

The City Council of the City of Trinidad, Colorado met in Special Session on Tuesday, January 24, 2012 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, January 24, 2012 at 1:30 p.m. in the Council Chambers at City Hall

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

- 1) Special Event Permit request (Malt, Vinous and Spirituous) by Mount Carmel Health, Wellness & Community Center at 911 Robinson Avenue for February 11, 2012

**\*\*RECESS INTO WORK SESSION\*\***

**\*\*RESUME SPECIAL MEETING UPON CONCLUSION OF WORK SESSION\*\***

- 2) Resolution amending the budget expense summary for the City of Trinidad Power & Light Fund for the fiscal year beginning January 1, 2012 and ending on December 31, 2012, by transferring and appropriating a total amount of \$77,554 from the "Wages," "FICA & M-Care," and "Retirement" line items to a new line item entitled "Annual LED Light Payment"
- 3) Ratification of LED Lighting proposal – Live Green Solutions - \$466,131
- 4) Executive Session – For the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under C.R.S. Section 24-6-402(4)(e) – Union contract negotiations

The meeting was called to order at 1:30 p.m.

There were present:	Mayor  Councilmembers	Rino, presiding  Baca Gonzalez, Bolton, Bonato, Pando, Shew, Velasquez
Also present:	City Manager City Attorney City Clerk	Gil de Rubio Beatty Garrett

Special Event Permit request (Malt, Vinous and Spirituous) by Mount Carmel Health, Wellness & Community Center at 911 Robinson Avenue for February 11, 2012. Scott Candland, Mt. Carmel Chief Operating Officer, addressed Council. He said the permit was being request for a (SCRT) dinner/theatre production of the play 'Love Letters'. Mayor Rino pointed to the information in their packets and confirmed with the City Clerk that everything was in order. A motion to approve the permit request was made by Councilmember Pando and seconded by Councilmember Shew. The motion carried by a unanimous roll call vote.

The special meeting recessed at 1:31 p.m. for work session and upon its conclusion, resumed at 3:10 p.m.

Councilmember Pando requested the order of the agenda be amended to consider the LED lighting proposal prior to the resolution amending the Power & Light Fund budget. Councilmember Bolton asked his reasoning. Councilmember Pando said he felt they needed to deal with the project consideration before they commit to the funding change. Councilmember Bolton asked for his reasoning. Councilmember Pando reminded that he stated he would back off of his previous motion if they went out to bids on the LED lighting. Then they could move money from the Power & Light Superintendent salary back into the budget. Councilmember Pando made a motion to consider the ratification of the LED lighting proposal first and the resolution transferring and appropriating Power & Light fund line items to a new line item for annual LED light payment second. The motion was seconded by Councilmember Velasquez. The motion carried by majority with the following votes being cast: Aye – Bonato, Pando, Velasquez, Rino  
Nay – Baca Gonzalez, Bolton, Shew

Ratification of LED Lighting proposal – Live Green Solutions - \$466,131. Councilmember Baca Gonzalez opined that the City has a very viable, reasonably priced option on the table. She said she would like Council to either vote it up or down, and then each of the Council members can live with his or her the vote. In particular she said she didn't think there was anything illegal about moving forward with the very good proposal offered by Live Green Solutions because there's an exception to the bidding requirements set forth in the City's code, Section 7-53, which says 'the provisions of this article, referring to the bid process, do not apply to the purchase of goods when a good is available from only one source of supply or when standardization or compatibility is the overriding consideration.' She added that she thinks those facts pertain to this situation. Specifically, a lot of the bidding process for LED lights will seek to replace the pole, the head, the light – the whole structure. Her understanding is that this concept/proposal by Live Green will actually manufacture the light fixture to fit into our existing poles thereby saving the City considerable money. For that reason she said she thinks they should go with the bid in the hand instead of looking for two in the bush. Mayor Rino pointed out that there were four companies who sent proposals. He said he is concerned that the City never wrote specifications relative to the poles, the lights, the light fixtures or what they will have to do, if they would have to retrofit the kit, who would have to build the kits and the

cost of the kit for each light fixture. If the City didn't do those things, how do we know this is the best proposal? Councilmember Baca Gonzalez said it had to be part of the dialogue between the City Manager and the four entities. Mayor Rino responded that whether he had the dialogue or not, Council didn't see it. Council had no idea and still don't know. He added that he hoped people don't think that by going to LED lights it will lower their electric bill. That won't be true at the onset. It will lower the City's use of electricity for the street lights. Eventually, maybe it will help, but not at the onset. He continued that he doesn't know if there is a mandate nor does he know of anyone else who knows if there is a mandate that this has to be done by 2014. He said he also doesn't know what the rush is to start with. Why can't we go out to bid in 45 days and do it in a proper fashion? He said he didn't think Live Green is a manufacturing company and asked City Manager Gil de Rubio if they are or if it is true that they are a financing company. City Manager Gil de Rubio clarified that Live Green is not a financing company although you can get financing with them. They are the manufacturer's representative in this area. He added that he visited the manufacturer in New Mexico. City Manager Gil de Rubio said that regarding specifications, all of the companies he talked to received the same information regarding the specifications for our light fixtures as Live Green did. It was an even playing field. Some companies refused to bid while others submitted ridiculous prices because they didn't want to even attempt to retrofit lights. The mandate lies in the manufacturing of the bulbs in 2014. As Live Green's attorney made Council aware at their meeting last Tuesday, the law is in place, however the enforcement is iffy. The law requires the manufacturers stop making bulbs of this caliber. In 2014 if we have to start replacing bulbs in our fixtures we'll have to buy LEDs on a one by one. Mayor Rino asked if he's correct that the company has to build them to fit into the City's light fixture. City Manager Gil de Rubio answered they most certainly will but it will be done on a one on one basis instead of building a prototype that will fit all of our lights. It will be a lot more expensive. Mayor Rino asked if the City has several different types of lights. City Manager Gil de Rubio said the City does and all the retrofits for those lights were taken into consideration for this bid. He pointed out that in the literature he provided to Council it breaks out all of the different lights we are getting compared to the lights we have currently. All of the companies received that. There are about four or five different styles and this quotation takes into account retrofitting all the lights. Mayor Rino said those companies must have been interested if they sent a quote. City Manager Gil de Rubio said he could only find four or five nationally at that time. If we wanted to replace our entire fixture with their work crews he could have found around 100 of them. Mayor Rino recalled that the original plan he presented to Council was going to cost around \$600,000 to \$700,000. The later one was reduced to \$400,000 from \$700,000. He asked why there was such a drastic drop from \$700,000 to \$400,000. Where is their profit going to come from if they are going to do it? City Manager Gil de Rubio answered that they will have very little. Initially we they started they wanted to use this as a gateway to Colorado. They have since acquired more accounts, but out of respect to Trinidad and because the president is originally from Trinidad, they have agreed to keep their discounts open until January 31<sup>st</sup>. He reiterated that he went down and talked to the manufacturer. They wanted Trinidad to be a stepping stone into the northern Rockies because they are out of New Mexico and so they did some valued engineering, the same as we do with all our bids, they sit down to determine where to cut corners. He said when he talked to these other companies he sent out standard specifications on where we wanted the lights and the wattages and so forth. Once he received the low bid he said he sat down with that firm and they sent a representative here for several days to come up with a plan to drastically reduce the City's cost. So there was a lot of valued engineering once they decided the low bid. Mayor Rino reiterated that it wasn't a bid it was a proposal. City Manager Gil de Rubio agreed. Councilmember Bonato commented that he is concerned about doing this the right and proper way and this project wasn't put out to bid. It was done in a way that wasn't right. He said he'd be more relaxed to see it put out for bid and be able to see how much the other companies will charge the City to do this project. If Live Green is going to charge the City \$466,000 and another company bids \$660,000 where's the difference? Is it in the workmanship, in the profit and loss? How can a company take \$200,000 loss or lost profit? Council wants to do this properly, put this out for bid, let us see what's going on and decided from there. City Manager Gil de Rubio said the reason it is back on this agenda is because of the January 31<sup>st</sup> deadline that Live Green gave the City. He added that it is fine if Council is not comfortable but that it was a legal proposal. Due diligence definitely has worked into this. We have rehashed this over and over again. He continued that he walked away from the last meeting still confused as to whether Council wanted to do an RFP or go with this proposal. He reiterated that he was confused and if they want him to do an RFP to just direct him to do so. Councilmember Bonato said he believed they did that last meeting. He added that he didn't know how he got confused - they wanted to put it out for bid, that's all they asked. Then all of a sudden a resolution was on the agenda. Councilmember Bonato clarified that all he is asking is that it be put out to bid, do it the proper way and let's see what comes back. There should be a fair chance to do this. City Manager Gil de Rubio said they can check they minutes on this, but he recalled that he asked if Mayor in the final discussion if the Council wanted to go out for an RFP on this and his response was 'let's wait for the resolution'. He noted the resolution is a different item on this agenda. He added that he realized after the meeting that the discount will sunset after January 31<sup>st</sup> and their next meeting is in February. He didn't want to go to the February meeting and ask if they wanted an RFP or not. That's why it is on the agenda. He asked if City Council as a whole wants him to do an RFP. Councilmember Velasquez said she thought they had voted on this last Tuesday and thought that it would go out to bid. City Attorney Beatty asked to address some questions that arose this afternoon. The first was the one posed to Sam Mamet from CML in the work session. Mayor Rino had asked if there was an actual federal mandate for the conversion to LED lighting. To state that there is a federal mandate that we convert our street lights to LED lighting is not accurate. He said he verified that with the Colorado Association of Municipal Utilities, which has confirmed it with the American Public Power Association and the National Electrical Manufacturers Association. There is a 2007 Energy Bill in place that imposes energy standards upon the industry, in practice making incandescent bulbs obsolete. It does ultimately affect the high pressure sodium bulbs that are most common place in the City street lights, he believed. He said he doesn't know enough about the technology to know if at some point the City can replace the high pressure sodium bulbs with compact fluorescents or something of that nature, something we have in our own households. There are more stringent requirements in place that are making those incandescent bulbs obsolete. The City will not run out of lighting options in 2014 if we don't do this. The essence of this project is that it is a cost savings effort in order to realize energy savings over the long haul. He concluded that he wanted to be clearer on the "federal mandate". There's not an actual mandate that we change our lights to LEDs. Regarding the purchasing policy, there's been quite a bit of discussion. Regarding the exception to the policy, City Attorney Beatty said he wants City Council to know that when this proposal was first brought forth to Council last year, it was handed out at a meeting so there wasn't any time to really consider it in advance. Subsequent to City Manager Gil de Rubio's presentation he said he had a conversation with him almost immediately. He presented him with the purchasing policy and explained how it works. At that time he said he thought it was merely the replacement of light bulbs and didn't realize what was involved. He said he wasn't real certain about the direction of the project at that time. City Manager Gil de Rubio brought it up a little later, he thought at a regular meeting, and they had further discussion. City Attorney Beatty said he recalls City Manager Gil de Rubio saying we will go out to bid. Subsequent to the second

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reading of the annual appropriation ordinance in December came this media-fueled thing. City Attorney Beatty said he spoke to the manufacturer, Live Green Solutions, and City Manager Gil de Rubio provided more information on what's actually involved in these LED lighting components. He continued that while he agrees there is some basis under the exception to our procurement policy, there's a risk. The exception provides that we don't have to follow the policy when standardization or compatibility is the overriding consideration. Upon his further consideration City Attorney Beatty said he feels the cost is the overriding consideration. As explained previously he reminded that he feels more comfortable if the City goes forth with a competitive, sealed bid process in compliance with our purchasing policy. Ken Fletcher addressed Council. He advised Council that he has been in touch with Senator Udall and his staff today and last Friday because he became very concerned about what was being put forward. He told Council that they have been led wrong. There is no federal mandate to replace street lights. The federal mandate written up by the House that was to replace the bulbs in residences and offices because those are the only type LED that would be available. The senate defeated that – there is no mandate. Dillon McMillan, a staff person for Senator Udall in Washington, D.C., e-mailed him as did the Senator, and said they are talking about 100-watt bulbs and 70-watt bulbs used at home and in offices. On the internet this morning Mr. Fletcher said he called up Live Green. The first page he got was blank and under construction. So, he went through another way to get the information. They are not in Albuquerque in their yellow pages, perhaps because they are not listed yet. He went in again and found there are three companies they've been involved with – Immek Volkswagen in Denver, Expressway Toyota in Boston, and LaCarGuy in Santa Monica. They are all automobile dealers. He found they are in Denver, actually Aurora. They are not listed in the yellow pages in Aurora. The head of the company was listed as Paul Keefe but there's no one in Aurora with that name. That was all from the internet today, acknowledging that he may be mistaken. Mr. Fletcher said he also searched for other companies and found Shine Retrofits from Boulder County, who is an actual manufacturer involved with LED lights. He clarified that he is not against putting the lights on the street, he's for it, but feels there should be a bidding process. Live Green placing a January 31<sup>st</sup> deadline isn't the way it should be done. Another company he found is Ledway from Wisconsin, Neptune Light from Illinois and Active LED in Texas. He further clarified that he didn't know any of these companies. He urged Council to be careful. If they want the lighting he said he is all for it but there's no mandate. They are only trying to mandate lights for residences and businesses. He asked that since the City is going to pay one-half million dollars which will reflect on the budget and on the reserve that they please at least have a bid go out and tell Live Green to bid on it. Frank Leone addressed Council as a citizen of Trinidad and third generation business person for the past 70 years. Mr. Leone said he is not here to argue over LED lights or electrical superintendents. Mr. Leone said has been a subcontractor and supplier of materials for the City on different jobs, has done several contracts with the City, County, Bureau of Land Reclamation, just finished a five-year project with CDOT, has worked with the Department of the Army, on the Trinidad Dam, which is the Albuquerque District, and at Pinon Canyon, which is the Omaha District, also with Department of Corrections and various other agencies. He said he has always had to submit bids on these projects. At one time he said he was the sole redi-mix supplier in Trinidad. He had to bid on jobs for the City and bid with other companies from Walsenburg, Pueblo and Raton, even though he was the only person here. Mr. Leone said he doesn't mind that, that's why we live in the society we do. He said he feels it is just right and property to get bids on all projects. He said he hopes there will never be promises by any official to give to a company any kind of a project without a bid process. It's not right. He said he'd be the first here if a job went to one company without a bid process because he thinks it is wrong. Mr. Leone said he hopes City Council thinks about it if you were a business person and go back to the process this City has done right along. He added that he has worked in this business since he was ten years old. His grandfather started the business back in 1876. He said he doesn't ever remember anyone getting a job by a promise or without a bid. Councilmember Baca Gonzalez thanked the two citizens who spoke for sharing that information and said Council appreciates input from citizens. She stated that she is more than a little concerned that this issue has been out there since July, since before she was on City Council. She said she is also very concerned about legal issue not being addressed sooner. Councilmember Baca Gonzalez said she has experience representing political subdivisions and she was ethically obligated to come forward and point out problems or irregularities whether it pleased her boss or a board of trustees. She said she is very concerned that the issue of whether or not this should be bid didn't come up until the last inning. Also, that this is the first time Council received a legal opinion that the bidding process should have been adhered to. She said she is not going to vote on something if legal counsel is advising against it. In view of these circumstances she recommended City Council needs to give clear, unequivocal direction to the City Manager and City Attorney regarding what City Council wishes to do with the LED lights. Mayor Rino said the people here have made it clear that the bidding process should be followed on the recommendation of the City Attorney. It is the only proper thing to do and it should have been brought to us long ago as to what the intent was relative to bidding. Had it been brought to us earlier he said he would have asked if it had been bid out, like he does with other projects. Mayor Rino recommended a motion to give clear direction that the City Manager go out to bid on the LED lighting. Councilmember Pando moved that they go out to bid on the LED lighting and that the bidding be open to anyone qualified. At the suggestion of Mayor Rino he added to his motion that the bids include the kinds of lights, number of lights and cost to replace the lights and move them in, and specific specifications according to what they think needs to be done in the City. The motion was seconded by Councilmember Velasquez. Councilmember Shew said the biggest reason for the project is that they want to save money out of street lighting. He said he'd like to see if they can get the information on how much money the City will save on street lighting itself with the bids, noting that he has a general idea of what we pay for the street lighting. City Manager Gil de Rubio said that's part of the package. Councilmember Shew said he'd like to see that from the other bidders. Councilmember Bolton read to illustrate the importance of LED lighting an article from Topeka, Kansas about street lighting "The transition to LED street lighting has helped the City achieve about 40% energy savings, reducing its carbon dioxide emissions by 63 tons. City officials ran a separate meter for the new LED lights and compared their energy meter reading to the previous two years to capture the data." She said they will really give us great savings on City energy. Mayor Rino agreed that it is necessary to do the project but in a proper manner. The City will save money and the savings will help do capital improvements down the line. Councilmember Pando also said he wasn't opposed to LED lighting. He reminded he originally said he wanted to postpone it. He said he realizes we will have to implement LED lighting and is opposed to it. However he said he is opposed to accepting proposals as opposed to the competitive bid process. Roll call was taken and the motion carried unanimously.

Resolution amending the budget expense summary for the City of Trinidad Power & Light Fund for the fiscal year beginning January 1, 2012 and ending on December 31, 2012, by transferring and appropriating a total amount of \$77,554 from the "Wages," "FICA & M-Care," and "Retirement" line items to a new line item entitled "Annual LED Light Payment". Mayor Rino reiterated his previous comment to Council that he adamantly believes the City needs to hire an engineer that can handle the energy issues of the City's utilities. If not, they will continue to go through this process. He said City Manager Gil de Rubio is probably qualified but is not an engineer. An engineer would have helped a great deal in

the LED lighting process. He said he thinks the funding for the superintendent should remain, although he said he doesn't know how to fund the LED project after the bids are received back, but perhaps through Rocky Mountain SER. They find individuals who will finance the LED lighting and it would be important for Council to reconsider the superintendent or engineer in those two departments (gas and power). City Manager Gil de Rubio said, as he has stated before, Rocky Mountain SER has been involved in the proposals since inception. He said issuing an RFP without a line item to fund the project is not attractive to contractors. It is a lot of work to come up with a bid if Council ultimately decides not to do the project. It is very difficult to go out for an RFP for a project that is not properly funded. Mayor Rino said he will keep harping on it. Councilmember Baca Gonzalez made a motion to approve the resolution as presented and the motion was seconded by Councilmember Bolton. The motion failed by majority with the following votes being cast:

- Aye – Baca Gonzalez, Bolton, Shew
- Nay – Bonato, Pando, Velasquez, Rino

Councilmember Bonato asked City Manager Gil de Rubio if he will be in contact with the companies listed on the handout from Ken Fletcher. City Manager Gil de Rubio said he will draw up an RFP and advertise it accordingly. He added that he can't contact them individually with an RFP.

RESOLUTION NO.

RESOLUTION AMENDING THE BUDGET EXPENSE SUMMARY FOR THE CITY OF TRINIDAD POWER & LIGHT FUND FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2012 AND ENDING ON DECEMBER 31, 2012, BY TRANSFERRING AND APPROPRIATING A TOTAL AMOUNT OF \$77,554 FROM THE "WAGES," "FICA & M-CARE," AND "RETIREMENT" LINE ITEMS TO A NEW LINE ITEM ENTITLED "ANNUAL LED LIGHT PAYMENT"

Executive Session – For the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under C.R.S. Section 24-6-402(4)(e) – Union contract negotiations. A motion to enter into executive session for the stated purpose was made by Councilmember Bonato and seconded by Councilmember Pando. The motion carried unanimously and the executive session ensued at 3:52 p.m. The executive session was electronically recorded pursuant to law. Upon conclusion of the executive session at 4:25 p.m., the special meeting resumed.

There being no further business, Councilmember Velasquez made a motion to adjourn and Councilmember Shew seconded the motion. Upon unanimous roll call vote, the meeting was adjourned.

ATTEST:

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JOHN RINO, Mayor

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AUDRA GARRETT, City Clerk