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360 Main St. • Delta, Colorado 81416 • Phone (970) 874-7566 • Fax (970) 874-8776

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Council may take formal action on any item appearing on this Agenda. However, formal action WILL NOT be taken at this meeting on any item of business first identified during the course of the meeting as a change to the Agenda, other business, or Citizen, Councilmember and Staff Comments.

## A G E N D A

Delta City Council  
Regular Meeting

July 19, 2011  
7:00 p.m.

- A. Pledge of Allegiance
- B. Changes to the Agenda
- C. Minutes
- D. Citizen Comments
- E. Delta Area Chamber of Commerce Street Closure Permit Application  
NAPA Block Party (Williams)
- F. Resolution #3, 2011; Authorizing Acquisition of Certain Real Property (220 W. 11<sup>th</sup> St.)  
from Francisco Saenz for the Confluence Drive Project (Hatheway)
- G. Contract to Buy & Sell Property: Agricultural Service Company (Hatheway)  
521 Bridge Street
- H. Contract to Buy & Sell Property: Producers COOP (Hatheway)  
701 Silver Street
- I. Contract to Buy & Sell Property: Delta Holding Group, LLC (Hatheway)  
430 W. 8<sup>th</sup> Street
- J. Contract to Buy & Sell Property: Skyland Group, LLC (Hatheway)  
SW Corner of Intersection at Confluence Drive & Bridge Street
- J1. Agreement to Amend/Extend Contract: Deloris Triantos (Hatheway)  
Property Located on West 8<sup>th</sup> Street
- K. Truck Route Design Change Order (Hatheway)
- L. Wastewater Treatment Plant Aeration System and Digester Cover Design (Glammeyer)
- M. 2010 Audit Report (Timothy Mayberry of Johnson, Holscher & Company, P.C.)
- N. Second Quarter Financial Report (DeZeeuw)
- O. Resolution #4, 2011; Amendments to Cemetery Regulations (Suppes)
- P. Management Agreement for Hansen House/Senior Citizens Center (Kerby)
- Q. Participation in November Coordinated Election (Kerby)
- R. City Attorney Comments
- S. City Manager Comments
- T. Councilmember Comments

## EXECUTIVE SESSION

To discuss the purchase, acquisition, lease, transfer, or sale of real, personal, or other property interest under CRS Section 24-6-402(4)(a) and for the purpose of instructing negotiators under CRS Section 24-6-402(4)(c), more specifically pertaining to the possible sale of property at 201 Kellogg, and pertaining to the purchase of right-of-way for the truck bypass (Confluence Drive) project and the possible purchase of open space property; and to discuss a personnel matter under CRS Section 24-6-402(4)(f) 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.

Mayor Pro Tem Guy Pfalzgraff called the meeting to order at 7:00 p.m. Also present were Councilmembers Bill Raley, Robert Jurca, and Ed Sisson, along with City Manager Joe Kerby and City Attorney Mike Schottelkotte. Mayor Mary Cooper was absent. A meeting notice was posted in the south window at City Hall at least twenty-four hours prior to the meeting.

**Pledge of Allegiance**

The Mayor Pro Tem led everyone present in the Pledge of Allegiance.

**Changes to the Agenda**

There were none.

**Minutes**

It was moved by Councilmember Raley and seconded by Councilmember Jurca to approve the minutes of June 20, 2011, as submitted by the Clerk. All in favor, motion carried.

**Citizen Comments**

There were none.

**Abraham Connection Presentation**

Kami Collins, representing the Abraham Connection Homeless Shelter, presented information about the Abraham Connection, which offers temporary, emergency overnight shelter on a night-by-night, case-by-case basis from November 1 through April 30. During its first season, the shelter (located at the Delta United Methodist Church) was open from January through April, 2011, and provided 71 "bed-nights" and 14 additional meals. Ms. Collins provided contact information for the shelter and answered questions from Council and staff.

**Governor's Energy Office Memorandum of Understanding**

During a work session earlier in the evening, Dan Richardson of the Governor's Energy Office (GEO) gave a presentation of the Performance Contracting program through the GEO. City Manager Kerby explained that Staff is recommending approval of the Memorandum of Understanding with the GEO, which would be the first step in attempting to improve the energy efficiency of City facilities. If Council approves the MOU, the next step would be to select an energy service company. Council would then be asked to approve a contract for a technical energy audit.

Mr. Kerby went on to explain that this program can help the City to increase energy efficiency of its facilities, while providing a financing mechanism which would allow capture of energy savings which could then be applied toward capital improvements for City facilities.

City Attorney Schottelkotte stated that he had reviewed the Memorandum of Understanding and found no problems with it.

It was moved by Councilmember Jurca and seconded by Councilmember Sisson to enter into the Memorandum of Understanding with the Governor's Energy Office. All in favor, motion carried.

**Cemetery Regulations**

Parks Director Paul Suppes explained that this matter had also been discussed in the work session preceding the regular meeting. Mr. Suppes explained that the proposed changes to the Cemetery regulations are being suggested in response to complaints received from the public. The changes would somewhat ease the current restrictions on placement of flowers on gravesites, and would completely prohibit the presence of dogs in the Cemetery, except for service dogs.

It was moved by Councilmember Sisson and seconded by Councilmember Raley to accept the changes in Cemetery regulations recommended by staff. All in favor, motion carried.

## **Regular Meeting, Delta City Council, July 5, 2011 (Cont.)**

### **Renewable Energy Policy Allowing for Net Metering**

Utilities Director Steve Glammeyer explained that the City is beginning to see an increase in the number of small individual renewable energy installations on both residential and commercial facilities in the last few years. In order to properly account for these installations regulate safety to the City's system and personnel, staff has developed a policy Council's consideration. The policy provides for "crediting" excess energy generated back onto the City's distribution system. Credits would be made to the customer's bill for the amount of energy generated beyond the customer's monthly usage. Credits would be carried over month to month and applied to the subsequent month's bill. Any excess credit remaining on the account at the time of disconnection from utility service would be forfeited to the City.

Mr. Glammeyer distributed a brief amendment to the policy which clarified how the amount of the credit would be determined.

Staff answered questions from Council concerning the implementation of the policy.

It was moved by Councilmember Sisson and seconded by Councilmember Jurca to adopt the City of Delta Renewal Energy Policy Allowing for Net Metering, including the amendment. All in favor, motion carried.

### **Liquor License Renewals: El Tapatio Hotel/Restaurant License; City Market 3.2% Beer License**

The Clerk reported that the applications for both renewals are complete and that the required fees have been paid. The Police Department reports for both licensees revealed no liquor violations during the last year. Staff recommended approval of both renewals.

It was moved by Councilmember Jurca and seconded by Councilmember Sisson to approve the Hotel/Restaurant License renewal application for El Tapatio and the 3.2% Beer License renewal application for City Market. All in favor, motion carried.

### **City Attorney Comments**

City Attorney Schottelkotte reported that he would be out of town for the July 19<sup>th</sup> meeting.

### **City Manager Comments**

City Manager Kerby gave the following report:

- The Special Election concerning medical marijuana facilities will be held on July 12.
- July 22 is the last day for the City to inform the County Clerk's office if we intend to participate in the November coordinated election. Thus, action will need to be taken at the July 19<sup>th</sup> meeting if there will be a City issue on the ballot.
- The City received a \$4,000 grant from Colorado Creative Industries for the Powwow.
- The Golf Course Micro Hydro Project has been submitted. It has gone through a feasibility study and has made it through Phase I review of the Colorado Renewable Energy Development Team. The project has been selected to move on to Phase II.
- The Manager plans on taking a week's vacation in August.
- The open space acquisition is moving ahead with a tentative closing date of August 8.
- Deltarado Days is scheduled for July 15 and 16.
- Today at 5:00 pm was the deadline for submission of names of citizens to serve on the Citizens Financial Task Force. Manager Kerby would like to have Council appoint the members of the Task Force within the next 30 days.

### **Councilmember Comments**

Councilmember Sisson commented on this year's 4<sup>th</sup> of July fireworks display and the Colorado Municipal League conference he attended in June. The Mayor Pro Tem also commented on the conference.

### **Executive Session**

It was moved by Councilmember Jurca and seconded by Councilmember Sisson to convene an Executive Session to discuss the purchase, acquisition, lease, transfer, or sale of real, personal, or other property interest under CRS Section 24-6-402(4)(a) and for the purpose of instructing

**Regular Meeting, Delta City Council, July 5, 2011 (Cont.)**

**Executive Session (Cont.)**

negotiators under CRS Section 24-6-402(4)(c), more specifically pertaining to the possible sale of property at 201 Kellogg, and pertaining to the purchase of right-of-way for the truck bypass (Confluence Drive) project; and to discuss a personnel matter under CRS Section 24-6-402(4)(f) 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. All in favor, motion carried.

At 7:37 p.m., Mayor Pro Tem Pfalzgraff recessed the Regular Meeting and convened the Executive Session.

At 9:04 p.m., the Mayor Pro Tem reconvened the Regular Meeting and announced that the Executive Session had been concluded. He stated that in addition to himself, the participants in the Executive Session were Councilmembers Ed Sisson, Bill Raley, and Robert Jurca; City Manager Joe Kerby; City Attorney Mike Schottelkotte. Public Works Director Jim Hatheway was present only for the property sale and right-of-way discussions. Brad Rodenberg was present only for the right-of-way discussion.

For the record, the Mayor Pro Tem asked any person participating in the Executive Session who believed that any substantial discussion of any matters not included in the motion to go into Executive Session occurred during the Executive Session in violation of the Open Meetings Law, to state his or her concerns for the record. No concerns were stated.

The meeting was immediately adjourned.

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Mary Lynn Williams, Acting City Clerk

## MEMO

To: City Council, City Manager  
From: Mary Lynn Williams, City Clerk  
Date: July 18, 2011  
Subject: Delta Area Chamber of Commerce Street Closure Permit Application

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### **Recommendation**

Staff recommends approval of the street closure permit, providing the Chamber of Commerce has submitted the required certificate of insurance and the written plan requested by staff.

### **Background**

The Chamber has submitted an application for a street closure permit for the NAPA Block Party scheduled for July 29, 2011. They are requesting closure of 9<sup>th</sup> Street from the alley just west of Main Street to Palmer Street from 4:00 p.m. to 8:30 p.m. As of the writing of this memo, the required certificate of insurance had not been submitted, nor had the written plan requested by staff. If these items are received prior to delivery of the packets, they will be included with the application. If not, they will be distributed at the meeting on Tuesday.

The application fee of \$25 and the \$500 deposit have been paid by the applicant.

### City of Delta Parade and Street Closure Permit

Date of Application: 7-11-11

PLEASE PRINT OR TYPE

**Event Information:**

Date of Event: 7-29-11

Location(s) of Event: 9th & main (1/2 block W. 9th to Palmer)

Name and Description of Event: Napa Block party

**Applicant:**

Contact Person: Gyneer Thomassen

Name of Represented Entity: Delta Area Chamber of Commerce

Mailing Address: 301 main st.

E-Mail Address: Director@deltacolorado.org

Phone Number: (Day) 874-8616 Evening \_\_\_\_\_

**Special Equipment Needs:**

The following items have been received by the City of Delta:

- Application Fee of \$ 25<sup>00</sup>
- Deposit of \$ 500<sup>00</sup> to be refunded if street closure area and adjoining property is clean and litter free.
- Proof of Special Event Insurance satisfactory to the City of Delta. attached

Any authorized City of Delta representative may terminate the event at any time for any good cause and applicant must then immediately vacate. No refund will be given in such event.

*Laura Sawyer* 7-11-11  
 Signature of Applicant or Representative Date

\_\_\_\_\_  
 City Representative Title Date

07/13/11 08:16 FAX 970 874 8776

CITY OF DELTA

-> CHAMBER

001

07/11/11 08:09 FAX 970 874 8776

CITY OF DELTA

002

City of Delta Special Permit continued

Any authorized City of Delta representative may terminate the event at any time for any good cause and applicant must then immediately vacate. No refund will be given in such event.

R.O.W. Closure Regulations:

- No R.O.W. closure may occur in conjunction with any Special Events Liquor License, unless permission is granted by the City Council.
- No R.O.W. may be closed more than ten hours.
- Application must be submitted at least 30 days in advance of event.
- Event must conclude by 11:00 p.m.
- R.O.W. and adjoining walkway, etc. must be cleaned after event by applicant.

Date of R.O.W. Closure: 7-29-11

Start Time of Closure: 4:00 PM Ending Time of Closure: 8:30 PM

Describe R.O.W. area to be closed:

9th Street between Palmer to alley,  
See Diagram

Barricades, cones and signs needed:

Barricades: 2 ? Signs: 2 ? Cones: \_\_\_\_\_

Time and Date for Delivery: \_\_\_\_\_

Time and Date for Pickup: \_\_\_\_\_

Parade Regulations:

- Application must be submitted at least 60 days in advance of event.
- Each parade must organize and stage on 9th Street from Grand Avenue to Main Street with additional staging area on Main Street from 9th Street to 11th Street on the East side. The parade must then travel North on Main Street to 4th Street, turning off of Main Street, East onto 4th Street.
- Throwing candy and other items from moving vehicles is prohibited.

I understand that the City of Delta has no liability and provides no insurance for the protection of the applicant or event spectators. The applicant agrees to save and hold harmless the City and its employees from any and all claims and demands arising out of the use of the permitted areas and will defend any cause of action brought to enforce any such claims or demands against the City and/or its Employees.

Laura Hany 7-13-11  
Signature of Applicant or Representative Date

\*\*\*\*\*  
The foregoing application for a special permit is hereby granted, subject to all terms, conditions and regulations previously stated and subject to all other applicable City Code regulations.

\_\_\_\_\_  
Mayor of the City of Delta

\_\_\_\_\_  
Date

Palmer Street

XXXXXXXXXXXXXXXXXXXX

proposed street  
closure area

XXXXXXXXXXXXXXXXXXXX

alley

Napa

Main Street

9th Street

Best  
Western



## MEMORANDUM

To: Mrs. Lynn Willams  
Joe Kerby (City Manager)

From: Chief Robert Thomas

Date: July 14, 2011

Ref: 9<sup>th</sup>/Main Block Party

In the interest of **public safety**, I need the following questions answered.

1. Purpose of the closure?
2. Will alcohol, wine and/or spirits be served?
3. Security measures (if alcohol is served)?
4. Fencing, bracelets etc. (if alcoholic beverages are served)?
5. Portal Potties
6. Trash Receptacles
7. Who is responsible for clean-up?
8. Will there be a sound system at the party?
9. Will surrounding neighbors be informed and how will they be informed?

Before I support this closure, I need the above questions answered in detail by Gynee Thomassen. Should the above mentioned questions are not adequately answered; I will not support the street closure.

Thanks

## MEMORANDUM

July 15, 2011

**To:** City of Delta - Delta City Council Members  
- Joe Kerby  
- Chief Robert Thomas  
- Lynn Williams

**From:** Julianne Messenger, Event Coordinator <sup>AM</sup>  
Delta Area Chamber of Commerce

**Copy:** Linda Sanchez, Delta Area Chamber of Commerce  
Gyne Thomassen, Delta Area Chamber of Commerce

**Re:** 9th Street Closure Request for July 29, 2011

In reply to Chief Thomas' July 14, 2011, Memorandum, and to follow up on my phone conversation yesterday evening with Chief Thomas, I provide the following written event confirmation details:

- the purpose of the street closure is a Chamber-sponsored business promotional event - *Delta Summer Block Party*.
- there will be no alcohol served at the event.
- a port-a-potty will be on site.
- trash receptacles will be on site.
- the event planners (the Chamber) will be responsible for cleaning up after the event.
- there will be music – not as a central focus, but as a background for complete event appeal to all of the senses, much like the inclusion of the Farmers' Market in all six of the Block Parties -- which we will ensure does not disturb the Best Western lodgers and the residential neighbors. The Block Party hours are 5:00 - 8:00 p.m.
- I have already spoken with the Best Western managers, Nita and Mike, and have their support of the requested street closure boundaries. The few affected residential neighbors will be contacted following City Council approval of the street closure request.

I trust that the above information will provide you with the needed details to address any concerns. Please feel free to contact me should you have questions or need additional information.



# CERTIFICATE OF LIABILITY INSURANCE

OP ID AT  
DELCH-1

DATE (MM/DD/YYYY)  
07/15/11

<b>PRODUCER</b> Western Group Inc - Delta 254 Main PO Box 79 Delta CO 81416 Phone: 970-874-4455 Fax: 970-874-0931	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.												
<b>INSURED</b>  Delta Area Chamber of Commerce Linda Sanchez 301 Main St. Delta CO 81416	<table border="1"> <tr> <th>INSURERS AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A: <b>UNITED FIRE</b></td> <td>13021</td> </tr> <tr> <td>INSURER B: <b>Scottsdale Insurance Co.</b></td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> </table>	INSURERS AFFORDING COVERAGE	NAIC #	INSURER A: <b>UNITED FIRE</b>	13021	INSURER B: <b>Scottsdale Insurance Co.</b>		INSURER C:		INSURER D:		INSURER E:	
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INSURER D:													
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## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS								
B	X	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	CPS1206391	05/01/11	05/01/12	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000								
		<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$								
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$								
		<b>EXCESS / UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  <input type="checkbox"/> DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$								
		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under SPECIAL PROVISIONS below				<table border="1"> <tr> <td>WC STATUTORY LIMITS</td> <td>OTHER</td> </tr> <tr> <td>E.L. EACH ACCIDENT</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - EA EMPLOYEE</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - POLICY LIMIT</td> <td>\$</td> </tr> </table>	WC STATUTORY LIMITS	OTHER	E.L. EACH ACCIDENT	\$	E.L. DISEASE - EA EMPLOYEE	\$	E.L. DISEASE - POLICY LIMIT	\$
WC STATUTORY LIMITS	OTHER													
E.L. EACH ACCIDENT	\$													
E.L. DISEASE - EA EMPLOYEE	\$													
E.L. DISEASE - POLICY LIMIT	\$													
A		<b>Property Section</b>	60383195	05/01/11	05/01/12									

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
**SPECIAL EVENTS COVERAGES, INCLUDING PARADES, Deltarado Days, Bull Ride at Deltarado Days, Liquor Liability, Block Parties**  
 The City of Delta is Additional Insured on Block Parties Events

<b>CERTIFICATE HOLDER</b>  <p style="text-align: center;"><b>CITYDEL</b></p> CITY OF DELTA Lynn 360 MAIN ST DELTA CO 81416	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>10</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
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## IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## DISCLAIMER

This Certificate of Insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.



## MEMO

To: *Mayor and Council*

From: *Jim Hatheway, Public Works Director*

Date: *13 July 2011*

Subject: *Confluence Drive Property Acquisitions*

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### **RECOMMENDATION**

The Public Works Department is recommending that the City move forward with purchasing the properties and interests listed below to meet the ROW needs for Confluence Drive.

### **BACKGROUND**

Transportation Resource Services, Inc. has completed negotiations as directed by city council for the purchase of property listed below. The properties and interests recommended for purchase are:

<i>Address/Location</i>	<i>Owner</i>	<i>Property Type/Interest</i>
220 West 11 <sup>th</sup> Street	Francisco Saenz	Residential/Whole Property
521 Bridge Street	Agricultural Service Company	Improvements
701 Silver Street	Producers COOP	Rail Access/Partial Property
430 West 8 <sup>th</sup> Street	Delta Holding Group, LLLP	Rail Access
SW corner of intersection at Confluence Drive and Bridge Street	Skyland Group, LLC	Vacant Property/Whole Property

### **COST**

This project has been budgeted in 80-19-42100.

### **ACTIONS TO BE TAKEN IF APPROVED**

Staff requests that City Council approve the contract for each property listed.

### **SUGGESTED MOTION**

I move the City approve the property acquisition contract with (*Property owner name*).  
(Opposition to the motion would be indicated by a 'no' vote)

**RESOLUTION NO. 3, 2011**

**A RESOLUTION OF THE CITY OF DELTA AUTHORIZING THE ACQUISITION OF CERTAIN REAL PROPERTY FROM FRANCISCO SAENZ FOR THE CONFLUENCE DRIVE PROJECT.**

Whereas, the City Council of Delta, Colorado has determined the need to acquire certain real property located at 220 West 11<sup>th</sup> Street in the City limits of Delta, Colorado for the public purpose of constructing and maintaining a new roadway or thoroughfare to be known as Confluence Drive; and

Whereas, said real property is presently titled to Francisco Saenz of 1488 Adobe Acres Road, Delta, Colorado 81416; and

Whereas, Mr. Saenz has signed a contract dated July \_\_\_\_\_, 2011 for sale of the subject real property to the City of Delta upon terms and conditions that are satisfactory to the City Council; and

Whereas, it appears that, notwithstanding pertinent requirements of the pending contract, Mr. Saenz may ultimately be unable to convey unencumbered title to the property, free and clear of outstanding tax and mortgage liens; and

Whereas, the City has power under the constitution and statues of Colorado to acquire unencumbered title to the subject real property by the exercise of its power of eminent domain; and

Whereas, although the Delta City Council desires to approve said contract of sale, it recognizes a concurrent need to conditionally authorize the use of its power of eminent domain for acquisition of unencumbered title to said real property in the event that Mr. Saenz is unable to convey such title by the time of closing of the aforementioned contract on August 19, 2011.

NOW, THEREFORE, it is resolved by the Delta City Council that, the said contract of July \_\_\_\_\_, be and is hereby approved for signature by the City Manager on behalf of the City. It is further resolved that, upon the inability or unwillingness of Francisco Saenz to convey unencumbered title and possession to the City on or before August 19, 2011 in accord with requirements of said contract, City staff, including the City attorney, shall be and are hereby authorized to commence and pursue with diligence, for the public purposes stated above, the acquisition by eminent domain proceedings of title to and possession of the real property of Francisco Saenz in Delta County, Colorado more particularly described as follows:

A tract of land beginning at a point which bears South 41°30' East 1110 feet from the northern most corner of the original Colorado Packing Corporation Site which is situated in the Northwest quarter of the Southeast quarter of Section 24, Township 15 South, Range 96 West of the 6<sup>th</sup> P.M.; thence West 225 feet parallel to the South line of the Northwest quarter of the Southeast quarter of said section;

thence South 7°0' East 129.5 feet; thence East 332 feet; thence North 41°30' West 171.75 feet more or less to the point of beginning.

The foregoing resolution was adopted by the City Council of Delta, Colorado this \_\_\_\_ day of \_\_\_\_\_, 2011.

The City of Delta, Colorado

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

Attest:

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

## CONTRACT TO BUY AND SELL PROPERTY

This Contract, made and entered into this \_\_\_ day of \_\_\_\_\_, 2011 by and between Francisco Saenz of 1488 Adobe Acres Road, Delta, Colorado 81416, (hereinafter referred to as "Seller") and the City of Delta, a Colorado municipality, of 360 Main Street (P.O. Box 19) Delta, Colorado 81416 (hereinafter referred to as the "City") is to witness:

### Recitals

Seller presently owns certain real estate located at or about 220 West 11<sup>th</sup> Street, Delta, Colorado. The parties to this Contract have agreed upon the following arrangements for the sale and purchase of all of said real estate as described in Paragraph 1 below.

### Agreement

**1. General Premises.** For and in consideration of the total price of One Hundred Forty Five Thousand and NO/100 Dollars (\$145,000.00), to be paid as hereinafter provided, Seller agrees to sell and the City agrees to purchase the following real property (hereinafter referred to as "the Property") located in Delta County, Colorado:

A TRACT OF LAND BEGINNING AT A POINT WHICH BEARS SOUTH 41°30' EAST 1110 FEET FROM THE NORTHERN MOST CORNER OF THE ORIGINAL COLORADO PACKING CORPORATION SITE WHICH IS SITUATED IN THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 15 SOUTH, RANGE 96 WEST OF THE 6TH P.M.; THENCE WEST 225 FEET PARALLEL TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION; THENCE SOUTH 7°0' EAST 129.5 FEET; THENCE EAST 332 FEET; THENCE NORTH 41°30' WEST 171.75 FEET MORE OR LESS TO THE POINT OF BEGINNING.

COUNTY OF DELTA,  
STATE OF COLORADO

further identified as Delta County Assessor's Parcel No. 3457-244-00-004

also known by street and number as 220 W 11<sup>th</sup> Street, Delta, CO 81416

Together with all improvements and fixtures thereon and appurtenances thereto. The Property shall be conveyed by Seller to the City by general warranty deed and other appropriate legal instruments at the time of closing of this contract. The consideration set forth herein is in full settlement of all and any damages, including any damages to the remainder, occurring to the Seller or Seller's property, and includes full compensation for the Seller's interest, either present or future, the interest of lienors, and any and all interests, legal or equitable, which are or may be outstanding. The Seller shall pay from the proceeds of this Contract or otherwise, and shall satisfy or remove other outstanding interests. The Seller has entered into this contract solely because the City has the power of eminent domain, and requires the Property for a public purpose.

**2. Purchase Price and Payment Terms.** The aforementioned purchase price of \$145,000.00, plus closing costs related to this transaction, shall be fully paid by the City at closing in funds which comply with all applicable Colorado laws, including cash, electronic transfer funds, certified check, and/or cashier's check. Such payment shall be made to the Delta County Abstract Company acting as closing agent and trustee for the parties hereunder.

**3. Evidence of Title.** The City may secure a current commitment for the City's title insurance policy in an amount of its own choosing. Title insurance, if required, shall be secured by and at the expense of the City.

**4. Title Review.** The City shall have the right to inspect the aforementioned title documents. Written notice by the City of unmerchantability of title or of any other unsatisfactory title condition shown by the title documents shall be signed by or on behalf of the City and provided to the Seller. In addition to the title documents, Seller shall deliver to the City true copies of any and all leases and surveys in Seller's possession pertaining to the subject real property and shall disclose to the City all easements, liens or other title matters not shown by the public records of which Seller has actual knowledge prior to closing. The City shall have the right to inspect the Property to determine if third parties have any rights in the subject real property not shown by the public records. Written notice of any unsatisfactory conditions revealed by Seller's disclosures, or by such inspection conducted by the City, shall be signed by or on behalf of the City and given to Seller prior to the date of closing. If Seller does not receive any such notice from the City in advance of closing, the City shall be deemed to have accepted title subject to the existing conditions and rights of third parties revealed by Seller's disclosures or reasonably discernible from the City's inspection.

If Seller receives notice of any unmerchantability of title, or of any other unsatisfactory title conditions found by the City as provided in this Paragraph 4, Seller shall use reasonable efforts to correct said conditions prior to the date set for closing of this Contract. If Seller fails or is unable to correct such unsatisfactory conditions on or before the date of closing, this Contract shall then terminate unless the City instead elects to execute a written waiver of their objection to all such title conditions and proceed with closing.

**5. Inspection.** Upon execution of the Contract by the Seller, the City shall be permitted to enter upon the Property to perform site inspections and necessary due diligence that the City deems necessary for its benefit and protection. The City acknowledges that Seller has made no material representations about the physical condition or quality of the subject property. Unless this Contract sooner terminates as provided above, the City agrees to accept the Property at the time of the hereinafter provided possession transfer date in the physical condition in which it then exists. Until the time of said possession transfer date, Seller agrees to maintain the Property in its present condition, ordinary wear and use excepted.

**6. Closing of Contract and Payment of Related Costs.** Closing of this Contract shall occur at the Delta County Abstract Company in Delta, Colorado no later than August 19, 2011, or sooner upon mutual written agreement of the parties. The date, hour and place of closing shall be determined by the Delta County Abstract Company, as closing agent, and communicated to the parties. Seller and the City shall each execute such customary documentation as may be required by said closing agent. Fees for the closing agent's services shall be paid at closing by the City. All other customary closing costs and recording fees shall be paid at closing by the parties. The parties shall arrange with their respective attorneys for the preparation of any special documentation contemplated by this Contract that is not customarily prepared by the closing agent as part of its closing services.

Each of the parties shall pay their own respective attorney fees; provided, however that the City shall pay any attorney fee for its preparation of this contract.

**7. Transfer of Title.** At the time of closing, Seller shall execute and deliver a good and sufficient general warranty deed, conveying to the City title to the Property. Such Property shall be free and clear of all taxes through the date of closing of this Contract, and also free and clear of all liens, encumbrances, defects, exceptions and conditions other than those accepted by the City after disclosure thereof by Seller and/or by the City's title insurance commitment in accord with Paragraph 3 of this Contract, and those conditions that are reasonably apparent from the City's diligent inspection of the property, and subject to building, zoning and other governmental regulations.

**8. Taxes and Utilities.** Any and all unpaid *ad valorem* taxes assessed against the subject real and personal property for the years prior to 2011 shall be paid at or before closing by Seller. Such taxes for the year 2011 shall be prorated between the parties as of the date of closing of this contract, based upon the tax figure assessed for the year 2010. Subject to the aforementioned proration obligation, the City shall be responsible for the timely payment of any and all taxes lawfully assessed upon the subject property after closing of this Contract.

The costs of all utilities that are assessed to the Property prior to the date of closing and possession transfer shall be paid by Seller, and all such costs thereafter shall be paid by the City. Seller shall be entitled to recover any and all utility deposits made by them to utility providers prior to the date of transfer of possession.

**9. Possession.** Provided that the City's title commitment pursuant to Paragraph No. 3 identifies merchantable title, the Seller understands and agrees that the City will take possession of the Property free from all interests, including leasehold interests and tenancies, when the City tenders payment to the Seller by depositing the above-stated total offer of just compensation with the City's closing agent, Delta County Abstract Company. The Seller further understands and agrees that the City will be entitled to specific performance of this Agreement upon tender by the City of the agreed consideration.

**10. Condition of Property and Risk of Loss.** The Property shall be conveyed in the physical condition in which it presently exists, without any warranties or representations regarding such condition. Risk of loss by fire or other casualty affecting the improvements, if any, on the Property shall remain upon the Seller until the time of transfer of possession, whereupon such risk of loss shall pass to the City. If such loss occurs, the City shall be entitled to the full amount of any insurance proceeds receivable for the same.

**11. Payment of Encumbrances.** The Seller agrees that the consideration as agreed upon between the Seller and the City represents just compensation, and fully compensates the Seller for Seller's fee simple title and conveyance of the Property. The Seller further acknowledges, understands and agrees that the City is not and will not be responsible for paying, releasing or satisfying any judgment(s), lien(s) or other obligation(s) or indebtedness against the Property. The defense and/or settlement of claim(s) made by holders of any lien(s), judgment(s) or other obligation(s), whether by legal action or otherwise, for payment, satisfaction or release or payment of any contract term, provision or legal requirement is the sole responsibility of the Seller. The Seller understands, acknowledges and agrees that the beneficiaries of any unpaid mortgage(s), deed(s) of trust, taxes and/or other financial indebtedness secured by the Seller's Property may claim all or any portion of the compensation paid pursuant to this Contract. The Seller agrees to execute and deliver

to the City any and all documents necessary to convey to the City clear, unencumbered title to the above stated parcels. Failure of the Seller to secure release or subordination of all outstanding interests to the satisfaction of the City prior to closing may, at the City's sole option, render this Contract null and void.

**12. Remedies for Breach.** This Contract requires specific performance by the Seller, and the City may enforce specific performance of this Contract in the event the Seller fails or refuses to perform. Time is of the essence regarding the performance of all terms and conditions of this Contract. In the event of material breach by either party, the non-defaulting party shall be entitled to all consistent legal and equitable remedies afforded by Colorado law. Further, in the event of any litigation arising out of this Contract, the Court shall award to the prevailing party all reasonable costs and expenses incurred by such party during the pertinent litigation, including attorney fees.

**13. Termination.** In addition to its other remedies provided above, the City may terminate this contract for any material breach by the Seller or for failure of any contingency specified in this Contract. In the event of such termination, the City reserves all right to acquire title and possession of the Property by condemnation under its power of eminent domain.

**14. Contingency and Additional Provisions.** The parties agree upon the following contingencies and additional terms and provisions:

(a) This contract shall be contingent in all respects upon approval of its terms by a majority of a quorum of the Delta City Council at a public meeting conducted by no later than July 19, 2011. If said approval is not obtained by said date, this contract shall fully terminate.

(b) The City is represented in this transaction by the City Attorney Michael Schottelkotte. Seller is hereby advised to seek independent counsel for any and all legal and tax questions regarding this transaction. It is specifically provided that the City shall pay the full cost of preparation of this contract. All other attorney fees shall be paid by the party or parties who actually incur them.

(c) Facsimile signatures of the parties upon this contract shall be deemed valid for all purposes.

(d) Seller shall remove all personal property and trash from the Property prior to disbursement of funds at closing.

(e) Seller shall retain the modular homes situated upon the Property. Said modular homes are identified as a 2001 double wide by HUD IDA's 196687 and 196686; and a 1996 Fleetwood double wide with HUD data plates RAD 903394 and RAD 903395. The cost to the Seller to retain said modular homes shall be \$0.00. The Seller, at its sole cost and expense, shall disconnect the modular homes from all utilities, and remove said modular homes from the property at 220 West 11<sup>th</sup> Street, Delta, Colorado by August 19, 2011. The Seller shall indemnify and hold harmless the City, its contractors and its agents, from any damage or injury, including death, of or to the Seller, Seller's agents, contractors or employees entering the Premises and/or facilitating the removal of the modular homes from the Property.

(f) The parties acknowledge that the Property is subject to IRS tax liens. By July 13, 2011, the Seller shall provide the City with the name and telephone number of the attorney representing

Seller with this matter, and/or the name and telephone number of Seller's contact at the IRS so that the City can verify that these liens can and will be released as to the subject property at closing.

(g) The Seller shall pump the septic system and remove existing septic waste prior to removal of the modular homes identified in paragraph 14 (e) above, and provide confirmation of said waste removal to the City.

**15. Assignment and Modification.** Subject to the provisions of paragraph 14(c) above, no assignment or modification of the Contract by either party shall be permitted without the complete written consent of the other party.

**16. Merger.** This Contract contains the entire understanding of the parties regarding the subject matter; and there are no promises, covenants, warranties or other undertakings between them other than those expressly set forth herein. All prior discussions of the parties relating to the subject matter shall be deemed to be merged into this Contract.

**17. Binding Effect and Survival of Provisions.** This Contract shall be binding upon, and inure to the benefit of, the parties hereto and upon their respective heirs, survivors, successors, legal representatives and lawful assigns. Any obligation of this Contract which, by its terms, must be performed after closing of the Contract shall be deemed to survive the same.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above-written.

Seller:

  
\_\_\_\_\_  
Francisco Saenz

**THE CITY OF DELTA, COLORADO**

By: \_\_\_\_\_  
Joe Kerby, City Manager

Telephone and fax information for notification purposes:

Sellers' phone: \_\_\_\_\_

City's phone: (970) 874-7566 Fax: (970) 874-8776

STATE OF AUTHORITY

1. This Statement of Authority relates to an entity<sup>1</sup> named SKYLAND GROUP, LLC and is executed on behalf of the entity pursuant to the provisions of Section 38-30-172, C.R.S.<sup>2</sup>

2. The entity is a:

- |  |   |
|--|---|
| <input type="checkbox"/> Corporation                           | <input checked="" type="checkbox"/> Limited Liability Company             |
| <input type="checkbox"/> Non-Profit Corporation                | <input type="checkbox"/> General Partnership                              |
| <input type="checkbox"/> Trust                                 | <input type="checkbox"/> Limited Partnership                              |
| <input type="checkbox"/> Business Trust                        | <input type="checkbox"/> Registered Limited Liability Partnership         |
| <input type="checkbox"/> Governmental Subdivision or Agency    | <input type="checkbox"/> Registered Limited Liability Limited Partnership |
| <input type="checkbox"/> Unincorporated Non-Profit Association | <input type="checkbox"/> Limited Partnership Association                  |
| <input type="checkbox"/> Other                                 | please explain: _____   |

3. The entity was formed under the laws of the State of COLORADO

4. The mailing address for the entity is: P.O. Box 443, CEDAR EDGE, CO 81413

5. The name and position of each person authorized to execute instruments conveying, encumbering or otherwise affecting title to real property on behalf of the entity is (\*All Signatures are Required\*)

• <u>Tony Larner</u>	<u>Manager</u>
Name	Title
• <u>Michael J. Stone</u>	<u>Manager</u>
Name	Title
<u>[Signature]</u>	<u>Manager</u>

6. OPTIONAL<sup>3</sup> The authority of the foregoing person(s) to bind the entity  is limited  is not limited as follows: \_\_\_\_\_

7. OPTIONAL Other matters concerning the manner in which the entity deals with its interest(s) in real property: \_\_\_\_\_

DATED: July 11, 2011

[Entity name here]

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

Its: \_\_\_\_\_

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

Its: \_\_\_\_\_

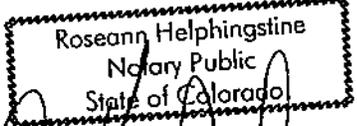
STATE OF COLORADO)

COUNTY OF Delta )ss.

The forgoing instrument was acknowledged before me this 11 day of July, 2011,  
by Tony Sarver, Michael Walker as members of  
Austin Kersey  
Skyland Group

Witness my hand and official seal.

My commission expires: 12-2-12

  
Roseann Helphingstine  
Notary Public

When Recorded Return To:  
Transportation Resource Services, Inc.  
5585 Erindale Drive, #100  
Colorado Springs, CO 80918

## CONTRACT TO BUY AND SELL PROPERTY

This Contract, made and entered into this \_\_\_ day of \_\_\_\_\_, 2011 by and between Skyland Group LLC aka Skyland Group, L.L.C., a Colorado limited liability company, of P.O. Box 1216, Cedaredge, Colorado 81413 (hereinafter referred to as "Seller") and the City of Delta, a Colorado municipality, of 360 Main Street (P.O. Box 19) Delta, Colorado 81416 (hereinafter referred to as the "City") is to witness:

### Recitals

Seller presently owns certain real estate located in the Southeast Quarter of the Northwest Quarter of Section 24, Township 15 South, Range 96 West of the 6<sup>th</sup> P.M. The parties to this Contract have agreed upon the following arrangements for the sale and purchase of all of said real estate as described in Paragraph 1 below.

### Agreement

**1. General Premises.** For and in consideration of the total price of One Hundred Ten Thousand Five Hundred and NO/100 Dollars (\$110,500.00), to be paid as hereinafter provided, Seller agrees to sell and the City agrees to purchase the following real property (hereinafter referred to as "the Property") located in Delta County, Colorado:

*Per legal description contained within Schedule A of Westcor Land Title Insurance Company Commitment Number W-761904:*

All that portion of the Old Delta Flour Mill property in the Delta Townsite described as follows: Beginning at a point, that point being the intersection of the southeast line of Bridge Street and the Southwest line of the Denver and Rio Grande Western Railroad Company right of way; thence South 41°35' East along said right of way line parallel to and 200 feet at right angles from the centerline of the main track of said railroad company, a distance of 620 feet more or less to a point, that point being original Delta Townsite Corner No. 23; thence North 81°03' East along said townsite line, a distance of 94.4 feet; thence North 41°35' West, parallel to and 260 feet at right angles from the centerline of the main line of said railroad company, a distance of 546.9 feet to the Southeast line of Bridge Street; thence North 48°13' East along the southeast line of Bridge Street, a distance of 60 feet to the point of beginning.

A parcel of land situate in part of the SE1/4 NW/14 of Section 24, Township 15 South, Range 96 West of the 6th Principal Meridian in Delta County, Colorado, more particularly described as follows: Beginning at a point on the West right of way line of the Union Pacific Railroad Company from whence the West 1/4 corner of said Section 24, bears south 72°55'52" West a distance of 1862.03 feet also said point being STA. 1193+84 and considered the centerline of the Union Pacific Railroad Company to bear South 41°35'00" East and all other bearings relative thereto; thence North 48°25'00" East 100.0 feet; thence South 41°35'00" East parallel with the centerline of the Union Pacific Railroad Company to STA.1187+83 a distance of 601.00 feet; thence south 48°25'00" West to the west right of way line of the Union Pacific Railroad Company a distance of 100.0 feet; thence North

41°35'00" West along said right of way line a distance of 601.0 feet to the Point of Beginning.

Also a parcel of land situate in part of the SE1/4 NW1/4 of Section 24, Township 15 South, Range 96 West of the 6th Principal Meridian in Delta County, Colorado, more particularly described as follows: Beginning at a point on the West right of way line of the Union Pacific Railroad Company from whence the West 1/4 corner of said Section 24, bears South 87°27'03" West a distance of 2181.06 feet said point also being STA. 1187+83 and considered the centerline of the Union Pacific Railroad Company to bear South 41°35'00" East and all other bearings relative thereto; thence North 48°25'00" East 100.0 feet; thence South 41°35'00" East to the East-West center section line of said Section 24 a distance of 201.21 feet; thence South 89°41'28" West along said subdivision line to the West right of way line of the Union Pacific Railroad Company a distance of 133.06 feet; thence North 41°35'00" West along said right of way line a distance of 113.44 feet to the point of Beginning.

County of Delta, State of Colorado

Together with all improvements and fixtures thereon and appurtenances thereto. The Property shall be conveyed by Seller to the City by special warranty deed, excepting therefrom any warranty of title to that portion of the Property identified as Area of Concern No. 5 (AOC 5) on attached Exhibit A, said area to be more particularly described by surveyed description in advance of closing; and, other appropriate legal instruments at the time of closing of this contract. The consideration set forth herein is in full settlement of all and any damages, including any damages to the remainder, occurring to the Seller or Seller's property, and includes full compensation for the Seller's interest, either present or future, the interest of lienors, and any and all interests, legal or equitable, which are or may be outstanding. The Seller shall pay from the proceeds of this Contract or otherwise, and shall satisfy or remove other outstanding interests. The Seller has entered into this contract solely because the City has the power of eminent domain, and requires the Property for a public purpose.

**2. Purchase Price and Payment Terms.** The aforementioned purchase price of \$110,500.00, plus closing costs related to this transaction, shall be fully paid by the City on or before closing in funds which comply with all applicable Colorado laws, including cash, electronic transfer funds, certified check, and/or cashier's check.

**3. Evidence of Title.** The City may secure a current commitment for the City's title insurance policy in an amount of its own choosing. Title insurance, if required, shall be secured by and at the expense of the City.

**4. Title Review.** The City shall have the right to inspect the aforementioned title documents. Written notice by the City of unmerchantability of title or of any other unsatisfactory title condition shown by the title documents shall be signed by or on behalf of the City and provided to the Seller prior to closing. In addition to the title documents, Seller shall deliver to the City true copies of any and all leases and surveys in Seller's possession pertaining to the subject real property and shall disclose to the City all easements, liens or other title matters not

shown by the public records of which Seller has actual knowledge prior to closing. The City shall have the right to inspect the subject real property to determine if third parties have any rights in the subject real property not shown by the public records. Written notice of any unsatisfactory conditions revealed by Seller's disclosures, or by such inspection conducted by the City, shall be signed by or on behalf of the City and given to Seller prior to the date of closing. If Seller does not receive any such notice from the City in advance of closing, the City shall be deemed to have accepted title subject to the existing conditions and rights of third parties revealed by Seller's disclosures or reasonably discernible from the City's inspection.

If Seller receives notice of any unmerchantability of title, or of any other unsatisfactory title conditions found by the City as provided in this Paragraph 4, Seller shall use reasonable efforts to correct said conditions prior to the date set for closing of this Contract. If Seller fails or is unable to correct such unsatisfactory conditions on or before the date of closing, this Contract shall then terminate unless the City instead elects to execute a written waiver of their objection to all such title conditions and proceed with closing.

**5. Inspection.** Upon execution of this Contract, the City shall have the right of access to the Property to conduct all inspections of the physical condition of the subject real property that it deems necessary for its benefit and protection. The City acknowledges that Seller has made no material representations about the physical condition or quality of the subject residential property. Unless this Contract sooner terminates as provided above, The City agrees to accept the subject property at the time of the hereinafter provided possession transfer date in the physical condition in which it then exists, subject to terms and conditions identified in Paragraph 14 below. Until the time of said possession transfer date, Seller agrees to maintain the property in its present condition, ordinary wear and use excepted.

**6. Closing of Contract and Payment of Related Costs.** Closing of this Contract shall occur at the Delta County Abstract Company in Delta, Colorado no later than September 2, 2011, or at a later date upon mutual written agreement between the parties. The date, hour and place of closing shall be determined by the Delta County Abstract Company, as closing agent, and communicated to the parties. Seller and the City shall each execute such customary documentation as may be required by said closing agent. Fees for the closing agent's services shall be paid at closing by the City. All other customary closing costs and recording fees shall be paid at closing by the City. The parties shall arrange with their respective attorneys for the preparation of any special documentation contemplated by this Contract that is not customarily prepared by the closing agent as part of its closing services. Each of the parties shall pay their own respective attorney fees; provided, however that the City shall pay any attorney fee for its preparation of this contract.

**7. Transfer of Title.** At the time of closing, Seller shall execute and deliver a good and sufficient special warranty deed conveying to the City title to the subject real property, excepting therefrom any warranty of title to that portion of the Property identified as Area of Concern No. 5 (AOC 5) on attached Exhibit A, said area to be more particularly described by surveyed description in advance of closing. Such property shall be free and clear of all taxes through the date of closing of this Contract, and also free and clear of all liens, encumbrances, defects, exceptions and conditions other than those accepted by the City after disclosure thereof by Seller

and/or by the City's title insurance commitment in accord with Paragraph 3 of this Contract, and those conditions that are reasonably apparent from the City's diligent inspection of the property, and subject to building, zoning and other governmental regulations.

**8. Taxes and Utilities.** Any and all unpaid *ad valorem* taxes assessed against the subject real and personal property for the years prior to 2011 shall be paid at or before closing by Seller. Such taxes for the year 2011 shall be prorated between the parties as of the date of closing of this contract, based upon the tax figure assessed for the year 2010. Subject to the aforementioned proration obligation, the City shall be responsible for the timely payment of any and all taxes lawfully assessed upon the subject property after closing of this Contract.

The costs of all utilities that are assessed to the subject real property prior to the date of closing and possession transfer shall be paid by Seller, and all such costs hereafter shall be paid by the City. Seller shall be entitled to recover any and all utility deposits made by them to utility providers prior to the date of transfer of possession.

**9. Possession.** The City will take possession of the Property free from all interests, including leasehold interests and tenancies, but subject to the current site lease with Natural Soda to store its personal property upon the Property, when the City tenders payment to the Seller by depositing the above-stated total offer of just compensation with the City's closing agent, Delta County Abstract Company. The Seller further understands and agrees that the City will be entitled to specific performance of this Agreement upon tender by the City of the agreed consideration.

**10. Condition of Property and Risk of Loss.** The property shall be conveyed in the physical condition in which it presently exists, without any warranties or representations regarding such condition. Risk of loss by fire or other casualty affecting the improvements, if any, on the Property shall remain upon the Seller until the time of transfer of possession, whereupon such risk of loss shall pass to the City. If such loss occurs, the seller shall be entitled to the proceeds paid as a result of insurance coverage for all refrigeration equipment, fans and electric boxes attached, and the City shall be entitled to the balance of any insurance proceeds receivable for the same.

**11. Payment of Encumbrances.** The Seller agrees that the consideration as agreed upon between the Seller and the City represents just compensation, and fully compensates the Seller for Seller's fee simple title and conveyance of the Property. The Seller further acknowledges, understands and agrees that the City is not and will not be responsible for paying, releasing or satisfying any judgment(s), lien(s) or other obligation(s) or indebtedness against the Property. The defense and/or settlement of claim(s) made by holders of any lien(s), judgment(s) or other obligation(s), whether by legal action or otherwise, for payment, satisfaction or release or payment of any contract term, provision or legal requirement is the sole responsibility of the Seller. The Seller understands, acknowledges and agrees that the beneficiaries of any unpaid mortgage(s), deed(s) of trust, taxes and/or other financial indebtedness secured by the Seller's Property may claim all or any portion of the compensation paid pursuant to this Contract. The Seller agrees to execute and deliver to the City any and all documents necessary to convey to the City clear, unencumbered title to the above stated parcels. Failure of the Seller to secure release

or subordination of all outstanding interests to the satisfaction of the City prior to closing may, at the City's sole option, terminate this contract.

**12. Remedies for Breach.** The City may enforce specific performance of this Contract in the event the Seller fails or refuses to perform. Time is of the essence regarding the performance of all terms and conditions of this Contract. In the event of material breach by either party, the non-defaulting party shall be entitled to all consistent legal and equitable remedies afforded by Colorado law. Further, in the event of any litigation arising out of this Contract, the Court shall award to the prevailing party all reasonable costs and expenses incurred by such party during the pertinent litigation, including attorney fees.

**13. Termination.** If this Contract is terminated by the City for Seller's breach or for failure of any contingency specified in this Contract, neither party shall have further obligations hereunder; provided however, that all payments advanced by the City to the Seller hereunder shall be promptly refunded to the City.

**14. Contingency and Additional Provisions.** The parties agree upon the following contingencies and additional terms and provisions:

(a) This contract shall be contingent in all respects upon approval of its terms by a majority of a quorum of the Delta City Council at a public meeting conducted by no later than **August 16, 2011**. If said approval is not obtained by said date, this contract shall fully terminate.

(b) The City is represented in this transaction by the City Attorney Michael Schottelkotte. Seller is hereby advised to seek independent counsel for any and all legal and tax questions regarding this transaction. It is specifically provided that the City shall pay the full cost of preparation of this contract. All other attorney fees shall be paid by the party or parties who actually incur them.

(c) Facsimile signatures of the parties upon this contract shall be deemed valid for all purposes.

**15. Assignment and Modification.** Subject to the provisions of paragraph 14(c) above, no assignment or modification of the Contract by either party shall be permitted without the complete written consent of the other party.

**16. Merger.** This Contract contains the entire understanding of the parties regarding the subject matter; and there are no promises, covenants, warranties or other undertakings between them other than those expressly set forth herein. All prior discussions of the parties relating to the subject matter shall be deemed to be merged into this Contract.

**17. Binding Effect and Survival of Provisions.** This Contract shall be binding upon, and inure to the benefit of, the parties hereto and upon their respective heirs, survivors, successors, legal representatives and lawful assigns. Any obligation of this Contract which, by its terms, must be performed after closing of the Contract shall be deemed to survive the same.

IN WITNESS WHEREOF the parties hereto have set their hands and seals on the day and year

Seller: Skeland Group L.L.C aka Skeland Group L.L.C. a Colorado limited liability company

BY: *Tony Larwin*

TITLE: *Member Manager*

BY: *Michael Foster*  
MEMBER MANAGER

TITLE: *[Signature]*  
*Member Manager*

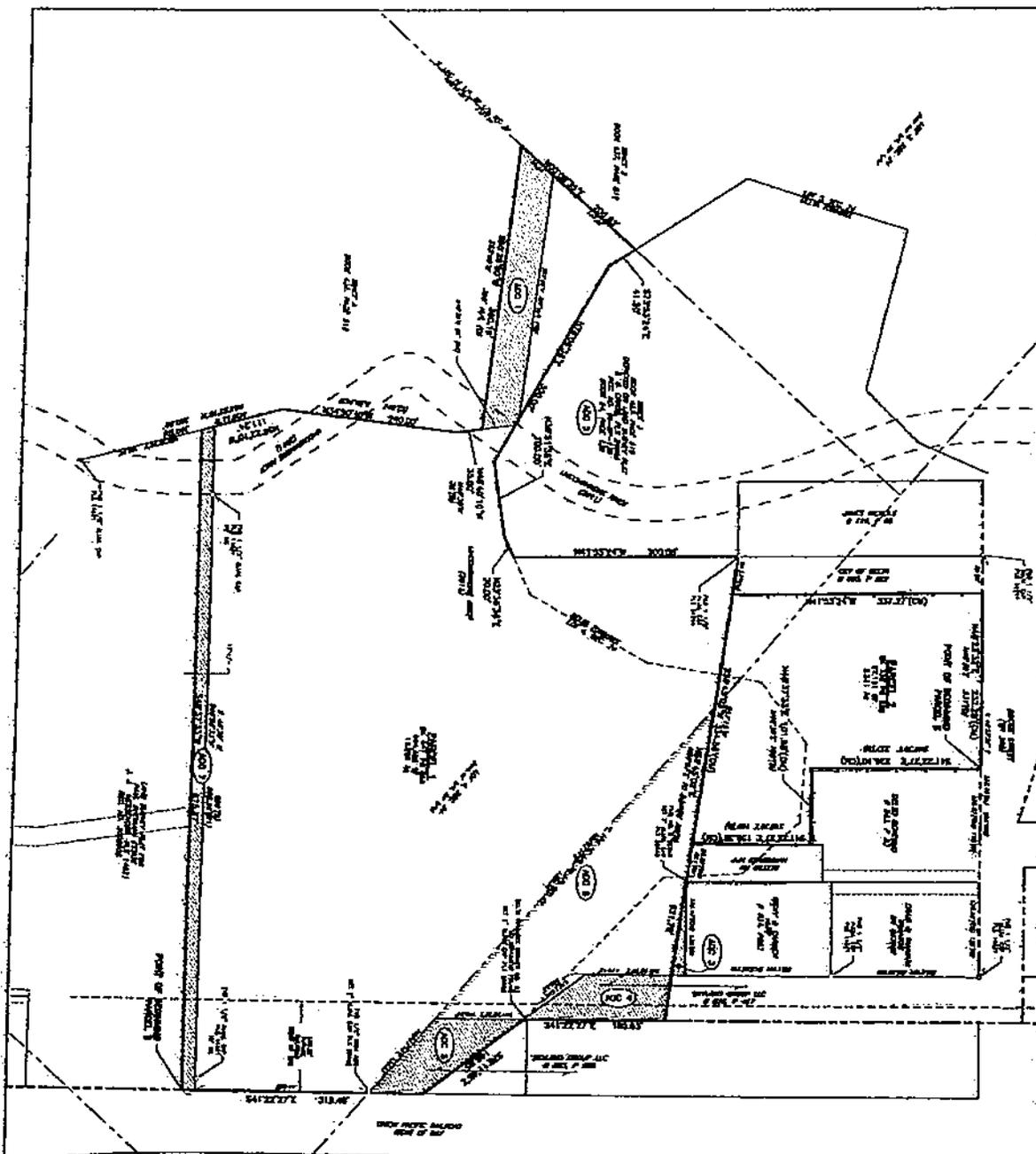
THE CITY OF DELTA, COLORADO

By: \_\_\_\_\_  
Joe Kerby, City Manager

Telephone and fax information for notification purposes:

City's phone: (970) 874-7566 Fax: (970) 874-8776





**LAND SURVEY PLAT**  
**TRANTON PARCELS**  
**CITY OF BETHLEHEM**  
 COUNTY OF NORTHAMPTON, PENNSYLVANIA

Surveyed by: [Name]  
 Date: [Date]



FOR REPAIRS ONLY

NOTES:  
 1. THE SURVEY WAS MADE BY THE SURVEYOR ON THE GROUND AND THE CORNER MARKS WERE FOUND AND FOUND TO BE IN PLACE.  
 2. THE SURVEY WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE PENNSYLVANIA SURVEYING ACT OF 1981.

## AGREEMENT TO AMEND/EXTEND CONTRACT

Date:

1. This agreement amends that contract dated May 23, 2011 (Contract), between the CITY OF DELTA, a Colorado municipality (City) and Deloris Triantos (Seller), relating to the sale and purchase of the following real property located in Delta County Colorado and legally described in Exhibit "A" attached hereto and incorporated herein by reference.

2. The Contract shall be amended as follows:

Paragraph 6 is amended as follows:

**6. Closing of Contract and Payment of Related Costs.** Closing of this Contract shall occur at the Delta County Abstract Company in Delta, Colorado no later than **September 15, 2011**, or sooner upon mutual written agreement of the parties. The date, hour and place of closing shall be determined by the Delta County Abstract Company, as closing agent, and communicated to the parties. Seller and the City shall each execute such customary documentation as may be required by said closing agent. Fees for the closing agent's services shall be paid at closing by the City. All other customary closing costs and recording fees shall be paid at closing by the parties. The parties shall arrange with their respective attorneys for the preparation of any special documentation contemplated by this Contract that is not customarily prepared by the closing agent as part of its closing services. Each of the parties shall pay their own respective attorney fees; provided, however that the City shall pay any attorney fee for its preparation of this contract.

Paragraph 14 (f) is amended as follows:

*(f) Seller shall remove all personal property, including but not limited to: vehicles, tires, scrap iron, lumber, and miscellaneous refuse by **August 31, 2011**. On or about **September 1, 2011** the City shall conduct a final inspection of the property. If Seller fails to perform on the removal of all personal property as defined herein by the date of final inspection by the City, the City shall estimate the costs of future removal of said items, provide the Seller with its estimated cost to remove said items, and deduct the estimated cost from the purchase price at closing. Any personal property items remaining upon the property after closing shall become the property of the City. If the City accepts the property upon final inspection, the City will provide written verification of its acceptance to the Seller, and the Seller will have no further obligation to relocate or dispose of personal property.*

3. All other terms and conditions of the Contract shall remain the same.

The parties have executed this Agreement to Amend/Extend the Contract as of the date and year first

written above.

CITY OF DELTA, a Colorado municipality

BY:

Joe Kerby, City Manager

Seller:

Deloris Triantos



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360 Main St. • Delta, Colorado 81416 • Phone (970) 874-7566 • Fax (970) 874-8776

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## MEMO

To: Mayor and Council  
From: Steve Glammeyer, Utilities Director  
Date: July 11, 2011  
Subject: Wastewater Treatment Plant Aeration System and Digester Cover Design

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### Recommendation

It is recommended that the Council award the design of a new aeration system and cover for the digesters at the wastewater treatment plant to Schmueser/Gordon/Meyer (SGM).

### Background

During the 2010 budget session, staff included money to design a new aeration system and cover for the digesters at the wastewater treatment plant. This is our ongoing process of rehabilitating and upgrading the plant to meet the needs for sewage treatment into the future. Staff requested and received 5 proposals from qualified engineering firms for this project on July 1<sup>st</sup>.

Proposal costs were included as follows:

Souder, Miller, & Associates (SMA):	\$19,826
SGM:	\$29,745
Stantec Consulting:	\$56,425
Jacobs Engineering:	\$74,827
URS:	\$78,353

Staff performed a thorough review of the proposals and offers the following:

SMA did not follow the requirements outlined in the RFP which could automatically disqualify them from consideration however we reviewed the proposal anyway to determine if we thought they would be able to complete the project adequately. Staff felt that SMA's proposal did not completely cover the scope of our project. Only one option was given for a cover which was a pre-fabricated metal building, similar to an "Easy Shade" type structure with vents and zipper type apron around the outside for winter months and those months that create a lot of debris that fall into the digester. The whole intent of a digester cover was to hold the heat in during the winter months and really has very little to do with keeping out debris. Staff also felt that not enough time was put into the proposal to evaluate the best alternative for us, which is to hold in heat during the winter so we may meet our 38 % Volatile Solids Reduction limit. We are concerned that should we award the contract to SMA and reinforce what it is we are trying to accomplish that they might end up with a change order for the added cost of evaluating covering options. It also appears that SMA is proposing an aggressive time schedule having the entire project completed in 24 days of total work and we are concerned that there is not enough time to

complete site applications and permitting. Finally, SMA's similar project experience was lacking where SGM has completed several projects of similar scope and size and at plants similar in process to ours.

SGM has offered initial research and project orientation at no cost to the City. After the initial research SGM would then commence work on preliminary design. Staff also noted that SGM took our project and looked further ahead to the upcoming CDPHE regulation 85, which deals with phosphorous and nitrogen. SGM will incorporate solutions into the design and operation to be able to meet these future limits. With this being considered in the design and addressed now it may save us money down the road when we have to comply with the up and coming phosphorous and nitrogen regulation. It is for these reasons that staff is confident SGM has a good understanding of the project and is therefore recommending award of this contract to SGM.

#### Cost

SGM proposed a project maximum of \$29,745.

#### Action to be Taken if Approved

Staff will secure a signed Professional Services Agreement from the contractor and the City Manager pending approval from the City Attorney.

#### Suggested Motion

I move the City enter into contract with SGM and authorize the City Manager to sign the contract pending approval from the City Attorney.



## MEMO

To Mayor and Council

From: Tod DeZeeuw, Finance Director

Date: July 11, 2011

Subject: Audit 2010

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Timothy Mayberry, CPA from Johnson, Holscher & Company, P.C. will be presenting the audited financial statements for the period ended December 31, 2010.

City of Delta  
City Council Monthly Financial Report  
For Period Ended June 30, 2011

Fund	Budget	6/30/2011 Year to Date Actual	Actual Percent of Budget
<b>General Fund</b>			
Revenues	4,633,175	2,273,531	49.07%
Expenditures	5,016,016	2,359,024	47.03%
<b>Conservation Trust Fund</b>			
Revenues	75,875	43,573	57.43%
Expenditures	86,500	13,172	15.23%
<b>Recreation Center Fund</b>			
Revenues	2,307,700	1,142,775	49.52%
Expenditures	2,731,406	904,213	33.10%
<b>C.W.C.I. Fund</b>			
Revenues	2,065,300	980,759	47.49%
Expenditures	2,496,330	977,440	39.16%
<b>M. L. &amp; P. Fund</b>			
Revenues	5,490,757	2,464,442	44.88%
Expenditures	8,188,124	2,983,695	36.44%
<b>Sewer Fund</b>			
Revenues	1,304,700	648,675	49.72%
Expenditures	2,196,801	844,072	38.42%
<b>Water Fund</b>			
Revenues	1,687,946	819,788	48.57%
Expenditures	1,958,926	949,572	48.47%

City of Delta  
City Council Monthly Financial Report  
For Period Ended June 30, 2011

Fund	Budget	6/30/2011 Year to Date Actual	Actual Percent of Budget
<b>Refuse Fund</b>			
Revenues	637,920	300,277	47.07%
Expenditures	553,133	272,032	49.18%
<b>Golf Course Fund</b>			
Revenues	989,500	587,223	59.35%
Expenditures	987,886	602,956	61.03%
<b>Perpetual Care Fund</b>			
Revenues	4,000	3,290	82.25%
Expenditures	0	950	0.00%
<b>Unemployment Taxes Fund</b>			
Revenues	20,000	10,000	50.00%
Expenditures	20,000	14,555	72.78%
<b>Internal Service Fund</b>			
Revenues	972,420	636,667	65.47%
Expenditures	1,222,357	510,718	41.78%
<b>Employee Dental Fund</b>			
Revenues	54,000	23,589	43.68%
Expenditures	54,000	27,359	50.66%
<b>Capital Project Fund</b>			
Revenues	2,928,500	31,454	1.07%
Expenditures	24,945,001	1,808,576	7.25%
<b>Debt Service Fund</b>			
Revenues	1,852,807	958,155	51.71%
Expenditures	1,852,802	854,549	46.12%

Resolution #4, 2011

A RESOLUTION OF THE CITY OF DELTA, COLORADO,  
AMENDING SECTIONS 4.1.7, 4.1.11, AND 4.1.14  
OF THE CEMETERY REGULATIONS

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DELTA, COLORADO, that Sections 4.1.7, 4.1.11 and 4.1.14 of the City's Cemetery Regulations are amended to read as follows:

4.1.7 Landscaping and Maintenance.

a. City Control

Lots may be improved, landscaped, maintained or decorated by any person of vested interest as allowed in this section.

b. Flat Marker Section

No permanent plantings or other items shall be placed within the flat marker section of the cemetery. Otherwise, the limits of subsection (d) below shall apply.

c. Blocks 15, 16 and 17 and Cremation Garden

Landscaping shall be as per the master plan developed for these blocks. No other planting will be allowed. All other requirements specified under subsection (d) below shall apply.

d. Remainder of Cemetery.

1. Permanent vases are allowed if mounted in cement with a minimum of three inch border flush to the ground and located within six inches of the monument, or if constructed as an integral part of an authorized monument.

2. Artificial or real flowers may be kept in permanent vases as described in 4.1.7(d)(1). If placed on the grave or lying on the stone, they

will be removed when faded or discolored. Flowers may be stuck around the stones. Flowers will be allowed on the ground or on stones five days prior to Memorial Day, up to five days after Memorial Day, and Memorial Day, after which they will be placed around the stone or marker.

3. Sprays and wreaths are allowed. When flowers are discolored and old, they will be picked up and disposed of. Glass vases are not permitted.

4. Christmas blankets and wreaths are allowed from December 1 to March 1, at which time they will be removed. Nails, steel spikes or wire are not to be left in the cemetery

5. (Repealed by Resolution #22, 2001)

6. No boxes, shells, stones, boulders, glass ornaments, chairs, settees, non-permanent vases, glasses, urns, fences, wood, nails, spikes, or wire are permitted.

\* \* \*

4.1.11 Access to Cemetery.

- a. The cemetery shall be open to persons on cemetery-related business, walking or in peaceful contemplation, and shall not be available for use for any other purpose, unless written permission has been given by the Parks Director.
- b. The cemetery shall be off limits to all dogs, except for service dogs. Persons wishing to walk their animals may do so at other City parks as long as they are leashed. Animals caught at large may be impounded and the owners may be cited.

\* \* \*

4.1.14 City's Liability.

The City shall have no liability for any loss or damage to any marker, monument or headstone except to the extent caused by the negligence of the City of its

employees. The City may pay 50% of the cost of repair or replacement of headstones up to a maximum of \$1,500.00 in those cases where the cause of the damage cannot be determined, but conceivably could be due to negligence of the City or its employees.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2011.

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Mayor

ATTEST:

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City Clerk

## AGREEMENT

Whereas the City of Delta(City) owns the property identified as Parcel #345713420019 according to the Delta County Clerk and also known as the "Senior Center", and

Whereas the Delta Senior Citizens Inc. (DSC) own the property identified as 247 Meeker Street and as Parcel #345713420019 according to the Delta County Clerk and also known as the Hansen House, further described as being the residential style frame 2 story house attached to the Senior Center, and

Whereas the City and DSC desire to enter into an agreement regarding the use of the Senior Center for the benefit of the Community:

NOW THEREFORE BE IT RESOLVED that:

1. The City hereby agrees to allow the DSC to manage the building (aka Senior Center) attached to the Hansen House for a period of one year effective as of August 1<sup>st</sup>, 2011. This agreement will automatically renew for subsequent one year terms unless terminated in writing as outlined in Section 8 and 9 of this agreement.
2. DSC hereby agrees to pay \$150.00 monthly payable to the City of Delta for purposes of utilities.
3. DSC hereby agrees to provide for its own liability, property and casualty insurance for the Hansen House.
4. The City hereby agrees to provide for its own liability, property and casualty insurance for the Senior Center. The City will not provide coverage for any equipment located in the Senior Center which is not owned by the City.
5. The DSC hereby agrees to allow other community groups to use the facility when it does not interfere with the programs or activities planned by the DSC. The DSC hereby agrees to collect a reasonable fee from these groups to cover for the cost of utilities, custodial, and maintenance of the Senior Center. The fees charged must be approved in advance by the City. The DSC is responsible for scheduling and managing the rental of the facility. As a result, DSC is able to retain the rental fees for its benefit. DSC will provide annually an updated Rental Agreement as well as a copy of its annual financial statement for the prior year.
6. It shall be the responsibility of the DSC or any other agency providing services on the property to provide standard workmen's compensation or other acceptable insurance for its employees.
7. The DSC hereby agrees to provide all custodial services for all areas of the Senior Center with the exception of the basement and the kitchen.
8. The DSC may with or without cause and with 6 months written notice terminate this management agreement by sending a certified letter to the City of Delta at the address shown below.
9. The City may with or without cause and with 6 months written notice terminate this agreement by sending a certified letter to the DSC at the address shown below. Every effort must be made by the City to resolve conflicts resulting from the management of the Senior Center prior to this step being taken.

10. The DSC hereby recognize and acknowledge that the City has also entered into a "Site Use and Senior Community Meal Agreement" with Volunteers of America. The DSC agrees to honor all provisions outlined in that agreement.
11. DSC hereby agrees not to make any physical improvements or approve of any physical changes to the Senior Center without the prior written consent of the City.
12. DSC will provide by June of each year a written request to the City of desired improvements for the Senior Center for the following year. DSC understands that the City has the ultimate authority for budget approval of Senior Center improvements.
13. DSC hereby agrees to notify the City Facilities Department immediately of any needed repairs or maintenance items.
14. An annual joint site inspection will be completed in May of each year by the City, DSC and VOA to identify any concerns related to the physical maintenance of the building.
15. The City will be responsible for snow removal for both the sidewalks, stairways and associated parking lot. City will plow parking lot using the same criteria used to determine plowing of other city facilities.
16. The City is responsible for maintaining all exterior landscaping, grass and flowers that surround both the Hansen House and the Senior Center. In addition, the City will be responsible for the seasonal turning on and off of the water used for watering the premises.
17. DSC will be responsible for the exterior maintenance of the Hansen House as well as the preparation of the swamp cooler and seasonally turning on and off the water supplying the swamp cooler at their discretion.

FOR THE CITY OF DELTA, COLORADO

FOR THE DELTA SENIOR CITIZENS, INC.

BY \_\_\_\_\_

BY 

Mary Cooper, Mayor

Larry Davidson, President

Attest:

BY \_\_\_\_\_

Lynn Williams, City Clerk

CONTACT ADDRESSES:

City of Delta  
 Attn: City Manager  
 360 Main Street  
 Delta, CO 81416

Delta Senior Citizens, Inc.  
 Attn: President  
 247 Meeker Street  
 Delta, CO 81416