding options and warrants?  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No *If YES, attach list of persons with outstanding options and warrants</p> <p>Are there any other persons, other than those listed in the Ownership Structure, including but not limited to suppliers, lenders and landlords, who will receive, directly or indirectly, any compensation or rents based upon a percentage or share of gross proceeds or income of the Marijuana business?  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No *If YES, attach list of persons</p>									

Printed Legal Business Name M & M Distributing, LLC.	Printed Trade Name (DBA)
1. Has the applicant, the applicant's parent company or any other intermediary business entity ever applied for a Marijuana license in this or any other jurisdiction, foreign or domestic, whether or not the license was ever issued? If YES, provide details on a separate sheet, including jurisdiction, type of license, license number, and dates license held or applied for.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2. Has the applicant, the applicant's parent company or any other intermediary business entity ever been denied a Marijuana license, withdrawn a Marijuana license or had any disciplinary action taken against any Marijuana license that they have held in this or any other jurisdiction, foreign or domestic? If YES, provide details on a separate sheet, including jurisdiction, type of action, and date of action.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Financial History</b>	
1. Is the applicant, the applicant's parent company or any other intermediary business entity delinquent in the payment of any judgments or tax liabilities due to any governmental agency anywhere? If YES, provide details on a separate sheet and attach any documents to prove settlement or resolution of the delinquency.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2. Has the applicant, the applicant's parent company or any other intermediary business entity filed a bankruptcy petition in the past 5 years, had such a petition filed against it, or had a receiver, fiscal agent, trustee, reorganization trustee or similar person appointed for it? If YES, provide details on a separate sheet and attach any documents from the bankruptcy court.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
3. Is the applicant, the applicant's parent company or any other intermediary business entity currently a party to, or has it ever been a party to, in any capacity, any business trust instrument? If YES, provide details on a separate sheet.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
4. Has a complaint, judgment, consent decree, settlement or other disposition related to a violation of federal, state or similar foreign antitrust, trade or security law or regulation ever been filed or entered against the applicant, the applicant's parent company or any other intermediary business entity? If YES, provide details on a separate sheet and attach any documents to prove the settlement of any of these issues. Include any items currently under formal dispute or legal appeal.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
5. Has the applicant, the applicant's parent company or any other intermediary business entity been a party to a lawsuit in the past 5 years, either as a plaintiff or defendant, complainant or respondent, or in any other fashion, in this or any other country? If YES, provide details on a separate sheet and attach any documents to prove the settlement of any of these issues. Include any items currently under formal dispute or legal appeal.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
6. Has the applicant, the applicant's parent company or any other intermediary business entity filed a business tax return in the past two years?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
7. Has the applicant, the applicant's parent company or any other intermediary business entity completed financial statements, either audited or unaudited, in the past two years? If YES, attach all financial statements completed in the past two years.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
8. Has any interest or share in the profits of the sale of Marijuana been pledged or hypothecated as security for a debt or deposited as a security for the performance of an act or to secure the performance of a contract? If YES, provide details on a separate sheet.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
9. Attach a list detailing the operating and investment accounts for this business, including financial institution name, address, telephone number, and account number for each account.	
10. Attach a list detailing each outstanding loan and financial obligation obtained for use in this business, including creditor name, address, phone number, loan number, loan amount, loan terms, date acquired, and date due.	
Person who maintains Applicant's business records Geraldine DeAngelis	Title Sec/Treas
Address ██████████, Trinidad, CO 81082	Phone Number (719) 846-3634
Person who prepares Applicant's tax returns, government forms & reports Ortiz Tax Service (Tom Ortiz)	Title
Address 15801 Hwy 239, Trinidad, CO 81082	Phone Number (719) 846-9663
Location of financial books and records for Applicant's business 422 N. Commercial St., Trinidad, CO 81082	

## Affirmation & Consent

I, Geraldine M. DeAngelis, as an authorized agent for the applicant, state under penalty for offering a false instrument for recording pursuant to 18-5-114 C.R.S. that the entire Marijuana Business License Application Form, statements, attachments, and supporting schedules are true and correct to the best of my knowledge and belief, and that this statement is executed with the knowledge that misrepresentation or failure to reveal information requested may be deemed sufficient cause for the refusal to issue a Marijuana license by the State Licensing Authority. Further, I am aware that later discovery of an omission or misrepresentation made in the above statements may be grounds for the denial or revocation of the license. I am voluntarily submitting this application to the Colorado Marijuana Licensing Authority under oath with full knowledge that I may be charged with perjury or other crimes for intentional omissions and misrepresentations pursuant to Colorado law or for offering a false instrument for recording pursuant to 18-5-114 C.R.S. I further consent to any background investigation necessary to determine my present and continuing suitability and that this consent continues as long as I hold a Colorado Marijuana License, and for 90 days following the expiration or surrender of such Marijuana license. Note: If your check is rejected due to insufficient or uncollected funds, the Department of Revenue may collect the payment amount directly from your banking account electronically.

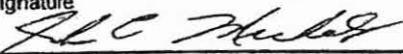
**Print Full Legal Agent Name clearly below:**

Applicant's Business Name <b>M &amp; M Distributing, LLC.</b>		Trade Name (DBA)	
Legal Agent Last Name (Please Print) <b>DeAngelis</b>	Legal Agent First Name <b>Geraldine</b>	Legal Agent Middle Name <b>Marie</b>	
Signature <i>Geraldine De Angelis</i>			Date <b>10/7/14</b>

## Affirmation & Consent

I, John E. Micheliza, as an authorized agent for the applicant, state under penalty for offering a false instrument for recording pursuant to 18-5-114 C.R.S. that the entire Marijuana Business License Application Form, statements, attachments, and supporting schedules are true and correct to the best of my knowledge and belief, and that this statement is executed with the knowledge that misrepresentation or failure to reveal information requested may be deemed sufficient cause for the refusal to issue a Marijuana license by the State Licensing Authority. Further, I am aware that later discovery of an omission or misrepresentation made in the above statements may be grounds for the denial or revocation of the license. I am voluntarily submitting this application to the Colorado Marijuana Licensing Authority under oath with full knowledge that I may be charged with perjury or other crimes for intentional omissions and misrepresentations pursuant to Colorado law or for offering a false instrument for recording pursuant to 18-5-114 C.R.S. I further consent to any background investigation necessary to determine my present and continuing suitability and that this consent continues as long as I hold a Colorado Marijuana License, and for 90 days following the expiration or surrender of such Marijuana license. Note: If your check is rejected due to insufficient or uncollected funds, the Department of Revenue may collect the payment amount directly from your banking account electronically.

**Print Full Legal Agent Name clearly below:**

Applicant's Business Name M & M Distributing, LLC.		Trade Name (DBA)	
Legal Agent Last Name (Please Print) Micheliza	Legal Agent First Name John	Legal Agent Middle Name Everett	
Signature 			Date 10-6-14

# Investigation Authorization Authorization to Release Information

I, John Micheliza, as an authorized agent for the applicant, hereby authorize the Colorado Marijuana Licensing Authority, the Marijuana Enforcement Division, (hereafter, the Investigatory Agencies) to conduct a complete investigation into my personal background, using whatever legal means they deem appropriate. I hereby authorize any person or entity contacted by the Investigatory Agencies to provide any and all such information deemed necessary by the Investigatory Agencies. I hereby waive any rights of confidentiality in this regard. I understand that by signing this authorization, a financial record check may be performed. I authorize any financial institution to surrender to the Investigatory Agencies a complete and accurate record of such transactions that may have occurred with that institution, including, but not limited to, internal banking memoranda, past and present loan applications, financial statements and any other documents relating to my personal or business financial records in whatever form and wherever located. I understand that by signing this authorization, a financial record check of my tax filing and tax obligation status may be performed. I authorize the Colorado Department of Revenue to surrender to the Investigatory Agencies a complete and accurate record of any and all tax information or records relating to me. I authorize the Investigatory Agencies to obtain, receive, review, copy, discuss and use any such tax information or documents relating to me. I authorize the release of this type of information, even though such information may be designated as "confidential" or "nonpublic" under the provisions of state or federal laws. I understand that by signing this authorization, a criminal history check will be performed. I authorize the Investigatory Agencies to obtain and use from any source, any information concerning me contained in any type of criminal history record files, wherever located. I understand that the criminal history record files contain records of arrests which may have resulted in a disposition other than a finding of guilt (i.e., dismissed charges, or charges that resulted in a not guilty finding). I understand that the information may contain listings of charges that resulted in suspended imposition of sentence, even though I successfully completed the conditions of said sentence and was discharged pursuant to law. I authorize the release of this type of information, even though this record may be designated as "confidential" or "nonpublic" under the provisions of state or federal laws.

The Investigatory Agencies reserve the right to investigate all relevant information and facts to their satisfaction. I understand that the Investigatory Agencies may conduct a complete and comprehensive investigation to determine the accuracy of all information gathered. However, the State of Colorado, Investigatory Agencies, and other agents or employees of the State of Colorado shall not be held liable for the receipt, use, or dissemination of inaccurate information. I, on behalf of the applicant, its legal representatives, and assigns, hereby release, waive, discharge, and agree to hold harmless, and otherwise waive liability as to the State of Colorado, Investigatory Agencies, and other agents or employees of the State of Colorado for any damages resulting from any use, disclosure, or publication in any manner, other than a willfully unlawful disclosure or publication, of any material or information acquired during inquiries, investigations, or hearings, and hereby authorize the lawful use, disclosure, or publication of this material or information. Any information contained within my application, contained within any financial or personnel record, or otherwise found, obtained, or maintained by the Investigatory Agencies, shall be accessible to law enforcement agents of this or any other state, the government of the United States, or any foreign country.

**Print Full Legal Name of Authorized Agent clearly below:**

Applicant's Business Name M & M Distributing, LLC.		Trade Name (DBA)
Legal Agent Last Name (Please Print) Micheliza	Legal Agent First Name John	Legal Agent Middle Name Everett
Legal Agent Title	Signature (Must be signed in front of one witness) <i>John C. Micheliza</i>	
Date (MM/DD/YY) 10-06-14	City Trinidad	State Colo
Witness 1 Signature <i>Brett S. Plant</i>		

## Investigation Authorization Authorization to Release Information

I, Geraldine M. DeAngelis, as an authorized agent for the applicant, hereby authorize the Colorado Marijuana Licensing Authority, the Marijuana Enforcement Division, (hereafter, the Investigatory Agencies) to conduct a complete investigation into my personal background, using whatever legal means they deem appropriate. I hereby authorize any person or entity contacted by the Investigatory Agencies to provide any and all such information deemed necessary by the Investigatory Agencies. I hereby waive any rights of confidentiality in this regard. I understand that by signing this authorization, a financial record check may be performed. I authorize any financial institution to surrender to the Investigatory Agencies a complete and accurate record of such transactions that may have occurred with that institution, including, but not limited to, internal banking memoranda, past and present loan applications, financial statements and any other documents relating to my personal or business financial records in whatever form and wherever located. I understand that by signing this authorization, a financial record check of my tax filing and tax obligation status may be performed. I authorize the Colorado Department of Revenue to surrender to the Investigatory Agencies a complete and accurate record of any and all tax information or records relating to me. I authorize the Investigatory Agencies to obtain, receive, review, copy, discuss and use any such tax information or documents relating to me. I authorize the release of this type of information, even though such information may be designated as "confidential" or "nonpublic" under the provisions of state or federal laws. I understand that by signing this authorization, a criminal history check will be performed. I authorize the Investigatory Agencies to obtain and use from any source, any information concerning me contained in any type of criminal history record files, wherever located. I understand that the criminal history record files contain records of arrests which may have resulted in a disposition other than a finding of guilt (i.e., dismissed charges, or charges that resulted in a not guilty finding). I understand that the information may contain listings of charges that resulted in suspended imposition of sentence, even though I successfully completed the conditions of said sentence and was discharged pursuant to law. I authorize the release of this type of information, even though this record may be designated as "confidential" or "nonpublic" under the provisions of state or federal laws.

The Investigatory Agencies reserve the right to investigate all relevant information and facts to their satisfaction. I understand that the Investigatory Agencies may conduct a complete and comprehensive investigation to determine the accuracy of all information gathered. However, the State of Colorado, Investigatory Agencies, and other agents or employees of the State of Colorado shall not be held liable for the receipt, use, or dissemination of inaccurate information. I, on behalf of the applicant, its legal representatives, and assigns, hereby release, waive, discharge, and agree to hold harmless, and otherwise waive liability as to the State of Colorado, Investigatory Agencies, and other agents or employees of the State of Colorado for any damages resulting from any use, disclosure, or publication in any manner, other than a willfully unlawful disclosure or publication, of any material or information acquired during inquiries, investigations, or hearings, and hereby authorize the lawful use, disclosure, or publication of this material or information. Any information contained within my application, contained within any financial or personnel record, or otherwise found, obtained, or maintained by the Investigatory Agencies, shall be accessible to law enforcement agents of this or any other state, the government of the United States, or any foreign country.

**Print Full Legal Name of Authorized Agent clearly below:**

Applicant's Business Name M & M Distributing, LLC.		Trade Name (DBA)
Legal Agent Last Name (Please Print) DeAngelis	Legal Agent First Name Geraldine	Legal Agent Middle Name Marie
Legal Agent Title <i>Sec/Treas</i>	Signature (Must be signed in front of one witness) <i>Geraldine M. DeAngelis</i>	
Date (MM/DD/YY) <i>10/7/14</i>	City <i>Trinidad</i>	State <i>CO</i>
Witness 1 Signature <i>Beth S. Plant</i>		



**STATEMENT OF UNDERSTANDING**  
 Colorado Department of Revenue - Marijuana Enforcement Division

I understand I am responsible for knowing and complying with all state laws and regulations governing medical and retail marijuana pursuant to Article 12 Title 43.3 and Article 12 Title 43.4 of the Colorado Revised Statutes and Subpart A and B of 1 CCR 212-2. I understand I am being made aware of the following laws and regulations and agree to comply with them upon issuance of my license:

I will not cultivate, sell, dispense, possess or test any marijuana on the licensed premise prior to being issued a license to do so by the State Licensing Authority and receiving approval to do so by the local jurisdiction where the license is issued. *JM*

I understand that the licensed premise must comply with all the security and surveillance requirements set forth in the Retail Marijuana Code and the rules or regulations promulgated in accordance with the Code before the license can cultivate, sell, dispense, possess or test any marijuana on the licensed premise. *JM*

I understand that at all times I shall possess and maintain possession of the premise for which the license is issued by ownership, lease, rental, or other or other arrangement of possession of the premise. *JM*

I understand that I am required to keep a complete set of all records necessary to show fully the business transactions of the licensee, all of which shall be open at all times during business hours for inspections and examination by the State Licensing Authority or its duly authorized representatives. *JM*

I understand that the licensed premise, including any places of storage where retail marijuana or retail marijuana products are stored, sold, dispensed or tested shall be subject to inspection by the state or local jurisdictions and their investigators, during all business hours and other times of apparent activity. *JM*

I understand that I shall retain all books and records necessary to show fully the business transactions of the business for a period of the current tax year and the three preceding tax years. *JM*

I understand I must use the State's Inventory Tracking System as my primary inventory tracking system of record and to follow all the rules and guidelines set forth for the use of this system. *JM*

I understand that any retail marijuana or marijuana product must meet the labeling and packaging requirements set forth in the Retail Marijuana Code and all the rules or regulations promulgated in accordance with the Code. *JM*

I understand that all areas of ingress or egress to limited access areas shall be clearly identified as such by a sign as designated by the State Licensing Authority. *JM*

I have read all of the above information and understand my responsibilities as a retail marijuana business licensee. I further understand that failure to comply with any law, regulation, or the provisions of this Statement may be grounds for disciplinary action including, but not limited to the suspension or revocation of my license and a monetary penalty after an administrative hearing.

LICENSEE'S BUSINESS NAME <i>M+M Distributing LLC</i>	BUSINESS LICENSE NUMBER <i>STORE</i>
OWNER'S SIGNATURE <i>John C. Muehle</i>	DATE <i>11-18-14</i>

*K. Kuntz* *CI* *11-18-14*



**STATEMENT OF UNDERSTANDING**  
 Colorado Department of Revenue - Marijuana Enforcement Division

I understand I am responsible for knowing and complying with all state laws and regulations governing medical and retail marijuana pursuant to Article 12 Title 43.3 and Article 12 Title 43.4 of the Colorado Revised Statutes and Subpart A and B of 1 CCR 212-2. I understand I am being made aware of the following laws and regulations and agree to comply with them upon issuance of my license:

I will not cultivate, sell, dispense, possess or test any marijuana on the licensed premise prior to being issued a license to do so by the State Licensing Authority and receiving approval to do so by the local jurisdiction where the license is issued. HR

I understand that the licensed premise must comply with all the security and surveillance requirements set forth in the Retail Marijuana Code and the rules or regulations promulgated in accordance with the Code before the license can cultivate, sell, dispense, possess or test any marijuana on the licensed premise. HR

I understand that at all times I shall possess and maintain possession of the premise for which the license is issued by ownership, lease, rental, or other or other arrangement of possession of the premise. HR

I understand that I am required to keep a complete set of all records necessary to show fully the business transactions of the licensee, all of which shall be open at all times during business hours for inspections and examination by the State Licensing Authority or its duly authorized representatives. HR

I understand that the licensed premise, including any places of storage where retail marijuana or retail marijuana products are stored, sold, dispensed or tested shall be subject to inspection by the state or local jurisdictions and their investigators, during all business hours and other times of apparent activity. HR

I understand that I shall retain all books and records necessary to show fully the business transactions of the business for a period of the current tax year and the three preceding tax years. HR

I understand I must use the State's Inventory Tracking System as my primary inventory tracking system of record and to follow all the rules and guidelines set forth for the use of this system. HR

I understand that any retail marijuana or marijuana product must meet the labeling and packaging requirements set forth in the Retail Marijuana Code and all the rules or regulations promulgated in accordance with the Code. HR

I understand that all areas of ingress or egress to limited access areas shall be clearly identified as such by a sign as designated by the State Licensing Authority. HR

I have read all of the above information and understand my responsibilities as a retail marijuana business licensee. I further understand that failure to comply with any law, regulation, or the provisions of this Statement may be grounds for disciplinary action including, but not limited to the suspension or revocation of my license and a monetary penalty after an administrative hearing.

LICENSEE'S BUSINESS NAME <u>MJM Distributing LLC</u>	BUSINESS LICENSE NUMBER <u>66096</u>
OWNER'S SIGNATURE <u>Geraldine De Angelis</u>	DATE <u>11/18/14</u>

K. K. [Signature]

## MED Retail Marijuana New Application Checklist:

Business Name: M & M DISTRIBUTING LLC

License Number(s): MME 202-00849

Criminal Investigator: VIGIL Date: 11/18/2014

Compliance Investigator: \_\_\_\_\_ Date: \_\_\_\_\_

Reviewer: \_\_\_\_\_ Date: \_\_\_\_\_

**New Retail Business Applications will be taken by appointment only; applications mailed in will not be accepted. MED requires all documents listed below and any additional documents requested by the MED investigator. If the application is incomplete or missing required documents MED will not accept the application or fees until a complete application is submitted.**

**All applications for conversion or combined use will be treated as completely new applications requiring all the documents listed below and any other documents requested by the MED investigators to be licensed. Once a retail application is submitted, MED will not accept any Changes of Ownership until the license is issued.**

- MED will only accept business applications from owners. Managers and attorneys cannot submit applications on behalf of owners because signatures and fingerprints of owners are required.
- ~~If the applicant is requesting conversion and not combined use, suggest they consider the following: once the State issues the Retail Marijuana License, the Medical Marijuana License must be surrendered within fourteen (14) days. If the local retail license has not been received, and the State Medical License has been surrendered, the business must CEASE business immediately.~~
- Two (2) complete copies of the MED Retail Business License Application are required for EACH Retail Store, Cultivation, Marijuana Products Manufacturer or Testing Facility. One (1) copy for the MED, and one (1) copy for the Local Licensing Authority (Form available on the MED Website.)
- Two (2) checks or money orders for EACH license application. One check payable to the MED (DOR), and one check payable to the designated local authority. The application requires disclosure of the local authority contact (name, address, e-mail and phone number) to enable MED to forward a copy of the application and fees to them.
- ~~MED Associated Key License Application Form completed by each owner for submission with the Business Application. This form is not required if the new business applicant(s) own another currently licensed Colorado Marijuana Business. (Form available on the MED Website.)~~
- ~~Copy of the Associated Key(s) Colorado Driver's license or Colorado State issued ID.~~
- ~~Fingerprints for new Associated Keys.~~
- LLC's must provide an Operating Agreement and Corporations must provide Articles of Incorporation and Bylaws completed and signed by all parties.

- Copy of a current "Certificate of Good Standing" from the Colorado Secretary of State.
- ~~Copy of Trade Name Registration from the Colorado Secretary of State if applicable.~~
- Verify the business name on the application, local license, MLO record, sales tax bond, lease and tax license all match the legal business name registered with the Colorado Secretary of State.
- Copy of the current lease(s), **in the name of the business**, fully executed and signed, for each licensed business location.
- Floor plans of each facility, **to scale**, on 8.5" x 11" paper. These drawings, at a minimum, will indicate all walls, fixtures in sales area, entrances, exits, safes, storage areas, locations of cameras, DVR(s) and security room(s). Clearly identify the licensed premises area(s).
- Copy of the Colorado Retail Marijuana License Bond on the approved State form. Not allowed to use the existing Colorado Medical Marijuana License Bond for a retail business (*On the MED website.*)
- Copy of the current Retail Marijuana State Sales, Excise or Wholesale Tax License.
- ~~Copies of all existing notes, security instruments and loan documents. Provide a written explanation of the funding sources described in these documents and any other sources of investment capital obtained since the last renewal of these licenses.~~
- A Retail Applicant Ownership and Funding Certification form signed by each owner certifying full disclosure of ownership and funding under penalty of perjury. This form also does not allow any change of ownership or change of location until the license is approved (*This form provided by MED at time of application.*)
- If application is for combined use of the same facility without physical separation for both a Medical Marijuana Center and a Retail Marijuana Store, a signature will also be required on a Letter of Understanding prohibiting the sale of Medical Marijuana to anyone under the age of twenty one (21) years old (*This form provided by MED at time of application.*)
- A Statement of Understanding form signed by each owner for each business license certifying knowledge and compliance of all state laws and regulations. (*This form provided by MED at time of application.*)
- Explain Marijuana Inventory Tracking System (METRC). The business must have all current Medical Marijuana Inventory entered into METRC before operating as a Retail Marijuana business. Prior to operating a Retail business as either a conversion or as combined use, the Medical Marijuana inventory or a portion of the Medical Marijuana inventory must be converted to Retail Marijuana inventory. This is a ONE TIME conversion and includes converting the inventory in METRC.
- Payment of business application and licensing fees.
- Payment of Associated Key application and licensing fees.
- Background investigator assigned does a thorough background investigation and completes the investigation report.
- Enter investigation report and all information into a MLO investigation.



# Colorado Sales Tax Withholding Account Application

You can now apply online, see page 3 for more information. If applying by paper, read the instructions (on page 4) before completing this form.

<b>A</b>	1. Reason for Filing This Application — Required		
	<input type="checkbox"/> Original Application	<input type="checkbox"/> Change of Ownership	<input checked="" type="checkbox"/> Additional Location
Do you have a Department of Revenue Account Number?		If Yes, Account Number	
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		27964766	
2. Indicate Type of Organization. If you are not an individual you must have a FEIN number.			
<input type="checkbox"/> Individual		<input checked="" type="checkbox"/> Limited Liability Company (LLC)	
<input type="checkbox"/> General Partnership		<input type="checkbox"/> Corporation/"S" Corp.	
<input type="checkbox"/> Limited Partnership		<input type="checkbox"/> Association	
<input type="checkbox"/> Limited Liability Limited Partnership (LLLP)		<input type="checkbox"/> Estate/Trust	
		<input type="checkbox"/> Government	
		<input type="checkbox"/> Joint Venture	
		<input type="checkbox"/> Non-Profit (Charitable)	
<b>B</b>	1a. Last Name or Business Name		Middle initial
	M M Distributing LLC		
	1b. Proof of Identification (Requirements – See page 4)		
2a. Trade Name/ Doing Business As (If applicable, and for informational purposes only)		2b. FEIN (required)	2c. SSN
		37-1751898	
<b>Physical Place of Business</b>			
3a. Principal Address (A Colorado address is required if a location in the state)		City	State Zip
422 N. Commercial		Trinidad	CO 81082
3b. County	3c. If business is within limits of a city, what city?		3d. Phone Number
Las Animas	Trinidad		[REDACTED]
<b>Mailing address — enter mailing address here if different than the physical address</b>			
4a. Last Name or Business Name		First Name	Middle Initial 4b. Phone Number
			( )
4c. Mailing Address		City	State Zip
5. List specific products ( you must list the products you sell) and/or services you provide and Explain In Detail in section 5a. below.			
Do you sell alcohol?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Do you rent out items for 30 days or less?
Do you sell tobacco products?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Do you sell Prepaid Wireless?
Is your business in a special taxing district?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Do you sell medical marijuana?
Do you rent motor vehicles for 30 days or less?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Do you sell adult usage marijuana?
			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
5a. List specific products and/or services you provide and Explain In Detail			
Sell Retail Marijuana			
6a. Owner/Partner/ Corp. Officer Last Name		Owner/Partner/ Corp. Officer First Name	
De Angelis		Geraldine	
6b. Title	6c. FEIN	6d. SSN	6e. Phone Number
Sec / Treas		[REDACTED]	[REDACTED]
6f. Address		City	State Zip
[REDACTED]		Trinidad	CO 81082
7a. Owner/Partner/ Corp. Officer Last Name		Owner/Partner/ Corp. Officer First Name	
Micheliza		John	
7b. Title	7c. FEIN	7d. SSN	7e. Phone Number
President		[REDACTED]	[REDACTED]
7f. Address		City	State Zip
[REDACTED]		Trinidad	CO 81082

(Form continued on page 2)

**If you acquired the business in whole or in part, complete the following:**

8a. Prior Last Name or Business Name	First Name	Middle Initial	8b. Date of Acquisition (MM/DD/YY)	
8c. Address		City	State	Zip

**C** 1. If seasonal, mark each business month:  Jan  Feb  Mar  Apr  May  Jun  Jul  Aug  Sep  Oct  Nov  Dec

2a. Filing Frequency: If sales tax is collected: <input type="checkbox"/> \$15.00/ month or less — Annually <input type="checkbox"/> Under \$300/ month — Quarterly <input type="checkbox"/> Wholesale Only — Annually <input checked="" type="checkbox"/> \$300/ month or more — Monthly	2b. First Day of Sales (MM/DD/YY)  12-1-14
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3. Indicate which applies to you: <input checked="" type="checkbox"/> Retail-Sales <input type="checkbox"/> Wholesaler <input type="checkbox"/> Charitable <input type="checkbox"/> Retailers-Use	Revenue Registration Account Number (Dept. Use Only) 27964766-0001
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<b>D</b> 1. Filing frequency If wage withholding amount is W2 (Withholding of \$50,000 plus see Section D page 6) <input type="checkbox"/> \$1 - \$6,999/Year — Quarterly <input type="checkbox"/> \$7,000 - \$49,999/Year — Monthly <input type="checkbox"/> \$50,000 +/ Year — Weekly	2. <input type="checkbox"/> W2 Withholding <input type="checkbox"/> 1099 Withholding
1a. Filing frequency If wage withholding amount is 1099 (Withholding of \$50,000 plus see Section D page 6) <input type="checkbox"/> \$1 - \$6,999/Year — Quarterly <input type="checkbox"/> \$7,000 - \$49,999/Year — Monthly <input type="checkbox"/> \$50,000 +/ Year — Weekly	2a. <input type="checkbox"/> Oil/Gas Withholding

3a. First Day of Payroll, if applicable (MM/DD/YY)	3b. Payroll Records Phone Number ( )
--	---

E	Period Covered		Fees (see fees on page 3)			
	From MM/YY	To MM/YY	(0020-810)	State Sales Tax Deposit	(355) \$	
	12/14	12/15	(0080-750)	Sales Tax License	(999) \$	12 00
		12/	(0100-750)	Wholesale License	(999) \$	00
			(1000-750)	Wage W2 Withholding	(999) \$	00
			(1020-750)	1099 Withholding	(999) \$	00
		12/	(0160-750)	Charitable License	(999) \$	00
Mail to and Make Checks Payable to: Colorado Department of Revenue, PO Box 17087 Denver, CO 80261-0087			Amount Owed \$		12 .00	

The State may convert your check to a one time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is rejected due to insufficient or uncollected funds, the Department of Revenue may collect the payment amount directly from your bank account electronically.

**F** I declare under penalty of perjury in the second degree that the statements made in this application are true and complete to the best of my knowledge.

Signature of Owner, Partner, or Corporate Officer Required <i>Geraldine McQueen</i>	Title <i>Sec / Treas</i>	Date (MM/DD/YY) 11-18-14
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(See fees and additional information on page 3)

## Colorado Marijuana Licensing Authority Retail Business License Application

License Types & Fees (See Application Checklist for details on license types and fees.)			
<input type="checkbox"/> Retail Marijuana Store  <input checked="" type="checkbox"/> Retail Marijuana Cultivation  <input type="checkbox"/> Retail Marijuana Test Facility	<input checked="" type="checkbox"/> Tier 1 = 3600 or fewer plants <input type="checkbox"/> Tier 2 = 3601 – 6000 plants <input type="checkbox"/> Tier 3 = 6001–10200 plants	<input type="checkbox"/> Retail Marijuana Products Manufacturer <input type="checkbox"/> Conversion <input checked="" type="checkbox"/> Retail/Medical Marijuana Combined Use <input type="checkbox"/> Affiliated Business	
Applicant's Legal Business Name (Please Print) <b>M &amp; M Distributing, LLC</b>		Marijuana License Number (Assigned by Division) <b>OPC 403-01495</b>	
Trade Name (DBA) (Provide Trade Name Registration)		Website Address	
<b>Physical Address</b>			
Street Address of Marijuana Business <b>422 N. Commercial St.</b>		City <b>Trinidad</b>	State <b>CO</b>
Business Phone Number <b>(719) 422-8298</b>		Business Fax Number	Email Address [REDACTED]
<b>Mailing Address (if different from Business Address)</b>			
Address		City	State ZIP
Primary Contact Person for Business <b>John E. Micheliza</b>		Title <b>President</b>	Primary Contact Phone Number [REDACTED]
Primary Contact Address (city, state ZIP) [REDACTED] Trinidad, CO 81082		Primary Contact Fax Number <b>(719) 846-7896</b>	
Federal Taxpayer ID <b>37-1751898</b>		Colorado Sales Tax License # <b>27964766-000</b>	Email Address [REDACTED]
Type of Business Structure			
<input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Limited Partnership <input checked="" type="checkbox"/> Limited Liability Company <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Publicly Traded Corporation <input type="checkbox"/> Trust <input type="checkbox"/> Other _____			
State of Incorporation or Creation of Business Entity <b>Colorado</b>			Date <b>3/5/2014</b>
Date of Qualification to Conduct Business in Colorado (Provide Certificate of Good Standing from the Colorado Secretary of State's Office) <b>3/5/2014</b>			
If a Corporation, List all States Where the Corporation is Authorized to Conduct Business <b>N/A</b>			
List all Trade Names used by the Business Entity (other than above) <b>N/A</b>			
Attach copies of all articles of incorporation, bylaws, articles of organization, or a true copy of any partnership or trust agreement, including any and all amendments to such.  If a corporation, attach copies of all annual and bi-annual reports, SEC filings, if any, and all minutes from all corporate meetings for the past 12 months.			

1. Is the applicant (including any of the partners, if a partnership; members or manager if a limited liability company; or officers, stockholders or directors if a corporation) or manager under the age of twenty-one years?		Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>	
2. Has the applicant (including any of the partners, if a partnership; members or manager if a limited liability company; or officers, stockholders or directors if a corporation) or manager ever (in Colorado or any other state); (a) been denied a privileged license (ie: Liquor, Gaming, Racing and Marijuana)? (b) had a privileged license (ie: Liquor, Gaming, Racing and Marijuana) suspended or revoked? (c) had interest in another entity that had a privileged (ie: Liquor, Gaming, Racing and Marijuana) license denied, suspended or revoked? If you answered yes to 2a, b or c, explain in detail on a separate sheet.		 <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	
3. Has a Marijuana license ever been issued to the applicant (including any of the partners, if a partnership; members or manager if a limited liability company; or officers, stockholders or directors if a corporation)? If yes, identify the name of the business and list any current or former financial interest in said business including any loans to or from a licensee.		 <input checked="" type="checkbox"/> <input type="checkbox"/>	
4. Does the applicant have legal possession of the premises by virtue of ownership, lease or other arrangement? Attach all documentation showing legal possession. Deed, Title, sale or lease agreements etc. <input type="checkbox"/> Ownership <input checked="" type="checkbox"/> Lease <input type="checkbox"/> Other (Explain in Detail) _____ (a) If leased, list name of landlord and tenant, and date of expiration, EXACTLY as they appear on the lease:			
Landlord See attachment	Tenant	Expires 3/11/2016	
Attach a diagram of the premises to be licensed and outline or designate the area (including dimensions) which shows the limited access areas, walls, partitions, entrances, exits and what each room shall be utilized for in this business, including security equipment locations. This diagram should be no larger than 8 1/2" X 11". (It does not have to be to scale)			
5. Who, besides the owners listed in this application (including persons, firms, partnerships, corporations, limited liability companies, trusts), will loan or give money, inventory, furniture or equipment to or for use in this business; or who will receive money or profits from this business. Attach a separate sheet if necessary.			
Name	Date of Birth	FEIN OR SSN	Interest
N/A			
Attach copies of all notes and security instruments, and any written agreement, or details of any oral agreement, by which any person (including partnerships, corporations, limited liability companies, etc.) will share in the profit or gross proceeds of this establishment, and any agreement relating to the business which is contingent or conditional in any way by volume, profit, sales, giving of advice or consultation.			
<b>Local Licensing Authority (To be filled out by Applicant)</b>			
Local Licensing Authority/Department Audra Garrett		Address 135 No. Animas St., Trinidad, CO 81082	
Local Licensing Authority contact name Audra Garrett		Contact Phone (719) 846-9843	Contact Email audragarrett@trinidad.co.gov
Date of application with local authority 11/17/14		Date of approval from local authority, if any	
Are you requesting a concurrent review? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
6. Has the Applicant filed for a retail marijuana cultivation?		Yes No <input checked="" type="checkbox"/> <input type="checkbox"/>	
What City or County? (Fill out a separate and complete application) Trinidad, CO 81082			
7. Does the Retail Applicant have evidence of a good and sufficient bond in the amount of \$5000.00 in accordance with 12-43.4-303 C.R.S. (Include evidence with application)?		<input checked="" type="checkbox"/> <input type="checkbox"/>	
Printed Legal Business Name M & M Distributing, LLC		Printed Trade Name (DBA)	

Printed Legal Business Name M & M Distributing, LLC.	Printed Trade Name (DBA)
1. Has the applicant, the applicant's parent company or any other intermediary business entity ever applied for a Marijuana license in this or any other jurisdiction, foreign or domestic, whether or not the license was ever issued? If YES, provide details on a separate sheet, including jurisdiction, type of license, license number, and dates license held or applied for.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2. Has the applicant, the applicant's parent company or any other intermediary business entity ever been denied a Marijuana license, withdrawn a Marijuana license or had any disciplinary action taken against any Marijuana license that they have held in this or any other jurisdiction, foreign or domestic? If YES, provide details on a separate sheet, including jurisdiction, type of action, and date of action.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Financial History</b>	
1. Is the applicant, the applicant's parent company or any other intermediary business entity delinquent in the payment of any judgments or tax liabilities due to any governmental agency anywhere? If YES, provide details on a separate sheet and attach any documents to prove settlement or resolution of the delinquency.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2. Has the applicant, the applicant's parent company or any other intermediary business entity filed a bankruptcy petition in the past 5 years, had such a petition filed against it, or had a receiver, fiscal agent, trustee, reorganization trustee or similar person appointed for it? If YES, provide details on a separate sheet and attach any documents from the bankruptcy court.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
3. Is the applicant, the applicant's parent company or any other intermediary business entity currently a party to, or has it ever been a party to, in any capacity, any business trust instrument? If YES, provide details on a separate sheet.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
4. Has a complaint, judgment, consent decree, settlement or other disposition related to a violation of federal, state or similar foreign antitrust, trade or security law or regulation ever been filed or entered against the applicant, the applicant's parent company or any other intermediary business entity? If YES, provide details on a separate sheet and attach any documents to prove the settlement of any of these issues. Include any items currently under formal dispute or legal appeal.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
5. Has the applicant, the applicant's parent company or any other intermediary business entity been a party to a lawsuit in the past 5 years, either as a plaintiff or defendant, complainant or respondent, or in any other fashion, in this or any other country? If YES, provide details on a separate sheet and attach any documents to prove the settlement of any of these issues. Include any items currently under formal dispute or legal appeal.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
6. Has the applicant, the applicant's parent company or any other intermediary business entity filed a business tax return in the past two years?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
7. Has the applicant, the applicant's parent company or any other intermediary business entity completed financial statements, either audited or unaudited, in the past two years? If YES, attach all financial statements completed in the past two years.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
8. Has any interest or share in the profits of the sale of Marijuana been pledged or hypothecated as security for a debt or deposited as a security for the performance of an act or to secure the performance of a contract? If YES, provide details on a separate sheet.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
9. Attach a list detailing the operating and investment accounts for this business, including financial institution name, address, telephone number, and account number for each account.	
10. Attach a list detailing each outstanding loan and financial obligation obtained for use in this business, including creditor name, address, phone number, loan number, loan amount, loan terms, date acquired, and date due.	
Person who maintains Applicant's business records Geraldine DeAngelis	Title Sec/Treas
Address ██████████, Trinidad, CO 81082	Phone Number (719) 846-3634
Person who prepares Applicant's tax returns, government forms & reports Ortiz Tax Service (Tom Ortiz)	Title
Address 15801 Hwy 239, Trinidad, CO 81082	Phone Number (719) 846-9663
Location of financial books and records for Applicant's business 422 N. Commercial St., Trinidad, CO 81082	

## Affirmation & Consent

I, Geraldine M. DeAngelis, as an authorized agent for the applicant, state under penalty for offering a false instrument for recording pursuant to 18-5-114 C.R.S. that the entire Marijuana Business License Application Form, statements, attachments, and supporting schedules are true and correct to the best of my knowledge and belief, and that this statement is executed with the knowledge that misrepresentation or failure to reveal information requested may be deemed sufficient cause for the refusal to issue a Marijuana license by the State Licensing Authority. Further, I am aware that later discovery of an omission or misrepresentation made in the above statements may be grounds for the denial or revocation of the license. I am voluntarily submitting this application to the Colorado Marijuana Licensing Authority under oath with full knowledge that I may be charged with perjury or other crimes for intentional omissions and misrepresentations pursuant to Colorado law or for offering a false instrument for recording pursuant to 18-5-114 C.R.S. I further consent to any background investigation necessary to determine my present and continuing suitability and that this consent continues as long as I hold a Colorado Marijuana License, and for 90 days following the expiration or surrender of such Marijuana license. Note: If your check is rejected due to insufficient or uncollected funds, the Department of Revenue may collect the payment amount directly from your banking account electronically.

**Print Full Legal Agent Name clearly below:**

Applicant's Business Name M & M Distributing, LLC.		Trade Name (DBA)
Legal Agent Last Name (Please Print) DeAngelis	Legal Agent First Name Geraldine	Legal Agent Middle Name Marie
Signature <i>Geraldine De Angelis</i>		Date 10/7/14

## Affirmation & Consent

I, John E. Micheliza, as an authorized agent for the applicant, state under penalty for offering a false instrument for recording pursuant to 18-5-114 C.R.S. that the entire Marijuana Business License Application Form, statements, attachments, and supporting schedules are true and correct to the best of my knowledge and belief, and that this statement is executed with the knowledge that misrepresentation or failure to reveal information requested may be deemed sufficient cause for the refusal to issue a Marijuana license by the State Licensing Authority. Further, I am aware that later discovery of an omission or misrepresentation made in the above statements may be grounds for the denial or revocation of the license. I am voluntarily submitting this application to the Colorado Marijuana Licensing Authority under oath with full knowledge that I may be charged with perjury or other crimes for intentional omissions and misrepresentations pursuant to Colorado law or for offering a false instrument for recording pursuant to 18-5-114 C.R.S. I further consent to any background investigation necessary to determine my present and continuing suitability and that this consent continues as long as I hold a Colorado Marijuana License, and for 90 days following the expiration or surrender of such Marijuana license. Note: If your check is rejected due to insufficient or uncollected funds, the Department of Revenue may collect the payment amount directly from your banking account electronically.

**Print Full Legal Agent Name clearly below:**

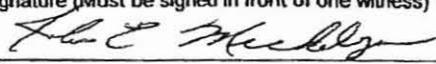
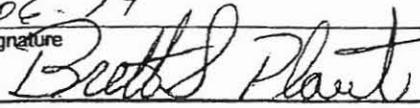
Applicant's Business Name M & M Distributing, LLC.		Trade Name (DBA)	
Legal Agent Last Name (Please Print) Micheliza	Legal Agent First Name John	Legal Agent Middle Name Everett	
Signature 		Date 10-6-14	

## Investigation Authorization Authorization to Release Information

I, John Micheliza, as an authorized agent for the applicant, hereby authorize the Colorado Marijuana Licensing Authority, the Marijuana Enforcement Division, (hereafter, the Investigatory Agencies) to conduct a complete investigation into my personal background, using whatever legal means they deem appropriate. I hereby authorize any person or entity contacted by the Investigatory Agencies to provide any and all such information deemed necessary by the Investigatory Agencies. I hereby waive any rights of confidentiality in this regard. I understand that by signing this authorization, a financial record check may be performed. I authorize any financial institution to surrender to the Investigatory Agencies a complete and accurate record of such transactions that may have occurred with that institution, including, but not limited to, internal banking memoranda, past and present loan applications, financial statements and any other documents relating to my personal or business financial records in whatever form and wherever located. I understand that by signing this authorization, a financial record check of my tax filing and tax obligation status may be performed. I authorize the Colorado Department of Revenue to surrender to the Investigatory Agencies a complete and accurate record of any and all tax information or records relating to me. I authorize the Investigatory Agencies to obtain, receive, review, copy, discuss and use any such tax information or documents relating to me. I authorize the release of this type of information, even though such information may be designated as "confidential" or "nonpublic" under the provisions of state or federal laws. I understand that by signing this authorization, a criminal history check will be performed. I authorize the Investigatory Agencies to obtain and use from any source, any information concerning me contained in any type of criminal history record files, wherever located. I understand that the criminal history record files contain records of arrests which may have resulted in a disposition other than a finding of guilt (i.e., dismissed charges, or charges that resulted in a not guilty finding). I understand that the information may contain listings of charges that resulted in suspended imposition of sentence, even though I successfully completed the conditions of said sentence and was discharged pursuant to law. I authorize the release of this type of information, even though this record may be designated as "confidential" or "nonpublic" under the provisions of state or federal laws.

The Investigatory Agencies reserve the right to investigate all relevant information and facts to their satisfaction. I understand that the Investigatory Agencies may conduct a complete and comprehensive investigation to determine the accuracy of all information gathered. However, the State of Colorado, Investigatory Agencies, and other agents or employees of the State of Colorado shall not be held liable for the receipt, use, or dissemination of inaccurate information. I, on behalf of the applicant, its legal representatives, and assigns, hereby release, waive, discharge, and agree to hold harmless, and otherwise waive liability as to the State of Colorado, Investigatory Agencies, and other agents or employees of the State of Colorado for any damages resulting from any use, disclosure, or publication in any manner, other than a willfully unlawful disclosure or publication, of any material or information acquired during inquiries, investigations, or hearings, and hereby authorize the lawful use, disclosure, or publication of this material or information. Any information contained within my application, contained within any financial or personnel record, or otherwise found, obtained, or maintained by the Investigatory Agencies, shall be accessible to law enforcement agents of this or any other state, the government of the United States, or any foreign country.

**Print Full Legal Name of Authorized Agent clearly below:**

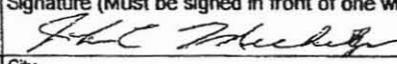
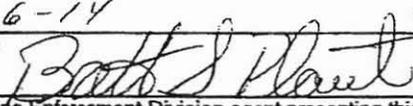
Applicant's Business Name M & M Distributing, LLC.		Trade Name (DBA)
Legal Agent Last Name (Please Print) Micheliza	Legal Agent First Name John	Legal Agent Middle Name Everett
Legal Agent Title	Signature (Must be signed in front of one witness) 	
Date (MM/DD/YY) 10-06-14	City Trinidad	State Colo
Witness 1 Signature 		

## Applicant's Request to Release Information

TO:	FROM: (Applicant's Printed Name) John Micheliza
-----	--

1. I/We hereby authorize and request all persons to whom this request is presented having information relating to or concerning the above named applicant to furnish such information to a duly appointed agent of the Marijuana Enforcement Division whether or not such information would otherwise be protected from the disclosure by any constitutional, statutory or common law privilege.
2. I/We hereby authorize and request all persons to whom this request is presented having documents relating to or concerning the above named applicant to permit a duly appointed agent of the Marijuana Enforcement Division to review and copy any such documents, whether or not such documents would otherwise be protected from disclosure by any constitutional, statutory, or common law privilege.
3. I/We hereby authorize and request the Colorado Department of Revenue to permit a duly appointed agent of the Marijuana Enforcement Division to obtain, receive, review, copy, discuss and use any such tax information or documents relating to or concerning the above named applicant, whether or not such information or documents would otherwise be protected from disclosure by any constitutional, statutory, or common law privilege.
4. If the person to whom this request is presented is a brokerage firm, bank, savings and loan, or other financial institution or an officer of the same, I/we hereby authorize and request that a duly appointed agent of the Marijuana Enforcement Division be permitted to review and obtain copies of any and all documents, records or correspondence pertaining to me/us, including but no limited to past loan information, notes co-signed by me/ us, checking account records, savings deposit records, safe deposit box records, passbook records, and general ledger folio sheets.
5. I/We do hereby make, constitute, and appoint any duly appointed agent of the Colorado Marijuana Enforcement Division, my/our true and lawful attorney in fact for me/us in my/our name, place, stead, and on my/our behalf and for my/our use and benefit:
  - (a) To request, review, copy sign for, or otherwise act for investigative purposes with respect to documents and information in the possession of the person to whom this request is presented as I/we might;
  - (b) To name the person or entity to whom this request is presented and insert that person's name in the appropriate location in this request;
  - (c) To place the name of the agent presenting this request in the appropriate location on this request.
6. I grant to said attorney in fact full power and authority to do, take, and perform all and every act and thing whatsoever requisite, proper, or necessary to be done, in the exercise of any of the rights and powers herein granted, as fully to all intents and purposes as I/we might or could do if personally present, with full power of substitution or revocation, hereby ratifying and confirming all that said attorney in fact, or his substitute or substitutes, shall lawfully do or cause to be done by virtue of this power of attorney and the rights and powers herein granted.
7. This power of attorney ends twenty-four (24) months from the date of execution.
8. The above named applicant has filed with the Colorado Marijuana Licensing Authority an application for a Marijuana license. Said applicant understands that it is seeking the granting of a privilege and acknowledges that the burden of proving its qualifications for a favorable determination is at all times on the applicant. Said applicant accepts any risk of adverse public notice, embarrassment, criticism, or other action of financial loss, which may result from action with respect to this application.
9. I/We do, for myself/ourselves, my/our heirs, executors, administrators, successors, and assigns, hereby release, remise, and forever discharge the person to whom this request is presented, and his agents and employees from all and all manner or actions, causes of action, suits, debts, judgments, executions, claims, and demands whatsoever, known or unknown, in law or equity, which the applicant ever had, now has, may have, or claims to have against the person to whom this request is being presented or his agents or employees arising out of or by reason of complying with the request.
10. I/We agree to indemnify and hold harmless the person to whom this request is presented and his agents and employees from and against all claims, damages, losses, and expenses, including reasonable attorneys' fees arising out of or by reason of complying with this request.
11. A reproduction of this request by photocopying or similar process shall be for all intents and purposes as valid as the original.

**Print Full Legal Name of Authorized Agent clearly below:**

Legal Agent Last Name (Please Print) Micheliza	Legal Agent First Name John	Legal Agent Middle Name Everett
Legal Agent Title President	Signature (Must be signed in front of one witness) 	
Date (MM/DD/YY) 10-06-14	City Trinidad	State Colo.
Witness 1 Signature 		
Signature of Marijuana Enforcement Division agent presenting this request		Date

M & M Distributing, LLC  
422 N. Commercial St.  
Trinidad, CO 81082

Medical Marijuana License

Center 402-00949  
OPC 403-01495

Approved July 16, 2014 (not yet operational)

9) International Bank  
320 N. Convent  
Trinidad, CO 81082  
719-846-1600

#



10) N/A

Personal Finances will be used.

Applicant's Last Name (Please Print) <u>Micheliza</u>	First Name <u>John</u>	Middle Name <u>Everett</u>
--	---------------------------	-------------------------------

**Personal Financial**

1. Annual Income

Salary (Source): <u>Social Security</u>	\$ <u>19,678.80</u>
Salary (Source): <u>Midland Natl Life Ins. Annuity</u>	\$ <u>10,347.79</u>
Interest (Source): <u>Metropolitan Life</u>	\$ <u>413.39</u>
Interest (Source): <u>New York Life, MET Life, Century Savings</u>	\$ <u>237.88</u>
Dividends (Source): <u>National Financial Services</u>	\$ <u>3,563.07</u>
Dividends (Source): _____	\$ _____
Other (Source): <u>Federal Aviation Admin.</u>	\$ <u>3,000.00</u>
Other (Source): _____	\$ _____
<b>TOTAL</b>	\$ <b><u>37,240.93</u></b>

Please submit all executed agreements or documents that grant you any right to any percent of ownership or percent of income from the Colorado Medical Marijuana business with which you are associated.

2. Amount to be invested in business: \_\_\_\_\_ \$ 120,000.00

3. Percentage of ownership this amount represents: \_\_\_\_\_ 50 %

4. Investment will be derived from the following sources:

Personal Finances

Midland National - Annuities 300,000

Sale of property - Spanish Peaks 400,000

Secured Loans - Warehouses

Tercio property

5. Has your interest in this Medical Marijuana establishment been assigned, pledged or hypothecated to any person, firm, or corporation, or has any agreement been entered into whereby your interest is to be assigned, pledged or sold, either in part or whole?  Yes  No

If YES, explain: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Applicant's Initials JEM

### Colorado Retail Marijuana License Bond

Name of Bonding Company PHILADELPHIA INDEMNITY INSURANCE COMPANY  
Bond Number PB11831700194

**KNOW ALL PERSONS BY THESE PRESENTS:**

That we, M & M DISTRIBUTING, LLC, Street Address 422 N COMMERCIAL ST,  
City TRINIDAD, County of \_\_\_\_\_, State of Colorado, as Principal,  
and PHILADELPHIA INDEMNITY INSURANCE a surety company qualified and authorized to do surety business in the State of  
Colorado, as Surety, are held and firmly bound unto the State of Colorado to indemnify the State or local governmental entity for  
any loss suffered by reasons of violation of the conditions hereinafter contained in the penal sum of FIVE THOUSAND DOLLARS  
(\$5,000.00), lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs,  
executors, administrators, successors and assigns jointly, severally, and firmly by these presents. \*COMPANY

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal is applying for the issuance or renewal of a license  
issued pursuant to the Colorado Retail Marijuana Code, Article 43.4 of Title 12 of the Colorado Revised Statutes, which license or  
license renewal shall be valid, if not suspended or revoked, for a license period ending one year from the last day of the month of  
issuance of the license or renewal;

NOW, THEREFORE, if the Principal is granted a license by the State pursuant to Article 43.4 of Title 12 of the Colorado Revised  
Statutes, during the term of said license and any renewal thereof, the Principal shall report and pay all sales and use taxes due the  
State of Colorado, or due any other entity for which the State is the collector or collecting agent, in a timely manner as provided by law.

IT IS FURTHER PROVIDED that the aggregate liability of the Surety for all breaches of the condition of this bond, regardless of the  
number of years this bond shall continue in force, the number of claims made against this bond, and the number of premiums which  
shall be payable or paid shall not exceed the amount of the bond.

IT IS FURTHER PROVIDED that pursuant to Section 12-43.4-303(2), C.R.S., the Surety shall not be required to make payments to  
the State of Colorado claiming under this bond until a final determination of failure to pay taxes due to the State has been made by the  
State Licensing Authority or a court of competent jurisdiction.

IT IS FURTHER PROVIDED that the Surety shall have the right to cancel this bond for any reason authorized by statute by filing forty-  
five (45) days' written notice of such cancellation with the Principal and with the State Licensing Authority. If cancellation is based upon  
nonpayment of premium, this bond may be cancelled by the Surety upon ten (10) days' written notice to the Principal and the State  
Licensing Authority.

THIS OBLIGATION may be continued from year to year by the issuance by the Surety of a proper continuation certificate delivered to  
the State Licensing Authority pursuant to Section 12-43.4-303(3), C.R.S.:

Dated this 1ST day of JULY, 2014.

For the Principal: \_\_\_\_\_ For the Surety: SUSAN A. SALLADA, ATTORNEY-IN-FACT

#### ACKNOWLEDGMENT OF SURETY

STATE OF PENNSYLVANIA

COUNTY OF MONTGOMERY SS.

On this 1ST day of JULY, 2014, before me, a notary public in and for the above State, personally appeared  
SUSAN A. SALLADA to me personally known and being by me duly sworn, did say that he or she is an  
authorized corporate officer or the Attorney-in-Fact of PHILADELPHIA INDEMNITY, a corporation duly organized and existing  
under the laws of the State of Colorado, or authorized to do business therein, and that he or she as such officer executed the  
foregoing instrument for the purposes herein contained on behalf of said corporation, and further acknowledged that the instrument  
was executed as the free act and deed of said corporation. \*\*INSURANCE COMPANY

IN WITNESS WHEREOF, I hereunto set my name and affixed my official seal on the day and year written above.

(SEAL)

Sara T. Sharkey  
Notary Public,

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



PHILADELPHIA INDEMNITY INSURANCE COMPANY  
One Bala Plaza, Suite 100  
Bala Cynwyd, PA 19004  
Power of Attorney

KNOW ALL PERSONS BY THESE PRESENTS: that PHILADELPHIA INDEMNITY INSURANCE COMPANY (the Company), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, does hereby constitute and appoint: Susan A. Sallada and Patricia A. Marinucci of Universal Service Agency, Inc. City of Fort Washington, State of Pennsylvania.

Its true and lawful Attorney(s) in fact with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business and to bind the Company thereby, in an amount not to exceed \$25,000,000.00

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of PHILADELPHIA INDEMNITY INSURANCE COMPANY at a meeting duly called the 1<sup>st</sup> day of July, 2011.

**RESOLVED:** That the Board of Directors hereby authorizes the President or any Vice President of the Company to: (1) Appoint Attorney(s) in Fact and authorize the Attorney(s) in Fact to execute on behalf of the Company bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof and to attach the seal of the Company thereto; and (2) to remove, at any time, any such Attorney-in-Fact and revoke the authority given. And, be it

**FURTHER RESOLVED:** That the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney or certificate relating thereto by facsimile, and any such Power of Attorney so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with the respect to any bond or undertaking to which it is attached.

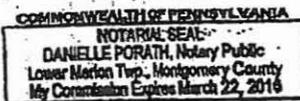
IN TESTIMONY WHEREOF, PHILADELPHIA INDEMNITY INSURANCE COMPANY HAS CAUSED THIS INSTRUMENT TO BE SIGNED AND ITS CORPORATE SEAL TO BE AFFIXED BY ITS AUTHORIZED OFFICE THIS 7<sup>TH</sup> DAY OF FEBRUARY 2013.



(Seal)

Robert D. O'Leary Jr., President & CEO  
Philadelphia Indemnity Insurance Company

On this 7<sup>th</sup> day of February 2013, before me came the individual who executed the preceding instrument, to me personally known, and being by me duly sworn said that he is the therein described and authorized officer of the PHILADELPHIA INDEMNITY INSURANCE COMPANY; that the seal affixed to said instrument is the Corporate seal of said Company; that the said Corporate Seal and his signature were duly affixed.



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

residing at: \_\_\_\_\_

Bala Cynwyd, PA

(Notary Seal)

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

March 22, 2016

I, Craig P. Keller, Executive Vice President, Chief Financial Officer and Secretary of PHILADELPHIA INDEMNITY INSURANCE COMPANY, do hereby certify that the foregoing resolution of the Board of Directors and this Power of Attorney issued pursuant thereto are true and correct and are still in full force and effect. I do further certify that Robert D. O'Leary Jr., who executed the Power of Attorney as President, was on the date of execution of the attached Power of Attorney the duly elected President of PHILADELPHIA INDEMNITY INSURANCE COMPANY.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 1 day of July, 2014



  
Craig P. Keller, Executive Vice President, Chief Financial Officer & Secretary  
PHILADELPHIA INDEMNITY INSURANCE COMPANY

FB1183170094



# STATE OF COLORADO

## STATEMENT OF UNDERSTANDING Colorado Department of Revenue - Marijuana Enforcement Division

I understand I am responsible for knowing and complying with all state laws and regulations governing medical and retail marijuana pursuant to Article 12 Title 43.3 and Article 12 Title 43.4 of the Colorado Revised Statutes and Subpart A and B of 1 CCR 212-2. I understand I am being made aware of the following laws and regulations and agree to comply with them upon issuance of my license:

I will not cultivate, sell, dispense, possess or test any marijuana on the licensed premise prior to being issued a license to do so by the State Licensing Authority and receiving approval to do so by the local jurisdiction where the license is issued. \_\_\_\_\_

I understand that the licensed premise must comply with all the security and surveillance requirements set forth in the Retail Marijuana Code and the rules or regulations promulgated in accordance with the Code before the license can cultivate, sell, dispense, possess or test any marijuana on the licensed premise. \_\_\_\_\_

I understand that at all times I shall possess and maintain possession of the premise for which the license is issued by ownership, lease, rental, or other or other arrangement of possession of the premise. \_\_\_\_\_

I understand that I am required to keep a complete set of all records necessary to show fully the business transactions of the licensee, all of which shall be open at all times during business hours for inspections and examination by the State Licensing Authority or its duly authorized representatives. \_\_\_\_\_

I understand that the licensed premise, including any places of storage where retail marijuana or retail marijuana products are stored, sold, dispensed or tested shall be subject to inspection by the state or local jurisdictions and their investigators, during all business hours and other times of apparent activity. \_\_\_\_\_

I understand that I shall retain all books and records necessary to show fully the business transactions of the business for a period of the current tax year and the three preceding tax years. \_\_\_\_\_

I understand I must use the State's Inventory Tracking System as my primary inventory tracking system of record and to follow all the rules and guidelines set forth for the use of this system. \_\_\_\_\_

I understand that any retail marijuana or marijuana product must meet the labeling and packaging requirements set forth in the Retail Marijuana Code and all the rules or regulations promulgated in accordance with the Code. \_\_\_\_\_

I understand that all areas of ingress or egress to limited access areas shall be clearly identified as such by a sign as designated by the State Licensing Authority. \_\_\_\_\_

I have read all of the above information and understand my responsibilities as a retail marijuana business licensee. I further understand that failure to comply with any law, regulation, or the provisions of this Statement may be grounds for disciplinary action including, but not limited to the suspension or revocation of my license and a monetary penalty after an administrative hearing.

LICENSEE'S BUSINESS NAME	BUSINESS LICENSE NUMBER
OWNER'S SIGNATURE	DATE

PROOF OF PUBLICATION

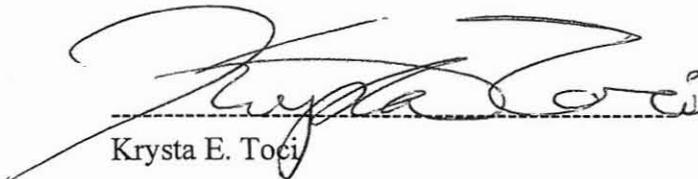
STATE OF COLORADO  
COUNTY OF LAS ANIMAS} SS

Krysta E. Toci, of lawful age, being first duly sworn upon oath, deposes and says that she is the authorized agent of The Chronicle-News, daily newspaper of general circulation which is published and circulated in the City of Trinidad, Las Animas County, Colorado, that said newspaper is a newspaper of general circulation complying with all of the requirements of Articles I to VII, Chapter 130, 1935, Colorado Statutes Annotated, and all other laws of said State, and that said legal / notice has been so published for the period of time prescribed in said newspaper proper and not a supplement.

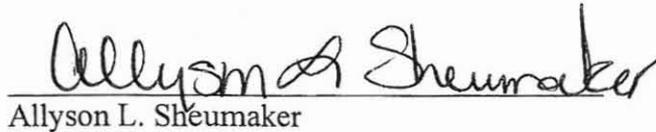
The attached Notice was published in said newspaper in its issue(s) dated

56454

December 15, 2014

  
Krysta E. Toci

Subscribed and sworn to before me this  
15 day of December,  
A. D., 2014.

  
Allyson L. Sheumaker

My commission expires on August 26, 2015



My Comm. Expires August 26, 2015

NOTICE OF PUBLIC HEARING

PURSUANT TO THE MARIJUANA LAWS OF COLORADO, M & M Distributing, LLC, 422 N. Commercial Street, Trinidad, CO, has requested the licensing officials of the City of Trinidad to grant a new Retail Marijuana Store license at this location.

Hearing on application will be held on Tuesday, January 6, 2015, at 7:00 p.m. in the Council Chambers, City Hall, 135 N. Animas Street, Trinidad, CO.

Date of Application: December 2, 2014.

Officers: John Micheliza, 44910 County Rd. 40, Trinidad, CO 81082  
Geraldine DeAngellis, 209 Estrella St., Trinidad, CO 81082

Remonstrances may be filed with the City Clerk's Office, 135 N. Animas, Trinidad, CO.

Dated this 11th day of December, 2014.

By Order of the Trinidad City Council  
Audra Garrett, City Clerk

Publish: December 15, 2014

56454

PROOF OF PUBLICATION

STATE OF COLORADO  
COUNTY OF LAS ANIMAS } SS

Krysta E. Toci, of lawful age, being first duly sworn upon oath, deposes and says that she is the authorized agent of The Chronicle-News, daily newspaper of general circulation which is published and circulated in the City of Trinidad, Las Animas County, Colorado, that said newspaper is a newspaper of general circulation complying with all of the requirements of Articles I to VII, Chapter 130, 1935, Colorado Statutes Annotated, and all other laws of said State, and that said legal / notice has been so published for the period of time prescribed in said newspaper proper and not a supplement.

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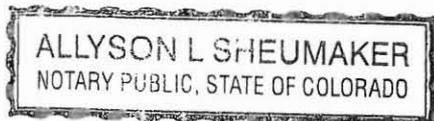
December 15, 2014

  
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Geraldine DeAngelis, 209 Estrella St., Trinidad, CO 81082

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Audra Garrett, City Clerk

Publish: December 15, 2014

56455



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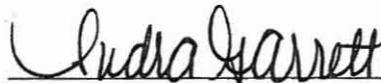
Officers: John Micheliza, [REDACTED] Trinidad, CO 81082  
Geraldine DeAngelis, [REDACTED], Trinidad, CO 81082

Remonstrances may be filed with the City Clerk's Office, 135 N. Animas, Trinidad, CO.

Dated this 11<sup>th</sup> day of December, 2014.

By order of the Trinidad City Council.

CITY OF TRINIDAD, COLORADO

  
Audra Garrett, City Clerk

CERTIFICATE OF MAILING

I hereby certify that on the 11th day of December, 2014, I mailed the Notice of Public Hearing by first-class mail, postage pre-paid to:

M & M Distributing, LLC  
422 N. Commercial Street  
Trinidad, CO 81082  
Certified #7012 3050 0000 2305 4820

  
\_\_\_\_\_  
Audra Garrett, City Clerk



## NOTICE OF PUBLIC HEARING

PURSUANT TO THE MARIJUANA LAWS OF COLORADO, M & M Distributing, LLC, 422 N. Commercial Street, Trinidad, CO, has requested the licensing officials of the City of Trinidad to grant a new Retail Marijuana Cultivation Facility license at this location.

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Date of Application: December 2, 2014

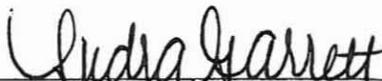
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Dated this 11<sup>th</sup> day of December, 2014.

By order of the Trinidad City Council.

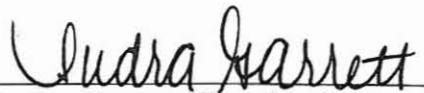
CITY OF TRINIDAD, COLORADO

  
\_\_\_\_\_  
Audra Garrett, City Clerk

CERTIFICATE OF MAILING

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M & M Distributing, LLC  
422 N. Commercial Street  
Trinidad, CO 81082  
Certified #7012 3050 0000 2305 4837

  
Audra Garrett, City Clerk

STATE OF COLORADO )

COUNTY OF LAS ANIMAS ) SS

CITY OF TRINIDAD )

CERTIFICATE OF POSTING

I, Audra Garrett, City Clerk of the City of Trinidad, Colorado, do hereby certify that pursuant to the laws of the State of Colorado, M & M Distributing, LLC, 422 N. Commercial Street, Trinidad, Colorado, which business has applied for a new Retail Marijuana Store license at said location, was duly posted for not less than ten continuous days, with the first day of posting occurring on the 16<sup>th</sup> day of December, 2014.

WITNESS, my hand and the official seal of the City of Trinidad, Colorado, this 16<sup>th</sup> day of December, 2014.

(SEAL)

CITY OF TRINIDAD, COLORADO



Audra Garrett, City Clerk

STATE OF COLORADO )

COUNTY OF LAS ANIMAS ) SS

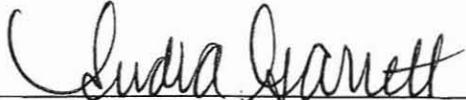
CITY OF TRINIDAD )

CERTIFICATE OF POSTING

I, Audra Garrett, City Clerk of the City of Trinidad, Colorado, do hereby certify that pursuant to the laws of the State of Colorado, M & M Distributing, LLC, 422 N. Commercial Street, Trinidad, Colorado, which business has applied for a new Retail Marijuana Cultivation Facility license at said location, was duly posted for not less than ten continuous days, with the first day of posting occurring on the 16<sup>th</sup> day of December, 2014.

WITNESS, my hand and the official seal of the City of Trinidad, Colorado, this 16<sup>th</sup> day of December, 2014.

CITY OF TRINIDAD, COLORADO

  
\_\_\_\_\_  
Audra Garrett, City Clerk

(SEAL)

12/11/14

DEPARTMENTAL INSPECTION REPORT  
3.2% BEER (FERMENTED MALT BEVERAGE)  
OR LIQUOR LICENSE

Applicant: M & M Distributing, LLC

dba:

Address: 422 N. Commercial Street

Type of License: Retail Marijuana Cultivation Facility

Renewal  Transfer  Change of Location  New  Special Event

FOR CONSIDERATION AT

COUNCIL MEETING DATE: January 6, 2015, 7:00 p.m.

\*\*\*\*\*

DEPARTMENT REVIEW

DEPARTMENT: FIRE / INSPECTION / POLICE / HEALTH DEPARTMENT

COMMENTS: not ready for inspection, final needed before  
opening

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12-16-14  
Date

[Signature]  
Signature

RETURN TO THE CITY CLERK'S OFFICE BEFORE: December 22, 2014

12/11/14

DEPARTMENTAL INSPECTION REPORT  
3.2% BEER (FERMENTED MALT BEVERAGE)  
OR LIQUOR LICENSE

Applicant: M & M Distributing, LLC

dba:

Address: 422 N. Commercial Street

Type of License: Retail Marijuana Store

Renewal  Transfer  Change of Location  New  Special Event

FOR CONSIDERATION AT  
COUNCIL MEETING DATE: January 6, 2015, 7:00 p.m.

\*\*\*\*\*

DEPARTMENT REVIEW

DEPARTMENT: FIRE / INSPECTION / POLICE / HEALTH DEPARTMENT

COMMENTS: inspection on file

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12-12-14  
Date

[Signature]  
Signature

RETURN TO THE CITY CLERK'S OFFICE BEFORE: December 22, 2014

12/11/14

DEPARTMENTAL INSPECTION REPORT  
3.2% BEER (FERMENTED MALT BEVERAGE)  
OR LIQUOR LICENSE

Applicant: M & M Distributing, LLC

dba:

Address: 422 N. Commercial Street

Type of License: Retail Marijuana Cultivation Facility

Renewal  Transfer  Change of Location  New  Special Event

FOR CONSIDERATION AT  
COUNCIL MEETING DATE: January 6, 2015, 7:00 p.m.

\*\*\*\*\*

DEPARTMENT REVIEW

DEPARTMENT: FIRE / INSPECTION / POLICE / HEALTH DEPARTMENT

COMMENTS: License not to be released until  
CO is issued

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12-16-14  
Date

[Signature]  
Signature

RETURN TO THE CITY CLERK'S OFFICE BEFORE: December 22, 2014

12/11/14

DEPARTMENTAL INSPECTION REPORT  
3.2% BEER (FERMENTED MALT BEVERAGE)  
OR LIQUOR LICENSE

Applicant: M & M Distributing, LLC

dba:

Address: 422 N. Commercial Street

Type of License: Retail Marijuana Store

Renewal  Transfer  Change of Location  New  Special Event

FOR CONSIDERATION AT  
COUNCIL MEETING DATE: January 6, 2015, 7:00 p.m.

\*\*\*\*\*

DEPARTMENT REVIEW

DEPARTMENT: FIRE / INSPECTION / POLICE / HEALTH DEPARTMENT

COMMENTS: approved  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12-16-14  
Date

  
Signature

RETURN TO THE CITY CLERK'S OFFICE BEFORE: December 22, 2014

12/11/2014

**DEPARTMENTAL INSPECTION REPORT  
MEDICAL MARIJUANA LICENSE**

Applicant's Name: M & M Distributing, LLC

DBA:

Business Address: 422 N. Commercial Street

Type of License: Retail Marijuana Cultivation Facility

Renewal     Transfer     Change of Location     New     Special Event

FOR CONSIDERATION AT

COUNCIL MEETING DATE: January 6, 2015, 7:00 p.m.

\*\*\*\*\*

DEPARTMENT REVIEW

DEPARTMENT: FIRE / INSPECTION / POLICE / HEALTH DEPARTMENT

COMMENTS:

Premises to be inspected upon completion.

12-15-14  
Date

Charles J. Daines  
Signature

RETURN TO THE CITY CLERK'S OFFICE BEFORE: December 22, 2014

12/11/2014

## DEPARTMENTAL INSPECTION REPORT MEDICAL MARIJUANA LICENSE

Applicant's Name: M & M Distributing, LLC

DBA:

Business Address: 422 N. Commercial Street

Type of License: Retail Marijuana Store

Renewal     Transfer     Change of Location     New     Special Event

FOR CONSIDERATION AT  
COUNCIL MEETING DATE:

January 6, 2015, 7:00 p.m.

\*\*\*\*\*

### DEPARTMENT REVIEW

DEPARTMENT: FIRE / INSPECTION / POLICE / HEALTH DEPARTMENT

COMMENTS: Inspected on 12-15-14  
see attached Checklist

12-15-14

Date

Charles J. Deinos

Signature

RETURN TO THE CITY CLERK'S OFFICE BEFORE:

December 22, 2014

MARIJUANA LICENSE CHECKLIST

LOCATION: M & M Distributing  
422 N. Commercial  
Retail Marijuana Store

DATE: 12-15-14

- Licenses displayed or kept somewhere on-site, or copies of applications for licensing pending approval
- Copy of current employee list
- On-site copy of current diagram of license premises (compare with actual building layout)
- Surveillance log sign-in sheet (photograph)
- List of approved employees/ contractors with access to Surveillance room (Photograph)
- Visitor log sign-in sheet (photograph)
- Check for 40 day recording history on DVR/ NVR unit
- Check each camera view for function, coverage, and blockage of views -ingress/egress doors covered 20' in all directions inside and out and capable of identification of people (includes fence gates), all marijuana displayed for sale on camera, all back stock on camera, POS locations show identity of person buying and selling, camera view not blocked by any objects, Surveillance system covered, coverage of ingress into limited access areas, coverage of all activity (quality good enough to identify people) where marijuana is tagged, harvested, trimmed, dried/cured, and packaged (basically, all marijuana in any form has to be on camera).
- Check for 4 hour battery back on DVR/NVR unit, failure notification system, and that the unit is located inside a secured area.
- Limited access area signs
- Commercial grade locks on doors and for outdoor grows, ensure licensed premises is secure in a way to prevent entry
- All exterior doors and windows alarmed
- Check for child resistant containers and child resistant opaque exit packages
- Check that all scales are certified



CITY OF TRINIDAD, COLORADO  
1876

## COUNCIL COMMUNICATION

3c

**CITY COUNCIL MEETING:** January 6, 2015  
**PREPARED BY:** Audra Garrett, ACM/City Clerk  
**DEPT. HEAD SIGNATURE:** *Audra Garrett*

**SUBJECT:** PUBLIC HEARING - New Retail Liquor Store license request by El Paso Liquor, Inc. d/b/a El Paso Liquor at 1101 E. Main Street

**PRESENTER:** El Paso Liquor, Inc. representative

**RECOMMENDED CITY COUNCIL ACTION:** Conduct the public hearing. City Council may take up to 30 days thereafter to render a decision on the application.

**SUMMARY STATEMENT:** N/A

**EXPENDITURE REQUIRED:** No

**SOURCE OF FUNDS:** N/A

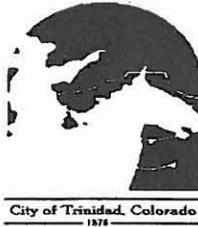
**POLICY ISSUE:** This is an application for a new license. The requirements to be illustrated by the applicant to the local liquor licensing authority are 1) the needs of the neighborhood are not being meet by existing establishments; 2) it is the desire of the adult inhabitants of the neighborhood that this license be granted; and 3) the licensee is of good moral character to hold a liquor license.

**ALTERNATIVE:** N/A

### BACKGROUND INFORMATION:

The application packet is the record for the hearing. Fingerprint results are pending for Iaonnis Smirniotis. Should something arise concerning his background, Council would take separate action. However, nothing is anticipated. The fingerprints were too low of quality to be processed.

3c



## INVESTIGATIVE REPORT

Applicant: El Paso Liquor, Inc.  
Business Name: El Paso Liquor  
Business Address: 1101 E. Main Street  
Date of Application: November 25, 2014  
Date Application Filed  
with Local Authority: December 2, 2014  
Type of Request: New License  
Type of License: Retail Liquor Store  
Hearing Date: Tuesday, January 6, 2015, 7:00 p.m.

### APPLICATION CONTENTS -

Applicant's Documents: Liquor License Application - Form #DR8404  
Articles of Incorporation  
Statement of Trade Name  
Diagram of Premises  
Commercial Lease Agreement  
Individual History Records-Form #DR8404-I  
Letters of Reference  
Fingerprints

City Documents: Notice of Public Hearing  
Certificate of Mailing  
Proof Publication on 10/31/2014  
Certificate of Posting  
Departmental Reports  
Correspondence to Applicant  
Neighborhood Boundary Map

**STATE AND LOCAL FEES -**

State Fees:	Investigation	\$1,125.00
	License	<u>227.50</u>
	Total	\$1,352.50

Local Fees:	Investigation	\$ 625.00
	License	<u>22.50</u>
	Total	\$ 647.50

Local and state fees have been paid. Applicant has been advised the City's and State's investigation fee is non-refundable and in the event the liquor license is denied, license fees only shall be refunded.

**LETTERS OF REFERENCE -**

Letters of reference for Ioannis G. Smirniotis received from:

Rianna Rivera, Trinidad, CO  
Elsie Hargrove, Trinidad, CO  
Anastasio G. Andrianakos, Denver, CO

Three letters of reference have been verified, as required by ordinance.

**FINGERPRINTING -**

Fingerprint cards were submitted to CBI/FBI on 11/26/14. Results have not been received for Ioannis G. Smirniotis because the print quality was too poor. Mr. Smirniotis will need to have prints retaken and resubmitted.

**LEASE AGREEMENT -**

The lease agreements dated 11/25/2014 between Ioannis Smirniotis, an individual, and El Paso Liquor, Inc., a Colorado corporation for the lease of property at 1101 E. Main Street. The lease term is from December 1, 2014 through November 30, 2017.

**DIAGRAM OF PREMISES -**

The diagram identifies the proposed premises. It encompasses the ground level facility. There are two fairly large storage areas that consume approximately half of the building. The remainder of the building is the sales room. A drive through is proposed on the east side of the building.

## **SALES TAX LICENSE -**

Sales Tax License #30676693 was verified.

## **NOTICE OF HEARING -**

Mailed to applicant – 12/11/14.

Published – 12/15/14.

Posted on the premises – 12/16/14.

## **DEPARTMENTAL REPORTS -**

Fire Chief Tim Howard conducted his inspection on 12/16/2014. He reported that the premise is not ready for inspection. A follow up inspection will be required and is anticipated the second week of February, 2015.

Building Inspector Chris Kelley advises that this proposed use will represent a change of occupancy and that plans are needed for the remodel.

The Police Department reported that an inspection will be completed upon renovation of the premises. Chief Glorioso had no other comments at this time.

## **CORRESPONDENCE TO APPLICANT -**

A letter dated 12/15/2014 was sent to El Paso Liquor, Inc. advising of the procedures to follow at the hearing. A sample petition was also provided as well as a map of the designated neighborhood.

## **ZONING –**

The proposed premise is zoned Community Commercial.

## **SCHOOL DISTANCES –**

There is a 500-foot limitation from a school for a Tavern license type specifically. While the limitation does not exist for a Retail Liquor Store license, information is provided for informational purposes only. The nearest school property is Goal Academy which is 3,208.82 feet from the nearest point of this property.

## **LICENSED OUTLETS WITHIN THE NEIGHBORHOOD -**

The neighborhood boundary was set as the corporate boundaries of the City.

There are forty-one (41) licensed outlets within the City limit boundary. Of the forty-one (41) licensed premises, eight (8) are licensed as Retail Liquor Stores. (J.R.'S #811, Main St. Tap House, Krackalack Sports Grill, RJ's Discount Liquor, Monte Cristo Bar, and Ole's Tavern have either not renewed their license and are in the 90-day late renewal period or have closed).

The outlets are:

3.2% - Off	J. R.'S Fuel Stop #810	731 E. Main Street
	J. R.'S #811	110 E. Colorado Avenue
	Safeway Store #722	457 W. Main Street
	Wal-Mart #962	2921 Toupal Drive
	Count: 4	
3.2% - On Premises	Creative Sale, Inc.	700 Smith Street
	Count: 1	
Club	Elks, BPOE	120 S. Maple
	Count: 1	
Hotel/Rest.	Royse's Black Jack Steakhouse	225 W. Main Street
	Chef Liu's Restaurant	1423 Santa Fe Trail
	Mission at the Bell Restaurant	134 W. Main Street
	Quality Inn	3125 Toupal Drive
	Rino's Restaurant	400 E. Main Street
	Wonderful House Restaurant	415 University Street
	Bella Luna Pizzeria	121 W. Main Street
	Trinidad Holiday Inn	3130 Santa Fe Trail Drive
	Main St. Tap House	308 W. Main Street
	Brix	231 E. Main Street
	Café What a Grind	341 N. Commercial Street
	Krackalack Sports Grill	416 University Street
	Ristras Restaurant and Cantina, LLC	516 E. Elm Street
	Clubhouse Grille, The	1415 Nolan Dr.
	Count: 14	
Liquor Store	Drop City Liquor	155 Elm Street
	Main Street Liquors	803 E. Main Street
	Mountain Liquor	1144 Robinson

Santa Fe Trail Hops & Vines	1530 Santa Fe Trail
Tire Shop Wine & Spirits	601 W. Main Street
Trinidad Beer, Liquor & Wine Depot	111 E. Kansas Avenue
Arizona Liquor	847 Arizona Avenue
RJ's Discount Liquor	2132 Freedom Road

Count: 8

Tavern	Great Wall	321 State Street
	El Rancho Cafe	1901 Santa Fe Trail
	Gino's Sports Bar	991 E. Main Street
	JuJo's Pub and Dance Hall	125 N. Chestnut Street
	Lumber Jacks Bar & Grill	1133 N. Linden Ave.
	Mantelli's	137 W. Main Street
	Monte Cristo Bar	124 Santa Fe Trail
	The Park	608 Arizona Avenue
	Trinidad Lanes, LLC	823 Van Buren
	Ole's Tavern	2833 Toupal Drive

Count: 10

Arts	Southern Colorado Repertory Theatre	131 W. Main Street
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Count: 1

Beer and Wine	Mt. Carmel Health, Wellness & Community Center	911 Robinson Avenue
	Lees' Bar B-Q	1133 North Linden Avenue

Count: 2

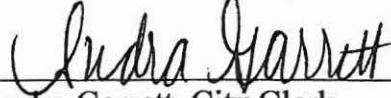
Disclosure statements are provided by Councilmember Michelle Miles and Councilmember Liz Torres.

#### **PETITIONS –**

A petition was filed with this office on December 22, 2014, in support of the granting of the liquor license, containing 52 total signatures. Of the 52 signatures provided, 43 were residents or business owners/ managers from within the neighborhood, 21 years of age or older, all favoring issuance of a liquor license at this location. No petitions opposing the issuance of the license were submitted.

Dated this 30th day of December, 2014.

CITY OF TRINIDAD, COLORADO



Audra Garrett

Audra Garrett, City Clerk

CERTIFICATE OF MAILING

I hereby certify that on the 30th day of December, 2014, I mailed a copy of the Investigative Report, by Certified Mail, to:

El Paso Liquor, Inc.  
d/b/a El Paso Liquor  
1508 Atchison Avenue  
Trinidad, CO 81082  
Certified Mail # 7014 2120 0004 1880 9355

  
\_\_\_\_\_  
Audra Garrett, City Clerk



<b>6.</b> Is the applicant (including any of the partners, if a partnership; members or manager if a limited liability company; or officers, stockholders or directors if a corporation) or manager under the age of twenty-one years?	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>												
<b>7.</b> Has the applicant (including any of the partners, if a partnership; members or manager if a limited liability company; or officers, stockholders or directors if a corporation) or manager ever (in Colorado or any other state); (a) been denied an alcohol beverage license? (b) had an alcohol beverage license suspended or revoked? (c) had interest in another entity that had an alcohol beverage license suspended or revoked? If you answered yes to 7a, b or c, explain in detail on a separate sheet.	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>												
<b>8.</b> Has a liquor license application (same license class), that was located within 500 feet of the proposed premises, been denied within the preceding two years? If "yes," explain in detail.	<input type="checkbox"/> <input checked="" type="checkbox"/>												
<b>9.</b> Are the premises to be licensed within 500 feet of any public or private school that meets compulsory education requirements of Colorado law, or the principal campus of any college, university or seminary?	<input type="checkbox"/> <input checked="" type="checkbox"/>												
<b>10.</b> Has a liquor or beer license ever been issued to the applicant (including any of the partners, if a partnership; members or manager if a limited liability company; or officers, stockholders or directors if a corporation)? If yes, identify the name of the business and list any current or former financial interest in said business including any loans to or from a licensee.	<input type="checkbox"/> <input checked="" type="checkbox"/>												
<b>11.</b> Does the Applicant, as listed on line 2 of this application, have legal possession of the premises by virtue of ownership, lease or other arrangement? <input checked="" type="checkbox"/> Ownership <input type="checkbox"/> Lease <input type="checkbox"/> Other (Explain in Detail)	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>												
a. If leased, list name of landlord and tenant, and date of expiration, EXACTLY as they appear on the lease:													
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:40%; height: 20px;">Landlord</td> <td style="width:40%;">Tenant</td> <td style="width:20%;">Expires</td> </tr> </table>	Landlord	Tenant	Expires										
Landlord	Tenant	Expires											
Attach a diagram and outline or designate the area to be licensed (including dimensions) which shows the bars, brewery, walls, partitions, entrances, exits and what each room shall be utilized for in this business. This diagram should be no larger than 8 1/2" X 11". (Doesn't have to be to scale)													
<b>12.</b> Who, besides the owners listed in this application (including persons, firms, partnerships, corporations, limited liability companies), will loan or give money, inventory, furniture or equipment to or for use in this business; or who will receive money from this business. Attach a separate sheet if necessary.													
<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:35%;">NAME</th> <th style="width:15%;">DATE OF BIRTH</th> <th style="width:20%;">FEIN OR SSN</th> <th style="width:30%;">INTEREST</th> </tr> </thead> <tbody> <tr> <td colspan="4" style="text-align: center; padding: 10px;"><b>NONE</b></td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>		NAME	DATE OF BIRTH	FEIN OR SSN	INTEREST	<b>NONE</b>							
NAME	DATE OF BIRTH	FEIN OR SSN	INTEREST										
<b>NONE</b>													
Attach copies of all notes and security instruments, and any written agreement, or details of any oral agreement, by which any person (including partnerships, corporations, limited liability companies, etc.) will share in the profit or gross proceeds of this establishment, and any agreement relating to the business which is contingent or conditional in any way by volume, profit, sales, giving of advice or consultation.													
<b>13. Optional Premises or Hotel and Restaurant Licenses with Optional Premises</b> Has a local ordinance or resolution authorizing optional premises been adopted?	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>												
Number of separate Optional Premises areas requested. <u>0</u> (See License Fee Chart)													
<b>14. Liquor Licensed Drug Store applicants, answer the following:</b> (a) Does the applicant for a Liquor Licensed Drug Store have a license issued by the Colorado Board of Pharmacy? COPY MUST BE ATTACHED.		Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>											
<b>15. Club Liquor License applicants answer the following and attach:</b> (a) Is the applicant organization operated solely for a national, social, fraternal, patriotic, political or athletic purpose and not for pecuniary gain? (b) Is the applicant organization a regularly chartered branch, lodge or chapter of a national organization which is operated solely for the object of a patriotic or fraternal organization or society, but not for pecuniary gain? (c) How long has the club been incorporated? (Three years required) _____ (d) Has applicant occupied an establishment for three years that was operated solely for the reasons stated above?		Yes No <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>											
<b>16. Brew-Pub License or Vintner Restaurant Applicants answer the following:</b> (a) Has the applicant received or applied for a Federal Permit? (Copy of permit or application must be attached)		Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>											
<b>17a. Name of Manager (for all on-premises applicants)</b> <u>IOANNIS G SMIRMOTIS</u> (If this is an application for a Hotel, Restaurant or Tavern License, the manager must also submit an Individual History Record (DR 8404-I).		Date of Birth <input style="background-color: black; color: black;" type="text"/>											
<b>17b.</b> Does this manager act as the manager of, or have a financial interest in, any other liquor licensed establishment in the State of Colorado? If yes, provide name, type of license and account number.		Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>											
<b>18. Tax Distraint Information.</b> Does the applicant or any other person listed on this application and including its partners, officers, directors, stockholders, members (LLC) or managing members (LLC) and any other persons with a 10% or greater financial interest in the applicant currently have an outstanding tax distraint issued to them by the Colorado Department of Revenue? If yes, provide an explanation and include copies of any payment agreements.		Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>											

19. If applicant is a corporation, partnership, association or limited liability company, applicant **must list ALL OFFICERS, DIRECTORS, GENERAL PARTNERS, AND MANAGING MEMBERS.** In addition applicant **must list** any stockholders, partners, or members with **OWNERSHIP OF 10% OR MORE** IN THE APPLICANT. ALL PERSONS LISTED BELOW must also attach form DR 8404-I (Individual History record), and submit finger print cards to their local licensing authority.

NAME	HOME ADDRESS, CITY & STATE	DOB	POSITION	% OWNED*
IOANNIS G SMIRMOTIS	[REDACTED]	[REDACTED]	President	100%
	TRINIDAD CO 81082			

\*If total ownership percentage disclosed here does not total 100% applicant must check this box

Applicant affirms that no individual other than these disclosed herein, owns 10% or more of the applicant

**Additional Documents to be submitted by type of entity**

- CORPORATION     Cert. of Incorp.     Cert. of Good Standing (if more than 2 yrs. old)     Cert. of Auth. (if a foreign corp.)  
 PARTNERSHIP     Partnership Agreement (General or Limited)     Husband and Wife partnership (no written agreement)  
 LIMITED LIABILITY COMPANY     Articles of Organization     Cert. of Authority (if foreign company)     Operating Agrmt.  
 ASSOCIATION OR OTHER    Attach copy of agreements creating association or relationship between the parties

Registered Agent (if applicable) **ANDRIANAKOS ANASTASIOS G**    Address for Service **1325 S. Colorado Blvd #500 DENVER 80222**

**OATH OF APPLICANT**

*I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge. I also acknowledge that it is my responsibility and the responsibility of my agents and employees to comply with the provisions of the Colorado Liquor or Beer Code which affect my license.*

Authorized Signature     Title **President**    Date **11/24/14**

**REPORT AND APPROVAL OF LOCAL LICENSING AUTHORITY (CITY/COUNTY)**

Date application filed with local authority **Rec 11/25/14 - filed 12/21/14**    Date of local authority hearing (for new license applicants; cannot be less than 30 days from date of application 12-47-311 (1)) C.R.S. **1/6/2015**

**THE LOCAL LICENSING AUTHORITY HEREBY AFFIRMS:**

That each person required to file DR 8404-I (Individual History Record) has:

- Been fingerprinted .....  Yes  No  
 Been subject to background investigation, including NCIC/CCIC check for outstanding warrants .....  Yes  No

That the local authority has conducted, or intends to conduct, an inspection of the proposed premises to ensure that the applicant is in compliance with, and aware of, liquor code provisions affecting their class of license .....  Yes  No

(Check One)

- Date of Inspection or Anticipated Date **12/22/14**  
 Upon approval of state licensing authority.

The foregoing application has been examined; and the premises, business to be conducted, and character of the applicant are satisfactory. We do report that such license, if granted, will meet the reasonable requirements of the neighborhood and the desires of the adult inhabitants, and will comply with the provisions of Title 12, Article 46 or 47, C.R.S. **THEREFORE, THIS APPLICATION IS APPROVED.**

Local Licensing Authority for \_\_\_\_\_ Telephone Number \_\_\_\_\_  
 TOWN, CITY  
 COUNTY

Signature \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_  
 Signature (attest) \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_



Colorado Secretary of State  
 Date and Time: 11/17/2014 07:08 PM  
 ID Number: 20141697102  
 Document number: 20141697102  
 Amount Paid: \$50.00

Document must be filed electronically.  
 Paper documents are not accepted.  
 Fees & forms are subject to change.  
 For more information or to print copies  
 of filed documents, visit [www.sos.state.co.us](http://www.sos.state.co.us).

ABOVE SPACE FOR OFFICE USE ONLY

**Articles of Incorporation for a Profit Corporation**

filed pursuant to § 7-102-101 and § 7-102-102 of the Colorado Revised Statutes (C.R.S.)

1. The domestic entity name for the corporation is

El Paso Liquor, Inc

*(Caution: The use of certain terms or abbreviations are restricted by law. Read instructions for more information.)*

2. The principal office address of the corporation's initial principal office is

Street address 1101 E Main Street  
*(Street number and name)*

Trinidad CO 81082  
*(City) (State) (ZIP/Postal Code)*  
United States  
*(Province - if applicable) (Country)*

Mailing address 1325 S Coloardo Blvd #500  
 (leave blank if same as street address) *(Street number and name or Post Office Box information)*

Denver CO 80222  
*(City) (State) (ZIP/Postal Code)*  
United States  
*(Province - if applicable) (Country)*

3. The registered agent name and registered agent address of the corporation's initial registered agent are

Name Andrianakos Anastasios G  
 (if an individual) *(Last) (First) (Middle) (Suffix)*

or  
 (if an entity)  
*(Caution: Do not provide both an individual and an entity name.)*

Street address 1325 S Colorado Blvd #500  
*(Street number and name)*

Denver CO 80222  
*(City) (State) (ZIP/Postal Code)*

Mailing address  
 (leave blank if same as street address) *(Street number and name or Post Office Box information)*

CO  
*(State) (ZIP/Postal Code)*

(The following statement is adopted by marking the box.)

The person appointed as registered agent above has consented to being so appointed.

4. The true name and mailing address of the incorporator are

Name  
(if an individual) Smirniotis Ioannis  
(Last) (First) (Middle) (Suffix)

or

(if an entity)  
(Caution: Do not provide both an individual and an entity name.)

Mailing address 1508 Atchison  
(Street number and name or Post Office Box information)

Trinidad CO 81082  
(City) (State) (ZIP/Postal Code)  
United States  
(Province - if applicable) (Country)

(If the following statement applies, adopt the statement by marking the box and include an attachment.)

The corporation has one or more additional incorporators and the name and mailing address of each additional incorporator are stated in an attachment.

5. The classes of shares and number of shares of each class that the corporation is authorized to issue are as follows.

- The corporation is authorized to issue 10,000 common shares that shall have unlimited voting rights and are entitled to receive the net assets of the corporation upon dissolution.
- Information regarding shares as required by section 7-106-101, C.R.S., is included in an attachment.

6. (If the following statement applies, adopt the statement by marking the box and include an attachment.)

This document contains additional information as provided by law.

7. (Caution: Leave blank if the document does not have a delayed effective date. Stating a delayed effective date has significant legal consequences. Read instructions before entering a date.)

(If the following statement applies, adopt the statement by entering a date and, if applicable, time using the required format.)

The delayed effective date and, if applicable, time of this document is/are \_\_\_\_\_  
(mm/dd/yyyy hour:minute am/pm)

Notice:

Causing this document to be delivered to the Secretary of State for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed, or that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S., the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of that Part, the constituent documents, and the organic statutes.

This perjury notice applies to each individual who causes this document to be delivered to the Secretary of State, whether or not such individual is named in the document as one who has caused it to be delivered.

8. The true name and mailing address of the individual causing the document to be delivered for filing are

Andrianakos      Anastasios      G  
*(Last)*                      *(First)*                      *(Middle)*                      *(Suffix)*  
1325 S Colorado Blvd #500  
*(Street number and name or Post Office Box information)*

---

Denver                      CO      80222  
*(City)*                      *(State)*                      *(ZIP/Postal Code)*  
United States  
*(Province - if applicable)*                      *(Country)*

*(If the following statement applies, adopt the statement by marking the box and include an attachment.)*

- This document contains the true name and mailing address of one or more additional individuals causing the document to be delivered for filing.

**Disclaimer:**

This form/cover sheet, and any related instructions, are not intended to provide legal, business or tax advice, and are furnished without representation or warranty. While this form/cover sheet is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form/cover sheet. Questions should be addressed to the user's legal, business or tax advisor(s).



Colorado Secretary of State  
 Date and Time: 11/17/2014 07:18 PM  
 ID Number: 20141697109  
 Document number: 20141697109  
 Amount Paid: \$20.00

Document must be filed electronically.  
 Paper documents are not accepted.  
 Fees & forms are subject to change.  
 For more information or to print copies  
 of filed documents, visit [www.sos.state.co.us](http://www.sos.state.co.us).

ABOVE SPACE FOR OFFICE USE ONLY

**Statement of Trade Name of a Reporting Entity**  
 filed pursuant to §7-71-103 and §7-71-107 of the Colorado Revised Statutes (C.R.S)

1. For the reporting entity delivering this statement, its ID number, true name, form of entity and the jurisdiction under the law of which it is formed are

ID Number	<u>20141697102</u> <i>(Colorado Secretary of State ID number)</i>
True name	<u>El Paso Liquor, Inc</u>
Form of entity	<u>Corporation</u>
Jurisdiction	<u>Colorado</u>

2. The trade name under which such entity transacts business or conducts activities or contemplates transacting business or conducting activities in this state is

El Paso Liquor

3. A brief description of the kind of business transacted or activities conducted or contemplated to be transacted or conducted in this state under such trade name is

Liquor store

4. *(If the following statement applies, adopt the statement by marking the box and include an attachment.)*

This document contains additional information as provided by law.

5. *(Caution: Leave blank if the document does not have a delayed effective date. Stating a delayed effective date has significant legal consequences. Read instructions before entering a date.)*

*(If the following statement applies, adopt the statement by entering a date and, if applicable, time using the required format.)*  
 The delayed effective date and, if applicable, time of this document are \_\_\_\_\_  
*(mm/dd/yyyy hour:minute am/pm)*

**Notice:**

Causing this document to be delivered to the Secretary of State for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that such document is such individual's act and deed, or that such individual in good faith believes such document is the act and deed of the person on whose behalf such individual is causing such document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S. and, if applicable, the constituent documents and the organic statutes, and that such individual in good faith believes the facts stated in such document are true and such document complies with the requirements of that Part, the constituent documents, and the organic statutes.

This perjury notice applies to each individual who causes this document to be delivered to the Secretary of State, whether or not such individual is identified in this document as one who has caused it to be delivered.

6. The true name and mailing address of the individual causing this document to be delivered for filing are

Andrianakos      Anastasios      G  
(Last)                      (First)                      (Middle)                      (Suffix)  
1325 S Colorado Blvd #500  
(Street number and name or Post Office Box information)

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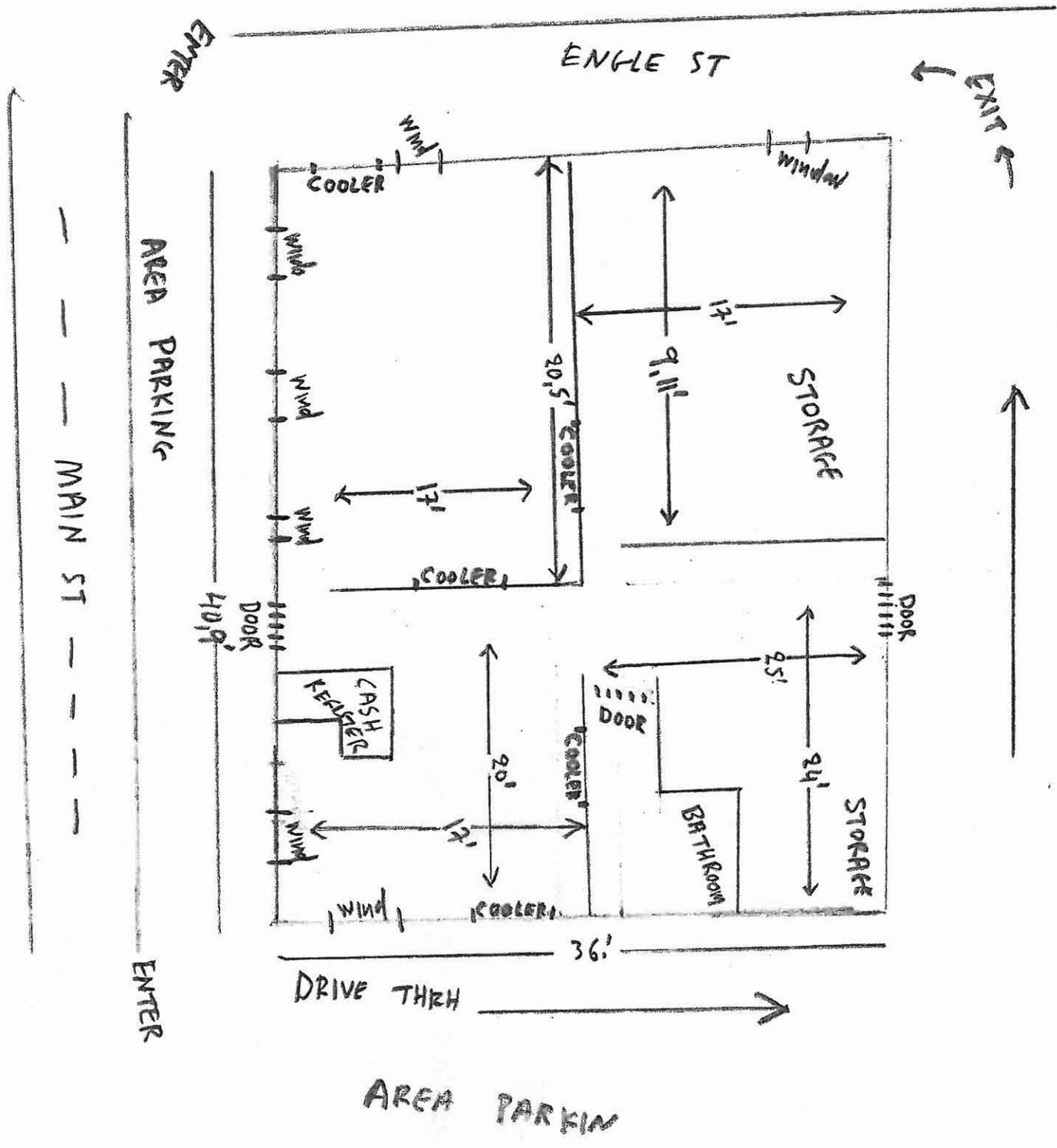
Denver                      CO      80222  
(City)                      (State)                      (Postal/Zip Code)  
United States  
(Province - if applicable)                      (Country - if not US)

*(If the following statement applies, adopt the statement by marking the box and include an attachment.)*

This document contains the true name and mailing address of one or more additional individuals causing the document to be delivered for filing.

**Disclaimer:**

This form/cover sheet, and any related instructions, are not intended to provide legal, business or tax advice, and are furnished without representation or warranty. While this form/cover sheet is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form/cover sheet. Questions should be addressed to the user's legal, business or tax advisor(s).



THIS LEASE HAS IMPORTANT LEGAL CONSEQUENCES.  
THE PARTIES SHOULD CONSULT LEGAL COUNSEL BEFORE SIGNING.

COMMERCIAL LEASE  
(NNN)

This Commercial Lease (the "Lease") is made on NOVEMBER 25 2014 (date) and is entered into by and between Landlord (as defined below) and Tenant (as defined below). In consideration of the payment of the Rent (as defined below); all costs, charges, and expenses which Tenant assumes, agrees, or is obligated to pay to Landlord pursuant to the Lease (the "Additional Rent"); and the performance of the promises by Tenant set forth below, Landlord hereby leases to Tenant, and Tenant hereby accepts, the Premises (as defined below), subject to the terms and provisions set forth in the Lease.

**PARTIES, PREMISES, AND DEFINED TERMS**

1. Landlord: IOANNIS SMIANIOTIS  
a(n) INDIVIDUAL [Individual, Company or Type of Entity], (the "Landlord").

2. Tenant: EL PASO LIQUOR INC  
a(n) CORPORATION [Individual, Company, or Type of Entity], (the "Tenant").

3. Premises: Landlord is the owner of certain real estate legally described as  
LOTS 8 9 AND 10 CAPITAL HILL ADDITION TO THE  
CITY OF TRINIDAD  
in LAS ANIMAS [insert county],

Colorado (the "Real Estate"). The Real Estate is improved with a BUILDING  
[insert description of building or buildings] (the "Improvements") (the Real Estate

and the Improvements are collectively referred to as the "Property"). Landlord hereby leases and demises to Tenant the following described portion of the Property: Address 1101 E MAIN STREET  
Suite N/A, consisting of 1649 square feet (the "Premises").

4. Term: Landlord Leases the Premises to Tenant from twelve o'clock noon on the 1<sup>st</sup> day of DECEMBER, 2014, and until 11:59 p.m. on the 30<sup>th</sup> day of NOVEMBER, 2017 (the "Term"). Subject to Tenant's performance of all obligations under the Lease, including, without limitation, payment of Rent and Additional Rent, Tenant shall enjoy quiet possession of the Premises.

5. Rent: Rental for the first year of the Term is NINE THOUSAND SIX HUNDRED and NO/100 Dollars (\$ 9600.00) payable in equal installments of EIGHT HUNDRED and NO/100 Dollars (\$ 800.00) in advance to Landlord on the first day of each calendar month for that month's rental before twelve o'clock noon, without notice (the "Rent"). Unless otherwise provided in the Lease, all payments due under the Lease, including Additional Rent, shall be mailed, or delivered to Landlord at the following address: 1508 ARCHISON TRINIDAD COLORADO 81082. If the Term does not begin on the first day of the month, the Rent shall be prorated accordingly. Rent for subsequent years of the Term  shall  shall not be increased. In the event Rent is subject to increase, it shall be increased on the following basis: N/A

6. Option: Tenant  shall  shall not have the option to extend the Term, pursuant to the terms and conditions contained herein, for an additional THREE YEARS period (the "Option"). In the event Tenant desires to exercise the Option, Tenant shall, at least NINETY days before expiration of the Term, provide Landlord with written notice of its intent to exercise the Option. Rent shall be adjusted and payable as follows: NINE HUNDRED DOLLARS PER MONTH FOR ALL THREE YEARS FROM DECEMBER 1<sup>st</sup>, 2017 THROUGH NOVEMBER 30, 2020.

The option shall only be exercisable provided that no Tenant Defaults currently exist and that no Tenant Defaults have occurred over the Term of the Lease which have not been cured by Tenant as provided by the Lease.

7. Security Deposit: Prior to occupying the Premises, Tenant shall keep on deposit with Landlord a security, cleaning, and damage deposit in the amount of N/A - NO SECURITY DEPOSIT. and —/100 Dollars (\$ —) as security for the return of the Premises at the expiration of the Term in as good condition as when Tenant entered the Premises, normal wear and tear excepted, as well as the faithful, timely, and complete performance of all other terms, conditions, and covenants of the Lease (the "Security Deposit").

8. Use: The Premises shall be used for: OPERATING A LIQUOR STORE. provided this use conforms with applicable zoning regulations. Tenant shall not, without the prior written consent of Landlord, permit the Premises to be used for any other purpose.

9. Utilities/Additional Rent: Tenant shall pay all of the utilities for the Premises indicated in this Paragraph 9 as Additional Rent and shall pay Tenant's Pro Rata Share of all other items in this Paragraph 9 as Additional Rent. Tenant's pro rata share of costs for purposes of the Lease shall be 100 % ("Tenant's Pro Rata Share"). Tenant's Pro Rata Share is determined as a proportion of the whole of the improvements upon the Property, the denominator of which is the number of the square feet available to rent as determined by the Landlord and excluding common areas, and the numerator of which shall be the same square footage as the Premises.

a. **Utilities:** Tenant shall be responsible for paying the following utilities on the Premises:  Electric  Gas  Water  Sewer  Phone  Cable/Satellite T.V.  Internet Access  Refuse Disposal  Other \_\_\_\_\_

If the Premises does not share meter facilities for utilities and if the utility or utilities are not provided as part of the CAM Costs (as defined below), tenant shall contract directly with all utility providers and all utility payments shall be directed to the respective utility providers. If the Premises shares meter facilities for utilities, the charges shall be allocated to each tenant by Landlord based upon a reasonable basis and shall be payable to the Landlord as Additional Rent.

b. **CAM Costs:** Tenant shall be responsible for paying Tenant's Pro Rata Share of the annual common area operation and maintenance costs of the Property ("CAM Costs"). CAM Costs are all expenditures made by Landlord to operate and maintain the Property, including, but not limited to, utilities (electric, gas, water, and sewer), repairs, replacement costs (due to ordinary and extraordinary wear and tear or catastrophe), trash and snow/ice removal (including removal from parking areas, abutting roadways, and walkways), landscaping and lawn maintenance, painting, sign installation and maintenance, repair and replacement of utility systems, depreciation of machinery and equipment used in such repair and replacement, and cost of all personnel to implement such services. The foregoing list of items is provided for illustrative purposes only and shall not be deemed a full, complete, or exhaustive list of all possible CAM Costs.

c. **Tax Costs:** Tenant shall be responsible for paying Tenant's Pro Rata Share of annual taxes, assessments, and governmental charges relative to the Property ("Tax Costs"). The Tax Costs shall include, but not be limited to, all federal, state, county, municipal, or other governmental or quasi-governmental taxes or assessments levied upon, charged against, or assessed in connection with the use of the Property. Tax Costs shall not include state, or federal income taxes owed by Landlord.

d. **Landlord's Insurance Costs:** The Landlord shall procure and maintain such fire and casualty, loss of rents, and liability insurance on the Property as it deems proper and appropriate ("Insurance Costs"). Tenant shall be responsible for paying Tenant's Pro Rata Share of Insurance Costs. Such insurance shall not be required to cover any of the Tenant's property and the Tenant shall have no interest in any of the proceeds of such insurance.

10. **Payment of Additional Rent:** All Additional Rent shall be paid by Tenant to Landlord in equal monthly installments concurrent with the Rent. Payments of Additional Rent shall be calculated as follows: on, or before the commencement date of this Term, Landlord shall give Tenant a statement of the estimated annual CAM Costs, Tax Costs, and Insurance Costs for the Property ("Estimate of Costs"). Tenant shall pay Additional Rent to Landlord based upon the Estimate of Costs divided by twelve (12). The Estimate of Costs shall be the basis of such Additional Rent calculated until Tenant is notified by Landlord of a change thereof. Within ninety (90) days of the end of each calendar year, Landlord shall compute actual CAM Costs, Tax Costs, and Insurance Costs for the preceding year (the "Actual Costs"). Landlord shall provide Tenant with a statement of Actual Costs. In the event that Tenant's payment of Additional Rent for said calendar year totals less than the Tenant's pro-rata share of the Actual Costs, Tenant shall be obligated to pay Landlord, within ten (10) days of receipt of statement, the difference between Tenant's pro-rata share of Actual Costs and the Additional Rent actually paid for said calendar year. In the event Tenant's Additional Rent actually paid for said calendar year exceeds Tenant's pro-rata share of Actual Costs, such excess shall be credited to Tenant's account. The Actual Costs of the prior calendar year shall be used for the purpose of calculating the Estimate of Costs for the then current year.

11. **Late Payments:** If any Rent, Additional Rent, or other payment is received later than 15 days after the date when due, the parties agree that Additional Rent in the amount of  \$ \_\_\_\_\_ or  FIVE percent (5 %) of the outstanding sums shall also be due and payable. The addition of such amount and the collection thereof shall not operate to waive any other rights of Landlord for nonpayment of Rent, or for any other reason.

12. **Repairs and Maintenance of the Premises:** The  Landlord  Tenant shall maintain the foundation, exterior walls, and roof of the Improvements in good repair. The  Landlord  Tenant agrees to keep all the other improvements (including plate glass and other windows, window frames, and doors) upon the Premises repaired and maintained in good order as described in the Lease. The  Landlord  Tenant shall properly irrigate and care for all trees, shrubbery, and lawn and the  Landlord  Tenant shall keep all driveways, sidewalks, and parking areas on the Premises free and clear of ice and snow.

13. **Parking:** For the Term, Landlord grants to Tenant and its employees and invitees, at no additional charge, a Parking License. The Parking License is a non-exclusive license for the use of N/A parking spaces upon the Property (the "Parking License"). The Parking License shall be effective for the term of the Lease as defined below. Landlord and Tenant  shall  shall not designate specific spaces for the Parking License prior to commencement of the Term.

## PREMISES

14. **Common Areas:** The common areas are all areas outside of the Premises upon the Property designated by Landlord for common use of Tenant, its employees, licensees, invitees, contractors, and Landlord (the "Common Areas"). Landlord grants to Tenant, its employees, licensees, invitees and contractors a non-exclusive license over such Common Areas of the Property necessary to the use and occupancy of the Premises and Parking License (the "Common Area License"). Said License shall be effective for the Term of the Lease. Tenant shall not use Common Areas for any type of storage, or parking of trucks, trailers, or other vehicles without the advance written consent of Landlord. All parking and Common Areas of Property shall at all times be subject to the management of Landlord, and are not part of the Premises. All use of the Common Areas shall be at the sole risk of Tenant, and Landlord is not liable for any damages, or injuries occasioned by such use. Landlord shall have the right, power, and authority to compile, promulgate, change, and modify all rules and regulations that it may, in its sole discretion, deem necessary for use of the Common Areas. Tenant agrees to abide by and conform with all rules and regulations pertaining to such Common Areas. Landlord shall have the right to construct, maintain, and operate lighting facilities; to police and from time to time change the area, location, and arrangement of the Common Areas and facilities; to restrict employee parking to certain areas; to temporarily close all, or any portion of the Common Areas; to discourage non-customer parking; and to do and perform any and all such other acts in and to said Common Areas and facilities as Landlord shall determine in its sole and absolute discretion.

**15. Condition of Premises and Representations:** Tenant is familiar with the physical condition of the Premises and the Property. Except as may otherwise be provided in the Lease, Landlord makes no representations, or warranties as to the physical condition of the Premises, or the Property, or their suitability for Tenant's intended use. In the event that Landlord agrees to provide any renovations, build-out, or any other labor and materials for the improvement of the Premises, or any allowance for improvements to be effected by Tenant, such work, or allowance shall be specified and agreed to between the parties in a separate document appended to this Lease and which shall constitute a part of this Lease ("Work Letter"). Other than the work, if any, to be performed pursuant to Tenant's Work Letter, the Premises are rented "as is," in current condition, and all warranties are hereby expressly disclaimed. Landlord makes no representations, or warranties as to the suitability of the Premises for Tenant's intended use. Landlord further makes no representations, or warranties as to whether Tenant's intended use will necessitate changes, or alterations to the Premises in order to comport with local, state, or federal laws and regulations. Such laws and regulations include, but are not limited to: health code regulations, access regulations (including, but not limited to, the Americans with Disabilities Act), and zoning regulations. Tenant understands and agrees that in the event actions, alterations, or improvements are required in order to bring the Premises into compliance with any local, state, or federal laws and regulations because of Tenant's intended use, Tenant shall be solely responsible for any and all associated costs and expenses relative thereto. Tenant further indemnifies and agrees to hold Landlord harmless from any and all claims and liabilities that may arise by virtue of Tenant's use of the Premises in violation of any local, state, or federal laws and regulations.

**16. Check-In Inspection:** Landlord and Tenant may conduct an inspection of the Premises at the time of possession. A check-in inspection sheet may be completed at that time and the information contained therein shall be sufficient and satisfactory proof of the condition of the Premises at the time of possession, should a subsequent dispute arise at a later date as to the condition of the Premises at the time of move-in.

**17. Use of Premises:** Tenant, in consideration of the leasing of the Premises, agrees as follows:

**a. Use of Premises:** To use and occupy the Premises solely as and for the use specified in Paragraph 8 of the Lease. Landlord's consent to the aforementioned use is not an assurance, or warranty that the Premises' attributes are sufficient for Tenant's use. Tenant represents and warrants that it has conducted sufficient due diligence to assure itself that the Premises are suitable for its use, and that such use is permitted by applicable law. Landlord expressly reserves its right to lease space within the Property as it sees fit, unless explicitly prohibited by other provisions in the Lease. Landlord's demise of the Premises to Tenant does not preclude Landlord from leasing other parts of the Property to other tenants who may be viewed objectively, or subjectively as competing with Tenant.

**b. Signage:** Tenant shall be permitted to erect a sign or signs upon the Premises, provided all signage is in compliance with size and other requirements of Landlord and as may be set forth by applicable ordinances and regulations including, but not limited to, sign and design ordinances. All signage shall conform to aesthetic and design criteria, themes, and standards of the Property and the Improvements. Additionally, Landlord may provide signage space on a common, or community sign located on the Property.

**c. Vacancy:** It will be deemed a Default of the Lease if the Premises are left vacant and unoccupied for over thirty (30) days. In addition to other remedies contained in the Lease, the Landlord may, without being obligated to do so, and without terminating the Lease, retake possession of the Premises and relet, or attempt to relet them for such rent and upon such conditions as the Landlord deems best, making such changes and repairs as may be required, giving credit for the amount of rent so received, less all expenses of such changes and repairs. Tenant shall be liable for the balance of the Rent and Additional Rent herein reserved until the expiration of the Term.

**d. Legal Compliance:** Tenant and its licensees and invitees shall comply with and abide by all federal, state, county, and municipal laws and ordinances in connection with the occupancy and use of the Premises. Tenant and its licensees and invitees may not possess, or consume alcoholic beverages on the Premises unless they are of legal age. No alcoholic beverages shall be sold upon the Premises unless proper licenses have been obtained. No illegal drugs or controlled substances (unless specifically prescribed by a physician for a specific person occupying or present upon the Premises) shall be permitted upon the Premises. Tenant hereby covenants and agrees to use its reasonable efforts to prevent and preclude its employees, guests, invitees, etc. from the aforementioned illegal conduct. Tenant and its licensees and invitees shall not use the Premises in any way that may result in an increase of the rate or cost to the Landlord to insure the Property. No hazardous or dangerous activities are permitted upon the Premises.

**e. Additional Prohibitions:** Neither Tenant nor its subtenants, licensees, volunteers, employees, guests, or invitees shall act in any manner that would interfere with, or be a nuisance to, other subtenants, occupants, or invitees of the Premises, or adjacent property owners, or adjacent tenants, or that would interfere with those other parties' quiet enjoyment of their premises. Said prohibition includes, but is not limited to, loud noises, loud music, noxious or unpleasant odors, and disruptive behavior or actions. Tenant shall not permit any portion of the Premises to be used in a manner that may endanger the person or property of Landlord, co-tenants, or any person living on or near the Premises. Tenant shall keep all portions of the Premises in a clean, safe, sanitary, and habitable condition.

**f. Pets and Animals:** Pets or animals  shall  shall not be permitted upon the Premises.

**g. Storage/Trash:** Tenant shall store all personal property entirely within the Premises. Tenant shall store all trash and refuse in adequate containers within the Premises, which Tenant shall maintain in a neat and clean condition, or within designated Common Areas so as not to be visible to members of the public in, or about the Property, and so as not to create any health or fire hazard.

**h. Hazardous Material Prohibited:** Tenant shall not cause or permit any hazardous material to be brought upon, kept or used in, or about the Premises by Tenant, its agents, employees, contractors, or invitees. If Tenant breaches the obligations stated in the preceding sentence, or if the presence of hazardous material on the Premises caused, or permitted by Tenant results in contamination of the Premises, or if contamination of the Premises by hazardous material otherwise occurs for which Tenant is responsible to Landlord for resulting damage, then Tenant shall indemnify, defend, and hold Landlord harmless from any and all resulting claims, judgments, damages, penalties, fines, costs, liabilities, or losses.

**i. Quiet Enjoyment:** Landlord agrees that upon Tenant paying the Rent and performing Tenant's obligations under the Lease, Tenant shall peacefully and quietly have, hold, and enjoy the Premises throughout the Term or until the Lease is terminated pursuant to its terms. Landlord shall not be responsible for the acts or omissions of any other tenant or third party that may interfere with Tenant's use and enjoyment of the Premises. In the event of any transfer or transfers

of Landlord's interest in the Premises or in the Property, other than a transfer for security purposes only, the Landlord shall be automatically relieved of any and all obligations and liabilities accruing from and after the date of such transfer.

j. **Rules and Regulations:** Landlord shall provide Tenant with a copy of all rules and regulations affecting the Premises, and Tenant shall abide by all such rules and regulations.

18. **Subletting or Assignment:** Tenant shall not sublet the Premises or any part thereof, nor assign the Lease or any interest therein, without the prior written consent of Landlord. Such consent shall be at the sole discretion of Landlord. As a condition of assignment or sublease, Landlord may require the continued liability of Tenant or a separate personal guaranty by Tenant or its principal. If Tenant is a corporation, limited liability company, or other entity that is not a natural person, any change in ownership of more than thirty percent (30.0%) (over any period) of the ownership interest shall be deemed an assignment of the Lease. In the event an assignment or sublease is permitted, all payments from assignee or sublessee shall be made directly by said party to Landlord, and not through Tenant.

19. **Surrender of Premises:** Tenant will return the Premises to Landlord at the expiration of the Term in as good order and repair as when Tenant took possession, loss by casualty and normal wear and tear excepted. Any deterioration or damage caused by accident, abuse, carelessness, or negligence shall not be considered normal wear and tear. In the event that Tenant fails to redeliver the Premises in appropriate condition, Landlord may restore the Premises to appropriate condition, including repair, replacement, and cleaning. The cost of any work necessitated shall be deducted from the Security Deposit; if the Security Deposit is insufficient to cover work performed, Tenant shall be obliged to pay the additional balance.

20. **Removal of Fixtures/Redelivery:** Tenant shall remove, at the termination of the Lease, provided Tenant is not in Default, Tenant's moveable trade fixtures and other items of personal property that are not permanently affixed to the Premises. Tenant shall remove the alterations and additions and signs made by Tenant as Landlord may request and repair any damage caused by such removal. Tenant shall peaceably yield up the Premises and all alterations and additions thereto (except such as Landlord has requested Tenant to remove); and all fixtures, furnishings, floor coverings, and equipment that are permanently affixed to the Premises which shall thereupon become the property of the Landlord. Any personal property of Tenant not removed within five (5) days following such termination shall, at Landlord's option, become the property of Landlord.

#### PAYMENTS

21. **Payments/Dishonored Checks:** Payments shall be deemed received when actually delivered to, and received by, Landlord at the payment location. Dishonored checks and any checks received late in the mail will be treated as late payments. Additional bank and handling charges may also be assessed in the event of a dishonored check. The foregoing items shall be deemed Additional Rent. Landlord may require Tenant to replace such dishonored check with a money order, cashier's check, or other good funds. Landlord may further require that all subsequent payments after a dishonored check be paid with a money order, cashier's check, or other good funds.

22. **Partial Payment:** If any partial payment is made by Tenant, it shall be allocated first to the payment of Additional Rent, including, without limitation, utilities (if applicable) and other expenses; and second to unpaid Rent. Acceptance by Landlord of any partial payment shall not waive the right of Landlord to require immediate payment of the unpaid balance of Rent or waive or affect Landlord's rights to institute legal proceedings including, without limitation, an eviction action.

23. **No Offset:** No assent, express or implied, to any Default of any one or more of the agreements hereof shall be deemed or taken to be a waiver of any succeeding or other Default. The covenants set forth in the Lease are independent. Tenant shall have no right to withhold or set off any Rent due Landlord.

24. **Joint and Several Obligations of Tenant:** In the event more than one person comprises Tenant, it is expressly understood and agreed that each person comprising Tenant is jointly and severally liable for any and all obligations of Tenant in the Lease. This means that all persons comprising Tenant are each, together and separately, responsible for all of Tenant's obligations. Landlord may, at its option, determine whom to hold responsible.

#### SECURITY DEPOSIT

##### 25. Security Deposit:

a. **Security Deposit:** To secure the faithful performance by Tenant of all of Tenant's covenants, conditions, and agreements in the Lease to be observed and performed, Tenant shall deposit with Landlord the Security Deposit prior to commencement of the Lease. The Security Deposit may also be used in the event of termination of the Lease by re-entry, eviction, or otherwise.

b. **Application of Security Deposit:** The parties agree: (1) that the Security Deposit or any portion thereof, may be applied to the curing of any Default that may exist, and/or payment of subsequent damages and costs incurred by Landlord, without prejudice to any other remedy or remedies that Landlord may have on account thereof, and upon such application Tenant shall pay Landlord on demand the amount so applied, which shall be added to the Security Deposit so it will be restored to its original amount; (2) that should the Premises be conveyed by Landlord, the Security Deposit or any portion thereof may be turned over to Landlord's grantee, and if the Security Deposit is turned over, Tenant agrees to look to such grantee for such application or return; (3) that Landlord shall not be obligated to hold the Security Deposit as a separate fund; (4) that should the Rent be increased, the Security Deposit shall be increased in the same proportion within thirty (30) days of such Rent increase; and (5) that should a Default occur, Landlord may, as an additional remedy, increase the Security Deposit at its sole discretion.

c. **Return of Security Deposit:** If Tenant shall perform all of its respective covenants and agreements in the Lease, the Security Deposit, or the portion thereof not previously applied pursuant to the provisions of the Lease, together with a statement, shall be returned to Tenant without interest, no later than sixty (60) days after the expiration of the Term, or any renewal or extension thereof (or such earlier time if required by applicable law), provided Tenant has vacated the Premises and surrendered possession thereof to Landlord.



limitation, any liability for injury to or loss of Tenant's business, nor shall any delays entitle Tenant to any abatement of Rent or damages, or be deemed an eviction of Tenant in whole or in part.

**34. Keys/Locks:** Tenant shall not place any additional locks upon the Premises, including, but not limited to, exterior and interior doors. Tenant shall not cause any of the locks or cylinders therein to be changed or re-keyed.

**35. Waste/Rubbish Removal:** Tenant shall not lay waste to the Premises. Tenant shall not perform any action or practice that may injure the Premises or Property. Tenant shall keep the Premises and the Property surrounding the Premises free and clear of all debris, garbage, and rubbish. Unless otherwise provided for in the Lease, Tenant shall be responsible for contracting for and paying for trash and debris removal required by Tenant's use of the Premises.

#### DEFAULT, NOTICE AND REMEDIES

**36. Default:** If Tenant is in arrears in the payment of any installment of Rent, any Additional Rent, or any portion thereof, or is in violation of any other covenants or agreements set forth in the Lease (a "Default") and the Default remains uncorrected for a period of three (3) days after Landlord has given written notice thereof pursuant to applicable law, then Landlord may, at Landlord's option, undertake any of the following remedies without limitation: (a) declare the Term of the Lease ended; (b) terminate Tenant's right to possession of the Premises and reenter and repossess the Premises pursuant to applicable provisions of the Colorado Forcible Entry and Unlawful Detainer statute; (c) recover all present and future damages, costs, and other relief to which Landlord is entitled; (d) pursue Landlord's lien remedies; (e) pursue breach of contract remedies; and (f) pursue any and all available remedies in law or equity. In the event possession is terminated by reason of a Default prior to expiration of the Term, Tenant shall remain responsible for the Rent and Additional Rent, subject to Landlord's duty to mitigate such damages. Pursuant to §§ 13-40-104(d.5) and (e.5), and 13-40-107.5, C.R.S., hereby incorporated by reference, in the event repeated or substantial Defaults(s) under the Lease occur, Landlord may terminate Tenant's possession upon a written Notice to Quit, without a right to cure. Upon such termination, Landlord shall have available any and all of the remedies listed above.

**37. Abandonment:** In the event of an abandonment of the Premises, Landlord may, without being obligated to do so and without terminating the Lease, retake possession of the Premises and exercise any of the remedies contained in Paragraph 38 below.

**38. Re-Entry:** In the event of re-entry by Landlord as a result of abandonment or a Default by Tenant:

a. Tenant shall be liable for damages to Landlord for all loss sustained, including, without limitation, the balance of the Rent and Additional Rent, court costs, and reasonable attorneys' fees;

b. Tenant's personal property and the personal property of any guest, invitee, licensee, or occupant may be removed from the Premises and left on the street or alley, or, at Landlord's option, it may be removed and stored, or disposed of at Landlord's sole discretion. Landlord shall not be deemed a bailee of the property removed and Landlord shall not be held liable for the property. Tenant shall indemnify Landlord for any expense in defending against any claim by Tenant or third party and for any legal expense, cost, fine, or judgment awarded to a third-party as a result of Landlord's action under the term of the Lease;

c. Landlord may attempt to relet the Premises for such rent and under such terms as Landlord believes appropriate;

d. Landlord may enter the Premises, clean and make repairs, and charge Tenant accordingly;

e. Any money received by Landlord from Tenant shall be applied first to Rent, Additional Rent, and other payments due; and

f. Tenant shall surrender all keys and peacefully surrender and deliver up possession of the Premises.

#### INSURANCE AND INDEMNIFICATION

**39. Negligent Damages:** Tenant shall be responsible for and reimburse Landlord for any and all damages to the Premises or Property and persons and property therein caused by the negligent, grossly negligent, reckless, or intentional acts of itself, its employees, agents, invitees, licensees, or contractors.

**40. Liability Indemnification/Insurance:** Tenant shall hold Landlord, Landlord's agents, and their respective successors and assigns, harmless and indemnified from all injury, loss, claims, or damage to any person or property while on the Premises, or any other part of the Property, or arising in any way out of Tenant's business, which is occasioned by a negligent, intentional, or reckless act, or omission of Tenant, its employees, agents, invitees, licensees, or contractors. Tenant shall maintain public liability insurance insuring Landlord and Landlord's agents, as their interest may appear, against all claims, demands, or actions for injury to or death in an amount of not less than one million dollars (\$1,000,000) arising out of any one occurrence, made by, or on behalf of any person, firm, or corporation, arising from, related to, or connected with the conduct and operation of Tenant's business, including, but not limited to, events on the Premises and anywhere upon the Property. Tenant shall also obtain coverage in the amount of one million dollars (\$1,000,000) per occurrence covering Tenant's contractual liability under the aforesaid indemnification clauses.

**41. Fire/Casualty Insurance:** Tenant shall maintain plate glass insurance covering all exterior plate glass in the Premises, fire, extended coverage, vandalism, and malicious mischief insurance and such other insurance as Tenant may deem prudent, covering all of Tenant's stock in trade, fixtures, furniture, furnishings, floor coverings, and equipment in the Premises.

**42. Insurance Requirements:** All of Tenant's insurance related to the Premises and the Property shall be in the form and from responsible and well-rated companies satisfactory to Landlord, shall name Landlord as an additional insured thereunder, and shall provide that the insurance will not be subject to cancellation, termination, or change except after at least thirty (30) days prior written notice to Landlord. The policies or duly executed certificates for such insurance shall be provided to Landlord prior to commencement of Term and upon request of Landlord.

**43. Waiver of Liability:** Landlord and Landlord's agents and employees shall not be liable for, and Tenant waives all claims for, damage to property sustained by Tenant, employees, agents or contractors, or any other person claiming through Tenant, resulting from any accident in or upon the Premises or the Property of which they shall be a part, including, but not limited to, claims for damage resulting from: (1) any equipment or appurtenances becoming out of repair; (2) Landlord's failure to keep the Property or the Premises in repair; (3) injury done or occasioned by wind.

water, or other act of God; (4) any defect in, or failure of, plumbing, heating, or air-conditioning equipment, electric wiring, or installation thereof, gas, water and steam pipes, stairs, porches, railings, or walks; (5) broken glass; (6) the backing-up of any sewer pipe, or downspout; (7) the bursting, leaking, or running of any tank, tub, sink, sprinkler system, water closet, waste pipe, drain, or any other pipe or tank in, upon, or about the Property or Premises; (8) the escape of steam, or hot water; (9) water, snow, or ice being upon, or coming through the roof, skylight, doors, stairs, walks, or any other place upon, or near such Property, or the Premises, or otherwise; (10) the falling of any fixtures, plaster, or stucco; (11) fire or other casualty; and (12) any act, omission, or negligence of co-Tenants, or of other persons or occupants of the Property, or of adjoining or contiguous buildings, or of adjacent or contiguous property.

**44. Third-Party Liability:** Landlord shall not be liable to Tenant for any damage by or from any act or negligence of any co-tenant or other occupant of the Improvements, or by any owner or occupant of adjoining or contiguous property. Landlord shall not be liable for any injury or damage to persons or property resulting in whole or in part from the criminal activities of others. To the extent not covered by normal fire and extended coverage insurance, Tenant agrees to pay for all damage to the Improvements.

**45. Landlord Insurance:** Insurance shall be procured by Landlord in accordance with its sole discretion. All awards and payments thereunder shall be the property of the Landlord, and Tenant shall have no interest in the same. Notwithstanding the foregoing, Landlord agrees to obtain building liability and hazard insurance required to be carried for the Property and Premises and adequate hazard insurance, which covers replacement cost of the Property and Premises.

**46. Indemnification Fees and Costs:** In case any claim, demand, action, or proceeding is made or brought against Landlord, its agents, or employees, by reason of any obligation on Tenant's part to be performed under the terms of the Lease or arising from any act of negligence of Tenant or its agents or employees, or which gives rise to Tenant's obligation to indemnify Landlord, Tenant shall be responsible for all costs and expenses, including, but not limited to, reasonable attorneys' fees incurred in defending or prosecution of the same, as applicable.

#### OTHER PROVISIONS

**47. Destruction or Condemnation of Premises:** Landlord's and Tenant's duties and responsibilities are as follows when destruction or condemnation of the Premises occurs:

**a. Partial Destruction of the Premises:** In case of partial destruction of the Premises by fire, or other casualty, Landlord at its discretion may repair the Premises with reasonable dispatch after notice of said partial destruction. Tenant shall remain responsible for payment of Rent. Subparagraph (d) of this Paragraph 47 shall apply if Landlord determines that the partial destruction will not be repaired.

**b. Premises Untenable:** If the Premises are made totally untenable by fire, the elements, or other casualty, or if the building in which the Premises are located is partially destroyed to the point where Landlord, within a reasonable time, decides not to rebuild, or repair, then Subparagraph (d) of this Paragraph 47 shall apply.

**c. Condemnation:** If the whole or part of the Premises are taken by any authority for any public or quasi-public use, or purpose, then Subparagraph (d) of this Paragraph 47 shall apply. All damages and compensation awarded for any taking shall be the sole property of Landlord.

**d. Termination of Term:** Tenant agrees that if Landlord decides not to repair, or rebuild the Premises where the destruction has occurred as described in Subparagraphs (a) and (b) of this Paragraph 47, the Term hereby granted by the Lease shall cease and the Rent and Additional Rent shall be prorated and payable up to the time of the cessation of the Term. A refund will be given for the balance of any Rent paid in advance for which Tenant did not have use of the Premises due to the cessation of the Term under the conditions of this Paragraph 47. Where the Premises have been taken due to condemnation as described in Subparagraph (c) of this Paragraph 47, the Term of the Lease shall cease and terminate upon the date that possession of the Premises is taken by the authority. Rent and Additional Rent shall be prorated and payable up to the time of the cessation of the Term. Tenant shall not hold Landlord liable for any damages as a result of any of the acts or events described in this subparagraph.

**48. Holdover:** Tenant shall vacate the Premises and remove all of Tenant's personal property from the Premises prior to 11:59 p.m. on the date the Term expires. Landlord may immediately commence eviction proceedings at its sole discretion. If, after the expiration of the Lease, Tenant shall remain in possession of the Premises and continue to pay Rent without a written agreement as to such possession, then such tenancy shall be regarded as a month-to-month tenancy, at a monthly rental, payable in advance, equivalent to the last month's Rent paid under the Lease, and subject to all the terms and conditions of the Lease.

**49. Entry by Landlord:** Landlord may enter the Premises at reasonable hours for reasonable purposes (such as repairs, inspections, or re-letting to prospective new tenants), upon reasonable notice to Tenant. Landlord may also enter the Premises in the event of emergency, without notice, or in the event of vacancy of the Premises, as described in Paragraph 38.

**50. Guarantor:** In the event the Lease is guaranteed, the person(s) guaranteeing the Lease ("Guarantor") hereby absolutely guarantees Tenant's obligations and performance under the Lease. Guarantor further agrees to be bound by the same covenants and conditions of the Lease and hereby makes the same warranties and representations as Tenant hereunder. If Tenant defaults in the performance of its obligations under the Lease, Guarantor will perform said obligations.

**51. Subordination/Estoppel/Attornment:** The Lease shall be subordinate to all existing and future mortgages, deeds of trust, and other security interests on the Premises and to any and all extensions, renewals, refinancing, and modifications thereof. Tenant shall execute and deliver whatever instruments may be required for such purposes, or for the purpose of informing a potential or existing lender or purchaser of the Property as to the status of its tenancy. Any such instruments or estoppel letters shall contain all information reasonably required by Landlord or other entity in conjunction with such transaction. Tenant agrees to attorn to a lender or other party coming into title to the Property upon written request of Landlord.

52. **Notices:** All notices required to be sent under the Lease shall be in writing and either: (i) delivered as provided by applicable law, including, *inter alia*, § 13-40-101, C.R.S., *et seq.*, [Colorado Forcible Entry and Unlawful Detainer statute]; (ii) personally delivered, with proper proof of service; or (iii) sent via U.S. first class mail, postage prepaid. All notices required to be sent to Landlord shall be sent or delivered to the address where the Rent is to be paid, and all notices required to be sent to Tenant shall be sent or delivered to the Premises, unless otherwise specified in the Lease. Notwithstanding the foregoing, all notices involving or concerning § 13-40-101, C.R.S., *et seq.* shall be delivered as provided by statute.

53. **Attorneys' Fees:** In the event Tenant or Landlord fails to perform any of its obligations under the Lease, or in the event a dispute arises concerning the meaning or interpretation of any provision of the Lease, the defaulting party, or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees.

54. **Governing Law:** The Lease shall be governed by and construed in accordance with the laws of the State of Colorado. Venue shall be proper in the county where the Premises are located.

55. **Amendments and Termination:** Unless otherwise provided in the Lease, the Lease may be amended, modified, or terminated only by a written instrument executed by Landlord and Tenant.

56. **Captions:** The paragraph titles or captions in the Lease are for convenience only and shall not be deemed to be part of the Lease.

57. **Pronouns; Joint and Several Use of Certain Terms:** Whenever the terms referred to in the Lease are singular, the same shall be deemed to mean the plural, as the context indicates, and vice versa. All references to the "Landlord" shall mean Landlord and/or its authorized agents, contractors, or employees as may be required by the specific context. All references to the "Tenant" shall mean each and every person comprising Tenant, or an individual person, or combination of persons comprising Tenant as may be required by the specific context.

58. **Waivers:** No right under the Lease may be waived except by written instrument executed by the party who is waiving such right. No waiver of any breach of any provision contained in the Lease shall be deemed a waiver of any preceding or succeeding breach of that provision, or of any other provision contained in the Lease. No extension of time for performance of any obligations or acts shall be deemed an extension of the time for performance of any other obligations or acts.

59. **Heirs, Assigns, Successors:** The Lease is binding and inures to the benefit of the heirs, assigns, and successors in interest to the parties, subject to the restrictions on assignment in Paragraph 18.

60. **Time of the Essence:** Time is of the essence of the Lease, and each and all of its provisions.

61. **No Reservation of Option:** Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for lease, and is not effective as a lease or otherwise until execution and delivery by both Lessor and Tenant.

62. **Credit Reports:** Tenant hereby grants Landlord permission to obtain from time to time investigative consumer reports to ascertain the credit worthiness of Tenant and Tenant's guarantors, if applicable.

63. **Corporate Authorization:** If Tenant is a corporation, each individual executing the Lease on behalf of the corporation represents and warrants that he is duly authorized to execute and deliver the Lease on behalf of said corporation in accordance with a duly adopted resolution of the Board of Directors of the corporation and that the Lease is binding upon the corporation in accordance with its terms. Lessee agrees to provide Landlord with such a resolution within five (5) days of the execution of the Lease.

64. **Severability:** If any term, covenant, condition, or provision of the Lease, or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of the Lease, or the application of such term, or provision to persons, or circumstances other than those to which it is held invalid, or unenforceable, shall not be affected thereby, and each provision of the Lease shall be valid and shall be enforced to the fullest extent permitted by law.

65. **Lead-Based Paint Disclosure Rule:** Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, landlords must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Tenant must also receive a federally approved pamphlet on lead poisoning prevention. In the event the Premises were constructed before 1978, Landlord shall comply with the Lead-Based Paint Disclosure, 42 U.S.C. § 4852d.

66. **Other Applicable Laws:** Federal, state, county, or municipal laws and ordinances may affect the Premises, the Lease, and Landlord/Tenant relationship that are not specifically addressed in the Lease. Landlord and Tenant should consult legal counsel prior to execution of the Lease to ascertain such information.

67. **ADA Compliance:** Tenant shall not cause or permit any violation of the Americans with Disabilities Act (the "ADA") to occur on, or about the Premises by Tenant, its agents, employees, contractors or invitees. Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, diminution in value of the Premises, damages for the loss or restriction of use of rentable or usable space, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorneys' fees, consultation fees and expert fees) that arise during or after the Term as a result of such violation. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any remedial work required by any federal, state, or local governmental agency or political subdivision because of any ADA violation present on or about the Premises. Tenant shall be permitted to make such alterations to the Premises as may be necessary to comply with the ADA, at Tenant's sole expense and upon the prior written consent of Landlord. Without limiting the foregoing, if the presence of any ADA violation on the Premises caused or permitted by Tenant results in remedial work on the Premises, Tenant shall promptly take all actions at its sole expense as are required by any authority to comply with the ADA; provided that Landlord's consent to such actions shall first be obtained, which shall not be reasonably withheld.

68. Additional Provisions: In the event that there are any additional agreements between the parties or provisions with respect to the Premises, an Addendum may be attached to the Lease, which shall be incorporated by this reference as a part of the Lease. An Addendum containing additional provisions  is  is not attached. The Lease and the attached Addendum constitute the entire agreement between the parties.

TENANT AGREES TO SPEND \$20000.00 OR MORE TO CONVERT EXISTING BUILDING INTO A LIQUOR STORE.

THE PARTIES SHOULD INITIAL EACH PAGE OF THE LEASE AND SIGN BELOW. EACH PARTY SHOULD RECEIVE A SIGNED COPY OF THE LEASE AND ANY ADDENDA.

TENANT:

LANDLORD:

EL PASO LIQUOR INC, a(n) IOANNIS SMIRNIOTIS, a(n)

CORPORATION  
[Individual or Type of Entity]

INDIVIDUAL  
[Individual or Type of Entity]

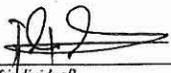
By: IOANNIS SMIRNIOTIS

By: IOANNIS SMIRNIOTIS

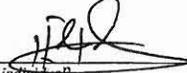
Its: PRESIDENT.

Its: OWNER

Or

  
[Signature of individual]

Or

  
[Signature of individual]

Date: 11/25/14

Date: 11/25/14

GUARANTOR (if applicable): N/A.

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[print name]

Date: \_\_\_\_\_

## INDIVIDUAL HISTORY RECORD

To be completed by the following persons, as applicable: sole proprietors; general partners regardless of percentage ownership, and limited partners owning 10% or more of the partnership; all principal officers of a corporation, all directors of a corporation, and any stockholder of a corporation owning 10% or more of the outstanding stock; managing members or officers of a limited liability company, and members owning 10% or more of the company; and any intended registered manager of Hotel and Restaurant or Tavern class of retail license.

**NOTICE:** This individual history record requires information that is necessary for the licensing investigation or inquiry. All questions must be answered in their entirety or the license application may be delayed or denied. If a question is not applicable, please indicate so by "N/A". Any deliberate misrepresentation or material omission may jeopardize the license application.

<b>1. Name of Business</b> EL PASO LIQUOR				
<b>2. Your Full Name (last, first, middle)</b> SMIRNIOTIS IOANNIS G			<b>3. List any other names you have used.</b> John	
<b>4. Mailing address (if different from residence)</b> 1101 E MAIN ST TRINIDAD CO 81082				
<b>5. List current residence address. Include any previous addresses within the last five years (attach separate sheet if necessary).</b>				
	<b>STREET AND NUMBER</b>	<b>CITY, STATE, ZIP</b>	<b>FROM</b>	<b>TO</b>
Current	1508 ATCHISON	TRINIDAD CO 81082	2008	2014
Previous				
<b>6. List all employment within the last five years. Include any self employment. (Attach separate sheet if necessary)</b>				
	<b>NAME OF EMPLOYER OR BUSINESS</b>	<b>ADDRESS (STREET, NUMBER, CITY, STATE, ZIP)</b>	<b>POSITION HELD</b>	<b>FROM TO</b>
	TRINIDAD DINER (Self Employed)	734 E MAIN ST TRINIDAD CO 81082	OWNER	2005 2014
<b>7. List the name(s) of relatives working in or holding a financial interest in the Colorado alcohol beverage industry.</b>				
	<b>NAME OF RELATIVE</b>	<b>RELATIONSHIP TO YOU</b>	<b>POSITION HELD</b>	<b>NAME OF LICENSEE</b>
	NONE			
<b>8. Have you ever applied for, held, or had an interest in a Colorado Liquor or Beer License, or loaned money, furniture, fixtures, equipment or inventory to any licensee? If yes, answer in detail.</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
<b>9. Have you ever received a violation notice, suspension, or revocation for a liquor law violation, or have you applied for or been denied a liquor or beer license anywhere in the United States? If yes, explain in detail.</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				

10. Have you ever been convicted of a crime or received a suspended sentence, deferred sentence, or forfeited bail for any offense in criminal or military court or do you have any charges pending? (If yes, explain in detail.)

Yes  No

11. Are you currently under probation (supervised or unsupervised), parole, or completing the requirements of a deferred sentence? (if yes, explain in detail.)

Yes  No

12. Have you ever had any professional license suspended, revoked, or denied? (If yes, explain in detail.)

Yes  No

**PERSONAL AND FINANCIAL INFORMATION**

Unless otherwise provided by law, the personal information required in question #13 will be treated as confidential. The personal information required in question #13 is solely for identification purposes.

13a. Date of Birth [REDACTED]	b. Social Security Number SSN [REDACTED]	c. Place of Birth [REDACTED]	d. U.S. Citizen? [REDACTED]
e. If Naturalized, State where [REDACTED]		f. When [REDACTED]	g. Name of District Court [REDACTED]
h. Naturalization Certificate Number [REDACTED]	i. Date of Certification [REDACTED]	j. If an Alien, Give Alien's Registration Card Number	k. Permanent Residence Card Number
l. Height [REDACTED]	m. Weight [REDACTED]	n. Hair Color [REDACTED]	o. Eye Color [REDACTED]
p. Sex [REDACTED]	q. Race [REDACTED]	r. Do you have a current Driver's License? If so, give number and state <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No [REDACTED]	

**14. Financial Information.**

a. Total purchase price \$ \_\_\_\_\_ (if buying an existing business) or investment being made by the applying entity, corporation, partnership, limited liability company, other \$ 58,000

b. List the total amount of your investment in this business including any notes, loans, cash, services or equipment, operating capital, stock purchases or fees paid \$ 58,000

c. Provide details of the investment described in 14.b. You must account for all of the sources of this investment. Attach a separate sheet if needed.

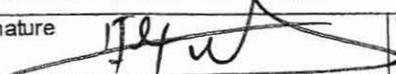
Type: Cash, Services or Equipment	Source	Amount
Cash - Bldg loan	Income from other businesses	\$38,000
Cash	Income from other businesses	20,000

**d. Loan Information (attach copies of all notes or loans)**

Name of Lender	Address	Term	Security	Amount
Century Savings & Loan	233 E. Main St. Trinidad Co 81082	10 years	Building	\$38,000

**Oath of Applicant**

I declare under penalty of perjury that this application and all attachments are true, correct, and complete to the best of my knowledge.

Authorized Signature 	Title President	Date 11/24/14
---	--------------------	------------------

**Tom Andrianakos & Associates, P.C.**  
**Certified Public Accountants**

**1325 S Colorado Blvd., Suite 500**  
**Denver, Colorado 80222**

**Telephone 303 757-4921**  
**Fax (303) 757-4922**

November 20, 2014

To Whom It May Concern

This letter is written to inform that I Anastasios G Andrinaakos, CPA have known Mr Ioannis G Smirniotis since March of year 2005 when Mr Smirniotis came to Colorado from Chicago Illinois. Mr Smirniotis is of good character and has been a successful business operator in Trinidad, Colorado, operating Trinidad Diner Inc. since year 2005. Mr Smirniotis has also been a successful landlord as he has purchased residential rental properties in Trinidad and Pueblo Colorado since he arrived and became a permanent resident of Trinidad Colorado. I would recommend Mr Smirniotis as a business operator of another small business ion Trinidad Colorado without any hesitation.

If I can be of further assistance please advice.

Sincerely

  
Anastasio G Andrianakos, CPA

message 12/11/14  
verified 12/19/14

November 18, 2014

To Whom it May Concern:

I have known John Snirniotis for a number of years. He has owned the Trinidad Diner for 10 years and has been very successful. In addition, he is well known in the community to be an honest business owner.

John is organized, efficient, extremely competent, and has an understanding of how businesses are run and how to run them for the long term.

In summary, I highly recommend John for a liquor license. He will be a valuable asset for our community.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rianna Rivera', with a large, sweeping flourish at the end.

Rianna Rivera

719-859-1605

verified 12/11/14  
message 12/11/14

November 21, 2014

To Whom It May Concern:

I have know Ioannis G. Smirniotis, for about 5 years and think of him as a very efficient businessman and active member of the community.

His current business as owner of the Trinidad Diner has ran successfully with his management of employees, bookkeeping, ordering supplies, payroll, etc., and all other duties associated with being in charge of the operation of his establishment.

He takes care of business in a timely manner, goes above and beyond to have things run smoothly and has the right disposition to mingle with the public.

He is a very honest person, he works great with people and has a friendly personality that would suit any business venture.

I would strongly recommend him to have all the qualities to succeed in a new business because of his background and experience.

If I can be of assistance in answering any questions you might have, you can reach me at 719-859-1777.

Sincerely,

  
Elsie Hargrove

verified 12/11/14  
message

NOTICE OF PUBLIC HEARING

PURSUANT TO THE LIQUOR LAWS OF COLORADO, El Paso Liquor, Inc., d/b/a El Paso Liquor, 1101 E. Main Street, Trinidad, CO, has requested the licensing officials of the City of Trinidad to grant a new retail liquor store license at this location to sell malt, vinous and spirituous liquors.

Hearing on application will be held on Tuesday, January 6, 2015, at 7:00 p.m. in the Council Chambers, City Hall, 135 N. Animas Street, Trinidad, CO.

Date of Application: December 2, 2014

Remonstrances may be filed with the City Clerk's Office, 135 N. Animas, Trinidad, CO.

Dated this 11th day of December, 2014.

By order of the Trinidad City Council.

CITY OF TRINIDAD, COLORADO

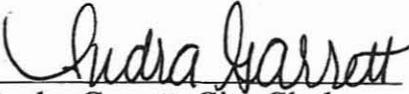


Audra Garrett, City Clerk

CERTIFICATE OF MAILING

I hereby certify that on the 11th day of December, 2014, I mailed the Notice of Public Hearing by first-class mail, postage pre-paid to:

El Paso Liquor, Inc.  
El Paso Liquor  
1508 Atchison Avenue  
Trinidad, CO 81082

  
Audra Garrett, City Clerk

PROOF OF PUBLICATION

STATE OF COLORADO  
COUNTY OF LAS ANIMAS } SS

Krysta E. Toci, of lawful age, being first duly sworn upon oath, deposes and says that she is the authorized agent of The Chronicle-News, daily newspaper of general circulation which is published and circulated in the City of Trinidad, Las Animas County, Colorado, that said newspaper is a newspaper of general circulation complying with all of the requirements of Articles I to VII, Chapter 130, 1935, Colorado Statutes Annotated, and all other laws of said State, and that said legal / notice has been so published for the period of time prescribed in said newspaper proper and not a supplement.

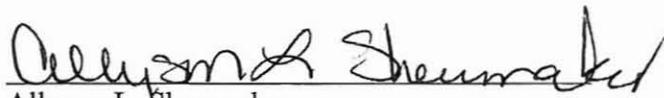
The attached Notice was published in said newspaper in its issue(s) dated

56456

December 15, 2014

  
-----  
Krysta E. Toci

Subscribed and sworn to before me this  
15 day of December  
A. D., 2014.

  
-----  
Allyson L. Sheumaker

My commission expires on August 26, 2015



My Comm. Expires August 26, 2015

NOTICE OF PUBLIC HEARING

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Remonstrances may be filed with the City Clerk's Office, 135 N. Animas, Trinidad, CO.

Dated this 11th day of December, 2014.

By Order of the Trinidad City Council  
Audra Garrett, City Clerk

Publish: December 15, 2014

56456

STATE OF COLORADO )  
COUNTY OF LAS ANIMAS ) SS  
CITY OF TRINIDAD )

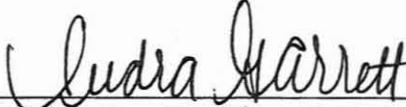
CERTIFICATE OF POSTING

I, Audra Garrett, City Clerk of the City of Trinidad, Colorado, do hereby certify that pursuant to the laws of the State of Colorado, El Paso Liquor, Inc., d/b/a El Paso Liquor, 1101 E. Main Street, Trinidad, Colorado, which business has applied for a new retail liquor store license to sell malt, vinous and spirituous liquors at said location, was duly posted for not less than fifteen continuous days, with the first day of posting occurring on the 16<sup>th</sup> day of December, 2014.

WITNESS, my hand and the official seal of the City of Trinidad, Colorado, this 16<sup>th</sup> day of December, 2014.

CITY OF TRINIDAD, COLORADO

(S E A L)

  
\_\_\_\_\_  
Audra Garrett, City Clerk

12/11/14

DEPARTMENTAL INSPECTION REPORT  
3.2% BEER (FERMENTED MALT BEVERAGE)  
OR LIQUOR LICENSE

Applicant: El Paso Liquor, Inc.

dba: El Paso Liquor

Address: 1101 E. Main Street

Type of License: Retail Liquor Store

Renewal  Transfer  Change of Location  New  Special Event

FOR CONSIDERATION AT  
COUNCIL MEETING DATE: January 6, 2015, 7:00 p.m.

\*\*\*\*\*

DEPARTMENT REVIEW

DEPARTMENT: FIRE / INSPECTION / POLICE / HEALTH DEPARTMENT

COMMENTS: not ready for inspection

2<sup>nd</sup> week in Feb. 2015

inspection needed before opening.

\_\_\_\_\_

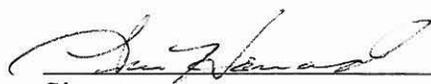
\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

12-16-14  
Date

  
Signature

RETURN TO THE CITY CLERK'S OFFICE BEFORE: December 22, 2014

12/11/14

DEPARTMENTAL INSPECTION REPORT  
3.2% BEER (FERMENTED MALT BEVERAGE)  
OR LIQUOR LICENSE

Applicant: El Paso Liquor, Inc.

dba: El Paso Liquor

Address: 1101 E. Main Street

Type of License: Retail Liquor Store

Renewal  Transfer  Change of Location  New  Special Event

FOR CONSIDERATION AT  
COUNCIL MEETING DATE: January 6, 2015, 7:00 p.m.

\*\*\*\*\*

DEPARTMENT REVIEW

DEPARTMENT: FIRE / INSPECTION / POLICE / HEALTH DEPARTMENT

COMMENTS: change of occupancy w/ new plans  
for remodel

12-16-14  
Date

[Signature]  
Signature

RETURN TO THE CITY CLERK'S OFFICE BEFORE: December 22, 2014

12/11/14

DEPARTMENTAL INSPECTION REPORT  
3.2% BEER (FERMENTED MALT BEVERAGE)  
OR LIQUOR LICENSE

Applicant: El Paso Liquor, Inc.

dba: El Paso Liquor

Address: 1101 E. Main Street

Type of License: Retail Liquor Store

Renewal  Transfer  Change of Location  New  Special Event

FOR CONSIDERATION AT  
COUNCIL MEETING DATE: January 6, 2015, 7:00 p.m.

\*\*\*\*\*

DEPARTMENT REVIEW

DEPARTMENT: FIRE / INSPECTION / POLICE / HEALTH DEPARTMENT

COMMENTS: \_\_\_\_\_

Inspection to be completed upon renovation  
of premises.

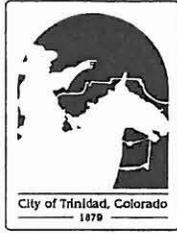
No other comments at this time.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12-15-14  
Date

Charles J. Garcia  
Signature

RETURN TO THE CITY CLERK'S OFFICE BEFORE: December 22, 2014



# CITY of TRINIDAD

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

December 15, 2014

El Paso Liquor, Inc.  
d/b/a El Paso Liquor  
1508 Atchison Avenue  
Trinidad, CO 81082

Dear Applicant:

You recently applied for a new retail liquor store license. The Trinidad City Council as the local liquor licensing authority has scheduled a hearing on your application for Tuesday, January 6, 2015, at 7:00 p.m. The City Council has also tentatively established the boundaries of the neighborhood in which the establishment is proposed to be located as the area within the corporate boundaries of the City of Trinidad. A map identifying the neighborhood boundaries is attached.

Below are procedures you should follow at the hearing. Remember that the approval of this application and the granting of the requested license are not automatic. Well in advance of the hearing, the information provided in the application and the other forms and questionnaires, particularly with respect to criminal convictions, needs to be reviewed. Any corrections, alterations, deletions or additions need to be provided to the City Clerk no later than one week before the scheduled hearing. A knowing misstatement in any of these forms constitutes grounds for denial of the license.

Procedures to be followed at hearing:

- A. Avoid repetitive testimony which adds little to your case.
- B. All applicants (with the exception of club licenses) have the burden of proving that the needs of the neighborhood and desires of the inhabitants are not being met. Present your evidence to support this as concisely as possible. This may be in the form of verbal testimony, petitions, or other means.

El Paso Liquor, Inc.  
d/b/a El Paso Liquor  
December 15, 2014  
Page 2

- C. Petitions - Before any liquor or beer license can be issued, two requirements must be affirmatively established that (1) the reasonable requirements of the neighborhood are not being met by existing outlets, and (2) that the inhabitants of the neighborhood desire that it be issued. One manner of showing this is by circulating petitions within the defined neighborhood (affected area). Many applicants use a marketing survey firm to circulate petitions. A sample petition is enclosed should you decide to do your own survey.

Please remember that because the applicant has received approval of the application by the local authority does not mean that a license will ultimately be issued. Every application is subject to review by the State of Colorado, and the Colorado Department of Revenue Liquor Enforcement Division must issue a State License before the City of Trinidad may issue a City License. The process of getting the application to the State, their review and issuance of their license, often takes three to four weeks to complete (less time if concurrent review is requested). You will be notified immediately when both the State and City licenses are ready to be mailed or picked up.

If you have any questions, please call.

Sincerely,

Audra Garrett  
City Clerk

Encs.



DISCLOSURE STATEMENT

I, Michelle Miles, hereby state and affirm that I am a member of Opera House Wine & Spirits, LLC, a Colorado limited liability company formed on February 22, 2010, whose principal office address is 601 W. Main Street, Trinidad, Colorado, 81082; that said limited liability company owns and operates Tire Shop Wine & Spirits, a retail liquor store licensed entity, licensed under Title 12, Articles 46 or 47, CRS 1973, as amended of the State of Colorado and under Chapter 3 of the Municipal Code of the City of Trinidad, located at 601 W. Main Street, in the City of Trinidad, County of Las Animas, State of Colorado; that I hold a 99% interest in Opera House Wine & Spirits, LLC; and, that I am able to act independently upon liquor licensing matters that come before the Trinidad City Council, the local liquor licensing authority, of which I am a member.

  
\_\_\_\_\_  
Michelle Miles  
12/4/12  
\_\_\_\_\_  
Date

DISCLOSURE STATEMENT

I, Liz Torres, hereby state and affirm that I am a member of Ristras Restaurant and Cantina, LLC, a Colorado limited liability company formed on February 13, 2014, whose principal office address is 516 Elm Street, Trinidad, Colorado, 81082; that said limited liability company owns and operates Ristras Restaurant and Cantina, a hotel and restaurant licensed entity, licensed under Title 12, Articles 46 or 47, CRS 1973, as amended of the State of Colorado and under Chapter 3 of the Municipal Code of the City of Trinidad, located at 516 Elm Street, in the City of Trinidad, County of Las Animas, State of Colorado; that I hold a 34% interest in Ristras Restaurant and Cantina, LLC; and, that I am able to act independently upon liquor licensing matters that come before the Trinidad City Council, the local liquor licensing authority, of which I am a member.

  
\_\_\_\_\_  
Liz Torres  
4.8.14  
\_\_\_\_\_  
Date

## PETITION EL PASO LIQUOR INC

Applicant IOANNIS G SMIRNIOTIS  
 Trade Name of Establishment EL PASO LIQUOR  
 Proposed Location 1101 E. MAIN ST  
 Application for (Type Of License) LIQUOR LICENCE  
 Public Hearing before the local Licensing Authority:  
 Date and Time 01-06-15 7 P:M  
 Location CITY HALL

**DO NOT SIGN THIS PETITION UNLESS:**

1. You are at least twenty-one (21) years of age.
2. You are a resident within the designated affected area(see attached map).
3. You sign your name only (first, middle and last name). You cannot sign for another individual.
4. You have not signed another petition concerning the same application.
5. You have read the petition in its entirety and understand its meaning.
6. The petition circulator witnesses your signature.

Check the SUPPORT column if you desire that this type of license be issued and/or the existing outlets do not adequately serve the reasonable requirements of the designated affected area.

Check the OPPOSE column if you desire that this type of license not be issued and/or the existing outlets adequately serve the reasonable requirements of the designated affected area.

Name - Signature	Complete Home Address (Include Space/Apt. No)	Age	Support	Oppose	Date Signed
<del>Paul Kelly</del>	610 E 5th	57	X		12-30-14
<del>Ven Jones</del>	1205 E 6th	50	X		12-18-14
<del>Tom Jones</del>	402 Beach St	60	X		12-18-14
<del>Kory W. Jones</del>	1017 SW JONES	69	X		12-18-14
<del>Brand Marshall</del>	218 E. Strong	36	X		12-18-14
<del>Charles Antel</del>	811 S. Chestnut	52	X		12-18-14
<del>Richard A. Spivey</del>	1604 MANFIELD	56	X		12-19-14
<del>Kerr S</del>	308 - <del>Edna</del> N. 400	53	X		12-17-14
Garry Espinoza	109 North Ave	50	X		12-19-14

EL PASO LIQUOR INC

Applicant IOANNIS G SMIRNIOTIS  
 Trade Name of Establishment EL PASO LIQUOR  
 Proposed Location 1101 E. MAIN ST  
 Application for (Type of License) LIQUOR LICENCE

Name - Signature	Complete Home Address (Street Address/Apt #)	Age	Support	Oppose	Date Signed
Cheryl Ashe	811 S. Chestnut	52	X		12/19/14
Daniel Ashe	610 Maple	26	X		12/19/14
timothy ashe	610 Maple	23	X		12/19/14
Charles Lust	33073 Elk Ridge Tr	72	X		12/19/14
Nancy W. Varga	410 W Washington	67	X		12/19/14
Patricia C. Geros	1220 Garfield Av.	58	X		12/19/14
Marcia Blum	2061 Lea St.	34	X		12/19/14
M. K. Smith	820 W. Kansas	34	X		12-19-14
Shirley Cosman	420 W. Kansas	30	X		12/19/14
Laura Malyon	225 E Godding	46	X		12/19/14
Francisco Juver	1104 E 9th ST	45	X		12-19-14
Chris Roe	11981 Co Rd 22.9	32	X		12-19-14
Betty Lucero	1113 Robinson Ave	58	X		12/19/14
Juanita Pena	1511 Atchison Ave	40	X		12/19/14
Mr M	1511 Atch. sou ave	48	X		12-19-14
Elmer / Margery	911 San Pedro Ave	61	X		12/19/14
Carla Sanchez	104 Arguilar cr.	56	X		12-20-14
Jayson C. Buhr	16978 C.R. 81	37	X		12-20-14
Betsy Buhr	16978 CR 81	36	X		12/20/14
Christopher Simpleman	306 S. Oak ST	46	X		12-20-2014
Bonnie L. Humer	123 N. Dunlinscott St	51	X		12-20-2014

Businesses

PETITION EL PASO LIQUOR INC

Applicant IOANNIS G SMIRNIOTIS

Trade Name of Establishment EL PASO LIQUOR

Proposed Location 1101 E. MAIN ST

Application for (Type Of License) LIQUOR LICENCE

Public Hearing before the local Licensing Authority:

Date and Time 01-06-15

Location CITY HALL 7 P.M

**DO NOT SIGN THIS PETITION UNLESS:**

1. You are at least twenty-one (21) years of age.
2. You are the owner or manager of a business located within the designated affected area(see attached map).
3. You sign your name only (first, middle and last name). You cannot sign for another individual.
4. You have not signed another petition concerning the same application.
5. You have read the petition in its entirety and understand its meaning.
6. The petition circulator witnesses your signature.

Check the SUPPORT column if you desire that this type of license be issued and/or the existing outlets do not adequately serve the reasonable requirements of the designated affected area.

Check the OPPOSE column if you desire that this type of license not be issued and/or the existing outlets adequately serve the reasonable requirements of the designated affected area.

Name - Signature Specify Owner/Manager	Business Name & Address	Age	Support	Oppose	Date Signed
<i>[Signature]</i> OWNER	ZUBAL DAIRY	51	Yes		12-18-14
<i>[Signature]</i> Owner	VFC Sawaya	60	Yes		12/18/14
<i>[Signature]</i>	GLASS TIT SHOP	57	Yes		12-18-14
<i>[Signature]</i>	HUCY'S PYOCES	65	Yes		12-18-14
<i>[Signature]</i> DURAN	34122 Co. Rd 20.8	64	YES		12-18-14
<i>[Signature]</i> Suvier	TOM'S ELECTRIC	59	yes		12-17-14
<i>[Signature]</i> Edgeman	404 E. Main	65	yes		12-19-14
<i>[Signature]</i> Samora	159 e. Main	39	Yes		12-19-14
<i>[Signature]</i> Alberto	Concepcion Centro Bodega	47	Yes		12/19/14

EL PASO LIQUOR INC

Applicant IOANNIS G SMIRNIOTIS  
 Trade Name of Establishment EL PASO LIQUOR  
 Proposed Location 1101 E. MAIN ST  
 Application for (Type of License) LIQUOR LICENCE

Name - Signature Specify Owner/Manager	Business Name & Address	Age	Support	Oppose	Date Signed
<i>[Signature]</i>	Southern Colonial Realty	60	X		12/19/14
<i>Christina Mayers</i>	Truck Repair & Towing <small>Santa Lee Bldg</small>	46	X		12/19/14
<i>J. Choate</i>	808 UTE Street	38	X		12/19/2014
<i>Louise Grosso</i>	Shirley's Thrift	56	X		12/19/14
<i>John Hernandez</i>	FERNANDEZ PLBG	64	X		12/19/14
<i>Kelly Riv</i>	Kelly Towing	39	X		12/20/14
<i>[Signature]</i>	Computech <sup>802</sup> Tascosa	43	X		12/20/14
<i>Tim Buono</i>	C. J. Buono Constr.	54	X		12/20/14
<i>James Donnelly</i>	Masada Mays Snacks	67	X		12/20/14
<i>[Signature]</i>	RJ's Discount Liquor	30	X		12-20-14
<i>Joseph Cordora</i>	Alino's Sports	63	X		12-20-14
<i>Mel Williamson</i>	Mel's Refrigerators	65	X		12-20-14
<i>Frank D Ferraro</i>	D-U-V Plumbing & Heating	47	X		12-21-14

EL PASO LIQUOR INC

Applicant

IOANNIS G SMIRNIOTIS

Trade Name of Establishment

EL PASO LIQUOR

Proposed Location

1101 E. MAIN ST

Application for (Type of License)

LIQUOR LICENSE

**AFFIDAVIT**

I, IOANNIS G SMIRNIOTIS, do hereby state that I was the circulator of said petition consisting of 5 pages including this page, and further state that I personally witnessed each signature appearing on said petition, and that each signature thereon is the signature of the person whose name it purports to be; further, that the address given opposite that person's name is the true address of the person signing; that every person who signed, represented himself or herself to be 21 years of age or older; that each person signing the petition read or had read to him the statement appearing on that page one (1) hereof, and understood the nature of the petition. I also hereby swear or affirm that no promises, threats, or inducements were employed whatsoever in connection with the presentation of this petition, and that every signature appearing hereon was completely free and voluntarily given.

Circulator



Date Signed

12/22/14

State of Colorado

County of

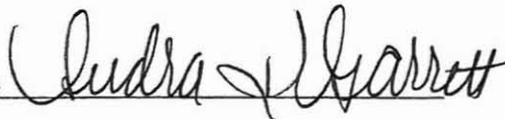
Las Animas

ss.

03/18/2015

Subscribed and sworn before me this 22<sup>nd</sup> day of December, 2014, 1999. My commission expires

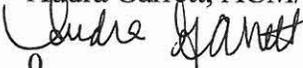
Notary Public





## COUNCIL COMMUNICATION

8a

**CITY COUNCIL MEETING:** January 6, 2015  
**PREPARED BY:** Audra Garrett, ACM/City Clerk  
**DEPT. HEAD SIGNATURE:**   
**# OF ATTACHMENTS:** 0

**SUBJECT:** Designation of locations for required posting of public meetings

**PRESENTER:** Audra Garrett, ACM/City Clerk

**RECOMMENDED CITY COUNCIL ACTION:** Designate City Hall and the Carnegie Public Library as the two locations

**SUMMARY STATEMENT:** Designation of posting locations is a requirement of local government

**EXPENDITURE REQUIRED:** No

**SOURCE OF FUNDS:** N/A

**POLICY ISSUE:** N/A

**ALTERNATIVE:** Another location could be chosen

**BACKGROUND INFORMATION:**

- These two locations have been the designated posting locations for over 20 years.

8a

86



**COUNCIL COMMUNICATION**

**CITY COUNCIL MEETING:** January 6, 2015  
**PREPARED BY:** Audra Garrett, ACM/City Clerk  
**DEPT. HEAD SIGNATURE:** *Audra Garrett*

**SUBJECT:** Liquor store license renewal request by Linda T. Anderson Barron d/b/a Mountain Liquor & General Store at 1144 Robinson Avenue

**PRESENTER:** Linda T. Anderson Barron

**RECOMMENDED CITY COUNCIL ACTION:** Consider renewal of the license

**SUMMARY STATEMENT:** N/A

**EXPENDITURE REQUIRED:** No

**SOURCE OF FUNDS:** N/A

**POLICY ISSUE:** N/A

**ALTERNATIVE:** N/A

**BACKGROUND INFORMATION:**

- The renewal application is in order.
- The Fire Department and Building Department report no issues /satisfactory inspection / recommend approval.
- The Police Department reported no calls for service.
- Disclosure statements from Councilmembers Miles and Torres are attached.
- Appropriate fees have been paid.

86

## LIQUOR OR 3.2 BEER LICENSE RENEWAL APPLICATION

Fees Due	
Renewal Fee	
Storage Permit \$100 x _____	_____
Optional Premise \$100 x _____	_____
Amount Due/Paid	

Make check payable to: **Colorado Department of Revenue.**  
 The State may convert your check to a one-time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is rejected due to insufficient or uncollected funds, the Department may collect the payment amount directly from your banking account electronically.

**PLEASE VERIFY & UPDATE ALL INFORMATION BELOW**

**RETURN TO CITY OR COUNTY LICENSING AUTHORITY BY DUE DATE**

Licensee Name Barron Anderson L T		DBA Mountain Liquor & General Store		
Liquor License # 009611850000	License Type Retail Liquor Store	Sales Tax License # 00961185-0000	Expiration Date Feb 24, 2015	Due Date Jan 10, 2015
Street Address 1144 Robinson Avenue				Phone Number 719-846-8223
Mailing Address Trinidad, CO 81082				
Operating Manager Linda T Barron	Date of Birth [REDACTED]	Home Address [REDACTED]	Phone Number [REDACTED]	

1. Do you have legal possession of the premises at the street address above?  YES  NO  
 Is the premises owned or rented?  Owned  Rented\* \*If rented, expiration date of lease \_\_\_\_\_
2. Since the date of filing of the last annual application, has there been any change in financial interest (new notes, loans, owners, etc.) or organizational structure (addition or deletion of officers, directors, managing members or general partners)? If yes, explain in detail and attach a listing of all liquor businesses in which these new lenders, owners (other than licensed financial institutions), officers, directors, managing members, or general partners are materially interested.  YES  NO  
**NOTE TO CORPORATION, LIMITED LIABILITY COMPANY AND PARTNERSHIP APPLICANTS:** If you have added or deleted any officers, directors, managing members, general partners or persons with 10% or more interest in your business, you must complete and return immediately to your Local Licensing Authority, Form DR 8177: Corporation, Limited Liability Company or Partnership Report of Changes, along with all supporting documentation and fees.
3. Since the date of filing of the last annual application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been convicted of a crime? If yes, attach a detailed explanation.  YES  NO
4. Since the date of filing of the last annual application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been denied an alcohol beverage license, had an alcohol beverage license suspended or revoked, or had interest in any entity that had an alcohol beverage license denied, suspended or revoked? If yes, attach a detailed explanation.  YES  NO
5. Does the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) have a direct or indirect interest in any other Colorado liquor license, including loans to or from any licensee or interest in a loan to any licensee? If yes, attach a detailed explanation.  YES  NO
6. **SOLE PROPRIETORSHIPS, HUSBAND-WIFE PARTNERSHIPS AND PARTNERS IN GENERAL PARTNERSHIPS:** Each person must complete and sign the DR 4679: Affidavit – Restriction on Public Benefits (available online or by calling 303-205-2300) and **attach a copy of their driver's license, state-issued ID or valid passport.**

**AFFIRMATION & CONSENT**

*I declare under penalty of perjury in the second degree that this application and all attachments are true, correct and complete to the best of my knowledge.*

Type or Print Name of Applicant/Authorized Agent of Business Linda T Anderson Barron	Title Owner
Signature 	Date Dec 10, 2014

**REPORT & APPROVAL OF CITY OR COUNTY LICENSING AUTHORITY**

The foregoing application has been examined and the premises, business conducted and character of the applicant are satisfactory, and we do hereby report that such license, if granted, will comply with the provisions of Title 12, Articles 46 and 47, C.R.S. **THEREFORE THIS APPLICATION IS APPROVED.**

Local Licensing Authority For Trinidad	Date
Signature	Title Mayor
	Attest

12/10/14

DEPARTMENTAL INSPECTION REPORT  
3.2% BEER (FERMENTED MALT BEVERAGE)  
OR LIQUOR LICENSE

Applicant: Linda T. Anderson Barron

dba: Mountain Liquor & General Store

Address: 1144 Robinson Avenue

Type of License: Liquor Store

Renewal  Transfer  Change of Location  New  Special Event

FOR CONSIDERATION AT  
COUNCIL MEETING DATE: January 6, 2015

\*\*\*\*\*

DEPARTMENT REVIEW

DEPARTMENT: FIRE / INSPECTION / POLICE / HEALTH DEPARTMENT

COMMENTS: inspected ok

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12-12-14  
Date

[Signature]  
Signature

RETURN TO THE CITY CLERK'S OFFICE BEFORE: December 23, 2014

12/10/14

DEPARTMENTAL INSPECTION REPORT  
3.2% BEER (FERMENTED MALT BEVERAGE)  
OR LIQUOR LICENSE

Applicant: Linda T. Anderson Barron

dba: Mountain Liquor & General Store

Address: 1144 Robinson Avenue

Type of License: Liquor Store

Renewal  Transfer  Change of Location  New  Special Event

FOR CONSIDERATION AT  
COUNCIL MEETING DATE: January 6, 2015

\*\*\*\*\*

DEPARTMENT REVIEW

DEPARTMENT: FIRE / INSPECTION / POLICE / HEALTH DEPARTMENT

COMMENTS: Approved

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12-16-14  
Date

  
Signature

RETURN TO THE CITY CLERK'S OFFICE BEFORE: December 23, 2014

12/10/2014

**DEPARTMENTAL INSPECTION REPORT  
3.2 % BEER (FERMENTED MALT BEVERAGE)  
OR LIQUOR LICENSE**

Applicant's Name: Linda T. Anderson Baron

DBA: Mountain Liquor & General Store

Business Address: 1144 Robinson Ave

Type of License: Retail Liquor Store

X  Renewal             Transfer             Change of Location             New             Special Event

FOR CONSIDERATION AT  
COUNCIL MEETING DATE:

January 6, 2015

\*\*\*\*\*

DEPARTMENT REVIEW

DEPARTMENT: FIRE / INSPECTION / POLICE / HEALTH DEPARTMENT

COMMENTS:

No records

12-15-14

Date

Charles J. Hawari  
Signature

RETURN TO THE CITY CLERK'S OFFICE BEFORE:

December 23, 2014

**DISCLOSURE STATEMENT**

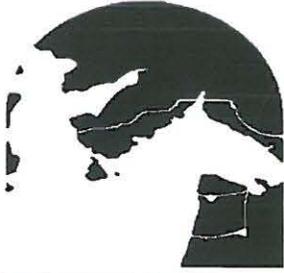
I, Michelle Miles, hereby state and affirm that I am a member of Opera House Wine & Spirits, LLC, a Colorado limited liability company formed on February 22, 2010, whose principal office address is 601 W. Main Street, Trinidad, Colorado, 81082; that said limited liability company owns and operates Tire Shop Wine & Spirits, a retail liquor store licensed entity, licensed under Title 12, Articles 46 or 47, CRS 1973, as amended of the State of Colorado and under Chapter 3 of the Municipal Code of the City of Trinidad, located at 601 W. Main Street, in the City of Trinidad, County of Las Animas, State of Colorado; that I hold a 99% interest in Opera House Wine & Spirits, LLC; and, that I am able to act independently upon liquor licensing matters that come before the Trinidad City Council, the local liquor licensing authority, of which I am a member.

  
\_\_\_\_\_  
Michelle Miles  
12/4/12  
\_\_\_\_\_  
Date

**DISCLOSURE STATEMENT**

I, Liz Torres, hereby state and affirm that I am a member of Ristras Restaurant and Cantina, LLC, a Colorado limited liability company formed on February 13, 2014, whose principal office address is 516 Elm Street, Trinidad, Colorado, 81082; that said limited liability company owns and operates Ristras Restaurant and Cantina, a hotel and restaurant licensed entity, licensed under Title 12, Articles 46 or 47, CRS 1973, as amended of the State of Colorado and under Chapter 3 of the Municipal Code of the City of Trinidad, located at 516 Elm Street, in the City of Trinidad, County of Las Animas, State of Colorado; that I hold a 34% interest in Ristras Restaurant and Cantina, LLC; and, that I am able to act independently upon liquor licensing matters that come before the Trinidad City Council, the local liquor licensing authority, of which I am a member.

  
\_\_\_\_\_  
Liz Torres  
4.8.14  
\_\_\_\_\_  
Date



CITY OF TRINIDAD, COLORADO  
1876

## COUNCIL COMMUNICATION

8C

**CITY COUNCIL MEETING:** January 6, 2015  
**PREPARED BY:** Audra Garrett, ACM/City Clerk  
**DEPT. HEAD SIGNATURE:** *Audra Garrett*

**SUBJECT:** Hotel and restaurant liquor license renewal request by Mission at the Bell Restaurant, Inc. d/b/a Mission at the Bell Restaurant at 134 W. Main Street, #14

**PRESENTER:** Mission at the Bell Restaurant, Inc., representative

**RECOMMENDED CITY COUNCIL ACTION:** Consider renewal of the license

**SUMMARY STATEMENT:** N/A

**EXPENDITURE REQUIRED:** No

**SOURCE OF FUNDS:** N/A

**POLICY ISSUE:** N/A

**ALTERNATIVE:** N/A

### BACKGROUND INFORMATION:

- The application is in order.
- The Fire Chief's inspection yielded the need for a vent hood inspection.
- The departmental reports from the Building Inspector indicates compliance.
- The Police Department had no calls for service.
- The Health Department reported compliance.
- Disclosure statements provided by Councilmembers Miles and Torres are attached.
- Appropriate fees have been paid.

8C

**LIQUOR OR 3.2 BEER LICENSE  
 RENEWAL APPLICATION**

Fees Due	
Renewal Fee	\$500.00
Storage Permit \$100 x _____	_____
Optional Premise \$100 x _____	_____
Related Resort \$75 x _____	_____
Amount Due/Paid	

MISSION AT THE BELL RESTAURANT  
 134 W MAIN ST #14  
 TRINIDAD CO 81082

Make check payable to: Colorado Department of Revenue. The State may convert your check to a one-time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is rejected due to insufficient or uncollected funds, the Department may collect the payment amount directly from your banking account electronically.

**PLEASE VERIFY & UPDATE ALL INFORMATION BELOW**

**RETURN TO CITY OR COUNTY LICENSING AUTHORITY BY DUE DATE**

Licensee Name <b>MISSION AT THE BELL RESTAURANT INC</b>		DBA <b>MISSION AT THE BELL RESTAURANT</b>		
Liquor License # <b>42444780000</b>	License Type <b>Hotel &amp; Restaurant (city)</b>	Sales Tax License # <b>42444780000</b>	Expiration Date <b>1/28/2015</b>	Due Date <b>12/14/2014</b>
Street Address <b>134 W MAIN ST #14 TRINIDAD CO 81082-2600</b>				Phone Number <b>(719) 845 1513</b>
Mailing Address <b>134 W MAIN ST #14 TRINIDAD CO 81082</b>				
Operating Manager <b>COOK J J de LUCCRO</b>	Date of Birth [REDACTED]	Home Address [REDACTED]	Phone Number [REDACTED]	
<p>1. Do you have legal possession of the premises at the street address above? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO                  Is the premises owned or rented? <input type="checkbox"/> Owned <input checked="" type="checkbox"/> Rented* *If rented, expiration date of lease <u>2/2017</u></p> <p>2. Since the date of filing of the last annual application, has there been any change in financial interest (new notes, loans, owners, etc.) or organizational structure (addition or deletion of officers, directors, managing members or general partners)? If yes, explain in detail and attach a listing of all liquor businesses in which these new lenders, owners (other than licensed financial institutions), officers, directors, managing members, or general partners are materially interested. <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</p> <p><b>NOTE TO CORPORATION, LIMITED LIABILITY COMPANY AND PARTNERSHIP APPLICANTS:</b> If you have added or deleted any officers, directors, managing members, general partners or persons with 10% or more interest in your business, you must complete and return immediately to your Local Licensing Authority, Form DR 8177: Corporation, Limited Liability Company or Partnership Report of Changes, along with all supporting documentation and fees.</p> <p>3. Since the date of filing of the last annual application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been convicted of a crime? If yes, attach a detailed explanation. <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</p> <p>4. Since the date of filing of the last annual application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been denied an alcohol beverage license, had an alcohol beverage license suspended or revoked, or had interest in any entity that had an alcohol beverage license denied, suspended or revoked? If yes, attach a detailed explanation. <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</p> <p>5. Does the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) have a direct or indirect interest in any other Colorado liquor license, including loans to or from any licensee or interest in a loan to any licensee? If yes, attach a detailed explanation. <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</p> <p>6. <b>SOLE PROPRIETORSHIPS, HUSBAND-WIFE PARTNERSHIPS AND PARTNERS IN GENERAL PARTNERSHIPS:</b> Each person must complete and sign the DR 4679: Affidavit – Restriction on Public Benefits (available online or by calling 303-205-2300) and attach a copy of their driver's license, state-issued ID or valid passport.</p>				

**AFFIRMATION & CONSENT**

I declare under penalty of perjury in the second degree that this application and all attachments are true, correct and complete to the best of my knowledge.

Type or Print Name of Applicant/Authorized Agent of Business <b>J J de LUCCRO</b>	Title <b>OWNER</b>
Signature <i>[Signature]</i>	Date <b>12-10-2014</b>

**REPORT & APPROVAL OF CITY OR COUNTY LICENSING AUTHORITY**

The foregoing application has been examined and the premises, business conducted and character of the applicant are satisfactory, and we do hereby report that such license, if granted, will comply with the provisions of Title 12, Articles 46 and 47, C.R.S. **THEREFORE THIS APPLICATION IS APPROVED.**

Local Licensing Authority For <b>Trinidad</b>	Date
Signature <b>Mayor</b>	Title <b>Mayor</b>
	Attest

12/10/14

DEPARTMENTAL INSPECTION REPORT  
3.2% BEER (FERMENTED MALT BEVERAGE)  
OR LIQUOR LICENSE

Applicant: Mission at the Bell Restaurant, Inc.

dba: Mission at the Bell Restaurant

Address: 134 W. Main Street, #14

Type of License: Hotel and Restaurant

Renewal  Transfer  Change of Location  New  Special Event

FOR CONSIDERATION AT  
COUNCIL MEETING DATE: January 6, 2015

\*\*\*\*\*

DEPARTMENT REVIEW

DEPARTMENT: FIRE / INSPECTION / POLICE / HEALTH DEPARTMENT

COMMENTS: Approved

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12-16-14  
Date

[Signature]  
Signature

RETURN TO THE CITY CLERK'S OFFICE BEFORE: December 23, 2014

12/10/2014

**DEPARTMENTAL INSPECTION REPORT  
3.2 % BEER (FERMENTED MALT BEVERAGE)  
OR LIQUOR LICENSE**

Applicant's Name: Mission at the Bell, Inc.

DBA: Mission at the Bell Restaurant

Business Address: 134 W. Main Street #14

Type of License: Hotel & Restaurant

Renewal     Transfer     Change of Location     New     Special Event

FOR CONSIDERATION AT

COUNCIL MEETING DATE: January 6, 2015

\*\*\*\*\*

DEPARTMENT REVIEW

DEPARTMENT: FIRE / INSPECTION / POLICE / HEALTH DEPARTMENT

COMMENTS:

No reports

12-15-14  
Date

Charles J. Heenan  
Signature

RETURN TO THE CITY CLERK'S OFFICE BEFORE: December 23, 2014

## Tom Acre

---

**From:** John Martinez [jmartinez@la-h-health.org]  
**Sent:** Monday, December 15, 2014 8:31 AM  
**To:** Audra Garrett  
**Subject:** RE: liquor

Hi Audra;

The Mission at the Bell Restaurant located at 134 W. Main Street # 14 is in Compliance with this agency.

John Martinez  
Las Animas-Huerfano Counties District Health Department  
Environmental Health Specialist III  
[jmartinez@la-h-health.org](mailto:jmartinez@la-h-health.org)

**From:** Audra Garrett [<mailto:audra.garrett@trinidad.co.gov>]  
**Sent:** Wednesday, December 10, 2014 4:13 PM  
**To:** John Martinez  
**Subject:** liquor

Hi John,

Please verify compliance with your office for Mission at the Bell Restaurant at 134 W. Main Street #14.

*Audra Garrett* City Clerk  
City of Trinidad  
135 N. Animas Street  
Trinidad, CO 81082  
(719) 846-9843 ext. 135  
(719) 846-4140 fax  
[audra.garrett@trinidad.co.gov](mailto:audra.garrett@trinidad.co.gov)



**DISCLOSURE STATEMENT**

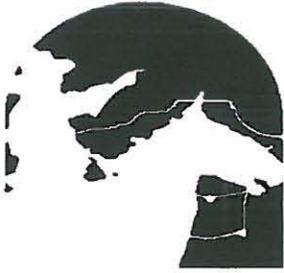
I, Michelle Miles, hereby state and affirm that I am a member of Opera House Wine & Spirits, LLC, a Colorado limited liability company formed on February 22, 2010, whose principal office address is 601 W. Main Street, Trinidad, Colorado, 81082; that said limited liability company owns and operates Tire Shop Wine & Spirits, a retail liquor store licensed entity, licensed under Title 12, Articles 46 or 47, CRS 1973, as amended of the State of Colorado and under Chapter 3 of the Municipal Code of the City of Trinidad, located at 601 W. Main Street, in the City of Trinidad, County of Las Animas, State of Colorado; that I hold a 99% interest in Opera House Wine & Spirits, LLC; and, that I am able to act independently upon liquor licensing matters that come before the Trinidad City Council, the local liquor licensing authority, of which I am a member.

  
\_\_\_\_\_  
Michelle Miles  
12/4/12  
\_\_\_\_\_  
Date

**DISCLOSURE STATEMENT**

I, Liz Torres, hereby state and affirm that I am a member of Ristras Restaurant and Cantina, LLC, a Colorado limited liability company formed on February 13, 2014, whose principal office address is 516 Elm Street, Trinidad, Colorado, 81082; that said limited liability company owns and operates Ristras Restaurant and Cantina, a hotel and restaurant licensed entity, licensed under Title 12, Articles 46 or 47, CRS 1973, as amended of the State of Colorado and under Chapter 3 of the Municipal Code of the City of Trinidad, located at 516 Elm Street, in the City of Trinidad, County of Las Animas, State of Colorado; that I hold a 34% interest in Ristras Restaurant and Cantina, LLC; and, that I am able to act independently upon liquor licensing matters that come before the Trinidad City Council, the local liquor licensing authority, of which I am a member.

  
\_\_\_\_\_  
Liz Torres  
4.8.14  
\_\_\_\_\_  
Date



CITY OF TRINIDAD, COLORADO  
1876

## COUNCIL COMMUNICATION

**CITY COUNCIL MEETING:** January 6, 2015  
**PREPARED BY:** Audra Garrett, ACM/City Clerk  
**DEPT. HEAD SIGNATURE:** *Audra Garrett*

8d

**SUBJECT:** Retail Marijuana Store license application filed by Emerald City Wellness, LLC d/b/a Emerald City at 520 Nevada Avenue

**PRESENTER:** Les Downs, City Attorney

**RECOMMENDED CITY COUNCIL ACTION:** Set the matter for public hearing.

**SUMMARY STATEMENT:** N/A

**EXPENDITURE REQUIRED:** No

**SOURCE OF FUNDS:** N/A

**POLICY ISSUE:** This is an application for a new license.

**ALTERNATIVE:** N/A

### BACKGROUND INFORMATION:

- The application appears to be in order and will be processed accordingly. A complete application packet will be provided for the hearing.
- City Council may not hold the hearing any earlier than 30 days from today. Therefore, the earliest a hearing may be set is February 17, 2015 at 7:00 p.m., the earliest regular Council meeting date following 30 days.
- Pursuant to TMC 14-204(f), the Local Licensing Authority may request that the state licensing authority conduct a concurrent review of a new license application prior to the local licensing authority's final approval of the license application.
- This is a quasi-judicial matter and as such Council should only consider evidence and testimony provided during the public hearing you set.

8d



# CITY OF TRINIDAD

City Clerk's Office  
135 N Animas St  
P.O. Box 880  
Trinidad, Colorado 81082  
719-846-9843

RETAIL MARIJUANA LICENSE APPLICATION		
<input checked="" type="checkbox"/> New License Application Fee	\$2,500.00	<input checked="" type="checkbox"/> License Fee/Renewal Fee \$2,500.00
<input type="checkbox"/> Transfer of Ownership Application Fee	\$1,500.00	<input type="checkbox"/> Change of Location \$1,500.00
<input type="checkbox"/> \$1.00 per square foot cultivation fee _____		Square feet = \$ _____
<input type="checkbox"/> Expansion of cultivation area @ \$1.00 per square foot charge for that additional area \$ _____		
LICENSE TYPE		
<input checked="" type="checkbox"/> Marijuana Store	<input type="checkbox"/> Marijuana Product Manufacturing Facility	
<input type="checkbox"/> Marijuana Cultivation Facility	<input type="checkbox"/> Marijuana Testing Facility	
TYPE OF BUSINESS		
<input type="checkbox"/> Corporation	<input type="checkbox"/> Partnership	<input type="checkbox"/> Individual*
<input type="checkbox"/> Limited Liability Corporation	<input type="checkbox"/> Other	
*Sole Proprietorship (Individual) – Verification of Lawful Presence is required per State law (Signed Affidavit and Photo ID)		

Applicant (Corporation/LLC) EMERALO CITY WELLNESS, LLC

Applicant (Sole Proprietor) \_\_\_\_\_

First Name \_\_\_\_\_ Middle Initial \_\_\_\_\_ Last Name \_\_\_\_\_

Trade Name of Establishment (DBA) EMERALO CITY

Address of Premise 520 NEVAOA AVE TRINIDAD CO 81082

Mailing Address 2606 COLORADO AVE COLORADO SPRINGS CO 80904

Telephone (719) 358-6955 Email Address ecw80904@gmail.com

Contact Person/Manager JOSEPH FISHER Title MEMBER / MGR

Telephone (932) 600-8990 Email Address ecw80904@gmail.com

Does the Applicant have legal possession of the premise for at least one (1) year from the date that this license will be issued by virtue of ownership, lease or other arrangement?

Ownership  Lease  Other (explain in detail)

\_\_\_\_\_

\_\_\_\_\_

R 12/15/14

If leased, list name of landlord and tenant, and date of expiration, EXACTLY as they appear on the lease.\*\*

Landlord	Tenant	Expires
KB HOLDINGS, LLC	EMERALD CITY WELLNESS LLC	12/31/2015

**\*\*If premises are leased, attach notarized consent by the owner of the property to the licensing of the premises for a retail marijuana facility.**

#### ADDITIONAL DOCUMENTS TO BE SUBMITTED WITH APPLICATION

Individual History Records attached and completed by each individual applicant, all general partners of a partnership, and limited partners owning 10% (or more) of a partnership; all officers and directors of a corporation, and stockholders of a corporation owning 10% (or more) of the stock of such corporation; all limited liability company *MANAGING* members, and officers or other limited liability company members with a 10% (or more) ownership interest in such company and all managers and employees of a Retail Marijuana License.

1. Fingerprinting by the Trinidad Police Department for:
  - all general partners of a partnership and limited partners owning 10% (or more) of a partnership;
  - all officers and directors of a corporation, and stockholders of a corporation owning 10% (or more) of the stock of such corporation;
  - all limited liability company *MANAGING* members, and officers or other limited liability company members with a 10% (or more) ownership interest in such company; and
  - all managers and employees of a Retail Marijuana License with the appropriate fee payable to Colorado Bureau of Investigation (currently \$39.50, March, 2014)
2. Lease or Deed – Evidence of Possession
3. Conditional Use Permit approval
4. Copy of alarm system contract
5. Copy of state sales tax license
6. Certificate of Good Standing
7. Affidavit of Lawful Presence (Sole Proprietors only)
8. Diagram of Premises:
  - A floor plan, drawn to scale on 8-1/2 x 11" paper, showing the layout of the center and the principal uses of the floor area. Floor plan must include location of lighting and cameras required by state rules.

A one-time fee of \$1.00 per square foot of that portion of the licensed premises in which plants are located for cultivation purposes, including greenhouses, shall be due to the City. Any expansion of the licensed premises in which plants are located for cultivation purposes shall result in an additional \$1.00 per square foot charge for that additional area.
9. Copy of State Application with attachments

**LIST OF OWNERS, OFFICERS, MANAGERS, EMPLOYEES & OTHERS WITH DIRECT OR INDIRECT FINANCIAL INTEREST**

1. Name: GARY LEE Schleich Title: MEMBER  
 Address: [REDACTED] AULT CO 80610  
 Financial Interest: 75% MEMBER OF LLC

2. Name: JOSEPH JOHN FISHER Title: MGR / MEMBER  
 Address: [REDACTED] COLORADO SPRINGS CO 80916  
 Financial Interest: 12.5% MEMBER

3. Name: BRIAN JOSEPH BITTER Title: GROW MGR / MEMBER  
 Address: [REDACTED] COLORADO SPRINGS CO 80916  
 Financial Interest: 12.5% MEMBER

4. Name: CHRISTOPHER LEE HARRIS Title: CONTROLLER  
 Address: [REDACTED] LARKSPUR CO 80118  
 Financial Interest: UNSECURED LOAN TO COMPANY - SELF FINANCIER

5. Name: \_\_\_\_\_ Title: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Financial Interest: \_\_\_\_\_

6. Name: \_\_\_\_\_ Title: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Financial Interest: \_\_\_\_\_

7. Name: \_\_\_\_\_ Title: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Financial Interest: \_\_\_\_\_

The applicant hereby acknowledges that the applicant and its owners, officers, and employees may be subject to prosecution under federal laws relating to the possession and distribution of controlled substances, that the City of Trinidad accepts no legal liability in connection with the approval and subsequent operation of the retail marijuana business; and that the application and documents submitted for other approvals relating to the retail marijuana business operation are subject to disclosure in accordance with the Colorado Open Records Act.

By accepting a license issued pursuant to this ordinance, a licensee releases the City, its officers, elected officials, appointed officials, employees, attorneys and agents from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of dispensary owners, operators, employees, clients or customers for a violation of state or federal laws, rules or regulations.

By accepting a license issued pursuant to this ordinance a licensee, jointly and severally if more than one, agrees to indemnify and defend the City, its officers, elected officials, employees, attorneys, agents, insurers, and self-insurance pool against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the operation of the retail marijuana business that is the subject of the license. The licensee further agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at its expense, and to bear all other costs and expenses related thereto, including court costs and attorney fees.

***I declare, under penalty of perjury, that this application has been examined by me; that the statements made herein are made in good faith and, to the best of my knowledge and belief, true, correct and complete.***

Signed: J. Fisher Title: MGR / MEMBER  
(Must be signed by Individual Owner, Partner, or Officer)

Printed Name: JOSEPH FISHER Date: 12/10/14



City of Trinidad, Colorado  
1876

**CITY OF TRINIDAD, COLORADO  
OFFICE OF THE CITY CLERK**

**LICENSEE'S STATEMENT REGARDING KNOWLEDGE  
OF THE STATE OF COLORADO'S RETAIL MARIJUANA CODES AND  
REGULATIONS AND THE CITY OF TRINIDAD'S ORDINANCES AND LOCAL  
RULES OF PROCEDURE GOVERNING RETAIL MARIJUANA BUSINESSES**

The Local Licensing Authority, as the enforcement agency for the for the City of Trinidad, expects a Retail Marijuana Business licensee to be knowledgeable of the State of Colorado's and the City of Trinidad's Retail Marijuana laws, codes, regulations and ordinances and to seek further clarification of such information if necessary.

I, JOSEPH JOHN FISHER, hereby state that I have read Article 43.4 of Title 12, C.R.S., as amended, and the regulations promulgated thereunder, and the City of Trinidad Municipal Code regarding general business licensing and Retail Marijuana business licensing and understand the contents thereof.

EMERALD CITY WELLNESS, LLC / JOSEPH FISHER  
Printed Name of Licensee

[Signature] MGR / MEMBER  
Authorized Signature of Licensee/Title

12/10/14  
Date

FELISHA M. REYES  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID # 20124059187  
MY COMMISSION EXPIRES SEPTEMBER 12, 2016

STATE OF Colorado )  
COUNTY OF El Paso )

ss.

Subscribed and sworn to before me this 10<sup>th</sup> day of DECEMBER, 2014.

[Signature]  
Notary Public Signature

My Commission Expires: 9-12-2016



City of Trinidad, Colorado  
1876

**CITY OF TRINIDAD, COLORADO  
OFFICE OF THE CITY CLERK**

**LICENSEE'S STATEMENT REGARDING KNOWLEDGE  
OF THE STATE OF COLORADO'S RETAIL MARIJUANA CODES AND  
REGULATIONS AND THE CITY OF TRINIDAD'S ORDINANCES AND LOCAL  
RULES OF PROCEDURE GOVERNING RETAIL MARIJUANA BUSINESSES**

The Local Licensing Authority, as the enforcement agency for the for the City of Trinidad, expects a Retail Marijuana Business licensee to be knowledgeable of the State of Colorado's and the City of Trinidad's Retail Marijuana laws, codes, regulations and ordinances and to seek further clarification of such information if necessary.

I, GARY LEE SCHLEICH, hereby state that I have read Article 43.4 of Title 12, C.R.S., as amended, and the regulations promulgated thereunder, and the City of Trinidad Municipal Code regarding general business licensing and Retail Marijuana business licensing and understand the contents thereof.

EMERALD CITY WELLNESS, LLC / GARY Schleich  
Printed Name of Licensee

[Signature] MEMBER  
Authorized Signature of Licensee/Title

12/10/14  
Date

STATE OF Colorado )  
COUNTY OF El Paso )

ss.

FELISHA M. REYES  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID # 20124058187  
MY COMMISSION EXPIRES SEPTEMBER 12, 2016

Subscribed and sworn to before me this 10<sup>th</sup> day of December, 2014.

[Signature]  
Notary Public Signature

My Commission Expires: 9/12/16



City of Trinidad, Colorado  
1876

**CITY OF TRINIDAD, COLORADO  
OFFICE OF THE CITY CLERK**

**LICENSEE'S STATEMENT REGARDING KNOWLEDGE  
OF THE STATE OF COLORADO'S RETAIL MARIJUANA CODES AND  
REGULATIONS AND THE CITY OF TRINIDAD'S ORDINANCES AND LOCAL  
RULES OF PROCEDURE GOVERNING RETAIL MARIJUANA BUSINESSES**

The Local Licensing Authority, as the enforcement agency for the for the City of Trinidad, expects a Retail Marijuana Business licensee to be knowledgeable of the State of Colorado's and the City of Trinidad's Retail Marijuana laws, codes, regulations and ordinances and to seek further clarification of such information if necessary.

I, CHRISTOPHER LEE HARRIS, hereby state that I have read Article 43.4 of Title 12, C.R.S., as amended, and the regulations promulgated thereunder, and the City of Trinidad Municipal Code regarding general business licensing and Retail Marijuana business licensing and understand the contents thereof.

EMERALD CITY WELLNESS, LLC / CHRISTOPHER HARRIS  
Printed Name of Licensee

[Signature] Controller  
Authorized Signature of Licensee/Title

12/10/14  
Date

STATE OF Colorado )  
COUNTY OF El Paso )

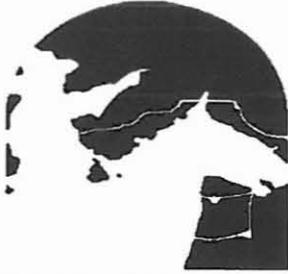
FELISHA M. REYES  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID # 20124059187  
MY COMMISSION EXPIRES SEPTEMBER 12, 2016

Subscribed and sworn to before me this 10<sup>th</sup> day of December, 2014.

[Signature]  
Notary Public Signature

My Commission Expires: 9/12/16





CITY OF TRINIDAD, COLORADO  
1876

## COUNCIL COMMUNICATION

**CITY COUNCIL MEETING:** January 6, 2015  
**PREPARED BY:** Audra Garrett, ACM/City Clerk  
**DEPT. HEAD SIGNATURE:**

**SUBJECT:** Retail Marijuana Cultivation Facility license application filed by Emerald City Wellness, LLC d/b/a Emerald City at 123 Pine Street

**PRESENTER:** Les Downs, City Attorney

**RECOMMENDED CITY COUNCIL ACTION:** Set the matter for public hearing.

**SUMMARY STATEMENT:** N/A

**EXPENDITURE REQUIRED:** No

**SOURCE OF FUNDS:** N/A

**POLICY ISSUE:** This is an application for a new license.

**ALTERNATIVE:** N/A

### BACKGROUND INFORMATION:

- The application appears to be in order and will be processed accordingly. A complete application packet will be provided for the hearing.
- City Council may not hold the hearing any earlier than 30 days from today. Therefore, the earliest a hearing may be set is February 17, 2015 at 7:00 p.m., the earliest regular Council meeting date following 30 days.
- Pursuant to TMC 14-204(f), the Local Licensing Authority may request that the state licensing authority conduct a concurrent review of a new license application prior to the local licensing authority's final approval of the license application.
- This is a quasi-judicial matter and as such Council should only consider evidence and testimony provided during the public hearing you set.



# CITY OF TRINIDAD

City Clerk's Office  
135 N Animas St  
P.O. Box 880  
Trinidad, Colorado 81082  
719-846-9843

RETAIL MARIJUANA LICENSE APPLICATION		
<input checked="" type="checkbox"/> New License Application Fee	\$2,500.00	<input checked="" type="checkbox"/> License Fee/Renewal Fee \$2,500.00
<input type="checkbox"/> Transfer of Ownership Application Fee	\$1,500.00	<input type="checkbox"/> Change of Location \$1,500.00
<input checked="" type="checkbox"/> \$1.00 per square foot cultivation fee	<u>2849</u> $\times$	Square feet = \$ <u>2849.00</u>
<input type="checkbox"/> Expansion of cultivation area @ \$1.00 per square foot charge for that additional area \$ _____		
LICENSE TYPE		
<input type="checkbox"/> Marijuana Store	<input type="checkbox"/> Marijuana Product Manufacturing Facility	
<input checked="" type="checkbox"/> Marijuana Cultivation Facility	<input type="checkbox"/> Marijuana Testing Facility	
TYPE OF BUSINESS		
<input type="checkbox"/> Corporation	<input type="checkbox"/> Partnership	<input type="checkbox"/> Individual*
<input checked="" type="checkbox"/> Limited Liability <sup>Company</sup> Corporation	<input type="checkbox"/> Other	
*Sole Proprietorship (Individual) – Verification of Lawful Presence is required per State law (Signed Affidavit and Photo ID)		

Applicant (Corporation/LLC) EMERALD CITY WELLNESS, LLC

Applicant (Sole Proprietor) \_\_\_\_\_

Trade Name of Establishment (DBA) EMERALD CITY

Address of Premise 123 PINE ST TRINIDAD CO 81082

Mailing Address 2606 COLORADO AVE COLORADO SPRINGS CO 80904

Telephone (719) 358-6955 Email Address ecw80904@gmail.com

Contact Person/Manager JOSEPH FISHER Title MGR / MEMBER

Telephone (732) 600-8990 Email Address ecw80904@gmail.com

Does the Applicant have legal possession of the premise for at least one (1) year from the date that this license will be issued by virtue of ownership, lease or other arrangement?

Ownership       Lease       Other (explain in detail)

\_\_\_\_\_

\_\_\_\_\_

R 12/15/14

If leased, list name of landlord and tenant, and date of expiration, EXACTLY as they appear on the lease:\*\*

Landlord	Tenant	Expires
JAN & MASON BRYANT	EMERALD CITY WELLNESS, LLC	12/31/2015

**\*\*If premises are leased, attach notarized consent by the owner of the property to the licensing of the premises for a retail marijuana facility.**

**ADDITIONAL DOCUMENTS TO BE SUBMITTED WITH APPLICATION**

Individual History Records attached and completed by each individual applicant, all general partners of a partnership, and limited partners owning 10% (or more) of a partnership; all officers and directors of a corporation, and stockholders of a corporation owning 10% (or more) of the stock of such corporation; all limited liability company *MANAGING* members, and officers or other limited liability company members with a 10% (or more) ownership interest in such company and all managers and employees of a Retail Marijuana License.

1. Fingerprinting by the Trinidad Police Department for:
  - all general partners of a partnership and limited partners owning 10% (or more) of a partnership;
  - all officers and directors of a corporation, and stockholders of a corporation owning 10% (or more) of the stock of such corporation;
  - all limited liability company *MANAGING* members, and officers or other limited liability company members with a 10% (or more) ownership interest in such company; and
  - all managers and employees of a Retail Marijuana License with the appropriate fee payable to Colorado Bureau of Investigation (currently \$39.50, March, 2014)
2. Lease or Deed – Evidence of Possession
3. Conditional Use Permit approval
4. Copy of alarm system contract
5. Copy of state sales tax license
6. Certificate of Good Standing
7. Affidavit of Lawful Presence (Sole Proprietors only)
8. Diagram of Premises:
  - A floor plan, drawn to scale on 8-1/2 x 11" paper, showing the layout of the center and the principal uses of the floor area. Floor plan must include location of lighting and cameras required by state rules.

A one-time fee of \$1.00 per square foot of that portion of the licensed premises in which plants are located for cultivation purposes, including greenhouses, shall be due to the City. Any expansion of the licensed premises in which plants are located for cultivation purposes shall result in an additional \$1.00 per square foot charge for that additional area.
9. Copy of State Application with attachments

**LIST OF OWNERS, OFFICERS, MANAGERS, EMPLOYEES & OTHERS WITH DIRECT OR INDIRECT FINANCIAL INTEREST**

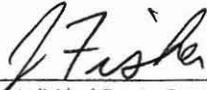
1. Name: GARY LEE Schleich Title: MEMBER  
Address: [REDACTED] AULT CO 80610  
Financial Interest: 75% MEMBER OF LLC
2. Name: JOSEPH JOHN FISHER Title: MGR / MEMBER  
Address: [REDACTED] COLORADO SPRINGS CO 80916  
Financial Interest: 12.5% MEMBER
3. Name: BRIAN JOSEPH BITTER Title: GRD MGR / MEMBER  
Address: [REDACTED] COLORADO SPRINGS CO 80916  
Financial Interest: 12.5% MEMBER
4. Name: CHRISTOPHER LEE HARRIS Title: CONTROLLER  
Address: [REDACTED] LARKSPUR CO 80118  
Financial Interest: UNSECURED LOAN TO COMPANY - SALE FINANCIER
5. Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Financial Interest: \_\_\_\_\_
6. Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Financial Interest: \_\_\_\_\_
7. Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Financial Interest: \_\_\_\_\_

The applicant hereby acknowledges that the applicant and its owners, officers, and employees may be subject to prosecution under federal laws relating to the possession and distribution of controlled substances, that the City of Trinidad accepts no legal liability in connection with the approval and subsequent operation of the retail marijuana business; and that the application and documents submitted for other approvals relating to the retail marijuana business operation are subject to disclosure in accordance with the Colorado Open Records Act.

By accepting a license issued pursuant to this ordinance, a licensee releases the City, its officers, elected officials, appointed officials, employees, attorneys and agents from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of dispensary owners, operators, employees, clients or customers for a violation of state or federal laws, rules or regulations.

By accepting a license issued pursuant to this ordinance a licensee, jointly and severally if more than one, agrees to indemnify and defend the City, its officers, elected officials, employees, attorneys, agents, insurers, and self-insurance pool against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the operation of the retail marijuana business that is the subject of the license. The licensee further agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at its expense, and to bear all other costs and expenses related thereto, including court costs and attorney fees.

***I declare, under penalty of perjury, that this application has been examined by me; that the statements made herein are made in good faith and, to the best of my knowledge and belief, true, correct and complete.***

Signed:  Title: MGR / MEMBER  
(Must be signed by Individual Owner, Partner, or Officer)

Printed Name: JOSEPH FISHER Date: 12/10/14



City of Trinidad, Colorado  
1876

**CITY OF TRINIDAD, COLORADO  
OFFICE OF THE CITY CLERK**

**LICENSEE'S STATEMENT REGARDING KNOWLEDGE  
OF THE STATE OF COLORADO'S RETAIL MARIJUANA CODES AND  
REGULATIONS AND THE CITY OF TRINIDAD'S ORDINANCES AND LOCAL  
RULES OF PROCEDURE GOVERNING RETAIL MARIJUANA BUSINESSES**

The Local Licensing Authority, as the enforcement agency for the for the City of Trinidad, expects a Retail Marijuana Business licensee to be knowledgeable of the State of Colorado's and the City of Trinidad's Retail Marijuana laws, codes, regulations and ordinances and to seek further clarification of such information if necessary.

I, JOSEPH JOHN FISHER, hereby state that I have read Article 43.4 of Title 12, C.R.S., as amended, and the regulations promulgated thereunder, and the City of Trinidad Municipal Code regarding general business licensing and Retail Marijuana business licensing and understand the contents thereof.

EMERALD CITY WELLNESS, LLC / JOSEPH FISHER  
Printed Name of Licensee

J Fisher MGR / MEMBER  
Authorized Signature of Licensee/Title

12/10/14  
Date

FELISHA M. REYES  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID # 20124059187  
MY COMMISSION EXPIRES SEPTEMBER 12, 2016

STATE OF Colorado )  
COUNTY OF el paso )

ss.

Subscribed and sworn to before me this 10<sup>th</sup> day of DECEMBER, 2014.

Felisha Reyes  
Notary Public Signature

My Commission Expires: 9/12/16









## COUNCIL COMMUNICATION

8f

**CITY COUNCIL MEETING:** January 6, 2015  
**PREPARED BY:** Audra Garrett, ACM/City Clerk  
**DEPT. HEAD SIGNATURE:** *Audra Garrett*  
**# OF ATTACHMENTS:** 1

**SUBJECT:** Appointment to the Planning, Zoning and Variance Commission

**PRESENTER:** Audra Garrett, ACM/City Clerk

**RECOMMENDED CITY COUNCIL ACTION:** Make appointment to fill the Commission seat

**SUMMARY STATEMENT:** N/A

**EXPENDITURE REQUIRED:** No

**SOURCE OF FUNDS:** N/A

**POLICY ISSUE:** N/A

**ALTERNATIVE:** N/A

### BACKGROUND INFORMATION:

A letter was previously received for appointment to the Commission from Jim Begano when two vacancies existed. Those two vacancies were filled and a new vacancy occurred.

8f

To: City of Trinidad Staff, Mayor of Trinidad, and Trinidad City Council Members

I, James F. Begano Jr., would appreciate your consideration of my application for a member on the City of Trinidad's Planning, Zoning, and Variance Board. I served on the board as a member and chairman for several years. I also served on the Appeals Board both as a member and chairman.

My employment background has covered a wide range but for the most part was in one type or another of construction. I owned and operated a construction company, Heartwood Construction LLC, for 14 years. I also owned a gym and weightlifting manufacturing company called Bergy's Iron Works for 13 years. Other employment included railroad conductor, electrical engineer, welder, gas station attendant, and coal miner. I am presently employed at the New Elk Coal Co. in Weston, Colorado as the warehouse and purchasing manager as well as the construction supervisor.

As for education I attended Trinidad schools and have a college degree in electronics.

I believe all people should try to serve the community in which they live and take an interest in its everyday role in our lives. This can be done politically, serving on boards or committees, or volunteering on projects. I personally believe our city's future lies in change and vision from a different point of view. I am not sure I can provide a different point of view but would appreciate the opportunity to try.

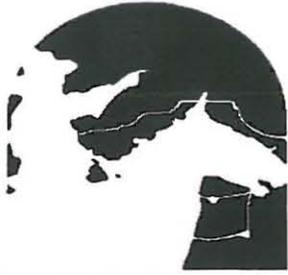
Thank You

James F. Begano Jr.

November 12, 2014

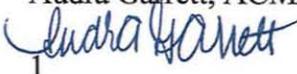
REC  
XLB

verified voter  
registration +  
residency



CITY OF TRINIDAD, COLORADO  
1876

## COUNCIL COMMUNICATION

**CITY COUNCIL MEETING:** January 6, 2015  
**PREPARED BY:** Audra Garrett, ACM/City Clerk  
**DEPT. HEAD SIGNATURE:**   
**# OF ATTACHMENTS:** 1

**SUBJECT:** Memorial Resolution acknowledging the contributions of Herman J. Heise upon his passing

**PRESENTER:** Audra Garrett, Acting City Manager/City Clerk

**RECOMMENDED CITY COUNCIL ACTION:** Consider adopting the resolution to be forwarded to Mr. Heise's family

**SUMMARY STATEMENT:** N/A

**EXPENDITURE REQUIRED:** None

**SOURCE OF FUNDS:** N/A

**POLICY ISSUE:** N/A

**ALTERNATIVE:** N/A

**BACKGROUND INFORMATION:**

- City Council has historically adopted resolutions as a tribute to the family of past Mayors and City Councilmembers who have passed away



RESOLUTION NO.

A MEMORIAL RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TRINIDAD, COLORADO, ACKNOWLEDGING THE CONTRIBUTIONS OF HERMAN J. HEISE UPON HIS PASSING

WHEREAS, Almighty God, in His infinite wisdom, has seen fit to take Herman J. Heise from this earthly life; and

WHEREAS, during his lifetime, Herman J. Heise, distinguished himself as a civil servant and civic leader. He shared his special kindness with everyone he met; and

WHEREAS, Herman J. Heise, faithfully served the people of the City of Trinidad as a City Councilmember from January, 2002 to March, 2006. He was instrumental in establishing the Youth Advisory Council, which exists still today; and

WHEREAS, upon the passing of Herman J. Heise, the City of Trinidad wishes, by this Resolution to acknowledge his many contributions to the community and to express its regret and sorrow to the Family of Herman J. Heise.

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

The Mayor and City Council do hereby extend their condolences to the Family of Herman J. Heise and by this Resolution do hereby remember the many outstanding contributions made by him to the Trinidad Community.

BE IT FURTHER RESOLVED that this Resolution shall become a part of the official minutes of the proceedings of the Trinidad City Council and a copy of the same shall be provided to the Family of Herman J. Heise

INTRODUCED, READ AND ADOPTED this 6th day of January, 2015.

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

\_\_\_\_\_  
CAROL BOLTON, Mayor Pro Tem

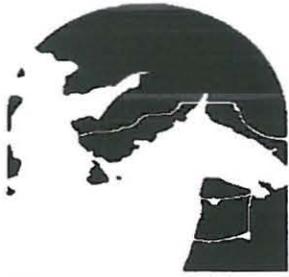
\_\_\_\_\_  
JOE BONATO, Councilmember

\_\_\_\_\_  
PAT FLETCHER, Councilmember

\_\_\_\_\_  
ANTHONY MATTIE, Councilmember

\_\_\_\_\_  
MICHELLE MILES, Councilmember

\_\_\_\_\_  
LIZ TORRES, Councilmember



CITY OF TRINIDAD, COLORADO  
1876

## COUNCIL COMMUNICATION

8h

**CITY COUNCIL MEETING:** January 6, 2015  
**PREPARED BY:** Audra Garrett, ACM/City Clerk  
**DEPT. HEAD SIGNATURE:** *Audra Garrett*

**SUBJECT:** Resolution adopting and entering into the Trust Agreement for the Colorado Firefighter Heart and Circulatory Benefits Trust and taking other actions in connection therewith

**PRESENTER:** Audra Garrett, Acting City Manager/City Clerk

**RECOMMENDED CITY COUNCIL ACTION:** Approval of the Resolution and Trust Agreement

**SUMMARY STATEMENT:** N/A

**EXPENDITURE REQUIRED:** Yes

**SOURCE OF FUNDS:** General Fund, reimbursed by DOLA

**POLICY ISSUE:** Statutory insurance coverage

**ALTERNATIVE:** N/A

### BACKGROUND INFORMATION:

- Law was enacted mid-year 2014 requiring insurance benefits
- Insurance is available through the Colorado Firefighter Heart and Circulatory Benefits Trust and one other insurance company, however the later is unable to provide all of the benefits which would require the City to self-insure or find additional coverage
- Because this was an unfunded mandate, DOLA is reimbursing entities for the cost of the coverage while funds are available

8h



**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION ADOPTING AND ENTERING INTO THE TRUST AGREEMENT FOR THE COLORADO FIREFIGHTER HEART AND CIRCULATORY BENEFITS TRUST AND TAKING OTHER ACTIONS IN CONNECTION THEREWITH**

**WHEREAS**, under state law, specifically, Part 3 of Article 5 of Title 29, Colorado Revised Statutes (C.R.S.), an employer as defined therein is required to maintain certain firefighter heart and circulatory malfunction benefits in accordance with and subject to the requirements and limitations of said Part 3; and

**WHEREAS**, in order to provide such benefits, an employer, which includes the City of Trinidad, (the "City") is authorized to participate in a multiple employer health trust; and

**WHEREAS**, the governing body of the City of Trinidad has authority under Article XIV, Section 18(2)(a) of the Colorado Constitution, and Sections 10-3-903.5, 29-1-201, et seq., and 29-5-302, C.R.S., as amended, to participate with other employers in a multiple employer health trust for the provision of such benefits and for related claims handling, risk management, and other functions and services related to such benefits; and

**WHEREAS**, the governing body has reviewed the Trust Agreement for the Colorado Firefighter Heart and Circulatory Benefits Trust, a copy of which is attached hereto as Exhibit A, by and through which the Members (as defined therein) desire to establish a trust (the "Trust") and provide a benefit plan that provides firefighter heart and circulatory malfunction benefits consistent with the provisions of Part 3 of Article 5 of Title 29, C.R.S., as specified in the Colorado Firefighter Heart and Circulatory Malfunction Benefits Plan (the "Plan"); and

**WHEREAS**, the Members intend that the Trust, together with the Plan, shall constitute an irrevocable trust exempt from taxation under Internal Revenue Code Section 115; and

**WHEREAS**, the governing body finds that membership and participation in the Trust and Plan would be in the best interests of the City of Trinidad, its employees and its taxpayers; and

**WHEREAS**, the governing body by this enactment desires to adopt and enter into the Trust Agreement for the Colorado Firefighter Heart and Circulatory Benefits Trust, and to take other actions in connection therewith.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Trinidad, Colorado, hereby:

1. Approves the contract entitled Trust Agreement for the Colorado Firefighter Heart and Circulatory Benefits Trust, a copy of which is attached hereto as Exhibit A and incorporated into this Resolution by this reference (the "Trust Agreement").
2. Authorizes and directs the presiding officer of the governing body to execute the Trust Agreement on behalf of the City.
3. Directs that staff transmit to the Colorado Firefighter Heart and Circulatory Benefits Trust (the "Trust"), McGriff, Seibels & Williams Inc., PO Box 1539, Portland, OR 97207-1539, an executed and attested copies of this Resolution and such Trust Agreement.
4. Designates Tim Howard as its initial Member Representative to the Trust and designates the current City Manager as its initial Alternate Representative to the Trust, such persons having the addresses stated below.
5. Representative Mailing Address: Tim Howard, Fire Chief, City of Trinidad, P. O. Box 880, Trinidad, CO 81082

Alternate Representative Mailing Address: City Manager, P. O. Box 880, Trinidad, CO 81082

6. Understands that, with the adoption of this Resolution and subject to the terms of the Trust Agreement, the City of Trinidad becomes a Member of the Trust, with its participation to commence effective as of the date determined in accordance with the Trust Agreement.

IN WITNESS WHEREOF, this Resolution was adopted by a majority vote of the City Council of the City of Trinidad on the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Joseph A. Reorda, Mayor

ATTEST:

\_\_\_\_\_  
Dona Valencich, Acting City Clerk

**TRUST AGREEMENT**

**FOR**

**COLORADO FIREFIGHTER HEART AND CIRCULATORY  
BENEFITS TRUST**

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## TRUST AGREEMENT

**THIS TRUST AGREEMENT** (this "Agreement") is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2014 (the "Effective Date") by and between the undersigned Colorado governmental entities (who, together with and any other Colorado governmental entities that becomes a participating Member under this Trust, are collectively the "Members") and the undersigned trustees constituting the "Trust Committee" for the Trust, as defined herein (the "Trust Committee").

### WITNESSETH:

**WHEREAS**, the Members are exempt from federal income tax under the Internal Revenue Code of 1986, as amended, as a state or territory of the United States, or any political subdivision, municipality or agency thereof, or an agency of such political subdivision or municipality (including any corporation owned or controlled by any state or territory of the United States or by any political subdivision, municipality, or agency); and

**WHEREAS**, the Members desire by and through this Agreement to provide a benefit plan that provides heart and circulatory malfunction benefits consistent with the provisions of Part 3 of Article 5 of Title 29, Colorado Revised Statutes (C.R.S.), as specified in the Colorado Firefighter Heart and Circulatory Malfunction Benefits Plan (the "Plan"); and

**WHEREAS**, the Members desire for the Trust to accept funds that shall from time to time be paid over to the Trust Committee in accordance with the terms of this Agreement, together with the earnings and profits thereon, if any, and to hold the funds in trust (the "Trust") and to make disbursements from the Trust in accordance with the provisions of this Agreement and the Plan; and

**WHEREAS**, the Members desire to appoint the Trust Committee as a trustee to hold and administer the assets of the Plan in accordance with this Agreement; and

**WHEREAS**, the Trust Committee has agreed to serve as trustee of the trust established under this Agreement; and

**WHEREAS**, the Members intend that the Trust hereby established, together with the Plan, shall constitute an irrevocable trust exempt from taxation under Internal Revenue Code Section 115; and

**WHEREAS**, the Members intend that the Trust hereby established, together with the Plan, shall constitute a multiple employer health trust for the purpose of Part 3 of Article 5 of Title 29, C.R.S.;

**NOW, THEREFORE**, the Members and the Trust Committee hereby mutually covenant and agree as follows:

## ARTICLE I DEFINITIONS

The following words and phrases, when used herein with an initial capital letter, shall have the meanings set forth below unless a different meaning plainly is required by the context. Any reference to a section number shall refer to a section of this Agreement unless otherwise specified.

- 1.1 **Administrator** means the person, committee or entity appointed by the Trust Committee to serve as plan administrator of the Plan. The Administrator shall be retained by the Trust Committee and shall administer the Plan pursuant to an administrative services agreement entered into between the Administrator and the Trust Committee.
- 1.2 **Authorized Investment** means and is limited to those investments that are defined as permissible for investment of public funds in Section 24-75-601 et seq. C.R.S., as in effect from time to time.
- 1.3 **Beneficiary** means any person designated under the terms of the Plan to receive benefits payable upon the death of a Participant.
- 1.4 **Code** means the Internal Revenue Code of 1986, as amended.
- 1.5 **Custodian** means Wells Fargo Bank, N.A., which shall serve as custodian for the Trust Fund. To the extent any assets are held by any custodian other than Wells Fargo Bank, N.A., such party shall also be considered a Custodian for the Trust.
- 1.6 **Fiscal Year** means the accounting year of the Trust, which shall commence on January 1 and end on December 31 of each year, except that the first year shall commence on the Effective Date and shall end on the immediately following December 31.
- 1.7 **Investment Committee** means the person, committee or entity appointed in accordance with the terms of the Trust to make and effect investment decisions under the Plan and Trust. Unless the Trust Committee appoints an Investment Committee, the Trust Committee shall be deemed to be the Investment Committee.
- 1.8 **Investment Fund** means any of the separate funds established by the Investment Committee for the investment of Plan assets.
- 1.9 **Investment Manager** means any person, corporation or other organization or association appointed by the Trust Committee pursuant to the terms of Section 4.3 to manage, acquire or dispose of the assets of an Investment Fund.
- 1.10 **Members or Member** means those governmental employers listed on Exhibit A and any other governmental employer that becomes a participating Member under this Trust pursuant to Article VIII, below.

- 1.11 **Member Representative** means that person who has been designated in writing by a Member as its representative to the Trust.
- 1.12 **Participant** means an employee or former employee of the Member.
- 1.13 **Plan** means the Colorado Firefighter Heart and Circulatory Benefits Plan set forth in Part 3 of Article 5 of Title 29, Colorado Revised Statutes, and in the Plan Summary of Benefits as such Plan may be amended from time to time.
- 1.14 **Trust** means the trust established by this Agreement.
- 1.15 **Trust Committee** means the Trust Committee appointed pursuant to Section 3.1 of this Trust Agreement, acting as a group or body.
- 1.16 **Trust Fund** means the total amount of cash and other property held in the Trust under this Agreement.
- 1.17 **Trustee** means the Trust Committee members and their successors as provided by this Agreement.

## ARTICLE II ESTABLISHMENT OF THE TRUST

- 2.1 **Trust Established.** The Members hereby establish with the Trust Committee, as a funding medium for the Plan, a Trust consisting of the Trust Fund and such earnings, profits, increments, additions and appreciation thereto and thereon as may accrue from time to time.
- 2.2 **Limit of Interest - Impossibility of Diversion.** It shall be impossible at any time for any part of the Trust to be used for or diverted to purposes other than for the exclusive benefit of the Participants and Beneficiaries covered under the Plan, except that the payment of taxes and administration expenses may be made from Trust funds as hereinafter provided. Funds of the Trust may not be transferred to any other account or fund of a Member.
- 2.3 **Trust Committee's Acceptance.** The Trust Committee accepts the Trust hereby created and agrees to perform the duties hereby required of the Trust Committee.

## ARTICLE III TRUSTEES AND SUCCESSOR TRUSTEES

- 3.1 **Trustees.** The Trust shall be administered by the Trust Committee. The Trust Committee shall be comprised of seven (7) individual Trustees; provided, however, that the Trust Committee shall be deemed duly constituted and may commence operations of the Trust upon seating of and execution of this Agreement by four (4) initial Trustees. Each Trustee must be a Participant and current employee of a Member, except as provided below. Trustees shall be

appointed by the Board of Directors of the Colorado State Fire Chiefs ("CSFC Board") from among the following:

- (a) One Trustee who is a Member Representative from a fire district or fire authority serving an area having less than thirty thousand (30,000) in population;
- (b) One Trustee who is a Member Representative from a fire district or fire authority serving an area having more than thirty thousand (30,000) in population;
- (c) One Trustee who is a Member Representative from a municipality having less than thirty thousand (30,000) in population;
- (d) One Trustee who is a Member Representative from a municipality having more than thirty thousand (30,000) in population;
- (e) One Trustee who is a Participant and officer of the Colorado Professional Firefighters Association ("CPFF"), who is designated for appointment by CPFF; and
- (f) Two Trustees who are Member Representatives from two other Members of any size or type, who are elected or appointed officials or employees of the Member and are not firefighters eligible for participation in the Plan.

Nominations for Trustees from the Members and CPFF shall be made by elected governing body of the Member (i.e., district board of directors, city council, CPFF Board of Directors) and be submitted to the CSFC Board at such time as the CSFC Board may provide. Terms of the Trustees shall be two-year, overlapping terms or until their successors have been appointed, except that among the initial Trustees, four of them shall serve an initial term of two years and three of them shall serve an initial term of one year as set for below so as to establish the staggering of terms. The term shall begin on a January 1, and end at midnight on a December 31, except that the initial undersigned Trustees' terms shall begin upon the formation of the Trust.

A vacancy shall occur on the Trust Committee when a Trustee (1) submits a written resignation to the Trust Committee; (2) dies; (3) ceases to be a Participant; (4) ceases to be a Member Representative, except in the case of the CPFF Trustee to whom such requirement (4) does not apply; (5) fails to attend three consecutive regular meetings of the Trust Committee without the Committee having entered upon the record its proceedings an approval for an additional absence or absences, except that such additional absence or absences shall be excused for temporary mental or physical disability or illness; or (6) is convicted of a felony. Any vacancy on the Trust Committee shall be filled by appointment by the CSFC Board for the unexpired portion of the term. Upon appointment and written acceptance thereof, a successor Trustee shall have all the title, rights, powers and privileges and duties conferred or imposed upon the initial or predecessor Trustee.

3.2 **Successor Trustees.** No successor Trustee need examine the accounts, records and acts of any previous Trustee of any allocation of the Trust assets, nor shall such successor Trustee be

responsible for any act or omission to act on the part of any previous Trustee. All Trustees and their successors from time to time acting under this Agreement shall have all the rights, powers and duties of the initial Trustees named in this Agreement, unless this Agreement is amended to provide otherwise.

3.3 **Compensation.** The Trustees shall receive no compensation for their services rendered under this Agreement other than any compensation as an employee of a particular Member. The Trust Committee may adopt policies to reimburse Trustees for actual meeting expenses and attendance at the Trust Committee meetings and other properly incurred expenses on Trust matters.

3.4 **Chair and Officers; Sub-Committees.** The officers of the Trust Committee shall be the chair, vice chair and secretary. The officers shall be appointed by the Trust Committee from among its members. Appointment of officers shall occur at the first meeting of the Trustee Committee each year. The Trust Committee may establish sub-committees necessary or appropriate to the exercise of its powers.

3.5 **Meetings.** The Trust Committee shall determine the time and place of its regular meetings. Special meetings of the Trust Committee may be called by the chair or by three (3) Trustees. The Trustees shall be provided with at least ten (10) days prior written notice designating the time, place and agenda of a regular meeting and three (3) days prior written notice designating the time, place and agenda of any special meeting. The manner of giving notice of meetings may include, without limitation, service by electronic mail to the Trustee's e-mail address. Regular and special meetings of the Trust Committee may be held by telephone or electronic (internet-based) conference call. Any meeting at which all Trustees are present in person, or concerning which all Trustees have waived notice in writing, shall be a valid meeting without the requirement to provide any notice.

3.6 **Proxy.** Any Trustee may duly authorize in writing another Trustee to cast a vote on one (1) or more specific matters to be voted on at a meeting, on behalf of such Trustee. Any such written authorization must specify the matter or matters and be given for a specific meeting and may not carry over to subsequent meetings.

3.7 **No Delegates.** A Trustee and/or the Trustee's Member Representative may not appoint a delegate to serve in his or her place.

3.8 **Quorum and Voting.**

- (a) To constitute a quorum at any regular or special meeting of the Trust Committee and for any action to be valid at such meeting, there must be present in person or by proxy at least four (4) of the seven (7) Trustees.
- (b) Valid actions at meetings at which a quorum is present require the affirmative vote of a simple majority of those Trustees present and voting, except where an absolute majority is expressly required. Each Trustee shall cast his or her vote on each matter upon which action is taken, except where abstention from voting is

required because of conflict of interest.

- (c) To approve the following items, an absolute majority vote (as defined below) is required:
- (1) Annual budget;
  - (2) Incurring any debt other than liabilities in the ordinary course of business; and
  - (3) Settling any litigation involving the Plan or Trust.

An absolute majority vote is the affirmative vote of at least four (4) Trustees.

3.9 **Action without a Meeting.** Any action that may be taken at a meeting of the Trust Committee may be taken without a meeting upon the written consent of a sufficient number of the Trustees otherwise required to approve such action at a meeting and shall be effective on the date of the last consent, unless two (2) or more Trustees object to taking the action without a meeting. A copy of such written consent, signed by the Trustees, shall be provided within ten (10) days of the effective date of the consent to each Trustee. Consent may be signified by a signature of the Trustee on a written consent or by an electronic means, such as an affirmative email response to a request for confirmation of favorable action on a matter, approval of a specific resolution, etc.

3.10 **Conflicts of Interest.** Trustees should avoid the appearance of impropriety. A Trustee shall exercise care that the Trustee's independent judgment in the discharge of Trust Committee responsibilities is not impaired as a result of conflicts between the interests of the Trust and the Trustee's own financial interests or personal interests, or the financial interests or personal interests of the members of the Trustee's family or associates. A Trustee shall not vote or decide upon any matter relating solely to himself or herself or vote in any case in which his or her individual right or claim to any benefit under the Plan is particularly involved or in which he or she otherwise has a conflict of interest. In the event that a Trustee believes that he or she has a conflict of interest, the Trustee shall disclose the conflict to the Trust Committee and shall refrain from participating in the matter to which the conflict relates. The minutes of the meeting where the disclosure is made shall reflect the disclosure and the fact of the Trustee having abstained from participation in the matter. A Trustee shall not use confidential information acquired in the course of the performance of Trust Committee responsibilities to further that Trustee's own financial interests or personal interests, or the financial interests or personal interests of the members of the Trustee's family or associates.

3.11 **Office Location and Meeting Place.** All meetings of the Trust Committee shall be held at a place designated at least annually by the Trust Committee, or the chair, if the Trust Committee is unable to reach an agreement regarding a meeting location. The Trust shall have its principal office at 433 S. Allison Parkway, Lakewood, CO 80226.

3.12 **Agent for Service of Legal Process.** The designated agent for service of legal process

shall be Samuel J. Light, Light Kelly, P.C. 101 University Blvd., Suite 210, Denver, Colorado 80206, or any successor agent as the Trust Committee shall designate.

3.13 **Rules and Regulations.** The Trust Committee shall have the power at any regular or special meeting to adopt bylaws, rules, regulations and policies for the administration of the Trust, and for the conduct of the affairs of the Trust Committee. Any bylaws, rules, regulations and policies of the Trust Committee shall be consistent with the written provisions of the Trust Agreement, and shall be binding upon all persons dealing with the Trust and upon any and all persons claiming any benefits under the Plan.

## ARTICLE IV DUTIES OF TRUST COMMITTEE

4.1 **Duties.** It shall be the duty of the Trust Committee:

- (a) **Receipt of Contributions.** To receive any contributions paid to it under this Agreement in cash or in other property acceptable to the Trust Committee. The Trust Committee shall not be responsible for the calculation or collection of any contribution required to be paid by the Member to the Trust under the Plan, but shall be responsible only for property actually received by it pursuant to this Agreement.
- (b) **Management of Funds.** To hold, invest, reinvest, manage and administer (except as otherwise provided herein) all contributions so received, together with the income therefrom and any other increment thereon, for the benefit of Participants and their Beneficiaries in accordance with the terms of this Agreement.
- (c) **Payments.** To direct payments under the Plan; provided, however, that the Trust Committee may rely upon the directions received from the Administrator, and the Administrator hereby indemnifies the Trust Committee from any loss, claim, damage or liability, including legal expenses, that may arise in connection with the Trust Committee's acting upon such direction.
- (d) **Appointment of Administrator.** To appoint such person, committee or entity as the Trust Committee shall determine to serve as Administrator of the Plan, and to contract with the Administrator for provision of its services. The Trust Committee shall have the power to terminate the appointment of the Administrator upon written notice with or without cause.
- (e) **Appointment of Investment Committee.** To appoint as the Investment Committee such person, committee or entity as the Trust Committee shall determine to make and effect investment decisions under the Plan and Trust; provided, however, that the Trust Committee may appoint itself as the Investment Committee.

## ARTICLE V INVESTMENT OF TRUST ASSETS

### 5.1 General Investment Power/Investment Funds.

- (a) **Authority of Investment Committee.** Except as provided in Sections 5.2 and 5.3, the Investment Committee shall have all authority and responsibility for the management, disposition and investment of the Trust Fund, and the Trust Committee shall comply with directions of the Investment Committee. The Investment Committee shall not issue any directions that are in violation of the terms of the Plan or this Agreement.
- (b) **Investment Funds.** The Trust may be divided into one or more separate Investment Funds, the number, makeup and description of which shall be determined from time to time by the Investment Committee. The Trust Committee shall implement, terminate, value, transfer to and from and allocate the gains, losses and expenses among the Investment Funds in accordance with the proper directions of the Investment Committee, the Administrator, or their delegates, and, to the extent applicable under the terms of this Agreement, the directions of Investment Managers.
- (c) **Funding Policy.** The Trust Committee shall have responsibility for selecting or establishing and carrying out a funding policy and method, consistent with the objectives of the Plan. The Trust Committee shall be responsible for the proper diversification of the Trust Fund, for the prudence of any investment of Trust assets consistent with State law, for compliance with statutory limitations on the amount of investment in securities, and for assuring that any such investments meet the requirements of State law.

### 5.2 Investment Managers.

- (a) **Appointment.** The Investment Committee may, but shall not be required to, appoint one or more Investment Managers to manage the assets of all or any one or more of the Investment Funds. Each such Investment Manager shall be either (i) registered as an investment adviser under the Investment Advisers Act of 1940; (ii) a bank, as defined in such Act; or (iii) an insurance company qualified to perform the services of Investment Manager under the laws of more than one state. The Investment Committee shall obtain from any Investment Manager so appointed by it a written statement acknowledging (i) that such Investment Manager is or on the effective date of its appointment will become a fiduciary with respect to the Trust assets under its management; (ii) certifying that such Investment Manager has the power to manage, acquire or dispose of Trust assets in the manner contemplated by the contract or other written instrument by which its appointment is or will be effected; and (iii) certifying that it is either an investment adviser, a bank or an insurance company which is qualified to be appointed as an Investment Manager under this Agreement.

- (b) **Contractual Arrangement.** The Investment Committee shall enter into a written contract or agreement with each such Investment Manager in connection with its appointment as such, and such contract shall be subject to such terms and conditions and shall grant to the Investment Manager such authority and responsibilities in the management of the applicable Investment Fund assets as the Investment Committee deems appropriate under the circumstances. Without limiting the generality of the foregoing, such contract may establish investment objectives for the assets of the Investment Fund(s) under the management of the Investment Manager and may limit the types of assets that may be acquired or held by such Investment Fund(s).
- (c) **Trust Committee's Duties.** With respect to each Investment Fund the management of which has been delegated to an Investment Manager, the Trust Committee shall follow and carry out the instructions of the appointed Investment Manager with respect to the acquisition, disposition and reinvestment of assets of such Investment Fund, including instructions relating to the exercise of all ownership rights in such assets.
- (d) **Failure to Direct.** In the event that an appointed Investment Manager shall fail to direct the Trust Committee with respect to investment of all or any portion of the cash held in an Investment Fund under its management, the Trust Committee shall invest such cash only when and as directed by the Investment Committee.
- (e) **Termination of Appointment.** The Investment Committee shall have the power to terminate the appointment of an Investment Manager upon written notice with or without cause. Upon the termination of the appointment of an Investment Manager, the Investment Committee shall (i) appoint a successor Investment Manager with respect to the Investment Fund(s) formerly under the management of the terminated Investment Manager, (ii) direct the Trust Committee to merge or combine such Investment Fund(s) with other Investment Fund(s) or Trust assets, or (iii) direct the Trust Committee to invest the assets of such Investment Fund as the Investment Committee deems appropriate in accordance with the existing funding policy.

### 5.3 **Manner and Effect of Directions.**

- (a) **Delegation of Authority to Custodian.** The Custodian is delegated the authority and responsibility for receiving and carrying out the directions of the Trust Committee, the Administrator, the Investment Committee, any Investment Manager or their designees. With respect to any assets held by a party other than Trust Committee, the Trust Committee is authorized and directed to delegate to the Custodian the authority and responsibility for receiving and carrying out the directions of the Investment Committee, any Investment Manager or their designees. The Trust Committee is authorized and directed to enter into such

agreements with another Custodian as are deemed necessary or appropriate to effect such delegation.

- 5.4 **Authorization of Designee(s).** The Administrator and the Investment Committee may each appoint one or more designees to act on their behalf. If a designee (or designees) is appointed, the appropriate committee shall furnish the Trust Committee with written documentation of the appointment and a specimen signature of each designee. The Trust Committee shall be entitled to rely upon such documentation until the Trust Committee is otherwise notified in writing.

## ARTICLE VI POWERS OF TRUST COMMITTEE

- 6.1 **General Authority.** In accordance with the directions of the Investment Committee and any Investment Managers as provided in Article V, the Trust Committee shall receive, hold, manage, convert, sell, exchange, invest, reinvest, disburse and otherwise deal with the assets of the Trust, including contributions to the Trust and the income and profits therefrom, without distinction between principal and income and in the manner and for the uses and purposes set forth in the Plan and as hereinafter provided.
- 6.2 **Specific Powers.** In the management of the Trust, the Trust Committee shall have the following powers in addition to the powers customarily vested in trustees by law and in no way in derogation thereof; provided, all such powers shall be exercised only upon and in accordance with the directions of the Investment Committee and, to the extent applicable, any duly appointed Investment Managers:
- (a) **Purchase of Property.** With any cash at any time held by it, to purchase or subscribe for any authorized investment (as defined in Section 6.3) and to retain the same in trust.
  - (b) **Disposition of Property.** To sell, exchange, transfer or otherwise dispose of any property at any time held by it.
  - (c) **Retention of Cash.** To hold cash without interest in administrative accounts for contribution and distribution processing in such amounts as may be reasonable and necessary for the proper operation of the Plan and the Trust.
  - (d) **Exercise of Owner's Rights.** The Members acknowledge and agree that the Trust Committee shall have the right or power to vote proxies appurtenant to securities that it holds. The Members acknowledge and agree that the Trust Committee shall have the power to make any review of, or consider the propriety of, holding or selling any assets held in the Trust Fund in response to any tender offer, conversion privilege, rights offering, merger, exchange, public offering and/or any proxy action for any of such assets.

- (e) **Registration of Investments.** To cause any stock, bond, other security or other property held as part of the Trust to be registered in its own name or in the name of one or more of its nominees; provided, the books and records of the Trust Committee shall at all times show that all such investments are part of the Trust.
- (f) **Borrowing.** To the extent permitted by State law and at the direction of the Investment Committee, to borrow or raise money for the purposes of the Trust in such amounts, and upon such terms and conditions, as determined by the Investment Committee; and, for any sum so borrowed, to issue its promissory note as Trust Committee and to secure the repayment thereof by pledging all or any part of the Trust Fund to the extent permitted by State law; and no person lending money to the Trust Committee shall be bound to see to the application of the money lent or to inquire into the validity, expediency or propriety of any such borrowing.
- (g) **Purchase of Contracts.** To apply for, purchase, hold, transfer, surrender and exercise all incidents of ownership of any insurance, re-insurance, excess or stop loss insurance or annuity contract that the Trust Committee determines or the Investment Committee directs it to purchase or that is necessary or appropriate to carrying out the purposes of the Plan. The Trust Committee shall endeavor to obtain stop loss insurance to provide coverage for payment of benefits under the Plan above specified per claim and aggregate limits, provided such stop loss coverage can be obtained at a reasonable cost as determined by the Trust Committee.
- (h) **Execution of Instruments.** To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments, which may be necessary or appropriate to carry out the powers herein granted.
- (i) **Settlement of Claims and Debts.** To settle, compromise or submit to arbitration any claims, debts or damages due or owing to or from the Trust, to commence or defend suits or legal or administrative proceedings and to represent the Trust in all suits and legal and administrative proceedings.
- (j) **Establish Rules and Policies.** To establish, to the extent consistent with this Agreement and the Plan, rules and policies necessary or appropriate to the administration of the Trust or the carrying out of the powers herein granted;
- (k) **Trustee Insurance.** To purchase on behalf of the Trust Committee and the Investment Committee, trustees' errors and omissions insurance or similar coverage in such amounts as are recommended by a licensed insurance broker for benefit plans and a trust of similar size and purpose.
- (l) **Risk Management.** To establish reasonable risk management policies and procedures.

- (m) **Delegation.** To delegate in writing fiduciary responsibilities or ministerial powers and duties to such officers, agents, representatives and independent contractors as determined desirable, provide such delegation does not conflict with the provisions of this Agreement or the Plan.
- (n) **Employment of Agents, Advisers and Counsel.** To employ suitable agents, actuaries, auditors, accountants, investment advisers, brokers and counsel, and to pay their reasonable expenses and compensation.
- (o) **Appointment of Custodian.** The Trust Committee shall designate a custodian to hold Trust assets. The Trust Committee may change the custodian upon an affirmative vote of four (4) Trustees.
- (p) **Power to do any Necessary Act.** To do all acts which it may deem necessary or proper and to exercise any and all powers under the Plan and this Agreement upon such terms and conditions as it may deem in the best interests of the Trust.

6.3 **Authorized Investments.**

- (a) **General Definition.** “Authorized investment” as used in this Article VI shall mean and be limited to those investments that are defined as permissible for investment of public funds in Section 24-75-601 et seq. C.R.S., as in effect from time to time.
- (b) **Responsibility for Compliance.** The responsibility for determining whether any investment of Trust assets complies with the terms of this Agreement and applicable law shall lie solely with the Trust Committee.

## ARTICLE VII CONTRIBUTIONS TO THE TRUST FUND

7.1 **Member Contributions.** Subject to the limitations of this Agreement, each Member shall pay or cause to be paid contributions to the Trust at such times and in the amounts determined by the Trust Committee as are necessary to ensure funding of the Trust is sufficient, that operation of the Trust is not hazardous to the public or Participants or which the Trust Committee otherwise deems beneficial to protect the financial condition of the Trust. The Trust Committee shall establish Member contributions consistent with this Agreement, the Plan and any guidelines consistent with this Agreement and the Plan as established by the Trust Committee from time-to-time.

7.2. **Contributions on Annual Basis; Rate Structure.** The contribution rate structure for Member contributions shall provide for contributions to be made on an annual basis. Contributions shall be sufficient to fund the projected benefits and applicable expenses for the Participants receiving benefits under the Plan.

7.3 **Failure to Make Contributions.**

- (a) If any Member fails to make its Member contribution to the Trust within thirty (30) business days after the date on which they are due, such contributions shall bear interest from the date due at the rate of return for the three (3) month LIBOR rate set on the date when such contribution was first due plus one percent (1%), compounded monthly.
- (b) Any other Member may, with the consent of the Administrator, make the contribution on behalf of the delinquent Member and, such amount shall become a debt of the delinquent Member to the contributing Member.
- (c) The Trust Committee has the right, upon an affirmative vote of four (4) Trustees, with any Trustees from a Member in default excluded from the vote, should the delinquent Member not cure the delinquency within thirty (30) calendar days after the Administrator provides written notice to the Member of its delinquency, to terminate:
  - (1) such Member's participation in the Plan and Trust at the end of an additional thirty (30) calendar day notice period or the end of the Plan year of the Member's delinquency, if earlier, if such delinquency is not cured, and
  - (2) upon such termination, no claims submitted by Participants of the delinquent Member for benefits subsequent to the date of the termination, shall be paid by the Trust.
- (d) The Trust Committee also has the right, upon an affirmative vote of four (4) Trustees, with any Trustees from the Member in default excluded from the vote, to notify the Participants of such delinquent Member that such Member's participation in the Plan and Trust has been or will be terminated.
- (e) Nothing herein, however, shall relieve the delinquent Member of its responsibility for benefits payable to its Participants.

7.4 **TABOR Compliance.** This Agreement does not create a multiple fiscal year direct or indirect debt or other financial obligation. All financial obligations of a Member under this Agreement are contingent upon appropriation, budgeting, and availability of specific funds to discharge such obligations. No Member's contribution for any Fiscal Year shall exceed the annual contribution billed for such Fiscal Year unless additional funds for payment thereof have been appropriated by the Member.

7.5 **State Funding.** For benefits required under Section 29-5-302, C.R.S., no Member shall be required without its consent to make a contribution for a Fiscal Year in excess of the amount of state funding paid or payable to the Member under Section 29-5-302(11), C.R.S. for that Fiscal Year. There is reserved to the Members and to the Trust the right set forth in Section 29-

5-302(12) C.R.S., providing that if, at any time, the state funding provided for the benefit required by Section 29-5-302, C.R.S. is insufficient to cover the cost of the benefit, then the requirements of Section 29-5-302, C.R.S. to maintain the benefit shall become optional pursuant to Section 29-1-304.5. C.R.S. The Trust Committee may establish guidelines consistent with this Agreement governing any exercise of the right under said Section 29-5-302(12), C.R.S.

7.6 **Reports.** The Trust Committee shall provide reports needed for purposes of administration of this Agreement and the Plan.

## **ARTICLE VIII**

### **PARTICIPATION, WITHDRAWAL AND OBLIGATIONS OF MEMBERS**

8.1 **Participation in Trust by Members.** The initial participating Members in the Trust are as set forth on Exhibit A. Additional Members may participate in the Trust subject to the approval of the Trust Committee, which participation shall be effective as of the beginning of the next Fiscal Year or such other date as determined by the Trust Committee. Participation in the Trust is limited to those employers who are governmental entities participating for purposes of Part 3 of Article 5 of Title 29, C.R.S. The Trust Committee reserves the right to require a new participating Member at the time of joining the Trust to contribute to the reserves of the Trust or to make such other appropriate financial contribution as determined by the Trust Committee. The Trust Committee may reject requested participation by any additional Member for any reason. To participate in the Trust, a Member must properly adopt and enter into this Trust Agreement, which shall be evidenced by providing to the Trust Committee (i) a certified copy of the resolution or ordinance of the governing body of the Member approving and entering into this Trust Agreement, and (ii) a signed counterpart original of this Trust Agreement duly executed by presiding officer of the governing body or other authorized officer of the Member.

8.2 **Withdrawal by Member.** A Member may withdraw from participation in the entire Trust on the following terms and conditions:

- (a) Except as provided in this section, any Member which intends to withdraw from participation in the Trust must give at least ninety (90) days advance written notice to the Trust Committee. Upon a Member's withdrawal from the Trust, any Trustees who are employees of such Member shall no longer serve as Trustees.
- (b) Upon withdrawal, the Member shall be deemed to have withdrawn from participation in the entire Trust. Upon the effective date of withdrawal, the Member's Participants shall cease to participate in the Plan, provided, that if required by law, a Participant's benefits may be extended pursuant to, if and to the extent applicable, the terms and provisions of the Plan, including those Participants who have filed a claim for or are receiving benefits under the terms of the Plan prior to the effective date of the Member's withdrawal, in which case benefits shall continue subject to the withdrawing Member's payment of required contributions.
- (c) Upon withdrawal, the Trust Committee also has the right to notify the Participants

of such withdrawing Member that such Member's participation in the Plan and Trust has ceased or will cease.

- (d) In the event of a Member's withdrawal pursuant to this section, such withdrawing Member shall have no right to any of the assets, income or reserves of the Trust at any time, nor shall such Member have any right to a refund or rebate of any of its contributions to the Trust.

8.3 **Successors and Assigns.** Upon approval of the Trust Committee, a participating Member may transfer or assign its participation in the Trust to any successor in interest, whether by merger, consolidation, reorganization, restructuring, transfer of employees, or dissolution, creation or consolidation of Member entities or governing boards or otherwise.

8.4 **Powers of Members.** In addition to powers herein vested in the Members, the Members shall have the power to:

- (a) Amend the Trust Agreement by a two-thirds (2/3) vote of the Members present at a meeting. Written notice of any proposed amendment shall be provided to each Member at least forty-five (45) days in advance of any vote on the amendment.
- (b) Terminate the Plan and disburse its assets by a two-thirds (2/3) vote of all Members, pursuant to such notice and in keeping with such procedure as shall be established by the Trust Committee. In the case of such a vote, termination of the Plan shall be pursuant to provisions of Article X.

8.5 **Meetings of the Members.** Meetings of the Members shall be held as follows:

- (a) Members shall meet at least once annually at a time and place to be set by the Trust Committee, with notice mailed to each Member at least thirty (30) days in advance.
- (b) Special meetings of the Members may be called by the Trust Committee upon its own motion and shall be called by the Trust Committee upon written request of thirty (30) percent of the Members, with notice mailed to each Member at least thirty (30) days in advance.
- (c) The chair of the Trust Committee shall preside at the meetings; the vice chair shall preside in the absence of the chair.
- (d) Thirty percent (30%) percent of the Members shall constitute a quorum to conduct business.
- (e) Except for action to terminate the Plan, proxy voting shall be allowed, pursuant to such procedures as the Trust Committee may determine. Each Member shall be entitled to one vote on each issue, to be cast by its Member Representative.

8.6 **Member Obligations.** In addition to the other provisions, hereof, each Member shall have the obligation to:

- (a) Pay all contributions or other payments to the Trust at such times and in such amounts as shall be established by the Trust Committee. Any delinquent payments shall be paid with interest pursuant to a policy established by the Trust Committee and uniformly applied.
- (b) Designate in writing a Member Representative and one or more alternates for the Members' meetings. The Representative and any alternate shall be an employee of the Member, except as provided in Section 3.1, and may be changed from time to time. Any alternate may exercise all the powers of the Representative during a Member meeting in the absence of the Member Representative.
- (c) Allow the Trust Committee and Administrator and their agents reasonable access to records of the Member as required for the administration of Plan and Trust.
- (d) Cooperate fully with the Trust Committee and Administrator and their agents in matters relating to the administration of the Plan and Trust and the administration and coordination of benefits under the Plan.
- (e) Allow the Trust Committee to make decisions regarding, and to designate attorneys to represent the Member in, the investigation, settlement and litigation of any claim within the scope of benefits furnished through the Plan.
- (f) Comply with the benefits administration, claims handling and related policies established by the Trust Committee.

## **ARTICLE IX ADMINISTRATION**

### 9.1 **Accounting.**

- (a) **Books and Records.** The Administrator generally shall be responsible for keeping accurate and detailed records of all investments, receipts and disbursements and other transactions hereunder, including such specific records as shall be required by law and such additional records as may be agreed upon in writing between the Administrator and the Trust Committee. All books and records relating thereto shall be open to inspection and audit at all reasonable times by any person or persons designated by the Administrator, the Member, or the Investment Committee. The Trust Committee shall promptly provide copies of such books or records to any persons designated by the Administrator.
- (b) **Accounting.** Following the close of each Plan year of the Plan, or more frequently as the Trust Committee and the Administrator may agree, the Trust Committee, with the assistance of the Administrator, shall cause to be prepared a

written statement setting forth all investments, receipts, disbursements and other transactions effected during such year or during the period beginning as of the close of the last preceding year. Except as may be required by statute or by regulations published by State or federal government agencies with respect to reporting and disclosure, as may be required pursuant to the terms of the Plan or this Agreement or as reasonably may be requested by a majority of the Members or the Investment Committee, no person shall have the right to demand or to be entitled to any further or different accounting by the Trust Committee.

- (c) **Release.** Except with regard to claims of breach of fiduciary duty, upon the expiration of 90 days from the date of presentation to the Members of such annual or other statement, the Trust Committee shall forever be released and discharged from any liability or accountability to anyone as respects the propriety of its acts or transactions shown in such account, except with respect to any acts or transactions as to which, within such 90-day period, a Member whose interest is affected by such act or transaction shall file with the Trust Committee its written disapproval. In the event such a disapproval is filed, and unless the matter is compromised by agreement of the Trust Committee, the Trust Committee shall file its statement covering the period from the date of the last annual statement to which no objection was made in any court of competent jurisdiction for audit or adjudication. The applicable statutes of limitation shall be available to the Trust Committee in the event of a claim of breach of fiduciary duty.
- (d) **Valuations.** The Trust Committee shall designate a party to be responsible for valuations of assets of the Trust for which prices are not readily available on a nationally recognized securities exchange.
- (e) **Reliance on Administrator.** The Trust Committee shall be entitled to rely on the Administrator and any Custodian, other than Trust Committee, for the maintenance and provision of all records specified in this Section.

- 9.2 **Expenses.** The expenses incurred by the Trust Committee in the performance of its duties hereunder, including fees for legal and other services rendered and all other proper charges and disbursements of the Trust Committee, including taxes of any and all kinds whatsoever, that may be levied or assessed under existing or future laws upon or in respect of the Trust or any money, property or security forming a part of the Trust Fund, shall be paid by the Trust Committee from the Trust Fund, and the same shall constitute a charge upon the Trust Fund. To the extent the Member pays any expenses that are properly payable from the Trust Fund, the Trust Committee shall reimburse the Member that has made payment from the Trust Fund if requested to do so by the Member.

## ARTICLE X AMENDMENT OF TRUST; TERMINATION OF PLAN

- 10.1 **Amendment of Trust.**

- (a) **Right to Amend.** The Members may amend this Agreement at any time or from time to time by the affirmative vote of two-thirds (2/3) of all Members, and any such amendment by its terms may be retroactive. An amendment shall require compliance with the terms of Section 8.4(a). An adopted amendment shall become effective upon the date specified in the ballot approved by the Members, without necessity of further written consent or signatures by the Members. Upon adoption of any amendment, the Trust Committee shall cause a current copy of this Agreement to be sent to each Member.
- (b) **Exclusive Benefit.** Notwithstanding the foregoing, no amendment shall be made which would authorize or permit any assets of the Trust Fund, other than such assets as are required to pay taxes and administration expenses, to be used for or diverted to purposes other than the exclusive benefit of Participants or Beneficiaries.
- 10.2 **Termination of Plan.** The Trust shall continue for such time as may be necessary to accomplish the purposes for which it was created and shall terminate only upon the complete distribution of the Trust. The Trust may be terminated as of any date (and shall in fact terminate upon the complete distribution of the funds of this Trust on such date or thereafter) by unanimous vote of the Trust Committee and approval by a two-thirds (2/3) vote of all Members. Upon termination of the Trust, provided that the Trust Committee has not received instructions to the contrary, the Trust Committee shall liquidate the Trust and, after paying the reasonable expenses of the Trust, including expenses involved in the termination, distribute the balance thereof according to the written directions of each Member for the provision of benefits similar to those provided under the Plan for the benefit of each such Member's Participants and Beneficiaries covered thereunder; provided, however, that the Trust Committee shall not be required to make any distribution until the Trust Committee is reasonably satisfied that adequate provision has been made for the payment of all taxes, if any, which may be due and owing by the Plan and the Trust; and provided, further, that in no event shall any distribution be made by the Trust Committee until the Trust Committee is reasonably satisfied that the distribution will not be contrary to the applicable provisions of the Plan dealing with termination of the Plan and the Trust.
- 10.3 **Final Accounting.** At such time as the Trust is terminated, the Trust Committee shall render a final accounting of the affairs of the Trust to each participating Member, and thereafter there shall be no claim or action against the Trust Committee or any Trustee, and they shall have no further responsibilities or duties and shall be discharged.

## ARTICLE XI MISCELLANEOUS

- 11.1 **Nonalienation of Benefits.** Neither the benefits payable from the Trust Fund nor any interest in any of the assets of the Trust Fund shall be subject in any manner to the claim of any creditor of a Participant, or Beneficiary or to any legal process by any creditor of such Participant, or Beneficiary; and neither a Participant nor any Beneficiary shall have

any right to alienate, commute, anticipate or assign any right to benefits payable from or any interest in the Trust, except as provided in the Plan.

11.2 **Benefit.** Except as otherwise provided in the Plan and this Agreement, no part of the Trust hereunder shall be used for or diverted to any purpose other than for the benefit of Participants and Beneficiaries or the payment of expenses as herein provided.

11.3 **Effect of Plan.** The Trust Committee is not a party to the Plan, and in no event shall the terms of the Plan, either expressly or by implication, be deemed to impose upon the Trust Committee any power or responsibility other than as set forth in this Agreement. In the event of any conflict between the provisions of the Plan and this Agreement, this Agreement shall be deemed to be incorporated into and be a part of the Plan, and the terms of this Agreement shall control over any inconsistent terms of the Plan not contrary to State law.

11.4 **Dispute Resolution.**

(a) Disputes arising in relation to benefits under the Plan shall be resolved in accordance with the procedures established in the Plan.

(b) The parties to this Agreement (each, a “party”) are mutually committed to collaborative problem solving for resolving issues that may arise among or between them concerning this Agreement. In the event of a dispute, the complaining party may notify the other party of the dispute in writing and each party to the dispute will each appoint a representative to negotiate in good faith to resolve the dispute. These negotiations between representatives of the parties shall continue until the earliest of: (a) the time the dispute has been resolved; (b) the designated representatives have concluded that continued negotiation does not appear likely to resolve the dispute; or (c) thirty (30) days from the date of written notice of the dispute. If the dispute is not resolved through direct negotiations, the parties may, with the consent of all parties, attempt to settle any dispute arising out of or related to this Agreement through mediation. Unless otherwise agreed by the parties, mediation shall proceed as follows: The parties may agree on a mediator. If they are unable to agree on a mediator within thirty (30) days of the agreement to mediate, the parties shall contact an agreed upon dispute resolution organization or service and shall use its selection process to select a mediator. Each party shall bear its own costs of the mediation and the parties shall share the costs of the mediator. The mediation shall be scheduled within sixty (60) days of the agreement to mediate. If the direct negotiation process is unsuccessful and the parties do not consent to mediation or the agreed-upon mediation process does not successfully resolve the dispute within ninety (90) days of the agreement to mediate, the parties shall be entitled to pursue any other remedy allowed by law or this Agreement. However, no party shall pursue such a remedy without first exhausting the direct negotiation process.

- 11.5 **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties hereto with regard to the subject matter hereof, and there are no other agreements or understandings between the parties relating to the subject matter hereof other than those set forth or provided for herein.
- 11.6 **Approval of the Members.** The Members shall have the right, on behalf of all individuals at any time having any interest in the Trust, to approve any action taken or omitted by the Trust Committee.
- 11.7 **Liability for Predecessor or Successor.** No successor Trustee hereunder in any way shall be liable or responsible for any actions or omissions of any prior Trustee in the administration of the Trust or the Trust Fund prior to the date such successor Trustee assumes its obligations hereunder, nor shall any prior Trustee in any way be liable or responsible for any actions or omissions of any successor Trustee.
- 11.8 **Liability for Acts of Others.** No Trustee shall be liable for the acts or omissions of a Member, the Custodian, the Administrator, the Investment Committee or any Investment Manager except with respect to any acts or omissions of any such party in which the Trustee participates knowingly or which the Trustee knowingly undertakes to conceal, and which the Trustee knows constitutes a breach of fiduciary responsibility of such party.
- 11.9 **Governmental Immunity.** It is specifically understood and agreed that nothing contained in this Agreement shall be construed as an express or implied waiver by the Trust, the Trust Committee, the individual Trustees, or the Members of governmental immunity or of the sovereign immunity of the State of Colorado or its instrumentalities or any provision of the Colorado Governmental Immunity Act, Section 24-10-101 et seq., C.R.S.
- 11.10 **Controlling Law.** This Agreement shall be construed according to the laws of the State of Colorado.
- 11.11 **Effective Date.** This Agreement shall be effective on and after \_\_\_\_\_, 2014.
- 11.12 **Execution in Counterpart.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Member and the Trust Committee have caused this Agreement to be signed by their duly authorized officers or representatives as of the day first written above.

**TRUST COMMITTEE:**

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

Date: \_\_\_\_\_

Member Representative of:  
\_\_\_\_\_

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

Date: \_\_\_\_\_

Member Representative of:  
\_\_\_\_\_

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

Date: \_\_\_\_\_

Member Representative of:  
\_\_\_\_\_

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

Date: \_\_\_\_\_

Member Representative of:  
\_\_\_\_\_

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

Date: \_\_\_\_\_

Member Representative of:  
\_\_\_\_\_

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

Date: \_\_\_\_\_

Member Representative of:  
\_\_\_\_\_

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

Date: \_\_\_\_\_

Member Representative of:  
\_\_\_\_\_

**ADMINISTRATOR:**

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

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

Date: \_\_\_\_\_

**MEMBER:** \_\_\_\_\_

\_\_\_\_\_

Sign: \_\_\_\_\_

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

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

Attest:

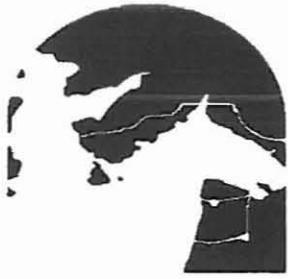
Sign: \_\_\_\_\_

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

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

Date of Member Adoption of Agreement:

\_\_\_\_\_



CITY OF TRINIDAD, COLORADO  
1876

## COUNCIL COMMUNICATION

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**CITY COUNCIL MEETING:** January 6, 2015  
**PREPARED BY:** Audra Garrett, ACM/City Clerk  
**DEPT. HEAD SIGNATURE:** *Audra Garrett*  
**# OF ATTACHMENTS:** 3

**SUBJECT:** Ratification of Collective Bargaining Agreements – General Services – 1074-A, Police – 1074-B, and Fire – 1074-C, January 1, 2015 through December 31, 2017

**PRESENTER:** Audra Garrett, ACM/City Clerk

**RECOMMENDED CITY COUNCIL ACTION:** Ratify the agreements

**SUMMARY STATEMENT:** Three-year collective bargaining agreements

**EXPENDITURE REQUIRED:** N/A

**SOURCE OF FUNDS:** N/A

**POLICY ISSUE:** N/A

**ALTERNATIVE:** N/A

**BACKGROUND INFORMATION:**

- The three-year contracts with the Union have been negotiated and agreed to harmoniously by both parties.
- Council is asked to ratify the agreements

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COLLECTIVE BARGAINING AGREEMENT  
 BETWEEN  
 CITY OF TRINIDAD  
 AND  
 LOCAL UNION NO. 1074  
 OF  
 AMERICAN FEDERATION OF STATE, COUNTY  
 AND  
 MUNICIPAL EMPLOYEES  
 JANUARY 1, 2015  
 TO  
 DECEMBER 31, 2017  
 GENERAL SERVICES AGREEMENT  
 1074-A

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## ARTICLE I

### UNION RECOGNITION AND SECURITY

SECTION 1. RECOGNITION: The City of Trinidad recognizes AFSCME Local No. 1074 as the sole and exclusive bargaining agency for all City of Trinidad employees working for the City and represented by this Agreement. The positions recognized in the Agreement are listed in Appendix A.

SECTION 2. UNION SECURITY: This Agreement shall be effective for all employees who are members in good standing as of the effective date of this Agreement. Existing employees working in a job classification covered under this Agreement may join the Union after successful completion of a probationary period. Any new employee working in a job classification covered under this Agreement and hired after January 1, 1980, shall join the Union after successful completion of a probationary period.

SECTION 3. PAYROLL DEDUCTION OF DUES: All employees who are members of the Union or who become members under conditions of this Agreement shall have their dues deducted monthly from their paycheck issued nearest the end of the month payable for the following month, together with such other assessments, initiation, reinstatement or deductions, which shall have been certified by the Treasurer of the Union to the City sufficiently in advance of the payroll deduction to permit the proper deduction of the amount specified.

The City agrees to deduct from the wages of any employee who is a member of the Union a "PEOPLE" deduction as provided for in a written authorization. Such authorization must be executed by the employee and may be revoked by the employee at any time by giving written notice to both the City and the Union. The City agrees to remit any deductions made pursuant to this provision promptly to the Union together with an itemized statement showing the

name of each employee from whose pay such deductions have been made and the amount deducted during the period covered by the remittance.

SECTION 4. MEETING ON UNION BUSINESS: The appropriate Union Steward and/or AFSCME Council No. 76 Representative may confer with any employee covered by this Agreement on the job site during work hours concerning any grievance or other matter covered by this contract. Such conference shall be with the prior consent of the supervisor of the affected employee(s) and limited to the amount of time necessary for that purpose and shall be arranged so as not to interfere with other employees in the work unit.

SECTION 5. INDEMNIFICATION OF CITY: The Union shall indemnify the City of Trinidad against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken by the City for the purpose of complying with any of the provisions of this Agreement.

#### SECTION 6. DEFINITIONS:

(a) Regular Employee – An employee who has been hired or promoted to fill a permanent position with the City, which position is represented by this Agreement. Such regular employee must have satisfactorily completed the required probationary period.

(i) Full-time employee – An employee whose established job assignment and duties require an eight (8) hour workday or a forty (40) hour work week.

(ii) Part-time employee – An employee whose established job assignment and duties require less than an eight (8) hour work day or less than a forty (40) hour work week.

(b) Provisional Employee – An employee who has been hired to fill a provisional position within the City, which position shall have a special assignment not covered by any other position recognized by this Agreement. The filling of a provisional position shall be limited to

the established duration of the special assignment or for a period of time not to exceed a six (6) month period. Should it be determined by the City Manager, a provisional position may be extended for an additional six (6) months; however, in no case shall the total duration of a provisional position, including the initial appointment and any extension, exceed a total of twelve (12) months.

(c) Probationary Employee – An employee who has been hired in anticipation of filling a permanent position and who must satisfactorily complete a probationary period of a minimum of six (6) months' duration before being classed as a regular employee.

(d) Temporary/Seasonal Employee – An employee who has been hired to fill a temporary or seasonal position in the City. The fillings of a temporary/seasonal position may be for the same job duties or similar job duties as a regular employee; however, a temporary/seasonal assignment may not exceed six (6) continuous months in duration.

(e) Continuous Operations Personnel – Employee(s) assigned to job duties and/or positions with a City Department which require operating schedules on a multi-shift schedule basis.

(f) Extended Operations Personnel – Employee(s) assigned to job duties and/or positions with a City Department which require operating schedules beyond the typical eight (8) hour work day hours.

(g) Work Year – One calendar year of time from the initial date of employment of a regular, full-time City employee.

(h) Temporary Assignment – The assignment of a City employee by his supervisor to a work position other than the position to which he was hired.

(i) Overall Seniority – The prioritized order for calculation of rights and privileges afforded by this Agreement. Calculation of such priority shall be determined for each regular employee by that employee's respective date of hire in a position recognized by this Agreement. For regular, part-time personnel, the prioritized order shall be based upon such employee's proportional length of employment as compared with the standard work year of 2,080 hours.

(j) Departmental Seniority – The prioritized order for calculation of rights and privileges afforded by this Agreement. Calculation of such priority shall be determined for each regular employee by the employee's respective date of assignment within a recognized City Department. For regular, part-time personnel the prioritized order shall be based upon such employee's proportional length of service in the Department in which he or she is assigned.

(k) Immediate Family – Immediate Family is defined for the purpose of this Agreement as the employee's spouse or domestic partner (*i.e.*, a person with whom the employee's life is interdependent and with whom the employee shares a mutual residence), parents, step-parents, guardians, children, step-children, grandparents, grandchildren, brothers and sisters, brothers-in-law and sisters-in-law, and the employee's spouse's parents.

(l) Flex Time – Flex time is an alternative work schedule authorized by Management that may exceed eight (8) hours per day, such as four (4) days at ten (10) hours, but may not exceed forty (40) regular hours per week.

## ARTICLE II

### RIGHTS OF MANAGEMENT

SECTION 1. MANAGEMENT PREROGATIVES: The Union agrees that the direction of the workforce, including the right to hire, suspend, or discharge for cause, transfer for legitimate reasons, relieve employees from duty because of lack of work, or cutbacks because of

budget requirements, is vested exclusively in the City of Trinidad and in management, subject to the limitations as may be contained in State Statutes, the City Charter, City Ordinances, Federal and State Court decisions and the terms of this Agreement.

### ARTICLE III

#### LAYOFF/REHIRE PROCEDURE

SECTION 1. LAYOFF NOTICE: In case of layoff, notice of such layoff shall be given to the affected employee(s) in written form, either by personal service by his or her supervisor or by certified mail. In either case, a minimum of ten (10) work days of notice shall be given prior to the effective date of layoff. Copies of such layoff notice for any employee covered by this Agreement shall be provided to the appropriate Union Representatives.

SECTION 2. EMPLOYEE LAYOFF SELECTION: The City shall have the sole authority to determine which positions shall be affected by employee layoff. Determination of any employee(s) affected by layoff shall be on the basis of departmental seniority for the position(s) affected, except that in the case of laborer positions, selection shall be made on a City-wide seniority basis beginning with the least senior employee in the affected position.

SECTION 3. EXERCISE OF BUMPING RIGHTS: If an employee in a position that has been selected for layoff is determined to be qualified for a position in a lesser classification within the same department, and such employee has Departmental Seniority over any other employee in such lesser classification, then the senior employee may exercise bumping rights. The determination of qualifications of any employee wishing to exercise bumping rights into a department other than the Department in which that employee is assigned shall be made by the City based upon the employee's previous successful experience in the lesser classification within the Department and satisfactory completion of a trial period as set forth in Article IX, Section 5.

SECTION 4. BUMPING RIGHTS TIME LIMIT: The exercise of bumping rights by an employee shall be initiated in writing by such employee within five (5) calendar days from the date of receipt of a layoff notice, or such rights shall be forfeited. Any employee displaced through the bumping rights process may exercise the same rights with a lesser position.

SECTION 5. REHIRE PROCEDURE: If the City should reestablish a position previously eliminated by layoff within one (1) year from the date such position was eliminated, the former employee previously in that position shall be given five (5) calendar days' written notice to indicate a desire to fill the position. Such notice shall be by certified mail to the former employee's last known address.

Should such former employee indicate a desire to return to employment with the City, such former employee must be available to report to work within ten (10) calendar days of his response to the position vacancy.

Any employee returning to work with the City under the provisions of this Article shall be subject to the trial period as set forth in Article IX, Section 5.

SECTION 6. REINSTATEMENT OF SENIORITY: Any employee who terminates employment with the City as a result of layoff, or caused by the exercise of bumping rights by a senior employee, and who returns to employment with the City to any position other than the position previously held by such employee within one (1) year of the date of termination, shall retain his or her seniority with respect to rates of accrual of leave benefits.

Seniority, relative to future layoff, shall be based upon the employee's date of re-employment and only to the position to which the employee has been re-employed.

Any employee who terminates employment in good standing, other than by layoff, with the City shall forfeit all seniority at the time of termination. Should such employee be

subsequently re-employed by the City to any position covered by this Agreement, that employee will be considered to be a new employee in all respects as if never previously employed by this City.

#### ARTICLE IV

##### DISCIPLINE OR DISCHARGE

SECTION 1. IMPOSITION OF DISCIPLINE: Employer shall not discipline any employee without just cause. While disciplinary actions will be progressive, the employer may impose discipline at a level which is appropriate to the offense committed.

SECTION 2. PRE-DISCIPLINARY MEETING:

(1) Before a suspension, demotion or termination occurs, a pre-disciplinary meeting shall be held. A pre-disciplinary meeting shall not be required for an oral or written disciplinary action notice or disciplinary probation or prior to placing Union member on investigatory leave.

(2) The purposes of the pre-disciplinary meeting are the following:

(a) To allow the Union member to correct any errors in City of Trinidad information or facts upon which it proposes to take disciplinary action; and

(b) To allow the Union member to tell his or her side of the story and present any mitigating information as to why the disciplinary action should not be taken.

(3) The written notice of contemplation of disciplinary action and pre-disciplinary meeting shall contain the following:

(a) That disciplinary action is contemplated;

(b) The specific conduct or omission committed by the Union member, which the City of Trinidad believes is in violation of its Personnel Policy, City of Trinidad rules, regulations or practices, or other applicable federal, state or local law;

(c) The purpose of the pre-disciplinary meeting as described in subsection 2 above;

(d) The date, time and location of the pre-disciplinary meeting; and

(e) That the Union member is entitled to representation by a disinterested union steward or AFSCME Representative of their choice at the meeting, which does not include attorneys.

(4) The notice of the pre-disciplinary meeting will be given to the Union member in person with a certificate of hand delivery, or certificate by courier delivered to his/her last address of record in the Payroll Department, or sent by first-class certified/registered U. S. Mail with a certificate of mailing, five (5) working days before the meeting is to occur.

(5) Because the meeting is not "adversarial," the following shall not occur:

(a) justification to the Union member or his/her representative for Management's views;

(b) testimony by or cross examination of witnesses;

(c) testimony under oath; or

(d) recording of the proceedings by a court reporter or a tape recorder, or any other recording device.

(6) Failure of a supervisor to comply strictly with the requirements in this subsection B shall not constitute a basis for reversing a disciplinary action upon grievance, arbitration, or mediation.

SECTION 3. DUE PROCESS. If the discipline is the result of a criminal investigation that may be charged as a felony, the department head will be allowed to forego the pre-

disciplinary meeting until charges are filed or until the matter is resolved and the employee is found guilty or pleads guilty to a felony.

The City shall discharge an employee only upon a finding of just cause. Such finding may be based upon one or more of the following grounds:

- (a) Incompetence, incapacity, or inefficiency in performance of duties;
- (b) Violation of an official rule, regulation, or order;
- (c) Failure to obey any lawful or reasonable direction when such action amounts to insubordination or serious breach of discipline;
- (d) Conviction of a felony;
- (e) Willful or repeated negligence in performing duties;
- (f) Conduct unbecoming an employee of the City;
- (g) Conduct subversive to the laws of the State or Nation;
- (h) Misuse of public funds; or
- (i) Falsifying reports or records.

Discharge shall be effective immediately upon service of written notice by the employee's supervisor, or upon receipt of written notice by certified mail. Such notice shall specify the finding(s) upon which the termination is based.

SECTION 4. UNSAFE ACTS. No employee shall be disciplined for refusal to perform an unsafe act or one for which the employee is not adequately trained. Unsafe acts include, but are not limited to, violations of the jointly-developed Safety Manual.

SECTION 5. DISCIPLINARY PROCEDURE: The Disciplinary Procedure shall be limited to the following:

(a) Oral Reprimand – If a supervisor has reason to issue an oral reprimand to any employee in his charge, such reprimand shall be issued at a place and time away from other employees and the public. If such oral reprimand has been logged or documented by the supervisor, it shall be kept in the subject employee's personnel file for a period of one (1) year from the date of the reprimand. If no similar occurrence takes place during that time period, the documentation shall be purged from the file.

(b) Written Reprimand – If a supervisor has reason to issue a written reprimand to an employee in his charge, such reprimand shall be issued in written letter form stating the infraction of the employee and outlining corrective measures the employee should follow to avoid re-occurrence. A copy of the letter shall be kept in the employee's personnel file for a period of three (3) years from the date of the reprimand. If no similar occurrence takes place during that time period, the documentation shall be purged from the file.

(c) Suspension Without Pay – If a supervisor has reason to issue a suspension without pay to an employee in his charge, such suspension shall be issued in written letter form stating the infraction of the employee, the corrective measures the employee should follow to avoid re-occurrence, and the duration and effective date of suspension. Such suspension shall allow three (3) working days' notice to be given prior to the start of such suspension. A copy of the suspension shall be kept in the employee's personnel file for a period of five (5) years from the date of suspension. If no similar occurrence takes place during that time period, the documentation shall be purged from the file.

When the City has reason to suspend or discharge an employee covered under this Agreement, the City will provide a written statement to the employee indicating the reasons for such consideration. The written statement shall be considered given to the employee if

personally delivered or, if unable to be personally delivered, after five (5) working days have elapsed from the date of certified mailing to the employee's last address of record in the Payroll Department.

(d) Demotion to Lower Classification – If the Supervisor has reason to demote an employee in his charge, such demotion shall be issued in written letter form stating the infraction of the employee, the corrective measures the employee should follow to avoid re-occurrence, and the effective date of the demotion. Such demotion shall allow five (5) working days' notice to be given prior to the start of such demotion. A copy of the demotion shall be kept in the employee's personnel file for a period of five (5) years from the date of the demotion. If no similar occurrence takes place during the time period, the documentation shall be purged from the file.

SECTION 6. FLAGRANT VIOLATION: Any employee may be suspended immediately for conduct prejudicial to the City, public, or fellow employees, if the public safety and/or welfare are affected.

SECTION 7. PROCEDURE FOR DISCIPLINE INVOLVING DEMOTION, SUSPENSION WITHOUT PAY, OR DISCHARGE:

(a) Steps – The following steps shall be utilized if an employee wishes to dispute the disciplinary action taken against him or her where the disciplinary action involved either a demotion, suspension without pay, or discharge:

(i) Step 1 – The department head will provide to the employee or employees notification of offenses involved and the type of disciplinary action taken. If the employee disagrees with the discipline administered he or she will, within ten (10) calendar days of the disciplinary action, file a written grievance with the department head and may obtain the assistance of the Union representative in doing so. The department head will schedule a meeting

within ten (10) calendar days with the employee and the Union representative. Following the meeting, the department head will provide a decision to the employee and the Union representative within five (5) calendar days.

(ii) Step 2 – If the grievance is not resolved at Step 1, the aggrieved employee may refer the grievance to the City Manager for a hearing, such request being in writing, within ten (10) working days of the issuance of the department head's decision. Should a hearing be requested, a decision shall be issued within ten (10) working days of the hearing.

(iii) Step 3 – If no agreement is reached at Step 2, the employee or a Union representative or his designee may, within five (5) work days of receipt of the Step 3 answer, request mediation by sending a letter to the Federal Mediation and Conciliation Services, with a copy to the City. Mediation will be set as soon as possible after the request. If the issue is not resolved after mediation, the employee will have ten (10) days to file a request to AAA requesting a list of seven (7) qualified arbitrators. Once a list is received, the parties will select the arbitrator by alternately striking one name from the list until only one name remains. The order of striking will be alternated between the parties. On a case-by-case basis, the parties may mutually agree on an arbitrator without utilizing the AAA process to select an arbitrator.

Hearings shall take place at a location mutually agreed upon by the parties. At the earliest possible time, the arbitrator shall conduct a hearing in order to hear testimony, receive evidence, and consider arguments. The arbitrator will base the decision solely on the evidence presented at the hearing, and if possible will issue a written decision within thirty (30) days of the close of the hearing. The arbitrator shall have no power to add to, subtract from, alter, or amend the terms of this agreement, or to expand the issue to anything beyond what the parties

place before him or her; nor shall the arbitrator substitute his/her judgment for that of the City unless the City's actions have violated specific terms of this Agreement.

The hearings shall be closed upon the completion of testimony. The arbitrator shall render his or her decision as soon after the close of the hearings as may be feasible. If the arbitrator is unable to make his or her decision within thirty (30) days of the close of the hearing, he or she shall promptly advise the parties of the reasons for the delay and the date when his or her decision will be submitted. The arbitrator's decision shall be final and shall govern on the dispute before him or her. Expenses and fees incident to the service of an arbitrator shall be paid equally by the City and AFSCME Local 1074.

(b) Right of Withdrawal – The designated Union representative or his designee has full authority to proceed with or withdraw the grievance at any step of this procedure.

(c) Right to Be Present – The employee shall have the right to be present at each step of the grievance procedure.

(d) Finality of Settlements – Settlements reached at any step of the grievance procedure shall be final and binding on both parties and shall not be subject to further proceedings under this Article except by mutual agreement. Settlements reached shall be in writing and signed by appropriate representatives of the Union and the City.

(e) Waiver of Time Limits – By agreement, the parties may waive the time limits set forth in each step of the grievance procedure.

(f) Precedents – Settlements or withdrawals at any step shall not constitute a precedent in the handling of other complaints or grievances.

## ARTICLE V HOURS OF WORK

SECTION 1. WORK SHIFT: The normal work shift for all regular, full-time employees shall be eight (8) hours within a calendar day. The normal work week for all such employees shall be forty (40) hours within a calendar week. Regular, full-time employees covered by this Agreement shall be assigned five (5) consecutive work shifts within a calendar week unless such employee(s) is scheduled to work flex time as defined.

All normal work shift hours shall be consecutive except for meal and break periods. Meal periods shall be either one-half (½) hour or one (1) hour in duration, as determined by Management. Break periods shall be set by the Supervisor, but in no case more often than once each half of the work shift and no longer than fifteen (15) minutes in duration. When work demands require, the meal period and break periods may be modified by the Supervisor.

(a) Flex Time - Employees assigned work duties on a flex schedule shall work forty (40) hours within a calendar week comprised of four (4) shifts of ten (10) hours per shift within a calendar week.

SECTION 2. FIRST SHIFT DAY: The first day of an assigned work shift in each calendar week for any regular, full-time employee shall constitute the first shift day for the purpose of computing the work week.

SECTION 3. ON-CALL POLICY: An on-call program may be put into effect using a rotating on-call list of regular, full-time employees who may be assigned to on-call duty for periods of time before or after their normal work shifts. The employee who is the designated on-call person for his/her department will receive for the week of on-call duty the sum of one hundred fifty dollars (\$150.00) for that week. The employee will be allowed a response time of

one-half (½) hour. A delay in response time is subject to disciplinary action, in accordance with Article IV. There will be only one person per department per week in the following eight (8) departments who will receive the on-call duty pay: Gas, Water, Sewer, Power & Light, Street & Bridge, Maintenance, Parks, and Sports & Recreation. In the event that the on-call person being unavailable due to circumstances which were unanticipated or by approved and scheduled vacation, the replacement on-call person shall be the most senior employee who volunteers to replace the on-call person, or if there being no volunteer, the least senior employee. Succeeding overtime assignments shall exhaust the list of qualified personnel affording each qualified employee the opportunity for assigned overtime. Employees who carry the pagers will be afforded the option of compensation of \$150.00 or pager time in the amount of \$150.00. The time would be computed by dividing the \$150.00 pager pay by the employee's hourly rate of pay. That number will be the amount of hours earned for that employee. The amount of hours will vary from employee to employee but the value will remain constant at \$150.00.

SECTION 4. EMERGENCY/CALL-BACK HOURS: Any regular, full-time employee who is called back to work before or after a normal work shift without a prior notice of at least twenty-four (24) hours shall be entitled to emergency/call back compensation. Such compensation shall be computed at two (2) times the normal hourly rate for each employee for actual time worked. Actual time worked shall be computed to the next one-quarter (¼) hour. Employees shall be compensated for a minimum of one (1) hour of emergency/call back pay for each occurrence. The work shift shall be identified by time card record. Compensation for assigned, scheduled overtime with notice of twenty-four (24) hours, or any overtime acquired on a volunteer basis, shall be computed at one and one-half (1 ½) the normal hourly rate.

## ARTICLE VI

### HOLIDAYS

SECTION 1. HOLIDAYS OBSERVED: All regular, full-time employees, with the exception of those noted in Section 2 of this Article, shall be afforded the following paid holidays. Such employees shall be given time off with regular pay for such holidays. The holidays recognized by this Agreement shall include:

New Year's Day	January 1st
Martin Luther King Day	Third Monday in January
President's Day	Third Monday in February
Good Friday	Last four hours of scheduled work shift
Memorial Day	Last Monday in May
Independence Day	July 4th
Labor Day	First Monday in September
Columbus Day	Second Monday in October
General Election Day	Tuesday following first Monday in even-numbered years
Veteran's Day	November 11th
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Fourth Friday in November
Christmas Eve	Last four hours of scheduled work shift the day preceding Christmas
Christmas Day	December 25th

In addition to the above noted holidays, four (4) work shifts per year of paid leave, known as personal leave days, shall be granted to each regular, full-time employee of the City. Such employee must have been employed by the City as of January 1st of the current calendar year to qualify for such personal leave days. The utilization of such personal leave days shall be subject to the operational needs of the Department to which such employee is assigned and must be authorized by the employee's supervisor. Any personal leave days not utilized by the end of the calendar year shall be forfeited.

Holidays falling on Saturday shall be observed on the preceding Friday, and holidays falling on Sunday shall be observed on the following Monday.

SECTION 2. COMPENSATION IN LIEU OF HOLIDAYS FOR CONTINUOUS OR EXTENDED OPERATIONS PERSONNEL: Employees assigned to work as continuous operations personnel or extended operations personnel shall receive monetary compensation in lieu of holidays. Such compensation shall be calculated for each qualifying employee on the basis of that employee's hourly wage rate, multiplied by the equivalent number of hours constituting the scheduled holidays recognized by this Agreement except the personal leave days. For any qualifying employee working less than a full calendar year, such compensation shall be apportioned based upon the remaining recognized holidays within that calendar year following the date such employee becomes a regular, full-time employee. Payment of such compensation shall be made in one lump sum, less appropriate deductions and taxes at the time of issuance of payroll for the second half of the month of November of each year; except that the Power & Light Department's power plant continuous personnel shall be paid on a monthly basis rather than once annually. At no time will the value of holiday compensation be less than two and one-half (2 ½) times ninety-six (96) hours of current hourly wage.

**ARTICLE VII**

**LEAVE BENEFITS**

SECTION 1. VACATION/ANNUAL LEAVE:

(a) Rate of Accrual – Each regular, full-time employee shall accrue basic vacation/annual leave following satisfactory completion of an initial probationary period in accordance with the following schedule:

<u>LENGTH OF EMPLOYMENT</u>	<u>ACCRUAL RATE</u>
Six (6) mos. thru five (5) yrs.	8 hrs./mo.
Five (5) yrs. to six (6) yrs.	8.666 hrs./mo.
Six (6) yrs. to seven (7) yrs.	9.333 hrs./mo.
Seven (7) yrs. to eight (8) yrs.	10 hrs./mo.
Eight (8) yrs. to nine (9) yrs.	10.666 hrs./mo.
Nine (9) yrs. to ten (10) yrs.	11.333 hrs./mo.
Ten (10) yrs. to eleven (11) yrs.	12 hrs./mo.
Eleven (11) yrs. to twelve (12) yrs.	12.686 hrs./mo.
Twelve (12) yrs. to thirteen (13) yrs.	13.333 hrs./mo.

The beginning date of accrual of vacation/annual leave shall be based upon the initial date of employment as a regular, full-time employee. With respect to accrual of annual vacation leave by any employee hired after January 1, 1998, after 320 hours are accrued, no further hours of vacation leave will be accrued until the employee drops below 320 hours of unused vacation leave.

(b) Longevity Compensation – Each regular, full-time employee attaining twenty-five (25) years of employment with the City from his/her initial date of hire shall be granted longevity

compensation in the form of one (1) additional day of leave for each year of employment beyond twenty-five (25) years, up to a maximum of five (5) additional longevity compensation days.

(c) Use of Accrued Leave – Each regular, full-time employee shall be allowed to schedule his/her accrued vacation/annual leave based upon a departmental schedule to be determined by the last working day of February of each year. The priority of scheduling vacation/annual leave shall be on the basis of departmental seniority of the personnel of each Department and shall be subject to the work schedule needs of that Department. In no case, however, shall any employee be allowed to schedule more than ninety-six (96) hours of vacation/annual leave consecutively unless each member of that Department has had an opportunity to schedule his/her basic vacation/annual leave.

In determining a departmental vacation/annual leave schedule, Management may adjust the scheduled days of annual leave for any employee with a written notification to such employee at least two (2) calendar weeks prior to the first day of such scheduled vacation/annual leave.

Any regular, full-time employee who may be on probation or a trial period shall not be allowed to utilize accrued vacation/annual leave.

(d) Rescheduling of Accrued Vacation/Annual Leave – Should operational emergencies or other circumstances occur which preclude an employee from utilizing scheduled vacation/annual leave, such employee shall be allowed to re-schedule such vacation/annual leave within the same calendar year, subject to the Departmental work schedule needs.

## SECTION 2. SICK/LEAVE BENEFITS:

(a) Rate of Accrual – Each regular, full-time employee shall accrue sick/health leave on the basis of eight (8) hours for each month of completed employment with the City following

satisfaction of his/her probationary period. Sick/health leave may be accrued by regular, full-time employees hired on or before January 1, 1998, to a maximum of seven hundred twenty (720) hours. Sick/health leave may be accrued by regular, full-time employees hired after January 1, 1998, to a maximum of six hundred forty (640) hours.

Any regular, full-time employee hired on or before January 1, 1998, accumulating in excess of seven hundred twenty (720) hours shall be compensated for all excess, accrued hours at his/her regular/hourly rate of pay at the end of each calendar year. Any regular full-time employee hired between January 1, 1998, and December 31, 1998, accumulating in excess of six hundred forty (640) hours shall be compensated for all excess, accrued hours at the rate of fifty percent (50%) of his/her regularly hourly rate of pay at the end of each calendar year. Any regular, full-time employee hired on or after January 1, 1999, will accumulate hours of earned sick leave in excess of the maximum six hundred forty (640) hours but will not be compensated for any accrued sick leave. In exchange for the removal of the cap, the Union agrees to waive compensation for sick leave benefits for full time employees hired on or after January 1, 1999, in future contracts.

(b) Use of Accrued Sick/Health Leave – Each regular, full-time employee shall be allowed to utilize sick/health leave for bonafide illness, injury, or medical care of that employee or that employee's spouse, children, or step-children. Any use of sick/health leave in excess of two (2) consecutive work shifts or more than three (3) full shifts in the same calendar month shall require the employee to provide to his/her supervisor written verification of illness or injury issued by a medical authority (*i.e.*, doctor, nurse, clinical technician, *etc.*)

(c) Notification to Supervisor – Each regular, full-time employee shall notify his/her immediate supervisor at least two (2) hours prior to the start of such employee's work shift. Any

deviation from the two (2) hour notification shall require justification by the employee to his/her supervisor. Should an employee become ill on the job, such employee shall only be assessed for the actual time missed, recorded to the nearest half hour. Failure of any regular, full-time employee to provide proper notification to his/her supervisor shall be cause for denial of sick/health leave benefits, and such employee shall be subject to disciplinary action.

SECTION 3. MILITARY LEAVE: The City recognizes and acknowledges State and Federal laws regarding rights and benefits due any employee in military service to this Country.

SECTION 4. JURY DUTY/WITNESS LEAVE: Any regular, full-time employee subpoenaed as a witness in any legal proceeding involving the City or called to jury duty shall notify his/her supervisor as soon as possible upon receipt of such notice and shall provide a copy of such notice to his/her supervisor. Such employee shall not have any time charged against accrued leave. Where an employee is paid a fee for jury duty or a witness fee, such fee shall be assigned over to the City. Failure to do so shall result in such employee being charged for the time away from the job consumed by such absence. Where notice of jury duty or subpoena identifies a specific hour at which time such employee must appear, the supervisor shall allow that employee to leave his/her assigned job duties with sufficient time to report as mandated by the notice. Upon dismissal from such requirement, as specified by the notice, the employee shall return to his/her job duties if his/her assigned work shift has not concluded.

Not to be confused with this allowance, any regular, full-time employee summoned or subpoenaed to a legal proceeding, either civil or criminal, not related to his/her job duties, shall only be allowed the necessary time away from his/her job, upon showing of proper documentation to his/her supervisor. Such necessary time shall be charged to the employee's accrued vacation/annual leave.

SECTION 5. FUNERAL LEAVE: In the event of a death in the Immediate Family (as defined in Article I, Section 6) of any employee, such employee shall be granted a leave of absence with pay not to exceed four (4) working days. Such leave shall be for the purpose of making household adjustments or to attend funeral services. If additional time is needed, sick leave and/or vacation/annual leave, at the employee's discretion, may be used for this purpose.

SECTION 6. MEDICAL LEAVE: The City recognizes and acknowledges the rights of employees covered by this Agreement through the Family and Medical Leave Act of 1993.

SECTION 7. LEAVE OF ABSENCE WITHOUT PAY OR BENEFITS: The City Manager may authorize, upon written request of any regular, full-time employee, a leave of absence without pay or benefits. Such leave of absence without pay or benefits shall be considered only upon presentation of documented medical advice or care prepared by a doctor.

The duration of any granted leave of absence without pay shall not exceed six (6) months. During such time, the employee shall not accrue any benefits; however, the City shall continue to provide health insurance benefits in accordance with Article XIII, Section 1.

SECTION 8. INJURY LEAVE: Any employee who suffers an injury or illness on the job shall be subject to the Workers' Compensation Act of Colorado. Until such time as a claim is determined to be compensable pursuant to Workers' Compensation Act, the time away from the job shall be charged to such employee's accrued leave time, beginning with accrued sick leave and followed by vacation/annual leave.

Upon determination that the claim is compensable pursuant to the Workers' Compensation Act, the leave time consumed shall be restored to that employee's account of accrued leave time. A copy of the written determination of acceptance of liability shall be provided to the injured employee. The City of Trinidad will continue to pay the injured worker

100% of their regular salary for six (6) months, whereby the employee would otherwise be entitled to temporary disability benefits (66 2/3%) from the City's Workers' Compensation carrier. After the first six (6) months have elapsed, the employee shall begin receiving temporary disability benefits (66 2/3%) directly from the City's Workers' Compensation carrier, rather than 100% of their salary from the City. Once the first six (6) months of injury leave has expired, the employee will not continue to accrue benefits except for medical/health insurance, for which the employee will be responsible for his/her share.

An employee incapacitated due to a job-related injury or illness who cannot perform the essential functions of his/her job with or without reasonable accommodation and who fails to return to work after twelve (12) months of injury leave is subject to termination. Prior to termination, the City Manager will review the employee's current medical ability and prognosis.

An employee who seeks to return to work from a job-related injury or illness is required to provide a "fitness for return to duty" report from his/her physician. If the employee returns from injury leave and within six (6) months becomes unable to work due in whole or in part to a re-injury or aggravation of the prior injury, the employee will be allowed to use the remainder of the original twelve (12) month injury leave period. Under this paragraph, the re-injured employee will *not* be allowed a second twelve (12) month leave period and will be subject to termination at the end of the original twelve (12) months of leave. However, prior to termination, the City Manager will again review the employee's current condition and prognosis.

SECTION 9. UNION CONTRACT NEGOTIATIONS LEAVE: Negotiations for future changes or replacement of the current Union contract shall be conducted at times and places mutually agreed upon between the City and Union-designated negotiators. The members of the Union negotiations team shall be released from their respective job duties without loss of pay

during the times of such negotiations, where such negotiations schedule coincides with the regular scheduled work hours of any such employee. It is recognized that the City and the Union may designate its representatives; provided, however, that the number of Union representatives shall not exceed five (5) except by agreement.

SECTION 10. ADMINISTRATIVE LEAVE FOR UNION BUSINESS: Employees, upon request to the City Manager, will be granted reasonable administrative leave to carry out official Union business as elected delegates or appointed representatives.

The President of the Union will be permitted, as workload permits, to conduct Union business, Union business to include grievances, posting of meeting notices, *etc.*, on work time.

SECTION 11. ADMINISTRATIVE LEAVE OF ABSENCE: The City and the Union recognize that it may be necessary to place an employee on administrative leave of absence, with pay, when allegations of criminal misconduct, or allegations of a flagrant violation of this Agreement or a City policy, warrant such an action.

SECTION 12. LIGHT DUTY STATUS: If, as a result of a service or non-service connected injury or illness, an employee is temporarily disabled and unable to efficiently perform the duties of his/her position, but is able to efficiently perform the duties of some other position within the City which is compatible with the employee's skills and abilities, then the Department Head or City Manager may refer the employee for placement in such departmental position for a period not to exceed three (3) months. Upon approval of the Department Head or City Manager, the employee may be so employed within his/her medical/physical restrictions. Such assignment shall be called light duty.

Light duty assignment shall have the following restrictions: (i) light duty shall not be used to displace all or part of a full-time position within the department; (ii) only one person in a

department shall be on light duty at any point in time with the Department Head or City Manager given full discretion as to whom will perform the light duty work, and the Union shall have no recourse through the grievance procedure to challenge this decision; and (iii) an employee must have at least one (1) year of City service to be eligible for light duty assignment.

## ARTICLE VIII

### WAGES AND PAY PROVISIONS

**SECTION 1. WAGES AND RATES:** The wage rate on an hourly basis for any job classifications covered by this Agreement shall be set forth according to the Wage Rates identified in Appendix A to this contract.

**SECTION 2. PAY PERIODS:** The City shall pay the appropriate wages to each respective employee covered by this Agreement, subject to the required and certified payroll deductions. The issuance of payroll shall be on a bi-weekly basis occurring twenty-six (26) times during each calendar year.

**SECTION 3. OVERTIME COMPENSATION:** Any employee who works assigned, scheduled overtime shall be compensated at the rate of one and one-half (1 ½) times his/her regular hourly wage rate for actual time worked in excess of eight and one-quarter (8 ¼) hours in a calendar day computed to the nearest one-quarter (¼) hour.

For employees working a flex time schedule, overtime compensation shall be computed for actual hours worked in excess of ten and one-quarter (10 ¼) hours in any calendar day computed to the nearest one-quarter (¼) hour.

Any employee working more than sixteen (16) consecutive hours shall be compensated at twice his/her hourly wage rate for actual time worked in excess of sixteen (16) consecutive hours computed to the nearest one-quarter (¼) hour.

Any employee working more than six (6) consecutive work shifts shall be paid at twice his/her regular hourly wage rate for actual time worked on a seventh consecutive work shift computed to the nearest one-quarter (¼) hour. Any employees working more than six (6) consecutive days shall be paid at twice his/her regular hourly wage rate for actual time worked on a seventh consecutive day completed to the nearest one-quarter (¼) hour.

**SECTION 4. COMPENSATORY TIME OFF:** Any employee who has worked overtime hours or emergency call back hours may elect to accrue the value of the extra time worked in lieu of monetary compensation. Such election shall be made in writing on the employee's time card for the pay period during which such extra time was worked.

The amount of time to be accrued shall be equal to the value for which monetary compensation would otherwise be paid (*i.e.*, one and one-half (1 ½) hours of accrued compensatory time for each hour of overtime worked and two (2) hours of accrued compensatory time for each hour of emergency call back time worked).

Use of accrued compensatory time by any employee shall require prior approval by his/her immediate supervisor in the same manner as for use of vacation/annual leave and shall be subject to the work demands of the department in which the employee works.

Any subsequent authorized absence (except for sick/health leave) of an employee who has accrued compensatory time shall result in the consumption of accrued compensatory time before the utilization of vacation/annual leave.

All accrued compensatory time maintained by any employee not specifically scheduled for use by September 1st of each year shall be paid off at face value coincident with the issuance of payroll for the second half of the month of September.

SECTION 5. ASSIGNMENT OF OVERTIME: Assignment of overtime shall be at the direction of the supervisor in each department. Selection of employees for assigned overtime shall be on the basis of qualification. When two (2) or more employees within a department have similar or equal job classifications, the assignment of overtime shall be on a rotational basis, beginning with the most senior employee in that job classification. Succeeding overtime assignments shall exhaust the list of qualified personnel affording each qualified employee the opportunity for assigned overtime.

As far as practicable, overtime shall be voluntary. Should there be no volunteer for a necessary overtime assignment, the supervisor shall direct the least senior qualified employee to perform the assigned work.

SECTION 6. MANDATORY OVERTIME: When a supervisor determines that overtime work is necessary for the protection of the safety, health, or welfare of the public, such overtime assignment for any employee in that supervisor's charge shall be mandatory.

SECTION 7. SEVERANCE COMPENSATION: Any employee who terminates employment with the City for any reason shall be paid coincident with his/her final paycheck for all accrued vacation/annual leave and all accrued compensatory time, if any. In the event of the employee's death, the payment shall be made to the employee's beneficiary. Any employee hired on or before January 1, 1998, who terminates employment with the City in good standing (*i.e.*, not terminated for cause and who has given the City a minimum of two (2) calendar weeks'

written notice of intent to terminate) shall also be compensated for accrued unused sick/health leave in accordance with the following schedule:

(a) Employees with less than five (5) years of employment with the City as calculated from his/her initial date of employment shall not be entitled to any compensation for unused, accrued sick/health leave;

(b) Any employee with more than five (5) years of employment but less than ten (10) years as calculated from his/her initial date of employment shall be compensated for all unused, accrued sick/health leave time at the rate of twenty-five percent (25%) of that employee's regular hourly wage rate at the time of termination for each hour or fractional hour of unused sick/health leave;

(c) Any employee with more than ten (10) years of employment but less than fifteen (15) years as calculated from his/her initial date of employment shall be compensated for all unused, accrued sick/health leave time at the rate of fifty percent (50%) of that employee's regular hourly wage rate at the time of termination for each hour or fractional hour of unused, accrued sick/health leave;

(d) Any employee with more than fifteen (15) years of employment but less than twenty (20) years as calculated from his/her initial date of employment shall be compensated for all unused, accrued sick/health leave time at the rate of seventy-five percent (75%) of that employee's regular hourly wage rate at the time of termination for each hour or fractional hour of unused, accrued sick/health leave;

(e) Any employee with more than twenty (20) years of employment as calculated from his/her initial date of employment shall be compensated for all unused, accrued sick/health leave time at the rate of one hundred percent (100%) of that employee's regular hourly wage rate

at the time of termination for each hour or fractional hour of unused, accrued sick/health leave. (Employees with twenty-five (25) years of employment, see Article VII, Section 1(b).)

Any employee hired between January 1, 1998, and December 31, 1998, who terminates employment with the City in good standing shall be compensated for those accrued unused sick/health leave hours in excess of six hundred forty (640) hours at the rate of fifty percent (50%) of his/her straight-time rate. Any employee hired on or after January 1, 1999, will not receive any compensation for unused sick/health leave, whether the employee has accrued sick leave in excess of six hundred forty (640) hours or not.

SECTION 8. PAY BY CLASSIFICATION: Any regular, full-time employee temporarily assigned to work in a higher classification shall be compensated at the regular hourly rate of the higher classification for the actual time in incremental one-quarter ( $\frac{1}{4}$ ) hours worked in that classification; provided that management has appointed said employee to the temporary assignment. Any regular, full-time, employee temporarily assigned to a lower classification shall be compensated at his/her normal regular hourly rate for such time during the work assignment in the lower position.

SECTION 9. TRAINING COMPENSATION: Any regular, full-time employee may request and be assigned to training in a position in a higher classification within the same department in which such employee is classified. Such employee shall be compensated at an hourly rate equal to ten percent (10%) less than the regularly hourly rate for that position during such time while in a training status. In no case, however, shall such employee's hourly wage rate be less than the normal hourly rate for the position regularly assigned. The granting of training and the frequency of assignment of job duties in a training status shall be at the discretion of the

supervisor of the position for which training is assigned. The City will provide schooling, training, and mock testing for employees anticipating promotional opportunities.

SECTION 10. SHIFT DIFFERENTIAL COMPENSATION: Any regular, full-time employee whose assigned hours of work in a regularly scheduled shift with work hours extending from 3:00 p.m. to 11:00 p.m. shall be compensated at the regular hourly rate plus a premium of nine (9) percent for actual hours worked during that time interval.

Any regular, full-time employee whose assigned hours of work in a regularly scheduled shift with work hours extending from 11:00 p.m. to 7:00 a.m., shall be compensated at the regular hourly rate, plus a premium of twelve (12) percent for actual hours worked during that time interval.

SECTION 11. CERTIFICATION AND LICENSE FEES:

(a) Certification Fees – Any employee required by their respective job duties or by law to attain and maintain certification in any skill level shall have all associated costs for fees, testing, training, and travel paid by the City. General Fund employees covered under this contract shall be entitled to compensation for up to three certifications at \$0.30/hr each. Certifications shall be approved by the City Manager (see Appendix B for current list). Utility fund employees shall be compensated in accordance with their established departmental certification scale.

(b) License Fees – Any employee required to attain and maintain a Commercial Driver's License (CDL) shall have all associated costs for fees, testing, training, and physical/medical examinations paid by the City.

SECTION 12. LONGEVITY COMPENSATION: In addition to other compensation, any regular, full-time employee shall be entitled to a "longevity" wage increase of \$0.04 per hour upon each of the employee's annual anniversary dates with the City.

## ARTICLE IX

### POSITION VACANCIES

SECTION 1. POSTING OF VACANCIES: If a vacancy occurs in any job other than the lowest classification within that department, and if the City intends to fill the vacancy, the job shall be first posted within ten (10) working days within the department. If the job is filled within the department, any other vacancy or vacancies will be filled first from within that department, if the employees are qualified for the vacancies. If a vacancy remains within the department, either in the lowest classification or above in any job position covered by this Agreement, and it is the intention of the City to fill the vacancy, the solicitation of applications by City employees who are permanent full-time or part-time shall be posted for no less than five (5) working days at all designated bulletin boards and a copy of such posting shall be provided to the designated Union representative, who shall also ensure that the job is posted. At the close of the posting period, if no suitable candidate for the vacancy is chosen from among City employees applying for such vacancy, or if no City employee makes application for such vacancy during the five (5) day posting period, then the City shall take whatever time is deemed necessary to solicit applications publicly for such vacancy and to fill such vacancy.

The City shall not be obligated to consider an application from a current City employee after the close of the five (5) day posting period.

The City will provide schooling and training and dry-run testing on the basis of anticipation for a trial basis for one year.

SECTION 2. APPLICATION FOR VACANCIES: Any employee who considers himself/herself qualified to fulfill the duties of a vacant position shall indicate in writing his bid for filling such vacancy after the posting of the position. All applicants for the posted position must meet the minimum qualification for that position, as defined in the job description.

SECTION 3. REVIEW: All applications shall be reviewed by the City Manager or his designee and the position shall be filled by that applicant who is determined by the City Manager or his designee to have the highest qualifications and is best suited to fill the vacancy. When qualifications and suitability are relatively equal among two or more competing City employees who are applicants for the position and selection is made from the competing City employees, then the vacancy shall be filled by giving preference to the employee with departmental seniority in which such vacancy occurs. Should no applicant have departmental seniority, then preference shall be based upon the applicant's total seniority, determined by the employee's total length of service to the City.

SECTION 4. PROBATIONARY PERIOD: All original appointments to permanent positions in the service of the City are made subject to a probationary period of six (6) continuous months, during which time the employee is precluded from participation as a Union member. The City Manager or his designee may extend the probationary period for any probationary employee up to an additional six (6) months.

SECTION 5. TRIAL PERIOD: Should an existing City employee be selected to fill an advertised vacancy, that employee may be required to serve a trial period not to exceed twenty-eight (28) calendar days. If such employee's proficiency and/or performance fails to be satisfactory during the trial period or such employee fails to satisfactorily complete a trial period, that employee shall be returned to his/her former position. When it is deemed appropriate, the

City Manager may extend an employee's trial period for any amount of time, not to exceed sixty (60) additional calendar work days.

SECTION 6. PROMOTION TO MANAGEMENT POSITION: An employee covered by this Agreement who is promoted to a management classification not represented in the contract who then later re-enters the bargaining unit shall not retain his/her accrued overall seniority for bumping rights, and shall not retain his/her accrued overall seniority for purposes of vacation scheduling. The employee shall retain overall seniority for purposes of vacation accrual.

## ARTICLE X

### SETTLEMENT OF DISPUTES

#### SECTION 1. GRIEVANCE PROCEDURE:

(a) Purpose – It shall be the policy of this City and the Union to promote harmonious employer/employee relations through a standard grievance procedure, which will have, as a basis, the qualities of fairness and rapidity.

(b) Definition – The term “grievance” shall include any complaint, dispute, or difference between the City and the Union or between the City and any employee covered by this Agreement, including the interpretation and/or application of and/or compliance with any provision of this Agreement.

(c) Representation – Any employee represented by this Agreement shall have the right to be present at all meetings or hearings where such employee has filed a grievance in accordance with these procedures. Further, such employee may be accompanied by Union representation.

(d) Disputes over discharge and disciplinary action involving demotion or suspension without pay – Any employee disputing disciplinary action involving demotion or suspension without pay or termination shall follow the procedure in Article IV (“Discipline or Discharge”).

SECTION 2. GRIEVANCE STEPS: The following steps shall be utilized in the processing of grievances. It is agreed between the parties that time is of the essence. If an employee fails to meet any of the time limits contained in this article, the grievance shall be considered dropped. If the City fails to meet any of the time limits contained in this article, the grievance will be considered settled based upon the employee's written request for remedy. Time limits shall be based upon the aggrieved employee's work schedule. All time limits may be extended by mutual agreement of the parties.

Step 1. Any employee covered by this Agreement who desires to file a grievance shall first raise such issue with his/her immediate supervisor either verbally or in writing within five (5) working days of knowledge of issue that gives rise to the grievance. If the issue is not resolved to the satisfaction of the employee in this manner, such employee may file a formal grievance.

Step 2. The formal grievance shall be filed in writing, using the appropriate form, with the employee's department head, within five (5) working days of the time the issue was first raised with the immediate supervisor. Upon submission of the written grievance, the department head shall meet with the employee and the representative within ten (10) days of receipt of the grievance to consider the matter. The department head will have three (3) working days thereafter to issue a written response to the grievance.

Step 3. If the grievance is not resolved at Step 2, the aggrieved employee may refer the grievance to the City Manager for final resolution. Such request shall be in writing

within five (5) working days of the department head's response. Within ten (10) working days of receiving the grievance, the City Manager shall issue a written preliminary decision.

Step 4. If the employee is not satisfied with the decision of the City Manager, following the issuance of the City Manager's preliminary decision, the employee may then request a hearing, such request being in writing, within ten (10) working days of the issuance of the preliminary decision. Should a hearing be requested, a final decision shall be issued within ten (10) working days of the hearing. The decision by the City Manager shall be final and binding and the highest decision available by this grievance procedure.

SECTION 3. GRIEVANCE COMMITTEE OR REPRESENTATIVE: Should a grievance reach Step 2 of the procedure provided, that Committee may be composed of the AFSCME Council 76 Representative, the Union President, the Chief Steward from the affected department, and the aggrieved party(ies). The Union President shall notify the City Manager of the Union Stewards and any subsequent replacement.

SECTION 4. REINSTATEMENT: In the event that an employee covered by this Agreement is found to have been discharged by the City Manager or otherwise demoted unjustly, the City Manager shall reinstate such employee and shall pay all compensation for lost wages for such lost regular work time and benefits at the employee's regular rate of pay. The employee shall also have any lost seniority restored.

SECTION 5. OTHER DISPUTES: Should a dispute or difference between the City and the Union occur which is not directly addressed in this contract, a committee consisting of the AFSCME Council 76 Representative, the Union President, and the Chief Steward of General Services shall petition the City Manager requesting a meeting. The petition shall describe the issue, state why they feel it should be addressed by the City Manager, and state what resolution

the Union is seeking. Upon receipt of the petition, the City Manager shall schedule a meeting as soon as is mutually convenient.

ARTICLE XI

WORKING CONDITIONS

SECTION 1. SAFETY COMMITTEE: The Union and the City have established a City-wide safety committee composed of three (3) Union and three (3) non-union employees. The safety committee is an advisory committee which reviews vehicle and other job-related personal injury accidents, assists the City Manager with ideas to eliminate future safety problems, and offers recommendations to address current safety issues.

SECTION 2. DEPARTMENT SAFETY RULES: The City has developed a City of Trinidad Safety Manual which contains safety rules that apply to all employees of the City. A violation of any of these safety rules, or any departmental safety rules, will subject the employee to the provisions of Article IV ("Discipline or Discharge").

SECTION 3. DRUG AND ALCOHOL TESTING:

(a) Introduction – The City proposes a program whereby on-duty employees who are unfit for work due to impairment by drug or alcohol use are required to submit to blood or urinalysis testing. The City recognizes that current urine screening tests for drugs indicate only prior exposure to a substance and cannot be used to determine when a substance was taken nor measure impairment.

The Union recognizes the problems associated with having impaired individuals on the job. The Union is concerned that any testing which occurs pursuant to this Agreement does not infringe on employees' privacy or other constitutional rights and that any testing or discipline is neither arbitrary, discriminatory, nor excessive.

The City will offer rehabilitative assistance to employees who either voluntarily admit a drug or alcohol problem or test positive for drugs or alcohol as a first offense. Such assistance

includes informing the employee about insurance coverage for rehabilitation or counseling under the City's insurance plan. The City will try to accommodate the employee by allowing temporary leave with job protection and the full continuance of employee benefits during such leave.

(b) Drug and/or Alcohol Testing for Cause – Drug or alcohol detection tests shall be given to employees who exhibit indications of impairment because of drugs or alcohol. Reasonable suspicion shall be based on objective facts that an employee may be impaired because of drugs or alcohol.

Supervisory personnel who have reasonable suspicion that an employee is at work with drugs or alcohol in his/her system are required to have the suspicion confirmed by a second supervisory level person. If the second supervisory person concurs with the supervisor's suspicion, the reasons for suspecting drug or alcohol use will be documented in writing.

The Union recognizes the City's interest in determining the cause of serious accidents and ensuring employee safety. Due to the time factor in obtaining a drug or alcohol test immediately following an accident and the inability to rule out drug or alcohol use without obtaining a urine or breath sample, employees involved in any serious workplace accident, as defined in this section, will be requested to submit to a for-cause drug and/or alcohol test.

"Serious workplace accident" means *any* accident that results in a fatality or injury requiring medical treatment, property damage estimated at \$3,000 or more, and/or damage to a motor vehicle that requires a vehicle to be towed from the accident site. Further, in the case of a motor vehicle accident, if no citation is given, the employee may still be tested if he/she could have contributed to the accident.

Following an accident, the employee will be tested as soon as possible, not to exceed eight (8) hours for alcohol testing and thirty-two (32) hours for drug testing. The employee involved in an accident must refrain from alcohol use for eight (8) hours following the accident or until he/she undergoes a post-accident test. Any employee who leaves the scene of the accident without justifiable explanation prior to submission to drug and alcohol testing will be considered to have refused the test and shall be subject to termination.

(c) Right to Representation – Management will notify a Union representative when an employee has been requested to submit to a drug or alcohol test, and the representative will be given the reason for the test. The request to submit to a substance test or the collection of the urine sample will not be contingent upon the Union representative's presence or involvement in the drug or alcohol testing process.

(d) Refusal to Submit to a Drug and/or Alcohol Detection Test – A refusal to submit to a drug or alcohol detection test does NOT lead to a presumption that the employee is under the influence of drugs or alcohol. However, refusal to submit to a drug and/or alcohol test may be considered insubordination and shall subject the employee to disciplinary action, up to and including termination.

(e) Testing Procedures – All drug and/or alcohol testing will be performed by a laboratory which meets the standards contained in the Department of Health and Human Services' MANDATORY GUIDELINES FOR FEDERAL WORKPLACE DRUG TESTING PROGRAMS. In addition, employees shall have a right to retain a portion of the specimen for testing at the employee's expense.

The Union will be involved in the selection and quality control oversight of the laboratory(ies) used for drug and/or alcohol detection.

(f) Employee Referrals – The parties agree that rehabilitative assistance is offered to any employee with a substance abuse problem. This policy will apply whether the employee voluntarily admits to a substance abuse problem or has a positive result for the first time on a drug or alcohol detection test.

The City will ensure that employee benefits include adequate coverage for services to assist employees with substance abuse problems.

(g) Discipline – Any employee found to be impaired (.04 BAC or higher) from the use of alcohol or who shall fail to pass a drug test shall be removed from duty and not allowed to return to duty until he/she passes a return-to-duty test. On the first occurrence, the employee shall not be subject to disciplinary action, except as otherwise set forth in this paragraph. On the second or any subsequent occurrence, the employee shall be subject to disciplinary action, up to and including termination. The failure of any employee to pass a return-to-duty test within six (6) months of removal from duty because of use of alcohol or failure to pass a drug test shall be cause for termination. Any such employee who returns to duty following passage of a return-to-duty test shall be required to submit to random drug and/or alcohol testing for a period of one (1) year following return to duty. If the employee fails to pass a random test, the employee shall be removed from duty and shall be subject to disciplinary action, up to and including termination. In any case, employees who are required to drive vehicles and/or equipment during the performance of their regular job duties must possess the appropriate Colorado Driver's License. Any loss of driving privileges is cause for termination, except that any such employee who loses his/her legal privilege to drive for a period of not more than twelve (12) months shall not be subject to termination of employment for such loss of driving privilege on the first occasion. The conditions of continued employment would have to be specified.

(h) City Responsibility – In the event that any employee or group of employees files or commences any claim or action before any administrative agency or court against the Union, its officers, or representatives for any alleged act or omission related to the application, interpretation, or enforcement of the City's drug testing program, the City shall indemnify the Union for any judgments, awards, fees, or costs, and hold the Union, its officers, and representatives harmless in the event of any such claim or action.

(i) Compliance with Applicable Laws – Notwithstanding the provisions of this Section, the City and the Union agree to abide by any applicable drug testing provision imposed by the State of Colorado or the federal government.

## ARTICLE XII

### POSTING OF NOTICES

SECTION 1. PLACES OF NOTICE POSTING: The Union membership shall be provided a bulletin board for the posting of all notices pertinent to the Union business of employees under the jurisdiction of the Union. Union stewards and officers may use such bulletin boards for posting of notices of meetings, negotiations with regard to agreements or grievances, or other Union/City-related matters and official communications from the Union to its members or from the City to the Union.

SECTION 2. DISTRIBUTION OF AGREEMENT COPIES: The City agrees to provide each regular, full-time employee, upon completion of the required probationary period, a copy of this Agreement in effect between the City and the Union. One copy of this Agreement and attachments shall be available in each department.

## ARTICLE XIII

### MISCELLANEOUS BENEFITS

SECTION 1. MEDICAL/HEALTH INSURANCE: The City agrees to make available to employees covered by this Agreement group medical/health insurance. The City further agrees to provide payment toward monthly premiums of each employee's medical/health insurance coverage as follows: (i) for the brand name drug prescription plan, the City will pay seventy-four 74% of calendar year 2015 medical/health insurance rates; or (ii) for the generic prescription plan, the City will provide payment of seventy-nine percent (79%) of the employee's premium. Since the present terms are based on the current health insurance costs, said terms shall remain in effect until the end of the current insurance coverage year, which is December 31st of every year. Thereafter, the level of City payment of employee premiums shall be determined by the City, based on the dollar amount of employee premiums and availability of funding. An Advisory Committee of three (3) Union representatives shall be established to make recommendations as to medical/health insurance coverage. The Committee will have full access to all insurance bids as soon as they are submitted to the City. All final determinations as to medical/health insurance coverage shall be made by City Council.

SECTION 2. REPLACEMENT OF PERSONAL LOSSES: Personal articles or equipment which are damaged or destroyed while an employee is performing his/her assigned duties shall be compensated for by the City on a pro-rated basis, so long as such loss was not a result of carelessness, neglect, or normal wear and tear of the article or item damaged or destroyed. This section shall not apply to personal motor vehicles, unless said vehicle was being used for work purposes at the time of damage or destruction.

SECTION 3. CLOTHING ALLOWANCE: Those qualified employees whose job duties require them to work out of doors shall receive compensation in the amount of one hundred fifty dollars (\$150.00) annually per employee (payable coincident with the first pay period in the month of February), which sum shall constitute the full amount of compensation to offset expense(s) incurred by such employees to purchase clothing outerwear (*i.e.*, coveralls, *etc.*) necessary for protection from weather elements.

The following personnel in the departments of the City of Trinidad, represented by AFSCME Contract 1074-A, shall be entitled to clothing allowance compensation:

City Maintenance Garage	All personnel
Electronic Data Processing	All meter readers
Street and Bridge Department	All personnel
Parks and Recreation Department	All personnel
Power and Light Department	All line crew personnel All power plant personnel
Natural Gas Department	All personnel
Water Department	All personnel
Sewer Department	All personnel

Personnel in the above-identified departments shall not be excused from the satisfactory performance of their respective job duties should they fail to purchase, maintain, and wear appropriate outerwear during inclement weather conditions.

Loss or damage of outerwear by any employee provided compensation herein shall be solely the responsibility of that employee.

SECTION 4. EMPLOYEE RETIREMENT: Employees covered by this Agreement shall participate in the retirement plan of the City, pursuant to which employees shall be entitled to one-hundred percent (100%) vesting upon completion of four (4) years of employment. Copies of the retirement plan shall be made available by the City to each employee.

SECTION 5. IMMUNIZATION FOR HIGH-RISK EMPLOYEES: Employees shall have, at their discretion, immunization shots made available by the City or appropriate health agency. Immunization shots may include one or more of the following:

- (a) Tetanus
- (b) Cholera
- (c) Hepatitis B

SECTION 6. HEALTH CLUB MEMBERSHIP: The City shall, in six (6) month increments, reimburse employees in the amount of twenty dollars (\$20.00) per month for health club membership fees upon submittal of receipts.

#### ARTICLE XIV

##### NON-DISCRIMINATION

SECTION 1. NON-DISCRIMINATION CLAUSE: The parties to this Agreement shall not discriminate against any person or employee because of disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry; but, with regard to a disability, it is not a discriminatory or an unfair employment practice for the City to refuse to hire, to discharge, or to promote or demote a person if there is no reasonable accommodation that the City can make with regard to the disability, the disability actually disqualifies the person from employment, and the disability has a significant impact on employment.

**ARTICLE XV**

**SAVING CLAUSE**

SECTION 1. SAVING CLAUSE: Should any Article, Section, or portion thereof, of this Agreement be held unlawful and unenforceable by any court of competent jurisdiction, such decision of the Court shall apply only to the specific Article, Section, or portion thereof directly specified in the decision; upon the issuance of such a decision, the parties agree immediately to negotiate a substitute for the invalidated Article, Section, or portion thereof.

**ARTICLE XVI**

**DURATION, RE-NEGOTIATION, AND ADOPTION OF AGREEMENT**

SECTION 1. EFFECTIVE DATE OF AGREEMENT: This Agreement shall become effective and shall be binding on both parties hereto as of January 1, 2015, and shall remain in full force and effect until December 31, 2017.

SECTION 2. WAGE/BENEFIT RE-OPENER: Either party may re-open this Agreement on the anniversary date of the effective date for the purpose of re-negotiating the hourly wage rates and up to any three (3) additional issues, by giving written notice to the other party sixty (60) to ninety (90) days before that anniversary date.

The parties agree to review current salary surveys available to municipalities and union organizations at the time re-openers are considered. The intent will be to determine if salaries paid to employees are comparable to like municipal employees and consider adjustments to those that are not, if possible.

This Agreement contains the full and complete agreement between Union and the City. No agreements, promises, or inducements have been made by either the Union or the City other than as appears in this Agreement.

SECTION 3. MATTERS NOT RE-OPENED: Any matter not re-opened in accordance with this Article shall remain in full force and effect until a new agreement is signed.

SECTION 4. OPENING BY MUTUAL AGREEMENT: In the event both parties agree, any Article or Section may be re-opened at any time during the life of this Agreement upon thirty (30) days' written notice to the other party. Negotiations may proceed immediately upon reaching such agreement.

SECTION 5. ADOPTION BY CITY COUNCIL RATIFICATION: Following the signing of this Agreement by duly authorized officers and business representatives of the Union and duly authorized officials of the City, the City of Trinidad shall adopt, by motion and majority vote, the provisions of this Agreement.

IN WITNESS WHEREOF, the parties named have signed their names and affixed the signatures of their duly authorized representatives on this.

LOCAL UNION #1074-A, AFSCME  
AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES,  
AFL-CIO

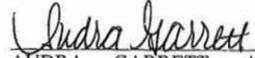
  
\_\_\_\_\_  
PRESIDENT - LOCAL #1074 - A

  
\_\_\_\_\_  
BUSINESS REPRESENTATIVE

CITY OF TRINIDAD, COLORADO

\_\_\_\_\_  
JOSEPH A. REORDA, MAYOR

\_\_\_\_\_  
DONA VALENCICH, ACTING  
CITY CLERK

  
\_\_\_\_\_  
AUDRA GARRETT, ACTING  
CITY MANAGER

**APPENDIX A**

**POSITION & WAGE SCHEDULE**

(Wage Rates Per Hour)

2015 Base Wage reflects an agreed-to annual increase of \$1.00/hour

	2014	2015		2014	2015
<u>Finance Department</u>			<u>Gas Department</u>		
Meter Reader II	\$ 15.38	\$ 16.38	Laborer	\$ 15.38	\$ 16.38
Head Meter Reader	\$ 18.22	\$ 19.22	Skilled Laborer	\$ 16.25	\$ 17.25
<u>General Maintenance</u>			<u>Asst. Foreman/Catholic</u>		
Store Keeper	\$ 16.28	\$ 17.28	Protection Tech.	\$ 24.00	\$ 25.00
Mechanic II	\$ 16.81	\$ 17.81	Gas Dist. Tech I	\$ 18.73	\$ 19.73
<u>Sports/Recreation</u>			<u>Gas Dist. Tech II</u>		
Custodian/Rec Aide II	\$ 14.87	\$ 15.87	Gas Dist. Tech III	\$ 20.48	\$ 21.48
<u>Power &amp; Light Dept.</u>			<u>Meter Customer</u>		
Plant Operator	\$ 18.31	\$ 18.31	Serviceman	\$ 20.60	\$ 21.60
Maintenance Mechanic	\$ 19.89	\$ 19.89	<u>Landfill - Street/Bridge</u>		
Store Keeper/Lineman 2	\$ 19.98	\$ 20.98	Gatekeeper	\$ 14.87	\$ 15.87
Electric Groundman	\$ 18.28	\$ 19.28	Maintenance Tech II	\$ 14.87	\$ 15.87
Meter Serviceman	\$ 20.38	\$ 21.38	Operator II	\$ 16.25	\$ 17.25
Elect. System Tech	\$ 20.72	\$ 21.72	Operator I	\$ 16.82	\$ 17.82
Asst. Line Supervisor	\$ 21.92	\$ 22.92	<u>Parks/Boulevards</u>		
Journey Lineman	\$ 21.63	\$ 22.63	Maintenance Tech II	\$ 14.52	\$ 15.52
Lineman One	\$ 18.33	\$ 19.33	Maintenance Tech I	\$ 15.02	\$ 16.02
Lineman Two	\$ 18.85	\$ 19.85	<u>Sewer Department</u>		
Lineman Three	\$ 19.98	\$ 20.98	Laborer	\$ 14.87	\$ 15.87
Lineman Four	\$ 20.70	\$ 21.70	Skilled Laborer	\$ 15.74	\$ 16.74
<u>Water Department</u>			<u>Entry Operator</u>		
Laborer	\$ 14.87	\$ 15.87	Class D Operator	\$ 17.20	\$ 18.20
Skilled Laborer	\$ 15.73	\$ 16.73	Class C Operator	\$ 17.95	\$ 18.95
Rural Meter Serviceman	\$ 17.19	\$ 18.19	Class B Operator	\$ 18.76	\$ 19.76
Senior Meter Serviceman	\$ 17.57	\$ 18.57	Class A Operator	\$ 19.82	\$ 20.82
Water Dist. Tech I	\$ 17.95	\$ 18.95			
Water Dist. Tech II	\$ 18.82	\$ 19.82			
Water Dist. Tech III	\$ 19.81	\$ 20.81			

**APPENDIX B**

GENERAL MAINTENANCE

Pegysis

Flagger

Air Conditioning

Emergency Vehicle Repair

Diesel Engine Repair

FINANCE

Flagger

STREET & BRIDGE AND LANDFILL

Landfill Scale

Flagger

Traffic Control

Backhoe

Loader

Motor Grader

PARKS

Sprinkler

Tree Care

Small Engine Repair

Mowing

Irrigation

Flagger

Playground Safety

Arboriculture



**COLLECTIVE BARGAINING AGREEMENT**  
**BETWEEN**  
**CITY OF TRINIDAD**  
**AND**  
**LOCAL UNION NO. 1074**  
**OF**  
**AMERICAN FEDERATION OF STATE, COUNTY**  
**AND**  
**MUNICIPAL EMPLOYEES**  
  
**JANUARY 1, 2015**  
**TO**  
**DECEMBER 31, 2017**  
  
**POLICE AGREEMENT**  
**1074-B**

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## ARTICLE I

### UNION RECOGNITION AND SECURITY

SECTION 1. RECOGNITION: The City of Trinidad recognizes AFSCME Local No. 1074 as the sole and exclusive bargaining agency for all City of Trinidad employees working for the City Police Department and represented by this Agreement. The positions recognized in the Agreement are listed in Appendix A.

SECTION 2. UNION SECURITY: This Agreement shall be effective for all employees who are members in good standing as of the effective date of this Agreement. Existing employees working in a job classification covered under this Agreement may join the Union after successful completion of a probationary period. Any new employee working in a job classification covered under this Agreement and hired after January 1, 1980, shall join the Union after successful completion of a probationary period.

SECTION 3. PAYROLL DEDUCTION OF DUES: All employees who are members of the Union or who become members under conditions of this Agreement shall have their dues deducted monthly from their paycheck issued nearest the end of the month payable for the following month, together with such other assessments, initiation, reinstatement or deductions, which shall have been certified by the Treasurer of the Union to the City sufficiently in advance of the payroll deduction to permit the proper deduction of the amount specified.

The City agrees to deduct from the wages of any employee who is a member of the Union a "PEOPLE" deduction as provided for in a written authorization. Such authorization must be executed by the employee and may be revoked by the employee at any time by giving written notice to both the City and the Union. The City agrees to remit any deductions made pursuant to this provision promptly to the Union together with an itemized statement showing the name of each

employee from whose pay such deductions have been made and the amount deducted during the period covered by the remittance.

SECTION 4. MEETING ON UNION BUSINESS: The appropriate Union Steward and/or AFSCME Council No. 76 Representative may confer with any employee covered by this Agreement on the job site during business hours concerning any grievance or other matter covered by this contract. Such conference shall be with the prior consent of the supervisor of the affected employee(s) and limited to the amount of time necessary for that purpose and shall be arranged so as not to interfere with other employees in the work unit.

SECTION 5. INDEMNIFICATION OF CITY: The Union shall indemnify the City of Trinidad against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken by the City for the purpose of complying with any of the provisions of this Agreement.

#### SECTION 6. DEFINITIONS:

(a) Regular Employee – An employee who has been hired or promoted to fill a permanent position with the City, when such position is represented by this Agreement. Such regular employee must have satisfactorily completed the required probationary period.

(i) Full-Time Employee – An employee whose established job assignment and duties require at least an eight (8) hour workday or a forty (40) hour work week.

(ii) Part-Time Employee – An employee whose established job assignment and duties require less than an eight (8) hour work day or less than a forty (40) hour work week.

(b) Provisional Employee – An employee who has been hired to fill a provisional position within the City, which position shall have a special assignment not covered by any other position recognized by this Agreement. The filling of a provisional position shall be limited to the

established duration of the special assignment or for a period of time not to exceed a six (6) month period. Should it be determined by the City Manager, a provisional position may be extended for an additional six (6) months; however, in no case shall the total duration of a provisional position, including the initial appointment and any extension, exceed a total of twelve (12) months.

(c) Probationary Employee – An employee who has been hired in anticipation of filling a permanent position and who must satisfactorily complete a probationary period of a minimum of six (6) months for non-sworn personnel and twelve (12) months for sworn personnel before being classed as a regular employee.

(d) Temporary/Seasonal Employee – An employee who has been hired to fill a temporary or seasonal position in the City. The filling of a temporary/seasonal position may be for the same job duties or similar job duties as a regular employee; however, a temporary/seasonal assignment may not exceed six (6) continuous months in duration.

(e) Continuous Operations Personnel – Employee(s) assigned to job duties and/or positions with the Police Department which require operating schedules on a twenty-four (24) hour basis.

(f) Extended Operations Personnel – Employee(s) assigned to job duties and/or positions with the Police Department which require operating schedules beyond the typical workday hours.

(g) Work Year – One calendar year of time from the initial date of employment of a regular, full-time City employee.

(h) Temporary Assignment – The assignment of a City employee by his supervisor to a work position other than the position to which he was hired.

(i) Overall Seniority – The prioritized order for calculation of rights and privileges afforded by this Agreement. Calculation of such priority shall be determined for each regular employee by that employee's respective date of hire in a position recognized by this Agreement. For regular, part-time personnel, the prioritized order shall be based upon such employee's proportional length of employment as compared with the standard work year of 2,080 hours.

(j) Departmental Seniority – The prioritized order for calculation of rights and privileges afforded by this Agreement. Calculation of such priority shall be determined for each regular employee by the employee's respective date of assignment within a recognized City Department. For regular, part-time personnel the prioritized order shall be based upon such employee's proportional length of service in the Department to which he or she is assigned.

(k) Immediate Family – Immediate Family is defined for the purpose of this Agreement as the employee's spouse or domestic partner (*i.e.*, a person with whom the employee's life in interdependent and with whom the employee shares a mutual residence), parents, step-parents, guardians, children, step-children, grandparents, grandchildren, brothers and sisters, brothers-in-law and sisters-in-law, and the employee's spouse's parents.

(l) Flex Time – Flex time is an alternative work schedule that may exceed eight (8) hours per day, such as four (4) days at ten (10) hours, but may not exceed forty (40) regular hours per week.

## ARTICLE II

### RIGHTS OF MANAGEMENT

SECTION 1. MANAGEMENT PREROGATIVES: The Union agrees that the direction of the working force, including the right to hire, suspend, or discharge for cause, transfer for legitimate reasons, relieve employees from duty because of lack of work, or cutbacks because of

budget requirements, is vested exclusively in the City of Trinidad and in management, subject to the limitations as may be contained in State Statutes, the City Charter, City Ordinance, Federal and State Court decisions, and the terms of this Agreement.

### ARTICLE III

#### LAYOFF/FIRE-HIRE PROCEDURE

SECTION 1. LAYOFF NOTICE: In case of layoff, notice of such layoff shall be given to the affected employee(s) in written form, either by personal service by his or her supervisor or by certified mail. In either case, a minimum of ten (10) workdays of notice shall be given prior to the effective date of layoff. Copies of such layoff notice for any employees covered by this Agreement shall be provided to the appropriate Union representatives.

SECTION 2. EMPLOYEE LAYOFF SELECTION: The City shall have the sole authority to determine which positions shall be affected by employee layoff. Determination of any employee(s) affected by layoff shall be on the basis of departmental seniority for the position(s).

SECTION 3. EXERCISE OF BUMPING RIGHTS: If an employee in a position that has been selected for layoff is determined to be qualified for a position in a lesser classification within the Police Department, and such employee has Departmental Seniority over any other employee in such lesser classification, then the senior employee may exercise bumping rights. The determination of qualifications of any employee wishing to exercise bumping rights into a department other than the Department in which that employee is assigned shall be made by the City based upon the employee's previous successful experience in the lesser classification within the Department and satisfactory completion of a trial period as set forth in Article IX, Section 5.

SECTION 4. BUMPING RIGHTS TIME LIMIT: The exercise of bumping rights by an employee shall be initiated in writing by such employee within five (5) calendar days from the date

of receipt of a layoff notice, or such rights shall be forfeited. Any employee displaced through the bumping rights process may exercise the same rights with a lesser position.

SECTION 5. REHIRE PROCEDURE: If the City should re-establish a position previously eliminated by layoff within one (1) year from the date such position was eliminated, the former employee previously in that position shall be given five (5) calendar days' written notice to indicate a desire to fill the position. Such notice shall be by certified mail to the former employee's last known address.

Should such former employee indicate a desire to return to employment with the City, such former employee must be available to report to work within ten (10) calendar days of his response to the position.

Any employee returning to work with the City under the provisions of this Article shall be subject to the trial period as set forth in Article IX, Section 5.

SECTION 6. REINSTATEMENT OF SENIORITY: Any employee who terminates employment with the Police Department as a result of layoff, or caused by the exercise of bumping rights by a senior employee, and who returns to employment with the City to any position other than the position previously held by such employee within one (1) year of the date of termination, shall retain his or her seniority with respect to rates of accrual of benefits.

Seniority, relative to future layoff, shall be based upon the employee's date of re-employment and only to the position to which the employee has been re-employed.

Any employee who terminates employment in good standing, other than by layoff, with the Police Department shall forfeit all seniority at the time of termination. Should such employee be subsequently re-employed by the City in any capacity, that employee will be considered to be a new employee in all respects as if never previously employed by the City.

## ARTICLE IV

### DISCIPLINE OR DISCHARGE

SECTION 1. IMPOSITION OF DISCIPLINE: Employer shall not discipline any employee without just cause. While disciplinary actions will be progressive, the employer may impose discipline at a level which is appropriate to the offense committed.

SECTION 2. PRE-DISCIPLINARY MEETING:

(1) Before a suspension, demotion or termination occurs, a pre-disciplinary meeting shall be held. A pre-disciplinary meeting shall not be required for an oral or written disciplinary action notice or disciplinary probation or prior to placing Union member on investigatory leave.

(2) The purposes of the pre-disciplinary meeting are the following:

(a) To allow the Union member to correct any errors in City of Trinidad information or facts upon which it proposes to take disciplinary action; and

(b) To allow the Union member to tell his or her side of the story and present any mitigating information as to why the disciplinary action should not be taken.

(3) The written notice of contemplation of disciplinary action and pre-disciplinary meeting shall contain the following:

(a) That disciplinary action is contemplated;

(b) The specific conduct or omission committed by the Union member, which the City of Trinidad believes is in violation of its Personnel Policy, City of Trinidad rules, regulations or practices, or other applicable federal, state or local law;

(c) The purpose of the pre-disciplinary meeting as described in subsection 2 above;

(d) The date, time and location of the pre-disciplinary meeting; and

(e) That the Union member is entitled to representation by a disinterested union steward or AFSCME Representative of their choice at the meeting, which does not include attorneys.

(4) The notice of the pre-disciplinary meeting will be given to the Union member in person with a certificate of hand delivery, or certificate by courier delivered to his/her last address of record in the Payroll Department, or sent by first-class certified/registered U. S. Mail with a certificate of mailing, five (5) working days before the meeting is to occur.

(5) Because the meeting is not "adversarial," the following shall not occur:

(a) justification to the Union member or his/her representative for Management's views;

(b) testimony by or cross examination of witnesses;

(c) testimony under oath; or

(d) recording of the proceedings by a court reporter or a tape recorder, or any other recording device.

(6) Failure of a supervisor to comply strictly with the requirements in this subsection B shall not constitute a basis for reversing a disciplinary action upon grievance, arbitration, or mediation.

SECTION 3. DUE PROCESS. If the discipline is the result of a criminal investigation that may be charged as a felony, the department head will be allowed to forego the pre-disciplinary meeting until charges are filed or until the matter is resolved and the employee is found guilty or pleads guilty to a felony.

The City shall discharge an employee only upon a finding of just cause. Such finding may be based upon one or more of the following grounds:

- (a) Incompetence, incapacity, or inefficiency in performance of duties;
- (b) Violation of an official rule, regulation, or order;
- (c) Failure to obey any lawful or reasonable direction when such action amounts to insubordination or serious breach of discipline;
- (d) Conviction of a felony;
- (e) Willful or repeated negligence in performing duties;
- (f) Conduct unbecoming an employee of the City;
- (g) Conduct subversive to the laws of the State or Nation;
- (h) Misuse of public funds; or
- (i) Falsifying reports or records.

Discharge shall be effective immediately upon service of written notice by the employee's supervisor, or upon receipt of written notice by certified mail. Such notice shall specify the finding(s) upon which the termination is based.

SECTION 4. UNSAFE ACTS. No employee shall be disciplined for refusal to perform an unsafe act or one for which the employee is not adequately trained. Unsafe acts include, but are not limited to, violations of the jointly-developed Safety Manual.

SECTION 5. DISCIPLINARY PROCEDURE: The Disciplinary Procedure shall be limited to the following:

- (a) Oral Reprimand – If a supervisor has reason to issue an oral reprimand to any employee in his charge, such reprimand shall be issued at a place and time away from other employees and the public. If such oral reprimand has been logged or documented by the supervisor, it shall be kept in the subject employee's personnel file for a period of one (1) year from

the date of the reprimand. If no similar occurrence takes place during that time period, the documentation shall be purged from the file.

- (b) Written Reprimand – If a supervisor has reason to issue a written reprimand to an employee in his charge, such reprimand shall be issued in written letter form stating the infraction of the employee and outlining corrective measures the employee should follow to avoid recurrence. A copy of the letter shall be kept in the employee's personnel file for a period of three (3) years from the date of the reprimand. If no similar occurrence takes place during that time period, the documentation shall be purged from the file.

- (c) Suspension Without Pay – If a supervisor has reason to issue a suspension without pay to an employee in his charge, such suspension shall be issued in written letter form stating the infraction of the employee, the corrective measures the employee should follow to avoid recurrence, and the duration and effective date of suspension. Such suspension shall allow three (3) working days' notice to be given prior to the start of such suspension. A copy of the suspension shall be kept in the employee's personnel file for a period of five (5) years from the date of suspension. If no similar occurrence takes place during that time period, the documentation shall be purged from the file.

When the City has reason to suspend or discharge an employee covered under this Agreement, the City will provide a written statement to the employee indicating the reasons for such consideration. The written statement shall be considered given to the employee if personally delivered or, if unable to be personally delivered, after five (5) working days have elapsed from the date of certified mailing to the employee's last address of record in the Payroll Department.

- (d) Demotion to Lower Classification – If the Supervisor has reason to demote an employee in his charge, such demotion shall be issued in written letter form stating the infraction of

the employee, the corrective measures the employee should follow to avoid re-occurrence, and the effective date of the demotion. Such demotion shall allow five (5) working days' notice to be given prior to the start of such demotion. A copy of the demotion shall be kept in the employee's personnel file for a period of five (5) years from the date of the demotion. If no similar occurrence takes place during the time period, the documentation shall be purged from the file.

SECTION 6. FLAGRANT VIOLATION: Any employee may be suspended immediately for conduct prejudicial to the City, public, or fellow employees, if the public safety and/or welfare are affected.

SECTION 7. PROCEDURE FOR DISCIPLINE INVOLVING DEMOTION, SUSPENSION WITHOUT PAY, OR DISCHARGE:

(a) Steps – The following steps shall be utilized if an employee wishes to dispute the disciplinary action taken against him or her where the disciplinary action involved either a demotion, suspension without pay, or discharge:

(i) Step 1 – The department head will provide to the employee or employees notification of offenses involved and the type of disciplinary action taken. If the employee disagrees with the discipline administered he or she will, within ten (10) calendar days of the disciplinary action, file a written grievance with the department head and may obtain the assistance of the Union representative in doing so. The department head will schedule a meeting within ten (10) calendar days with the employee and the Union representative. Following the meeting, the department head will provide a decision to the employee and the Union representative within five (5) calendar days.

(ii) Step 2 – If the grievance is not resolved at Step 1, the aggrieved employee may refer the grievance to the City Manager for a hearing, such request being in writing, within ten

(10) working days of the issuance of the department head's decision. Should a hearing be requested, a decision shall be issued within ten (10) working days of the hearing.

(iii) Step 3 – If no agreement is reached at Step 2, the employee or a Union representative or his designee may, within five (5) work days of receipt of the Step 3 answer, request mediation by sending a letter to the Federal Mediation and Conciliation Services, with a copy to the City. Mediation will be set as soon as possible after the request. If the issue is not resolved after mediation, the employee will have ten (10) days to file a request to AAA requesting a list of seven (7) qualified arbitrators. Once a list is received, the parties will select the arbitrator by alternately striking one name from the list until only one name remains. The order of striking will be alternated between the parties. On a case-by-case basis, the parties may mutually agree on an arbitrator without utilizing the AAA process to select an arbitrator.

Hearings shall take place at a location mutually agreed upon by the parties. At the earliest possible time, the arbitrator shall conduct a hearing in order to hear testimony, receive evidence, and consider arguments. The arbitrator will base the decision solely on the evidence presented at the hearing, and if possible will issue a written decision within thirty (30) days of the close of the hearing. The arbitrator shall have no power to add to, subtract from, alter, or amend the terms of this agreement, or to expand the issue to anything beyond what the parties place before him or her; nor shall the arbitrator substitute his/her judgment for that of the City unless the City's actions have violated specific terms of this Agreement.

The hearings shall be closed upon the completion of testimony. The arbitrator shall render his or her decision as soon after the close of the hearings as may be feasible. If the arbitrator is unable to make his or her decision within thirty (30) days of the close of the hearing, he or she shall promptly advise the parties of the reasons for the delay and the date when his or her decision will

be submitted. The arbitrator's decision shall be final and shall govern on the dispute before him or her. Expenses and fees incident to the service of an arbitrator shall be paid equally by the City and AFSCME Local 1074.

(b) Right of Withdrawal – The designated Union representative or his designee has full authority to proceed with or withdraw the grievance at any step of this procedure.

(c) Right to Be Present – The employee shall have the right to be present at each step of the grievance procedure.

(d) Finality of Settlements – Settlements reached at any step of the grievance procedure shall be final and binding on both parties and shall not be subject to further proceedings under this Article except by mutual agreement. Settlements reached shall be in writing and signed by appropriate representatives of the Union and the City.

(e) Waiver of Time Limits – By agreement, the parties may waive the time limits set forth in each step of the grievance procedure.

(f) Precedents – Settlements or withdrawals at any step shall not constitute a precedent in the handling of other complaints or grievances.

SECTION 6. DISPATCH TAPES: In the event that an allegation is made against an employee which could result in disciplinary action concerning, in whole or in part, a conversation allegedly participated in by the employee or statements alleged to have been made by the employee, which conversation or statements have been recorded on the Police Department dispatch tapes, the Police Chief shall provide the employee with a copy of the tape.

## ARTICLE V HOURS OF WORK

SECTION 1. WORK SHIFT: The normal work shift for all regular, full-time employees shall be determined by the department head based on needs of the department and manpower available.

Employees may be scheduled for eight (8) hour work shifts, ten (10) hour work shifts, or twelve (12) hour work shifts, or any combination of the three. Regular, full-time employees covered by this Agreement shall be assigned no more than eighty (80) work hours within a two-week pay period. The normal work period will be fourteen (14) consecutive days.

All normal work shift hours shall be consecutive except for meal and break periods. Meal periods shall be set by the Supervisor and maintained consistently on a departmental basis. Break periods shall be set by the Supervisor, but in no case more often than once each half of the work shift and no longer than fifteen (15) minutes in duration. When work demands require, the meal period and break periods may be modified by the supervisor.

Assignment of work shifts for sworn personnel shall be in accordance with a team assignment under the supervision of a Sergeant. Rotation of assigned shifts shall be scheduled to ensure equitable distribution of shift hours.

(a) Flex Time – Employees on flex time schedules shall work forty (40) hours per week with shifts of ten (10) hours per day, four (4) consecutive days per week.

(b) Work Shift – Assignment of work shifts for sworn personnel shall be in accordance with a team assignment under the supervision of a Sergeant. Two (2) month period rotation of assigned shifts shall be scheduled to assure equitable distribution of shift differential premium.

SECTION 2. FIRST SHIFT DAY: The first day of an assigned work shift in each calendar week for all regular, full-time employees shall constitute the first shift day for the purpose of computing the work week.

SECTION 3. EMERGENCY/CALL BACK HOURS: Any regular, full-time employee who is called back to work before or after a normal work shift without a prior notice of at least twenty-four (24) hours shall be entitled to emergency/call back compensation. Such compensation shall be computed at two (2) times the normal hourly rate for each employee for actual time worked. Actual time worked shall be computed to the next one-quarter (¼) hour. Employees shall be compensated for a minimum of one (1) hour of emergency/call back pay for each occurrence. The work shift shall be identified by time card record. Compensation for assigned, scheduled overtime with notice of twenty-four (24) hours, or any overtime acquired on a volunteer basis, shall be computed at one and one-half (1 ½) the normal hourly rate.

SECTION 4. COMPENSATORY TIME: Employees may accrue up to forty (40) hours of compensatory time. Employees will be advised by his/her supervisor with at least two (2) weeks' notice to arrange to reduce the time by scheduling time off. Employees will be given a choice of days available to schedule the necessary time off.

**ARTICLE VI  
HOLIDAYS**

SECTION 1. COMPENSATION IN LIEU OF HOLIDAYS: Employees assigned to work as continuous operations personnel or extended operations personnel shall receive monetary compensation in lieu of holidays. Payment of such compensation shall be made in one lump sum, less appropriate deductions and taxes, at the time of issuance of payroll for the second half of the

month of November of each year. At no time will the value of holiday compensation be less than two and one-half (2 ½) times ninety-six (96) hours of current hourly wage.

Where a qualified employee has been employed or assigned in a continuous operations or extended operation position less than the full calendar year, such employee shall receive compensation calculated on a pro-rated basis from the date of assignment to the position.

SECTION 2. PERSONAL DAY: In addition to the payment in lieu of holidays, four (4) work shifts per year of paid leave, known as personal leave days, shall be granted to each regular, full-time employee of the City. Each employee must be employed by the City as of January 1st of the ensuing calendar year to qualify for such personal leave days. The utilization of such personal leave days shall be subject to the operational needs of the department. The personal leave days will be treated the same as a vacation day in that time and one-half overtime pay/compensation will be allowed for replacement manpower to fill the vacancy created by the personal leave days.

**ARTICLE VII  
LEAVE BENEFITS**

SECTION 1. VACATION/ANNUAL LEAVE:

(a) Rate of Accrual – Each regular, full-time employee shall accrue basic vacation/annual leave on the basis of one (1) work shift for each month of completed employment.

Each regular, full-time employee who has completed a minimum of five (5) years of employment with the City shall be granted one (1) additional work shift for each year of completed employment up to a maximum of eight (8) additional shifts. The total of accrued vacation/annual leave for any regular, full-time employee shall not exceed twenty (20) work shifts within an employment year.

The beginning date of accrual of vacation/annual leave shall be based upon the initial date of employment as a regular, full-time employee.

With respect to accrual of annual vacation leave by any employee hired after January 1, 1998, after three hundred twenty (320) hours are accrued, no further hours of vacation leave will be accrued until the employee drops below three hundred twenty (320) hours of unused vacation leave.

(b) Longevity Compensation – Each regular, full-time employee attaining twenty-five (25) years of employment with the City shall be granted longevity compensation in the form of one (1) additional day of leave for each year of employment beyond twenty-five (25) years, up to a maximum of five (5) additional longevity compensation days.

(c) Use of Accrued Leave – Each regular, full-time employee shall be allowed to use his/her accrued vacation/annual leave based upon a Departmental schedule to be determined by the last working day of February of each year. The priority of scheduled vacation/annual leave shall be on the basis of Departmental Seniority and subject to the manpower needs of each respective department to which the regular, full-time employee is assigned. In no case, however, shall any employee be allowed to schedule more than twelve (12) work shifts consecutively unless every member of that department has had an opportunity to schedule his/her basic vacation/annual leave.

In determining a departmental vacation/annual leave schedule, the police chief may adjust the assigned days of scheduled annual leave for any employee with a written notification to such employee at least two (2) calendar weeks prior to the first day of assigned vacation.

Any regular, full-time employee who may be on probation or a trial period shall not be allowed to utilize accrued vacation/annual leave.

(d) Rescheduling of Accrued Vacation/Annual Leave – Should operational emergencies or other circumstances occur which preclude an employee from utilizing scheduled vacation/annual leave, such employee shall be allowed to reschedule such vacation/annual leave within the same calendar year, subject to the departmental work schedule needs.

## SECTION 2. SICK/HEALTH LEAVE:

(a) Rate of Accrual – Each regular, full-time employee shall accrue sick/health leave on the basis of eight (8) hours for each month of completed employment with the City. Sick/health leave may be accrued by regular, full-time employees hired on or before January 1, 1998, to a maximum of seven hundred twenty (720) hours. Sick/health leave may be accrued by regular, full-time employees hired after January 1, 1998, to a maximum of six hundred forty (640) hours.

Any regular, full-time employee hired on or before January 1, 1998, accumulating in excess of seven hundred twenty (720) hours shall be compensated for all excess, accrued hours at his/her regular/hourly rate of pay at the end of each calendar year. Any regular full-time employee hired between January 1, 1998, and December 31, 1998, accumulating in excess of six hundred forty (640) hours shall be compensated for all excess, accrued hours at the rate of fifty percent (50%) of his/her regularly hourly rate of pay at the end of each calendar year. Any regular, full-time employee hired on or after January 1, 1999, will accumulate hours in excess of the maximum six hundred forty (640) hours but will not be compensated for any accrued sick leave. In exchange for the removal of the cap, the Union agrees to waive compensation for any accrued sick leave benefits for full time employees hired on or after January 1, 1999, in future contracts.

(b) Use of Accrued Sick/Health Leave – Each regular, full-time employee shall be allowed to utilize sick/health leave for bonafide illness, injury, or medical care of that employee or that employee's spouse, children, or step-children. Any use of sick/health leave in excess of two

(2) consecutive work shifts or more than three (3) full shifts in the same calendar month shall require the employee to provide to his/her supervisor written verification of illness or injury issued by a medical authority (*i.e.*, doctor, nurse, clinical technician, *etc.*)

(c) Notification to Supervisor – Each regular, full-time employee shall notify his/her shift commander at least two (2) hours prior to the start of such employee's work shift. Any deviation from the two (2) hour notification shall require justification by the employee to his/her supervisor. Should an employee become ill on the job, such employee shall only be assessed for the actual time missed, recorded to the nearest one-half (½) hour. Failure of any regular, full-time employee to provide proper notification to his/her supervisor shall be cause for denial of sick/health leave benefits, and such employee shall be subject to disciplinary action.

SECTION 3. MILITARY LEAVE: The City recognizes and acknowledges State and Federal laws regarding rights and benefits due any employee in military service to this Country.

SECTION 4. JURY DUTY/WITNESS LEAVE: Any regular, full-time employee subpoenaed as a witness in any legal proceeding involving the City or called to jury duty shall notify his/her supervisor as soon as possible upon receipt of such notice and shall provide a copy of such notice to his/her supervisor. Such employee shall not have any time charged against accrued leave. Such employee shall be guaranteed one (1) hour minimum at one and one-half (1 ½) times the hourly wage. Where an employee is paid a fee for jury duty or a witness fee, such fee shall be assigned over to the City. Failure to do so shall result in such employee being charged for the time away from the job consumed by such absence. Where notice of jury duty or subpoena identifies a specific hour at which time such employee must appear, the supervisor shall allow that employee to leave his assigned job duties with sufficient time to report as mandated by the notice. Upon dismissal from such requirement, as specified by the notice, the employee shall return to his job

duties if his/her assigned work shift has not concluded. Appearance time in court beyond the regularly scheduled work shift shall be compensated as overtime.

Not to be confused with this allowance, any regular, full-time employee summoned or subpoenaed to a legal proceeding, either civil or criminal, not related to his/her job duties, shall only be allowed the necessary time away from his/her job, upon showing of proper documentation to his/her supervisor. Such necessary time shall be charged to the employee's accrued vacation/annual leave.

SECTION 5. FUNERAL LEAVE: In the event of a death in the Immediate Family (as defined in Article I, Section 6) of any employee, such employee shall be granted a leave of absence with pay not to exceed four (4) working days. Such leave shall be for the purpose of making household adjustments or to attend funeral services. If additional time is needed, sick leave and/or vacation/annual leave, at the employee's discretion, may be used for this purpose.

SECTION 6. MEDICAL LEAVE: The City recognizes and acknowledges the rights of employees covered by this Agreement through the Family and Medical Leave Act of 1993.

SECTION 7. LEAVE OF ABSENCE WITHOUT PAY OR BENEFITS: The City Manager may authorize, upon the written request of any regular, full-time employee, a leave of absence without pay or benefits. Such leave of absence without pay or benefits shall be considered only upon the presentation of documented medical advice or care prepared by a doctor.

The duration of any granted leave of absence without pay shall not exceed six (6) months. During such time the employee shall not accrue any benefits; however, the City shall continue to provide health insurance benefits in accordance with Article XIII, Section I.

SECTION 8. INJURY LEAVE: Any employee who suffers an injury or illness on the job shall be subject to the Workers' Compensation Act of Colorado. Until such time as a claim is

determined to be compensable pursuant to Workers' Compensation Act, the time away from the job shall be charged to such employee's accrued leave time, beginning with accrued sick leave and followed by vacation/annual leave.

Upon determination that the claim is compensable pursuant to the Workers' Compensation Act, the leave time consumed shall be restored to that employee's account of accrued leave time. A copy of the written determination of acceptance of liability shall be provided to the injured employee. The City of Trinidad will continue to pay the injured worker 100% of their regular salary for six (6) months, whereby the employee would otherwise be entitled to temporary disability benefits (66 2/3%) from the City's Workers' Compensation carrier. After the first six (6) months have elapsed, the employee shall begin receiving temporary disability benefits (66 2/3%) directly from the City's Workers' Compensation carrier, rather than 100% of their salary from the City. Once the first six (6) months of injury leave has expired, the employee will not continue to accrue benefits except for medical/health insurance, for which the employee will be responsible for his/her share.

An employee incapacitated due to a job-related injury or illness who cannot perform the essential functions of his/her job with or without reasonable accommodation and who fails to return to work after twelve (12) months of injury leave is subject to termination. Prior to termination, the City Manager will review the employee's current medical ability and prognosis, and provide those employees covered under the Fire & Police Pension Association (FPPA) whatever documentation is required to ensure that the employee is not denied any benefit(s) that the employee is otherwise entitled to under the employee's FPPA coverage.

An employee who seeks to return to work from a job-related injury or illness is required to provide a "fitness for return to duty" report from his/her physician. If the employee returns from

injury leave and within six (6) months becomes unable to work due in whole or in part to a re-injury or aggravation of the prior injury, the employee will be allowed to use the remainder of the original twelve (12) month injury leave period. Under this paragraph, the re-injured employee will not be allowed a second twelve (12) month leave period and will be subject to termination at the end of the original twelve (12) months of leave. However, prior to termination, the City Manager will again review the employee's current condition and prognosis.

SECTION 9. UNION CONTRACT NEGOTIATIONS LEAVE: Negotiations for future changes or replacement of the current Union contract shall be conducted at times and places mutually agreed upon between the City and Union designated negotiators. The members of the Union negotiations team shall be released from their respective job duties without loss of pay during the times of such negotiations, where such negotiations schedule coincides with the regular scheduled work hours of any such employee. It is recognized that the City and the Union may designate its representatives; provided, however, that the number of Union representatives shall not exceed five (5) except by agreement.

SECTION 10. ADMINISTRATIVE LEAVE FOR UNION BUSINESS: Employees, upon request to the City Manager, will be granted reasonable administrative leave to carry out official Union business as elected delegates or appointed representatives.

SECTION 11. LIGHT DUTY STATUS: If, as a result of a service or non-service connected injury or illness, an officer is temporarily disabled and unable to efficiently perform the duties of his/her position, but is able to efficiently perform the duties of some other position within the department which is compatible with the officer's skills and abilities, then the Chief of Police or City Manager may refer the officer for placement in such departmental position for a period not to exceed three (3) months. Upon approval of the Chief of Police or City Manager, the officer may be

so employed within his/her medical/physical restrictions. Such assignment shall be called light duty.

Light duty assignment shall have the following restrictions: (i) light duty shall not be used to displace all or part of a full-time position within the department; (ii) only one person shall be on light duty at any point in time with the Chief of Police or City Manager given full discretion as to whom will perform the light duty work, and the Union shall have no recourse through the grievance procedure to challenge this decision; and (iii) an officer must have at least one (1) year of City service to be eligible for light duty assignment.

SECTION 12. ADMINISTRATIVE LEAVE OF ABSENCE: The City and the Union recognize that it may be necessary to place an employee on administrative leave of absence, with pay, when allegations of criminal misconduct, or allegations of a flagrant violation of this Agreement or a City policy, warrant such an action.

SECTION 13. LEAVE SHARING: The City agrees to allow officers within the Police Department to transfer annual leave, sick leave, or compensatory time to other employee(s) under the following conditions: (i) the transfer is subject to the approval of the Chief of Police or City Manager; (ii) the officer receiving the transfer ("receiving officer") must have at least one year of City service; (iii) all personal accrued leave must be exhausted and the officer must not be receiving short-term disability, long-term disability, or workers' compensation benefits; (iv) if the receiving officer does not disclose the receipt of the benefits in the prior sentence, he/she shall be subject to discipline; (v) the receiving officer or family member (spouse, child, or parent) must be experiencing a catastrophic illness or injury to qualify; and (vi) an hour transferred to the receiving officer will be paid at the receiving officer's rate of pay at the time the leave is taken. Such transfer

requests shall not be unreasonably denied by the Chief of Police and will be subject to review by the City Manager.

This article does not in any way restrict the discretion of the Chief of Police to approve or not approve the leave of any officer.

## ARTICLE VIII

### WAGES AND PAY PROVISIONS

SECTION 1. WAGES AND RATES: The wage rate on an hourly basis for any job classification covered by this Agreement shall be set forth according to the Wage Rates identified in Appendix A to this contract.

SECTION 2. PAY PERIODS: The City shall pay the appropriate wages to each respective employee covered by this Agreement, subject to the required and certified payroll deduction. The issuance of payroll shall be on a bi-weekly basis occurring twenty-six (26) times during each calendar year.

SECTION 3. OVERTIME COMPENSATION: Compensation for assigned, scheduled overtime shall be computed on the basis of one and one-half (1 ½) times the affected employee's regular hourly wage rate for actual time worked in excess of eight and one-quarter (8 ¼) hours in a calendar day.

Work on the sixth day shall be paid at one and one-half (1 ½) times the affected employee's regular hourly wage. Work on the seventh day shall be paid at two (2) times the affected employee's regular hourly wage. For purposes of consideration of double time pay, if an employee is required to work consecutive shifts during a work week, the consecutive shift shall be counted as a day.

SECTION 4. ASSIGNMENT OF OVERTIME: Selection of employees for assigned overtime shall be on the basis of seniority. The assignment of overtime shall be on a rotational basis, beginning with the senior-most employee. Succeeding overtime assignments shall exhaust the list of qualified personnel, affording each employee the opportunity for assigned overtime.

As far as practicable, overtime shall be voluntary. Should there be no volunteer for a necessary overtime assignment, the supervisor shall direct the least senior employee to perform the assigned work.

SECTION 5. MANDATORY OVERTIME: When a supervisor determines that overtime work is necessary for the protection of the safety, health, or welfare of the public, such overtime assignment for any employee in that supervisor's charge shall be mandatory.

SECTION 6. SEVERANCE COMPENSATION: Any employee who terminates employment with the City for any reason shall be paid coincident with his/her final paycheck for all accrued vacation/annual leave and all accrued compensatory time, if any. In the event of the employee's death, the payment shall be made to the employee's beneficiary. Any employee hired on or before January 1, 1998, who terminates employment with the City in good standing (*i.e.*, not terminated for cause and who has given the City a minimum of two (2) calendar weeks' written notice of intent to terminate) shall also be compensated for accrued unused annual sick/health leave in accordance with the following schedule:

(a) Employees with less than five (5) years of employment with the City as calculated from his/her initial date of employment shall not be entitled to any compensation for unused, accrued sick/health leave;

(b) Any employee with more than five (5) years of employment but less than ten (10) years as calculated from his/her initial date of employment shall be compensated for all unused,

accrued sick/health leave time at the rate of twenty-five percent (25%) of that employee's regular hourly wage rate at the time of termination for each hour or fractional hour of unused sick/health leave;

(c) Any employee with more than ten (10) years of employment but less than fifteen (15) years as calculated from his/her initial date of employment shall be compensated for all unused, accrued sick/health leave time at the rate of fifty percent (50%) of that employee's regular hourly wage rate at the time of termination for each hour or fractional hour of unused, accrued sick/health leave;

(d) Any employee with more than fifteen (15) years of employment but less than twenty (20) years as calculated from his/her initial date of employment shall be compensated for all unused, accrued sick/health leave time at the rate of seventy-five percent (75%) of that employee's regular hourly wage rate at the time of termination for each hour or fractional hour of unused, accrued sick/health leave;

(e) Any employee with more than twenty (20) years of employment as calculated from his/her initial date of employment shall be compensated for all unused, accrued sick/health leave time at the rate of one hundred percent (100%) of that employee's regular hourly wage rate at the time of termination for each hour or fractional hour of unused, accrued sick/health leave. (Employees with twenty-five (25) years of employment, see Article VII, Section 1(b).)

Any employee, hired between January 1, 1998, and December 31, 1998, who terminates employment with the City in good standing shall be compensated for those accrued unused sick leave hours in excess of six hundred forty (640) hours at the rate of fifty percent (50%) of his/her straight-time rate. Any employee hired on or after January 1, 1999, will not receive any

compensation for unused sick leave, whether the employee has accrued sick leave in excess of six hundred forty (640) hours or not.

SECTION 7. PAY BY CLASSIFICATION: Any regular, full-time employee temporarily assigned to work in a higher classification shall be compensated at the regular hourly rate of the higher classification for the actual time in incremental one-quarter (¼) hours worked in that classification. Any regular full-time, employee temporarily assigned to a lower classification shall be compensated at his/her normal regular hourly rate for such time during the work assignment in the lower position.

SECTION 8. SHIFT DIFFERENTIAL COMPENSATION: Any regular, full-time employee working consistent eight (8) hour work shifts whose assigned hours of work in a regularly scheduled shift includes work hours after the hour of 3:00 p.m., but before 11:00 p.m, shall be compensated at the regular hourly rate plus a premium of nine (9) percent for actual hours worked during that time interval.

Any regular, full-time employee whose assigned hours of work in a regularly scheduled shift includes work hours after 11:00 p.m., but before the hour of 7:00 a.m., shall be compensated at the regular hourly rate, plus a premium of twelve (12) percent for actual hours worked during that time interval.

Any regular, full-time employee working varied hours/schedules under the declared fourteen (14) day work period, shall be compensated for all regular hours worked at the regular hourly rate plus a premium of seven (7) percent, the average of shift differential compensation paid to employees for shift work, so as to ensure equitable distribution of shift differential premium without regard to rotation of assigned shifts.

SECTION 9. SPECIALIZED ASSIGNMENT OF PAY: Any regular, full-time employee temporarily assigned to one of the following duty assignments:

- (a) School Resource Officer
- (b) Field Training Officer (Active Instructor only to receive 4% compensation)
- (c) Firearms Instructor
- (d) K-9
- (e) Accident Investigation Certification
- (f) PPCT Instructor
- (g) Animal Control Officer
- (h) SWAT
- (i) EMD - Dispatch

shall be compensated at four (4) percent above the employee's current wage for the actual time (computed in increments of one-quarter (¼) hours) worked in that classification. Any regular, full-time employee temporarily assigned to a lower classification shall be compensated at his/her regular, hourly rate for such time during the work assignment in the lower position.

SECTION 10. LONGEVITY COMPENSATION: In addition to other compensation, any regular, full-time employee shall be entitled to a "longevity" wage increase of \$0.04 per hour upon each of the employee's annual anniversary dates with the City.

SECTION 11. CERTIFICATIONS AND LICENSE FEES:

(a) Certification Fees – Any employee required by their respective job duties or by law to attain and maintain certification in any skill level shall have all associated costs for fees, testing, training, and travel paid by the City.

(b) Certification Pay - All employees covered under this contract shall be entitled to compensation for up to three certifications at \$0.30/hr each. Certifications shall be approved by the City Manager. Those certifications approved for compensation are as follows:

DRE (Drug Recognition Expert)

ARIDE (Advanced Roadside Impairment Detection and Enforcement)

NIMS/ICS (National Incident Management Systems/Incident Command Systems)

BNSF/GCCI (Burlington Northern Grade Crossing Crash Investigation)

Negotiations

Interrogation

Less lethal weapons

SFST Instructor (Standard Field Sobriety Testing)

Intox Instructor

Taser Instructor

NCIC/CCIC – non-dispatch

Armorer

Sniper

EOC (Emergency Operations Command)

Firearms Instructor (Not Active Instructor)

SART (Sexual Assault Response Team)

Law Enforcement Spanish

Range Safety Officer

Bicycle patrol

Elder abuse reporting

Below 100 Instructor

DISPATCH

EOC (Emergency Operations Command)

CTO (Certified Training Officer)

Emergency Operations Center Interface

Emergency Response to Terrorism

EOC Functional Exercise

EFD (Emergency Fire Dispatch)

ETC (Emergency Telecommunication)

**ARTICLE IX**

**POSITION VACANCIES**

SECTION 1. POSTING OF PROMOTIONAL VACANCIES: Vacancies in the Sergeant's classification shall be posted in the department for five (5) days, so that eligible officers may apply for the promotion. In the absence of applications or passing scores by applicants, the City shall advertise for applicants. Officers on approved leave shall be notified by the Department on the promotional opportunity. In the event the City Manager decides not to fill the position, the Union shall be notified in writing.

SECTION 2. FILLING OF VACANCIES:

(a) Posting of Vacancies – When it has been determined that a vacancy exists in the rank of police officer, the City shall simultaneously announce that vacancy in-house and advertise as necessary.

(b) Procedures for Transfers – Any qualified City employee may apply for the position of police officer if they pass all five (5) parts of the test. Their name shall be placed on the eligibility list.

(c) Procedure for Promotion:

(i) Notice of vacancies in the department shall be posted in accordance with Section 1 of this Article.

(ii) Eligible applicants shall be required to submit to a testing procedure in accordance with the testing procedure most recently adopted. This procedure may include, but is not limited to, an oral interview and/or presentation; a written test or paper preparation; and/or an assessment center.

(iii) Applicants will be ranked according to score(s) received from the oral interview and/or presentation; the written test or paper preparation; and/or an assessment center.

(iv) The position shall be filled by the most qualified applicant. Should applicants be substantially equal in ranking score, seniority shall prevail.

SECTION 3. PROBATIONARY PERIOD:

(a) All original appointments to a position in the service of the Trinidad Police Department are made subject to a probationary period of six (6) continuous months for non-sworn and twelve (12) months for sworn personnel, during which time the employee's performance is subject to review of his/her competency to carry out the assignments of the position.

(b) Prior to the completion of the probationary period, the employee shall be notified in writing if he/she has not successfully completed the probationary period.

(c) The City Manager or his/her designee can extend the probationary period for a maximum of an additional full term, one (1) time only, if necessary, at which time the City Manager must make a decision as to whether or not the employee shall become permanent.

(d) Should the City Manager or his/her designee decide that an employee cannot pass the probationary period, for whatever reason, the employee can be terminated without recourse or prejudice.

SECTION 4. APPEAL: If an employee who has applied for a vacant position does not receive it, but considers himself more qualified, and/or better suited than the employee placed in the position, such employee may appeal through the Grievance Procedure under this Agreement.

SECTION 5. TRIAL PERIOD. Non-sworn employees selected shall serve a ninety (90) calendar day trial period and sworn employees selected shall serve a one hundred and eighty (180) calendar day period. If the employee fails to successfully complete the trial period, he shall return

to his former position, subject to his right of appeal on failure to complete the trial period in accordance with Grievance Procedure.

The City Manager can extend the trial period for an additional amount of time if deemed necessary, not to exceed ninety (90) calendar days or one hundred and eighty (180) days, respectively.

SECTION 6. PROMOTION TO MANAGEMENT POSITION: An employee covered by this Agreement who is promoted to a management classification not represented in the contract, who then later re-enters the bargaining unit, shall not retain his accrued overall seniority for bumping rights, and shall not retain his/her accrued overall seniority for purposes of vacation scheduling, but the employee shall retain overall seniority for purposes of vacation accrual.

## ARTICLE X

### SETTLEMENT OF DISPUTES

#### SECTION 1. GRIEVANCE PROCEDURE:

(a) Purpose – It shall be the policy of this City and the Union to promote harmonious employer/employee relations through a standard grievance procedure, which will have, as a basis, the qualities of fairness and rapidity.

(b) Definition – The term “grievance” shall include any complaint, dispute, or difference between the City and the Union or between the City and any employee covered by this Agreement, including the interpretation and/or application of and/or compliance with any provision of this Agreement.

(c) Representation – Any employee represented by this Agreement shall have the right to be present at all meetings or hearings where such employee has filed a grievance in accordance with these procedures. Further, such employee may be accompanied by Union representation.

(d) Disputes over discharge and disciplinary action involving demotion or suspension without pay – Any employee disputing disciplinary action involving demotion or suspension without pay or termination shall follow the procedure in Article IV (“Discipline or Discharge”).

SECTION 2. GRIEVANCE STEPS: The following steps shall be utilized in the processing of grievances. It is agreed between the parties that time is of the essence. If an employee fails to meet any of the time limits contained in this article, the grievance shall be considered dropped. If the City fails to meet any of the time limits contained in this article, the grievance will be considered settled based upon the employee’s written request for remedy. Time limits shall be based upon the aggrieved employee’s work schedule. All time limits may be extended by mutual agreement of the parties.

Step 1. Any employee covered by this Agreement who desires to file a grievance shall first raise such issue with his/her immediate supervisor either verbally or in writing within five (5) working days of knowledge of issue that gives rise to the grievance. If the issue is not resolved to the satisfaction of the employee in this manner, such employee may file a formal grievance.

Step 2. The formal grievance shall be filed in writing, using the appropriate form, with the employee’s department head, within five (5) working days of the time the issue was first raised with the immediate supervisor. Upon submission of the written grievance, the department head shall meet with the employee and the representative within ten (10) days of receipt of the grievance to consider the matter. The department head will have three (3) working days thereafter to issue a written response to the grievance.

Step 3. If the grievance is not resolved at Step 2, the aggrieved employee may refer the grievance to the City Manager for final resolution. Such request shall be in writing

within five (5) working days of the department head's response. Within ten (10) working days of receiving the grievance, the City Manager shall issue a written preliminary decision.

Step 4. If the employee is not satisfied with the decision of the City Manager, following the issuance of the City Manager's preliminary decision, the employee may then request a hearing, such request being in writing, within ten (10) working days of the issuance of the preliminary decision. Should a hearing be requested, a final decision shall be issued within ten (10) working days of the hearing. The decision by the City Manager shall be final and binding and the highest decision available by this grievance procedure.

SECTION 3. GRIEVANCE COMMITTEE OR REPRESENTATIVE: Should a grievance reach Step 2 of the procedure provided, the Grievance Committee may be composed of the AFSCME Council No. 76 representative, Union President, the Chief Steward from the affected department, and the aggrieved party(ies). The Union President shall notify the City Manager of the Union Stewards and any subsequent replacement.

SECTION 4. REINSTATEMENT: In the event that an employee covered by this Agreement is found to have been discharged by the City Manager or otherwise demoted unjustly, the City Manager shall reinstate such employee and shall pay all compensation for lost wages for such lost regular work time and benefits at the employee's regular rate of pay. The employee shall also have any lost seniority restored.

SECTION 5. COMPLAINTS OR CHARGES FROM OUTSIDE THE DEPARTMENT: This section covers procedures to be followed when a citizen or anyone outside the department makes a complaint other than criminal charges against a Police Department employee. The employee shall have the right to Union representation at any point in the following procedure. When a citizen or any person outside the Department makes a written non-criminal complaint

against the employee who is a Union member (regardless of the way in which the charge is made), the charge shall be reviewed first by the employee and his immediate supervisor.

SECTION 6. OTHER DISPUTES: Should a dispute or difference between the City and the Union occur which is not directly addressed in this contract, a committee consisting of the AFSCME Council 76 Representative, Union President, and Chief Steward of the Police Department shall petition the City Manager requesting a meeting. The petition shall describe the issue, state why they feel it should be addressed by the City Manager, and state what resolution the Union is seeking. Upon receipt of the petition, the City Manager shall schedule a meeting as soon as is mutually convenient.

## ARTICLE XI

### WORKING CONDITIONS

SECTION 1. SAFETY COMMITTEE: The Union and the City have established a City-wide Safety Committee composed of three (3) Union and three (3) non-union employees. The safety committee is an advisory committee which reviews vehicle and other job-related personal injury accidents, assists the City Manager with ideas to eliminate future safety problems, and offers recommendations to address current safety issues.

The Safety Committee shall also sit in judgment to determine the basis of negligence in the case of any injury on the job to any employee covered by this Agreement.

The Committee shall be assigned the responsibility of reviewing employee's documented complaints that equipment the employee is required to use is unsafe and hazardous. The committee will expeditiously make recommendations to the Chief and Manager, with copies to the Union. No employee shall be required to use equipment that he feels is unsafe until a determination and

recommendation has been made by the Safety Committee. Unreasonable and/or frivolous complaints shall be subject to disciplinary action.

#### SECTION 2. DEPARTMENT SAFETY RULES:

(a) City of Trinidad Safety Manual – The City has developed a City of Trinidad Safety Manual, which contains safety rules which apply to all employees of the City. Violation of any of these safety rules, or any department safety rules, will subject the employee to the provisions of Article IV (“Discipline or Discharge”).

(b) Weapon Safety – All sworn personnel shall be required to qualify semi-annually on a modified P.P.C. course with their own service weapon in the caliber specified by the Department. The City shall provide ammunition for the semi-annual qualification. To the extent possible, the City shall provide practice ammunition to sworn personnel. Persons not qualifying semi-annually shall be subject to disciplinary action.

#### SECTION 3. IN-SERVICE TRAINING PROCEDURES:

(a) In-Service Training – All Police personnel shall be required to attend quarterly in-service training. There shall be scheduled sufficient hours per annum in-service training in subjects pertinent to law enforcement (*i.e.*, new laws, survival techniques, dealing with the public, *etc.*) to maintain state certification requirements. The Chief shall be responsible for the conduct of such in-service training but may assign to a subordinate.

(b) Training Materials – The Police Chief shall make announcements of training opportunities and related materials and publications available to all Police personnel in a conspicuous and easily available area.

#### SECTION 4. MISCELLANEOUS:

(a) Practice Ammunition – Fifty (50) rounds of practice ammunition shall be made available to each officer per month.

(b) First Aid Kits – Each police unit (car) shall carry a first-aid kit furnished by the City. Such kit shall include ambu-face masks for CPR procedures.

SECTION 5. DRUG AND ALCOHOL TESTING:

(a) Introduction – The City proposes a program whereby on-duty employees who are unfit for work due to impairment by drug or alcohol use are required to submit to blood or urinalysis testing. The City recognizes that current urine screening tests for drugs indicate only prior exposure to a substance and cannot be used to determine when a substance was taken nor measure impairment.

The Union recognizes the problems associated with having impaired individuals on the job. The Union is concerned that any testing which occurs pursuant to this Agreement does not infringe on employees' privacy or other constitutional rights and that any testing or discipline is neither arbitrary, discriminatory, nor excessive.

The City will offer rehabilitative assistance to employees who either voluntarily admit a drug or alcohol problem or test positive for drugs or alcohol as a first offense. Such assistance includes informing the employee about insurance coverage for rehabilitation or counseling under the City's insurance plan. The City will try to accommodate the employee by allowing temporary leave with job protection and the full continuance of employee benefits during such leave.

(b) Drug and/or Alcohol Testing for Cause – Drug or alcohol detection tests shall be given to employees who exhibit indications of impairment because of drugs or alcohol. Reasonable suspicion shall be based on objective facts that an employee may be impaired because of drugs or alcohol.

Supervisory personnel who have reasonable suspicion that an employee is at work with drugs or alcohol in his/her system are required to have the suspicion confirmed by a second

supervisory level person. If the second supervisory person concurs with the supervisor's suspicion, the reasons for suspecting drug or alcohol use will be documented in writing.

The Union recognizes the City's interest in determining the cause of serious accidents and ensuring employee safety. Due to the time factor in obtaining a drug or alcohol test immediately following an accident and the inability to rule out drug or alcohol use without obtaining a urine or breath sample, employees involved in any serious workplace accident, as defined in this section, will be requested to submit to a for-cause drug and/or alcohol test.

“Serious workplace accident” means any accident that results in a fatality or injury requiring medical treatment, property damage estimated at \$3,000 or more, and/or damage to a motor vehicle that requires a vehicle to be towed from the accident site. Further, in the case of a motor vehicle accident, if no citation is given, the employee may still be tested if he/she could have contributed to the accident.

Following an accident, the employee will be tested as soon as possible, not to exceed eight (8) hours for alcohol testing and thirty-two (32) hours for drug testing. The employee involved in an accident must refrain from alcohol use for eight (8) hours following the accident or until he/she undergoes a post-accident test. Any employee who leaves the scene of the accident without justifiable explanation prior to submission to drug and alcohol testing will be considered to have refused the test and shall be subject to termination.

(c) Right to Representation – Management will notify a Union representative when an employee has been requested to submit to a drug or alcohol test, and the representative will be given the reason for the test. The request to submit to a substance test or the collection of the urine sample will not be contingent upon the Union representative's presence or involvement in the drug or alcohol testing process.

(d) Refusal to Submit to a Drug and/or Alcohol Detection Test – A refusal to submit to a drug or alcohol detection test does NOT lead to a presumption that the employee is under the influence of drugs or alcohol. However, refusal to submit to a drug and/or alcohol test may be considered insubordination and shall subject the employee to disciplinary action, up to and including termination.

(e) Testing Procedures – All drug and/or alcohol testing will be performed by a laboratory which meets the standards contained in the Department of Health and Human Services' MANDATORY GUIDELINES FOR FEDERAL WORKPLACE DRUG TESTING PROGRAMS. In addition, employees shall have a right to retain a portion of the specimen for testing at the employee's expense.

The Union will be involved in the selection and quality control oversight of the laboratory(ies) used for drug and/or alcohol detection.

(f) Employee Referrals – The parties agree that rehabilitative assistance is offered to any employee with a substance abuse problem. This policy will apply whether the employee voluntarily admits to a substance abuse problem or has a positive result for the first time on a drug or alcohol detection test.

The City will ensure that employee benefits include adequate coverage for services to assist employees with substance abuse problems.

(g) Discipline – Any employee found to be impaired (.04 BAC or higher) from the use of alcohol or who shall fail to pass a drug test shall be removed from duty and not allowed to return to duty until he/she passes a return-to-duty test. On the first occurrence, the employee shall not be subject to disciplinary action, except as otherwise set forth in this paragraph. On the second or any subsequent occurrence, the employee shall be subject to disciplinary action, up to and including

termination. The failure of any employee to pass a return-to-duty test within six (6) months of removal from duty because of use of alcohol or failure to pass a drug test shall be cause for termination. Any such employee who returns to duty following passage of a return-to-duty test shall be required to submit to random drug and/or alcohol testing for a period of one (1) year following return to duty. If the employee fails to pass a random test, the employee shall be removed from duty and shall be subject to disciplinary action, up to and including termination. In any case, employees who are required to drive vehicles and/or equipment during the performance of their regular job duties must possess the appropriate Colorado Driver's License. Any loss of driving privileges is cause for termination, except that any such employee who loses his/her legal privilege to drive for a period of not more than twelve (12) months shall not be subject to termination of employment for such loss of driving privilege on the first occasion. The conditions of continued employment would have to be specified.

(h) City Responsibility – In the event that any employee or group of employees files or commences any claim or action before any administrative agency or court against the Union, its officers, or representatives for any alleged act or omission related to the application, interpretation, or enforcement of the City's drug testing program, the City shall indemnify the Union for any judgments, awards, fees, or costs, and hold the Union, its officers, and representatives harmless in the event of any such claim or action.

(i) Compliance with Applicable Laws – Notwithstanding the provisions of this Section, the City and the Union agree to abide by any applicable drug testing provision imposed by the State of Colorado or the federal government.

## ARTICLE XII

### POSTING OF NOTICES

SECTION 1. PLACES OF NOTICE POSTING: The Union membership shall be provided a bulletin board for the posting of all notices pertinent to the Union business of employees under the jurisdiction of the Union. Union stewards and officers may use such bulletin boards for posting of notices of meetings, negotiations with regard to agreements or grievances, or other Union/City-related matters and official communications from the Union to its members or from the City to the Union.

SECTION 2. DISTRIBUTION OF AGREEMENT COPIES: The City agrees to provide each regular, full-time employee, upon completion of the required probationary period, a copy of this Agreement in effect between the City and the Union. One copy of this Agreement and attachments shall be available in each department.

## ARTICLE XIII

### MISCELLANEOUS BENEFITS

SECTION 1. MEDICAL/HEALTH INSURANCE: The City agrees to make available to employees covered by this Agreement group medical/health insurance. The City further agrees to provide payment toward monthly premiums of each employee's medical/health insurance coverage as follows: (i) for the brand name drug prescription plan, the City will pay seventy-four 74% of calendar year 2015 medical/health insurance rates; or (ii) for the generic prescription plan, the City will provide payment of seventy-nine percent (79%) of the employee's premium. Since the present terms are based on the current health insurance costs, said terms shall remain in effect until the end of the current insurance coverage year, which is December 31st of every year. Thereafter, the level of City payment of employee premiums shall be determined by the City, based on the dollar

amount of employee premiums and availability of funding. An Advisory Committee of three (3) Union representatives shall be established to make recommendations as to medical/health insurance coverage. The Committee will have full access to all insurance bids as soon as they are submitted to the City. All final determinations as to medical/health insurance coverage shall be made by City Council.

SECTION 2. UNIFORMS: Sworn personnel are required to wear the Department's sanctioned uniform. The City shall pay towards the purchase of such uniform to each officer a uniform allowance of five hundred dollars (\$500.00) in May of each year. Uniforms and items of uniforms are to be worn for the normal scope and course of duty only.

Sworn personnel who successfully complete the one-year probationary period will be reimbursed up to three hundred dollars (\$300.00) for the purchase of their weapon. Department Policy will determine appropriate caliber as well as receipt necessary.

SECTION 3. REPLACEMENT OF PERSONAL LOSSES: Personal articles or equipment which are damaged or destroyed while an employee is performing his/her assigned duties shall be compensated for by the City on a pro-rated basis, so long as such loss was not a result of carelessness, neglect, or normal wear and tear of the article or item damaged or destroyed. This section shall not apply to personal motor vehicles, unless said vehicle was being used for work purposes at the time of damage or destruction.

SECTION 4. EMPLOYEE ASSISTANCE PLAN: The City and the Union recognize the value of counseling and assistance programs to those employees who have personal problems which interfere with the employee's efficient and productive performance of his/her job duties and responsibilities. The City and the Union will therefore aid such employees who request assistance

with such problems. The City and the Union will encourage the employee to seek professional assistance where necessary.

(a) Confidentiality – Records concerning an employee’s treatment for alcoholism, drug, or stress-related problems shall remain confidential and shall remain separate from other personnel materials.

(b) Continuation of Pay – The City and the Union agree that employees being rehabilitated will have an income while in the program. Employees participating will be entitled to use their accumulated vacation time and sick days. It is further agreed that after exhausting these benefits the employee may be advanced sick leave benefits to an extent mutually agreed upon by the City Manager and the Union. Sick days borrowed will be repaid through future service, or, in the event of termination, from wages and benefits due at the time of termination.

SECTION 5. IMMUNIZATION FOR HIGH-RISK EMPLOYEES: Employees shall have, at their discretion, immunization shots made available by the City or appropriate health agency. Immunization shots may include one or more of the following:

- (a) Tetanus
- (b) Cholera
- (c) Hepatitis B

SECTION 6. HEALTH CLUB MEMBERSHIP: The City shall, in six (6) month increments, reimburse employees in the amount of twenty dollars (\$20.00) per month for health club membership fees upon submittal of receipts.

SECTION 7. DEATH AND DISABILITY INSURANCE: The Fire and Police Pension Association requires a mandatory payment be made by either the employer or the employee to the Statewide Death and Disability Fund (“D & D”) for members hired on or after January 1, 1997,

effective January 1, 2000. The City will pay the mandatory required death and disability payment for all affected employees, which currently amounts to 2.6% of the employee’s base wages, or as may be changed by FPPA.

#### **ARTICLE XIV NON-DISCRIMINATION**

SECTION 1. NON-DISCRIMINATION CLAUSE: The parties to this Agreement shall not discriminate against any person or employee because of disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry; but, with regard to a disability, it is not a discriminatory or an unfair employment practice for the City to refuse to hire, to discharge, or to promote or demote a person if there is no reasonable accommodation that the City can make with regard to the disability, the disability actually disqualifies the person from employment, and the disability has a significant impact on employment.

#### **ARTICLE XV SAVING CLAUSE**

SECTION 1. SAVING CLAUSE: Should any Article, Section, or portion thereof, of this Agreement be held unlawful and unenforceable by any court of competent jurisdiction, such decision of the Court shall apply only to the specific Article, Section, or portion thereof directly specified in the decision. Upon the issuance of such a decision, the parties agree immediately to negotiate a substitute for the invalidated Article, Section, or portion thereof.

ARTICLE XVI

DURATION, RE-NEGOTIATION, AND ADOPTION OF AGREEMENT

SECTION 1. EFFECTIVE DATE OF AGREEMENT: This Agreement shall become effective and shall be binding on both parties hereto as of January 1, 2015, and shall remain in full force and effect until December 31, 2017.

SECTION 2. WAGE/BENEFIT RE-OPENER: Either party may re-open this Agreement on the anniversary date of the effective date for the purpose of re-negotiating the hourly wage rates and up to any three (3) additional issues, by giving written notice to the other party sixty (60) to ninety (90) days before that anniversary date.

The parties agree to review current salary surveys available to municipalities and union organizations at the time re-openers are considered. The intent will be to determine if salaries paid to employees are comparable to like municipal employees and consider adjustments to those that are not, if possible.

This Agreement contains the full and complete agreement between the Union and the City. No agreements, promises, or inducements have been made by either the Union or the City other than as appears in this Agreement.

SECTION 3. MATTERS NOT RE-OPENED: Any matter not re-opened in accordance with this Article shall remain in full force and effect until a new agreement is signed.

SECTION 4. OPENING BY MUTUAL AGREEMENT: In the event both parties agree, any Article or Section may be re-opened at any time during the life of this Agreement, upon thirty (30) days' written notice to the other party. Negotiations may proceed immediately upon reaching such agreement.

SECTION 5. ADOPTION BY CITY COUNCIL RATIFICATION: Following the signing of this Agreement by duly authorized officers and business representatives of the Union and duly authorized officials of the City, the City of Trinidad shall adopt, by motion and majority vote, the provisions of this Agreement.

IN WITNESS WHEREOF, the parties named have signed their names and affixed the signatures of their duly authorized representatives on this.

LOCAL UNION #1074-B, AFSCME  
AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES,  
AFL-CIO

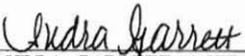
  
\_\_\_\_\_  
PRESIDENT - LOCAL #1074-B

  
\_\_\_\_\_  
BUSINESS REPRESENTATIVE

CITY OF TRINIDAD, COLORADO

\_\_\_\_\_  
JOSEPH A. REORDA, MAYOR

\_\_\_\_\_  
DONA VALENCICH, ACTING CITY  
CLERK

  
\_\_\_\_\_  
AUDRA GARRETT, ACTING CITY  
MANAGER

**APPENDIX A**

**POSITION & WAGE SCHEDULE**

(Wage Rates Per Hour)

2015 Base Wage reflects an agreed-to annual increase of \$1.00/hour

<u>Year:</u>	<u>2014</u>	<u>2015</u>
Officer	\$ 17.93	\$ 18.93
Sergeant	\$ 19.11	\$ 20.11
Dispatcher	\$ 15.21	\$ 16.21
ACO/CEO	\$ 16.30	\$ 17.30
Detective	\$ 18.59	\$ 19.59
Detective Sergeant	\$ 19.68	\$ 20.68

COLLECTIVE BARGAINING AGREEMENT  
  
 BETWEEN  
  
 CITY OF TRINIDAD  
 AND  
 LOCAL UNION NO. 1074  
 OF  
 AMERICAN FEDERATION OF STATE, COUNTY  
 AND  
 MUNICIPAL EMPLOYEES  
  
 JANUARY 1, 2015  
 TO  
 DECEMBER 31, 2017  
  
 FIRE AGREEMENT  
 1074-C

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## ARTICLE I

### UNION RECOGNITION AND SECURITY

SECTION 1. RECOGNITION: The City of Trinidad recognizes AFSCME Local No. 1074, of Colorado Council 76, affiliated with AFSCME, as the sole and exclusive bargaining agency for all City of Trinidad employees working for the City and represented by this Agreement. The positions recognized in the Agreement are listed in Appendix A.

SECTION 2. UNION SECURITY: This Agreement shall be effective for all employees who are members in good standing as of the effective date of this Agreement. Existing employees working in a job classification covered under this Agreement may join the Union after successful completion of a probationary period. Any new employee working in a job classification covered under this Agreement and hired after January 1, 1980, shall join the Union after successful completion of a probationary period.

SECTION 3. PAYROLL DEDUCTION OF DUES: All employees who are members of the Union or who become members under conditions of this Agreement shall have their dues deducted monthly from their paycheck issued nearest the end of the month payable for the following month, together with such other assessments, initiation, reinstatement, or deductions which shall have been certified by the Treasurer of the Union to the City sufficiently in advance of the payroll deduction to permit the proper deduction of the amount specified.

The City agrees to deduct from the wages of any employee who is a member of the Union a "PEOPLE" deduction as provided for in a written authorization. Such authorization must be executed by the employee and may be revoked by the employee at any time by giving written notice to both the City and the Union. The City agrees to remit any deductions made pursuant to this provision promptly to the Union together with an itemized statement showing the name of each

employee from whose pay such deductions have been made and the amount deducted during the period covered by the remittance.

SECTION 4. MEETING ON UNION BUSINESS: The appropriate Union Steward and/or AFSCME Council No. 76 Representative may confer with any employee covered by this Agreement on the job site during work hours concerning any grievance or other matter covered by this contract. Such conference shall be with the prior consent of the supervisor of the affected employee(s) and limited to the amount of time necessary for that purpose and shall be arranged so as not to interfere with other employees in the work unit.

SECTION 5. INDEMNIFICATION OF CITY: The Union shall indemnify the City of Trinidad against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken by the City for the purpose of complying with any of the provisions of this Agreement.

#### SECTION 6. DEFINITIONS:

(a) Regular Employee – An employee who has been hired or promoted to fill a permanent position with the Fire Department, which position is represented by this Agreement. Such regular employee must have satisfactorily completed a required twelve (12) month probationary period.

(b) Full-time Employee – An employee whose established job assignment and duties require a schedule of twenty-four (24) hours of work followed by forty-eight (48) hours of non-work time.

(c) Provisional Employee – An employee who has been hired to fill a provisional position within the City, which position shall have a special assignment not covered by any other position recognized by this Agreement. The filling of a provisional position shall be limited to the

established duration of the special assignment or for a period of time not to exceed a six (6) month period. Should it be determined by the City Manager, a provisional position may be extended for an additional six (6) months, however, in no case shall the total duration of a provisional position, including the initial appointment and any extension, exceed a total of twelve (12) months.

(d) Probationary Employee – An employee who has been hired in anticipation of filling a permanent position and who must satisfactorily complete a probationary period of a minimum of twelve (12) months duration before being classed as a regular employee.

(e) Temporary/Seasonal Employee – An employee who has been hired to fill a temporary or seasonal position. Such temporary/seasonal position may be for the same job duties or similar job duties as a regular employee; however, a temporary/seasonal assignment may not exceed six (6) continuous months in duration.

(f) Continuous Operations Personnel – Employee(s) assigned to job duties and/or positions with a City Department which require operating schedules on a twenty-four (24) hour basis.

(g) Extended Operations Personnel – Employee(s) assigned to job duties and/or positions with a City Department which require operating schedules beyond the typical work day hours.

(h) Work Year – One calendar year of time from the initial date of employment of a regular, full-time City employee.

(i) Temporary Assignment – The assignment of a City employee by his Supervisor to a work position other than the position to which he was hired.

(j) Overall Seniority – The prioritized order for calculation of rights and privileges afforded by this Agreement. Calculation of such priority shall be determined for each regular

employee by that employee's respective date of hire in a position recognized by this Agreement. For regular, part-time personnel, the prioritized order shall be based upon such employee's proportional length of employment as compared with the standard work year of 2,920 hours.

(k) Departmental Seniority – The prioritized order for calculation of rights and privileges afforded by this Agreement. Calculation of such priority shall be determined for each regular employee by the employee's respective date of assignment within a recognized City Department. For regular, part-time personnel the prioritized order shall be based upon such employee's proportional length of service in the Department in which he or she is assigned.

(l) Immediate Family – Immediate Family is defined for the purpose of this Agreement as the employee's spouse or domestic partner (*i.e.*, a person with whom the employee's life is interdependent and with whom the employee shares a mutual residence), parents, step-parents, guardians, children, step-children, grandparents, grandchildren, brothers and sisters, brothers-in-law and sisters-in-law, and the employee's spouse's parents.

## ARTICLE II

### RIGHTS OF MANAGEMENT

SECTION 1. MANAGEMENT PREROGATIVES: The Union agrees that the direction of the working force, including the right to hire, suspend, or discharge for cause, transfer for legitimate reasons, relieve employees from duty because of lack of work, or cutbacks because of budget requirements, is vested exclusively in the City of Trinidad and management, subject to the limitations as may be contained in State Statutes, the City Charter, City Ordinance, Federal and State Court decisions and the terms of this Agreement. The parties agree to the establishment of a Volunteer Fire Fighters group as long as Volunteer Fire Fighters will not be used in the place of regular full-time Fire Fighters and will not be used to reduce the work hours or the overtime of the

regular Fire Fighters. The intent of the Volunteer Fire Fighters is to augment and supplement the regular Fire Fighters.

### ARTICLE III

#### LAYOFF/REHIRE PROCEDURE

SECTION 1. LAYOFF NOTICE: In case of layoff, notice of such layoff shall be given to the affected employee(s) in written form, either by personal service by his or her supervisor or by certified mail. In either case, a minimum of ten (10) work days of notice shall be given prior to the effective date of layoff. Copies of such layoff notice for any employee covered by this Agreement shall be provided to the appropriate Union representatives.

SECTION 2. EMPLOYEE LAYOFF SELECTION: The City shall have the sole authority to determine which positions shall be affected by employee layoff. Determination of any employee(s) affected by layoff shall be on the basis of departmental seniority for the position(s) affected.

SECTION 3. EXERCISE OF BUMPING RIGHTS: If an employee in a position that has been selected for layoff is determined to be qualified for a position in a lesser classification within the same department and such employee has Departmental Seniority over any other employee in such lesser classification, then the senior employee may exercise bumping rights. The determination of qualifications of any employee wishing to exercise bumping rights into a department other than the Department in which that employee is assigned shall be made by the City based upon the employee's previous successful experience in the lesser classification within the Department and satisfactory completion of a trial period as called out in Article IX, Section 5.

SECTION 4. BUMPING RIGHTS TIME LIMIT: The exercise of bumping rights by an employee shall be initiated in writing by such employee within five (5) calendar days from the date of receipt of a layoff notice, or such rights shall be forfeited.

Any employee displaced through the bumping rights process may exercise the same rights with a lesser position.

SECTION 5. REHIRE PROCEDURE: If the City should re-establish a position previously eliminated by layoff within one (1) year from the date such position was eliminated, the former employee previously in that position shall be given five (5) calendar days' written notice to indicate a desire to fill the position. Such notice shall be by certified mail to the former employee's last known address.

Should such former employee indicate a desire to return to employment with the City, such former employee must be available to report to work within ten (10) calendar days of his response to the position.

Any employee returning to work with the City under the provisions of this Article shall be subject to the trial period as set forth in Article IX, Section 5.

SECTION 6. REINSTATEMENT OF SENIORITY: Any employee who terminates employment with the City as a result of layoff, or caused by the exercise of bumping rights by a senior employee, and who returns to employment with the City to any position other than the position previously held by such employee within one (1) year of the date of termination, shall retain his or her seniority with respect to rates of accrual of leave benefits.

Seniority, relative to future layoff, shall be based upon the employee's date of re-employment and only to the position to which the employee has been re-employed.

Any employee who terminates employment in good standing, other than by layoff, with the City shall forfeit all seniority at the time of termination. Should such employee be subsequently re-employed by the City to any position covered by this Agreement, that employee will be considered to be a new employee in all respects as if never previously employed by this City.

#### ARTICLE IV

##### DISCIPLINE OR DISCHARGE

SECTION 1. IMPOSITION OF DISCIPLINE: Employer shall not discipline any employee without just cause. While disciplinary actions will be progressive, the employer may impose discipline at a level which is appropriate to the offense committed.

SECTION 2. PRE-DISCIPLINARY MEETING:

(1) Before a suspension, demotion or termination occurs, a pre-disciplinary meeting shall be held. A pre-disciplinary meeting shall not be required for an oral or written disciplinary action notice or disciplinary probation or prior to placing Union member on investigatory leave.

(2) The purposes of the pre-disciplinary meeting are the following:

(a) To allow the Union member to correct any errors in City of Trinidad information or facts upon which it proposes to take disciplinary action; and

(b) To allow the Union member to tell his or her side of the story and present any mitigating information as to why the disciplinary action should not be taken.

(3) The written notice of contemplation of disciplinary action and pre-disciplinary meeting shall contain the following:

(a) That disciplinary action is contemplated;

(b) The specific conduct or omission committed by the Union member, which the City of Trinidad believes is in violation of its Personnel Policy, City of Trinidad rules, regulations or practices, or other applicable federal, state or local law;

(c) The purpose of the pre-disciplinary meeting as described in subsection 2 above;

(d) The date, time and location of the pre-disciplinary meeting; and

(e) That the Union member is entitled to representation by a disinterested union steward or AFSCME Representative of their choice at the meeting, which does not include attorneys.

(4) The notice of the pre-disciplinary meeting will be given to the Union member in person with a certificate of hand delivery, or certificate by courier delivered to his/her last address of record in the Payroll Department, or sent by first-class certified/registered U. S. Mail with a certificate of mailing, five (5) working days before the meeting is to occur.

(5) Because the meeting is not "adversarial," the following shall not occur:

(a) justification to the Union member or his/her representative for Management's views;

(b) testimony by or cross examination of witnesses;

(c) testimony under oath; or

(d) recording of the proceedings by a court reporter or a tape recorder, or any other recording device.

(6) Failure of a supervisor to comply strictly with the requirements in this subsection B shall not constitute a basis for reversing a disciplinary action upon grievance, arbitration, or mediation.

SECTION 3. DUE PROCESS. If the discipline is the result of a criminal investigation that may be charged as a felony, the department head will be allowed to forego the pre-disciplinary meeting until charges are filed or until the matter is resolved and the employee is found guilty or pleads guilty to a felony.

The City shall discharge an employee only upon a finding of just cause. Such finding may be based upon one or more of the following grounds:

- (a) Incompetence, incapacity, or inefficiency in performance of duties;
- (b) Violation of an official rule, regulation, or order;
- (c) Failure to obey any lawful or reasonable direction when such action amounts to insubordination or serious breach of discipline;
- (d) Conviction of a felony;
- (e) Willful or repeated negligence in performing duties;
- (f) Conduct unbecoming an employee of the City;
- (g) Conduct subversive to the laws of the State or Nation;
- (h) Misuse of public funds; or
- (i) Falsifying reports or records.

Discharge shall be effective immediately upon service of written notice by the employee's supervisor, or upon receipt of written notice by certified mail. Such notice shall specify the finding(s) upon which the termination is based.

SECTION 4. UNSAFE ACTS. No employee shall be disciplined for refusal to perform an unsafe act or one for which the employee is not adequately trained. Unsafe acts include, but are not limited to, violations of the jointly-developed Safety Manual.

SECTION 5. DISCIPLINARY PROCEDURE: The Disciplinary Procedure shall be limited to the following:

(a) Oral Reprimand – If a supervisor has reason to issue an oral reprimand to any employee in his charge, such reprimand shall be issued at a place and time away from other employees and the public. If such oral reprimand has been logged or documented by the supervisor, it shall be kept in the subject employee's personnel file for a period of one (1) year from the date of the reprimand. If no similar occurrence takes place during that time period, the documentation shall be purged from the file.

(b) Written Reprimand – If a supervisor has reason to issue a written reprimand to an employee in his charge, such reprimand shall be issued in written letter form stating the infraction of the employee and outlining corrective measures the employee should follow to avoid re-occurrence. A copy of the letter shall be kept in the employee's personnel file for a period of three (3) years from the date of the reprimand. If no similar occurrence takes place during that time period, the documentation shall be purged from the file.

(c) Suspension Without Pay – If a supervisor has reason to issue a suspension without pay to an employee in his charge, such suspension shall be issued in written letter form stating the infraction of the employee, the corrective measures the employee should follow to avoid re-occurrence, and the duration and effective date of suspension. Such suspension shall allow three (3) working days' notice to be given prior to the start of such suspension. A copy of the suspension shall be kept in the employee's personnel file for a period of five (5) years from the date of suspension. If no similar occurrence takes place during that time period, the documentation shall be purged from the file.

When the City has reason to suspend or discharge an employee covered under this Agreement, the City will provide a written statement to the employee indicating the reasons for such consideration. The written statement shall be considered given to the employee if personally delivered or, if unable to be personally delivered, after five (5) working days have elapsed from the date of certified mailing to the employee's last address of record in the Payroll Department.

(d) Demotion to Lower Classification – If the Supervisor has reason to demote an employee in his charge, such demotion shall be issued in written letter form stating the infraction of the employee, the corrective measures the employee should follow to avoid re-occurrence, and the effective date of the demotion. Such demotion shall allow five (5) working days' notice to be given prior to the start of such demotion. A copy of the demotion shall be kept in the employee's personnel file for a period of five (5) years from the date of the demotion. If no similar occurrence takes place during the time period, the documentation shall be purged from the file.

SECTION 6. FLAGRANT VIOLATION: Any employee may be suspended immediately for conduct prejudicial to the City, public, or fellow employees, if the public safety and/or welfare are affected.

SECTION 7. PROCEDURE FOR DISCIPLINE INVOLVING DEMOTION, SUSPENSION WITHOUT PAY, OR DISCHARGE:

(a) Steps – The following steps shall be utilized if an employee wishes to dispute the disciplinary action taken against him or her where the disciplinary action involved either a demotion, suspension without pay, or discharge:

(i) Step 1 – The department head will provide to the employee or employees notification of offenses involved and the type of disciplinary action taken. If the employee disagrees with the discipline administered he or she will, within ten (10) calendar days of the

disciplinary action, file a written grievance with the department head and may obtain the assistance of the Union representative in doing so. The department head will schedule a meeting within ten (10) calendar days with the employee and the Union representative. Following the meeting, the department head will provide a decision to the employee and the Union representative within five (5) calendar days.

(ii) Step 2 – If the grievance is not resolved at Step 1, the aggrieved employee may refer the grievance to the City Manager for a hearing, such request being in writing, within ten (10) working days of the issuance of the department head's decision. Should a hearing be requested, a decision shall be issued within ten (10) working days of the hearing.

(iii) Step 3 – If no agreement is reached at Step 2, the employee or a Union representative or his designee may, within five (5) work days of receipt of the Step 3 answer, request mediation by sending a letter to the Federal Mediation and Conciliation Services, with a copy to the City. Mediation will be set as soon as possible after the request. If the issue is not resolved after mediation, the employee will have ten (10) days to file a request to AAA requesting a list of seven (7) qualified arbitrators. Once a list is received, the parties will select the arbitrator by alternately striking one name from the list until only one name remains. The order of striking will be alternated between the parties. On a case-by-case basis, the parties may mutually agree on an arbitrator without utilizing the AAA process to select an arbitrator.

Hearings shall take place at a location mutually agreed upon by the parties. At the earliest possible time, the arbitrator shall conduct a hearing in order to hear testimony, receive evidence, and consider arguments. The arbitrator will base the decision solely on the evidence presented at the hearing, and if possible will issue a written decision within thirty (30) days of the close of the hearing. The arbitrator shall have no power to add to, subtract from, alter, or amend the terms of

this agreement, or to expand the issue to anything beyond what the parties place before him or her; nor shall the arbitrator substitute his/her judgment for that of the City unless the City's actions have violated specific terms of this Agreement.

The hearings shall be closed upon the completion of testimony. The arbitrator shall render his or her decision as soon after the close of the hearings as may be feasible. If the arbitrator is unable to make his or her decision within thirty (30) days of the close of the hearing, he or she shall promptly advise the parties of the reasons for the delay and the date when his or her decision will be submitted. The arbitrator's decision shall be final and shall govern on the dispute before him or her. Expenses and fees incident to the service of an arbitrator shall be paid equally by the City and AFSCME Local 1074.

(b) Right of Withdrawal – The designated Union representative or his designee has full authority to proceed with or withdraw the grievance at any step of this procedure.

(c) Right to Be Present – The employee shall have the right to be present at each step of the grievance procedure.

(d) Finality of Settlements – Settlements reached at any step of the grievance procedure shall be final and binding on both parties and shall not be subject to further proceedings under this Article except by mutual agreement. Settlements reached shall be in writing and signed by appropriate representatives of the Union and the City.

(e) Waiver of Time Limits – By agreement, the parties may waive the time limits set forth in each step of the grievance procedure.

(f) Precedents – Settlements or withdrawals at any step shall not constitute a precedent in the handling of other complaints or grievances.

## ARTICLE V HOURS OF WORK

SECTION 1. WORK SHIFT: The normal work shift for all regular, full-time employees shall be twenty-four (24) hours. The normal work period will be nineteen (19) days inclusive of one "kelly" day per employee.

SECTION 2. EMERGENCY/CALL BACK HOURS: Any regular, full-time employee who is called back to work before or after a normal work shift shall be entitled to emergency/call back compensation. Such compensation shall be computed at two (2) times the normal hourly rate for each employee for actual time worked.

SECTION 3. TRADING OF SHIFTS: Employees of equal rank and classifications will be allowed to trade two (2) shifts per month, with the approval of the Fire Chief.

## ARTICLE VI HOLIDAYS

SECTION 1. COMPENSATION IN LIEU OF HOLIDAYS: Fire Fighters working in rotational shifts shall receive monetary compensation in lieu of holiday time off. Such compensation shall be made in an annual amount of 1.4 "times" one and one-half (1 ½) "times" rate of pay "times" holiday hours, paid in equal monthly proportions, less appropriate deductions and taxes, coincidental with the pay period for the second half of the month. At no time will the value of holiday compensation be less than two and one-half (2 ½) "times" ninety-six (96) hours of current hourly wage.

Where a qualifying employee has been employed within the Fire Department for a period of time less than a full calendar year, the amount of compensation such employee shall receive shall be pro-rated from the date of qualification as an employee within the Fire Department.

In addition to the above-stated compensation in lieu of holidays, each regular Fire Fighter employed by the City as of January 1st of the ensuing calendar year shall qualify for four (4) personal leave shifts. The utilization of such personal leave shifts shall be subject to the operational needs of the Department.

**ARTICLE VII  
LEAVE BENEFITS**

**SECTION 1. VACATION/ANNUAL LEAVE:**

(a) Rate of Accrual - Each regular, full-time employee within the Fire Department shall accrue basic vacation/annual leave on the basis of the following schedule:

<u>Years of Service Completed</u>	<u>Rate of Accrual (in hours)</u>
1-5	133
6	144
7	155
8	166
9	177
10	188
11	199
12	210
13	222
14	233
15	244
16	255
17	266
18	277
19	288
20	299

The beginning date of accrual of vacation/annual leave shall be based upon the initial date of employment with the City as a regular, full-time employee.

With respect to accrual of annual vacation leave by any employee hired after January 1, 1998, after three hundred twenty (320) hours are accrued, no further hours of vacation leave will be

accrued until the employee drops below three hundred twenty (320) hours of unused vacation leave.

(b) Longevity Compensation - Each regular, full-time employee attaining twenty-five (25) years of employment with the City shall be granted longevity compensation in the form of one (1) additional day of leave for each year of employment beyond twenty-five (25) years, up to a maximum of five (5) additional longevity compensation days.

(c) Use of Accrued Leave - Each regular, full-time employee shall be allowed to schedule his/her accrued vacation/annual leave based upon a departmental schedule to be determined by the last working day of February of each year. The priority of scheduling vacation/annual leave shall be on the basis of Departmental Seniority and shall be subject to the manpower needs of that department. In no case, however, shall any single employee be allowed to schedule more than twelve (12) work shifts leave unless every member of that department has had an opportunity to schedule his first vacation/annual leave request. Any time not requested as vacation leave on the first vacation bid may be bid for by employees with subsequent vacation bids on a first-come, first-served basis. However, in the case of an emergency, use of vacation/ annual leave without the two (2) weeks' notice shall not be unreasonably withheld.

In determining a departmental vacation/annual leave schedule, management may adjust the assigned days of scheduled annual leave for any employee with a written notification to such employee at least two (2) calendar weeks prior to the first day of assigned vacation.

Any regular, full-time employee who is on probation or a trial period shall not be allowed to utilize accrued vacation/annual leave.

(d) Rescheduling of Accrued Vacation/Annual Leave - Should operational emergencies or other circumstances occur which preclude an employee from utilizing scheduled vacation/annual

leave, such employee shall be allowed to reschedule such vacation/annual leave within the same calendar year, subject to the Departmental work schedule needs.

SECTION 2. SICK/HEALTH LEAVE:

(a) Rate of Accrual - Each regular, full-time employee shall accrue sick/health leave on the basis of twelve (12) hours for each month of completed employment with the City. Sick/health leave may be accrued by regular, full-time employees hired on or before January 1, 1998, to a maximum of one thousand eight (1,008) hours. Sick/health leave may be accrued by regular, full-time employees hired after January 1, 1998, to a maximum of six hundred forty (640) hours.

Any regular, full-time employee hired on or before January 1, 1998, accumulating in excess of one thousand eight (1,008) hours shall be compensated for all excess, accrued hours at his/her regular hourly rate of pay at the end of each calendar year. Any regular, full-time employee hired between January 1, 1998, and December 31, 1998, accumulating in excess of six hundred forty (640) hours shall be compensated for all excess, accrued hours at the rate of fifty percent (50%) of his/her regularly hourly rate of pay at the end of each calendar year. Any regular, full-time employee hired on or after January 1, 1999, will accumulate hours in excess of the maximum six hundred forty (640) hours but will not be compensated for any accrued sick leave. In exchange for the removal of the cap, the union agrees to waive compensation for any accrued sick leave benefits for full time employees hired on or after January 1, 1999, in future contracts.

(b) Use of Accrued Sick/Health Leave - Fire fighters working twenty-four (24) hour shifts have difficulty arranging for the care of a member of the employee's family living in the household who is ill, injured, or in need of medical care. For that reason, fire fighters shall be allowed to utilize sick/health leave for bonafide illness, injury, or medical care of the employee or member of the employee's family living in the household. Fire fighters agree to police themselves

regarding this benefit. If the City Manager detects abuse of this privilege, the privilege can be revoked from any fire fighter.

A written verification of illness or injury issued by medical authority may be required of an employee who uses in excess of two (2) full shifts' sick/health leave in the same calendar month.

(c) Notification to Supervisor - Each regular, full-time employee shall notify his/her immediate supervisor at least two (2) hours prior to the start of such employee's work shift. Any deviation from the two (2) hour notification shall require justification by the employee to his/her supervisor. Should an employee become ill on the job, such employee shall only be assessed for the actual time missed, recorded to the nearest half hour. Failure of any regular, full-time employee to provide proper notification to his/her supervisor shall be cause for denial of sick/health leave benefits, and such employee shall be subject to disciplinary action.

SECTION 3. MILITARY LEAVE: The City recognizes and acknowledges State and Federal laws regarding rights and benefits due any employee in military service to this Country.

SECTION 4. JURY DUTY/WITNESS LEAVE: Any regular, full-time employee subpoenaed as a witness in any legal proceeding involving the City or called to jury duty shall notify his/her supervisor as soon as possible upon receipt of such notice and shall provide a copy of such notice to his/her supervisor. Such employee shall not have any time charged against accrued leave. Where an employee is paid a fee for jury duty or a witness fee, such fee shall be assigned over to the City. Failure to do so shall result in such employee being charged for the time away from the job consumed by such absence. Where notice of jury duty or subpoena identifies a specific hour at which time such employee must appear, the supervisor shall allow that employee to leave his assigned job duties with sufficient time to report as mandated by the notice. Upon

dismissal from such requirement, as specified by the notice, the employee shall return to his job duties if his/her assigned work shift has not concluded.

Not to be confused with this allowance, any regular, full-time employee summoned or subpoenaed to a legal proceeding, either civil or criminal, not related to his/her job duties shall only be allowed the necessary time away from his/her job, upon showing of proper documentation to his/her supervisor. Such necessary time shall be charged to the employee's accrued vacation/annual leave.

SECTION 5. FUNERAL LEAVE: In the event of a death in the Immediate Family (as defined in Article I, Section 6) of any employee, such employee shall be granted a leave of absence with pay not to exceed four (4) working days. Such leave shall be for the purpose of making household adjustments or to attend funeral services. If additional time is needed, sick leave and/or vacation/annual leave, at the employee's discretion, may be used for this purpose.

SECTION 6. MEDICAL LEAVE: - The City recognizes and acknowledges the rights of employees covered by this Agreement through the Family and Medical Leave Act of 1993.

SECTION 7. LEAVE OF ABSENCE WITHOUT PAY OR BENEFITS: The City Manager may authorize, upon the written request of any regular, full-time employee, a leave of absence without pay or benefits. Such leave of absence without pay or benefits shall be considered only upon presentation of documented medical advice or care prepared by a doctor.

The duration of any granted leave of absence without pay shall not exceed six (6) months. During such time, the employee shall not accrue any benefits, however, the City shall continue to provide health insurance benefits in accordance with Article XIII, Section 1.

SECTION 8. INJURY LEAVE: Any employee who suffers an injury or illness on the job shall be subject to the Workers' Compensation Act of Colorado. Until such time as a claim is

determined to be compensable pursuant to Workers' Compensation Act, the time away from the job shall be charged to such employee's accrued leave time, beginning with accrued sick leave and followed by vacation/annual leave.

Upon determination that the claim is compensable pursuant to the Workers' Compensation Act, the leave time consumed shall be restored to that employee's account of accrued leave time. A copy of the written determination of acceptance of liability shall be provided to the injured employee. The City of Trinidad will continue to pay the injured worker 100% of their regular salary for six (6) months, whereby the employee would otherwise be entitled to temporary disability benefits (66 2/3%) from the City's Workers' Compensation carrier. After the first six (6) months have elapsed, the employee shall begin receiving temporary disability benefits (66 2/3%) directly from the City's Workers' Compensation carrier, rather than 100% of their salary from the City. Once the first six (6) months of injury leave has expired, the employee will not continue to accrue benefits except for medical/health insurance, for which the employee will be responsible for his/her share.

An employee incapacitated due to a job-related injury or illness who cannot perform the essential functions of his/her job with or without reasonable accommodation and who fails to return to work after twelve (12) months of injury leave is subject to termination. Prior to termination, the City Manager will review the employee's current medical ability and prognosis, and provide to those employees covered under the Fire & Police Pension Association (FPPA) whatever documentation is required to ensure that the employee is not denied any benefits that the employee is otherwise entitled to under the employee's FPPA coverage.

An employee who seeks to return to work from a job-related injury or illness is required to provide a "fitness for return to duty" report from his/her physician. If the employee returns from

injury leave and within six (6) months becomes unable to work due in whole or in part to a re-injury or aggravation of the prior injury, the employee will be allowed to use the remainder of the original twelve (12) month injury leave period. Under this paragraph, the re-injured employee will not be allowed a second twelve (12) month leave period and will be subject to termination at the end of the original twelve (12) months of leave. However, prior to termination, the City Manager will again review the employee's current condition and prognosis.

SECTION 9. UNION CONTRACT NEGOTIATIONS LEAVE: Negotiations for future changes or replacement of the current Union contract shall be conducted at times and places mutually agreed upon between the City and Union designated negotiators. The members of the Union negotiations team shall be released from their respective job duties without loss of pay during the times of such negotiations, where such negotiations schedule coincides with the regular scheduled work hours of any such employee. It is recognized that the City and the Union may designate its representatives; provided, however, that the number of Union representatives shall not exceed five (5) except by agreement.

SECTION 10. ADMINISTRATIVE LEAVE FOR UNION BUSINESS: Employees, upon request to the City Manager, will be granted reasonable administrative leave to carry out official Union business as elected delegates or appointed representatives.

SECTION 11. ADMINISTRATIVE LEAVE OF ABSENCE. The City and the Union recognize that it may be necessary to place an employee on administrative leave of absence, with pay, when allegations of criminal misconduct, or allegations of a flagrant violation of the Agreement or a City policy, warrant such an action.

SECTION 12. LIGHT DUTY STATUS: If, as a result of a service or non-service connected injury or illness, an employee is temporarily disabled and unable to efficiently perform

the duties of his/her position, but is able to efficiently perform the duties of some other position within the City which is compatible with the employee's skills and abilities, then the Department Head or City Manager may refer the employee for placement in such departmental position for a period not to exceed three (3) months. Upon approval of the Department Head or City Manager, the employee may be so employed within his/her medical/physical restrictions. Such assignment shall be called light duty.

Light duty assignment shall have the following restrictions: (i) light duty shall not be used to displace all or part of a full-time position within the department; (ii) only one person in a department shall be on light duty at any point in time with the Department Head or City Manager given full discretion as to whom will perform the light duty work, and the Union shall have no recourse through the grievance procedure to challenge this decision; and (iii) an employee must have at least one (1) year of City service to be eligible for light duty assignment.

ARTICLE VIII

WAGES AND PAY PROVISIONS

SECTION 1. WAGES AND RATES: The wage rate on an hourly basis for any job classification covered by this Agreement shall be set forth according to the Wage Rates identified in Appendix A to this contract.

SECTION 2. PAY PERIODS: The City shall pay the appropriate wages to each respective employee covered by this Agreement, subject to the required and optional payroll deductions on the basis of every fourteen (14) days. When those dates fall on a holiday (as recognized by the General Services contract), payroll shall be issued on the last working day immediately preceding the holiday.

SECTION 3. OVERTIME COMPENSATION: Compensation for assigned, scheduled overtime shall be computed on the basis of one and one-half (1 ½) times the affected employee's regular hourly wage rate for actual time worked in excess of scheduled shift hours.

SECTION 4. ASSIGNMENT OF OVERTIME: Assignment of overtime shall be at the direction of the supervisor in the department based upon the following criteria:

(a) Captain Overtime Assignment - The assignment of overtime for a captain's position shall be on a rotational basis beginning with the senior captain. Succeeding overtime assignments shall exhaust the list of captains affording each the opportunity for assigned overtime. At least one (1) "white shirt" captain shall be on duty at all times.

(b) Dispatcher Overtime Assignment - The assignment of overtime for a dispatcher's position shall be on a rotational basis beginning with the senior dispatcher and continuing through the plugman seniority list. Succeeding overtime assignments shall exhaust the dispatcher seniority

list first and continue on through the plugman seniority list, affording each dispatcher and plugman the opportunity for assigned overtime in the dispatch position.

The assignment of overtime for a period of eight hours (8) or less shall not affect the rotation of the overtime list.

(c) Wildland Deployment - The Trinidad Fire Department will maintain a list of qualified personnel to staff the Wildland Unit. All personnel on the list must have, at a minimum, the certification of NIIMS FF2 ("Red Card"). Personnel will be called based upon this previously established team seniority list.

Assignment of overtime shall be at the direction of the Chief of the Department based on the following criteria:

- Overtime shall be on a rotational basis beginning with the senior member of the wildland team. Succeeding overtime assignments will continue until all members have had the opportunity for overtime.
- Members called from the overtime list will staff the wildland unit.
- Members must be able to commit to the entire incident. This may include up to a 14-day assignment.
- If unable to staff unit from list, on-duty personnel may be used to fill the positions. Backfill of on-duty personnel will come from the regular overtime list.

After dispatch, once a crew has been assigned to the incident, they shall remain with the incident until demobilized. If a crew is cancelled or demobilized prior to arriving on scene, or on scene for less than eight (8) hours, those members will remain on the top of the Wildland Overtime list. Personnel need to be able to respond to and depart from Station #2 within thirty (30) minutes of call out.

A Memorandum of Understanding referencing certification scheduling shall be added to Appendix B in the Fire Union Contract.

(d) Additional Criteria – If the list of all eligible personnel for an overtime assignment is exhausted, the overtime assignment shall be deemed mandatory overtime in accordance with Section 5 herein, and the first eligible employee contacted thereafter shall be required to report for the mandatory overtime assignment.

The assignment of overtime for a period of eight hours (8) or less shall not affect the rotation of the overtime list.

SECTION 5. MANDATORY OVERTIME: When a supervisor determines that overtime work is necessary for the protection of the safety, health, or welfare of the public, such overtime assignment for any employee in that supervisor's charge shall be mandatory.

SECTION 6. SEVERANCE COMPENSATION: Any employee who terminates employment with the City for any reason shall be paid coincident with his/her final paycheck for all accrued vacation/annual leave and all accrued compensatory time, if any. In the event of an employee's death, the payment shall be made to the employee's beneficiary. Any employee, hired on or before January 1, 1998, who terminates employment with the City in good standing (not terminated for cause and who has given the City a minimum of two (2) calendar weeks' written notice of intent to terminate) shall also be compensated for accrued unused annual sick/health leave in accordance with the following schedule:

(a) Employees with less than five (5) years of employment with the City as calculated from his/her initial date of employment shall not be entitled any compensation for unused, accrued sick/health leave;

(b) Any employee with more than five (5) years of employment but less than ten (10) years as calculated from his/her initial date of employment shall be compensated for all unused, accrued sick/health leave time at the rate of twenty-five percent (25%) of that employee's regular hourly wage rate at the time of termination for each hour or fractional hour of unused sick/health leave;

(c) Any employee with more than ten (10) years of employment but less than fifteen (15) years as calculated from his /her initial date of employment shall be compensated for all unused, accrued sick/health leave time at the rate of fifty percent (50%) of that employee's regular hourly wage rate at the time of termination for each hour or fractional hour of unused, accrued sick/health leave;

(d) Any employee with more than fifteen (15) years of employment but less than twenty (20) years as calculated from his/her initial date of employment shall be compensated for all unused, accrued sick/health leave time at the rate of seventy five percent (75%) of that employee's regular hourly wage rate at the time of termination for each hour or fractional hour of unused, accrued sick/health leave;

(e) Any employee with more than twenty (20) years of employment as calculated from his/her initial date of employment shall be compensated for all unused, accrued sick/health leave time at the rate of one hundred percent (100%) of that employee's regular hourly wage rate at the time of termination for each hour or fractional hour of unused, accrued sick/health leave. (Employees with 25 years of employment, see Article VII, Section 1(b).)

Any employee, hired between January 1, 1998 and December 31, 1998, who terminates employment with the City in good standing shall be compensated for those accrued unused sick leave hours in excess of six hundred forty (640) hours at the rate of fifty percent (50%) of his/her

straight-time rate. Any employee hired on or after January 1, 1999, will not receive any compensation for unused sick leave whether the employee has accrued sick leave in excess of six hundred forty (640) hours or not.

SECTION 7. PAY BY CLASSIFICATION: Any regular, full-time employee temporarily assigned to work in a higher classification shall be compensated at the regular hourly rate, in one-quarter (¼) hour increments, of the classification for the actual hours worked in the classification; provided that management has appointed said employee to the temporary assignment. Any regular, full-time employee temporarily assigned to a lower classification shall be compensated at his/her normal regular hourly rate for such time during the work assignment in the lower position.

SECTION 10. LONGEVITY COMPENSATION: In addition to other compensation, any regular, full-time employee shall be entitled to a "longevity" wage increase of \$0.04 per hour upon each of the employee's annual anniversary dates with the City.

## ARTICLE IX

### POSITION VACANCIES

SECTION 1. POSTING OF VACANCIES: When a necessary vacancy occurs in any job position covered by this Agreement and it is the intention of the City to fill the vacancy, the solicitation of applications by City employees shall be posted for no less than five (5) working days at all designated bulletin boards, and a copy of such posting shall be provided to the designated Union representative. At the close of the posting period, if no suitable candidate for the vacancy is chosen from among City employees applying for such vacancy, or if no City employee makes application for such vacancy during the five (5) day posting period, then the City shall take whatever time is deemed necessary to solicit applications publicly for such vacancy and to fill such vacancy.

The City shall not be obligated to consider an application from a current City employee after the close of the five (5) day posting period.

In the event the City Manager decides not to fill the position, the Union shall be notified in writing.

SECTION 2. REVIEW: All applications shall be reviewed by the office of the City Manager or his designee and the position shall be filled by that applicant who is determined by the City Manager or his designee to have the highest qualifications and is best suited to fill the vacancy. When qualifications and suitability are relatively equal among two or more competing City employees who are applicants for the position, and selection is made from the competing City employees, then the vacancy shall be filled by giving preference to the employee with departmental seniority in which such vacancy occurs. Should no applicant have Departmental Seniority, then preference shall be based upon the applicant's total seniority determined by the employee's total length of service to the City.

### SECTION 3. PROBATIONARY PERIOD:

(a) All original appointments to permanent positions in the service of the City are made subject to a probationary period of twelve (12) consecutive months, during which time the employee is precluded from participation as a Union member. During the probationary employee's initial six (6) months, he or she shall be compensated at ninety percent (90%) of the position's standard Wage Rate, and he or she shall not be eligible for (i) the assignment of overtime or (ii) duty on a four (4) person crew. Following the initial six (6) month probationary period, and upon the Fire Chief's written approval, the probationary employee shall be compensated at ninety-five percent (95%) of the position's standard Wage Rate, and the employee shall be eligible for (i) the assignment of overtime and (ii) duty on a four (4) person crew. Following the probationary

employee's completion of the twelve (12) consecutive month probationary period, and upon the Fire Chief's written approval, the employee shall become entitled to full compensation and the opportunity for Union membership.

(b) Probationary employees shall not be subject to furlough days.

SECTION 4. APPLICATION FOR VACANCIES: Any employee who considers himself qualified to fulfill the duties of a vacant position shall indicate in writing his bid for filling such vacancy after the posting of the position. All applicants for the posted position must meet the minimum qualification for that position, as defined in the job description.

SECTION 5. TRIAL PERIOD: Should an existing City employee be selected to fill an advertised vacancy, that employee may be required to serve a trial period not to exceed one hundred and eighty (180) calendar days. If such employee's proficiency and/or performance fails to be satisfactory during the trial period, or such employee fails to satisfactorily complete a trial period, that employee shall be returned to his/her former position. When it is deemed appropriate, the City Manager may extend an employee's trial period for any amount of time not to exceed thirty (30) additional workdays.

SECTION 6. PROMOTION TO MANAGEMENT POSITION: An employee covered by this Agreement who is transferred to a classification not represented in the contract shall not retain his Departmental Seniority with the Union when re-entering the bargaining unit.

In the event he later transfers back to a classification represented by this Agreement, he shall, from the date of re-entering, begin to accumulate Departmental Seniority.

SECTION 7. TEMPORARY EXTENDED VACANCIES: It is agreed by the City and the Union that temporary vacancies, other than vacation of more than thirty (30) calendar days in duration, shall be posted for assignment by the qualified most senior employee.

## ARTICLE X SETTLEMENT OF DISPUTES

### SECTION 1. GRIEVANCE PROCEDURE:

(a) Purpose – It shall be the policy of this City and the Union to promote harmonious employer/employee relations through a standard grievance procedure, which will have, as a basis, the qualities of fairness and rapidity.

(b) Definition – The term "grievance" shall include any complaint, dispute, or difference between the City and the Union or between the City and any employee covered by this Agreement, including the interpretation and/or application of and/or compliance with any provision of this Agreement.

(c) Representation – Any employee represented by this Agreement shall have the right to be present at all meetings or hearings where such employee has filed a grievance in accordance with these procedures. Further, such employee may be accompanied by Union representation.

(d) Disputes over discharge and disciplinary action involving demotion or suspension without pay – Any employee disputing disciplinary action involving demotion or suspension without pay or termination will follow the procedure in Article IV ("Discipline or Discharge").

SECTION 2. GRIEVANCE STEPS: The following steps shall be utilized in the processing of grievances. It is agreed between the parties that time is of the essence. If an employee fails to meet any of the time limits contained in this article, the grievance shall be considered dropped. If the City fails to meet any of the time limits contained in this article, the grievance will be considered settled based upon the employee's written request for remedy. Time limits shall be based upon the aggrieved employee's work schedule. All time limits may be extended by mutual agreement of the parties.

Step 1. Any employee covered by this Agreement who desires to file a grievance shall first raise such issue with his/her immediate supervisor either verbally or in writing within five (5) working days of knowledge of issue that gives rise to the grievance. If the issue is not resolved to the satisfaction of the employee in this manner, such employee may file a formal grievance.

Step 2. The formal grievance shall be filed in writing, using the appropriate form, with the employee's department head, within five (5) working days of the time the issue was first raised with the immediate supervisor. Upon submission of the written grievance, the department head shall meet with the employee and the representative within ten (10) days of receipt of the grievance to consider the matter. The department head will have three (3) working days thereafter to issue a written response to the grievance.

Step 3. If the grievance is not resolved at Step 2, the aggrieved employee may refer the grievance to the City Manager for final resolution. Such request shall be in writing within five (5) working days of the department head's response. Within ten (10) working days of receiving the grievance, the City Manager shall issue a written preliminary decision.

Step 4. If the employee is not satisfied with the decision of the City Manager, following the issuance of the City Manager's preliminary decision, the employee may then request a hearing, such request being in writing, within ten (10) working days of the issuance of the preliminary decision. Should a hearing be requested, a final decision shall be issued within ten (10) working days of the hearing. The decision by the City Manager shall be final and binding and the highest decision available by this grievance procedure.

SECTION 3. GRIEVANCE COMMITTEE OR REPRESENTATIVE: Should a grievance reach Step 2 of the procedure provided, the Grievance Committee may be composed of the

AFSCME Council 76 representative, Union President, the Chief Steward from the affected department, and the aggrieved party(ies). The Union President shall notify the City Manager of the Union Stewards and any subsequent replacement.

SECTION 4. OTHER DISPUTES: Should a dispute or difference between the City and the Union occur which is not directly addressed in this contract, a committee consisting of the AFSCME Council 76 Representative, Union President, and Chief Steward of the Fire Department shall petition the City Manager requesting a meeting. The petition shall describe the issue, state why they feel it should be addressed by the City Manager, and state what resolution the Union is seeking. Upon receipt of the petition, City Manager shall schedule a meeting as soon as is mutually convenient.

SECTION 5. REINSTATEMENT: In the event that an employee covered by this Agreement is found to have been discharged by the City Manager or otherwise demoted unjustly, the City Manager shall reinstate such employee and shall pay all compensation for lost wages for such lost regular work time and benefits at the employee's regular rate of pay. The employee shall also have any lost seniority restored.

## ARTICLE XI

### WORKING CONDITIONS

SECTION 1. SAFETY COMMITTEE: The Union and the City have established a City-wide safety Committee composed of three (3) Union and three (3) non-union employees. The Safety Committee is an advisory committee which reviews vehicle and other job-related personal injury accidents, assists the City Manager with ideas to eliminate future safety problems, and offers recommendations to address current safety issues.

SECTION 2. DEPARTMENT SAFETY RULES: The City has developed a City of Trinidad Safety Manual which contains safety rules that apply to all employees of the City. Violation of any of these safety rules, or any department safety rules, will subject the employee to the provisions of Article IV ("Discipline or Discharge").

SECTION 3. DRUG TESTING:

(a) Introduction – The City proposes a program whereby on-duty employees who are unfit for work due to impairment by drug or alcohol use are required to submit to blood, breath, or urinalysis testing. The City recognizes that current urine screening tests for drugs indicate only prior exposure to a substance and cannot be used to determine when a substance was taken nor measure impairment.

The Union also recognizes the problems associated with having impaired individuals on the job. The Union is concerned that any testing which occurs pursuant to this Agreement does not infringe on employees' privacy or other constitutional rights and that any testing or discipline is neither arbitrary, discriminatory, nor excessive.

The City will offer rehabilitative assistance to employees who either voluntarily admit a drug and/or alcohol problem or test positive for drugs or alcohol as a first offense. Such assistance includes informing the employee about insurance coverage for rehabilitation or counseling under the City's insurance plan. The City will try to accommodate the employee by allowing temporary leave with job protection and the full continuance of employee benefits during such leave.

(b) Drug and/or Alcohol Testing for Cause – Drug or alcohol detection tests shall be given to employees who exhibit indications of impairment because of drugs and/or alcohol. Reasonable suspicion shall be based on objective facts that an employee may be impaired because of drugs and/or alcohol.

Supervisory personnel who have reasonable suspicion that an employee is at work with drugs/alcohol in his/her system are required to have the suspicion confirmed by a second supervisory level person. If the second supervisory person concurs with the supervisor's suspicion, the reasons for suspecting drug or alcohol use will be documented in writing.

The Union recognizes the City's interest in determining the cause of serious accidents and ensuring employee safety. Due to the time factor in obtaining a drug or alcohol test immediately following an accident and the inability to rule out drug or alcohol use without obtaining a urine or breath sample, employees involved in any serious workplace accident, as defined in this section, will be requested to submit to a for-cause drug and/or alcohol test.

"Serious workplace accident" means any accident that results in a fatality or injury requiring medical treatment, property damage estimated at \$3,000 or more, and/or damage to a motor vehicle that requires a vehicle to be towed from the accident site. Further, in the case of a motor vehicle accident, if no citation is given, the employee may still be tested if he/she could have contributed to the accident.

Following an accident, the employee will be tested as soon as possible, not to exceed eight (8) hours for alcohol testing and thirty-two (32) hours for drug testing. The employee involved in an accident must refrain from alcohol use for eight (8) hours following the accident or until he/she undergoes a post-accident test. Any employee who leaves the scene of the accident without justifiable explanation prior to submission to drug and alcohol testing will be considered to have refused the test and shall be subject to termination.

(c) Right to Representation – Management will notify a Union representative when an employee has been requested to submit to a drug or alcohol test, and the representative will be given the reason for the test. The request to submit to a substance test or the collection of the urine

sample will not be contingent upon the Union representative's presence or involvement in the drug or alcohol testing process.

(d) Refusal to Submit to a Drug and/or Alcohol Detection Test – A refusal to submit to a drug or alcohol detection test does NOT lead to a presumption that the employee is under the influence of drugs or alcohol. However, refusal to submit to a drug and/or alcohol test may be considered insubordination and shall subject the employee to disciplinary action, up to and including termination.

(e) Testing Procedures – All drug and alcohol testing will be performed by a laboratory which meets the standards contained in the Department of Health and Human Services' MANDATORY GUIDELINES FOR FEDERAL WORKPLACE DRUG TESTING PROGRAMS. In addition, employees shall have a right to retain a portion of the specimen for testing at the employee's expense.

The Union will be involved in the selection and quality control oversight of the laboratory(ies) used for a drug or alcohol detection.

(f) Employee Referrals – The parties agree that rehabilitative assistance is offered to any employee with a substance abuse problem. This policy will apply whether the employee voluntarily admits to a substance abuse problem or has a positive result for the first time on a drug or alcohol detection test.

The City will ensure that employee benefits include adequate coverage for services to assist employees with substance abuse problems.

(g) Discipline – Any employee found to be impaired (.04 BAC or higher) from the use of alcohol or who shall fail to pass a drug test shall be removed from duty and not allowed to return to duty until he/she passes a return-to-duty test. On the first occurrence, the employee shall not be

subject to disciplinary action, except as otherwise set forth in this paragraph. On the second or any subsequent occurrence, the employee shall be subject to disciplinary action, up to and including termination. The failure of any employee to pass a return-to-duty test within six (6) months of removal from duty because of use of alcohol or failure to pass a drug test shall be cause for termination. Any such employee who returns to duty following passage of a return-to-duty test shall be required to submit to random drug and/or alcohol testing for a period of one (1) year following return to duty. If the employee fails to pass a random test, the employee shall be removed from duty and shall be subject to disciplinary action, up to and including termination. In any case, employees who are required to drive vehicles and/or equipment during the performance of their regular job duties must possess the appropriate Colorado Driver's License. Any loss of driving privileges is cause for termination, except that any such employee who loses his/her legal privilege to drive for a period of not more than twelve (12) months shall not be subject to termination of employment for such loss of driving privilege on the first occasion. The conditions of continued employment would have to be specified.

(h) City Responsibility – In the event that any employee or group of employees files or commences any claim or action before any administrative agency or court against the Union, its officers, or representatives for any alleged act or omission related to the application, interpretation, or enforcement of the City's drug testing program, the City shall indemnify the Union for any judgments, awards, fees, or costs, and hold the Union, its officers, and representatives harmless in the event of any such claim or action.

(i) Compliance with Applicable Laws – Notwithstanding the provisions of this Section, the City and the Union agree to abide by any applicable drug/alcohol testing provision imposed by the State of Colorado or the federal government.

## ARTICLE XII

### POSTING OF NOTICES

SECTION 1. PLACES OF NOTICE POSTING: The Union membership shall be provided a bulletin board for the posting of all notices pertinent to the Union business of employees under the jurisdiction of the Union. Union stewards and officers may use such bulletin boards for posting of notices of meetings, negotiations with regard to agreements or grievances, or other Union/City-related matters and official communications from the Union to its members or from the City to the Union.

SECTION 2. DISTRIBUTION OF AGREEMENT COPIES: The City agrees to provide each regular, full-time employee, upon completion of the required probationary period, a copy of this Agreement in effect between the City and the Union. One copy of this Agreement and attachments shall be available in each department.

## ARTICLE XIII

### MISCELLANEOUS BENEFITS

SECTION 1. MEDICAL/HEALTH INSURANCE: The City agrees to make available to employees covered by this Agreement group medical/health insurance. The City further agrees to provide payment toward monthly premiums of each employee's medical/health insurance coverage as follows: (i) for the brand name drug prescription plan, the City will pay seventy-four 74% of calendar year 2015 medical/health insurance rates; or (ii) for the generic prescription plan, the City will provide payment of seventy-nine percent (79%) of the employee's premium. Since the present terms are based on the current health insurance costs, said terms shall remain in effect until the end of the current insurance coverage year, which is December 31st of every year. Thereafter, the level of City payment of employee premiums shall be determined by the City, based on the dollar

amount of employee premiums and availability of funding. An Advisory Committee of three (3) Union representatives shall be established to make recommendations as to medical/health insurance coverage. The Committee will have full access to all insurance bids as soon as they are submitted to the City. All final determinations as to medical/health insurance coverage shall be made by City Council.

SECTION 2. REPLACEMENT OF PERSONAL LOSSES: Personal articles or equipment which are damaged or destroyed while an employee is performing his/her assigned duties shall be compensated for by the City on a pro-rated basis, so long as such loss was not a result of carelessness, neglect, or normal wear and tear of the article or item damaged or destroyed. This section shall not apply to personal motor vehicles, unless said vehicle was being used for work purposes at the time of damage or destruction.

### SECTION 3. UNIFORM PAY:

(a) All members of the Fire Division are required to dress in such uniform as is or may be prescribed by the Fire Chief. Uniforms shall be kept in a neat and clean condition and shall be worn at all time during hours of duty.

(b) Each member of the Fire Division shall be paid three hundred fifty dollars (\$350.00) annually for the purchase, replacement, and maintenance of uniforms prescribed under subsection (a) above. Such payment shall constitute the entirety of the City's obligation for uniforms. Any additional amounts necessary for compliance with subsection (a) shall be borne by members of the Fire Division.

SECTION 4. HEALTH CLUB MEMBERSHIP: The City shall, in six (6) month increments, reimburse employees in the amount of twenty dollars (\$20.00) per month for health club membership fees upon submittal of receipts.

**SECTION 5. DEATH AND DISABILITY INSURANCE:** The Fire and Police Pension

Association requires a mandatory payment be made by either the employer or the employee to the Statewide Death and Disability Fund ("D & D") for members hired on or after January 1, 1997, effective January 1, 2000. The City will pay the mandatory required death and disability payment for all affected employees, which currently amounts to 2.6% of the employee's base wages, or as may be changed by FPPA.

**SECTION 6. IMMUNIZATION FOR HIGH-RISK EMPLOYEES:** Employees shall have,

at their discretion, immunization shots made available by the City or appropriate health agency.

Immunization shots may include one or more of the following:

- (a) Tetanus
- (b) Cholera
- (c) Hepatitis B

**ARTICLE XIV**

**NON-DISCRIMINATION**

**SECTION 1. NON-DISCRIMINATION CLAUSE:** The parties to this Agreement shall

not discriminate against any person or employee because of disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry; but, with regard to a disability, it is not a discriminatory or an unfair employment practice for the City to refuse to hire, to discharge, or to promote or demote a person if there is no reasonable accommodation that the City can make with regard to the disability, the disability actually disqualifies the person from employment, and the disability has a significant impact on employment.

**ARTICLE XV**

**SAVING CLAUSE**

**SECTION 1. SAVING CLAUSE:** Should any Article, Section, or portion thereof, of this Agreement be held unlawful and unenforceable by any court of competent jurisdiction, such decision of the Court shall apply only to the specific Article, Section, or portion thereof directly specified in the decisions. Upon the issuance of such a decision, the parties agree immediately to negotiate a substitute for the invalidated Article, Section, or portion thereof.

ARTICLE XVI

DURATION, RE-NEGOTIATION, AND ADOPTION OF AGREEMENT

SECTION 1. EFFECTIVE DATE OF AGREEMENT: This Agreement shall become effective and shall be binding on both parties hereto as of January 1, 2015, and shall remain in full force and effect until December 31, 2017.

SECTION 2. WAGE/BENEFIT RE-OPENER: Either party may re-open this Agreement on the anniversary date of the effective date for the purpose of re-negotiating the hourly wage rates and up to any three (3) additional issues, by giving written notice to the other party sixty (60) to ninety (90) days before that anniversary date.

The parties agree to review current salary surveys available to municipalities and union organizations at the time re-openers are considered. The intent will be to determine if salaries paid to employees are comparable to like municipal employees and consider adjustments to those that are not, if possible.

This Agreement contains the full and complete agreement between Union and City. No agreements, promises, or inducements have been made by either the Union or the City other than as appears in this Agreement.

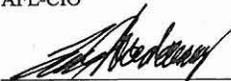
SECTION 3. MATTERS NOT RE-OPENED: Any matter not re-opened in accordance with this Article shall remain in full force and effect until a new agreement is signed.

SECTION 4. OPENING BY MUTUAL AGREEMENT: In the event both parties agree, any Article or Section may be re-opened at any time during the life of this Agreement, upon thirty (30) days' written notice to the other party. Negotiations may proceed immediately upon reaching such agreement.

SECTION 5. ADOPTION BY CITY COUNCIL RATIFICATION: Following the signing of this Agreement by duly authorized officers and business representatives of the Union and duly authorized officials of the City, the City of Trinidad shall adopt, by motion and majority vote, the provisions of this Agreement.

IN WITNESS WHEREOF, the parties named have signed their names and affixed the signatures of their duly authorized representatives on this Agreement.

LOCAL UNION #1074-C, AFSCME  
AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES,  
AFL-CIO

  
\_\_\_\_\_  
PRESIDENT - LOCAL #1074 - C

  
\_\_\_\_\_  
BUSINESS REPRESENTATIVE

CITY OF TRINIDAD, COLORADO

\_\_\_\_\_  
JOSEPH A. REORDA, MAYOR

\_\_\_\_\_  
DONA VALENCICH, ACTING CITY  
CLERK

  
\_\_\_\_\_  
AUDRA GARRETT, ACTING CITY  
MANAGER

**APPENDIX A**

**POSITION & WAGE SCHEDULE**

(Base Wage Rates per Hour)

2015 Base Wage reflects an agreed-to annual increase of \$1.00/hour

<u>Year:</u>	<u>2014</u>	<u>2015</u>
Firefighter/EMT	\$ 13.44	\$ 14.44
Engineer	\$ 13.61	\$ 14.61
Captain	\$ 13.88	\$ 14.88

**APPENDIX B**

**CERTIFICATION SCHEDULE**

A maximum of three certifications shall be allowed per employee for purposes of receiving additional compensation. Except, however, an employee who seeks certification in the areas of advanced life support or wildland, shall be allowed to stack certifications. Any advanced life support of wildland certifications which are stacked are to be counted as one of the three possible total.

All of the following are approved certifications that may entitle employees to additional compensation of \$0.30/hr:

Fire Instructor

Fire Inspector

Driver/Operator

Fire Officer

Haz-Mat Technician

Haz-Mat Incident Commander

Training Coordinator

State Proctor

Fire Investigator

Assistant/Primary Instructor

NFA Courses subject to approval of Chief and City Manager  
(National Fire Academy)

NRA  
(Nationally Recognized Agency)

High Angle  
Confined Space  
Swift Water  
Trench Rescue Technicians



The following are approved certifications that may entitle employees to additional compensation of \$0.10/hr, \$0.17/hr and \$0.27/hr, respectively, and are allowed to be stacked:

ADVANCED LIFE SUPPORT

EMT B	10
EMT I	17
Paramedic	27

WILDLAND CERTIFICATIONS:

NWCG FFT (red card)	10
NWCG FFT1	17
Engine Boss	27

- Certifications will be confirmed in writing by the Training Coordinator and Fire Chief
- All certifications must be maintained regardless of the certification(s) for which employees are paid





## COUNCIL COMMUNICATION

8j

**CITY COUNCIL MEETING:** January 6, 2015  
**PREPARED BY:** Audra Garrett, ACM/City Clerk  
**DEPT. HEAD SIGNATURE:** *Audra Garrett*

**SUBJECT:** Appointment to the Southern Colorado Economic Development District (SCEDD) Board of Directors (Louis Fineberg, Planning Director)

**PRESENTER:** Audra Garrett, ACM/City Clerk

**RECOMMENDED CITY COUNCIL ACTION:** Reappoint Planning Director Louis Fineberg

**SUMMARY STATEMENT:** N/A

**EXPENDITURE REQUIRED:** No

**SOURCE OF FUNDS:** N/A

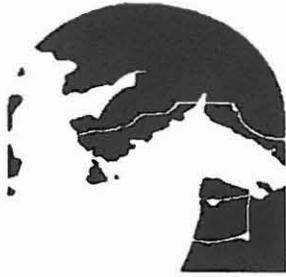
**POLICY ISSUE:** N/A

**ALTERNATIVE:** N/A

### BACKGROUND INFORMATION:

Louis Fineberg has filled this vacancy since January, 2011. It is a one-year term that Council recommends to the County which then has to be approved by the County Commissioners.

8j



CITY OF TRINIDAD, COLORADO  
1876

## COUNCIL COMMUNICATION

8k

**CITY COUNCIL MEETING:** January 6, 2015

**PREPARED BY:** Les S. Downs

**DEPT. HEAD SIGNATURE:** *Les S. Downs*

**# OF ATTACHMENTS:** 1

**SUBJECT:** Announcing the City Manager Finalists, and Discussion of the Procedure  
Council will Employ in Selecting the City Manager

**PRESENTER:** Les Downs, City Attorney

**RECOMMENDED CITY COUNCIL ACTION:** To announce, by way of motion, who the five finalists are for the permanent City Manager position, and to further discuss the procedure for selecting the City Manager.

**SUMMARY STATEMENT:** The open meetings law requires that you announce who the City Manager finalists are no less than fourteen days prior to your selection of a City Manager candidate. So if you announce the finalists at this meeting, you could have me, as the City Attorney and on your behalf, enter into contract negotiations with your finalist as early as January 21, 2015. Also to further discuss the procedure of the selection process.

**EXPENDITURE REQUIRED:** No

**SOURCE OF FUNDS:** N/A

**POLICY ISSUE:** To fill the permanent City Manager position.

**ALTERNATIVE:** To proceed with an alternate course of action.

**BACKGROUND INFORMATION:** Prior Council discussions to arrive at this point in the City Manager selection process.

8k

## Appendix F: Open meetings and records law considerations

by Geoff Wilson, Colorado Municipal League general counsel

Several provisions of Colorado's open meetings law<sup>1</sup> and open records law<sup>2</sup> affect the hiring of a municipal manager. These provisions generally relate to employment processes, materials submitted by applicants and disclosure of the names of "finalists." An introduction to these provisions is set forth below; however readers are advised that this overview should not substitute for advice from your own municipal attorney.

### Employment processes

The open meetings law requires that a "search committee" of a "local public body"<sup>3</sup> establish "job search goals, including the writing of a job description, deadlines for applications, requirements for applicants, selection procedures, and the time frame for appointing or employing a chief executive officer" at an open meeting.<sup>4</sup>

One of the questions that has been raised in connection with this language (which was first added to the statute in 1996 (HB 96-1314; 1996 Colo. Laws, Ch. 147) is whether it applies when a local government does not formally designate a "search committee," such as when the governing body itself conducts the process of hiring a chief executive officer. A conservative course of action in light of this ambiguity would be to develop those aspects of the employment process referenced in the statute in an open meeting, regardless of what local public body performs the function.

### Materials submitted by applicants

Records submitted by a non-finalist for an "executive position," which is broadly defined as a "nonelective employment position with a ... political subdivision," (the definition excludes positions in a classified or civil service system)<sup>5</sup> are not subject to release.<sup>6</sup> Records submitted by or on behalf of finalists, with the exception of letters of reference or medical, psychological and sociological data concerning the finalist, are available to the public for inspection and copying.<sup>7</sup> These provisions apply regardless of whether the local government itself conducts the selection process or a private firm does so on the local government's behalf.<sup>8</sup>

If an applicant for an "executive position" is specifically applying for a "chief executive officer" position<sup>9</sup>, the statute defines "finalist" (and thus which applicants' materials are public) as those whose names must be made public, pursuant to the Open Meetings Act, no later than 14 days prior to "any appointment or employment" of one of the applicants.<sup>10</sup> The Act does not define who is a "finalist" among applicants for an "executive position" that is not a "chief executive officer" position.

You may wish to let your applicants know that, once they become a finalist, their application is a public record under Colorado law. No applicant should expect his or her application to be confidential after this point.

### Disclosure of the names of finalists

As noted above, under the open records law, information concerning an applicant must be released once the applicant becomes a finalist.

In addition, the open meetings law provides that no later than 14 days prior to "appointing or employing" someone to fill a chief executive officer position, the local public body shall make public a list of all finalists under consideration. No offer of appointment or employment may be made prior to this public notice.<sup>11</sup> The statute does not specify how the list will be made public. A prudent course would seem to be to use the same process that the municipality uses to provide notice of its public meetings.

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<sup>1</sup> §24-6-401 to -402 C.R.S.

<sup>2</sup> §24-72-201 to -206, C.R.S.

<sup>3</sup> "Local public body" is defined quite broadly and includes the municipal governing body and any committee created by the governing body, so long as the committee has been delegated a "governmental decision making function." §24-6-402(1)(a) C.R.S.

<sup>4</sup> §24-6-402(3.5), C.R.S.

<sup>5</sup> §24-72-202(1.3), C.R.S.

<sup>6</sup> §24-72-204(3)(a)(XI)(A), C.R.S.

<sup>7</sup> §24-72-204(3)(a)(XI)(B), C.R.S.

<sup>8</sup> §24-72-204(3)(a)(XI)(C), C.R.S.

<sup>9</sup> The Open Records Act does not define "chief executive officer." Nonetheless, a municipal administrator, particularly in a council-manager form of government, is generally understood to be in the contemplation of this statute.

<sup>10</sup> §24-72-204(3)(a)(XI)(A), C.R.S.; §24-6-402(3.5), C.R.S.

<sup>11</sup> §24-6-402(3.5), C.R.S.