



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

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

February 7, 2012
7:00 p.m.

- A. Pledge of Allegiance
- B. Changes to the Agenda
- C. Minutes
- D. Citizen Comments
- E. Presentation of Award for the River Diffuser Project (Glammeyer)
- F. Approval of Contract for Improvements to the City of Delta Library based on Historical Structure Assessment (Kerby)
- G. Public Hearing: Naming of Lafarge Property (Suppes)
- H. Council Bill #2, 2012; First Reading (Hatheway)
Vacating Segments of Third Street and Silver Street
- I. Council Bill #3, 2012; First Reading (Hatheway)
Conveyance of a Parcel of the City Property to High Quality Packing, Inc.
- J. Council Bill #4, 2012; First Reading (Hatheway)
Condemnation of Family Household Trust Property
- K. Approval of Contract with THK Associates, Inc. for Golf Course Operational Review (Sanders)
- L. Approval of Ferganchick Water Shares Purchase (Glammeyer)
- M. Resolution of Directors of Battlement Mesa Ditch & Reservoir Company (Glammeyer)
- N. City Attorney Comments
- O. City Manager Comments
- P. Councilmember Comments

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 CRS Section 24-6-402(4)(e); or more specifically for discussions regarding Confluence Drive and also for discussions regarding the water bill due by the Delta Center PUD property owners.

Mayor Mary Cooper called the meeting to order at 7:00 p.m. Also present were Councilmembers Bill Raley, Robert Jurca, Guy Pfalzgraff, and Ed Sisson, along with City Manager Joe Kerby and City Attorney Mike Schottelkotte. 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 led everyone present in the Pledge of Allegiance.

Changes to the Agenda

There were none.

Minutes

Councilmember Raley presented a correction on the motion for Resolution #1, 2012.

It was moved by Councilmember Sisson and seconded by Councilmember Jurca to approve the minutes of January 3, 2012 as amended. All in favor, motion carried.

Citizen Comments

Bob Steckert, Republican Candidate for Delta County Commissioner District 3 introduced himself and presented some flyers to Council outlining his interests in becoming a County Commissioner.

Delta County Commissioner Bruce Hovde Presenting Check to the City of Delta for Contribution to the Open Space Property

Commissioner Bruce Hovde presented the City of Delta a check in the amount of \$10,000 towards the open space purchase.

URS Award Presentation to the City of Delta for Wastewater Diffuser Project

Utilities Director Steve Glammeyer introduced Jim Riss with URS Corporation that designed and helped oversee the construction of the diffuser at the wastewater treatment plant. They submitted for an award to the American Council of Engineering Companies. The City did receive the award. They also submitted to the American Public Works Colorado Chapter for an additional award. That award was also granted to the City.

Mr. Riss thanked Council for the opportunity to work for the City of Delta. He explained that ability to apply for the award and how the award is awarded.

Mayor Cooper was presented the award.

Director Glammeyer stated that the City has paved the way for many other communities with this type of project.

Councilmember Pfalzgraff reported that there has been a lot of interest in this project.

City Manager Kerby thanked Mr. Glammeyer for his efforts in this project.

Roubideau Reserve HH Lateral Ditch Pipe Removal

Community Development Director Glen Black reported that at the last planning commission meeting the Roubideau Reserve HH Lateral Ditch Pipe Removal was presented. The applicant has requested that the City allow removal of pipe from the ditch. This was piped during the development of the Roubideau Reserve Subdivision in 2005. In the years since the ditch was piped, several ditch users and lot owners have voiced complaints concerning the function of the piped ditch. To resolve the issue, the parties involved have concluded that the best solution would be to restore the open ditch.

Councilmember Sisson questioned if they would be replacing the pipe.

Mr. Black presented a slide presentation showing the area and also explaining the ditch.

Regular Meeting, Delta City Council, January 17, 2012 (Cont.)

Roubideau Reserve HH Lateral Ditch Pipe Removal (cont.)

Manager Kerby questioned if there would be any cost to the City.

Mr. Black stated that it would be paid for by the homeowner association.

Attorney Schottelkotte commented on the policy and concern for safety. By negating the requirements the City does not incur any liability.

Mark Youngwrith, 1768 Hillcrest Drive, explained how the ditch is laid out and how it is used.

It was moved by Councilmember Raley and seconded by Councilmember Sisson to grant the request to remove the pipe from the UVWUA ditch know as the HH Lateral where said pipe crosses Lots 9 and 10 of Filing 1 of the Roubideau Reserve Subdivision. All in favor, motion carried.

Public Hearing: Special Events Permit Application, Kiwanis Club

The Mayor closed the regular meeting convened a public hearing.

City Clerk Jolene Nelson explained that Kiwanis Club of Delta has submitted a special events permit application for their fund raising event at Bill Heddles Recreation Center on March 16, 2012 from 4:00pm to 11:00pm. The application is complete and all fees have been paid. She explained that Kiwanis has been in contact with the State regarding their event due to the concern of a poker tournament. According to the enforcement division they will be in compliance with all laws. A sign posting this public hearing was posted on the site as per requirements and no comments have been received.

The Mayor called for public comment and when there was now she closed the public hearing and reconvened the regular meeting.

It was moved by Councilmember Pfalzgraff and seconded by Councilmember Jurca to approve the special events liquor permit for Kiwanis Club of Delta for March 16, 2012. All in favor, motion carried.

2012 Budgeted Vehicle Purchases

Fleet Manager Rod Myers stated that there are seven vehicles that are budgeted for 2012. All were put out to bid and the bid sheet is in Council's packets showing the various bids submitted. He explained the bid process. He recommends Council to approve the following purchases:

- Three 2012 F150 Pickups from Hellman Motor Company.
- Two 2012 Ford Explorers from Hellman Motor Company.
- One 2012 one ton truck with utility bed from Turner Chevrolet.
- One 2012 ½ ton 4x4 crew cab pickup from Hellman Chevrolet.

It was moved by Councilmember Jurca and seconded by Councilmember Sisson to purchase three 2012 F150 Pickups from Hellman Motor Company for \$17,545 each, two 2012 Ford Explorer's from Hellman Motor Company for \$30,500 each, one 2012 1 ton truck with utility bed from Turner Chevrolet in Montrose for \$29,411.86, and one 2012 ½ ton 4x4 crew cab pickup from Hellman Chevrolet for \$25,364.65 for a total amount of \$168,411.51. All in favor, motion carried.

Purchase of Demo or Used Equipment

Mr. Myers explained that when departments are looking at replacing or purchasing a piece of specialized equipment vendors often provide a demonstration unit. Sometimes the demonstration unit will be what the City is looking for and the vendor will offer it at a greatly reduced price depending on the mileage and hours the unit has on it. For 2012, a bucket truck and a sprayer are budgeted. Staff would like to have the ability to purchase the equipment if a demonstration unit or piece of used equipment was to become available. The reason for this request is often times with used equipment that is on the market staff does not have the luxury of waiting until the next Council meeting in order to secure approval due to the possibility of the piece of equipment being sold to someone else in the meantime. Staff recommends to Council to allow the City Manager and staff to approve the purchase of a demonstration unit or used equipment should they become available during the demo or bid process for 2012.

It was moved by Councilmember Raley and seconded by Councilmember Sisson to approve the

Regular Meeting, Delta City Council, January 17, 2012 (Cont.)

Purchase of Demo or Used Equipment (cont.)

purchase of a budgeted demonstration unit or used equipment for the 2012 calendar year specifically for a bucket truck and a sprayer if they become available and are deemed suitable for the City's needs. All in favor, motion carried.

SEMA Contract Addendum for Confluence Drive

City Manager Joe Kerby stated that this request is to extend the current contract with SEMA allowing a Notice to Proceed to be issued no later than April 1, 2012. The current contract requires the Notice to Proceed to be issued no later than February 1, 2012.

City Attorney Michael Schottelkotte reported that there is no jeopardy for the City.

It was moved by Councilmember Pfalzgraff and seconded by Councilmember Jurca to approve the SEMA Contract Addendum for Confluence Drive allowing a Notice to Proceed to be issued no later than April 1, 2012. All in favor, motion carried.

Huffington Property Lease at WWTP

Director Glammeyer explained that this is a historical lease with Bonsall Huffington to pasture his stock on the property adjacent to the wastewater treatment plant. Scott Huffington, son of Bonsall, would like to assume this lease for the next 3 years. The current lease expired December 31, 2011. Staff has altered the dates of the lease agreement for a 3 year period in order to allow a longer lease term and for Mr. Huffington to make some investment into better fencing and infrastructure. Prior to termination of the lease in 2013, staff will re-bid the lease. Staff recommends renewal of the lease once payment has been made in full for the water allotment (\$2850) and for the yearly lease amount (\$1500).

Attorney Schottelkotte stated that there is an escape clause in the lease should there be a need.

It was moved by Councilmember Sisson and seconded by Councilmember Raley to enter into the lease agreement with Mr. Scott Huffington for the use of City owned property for the purpose of livestock grazing and authorize the City Manager to sign the agreement once payment has been received in full. All in favor, motion carried.

Formation of Battlement Ditch & Reservoir Company Board of Directors

Director Glammeyer stated that the City owns the majority shares of the Battlement Mesa Ditch and Reservoir Company (BMDRC) and has for many decades. Recently, the Estate of Tony Ferganchick approached the City about the potential availability and sale of the remaining shares in the Company owned by the estate. The City is working with the personal representative of the estate on the purchase of those shares and will be discussing that with Council at a future meeting. In the meantime, a board of directors needs to be in place to handle the various actions of the company such as signing future stock certificates should the City purchase the remaining shares. Therefore, the City Attorney's office has drafted consent to action which sets the current members of Council and the directors of the Company.

Attorney Schottelkotte recommended upon final approval of Jim Brown.

It was moved by Councilmember Pfalzgraff and seconded by Councilmember Raley to execute the Consent to Action of the Stockholders of the Battlement Mesa Ditch and Reservoir Company upon review and approval of Jim Brown and authorize the City Manager to sign said consent. All in favor, motion carried.

Hawkins/Myers Raw Water Lease

Director Glammeyer reported that this is the annual lease for City owned water on Grand Mesa. Historically the lease agreement has been with Ms. Hawkins and Ms. Myers to sue water under the City's decrees for the Maude S. Ditch and other City owned flow decrees from the Doughspoon Creek for purposes of stock water. In 2007 the City set the price of water at \$700 and staff feels this would continue to be a fair price. Staff recommends approving this agreement for 2012.

It was moved by Councilmember Sisson and seconded by Councilmember Jurca to enter into the lease agreement with Ms. Hawkins and Myers for the use of City water on the Grand Mesa

Regular Meeting, Delta City Council, January 17, 2012 (Cont.)

Hawkins/Myers Raw Water Lease (cont.)

for the purposes of stock water. All in favor, motion carried.

Resolution #3, 2012; Setting Ballot Language

A RESOLUTION OF THE CITY COUNCIL OF DELTA, COLORADO REFERRING TO CITY VOTERS A QUESTION CONCERNING AMENDMENTS OF SECTION 141 OF THE DELTA MUNICIPAL CHARTER

was read by the Clerk.

Attorney Schottelkotte explained that this amends Section 141 of the City Charter regarding contractual powers. There are only changes to the first two sentences.

It was moved by Councilmember Jurca seconded by Councilmember Raley to adopt Resolution #3, 2012. Roll call vote: Councilmembers Raley, aye; Jurca, aye; Pfalzgraff, aye; Sisson, aye; and Cooper aye. Motion carried.

**Ordinance #1, 2012; Second and Final Reading
Disconnection of Jennings Landing No. 3**

AN ORDINANCE OF THE CITY OF DELTA, COLORADO DISCONNECTING FROM THE CITY'S TERRITORIAL LIMITS A PORTION OF PROPERTY PREVIOUSLY ANNEXED UNDER THE NAME OF JENNINGS LANDING #3

was introduced as Council Bill #1, 2012 and read by the Clerk.

Community Development Director Glen Black stated that he had nothing new to report.

Attorney Schottelkotte reported that he wrote to Dave Rice at the County and explained what statute the City was operating under.

It was moved by Councilmember Raley seconded by Councilmember Jurca to adopt Council Bill #1, 2012 on second and final reading. Roll call vote: Councilmembers Raley, aye; Jurca, aye; Pfalzgraff, nay; Sisson, aye; and Cooper aye. Motion carried. Council Bill #1, 2012 was adopted on second and final reading as Ordinance #1, 2012.

Hotel/Restaurant Liquor License Renewal; Ocean Pearl

The Clerk explained that Ocean Pearl has submitted their hotel/restaurant liquor license renewal. The application is complete and all fees have been paid. The police department has recommended renewal.

It was moved by Councilmember Sisson and seconded by Councilmember Jurca to approve the hotel/restaurant liquor license renewal for Ocean Pearl. All in favor, motion carried.

Proclamation; Child Abuse

Chief Robert Thomas stated that he is a board member of the Dolphin House. This proclamation is declaring education on sexual abuse as well as child abuse. They have been working with Delta, Gunnison, Hinsdale, Montrose, Ouray and San Miguel counties. The Montrose City Council has received the same proclamation.

Mayor read the proclamation.

City Attorney Comments

There were none.

City Manager Comments

Manager Kerby commented on the following items:

- Business after hours.

Regular Meeting, Delta City Council, January 17, 2012 (Cont.)

City Manger Comments (cont.)

- Bid process for the operational review of the golf course.
- Committee for the pro-cycle challenge for 2013.
- Preparations for the new mural will begin next week.
- Three homes on Columbia Street for demolished for the truck route.
- An open house for the animal shelter with CAWS will be every Saturday from 10am to 2pm until the end of March.
- Youth substance abuse and prevention is hosting a luncheon tomorrow at noon.
- Chief Thomas and HR Director Jeri Karsten will be presenting proposed plans regarding the police department turn over.
- The open space property is moving forward with the reclamation.
- Staff is working on RFPs for the City's phone system.
- The employee task force has met with Holmes Murphy regarding the health insurance.
- February 1st is the tentative date for the release of water at the Hartland Dam.
- Staff had a conference call with Union Pacific Railroad regarding the truck route.

Councilmember Comments

Councilmember Pfalzgraff presented an update regarding FORE Alliance.

Mayor Cooper commented on a meeting with Union Pacific regarding the truck route as well as commenting on Delta County Economic Development. She reported on attending the grand opening for Alta Vista de la Montana.

Executive Session

It was moved by Councilmember Sisson and seconded by Councilmember Pfalzgraff to convene an 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 CRS Section 24-6-402(4)(e); or more specifically for discussions regarding Confluence Drive and also for discussions regarding the water bill due by the Delta Center PUD property owners and also for discussions regarding property approximately located on the southeast corner of Gunnison River Drive and Palmer Street. All in favor, motion carried.

Mayor Cooper recessed the Regular Meeting and convened the Executive Session.

At 9:01 p.m., the Mayor reconvened the Regular Meeting and announced that the Executive Session had been concluded. She stated that in addition to herself, the participants in the Executive Session were Councilmembers Robert Jurca, Bill Raley, Guy Pfalzgraff and Ed Sisson; along with City Manager Joe Kerby and City Attorney Michael Schottelkotte. For the record, the Mayor 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.

Jolene E. Nelson, City Clerk



CITY COUNCIL MEETING AGENDA ITEM

MEETING DATE: February 1, 2012

Name: Steve Glammeyer

Date Memo/Packet Submitted to City Clerk: February 2, 2012

(Due no later than Thursday @ 12:00pm)

Dept: Utilities

Description: Award presentation – APWA Colorado Chapter **Phone:** 874-7901

...ALL QUESTIONS must be answered...

Discussed with City Manager? Yes	Reviewed by City Attorney? No
Included in Current Year Budget? N/A Budgeted Amount \$ _____ If not budgeted explain: No cost to the City	Program is... NEW ONGOING TEMPORARY
Is this a Bid Award? No Bidders and Bid Amounts:	Subject to Annual Renewal? No Renewal Date: <u>N/A</u>
What process was used? _____ Informal Bid _____ RFP _____ Bid _____ RFQ _____ Other (explain)	Is this a Grant? No
Is this to be communicated to the Public? Yes <u>X</u> Press Release _____ Newsletter Article _____ Other _____ Channel 10 _____ City website	What is the City's Match? N/A
Purchase Amount: N/A	Is an Ordinance Required? No Is Resolution Required? No Are there any publishing requirement? No

SUMMARY: This is an award won by the City for the design and construction of the river diffuser at the wastewater treatment plant. The award was received from the American Public Works Association – Colorado Chapter.



CITY COUNCIL MEETING AGENDA ITEM

MEETING DATE:

02/07/12

Name: ___ Joe Kerby _____ **Date Memo/Packet Submitted to City Clerk:** ___ 02/03/12 ___

(Due no later than Thursday @ 12:00pm)

Dept: ___ Administration _____ **Description:** Delta Library Improvements _____ **Phone:** ___ 874-7909 ___

...ALL QUESTIONS must be answered...

Discussed with City Manager? Yes	Reviewed by City Attorney? Yes
Included in Current Year Budget? No Budgeted Amount \$ _____ If not budgeted explain: Purchase Amount \$ _____	Program is... <div style="display: flex; justify-content: space-around;"> NEW ONGOING TEMPORARY </div>
Is this a Bid Award? No Bidders and Bid Amounts – Attach a Summary of Bids Received	Subject to Annual Renewal? No Renewal Date: _____
What process was used? _____ Informal Bid _____ RFP _____ Bid _____ RFQ _____ Other (explain) N/A	Is this a Grant? Yes What is the City's Match? Library District would like the City to participate financially but we have not budgeted anything for this in 2012 Budget. If we are not able to participate financially they are able to pay the entire cash match.
Is this to be communicated to the Public? No _____ Press Release _____ Newsletter Article _____ Channel 10 _____ City website _____ Other	Is an Ordinance Required No Is Resolution Required? No Are there any publishing requirements? No

SUMMARY: In 2011 the Library District through the use of a grant was able to conduct a Historic Structure Assessment on the Delta City Library. The assessment recommended several improvements. The Library District is prepared to move forward with Phase 1 Improvements at this time which requires City Council approval.



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MEMO

To: City Council, City Manager
From: Joe Kerby, City Manager
Date: February 3, 2012
Subject: Contract for Improvements to the City of Delta Library

Recommendation

To approve Contract #2012-01-070 with the State of Colorado, Delta County Public Library District, City of Delta and Delta County.

Background

The City of Delta owns the Delta Library building located at 501 Palmer Street. The Delta County Library District operates the Library. The land the library sits on is owned by Delta County. The building itself was constructed in 1911 and is known as a “Carnegie Library”. There are 35 Carnegie Libraries in the State of Colorado. Carnegie refers to the particular architecture of the building. Delta County Library District received a grant from the State Historical Society to complete a “Historical Structure Assessment” to determine what needs to be done to address some building deficiencies. The Historical Structure Assessment was completed in July of 2011. The Delta County Library District after reviewing the results of the Historical Structure Assessment has applied for a grant to complete Phase 1 of the improvements needed that were identified in the assessment.

Cost

The attached contract shows the scope of Phase 1 of the project which shows a total project cost of \$153,227 including a contingency of \$13,722. The grant requires a cash match of \$59,368 which Delta County Library District is prepared to pay. The Library District, however, is requesting the City consider participating financially through a contribution of cash towards the cash match. The City has not budgeted any funds in the 2012 budget for this purpose. If Council decides they would like to participate financially staff will need to attempt to find funds in our existing 2012 budget. One option may be to wait until later in the year to see how our revenues and expenditures are tracking then consider a contribution if we are able. The Library District does plan to complete the project in 2012.

Suggested Motion

I move that Council authorize the Mayor to sign Contract #2012-01-070 with the State of Colorado, Delta County Library District and Delta County in the amount of \$153,227 with the City contribution a cash match of _____.

Department or Agency Name	History Colorado , the Colorado Historical Society
Department or Agency Number	GCA
Routing Number	APPROVED WAIVER FORM #37-A

CONTRACT #2012-01-070

THIS CONTRACT, Made this _____ day of _____, _____, by and between the State of Colorado for the use and benefit of the Department of Higher Education, History Colorado, the Colorado Historical Society, 1200 Broadway, Denver, Colorado 80203, hereinafter referred to as the State and/or History Colorado, and the **Delta County Public Library District dba Delta County Libraries**, PO Box 858, Delta, Colorado 81416, hereinafter referred to as the Grant Recipient, hereinafter referred to as the "Contractor", and the **City of Delta**, Owner of Property - Building, 360 Main Street, Delta, Colorado 81416, and the **County of Delta**, Owner of the Property – Land, 501 Palmer Street, Delta, Colorado 81416, hereinafter referred to as the Property Owner(s),

WHEREAS, authority exists in the Law and Funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for encumbering and subsequent payment of this Contract under Encumbrance Number _____ in Fund Number 401, Appropriation Account 401 and Organization SHFG; and

WHEREAS, required approval, clearance and coordination has been accomplished from and with appropriate agencies; and

WHEREAS, Article 12-47.1-1201 of the Colorado Revised Statutes and Subsection (5) (b) (III) of Section 9 of Article XVIII of the state constitution, provide for the annual distribution of monies from the State Historical Fund; and

WHEREAS, the Grant Recipient is eligible in accordance with law to receive a State Historical Fund preservation grant award for acquisition and development projects with cumulative grant awards over \$50,000; and

WHEREAS, this Contract (hereinafter "Contract" or "Agreement") sets forth the Scope of Work, Budget and List of Submittals, hereinafter referred to as the "Project",

WHEREAS, the Property Owner(s) are public entities and the owner in fee simple of certain real property in Delta County, Colorado, which property has been listed on the State Register of Historic Properties, as the Delta Public Library - Carnegie Library (Delta) located at 211 West Sixth Street, Delta, Colorado, hereinafter referred to as the "Property," and which Property is more particularly described as follows:

211 W 6TH ST DELTA 81416 S: 24 T: 15S R: 96W Subdivision: ORIGINAL DELTA Block: 20 TOTAL 0.20 AC+- PT BLK-20 ORIGINAL DELTA SAID PT IS LOCATED IN NE4 SEC-24 T15S R96W 6PM BEG SE COR SEC-20 BEARS N38°34'32"W 568.59' N89°04'44"W 105' N0°53'58"R 80' S89°04'44"W 105' S0°53'58"W 80' TO POB TOGETHER WITH ANOTHER PT OF BLK-20 BEG SOUTH LINE BLK-20 BEARS N29°24'12"W 508.31' N89°04'44"W 52.40' N0°55'16"E 95' S89°04'44"E 65.50' S0°55'16"W 15' N89°04'44"W 13.13' S0°53'58"W 80' TO POB TOTAL AC THIS PARCEL .31 M/L R-69739 BK 116 PG 251 BK 524 PG 534 BK 550 PG 263 BK 786 PG 703 R-585050

NOW THEREFORE, it is hereby agreed that:

1. The Property Owner(s) and Grant Recipient shall use funds subject to this Contract in support of **Project #2012-01-070, "Exterior Rehabilitation"** in accordance with the *Scope of Work* attached hereto as Exhibit A, including all applicable plans and specifications developed prior to or during the contract period, which are hereby made a part of this Contract by reference.
2. **APPLICABLE STANDARDS:** The Property Owner(s) and Grant Recipient agree that they will perform the activities and produce the deliverables listed in Exhibit C in accordance with the pertinent sections of the applicable Secretary of the Interior's *Standards for Archaeology and Historic Preservation*. The Property Owner and Grant Recipient shall perform any and all survey activities and submittals in accordance with the Survey Manual and How to Complete Colorado Cultural Resource Inventory Forms, Volumes I and II, June 1998 (Revised December 2001) for any and all survey activities and projects (copies of which are available through History Colorado).
3. **RIGHT OF USE:** All copyrightable materials and/or submittals developed or produced under this contract are subject to a royalty-free, nonexclusive, and irrevocable license to History Colorado to reproduce, publish, display, perform, prepare derivative works or otherwise use, and authorize others to reproduce, publish, display, perform, prepare derivative works, or otherwise use, the work or works for History Colorado and/or State Historical Fund purposes.
4. **CONTRACT EFFECTIVE DATE:** The term of this Contract shall be from May 1, 2012 through May 1, 2014.

The performance of the work must be commenced within sixty (60) days of the Contract beginning date unless a longer period is approved in writing by the State Historical Fund Administrator. The performance of the work must be completed no later than thirty (30) days prior to the Contract ending date.

5. **COMPENSATION AND METHOD OF PAYMENT:** In consideration of the project described in Exhibit A and subject to on time delivery of completion of the milestones contained in the *List of Submittals* set forth in Exhibit C, the State shall pay to the Grant Recipient a grant not to exceed ninety-three thousand eight hundred fifty-nine dollars (\$93,859.00).

Unless otherwise specified in Exhibit C, the State shall advance forty-percent (40%) of the total grant amount upon proper execution of this contract and upon submission of a SHF Payment Request, fifty-percent (50%) will be paid to the Grant Recipient upon submission and approval of the Interim *SHF Financial Report*. The remaining ten-percent (10%) of the grant amount shall be paid following Grant Recipient's submission and the State's approval of the *Final SHF Financial Report* and *SHF Payment Request Form (Attachments 1 and 2)*. All payments are subject to the satisfactory completion of milestones described in Exhibit C and submission by Grant Recipient of either documented proof or certification of expenditures with each financial report.

Expenditures incurred by the Grant Recipient or Property Owner prior to execution of this Contract are not eligible expenditures for State reimbursement. If the Project involves matching funds the SHF may allow prior expenditures in furtherance of the *Scope of Work* to be counted as part of such matching funds.

6. **ACCOUNTING:** At all times from the effective date of this Contract until completion of this Project, the Grant Recipient and Property Owner(s) shall maintain properly segregated books of State funds, matching funds, and other funds associated with this Project. All receipts and expenditures associated with said Project shall be documented in a detailed and specific manner, and shall accord with the *Budget* set forth in Exhibit B. Grant Recipient may adjust budgeted expenditure amounts up to ten percent (10%) within said Budget without approval of the State and document the adjustments in the next financial report. Adjustments of budget expenditure amounts in excess of ten percent (10%) must be authorized by the State. In no event shall the State's total financial obligation exceed the amount shown in Paragraph 5 above. Interest earned on funds advanced by the State shall be applied to eligible project expenditures, and will be deducted from the final payment.

7. **AUDIT:** The State or its authorized representative shall have the right to inspect, examine, and audit Grant Recipient's and Property Owner(s) records, books, and accounts, including the right to hire an independent Certified Public Accountant of the State's choosing and at the State's expense to do so. Such discretionary audit may be called for at any time and for any reason from the effective date of this Contract until three (3) years after the date final payment for this Project is received by the Grant Recipient or Property Owner(s) provided that the audit is performed at a time convenient to the Grant Recipient and/or Property Owner(s) and during regular business hours.

8. **PARTIES RELATIONSHIP:** THE GRANT RECIPIENT AND THE PROPERTY OWNER(S) ARE NOT EMPLOYEES OR AGENTS OF THE STATE. THE GRANT RECIPIENT AND/OR PROPERTY OWNER(S) SHALL HAVE NO AUTHORITY, EXPRESS OR IMPLIED, TO BIND THE STATE TO ANY AGREEMENTS OR UNDERSTANDINGS WITHOUT THE EXPRESS WRITTEN CONSENT OF THE STATE. THE GRANT RECIPIENT AND PROPERTY OWNER(S) REPRESENT THAT THEY HAVE OR SHALL SECURE AT THEIR OWN EXPENSE ALL PERSONNEL EMPLOYED OR UTILIZED BY THE GRANT RECIPIENT/PROPERTY OWNER(S) UNDER THIS CONTRACT. THE GRANT RECIPIENT AND/OR PROPERTY OWNER(S) SHALL BE RESPONSIBLE FOR PROVIDING WORKMEN'S COMPENSATION COVERAGE AND UNEMPLOYMENT COMPENSATION COVERAGE FOR ALL OF THEIR EMPLOYEES TO THE EXTENT REQUIRED BY LAW, AND FOR ENSURING THAT ALL SUBCONTRACTORS MAINTAIN SUCH INSURANCE. THE GRANT RECIPIENT AND/OR PROPERTY OWNER(S) SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX WITHHOLDING. ALL OF THE SERVICES REQUIRED HEREUNDER SHALL BE PERFORMED BY THE GRANT RECIPIENT AND/OR PROPERTY OWNER(S) OR UNDER THEIR SUPERVISION.

9. **REPRESENTATIVES AND NOTICES:** All notices required to be given by the parties hereunder shall be given by certified or registered mail to the individuals at the addresses set forth below, who are also the designated representatives for the project. Any party may from time to time designate in writing substitute addresses or persons to whom such notices shall be sent.

To the State: Steve W. Turner
Vice President OAHF and SHF/Deputy SHPO
History Colorado, the Colorado Historical Society
1200 Broadway
Denver, Colorado 80203

To the Grant Recipient: Ms. LaDonna Gunn
Grants/Project Coordinator
Delta County Public Library District dba Delta County Libraries
149 East Main Street, PO Box 540
Hotchkiss, Colorado 81419

To the Property Owner(s): City of Delta AND County of Delta
360 Main Street AND 501 Palmer Street
Delta, Colorado 81416 AND Delta, Colorado, 81416

10. ADA COMPLIANCE: The Grant Recipient and Property Owner(s) assure the State that at all times during the performance of this contract no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied benefits of the service, programs, or activities performed by the Grant Recipient and Property Owner(s), or be subjected to any discrimination by the Grant Recipient or Property Owner(s) upon which assurance the State relies. Further, all real property improvements shall conform to applicable ADA requirements.
11. DISSEMINATION OF ARCHAEOLOGICAL SITE LOCATIONS: The Grant Recipient and Property Owner(s) agree to provide History Colorado with copies of any archaeological surveys developed during the course of, or under a project financed either wholly or in part by History Colorado. The Grant Recipient and Property Owner(s) agree to otherwise restrict access to such archaeological surveys, as well as access to any other information concerning the nature and location of archaeological resources, in strict accordance with the provisions of History Colorado-the Colorado Historical Society, Office of Archaeology and Historic Preservation, Dissemination of Cultural Resource; Policy and Procedures, adopted October 1991 (Revised Nov. 2002), a copy of which is available from the History Colorado.
12. REPORTS: The Grant Recipient and/or Property Owner(s) shall deliver project progress reports to the State every six (6) months during the project which document the progress of the Project, and *SHF Financial Reports* (Attachment 1) as described and at the times in the *List of Submittals* (Exhibit C).
13. MATCHING FUNDS: The Grant Recipient and Property Owner(s) agree to make available the necessary funds to complete the Project and provide matching funds, if applicable, in accordance with the Project Budget as set forth in Exhibit B. In the event that said matching funds become unavailable, the State may, in its sole discretion, reduce its total funding commitment to the Project in proportion to the reduction in matching funds.

If the total funding set forth in the Project Budget is not expended on completion of the Project, the State may reduce its pro-rata share of the unexpended budget.

14. CONSULTANTS/SITE VISITS: The State may:
 - a. Review any project planning documents and methods for conformity with the applicable standards, manuals, and guidelines;
 - b. Make site visits as determined necessary by the State before, during and/or at the conclusion of the Project to provide on-site technical advice and to monitor progress.

Any exercise of the State's rights under this Paragraph 14 shall not relieve the Grant Recipient or Property Owner(s) of any of its Contract obligations.

15. PUBLIC ACKNOWLEDGMENT OF FUNDING SOURCE: In all publications and similar materials funded under this Contract, a credit line shall be included that reads: "This project is/was paid for in part by a State Historical Fund grant from History Colorado, the Colorado Historical Society." In addition, History Colorado reserves the right to require that the following sentence be included in any publication or similar material funded through this program: "The contents and opinions contained herein do not necessarily reflect the views or policies of History Colorado, the Colorado Historical Society".
16. PRESERVATION OF PROPERTY: The Property Owner(s) hereby agrees to the following for a period of twenty (20) years commencing on the date of this Agreement.
 - a. Without the express written permission of History Colorado, no construction, alteration, movement, relocation or remodeling or any other activity shall be undertaken or permitted to be undertaken on the Property which would alter the architectural appearance of the Property, adversely affect the structural soundness of the Property, encroach on the open land area of the Property, or adversely affect such prominent landscape features as trees, hedges, fences, walls or paths. Such work, when permitted shall be performed according to the Secretary of the Interior's *Standards for the Treatment of Historic Properties and the Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings*, issued and as may from time to time be amended by the U.S. Secretary of the Interior, hereinafter collectively referred to as the "*Standards*". In all events, the Property Owner(s) further agrees at all times to maintain the Property in a good and sound state of repair and to maintain the Property according to the *Standards* so as to prevent deterioration of the Property.
 - b. In the event of severe damage or total destruction to the Property (defined, for the purpose of this Agreement, as sudden damage or loss caused by fire, earthquake, inclement weather, acts of the public enemy, riot or other similar casualty) not due to the fault of the Property Owner(s) this Agreement shall terminate as of the date of such damage or destruction.
 - c. History Colorado, or a duly appointed representative of History Colorado, shall be permitted to inspect the Property at all reasonable times in order to ascertain if the above conditions are being observed.
 - d. Within sixty (60) days prior to completion of this Contract, Property Owner(s) covenants and agrees that History Colorado will record this Contract with the county clerk and recorder for the county in which the property is located. Property Owner(s) further covenants and agrees that this Contract will constitute a binding covenant that will run with the land.
 - e. To the extent authorized by law, the Property Owner(s) shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards, including costs, expenses, and attorneys fees incurred as a

result of any act or omission by the Property Owner(s), or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

17. REMEDIES: In addition to any other remedies provided for in this contract, and without limiting its remedies otherwise available at law, the State may exercise the following remedial actions if the Grant Recipient substantially fails to satisfy or perform the duties and obligation in this Contract. Substantial failure to satisfy the duties and obligations shall be defined to mean significant, insufficient, incorrect, or improper performance, activities, or inaction by the Property Owner(s) or Grant Recipient. These remedial actions are as follows:
 - a. Suspend the Grant Recipient's performance pending necessary corrective action as specified by the State without Grant Recipient's entitlement to adjustment in price/cost or schedule; and/or
 - b. Withhold payment to Grant Recipient until the necessary services or corrections in performance are satisfactorily completed in accordance with the *Standards*, the SHF Grants Manual and/or the terms and conditions of this Contract; and/or
 - c. Request the removal from work on the contract of employees or agents of the Property Owner(s) or Grant Recipient whom the State justifies as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on the contract the State deems to be contrary to the public interest or not in the best interest of the State; and/or
 - d. Deny payment for those services or obligations which have not been performed and which due to circumstances caused by the Property Owner(s) or Grant Recipient cannot be performed, or if performed would be of no value to the State. Denial of the amount of payment must be reasonably related to the value of work or performance lost to the State; and/or
 - e. Declare all or part of the work ineligible for reimbursement; and/or
 - f. In the event of a violation of this Agreement, and in addition to any remedy now or hereafter provided by law, History Colorado may, following reasonable notice to the Grant Recipient institute suit to enjoin said violation or to require the restoration of the Property to its condition at the time of this Agreement or condition at the time of the most recent satisfactory inspection by History Colorado. History Colorado shall be entitled to recover all costs or expenses incurred in connection with such a suit, including all court costs and attorney's fees.
 - g. Terminate the contract for default.
18. RECAPTURE AND OTHER REMEDIES AGAINST PROPERTY OWNER(S): The following recapture provision shall apply only to the Property Owner(s): In the event that the property, as a whole, is sold within a five-year period after completion of the project, the following recapture provision shall apply: If the property is sold within the first year after completion, one-hundred percent (100%) of the funds awarded shall be returned to the State, with a twenty percent (20%) reduction per year thereafter.
 - a. In the event of a violation of this Agreement, and in addition to any remedy now or hereafter provided by law, History Colorado may, following reasonable notice to the Property Owner(s), institute suit to enjoin said violation or to require the restoration of the Property to its condition at the time of this Agreement or condition at the time of the most recent satisfactory inspection by History Colorado. History Colorado shall be entitled to recover all costs or expenses incurred in connection with such a suit, including all court costs and attorney's fees.
 - b. The failure of History Colorado to exercise any right or remedy granted under this Agreement shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.
19. CUMULATIVE EFFECT: The above remedies are cumulative and the State, in its sole discretion, may exercise any or all of them individually or simultaneously.
20. TERMINATION OF CONTRACT FOR DEFAULT: If, through any cause, the Grant recipient or the Property Owner(s) shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the Grant Recipient or Property Owner(s) shall violate any of the covenants, agreements, or stipulations of this Contract, the State shall, in addition to other remedies, thereupon have the right to terminate this Contract for default by giving written notice to the Grant Recipient and Property Owner(s) of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, products, submittals, and reports or other material prepared by the Grant Recipient or Property Owner(s) under this Contract shall, at the option of the State, become its property, and the Grant Recipient and/or Property Owner(s) shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Notwithstanding the above, the Grant Recipient and the Property Owner(s) shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the Contract by the Grant Recipient or the Property Owner(s), and the State may withhold any payments to the Grant Recipient or Property Owner(s) for the purpose of setoff until such time as the exact amount of damages due the State from the Grant Recipient and/or Property Owner(s) are determined.
21. TERMINATION BY STATE: The State may terminate this Contract at any time the State determines that the purposes of the distribution of State monies under the Contract would no longer be served by completion of the Project. The State shall effect such termination by giving written notice of termination to the Grant Recipient and the Property Owner(s) and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents and other materials paid for with State funds shall, at the option of the State, become its property. If the Contract is terminated by the State as provided herein, the Grant Recipient and/or Property Owner(s) will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Grant

Recipient and/or Property Owner(s) covered by this Contract, less payments of compensation previously made. Provided, however, that if less than sixty percent (60%) of the project covered by this Contract has been completed upon the effective date of such termination, the Grant Recipient and/or Property Owner(s) shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by the Grant Recipient and/or Property Owner(s) during the Contract period which are directly attributable to the uncompleted portion of the project covered by this Contract. If this Contract is terminated due to the fault of the Grant Recipient and/or Property Owner(s), Paragraph 20 hereof relative to termination shall apply.

22. **CHANGES:** This Contract is intended as the complete integration of all understandings between the parties, at this time, and no prior or contemporaneous addition, deletion, or other amendment hereto, including an increase or decrease in the amount of monies to be paid to the Grant Recipient and/or Property Owner(s), shall have any force or effect whatsoever, unless embodied in a written contract amendment incorporating such changes executed and approved pursuant to the State's Fiscal Rules. Notwithstanding this provision, modifications to Exhibit A (Scope of Work) and/or to Exhibit C (List of Submittals) may be approved by letter of agreement, agreed to in writing by all parties, providing that no such letter of agreement may alter either the total amount of funds payable under the contract, as set forth in Paragraph 5, or the contract period, as set forth in Paragraph 4, unless such changes are embodied in a written contract amendment executed and approved pursuant to the State's Fiscal Rules.
23. **CONFLICT OF INTEREST:** The Grant Recipient or Property Owner(s) agree not to engage in any conduct, activity, or transaction related to this contract which would constitute a conflict of interest under any applicable State or Federal law.
24. **COMPLIANCE WITH APPLICABLE LAWS:** At all times during the performance of this Contract, the Grant Recipient and Property Owner(s) shall strictly adhere to all applicable Federal and State laws that have been or may hereafter be established.
25. **SEVERABILITY:** To the extent that this Contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the Contract, the terms of this Contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as waiver of any other term.
26. **BINDING ON SUCCESSORS:** Except as herein otherwise provided, this Contract shall inure to the benefit of and be binding upon the parties, or any subcontractors hereto, and their respective successors and assigns.
27. **ASSIGNMENT:** No party, nor any subcontractors hereto, may assign its rights or duties under this Contract without the prior written consent of the other parties.
28. **SURVIVAL OF CERTAIN CONTRACT TERMS:** Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued performance of compliance beyond the termination date of the contract shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the Grant Recipient and/or the Property Owner(s) or their subcontractors.
29. **BOND REQUIREMENT:** If this contract involves the payment of more than fifty thousand dollars for the construction, erection, repair, maintenance, or improvement of any building, road, bridge, viaduct, tunnel, excavation or other public work for this State, the Contractor shall, before entering upon the performance of any such work included in this contract, duly execute and deliver to the State official who will sign the contract, a good and sufficient bond or other acceptable surety to be approved by said official in a penal sum not less than one-half of the total amount payable by the terms of this contract. Such bond shall be duly executed by a qualified corporate surety conditioned upon the faithful performance of the contract and in addition, shall provide that if the Contractor or his subcontractors fail to duly pay for any labor, materials, team hire, sustenance, provisions, provender or other supplies used or consumed by such Contractor or his subcontractor in performance of the work contracted to be done or fails to pay any person who supplies rental machinery, tools, or equipment in the prosecution of the work the surety will pay the same in an amount not exceeding the sum specified in the bond, together with interest at the rate of eight per cent per annum. Unless such bond is executed, delivered and filed, no claim in favor of the Contractor arising under such contract shall be audited, allowed or paid. A certified or cashier's check or a bank money order payable to the Treasurer of the State of Colorado may be accepted in lieu of a bond. This provision is in compliance with CRS 38-26-106.
30. **CORA DISCLOSURE:** To the extent not prohibited by federal law, this Contract and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.
31. **STATEWIDE CONTRACT MANAGEMENT SYSTEM:** If the maximum amount payable to Grantee under this Grant is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §31 applies.

Grantee agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide Contract Management System.

Grantee's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Grant, State law, including CRS §24-103.5-101, and State fiscal rules, policies and guidance. Evaluation and Review of Grantee's performance shall be part of the normal Grant administration process and Grantee's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and

timeliness. Collection of information relevant to the performance of Grantee's obligations under this Grant shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Grantee's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and rating shall be rendered within 30 days of the end of the Grant term. Grantee shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Grantee demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by CHS, and showing of good cause, may debar Grantee and prohibit Grantee from bidding on future grants. Grantee may contest the final Evaluation, Review and rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Grantee, by the Executive Director, upon showing of good cause.

SPECIAL PROVISIONS

(The Special Provisions apply to all contracts except where noted in italics.)

1. **CONTROLLER'S APPROVAL.** CRS 24-30-202 (1).
This contract shall not be valid until it has been approved by the Colorado State Controller or designee.
2. **FUND AVAILABILITY.** CRS 24-30-202(5.5).
Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
3. **GOVERNMENTAL IMMUNITY.**
No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 1346(b) and 2671 et seq., as applicable now or hereafter amended.
4. **INDEPENDENT CONTRACTOR.**
Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.
5. **COMPLIANCE WITH LAW.**
Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
6. **CHOICE OF LAW.**
Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.
7. **BINDING ARBITRATION PROHIBITED.**
The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.
8. **SOFTWARE PIRACY PROHIBITION.** Governor's Executive Order D 002 00.
State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
9. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST.** CRS 24-18-201 and 24-50-507.
The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.
10. **VENDOR OFFSET.** CRS 24-30-202 (1) and 24-30-202.4. *[Not Applicable to intergovernmental contracts]*
Subject to CRS 24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS 39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.
11. **PUBLIC CONTRACTS FOR SERVICES.** CRS 8-17.5-101. *[Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]*
Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS 8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS 8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS 8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.
12. **PUBLIC CONTRACTS WITH NATURAL PERSONS.** CRS 24-76.5-101. Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS 24-76.5-101 et seq., and (c) has produced one form of identification required by CRS 24-76.5-103 prior to the effective date of this contract.

CONTRACT SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

*Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.

CONTRACTOR:
(Grant Recipient)

Delta County Public Library District
dba Delta County Libraries

Legal Name of Contracting Entity

*Signature of Authorized Officer

Date

Print Name of Authorized Officer

Print Title of Authorized Officer

City of Delta/ County of Delta
Legal Owner

Signature of Legal Owner

Date

Print Name of Legal Owner

Print Title of Legal Owner

STATE OF COLORADO
John W. Hickenlooper, GOVERNOR

BY:

Executive Director or Designee
Edward C. Nichols, President

History Colorado, the Colorado Historical Society

Date:

Department of Higher Education

STATE HISTORICAL FUND

BY:

Director or Designee
Steve W. Turner, Vice President OAHF & SHF/Deputy SHPO

Date:

WAIVER CONTRACT REVIEWER

By:

Contracts Officer or Designee
Janette Vigil, State Historical Fund

Date:

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performances or for any goods and/or services provided hereunder.

STATE CONTROLLER
David J. McDermott, CPA

BY:

Joseph Bell
CHS, Vice President Finance, Facilities & Regional
Museums

Date:

Revised, December 5, 2011
x:\Document\09130125.doc
Approval/Contract A with 20 year covenant

SCOPE OF WORK

- I. **Project Purpose:** The purpose of this project is the exterior preservation of the 1911 Carnegie Library in Delta, Colorado.

- II. **Scope of Work is as follows:**
 - A. **Preservation Activities (Construction)**
 1. **Stabilize Exterior Wall and Establish Dry Zone of 1911 Building**
 - a. Mobilization, clearing, and grubbing
 - b. Install foundation piers/piles for underpinning with foundation anchoring brackets
 - c. Cut and patch interior concrete slab for shoring
 - d. Site work and irrigation
 - e. Perimeter soil and concrete work
 - f. Construction surveying
 2. **Preserve Exterior Walls of 1911 Building**
 - a. Develop mortar analysis
 - b. Repair/replace stone veneer walls
 - c. Reset loose brick masonry
 - d. Clean all brick and stone surfaces
 - e. Re-point brick and stone veneer walls
 - f. Repair stone window sills
 - g. Test existing exterior paint for lead
 - h. Remove lead based paint, if necessary
 - i. Sand, fill and repaint exterior metal cornice
 - j. Repaint wood columns at east elevation
 - k. Repair stone cap

 - B. **A/E Services**
 1. Architectural services
 2. Engineering services
 3. Landscape architectural services

In accordance with Section 12-47.1-12-1 C.R.S. (1999) The Limited Gaming Act which authorizes the Colorado Historical Society to administer the State Historical Fund as a statewide grants program.

H:\Contracts\2012\1201070 Exhibit A.doc

PROJECT BUDGET

TASK	AMOUNT
A. Preservation Activities (Construction):	
1. Stabilize Exterior Wall & Establish Dry Zone of 1911 Building	\$28,989
2. Preserve Exterior Walls of 1911 Building	\$62,490
<hr/>	
<i>Subtotal Construction</i>	<i>\$91,479</i>
B. Architecture & Engineering Fees*	\$13,722
C. General Conditions, Permits and O&P (25% of A)	\$22,869
D. Project Management	\$11,435
<hr/>	
<i>Project Subtotal</i>	<i>\$139,505</i>
Contingency**	\$13,722
PROJECT TOTAL	\$153,227
Grant Award (61.25%)	\$93,859
Cash Match (38.75%)	\$59,368

*This line item may not be increased through budget revisions or be allowed contingency funds. The amount is an increase of \$8,192 from the original application due to an error on the part of the grant applicant. The increase is allocated for in cash match solely.

** Contingency - Must receive written approval from SHF Staff prior to use

Travel must be within SHF/State allowable rates (\$.50/mile – mileage, \$100/night – Hotel, \$46/day – Per Diem)

LIST OF SUBMITTALS

<u>Project Reports</u>		
<u>Project Reports</u>	<u>Due Date</u>	<u>Society Response</u>
a. Payment Request Form (Attachment 1). Deliverables #1 – 2, 13 below must be reviewed and approved before Advance payment is made.	N/A	Advance payment of grant award \$34,181.
b. Progress Report # 1	August 1, 2012	Review*
c. Progress Report # 2	November 1, 2012	Review*
d. Progress Report # 3	February 1, 2013	Review*
e. Interim Financial Report (Attachment 1). Deliverables #3 - 7 below must be reviewed and approved before Interim payment is made.	February 15, 2013	Review & Approve. 1 st Interim payment of grant award \$42,727.†
f. Progress Report # 4	May 1, 2013	Review*
g. Progress Report # 5	August 1, 2013	Review*
h. Progress Report #6	November 1, 2013	Review*
i. Progress Report #7	February 1, 2014	Review*
j. Final Financial Report (Attachment 1)	February 15, 2014	Review & Approve. Final Reimbursement of grant award \$8,546.†

*At the discretion of the SHF technical staff, progress reports may not receive a response.

** Interim financial report due date is a guideline. Please submit Interim financial report when majority of advance has been expended and you are ready for the next payment.

*** Project period ends. All Deliverables due on or before this date.

†Payment may increase due to approval of contingency funds

PROJECT DELIVERABLES

Submit the following Project Deliverables. Deliverables #1 - 7 must be reviewed and approved by SHF before commencement of treatments (construction).

<u>Project Deliverables</u>	<u>Society Response</u>
01. Initial consultation with SHF Historic Preservation Specialist (within 45 days of contract start date)	Review/Comment and or Approve
02. Before/existing condition photos of areas affected by scope of work	Review/Comment and or Approve
03. Subcontract Certification – Engineer	Review/Comment and or Approve
04. Subcontract Certification – Architect	Review/Comment and or Approve
05. Construction Documents / Plans and Specifications	Review/Comment and or Approve
06. Subcontract Certification – Contractor	Review/Comment and or Approve
07. Pre-Construction meeting with SHF Historic Preservation Specialist	Review/Comment and or Approve
08. Materials Testing Analysis and Results	Review/Comment and or Approve
09. Mock up of stone repair/replacement	Review/Comment and or Approve
10. OAHP Archaeology site forms, if necessary	Review/Comment and or Approve
11. Copy of Archaeological Report, if necessary	Review/Comment and or Approve
12. After photos of areas affected by Scope of Work	Review/Comment and or Approve
13. MOU/LOA between Grant Recipient and Property Owner	Review/Comment and or Approve

H:\Contracts\2012\1201070 Exhibit C.docx



**CITY COUNCIL
MEETING AGENDA
ITEM**

MEETING DATE: Feb 7th 2012

Name: Latarge New Name Date Memo/Packet Submitted to City Clerk: _____
(Due no later than Thursday @ 12:00pm)

Dept: Parks Description: Name Latarge Property Phone: 824-7973

...ALL QUESTIONS must be answered...

Discussed with City Manager? Yes / <input checked="" type="radio"/> No	Reviewed by City Attorney? Yes / <input checked="" type="radio"/> No
Included in Current Year Budget? <input checked="" type="radio"/> Yes / No Budgeted Amount \$ _____ If not budgeted explain:	Program is... <input checked="" type="radio"/> NEW ONGOING TEMPORARY
Is this a Bid Award? Yes / <input checked="" type="radio"/> No Bidders and Bid Amounts – Attach a Summary of Bids Received	Subject to Annual Renewal? Yes / <input checked="" type="radio"/> No Renewal Date: _____
What process was used? _____ Informal Bid _____ RFP <u>NA</u> _____ Bid _____ RFQ _____ Other (explain)	Is this a Grant? Yes / <input checked="" type="radio"/> No
Is this to be communicated to the Public? <input checked="" type="radio"/> Yes / No <input checked="" type="checkbox"/> Press Release _____ Newsletter Article _____ Other _____ Channel 10 <input checked="" type="checkbox"/> City website	What is the City's Match? <u>NA</u>
Purchase Amount: <u>NA</u>	Is an Ordinance Required? Yes / <input checked="" type="radio"/> No Is Resolution Required? Yes / <input checked="" type="radio"/> No Are there any publishing requirement? <input checked="" type="radio"/> Yes / No

SUMMARY: Give Latarge Property Official Name



Paul Suppes
Parks Director
874-7973

Memo

To: Mayor and Council
From: Paul Suppes Parks Director
Date: 01-31-12
Subject: Name for Lafarge Property

Recommendation

It is recommended that the Council approve a name for the Lafarge property from the 3 Names brought to Council in Dec. of last year.

Background

The Parks Dept. as per City Council request did advertise for a name for the Lafarge property in the Paper and did receive 14 names from 6 submissions. We did present these to City Council in Dec. 20th, 2011 and then was required to publish the 3 names for public comment. We have received no comment on any of the names. The required 30 day time period has been met. And now it is time to make a decision on the name.

Costs

The only cost to the City will be a sign at the entry to the Park, approx \$200 and this will come from the line item of the River property.

Actions To Be Taken If Approved

The Parks Dept. will notify the DCI of the name and a Sign will be ordered and put up at the entrance of the park.

The three names were River Bend Park, Riverwood Park, and Driftwood Park.

Suggested Motion

I move the City name the Lafarge property, ????????, Park and that all future references to the Lafarge property be called the same.



Paul Suppes
Parks Director
8747973

Memo

To: Mayor and Council
From: Paul Suppes Parks Director
Date: 12-16-11
Subject: Name Contest for Lafarge Property

Recommendation

The following names have been selected by Parks Staff and the City Manager for the Lafarge Property these names are recommended to City Council to approve and to publish. These names are as follows; River Bend Park, Riverwood Park and Driftwood Park.

Background and process

The Parks Dept. as per City Council request did proceed with a name contest for the Lafarge property. This was the process that we followed as per City Policy. We advertised in the DCI November 9th for submission of park names, along with reasons for the name, anything that the name might effect, name of person who submitted and phone number of the person submitting along with a signature. The request were to be submitted by November 30th. At that point as per City Policy staff and City Manager pick the top 3 names and submit them to City Council for their review and then to publish for 30 days and allow for public comment, then at that point the City Council has a public hearing on the names and then selects a name for the Park. We did receive 6 submissions with a total of 14 names. Staff and City manager did select the 3 names submitted to Council.

Costs

There is no cost to the City.

Actions to be Taken if Approved

The Council needs to approve the 3 names and set a public hearing in 30 days and request Public comment on the 3 names and then pick a name for the Park.

Suggested Motion

I move the City approve the 3 names as listed and set a public hearing in 30 days. River Bend Park, Riverwood Park and Driftwood Park.



CITY COUNCIL MEETING AGENDA ITEM

MEETING DATE: 7 FEB

Name: HATHEWAY Date Memo/Packet Submitted to City Clerk: 2 FEB 12
(Due no later than Thursday @ 12:00pm)

Dept: PW Description: STREET VACATION Phone: 874-7566

...ALL QUESTIONS must be answered...

Discussed with City Manager? <input checked="" type="radio"/> Yes / <input type="radio"/> No	Reviewed by City Attorney? <input checked="" type="radio"/> Yes / <input type="radio"/> No <i>MIKE WROTE IT</i>
Included in Current Year Budget? <input type="radio"/> Yes / <input type="radio"/> No Budgeted Amount \$ <u>NA</u> If not budgeted explain:	Program is... <input checked="" type="radio"/> NEW <input type="radio"/> ONGOING <input type="radio"/> TEMPORARY
Is this a Bid Award? <input type="radio"/> Yes / <input checked="" type="radio"/> No Bidders and Bid Amounts – Attach a Summary of Bids Received	Subject to Annual Renewal? <input type="radio"/> Yes / <input checked="" type="radio"/> No Renewal Date: _____
What process was used? <input type="checkbox"/> Informal Bid <input type="checkbox"/> RFP <input type="checkbox"/> Bid <input type="checkbox"/> RFQ <input checked="" type="checkbox"/> Other (explain) - <u>ATR</u>	Is this a Grant? <input type="radio"/> Yes / <input checked="" type="radio"/> No
Is this to be communicated to the Public? <input type="radio"/> Yes / <input checked="" type="radio"/> No <input type="checkbox"/> Press Release <input type="checkbox"/> Newsletter Article <input type="checkbox"/> Other <input type="checkbox"/> Channel 10 <input type="checkbox"/> City website	What is the City's Match? <u>NA</u>
Purchase Amount: <u>NA</u>	Is an Ordinance Required? <input checked="" type="radio"/> Yes / <input type="radio"/> No Is Resolution Required? <input type="radio"/> Yes / <input checked="" type="radio"/> No Are there any publishing requirement? <input type="radio"/> Yes / <input checked="" type="radio"/> No

SUMMARY: See Memo



MEMO

To: *Mayor and Council*

From: *Jim Hatheway, Public Works Director*

Date: *2 February 12*

Subject: *3rd and Silver Street Vacation*

A handwritten signature in black ink, appearing to be 'JH', written over the 'From:' line.

RECOMMENDATION

The Public Works Department is recommending that the City award adopt the attached ordinance for vacation of 3rd and Silver Streets.

BACKGROUND

This is a contractual obligation as part of the property acquisition from Hi-Quality for construction of Confluence Drive.

COST

None

ACTIONS TO BE TAKEN IF APPROVED

Property will be conveyed to adjacent property owners as dictated by State law. City will reserve a utility easement the width of the existing right of way.

SUGGESTED MOTION

I move the City adopt the attached ordinance to vacate 3rd and Silver Streets as agreed upon in the purchase contract with Hi Quality.

ORDINANCE NO._____

COUNCIL BILL NO._____

AN ORDINANCE OF THE CITY OF DELTA, COLORADO, VACATING SEGMENTS OF THIRD STREET AND SILVER STREET IN THE CITY LIMITS.

WHEREAS, under Article I, Section 3 of Delta’s Municipal Charter, and under C.R.S. 31-15-702(1)(a), the City has general municipal power to vacate streets and roadways, particularly those that are determined not to be needed for public purposes; and

WHEREAS, the City Council has determined that there is no need to maintain present or future rights of general public access across, through or upon segments of Third Street and Silver Street in Delta, Colorado which segments contain a total of 0.28 acres and are more particularly described by an instrument and map prepared by JSC, Inc. Of Meeker, Colorado collectively labeled and attached hereto as “Exhibit A”; and

WHEREAS, the City Council has determined that vacating the subject segments of Third Street and Silver Street will not result in the isolation of any private land from public access, and is especially warranted by circumstances surrounding a new City project for development of a public roadway to be known as Confluence Drive, and

WHEREAS, the City Council has determined that its actions contemplated under this ordinance will otherwise comply with applicable provisions of law set forth in C.R.S. 43-2-101 *et seq.*

NOW, THEREFORE, be it ordained by the City Council of Delta, Colorado as follows:

1. The aforementioned segments of Third Street and Silver Street, as specifically described and mapped by the attached Exhibit A are hereby permanently vacated; provided, however, that the vacated area is nevertheless hereby permanently reserved for the construction, maintenance, repair and use of all public utility lines and related facilities deemed necessary by the Delta City Council, and also temporarily reserved for all necessary purposes relating to construction of the aforementioned Confluence Drive.

2. Title to the vacated street segments, subject to the aforementioned reservations, shall vest in the owners of adjoining lands according to the provisions of C.R.S. 43-2-302(1)(c).

3. The City’s Mayor and Clerk, in consultation with the City Attorney, are hereby authorized to make, execute, obtain and record any and all documentation that they may deem necessary or prudent for

the proper implementation of this ordinance and for the revision of official maps of the City.

ADOPTED ON FIRST READING AND ORDERED PUBLISHED THIS _____ DAY OF _____, 2012.

CITY OF DELTA, COLORADO

ATTEST:

City Clerk

By: _____
Mayor

ADOPTED ON SECOND AND FINAL READING AND ORDERED PUBLISHED THIS _____ DAY OF _____, 2012.

CITY OF DELTA, COLORADO

ATTEST:

City Clerk

Mayor

EXHIBIT A

DT-2
FND 3/4" ALUM. CAP IN RANGE BOX
STAMPED: COLO DOT
DT-2 2001 BLACK 10513

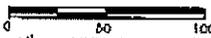
CITY OF DELTA,
DELTA COUNTY
COLORADO

(BASIS OF BEARING--ASSUMED)
N79°13'51"E
2173.02'

POINT OF
COMMENCEMENT
DT-1
FND STONE
WITH CROSS



SCALE: 1" = 100 U.S. SURVEY FEET



2ND STREET

LOT 32

LOT 1

SILVER STREET

COLUMBIA STREET

BLOCK 35

PLAT C
DELTA TOWNSITE

538°57'26"E
727.15'

L3

LOT 17

LOT 16

3RD STREET

CONTAINING 0.28 ACRES +/-

LOT 32

LOT 15

LOT 32

LOT 1

BLOCK 39

BLOCK 34

THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED SURVEY.
IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION.

SHEET 1 OF 2

3RD STREET VACATION PLAT C DELTA TOWNSITE

LYING IN SECTION 13, T15S, R96W OF THE 6TH P.M.
CITY OF DELTA, DELTA COUNTY, COLORADO

JSC, INC.

P.O. BOX 1153 MEEKER, CO 81641
PHONE: (970) 878-5292 FAX: 878-5392

DRAWN BY	SEC
DATE	1-25-2012
JOB NO.	2212-01
CHECKED BY	JLJ

EXHIBIT A

JSC, INC.

P.O. Box 1153

Meeker, CO 81641

Phone (970) 878-5292 Fax (970) 979-5392

3RD STREET VACATION
PLAT C DELTA TOWNSITE

A PARCEL OF LAND LYING IN PLAT C DELTA TOWNSITE, A SUBDIVISION PLAT RECORDED IN BOOK 2 PAGE 2 OF THE TOWN OF DELTA PLAT BOOK RECEPTION NO. 7297, LOCATED IN SECTION 13, TOWNSHIP 15 SOUTH, RANGE 96 WEST OF THE 6TH P.M., CITY OF DELTA, COUNTY OF DELTA, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT DELTA TOWNSITE CORNER NO. 1 (STONE WITH A CUT CROSS IN CONCRETE), WHENCE DELTA TOWNSITE CORNER DT-2 (3-1/4 INCH ALUMINUM CAP IN RANGE BOX STAMPED COLO DOT DT-2 2001 BLACK 10513) BEARS

N79°13'51"E, 2173.02 FEET;

THENCE S39°37'26"E, 727.15 FEET TO NORTHEAST CORNER OF BLOCK 39 OF SAID PLAT C DELTA TOWNSITE, BEING THE TRUE POINT OF BEGINNING;

THENCE S89°28'58"W, ALONG THE NORTH LINE OF SAID BLOCK 39, 115.97 FEET;

THENCE N36°09'44"W, 92.29 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF 3RD STREET;

THENCE N89°28'58"E, ALONG SAID NORTH RIGHT-OF-WAY LINE, 201.37 FEET;

THENCE S19°25'57"W, 92.66 FEET TO A POINT ON THE EAST LINE OF SAID BLOCK 39;

THENCE N00°29'39"W, ALONG SAID EAST LINE, 12.10 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.28 ACRES MORE OR LESS.



**CITY COUNCIL
MEETING AGENDA
ITEM**

MEETING DATE: 7 FEB

Name: HATHWAY Date Memo/Packet Submitted to City Clerk: 2 FEB 12
(Due no later than Thursday @ 12:00pm)
 Dept: PW Description: PROPERTY CONVEYANCE TO HI Q Phone: 874-7566

...ALL QUESTIONS must be answered...

Discussed with City Manager? <input checked="" type="radio"/> Yes / <input type="radio"/> No	Reviewed by City Attorney? <input checked="" type="radio"/> Yes / <input type="radio"/> No <i>MIKE WROTE IT</i>
Included in Current Year Budget? <input type="radio"/> Yes / <input type="radio"/> No Budgeted Amount \$ <u>NA</u> If not budgeted explain:	Program is... <input checked="" type="radio"/> NEW <input type="radio"/> ONGOING <input type="radio"/> TEMPORARY
Is this a Bid Award? <input type="radio"/> Yes / <input checked="" type="radio"/> No Bidders and Bid Amounts – Attach a Summary of Bids Received	Subject to Annual Renewal? <input type="radio"/> Yes / <input checked="" type="radio"/> No Renewal Date: _____
What process was used? <input type="checkbox"/> Informal Bid <input type="checkbox"/> RFP <input type="checkbox"/> Bid <input type="checkbox"/> RFQ <input checked="" type="checkbox"/> Other (explain) <i>ATR</i>	Is this a Grant? <input type="radio"/> Yes / <input checked="" type="radio"/> No
Is this to be communicated to the Public? <input type="radio"/> Yes / <input checked="" type="radio"/> No <input type="checkbox"/> Press Release <input type="checkbox"/> Newsletter Article <input type="checkbox"/> Other <input type="checkbox"/> Channel 10 <input type="checkbox"/> City website	What is the City's Match? <i>NA</i>
Purchase Amount: <u>NA</u>	Is an Ordinance Required? <input checked="" type="radio"/> Yes Is Resolution Required? <input checked="" type="radio"/> No Are there any publishing requirements? <input checked="" type="radio"/> Yes / <input type="radio"/> No

SUMMARY: See Memo



MEMO

To: *Mayor and Council*

From: *Jim Hatheway, Public Works Director* 

Date: *2 February 12*

Subject: *Property Conveyance to Hi Quality Packing*

RECOMMENDATION

The Public Works Department is recommending that the City convey a 0.18 acre parcel to Hi-Quality Packing, Inc.

BACKGROUND

This is a contractual obligation as part of the property acquisition from Hi-Quality for construction of Confluence Drive.

COST

None

ACTIONS TO BE TAKEN IF APPROVED

Property will be conveyed to Hi-Quality Packing Inc. as agreed to in the purchase contract

SUGGESTED MOTION

I move the City adopt the attached ~~resolution~~ *Council Bill #2, 2012* to convey 0.18 acres as agreed upon in the purchase contract with Hi Quality.

ORDINANCE NO. _____

COUNCIL BILL NO. _____

AN ORDINANCE OF THE CITY OF DELTA, COLORADO, VACATING SEGMENTS OF THIRD STREET AND SILVER STREET IN THE CITY LIMITS.

WHEREAS, under Article I, Section 3 of Delta's Municipal Charter, and under C.R.S. 31-15-702(1)(a), the City has general municipal power to vacate streets and roadways, particularly those that are determined not to be needed for public purposes; and

WHEREAS, the City Council has determined that there is no need to maintain present or future rights of general public access across, through or upon segments of Third Street and Silver Street in Delta, Colorado which segments contain a total of 0.28 acres and are more particularly described by an instrument and map prepared by JSC, Inc. Of Meeker, Colorado collectively labeled and attached hereto as "Exhibit A"; and

WHEREAS, the City Council has determined that vacating the subject segments of Third Street and Silver Street will not result in the isolation of any private land from public access, and is especially warranted by circumstances surrounding a new City project for development of a public roadway to be known as Confluence Drive, and

WHEREAS, the City Council has determined that its actions contemplated under this ordinance will otherwise comply with applicable provisions of law set forth in C.R.S. 43-2-101 *et seq.*

NOW, THEREFORE, be it ordained by the City Council of Delta, Colorado as follows:

1. The aforementioned segments of Third Street and Silver Street, as specifically described and mapped by the attached Exhibit A are hereby permanently vacated; provided, however, that the vacated area is nevertheless hereby permanently reserved for the construction, maintenance, repair and use of all public utility lines and related facilities deemed necessary by the Delta City Council, and also temporarily reserved for all necessary purposes relating to construction of the aforementioned Confluence Drive.

2. Title to the vacated street segments, subject to the aforementioned reservations, shall vest in the owners of adjoining lands according to the provisions of C.R.S. 43-2-302(1)(c).

3. The City's Mayor and Clerk, in consultation with the City Attorney, are hereby authorized to make, execute, obtain and record any and all documentation that they may deem necessary or prudent for the proper implementation of this ordinance and for the revision of official maps of the City.

ADOPTED ON FIRST READING AND ORDERED PUBLISHED THIS _____ DAY OF _____, 2012.

CITY OF DELTA, COLORADO

ATTEST:

City Clerk

By: _____
Mayor

ADOPTED ON SECOND AND FINAL READING AND ORDERED PUBLISHED THIS _____ DAY OF _____, 2012.

CITY OF DELTA, COLORADO

ATTEST:

City Clerk

Mayor

EXHIBIT A

JSC, INC.

P.O. Box 1153

Meeker, CO 81641

Phone (970) 878-5292 Fax (970) 979-5392

3RD STREET VACATION PLAT C DELTA TOWNSITE

A PARCEL OF LAND LYING IN PLAT C DELTA TOWNSITE, A SUBDIVISION PLAT RECORDED IN BOOK 2 PAGE 2 OF THE TOWN OF DELTA PLAT BOOK RECEPTION NO. 7297, LOCATED IN SECTION 13, TOWNSHIP 15 SOUTH, RANGE 96 WEST OF THE 6TH P.M., CITY OF DELTA, COUNTY OF DELTA, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT DELTA TOWNSITE CORNER NO. 1 (STONE WITH A CUT CROSS IN CONCRETE), WHENCE DELTA TOWNSITE CORNER DT-2 (3-1/4 INCH ALUMINUM CAP IN RANGE BOX STAMPED COLO DOT DT-2 2001 BLACK 10513) BEARS

N79°13'51"E, 2173.02 FEET;

THENCE S39°37'26"E, 727.15 FEET TO NORTHEAST CORNER OF BLOCK 39 OF SAID PLAT C DELTA TOWNSITE, BEING THE TRUE POINT OF BEGINNING;

THENCE S89°28'58"W, ALONG THE NORTH LINE OF SAID BLOCK 39, 115.97 FEET;

THENCE N36°09'44"W, 92.29 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF 3RD STREET;

THENCE N89°28'58"E, ALONG SAID NORTH RIGHT-OF-WAY LINE, 201.37 FEET;

THENCE S19°25'57"W, 92.66 FEET TO A POINT ON THE EAST LINE OF SAID BLOCK 39;

THENCE N00°29'39"W, ALONG SAID EAST LINE, 12.10 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.28 ACRES MORE OR LESS.

EXHIBIT A

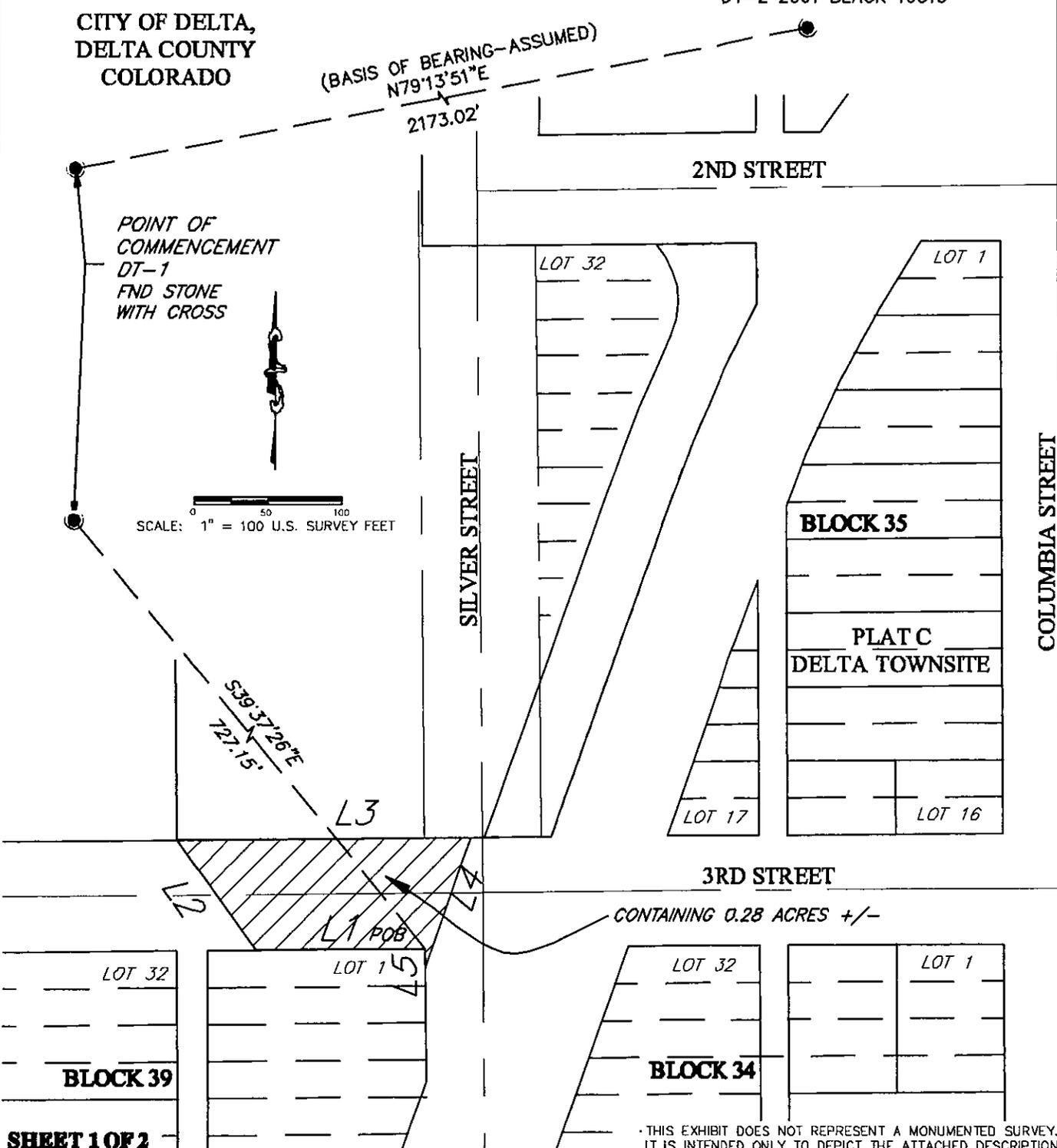
DT-2
 FND 3 1/2" ALUM. CAP IN RANGE BOX
 STAMPED: COLO DOT
 DT-2 2001 BLACK 10513

CITY OF DELTA,
 DELTA COUNTY
 COLORADO

(BASIS OF BEARING--ASSUMED)
 N79°13'51"E
 2173.02'

POINT OF
 COMMENCEMENT
 DT-1
 FND STONE
 WITH CROSS

SCALE: 1" = 100 U.S. SURVEY FEET



SHEET 1 OF 2

THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED SURVEY.
 IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION.

3RD STREET VACATION PLAT C DELTA TOWNSITE

LYING IN SECTION 13, T15S, R96W OF THE 6TH P.M.
 CITY OF DELTA, DELTA COUNTY, COLORADO

JSC, INC.

P.O. BOX 1153 MEEKER, CO 81641
 PHONE: (970) 878-5292 FAX: 878-5392

DRAWN BY	SEC
DATE	1-25-2012
JOB NO.	2212-01
CHECKED BY	JLJ



CITY COUNCIL MEETING AGENDA ITEM

MEETING DATE: 7 FEB

Name: HATTEWAY Date Memo/Packet Submitted to City Clerk: 3 FEB
(Due no later than Thursday @ 12:00pm)
 Dept: PW Description: HOUSEHOLD TRUST Phone: 4-7566
CONDENNATION

...ALL QUESTIONS must be answered...

Discussed with City Manager? <input checked="" type="radio"/> Yes / <input type="radio"/> No	Reviewed by City Attorney? <input checked="" type="radio"/> Yes / <input type="radio"/> No <i>Mike Wrote It</i>
Included in Current Year Budget? <input checked="" type="radio"/> Yes / <input type="radio"/> No Budgeted Amount \$ _____ If not budgeted explain: <i>will have to pay for w/ project contingency</i>	Program is... <input checked="" type="radio"/> NEW ONGOING TEMPORARY
Is this a Bid Award? <input type="radio"/> Yes / <input checked="" type="radio"/> No Bidders and Bid Amounts – Attach a Summary of Bids Received	Subject to Annual Renewal? <input type="radio"/> Yes / <input checked="" type="radio"/> No Renewal Date: _____
What process was used? <input type="checkbox"/> Informal Bid <input type="checkbox"/> RFP <input type="checkbox"/> Bid <input type="checkbox"/> RFQ <input type="checkbox"/> Other (explain) <i>NA</i>	Is this a Grant? <input type="radio"/> Yes / <input checked="" type="radio"/> No <i>NA</i>
Is this to be communicated to the Public? <input type="radio"/> Yes / <input checked="" type="radio"/> No <input type="checkbox"/> Press Release <input type="checkbox"/> Newsletter Article <input type="checkbox"/> Other <input type="checkbox"/> Channel 10 <input type="checkbox"/> City website	What is the City's Match? <i>NA</i>
Purchase Amount: <i>Estimated up to and over \$100k</i>	Is an Ordinance Required? <input checked="" type="radio"/> Yes / <input type="radio"/> No Is Resolution Required? <input type="radio"/> Yes / <input checked="" type="radio"/> No Are there any publishing requirements? <input checked="" type="radio"/> Yes / <input type="radio"/> No

SUMMARY: see Memo



MEMO

To: *Mayor and Council*

From: *Jim Hatheway, Public Works Director* 

Date: *2 February 12*

Subject: *Household Trust Condemnation*

RECOMMENDATION

The Public Works Department is recommending that the City adopt an ordinance authorizing City staff and attorney to pursue condemnation actions against the Household Trust to acquire property for Confluence Drive.

BACKGROUND

City staff, City attorney and TRS representatives have tried on numerous occasions to engage the Trustee for the Household Trust in negotiations to acquire property needed for Confluence Drive. The Trustee has ignored all communication and negotiation requests. All options are exhausted and the City must now proceed with condemnation to acquire the property.

COST

Attorney fees, court fees, publishing costs, staff cost – All unknown at this point. Will be dependent upon the court proceedings. Estimated costs range upwards of \$100,000.

ACTIONS TO BE TAKEN IF APPROVED

City attorney will proceed to follow condemnation action against the trust supported by staff and employees of TRS.

SUGGESTED MOTION

I move the City adopt the attached ordinance to proceed with condemnation action against the Household Trust to acquire property for Confluence Drive.

Council Bill # _____, 2012

Ordinance # _____, 2012

A ORDINANCE OF THE CITY OF DELTA AUTHORIZING THE ACQUISITION OF CERTAIN REAL PROPERTY FROM FAMILY HOUSEHOLD TRUST FOR THE CONFLUENCE DRIVE PROJECT.

Whereas, the City Council of Delta, Colorado has determined the need to acquire certain real property, located South of Highway 348 and between the Gunnison River and the Union Pacific Railroad tracks in the City limits of Delta, Colorado, for the purpose of constructing and maintaining a new public roadway or thoroughfare to be known as Confluence Drive; and

Whereas, the pertinent real property (“the property”) is presently titled in the name of the Family Household Trust, a Florida Trust (“the Trust”), the only address for which known to the City is c/o Raymond Miller, Trustee, 218 Harbor Drive, Venice, Florida 34285, as shown by local records of the Delta County Treasurer and Assessor and by a Statement of Authority recorded by the Trust pursuant to C.R.S. 38-30-172 on August 17, 2005 under Reception No. 594641 of the Delta County Colorado records; and

Whereas, the City has presented legal representatives of the Trust at its above listed address with good faith offers to purchase the Trust’s property, and with related requests for information, none of which offers or requests have been answered by the Trust or by anyone purporting to act on its behalf; and

Whereas, it currently appears that further efforts to negotiate a conventional purchase of the property from the uncommunicative Trust would be futile; and

Whereas, although a conventional purchase of the property would be preferable, the City Council nevertheless concludes that the exercise of the City’s power of eminent domain is the only practical means for acquiring unencumbered title to the needed property of the Trust under the current circumstances.

NOW, THEREFORE, it is resolved by the City Council of Delta, Colorado that City staff, including particularly the City attorney, be and are hereby authorized to commence and pursue with diligence, for the public purposes stated above, the acquisition by proper eminent domain proceedings of title to and possession of the seven (7) parcels of the Family Household Trust property located in Delta County, Colorado and more particularly described on Exhibits 1 through 7 attached hereto. This ordinance shall not be deemed to preclude a conventional purchase of the property by the City on reasonable terms if the Trust hereafter offers to engage in direct negotiations.

ADOPTED ON FIRST READING THIS _____ DAY OF
_____, 2012 AND ORDERED PUBLISHED.

Mayor

ATTEST:

City Clerk

ADOPTED ON SECOND AND FINAL READING, AND ORDERED PUBLISHED,
THIS _____ DAY OF _____, 2012.

Mayor

ATTEST:

City Clerk

Legal Description – Parcel 18

EXHIBIT 1
SHEET 1 OF 2

RIGHT OF WAY DESCRIPTION PARCEL 18

A PORTION OF THAT PARCEL OF LAND KNOWN AS PARCEL B DESCRIBED IN BOOK 866 AT PAGE 261 OF THE RECORDS OF DELTA COUNTY AND LOCATED IN THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 15 SOUTH, RANGE 96 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF DELTA, COUNTY OF DELTA, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE LINE BETWEEN DT-1, MONUMENTED BY A STONE WITH A CUT CROSS IN CONCRETE, AND DT-20, MONUMENTED BY A 2-1/2 INCH DIAMETER ALUMINUM CAP STAMPED LSJ36087, BEARS S 08°32'17" E, A DISTANCE OF 2700.09 FEET, BEARINGS ARE BASED ON THE MESA COUNTY LOCAL COORDINATE SYSTEM KNOWN AS DCLC02 (2009);

COMMENCING AT CORNER NUMBER 20, DELTA TOWNSITE; THENCE S33°38'31" E A DISTANCE OF 2,227.89 FEET TO THE MOST NORTHERLY CORNER OF SAID PARCEL B AS SHOWN ON THE SURVEY OF PAUL SHERMAN ESTATE, RECEPTION NUMBER 2000505 AND BEING ON THE SOUTHWESTERLY RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD, SAID POINT BEING THE SOUTHEASTERN CORNER OF THAT PARCEL OF LAND DESCRIBED IN RECEPTION NUMBER 650383, SAID POINT ALSO BEING THE POINT OF BEGINNING;

THENCE ALONG THE SOUTHWESTERLY RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD, S 41°22'27" E, A DISTANCE OF 650.00 FEET TO THE NORTHERLY LINE OF THAT PARCEL OF LAND DESCRIBED AT RECEPTION NUMBER 652755 OF THE RECORDS OF DELTA COUNTY

THENCE ALONG SAID NORTHERLY LINE, N 89°52'27" W, A DISTANCE OF 156.80 FEET;

THENCE ALONG THE ARC ON A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 1010.00 FEET, A CENTRAL ANGLE OF 04°26'35" AND AN ARC LENGTH OF 78.32 FEET, THE CHORD OF WHICH BEARS N 43°35'45" W, A DISTANCE OF 78.30 FEET;

THENCE N 41°22'27" W, A DISTANCE OF 513.92 FEET TO THE NORTHERLY LINE OF SAID PARCEL B;

THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL B, N 69°31'07" E, A DISTANCE OF 128.79 FEET TO THE POINT OF BEGINNING;

CONTAINING AN AREA OF 74,494 SQUARE FEET OR 1.710 ACRES, MORE OR LESS.

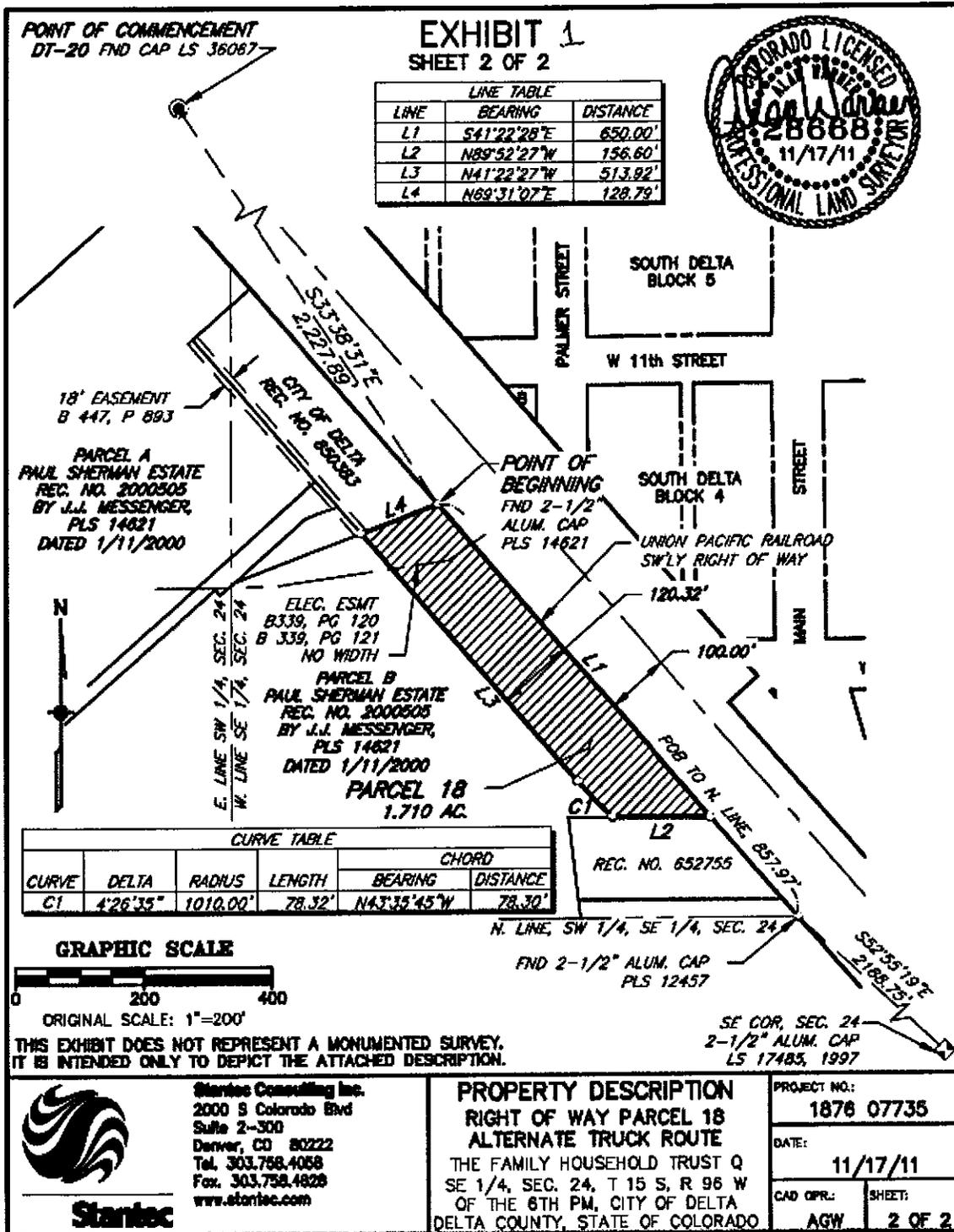
SURVEYOR'S STATEMENT

I HEREBY STATE THAT THE ATTACHED PROPERTY DESCRIPTION WAS PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AND IS ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

ALAN WARNER, PLS 28668
FOR AND ON BEHALF OF
STANTEC CONSULTING INC.



Legal Description – Exhibit – Parcel 18



Legal Description – Parcel 18A

EXHIBIT 7
SHEET 1 OF 2

RIGHT OF WAY DESCRIPTION PARCEL 18A

A PORTION OF THAT PARCEL OF LAND KNOWN AS PARCELS A AND B DESCRIBED IN BOOK 866 AT PAGE 261 OF THE RECORDS OF DELTA COUNTY AND LOCATED IN THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 15 SOUTH, RANGE 96 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF DELTA, COUNTY OF DELTA, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE LINE BETWEEN DT-1, MONUMENTED BY A STONE WITH A CUT CROSS IN CONCRETE, AND DT-20, MONUMENTED BY A 2-1/2 INCH DIAMETER ALUMINUM CAP STAMPED LSJ6067, BEARS S 06°32'17" E, A DISTANCE OF 2700.09 FEET, BEARINGS ARE BASED ON THE MESA COUNTY LOCAL COORDINATE SYSTEM KNOWN AS DCLC02 (2009);

COMMENCING AT CORNER NUMBER 20, DELTA TOWNSITE; THENCE S 30°05'46" E A DISTANCE OF 2,147.88 FEET TO THE INTERSECTION OF THE SOUTHWESTERLY LINE OF THAT PARCEL OF LAND DESCRIBED IN RECEPTION NUMBER 650383 AND THE SOUTHEASTERLY LINE OF THAT PARCEL OF LAND DESCRIBED IN BOOK 247 AT PAGE 519 AND BEING 120.32 FEET SOUTHWESTERLY BY PERPENDICULAR MEASURE FROM THE SOUTHWESTERLY RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD, SAID POINT BEING THE POINT OF BEGINNING;

THENCE S 41°22'27" E, A DISTANCE OF 569.22 FEET;

THENCE ALONG THE ARC ON A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1010.00 FEET, A CENTRAL ANGLE OF 04°26'35" AND AN ARC LENGTH OF 78.32 FEET, THE CHORD OF WHICH BEARS S 43°35'45" E, A DISTANCE OF 78.30 FEET TO THE NORTHERLY LINE OF THAT PARCEL OF LAND DESCRIBED AT RECEPTION NUMBER 652755 OF THE RECORDS OF DELTA COUNTY;

THENCE ALONG SAID NORTHERLY LINE, N 89°52'27" W, A DISTANCE OF 56.40 FEET;

THENCE ALONG THE ARC ON A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 1050.00 FEET, A CENTRAL ANGLE OF 02°13'51" AND AN ARC LENGTH OF 40.88 FEET, THE CHORD OF WHICH BEARS N 42°29'23" W, A DISTANCE OF 40.88 FEET;

THENCE N 41°22'27" W, A DISTANCE OF 585.74 FEET TO THE SOUTHEASTERLY LINE OF SAID PARCEL OF LAND DESCRIBED IN BOOK 247 AT PAGE 519;

THENCE ALONG SAID SOUTHEASTERLY LINE, ALONG THE ARC ON A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 374.56 FEET, A CENTRAL ANGLE OF 06°37'26" AND AN ARC LENGTH OF 43.30 FEET, THE CHORD OF WHICH BEARS N 71°04'00" E, A DISTANCE OF 43.28 FEET TO THE POINT OF BEGINNING;

CONTAINING AN AREA OF 25,496 SQUARE FEET OR 0.585 ACRES, MORE OR LESS.

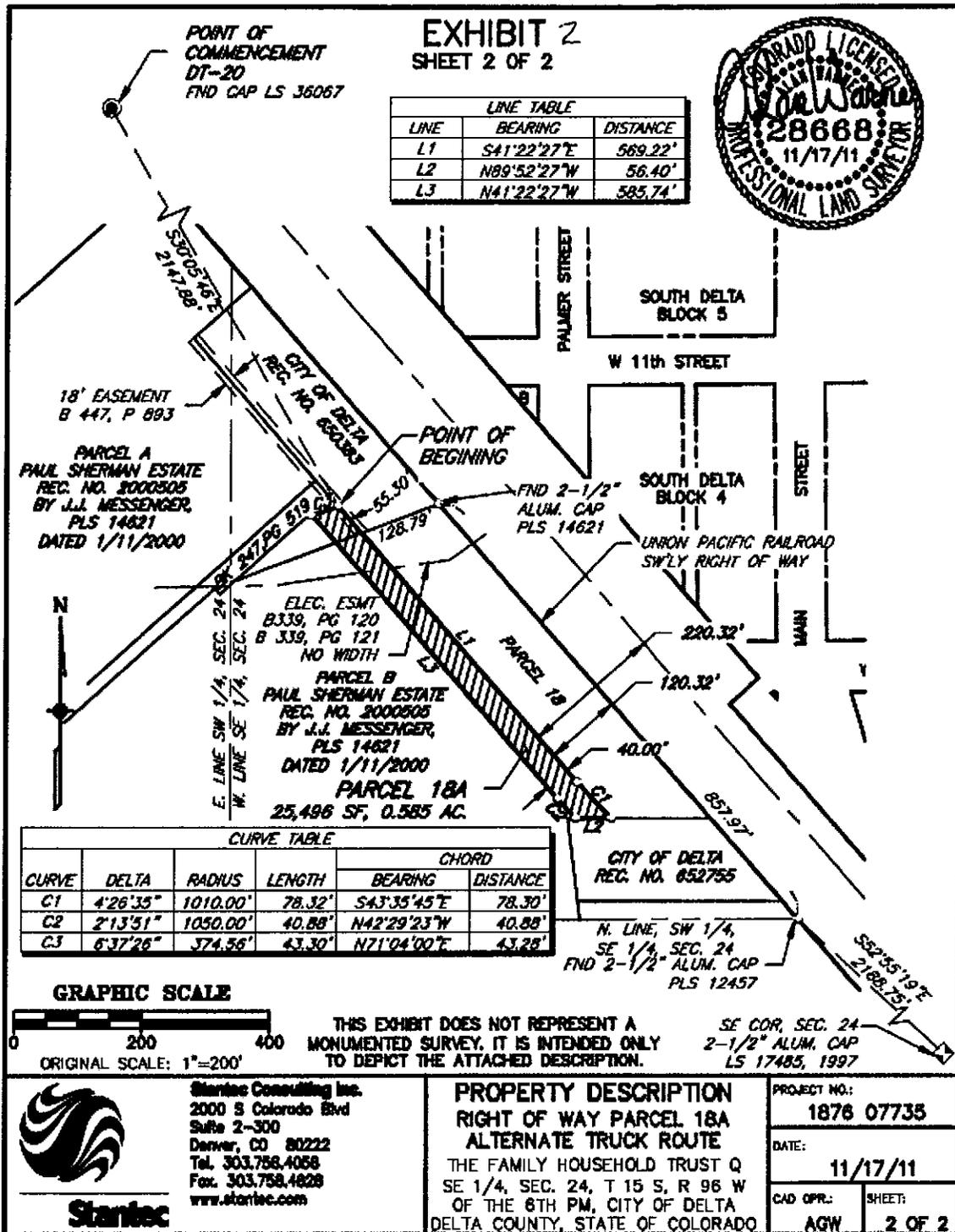
SURVEYOR'S STATEMENT

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ALAN WARNER, PLS 28668
FOR AND ON BEHALF OF
STANTEC CONSULTING INC.



Legal Description – Exhibit – Parcel 18A



Legal Description – Parcel 20

EXHIBIT 3
SHEET 1 OF 2

RIGHT OF WAY DESCRIPTION PARCEL 20

A PORTION OF THAT PARCEL OF LAND KNOWN AS PARCEL A DESCRIBED IN BOOK 866 AT PAGE 261 OF THE RECORDS OF DELTA COUNTY AND LOCATED IN THE SOUTH HALF OF SECTION 24, TOWNSHIP 15 SOUTH, RANGE 96 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF DELTA, COUNTY OF DELTA, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE LINE BETWEEN DT-1, MONUMENTED BY A STONE WITH A CUT CROSS IN CONCRETE, AND DT-20, MONUMENTED BY A 2-1/2 INCH DIAMETER ALUMINUM CAP STAMPED LSJ6067, BEARS S 06°32'17" E, A DISTANCE OF 2700.09 FEET, BEARINGS ARE BASED ON THE MESA COUNTY LOCAL COORDINATE SYSTEM KNOWN AS DCLC02 (2009);

COMMENCING AT CORNER NUMBER 20, DELTA TOWNSITE; THENCE S30°19'43"E A DISTANCE OF 1,564.53 FEET TO THE MOST NORTHERLY CORNER OF SAID PARCEL A BEING ON THE SOUTHWESTERLY RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD, SAID POINT BEING THE POINT OF BEGINNING;

THENCE ALONG THE SOUTHWESTERLY RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD, S 41°22'27" E, A DISTANCE OF 225.27 FEET AS SHOWN ON THE SURVEY OF PAUL SHERMAN ESTATE, RECEPTION NUMBER 2000505 TO THE NORTHERLY CORNER OF THAT PARCEL OF LAND DESCRIBED IN RECEPTION NUMBER 650383;

THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL, S 48°37'33" W, A DISTANCE OF 120.32 FEET;

THENCE N 41°22'27" W, A DISTANCE OF 225.27 FEET;

THENCE N 48°37'33" E, A DISTANCE OF 120.32 FEET TO THE POINT OF BEGINNING;

CONTAINING AN AREA OF 27,105 SQUARE FEET OR 0.622 ACRES, MORE OR LESS.

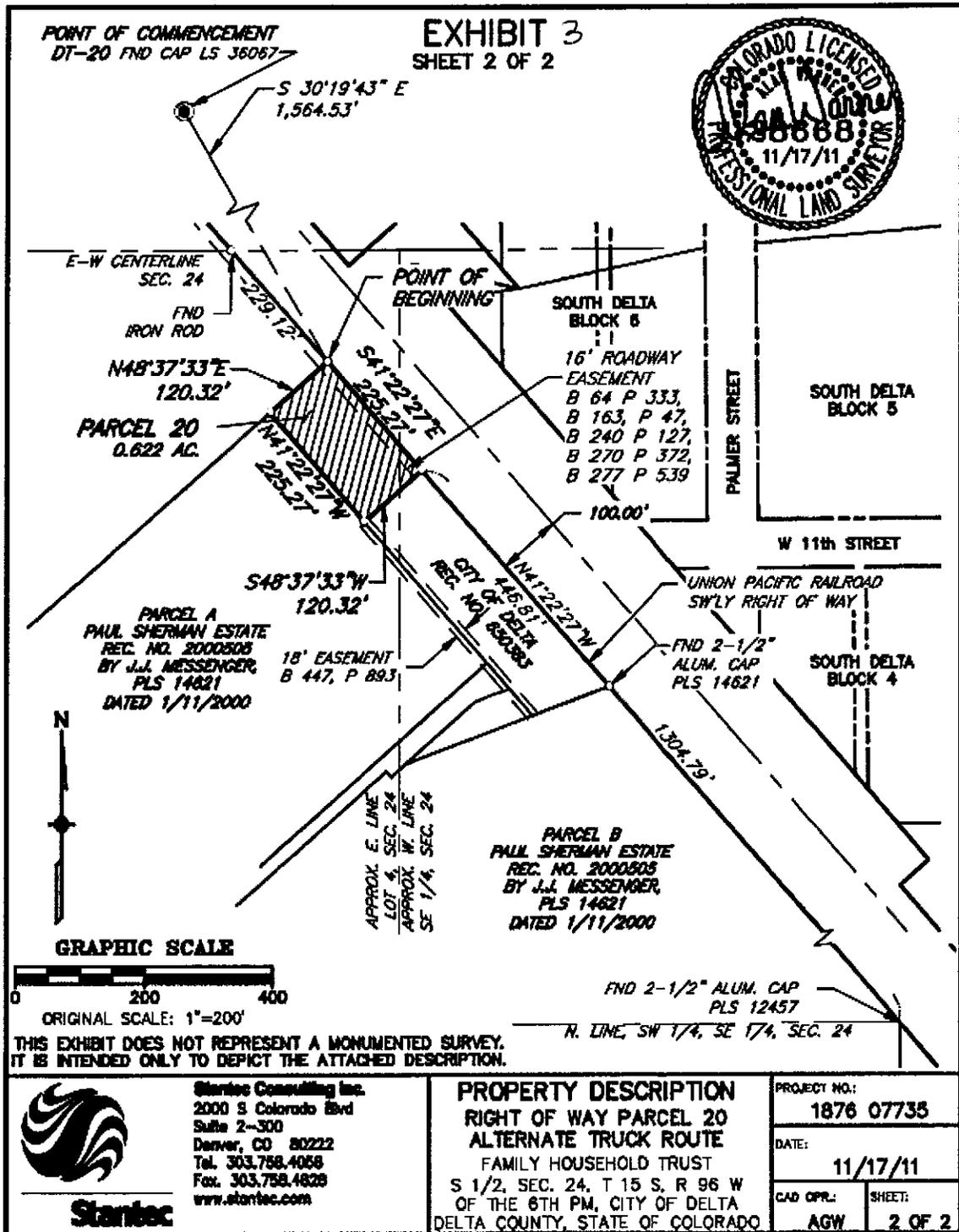
SURVEYOR'S STATEMENT

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ALAN WARNER, PLS 28668
FOR AND ON BEHALF OF
STANTEC CONSULTING INC.



Legal Description – Exhibit – Parcel 20



Legal Description – Parcel 20A

EXHIBIT 4
SHEET 1 OF 2

RIGHT OF WAY DESCRIPTION PARCEL 20A

A PORTION OF THAT PARCEL OF LAND KNOWN AS PARCEL A DESCRIBED IN BOOK 866 AT PAGE 261 OF THE RECORDS OF DELTA COUNTY AND LOCATED IN THE SOUTH HALF OF SECTION 24, TOWNSHIP 15 SOUTH, RANGE 96 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF DELTA, COUNTY OF DELTA, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE LINE BETWEEN DT-1, MONUMENTED BY A STONE WITH A CUT CROSS IN CONCRETE, AND DT-20, MONUMENTED BY A 2-1/2 INCH DIAMETER ALUMINUM CAP STAMPED LSJ6067, BEARS S 06°32'17" E, A DISTANCE OF 2700.09 FEET, BEARINGS ARE BASED ON THE MESA COUNTY LOCAL COORDINATE SYSTEM KNOWN AS DGLCO2 (2009);

COMMENCING AT CORNER NUMBER 20, DELTA TOWNSITE; THENCE S30°19'43"E A DISTANCE OF 1,564.53 FEET TO THE SOUTHWESTERLY RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD; THENCE S 48°37'33" W, A DISTANCE OF 120.32 FEET AND THE POINT OF BEGINNING;

THENCE S 41°22'27" W, A DISTANCE OF 517.14 FEET TO THE NORTHWESTERLY LINE OF THAT PARCEL OF LAND DESCRIBED IN BOOK 247 AT PAGE 519;

THENCE ALONG SAID LINE, S 48°37'33" W, A DISTANCE OF 40.00 FEET;

THENCE N 41°22'27" W, A DISTANCE OF 517.14 FEET;

THENCE N 48°37'33" E, A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING;

CONTAINING AN AREA OF 20,686 SQUARE FEET OR 0.475 ACRES, MORE OR LESS.

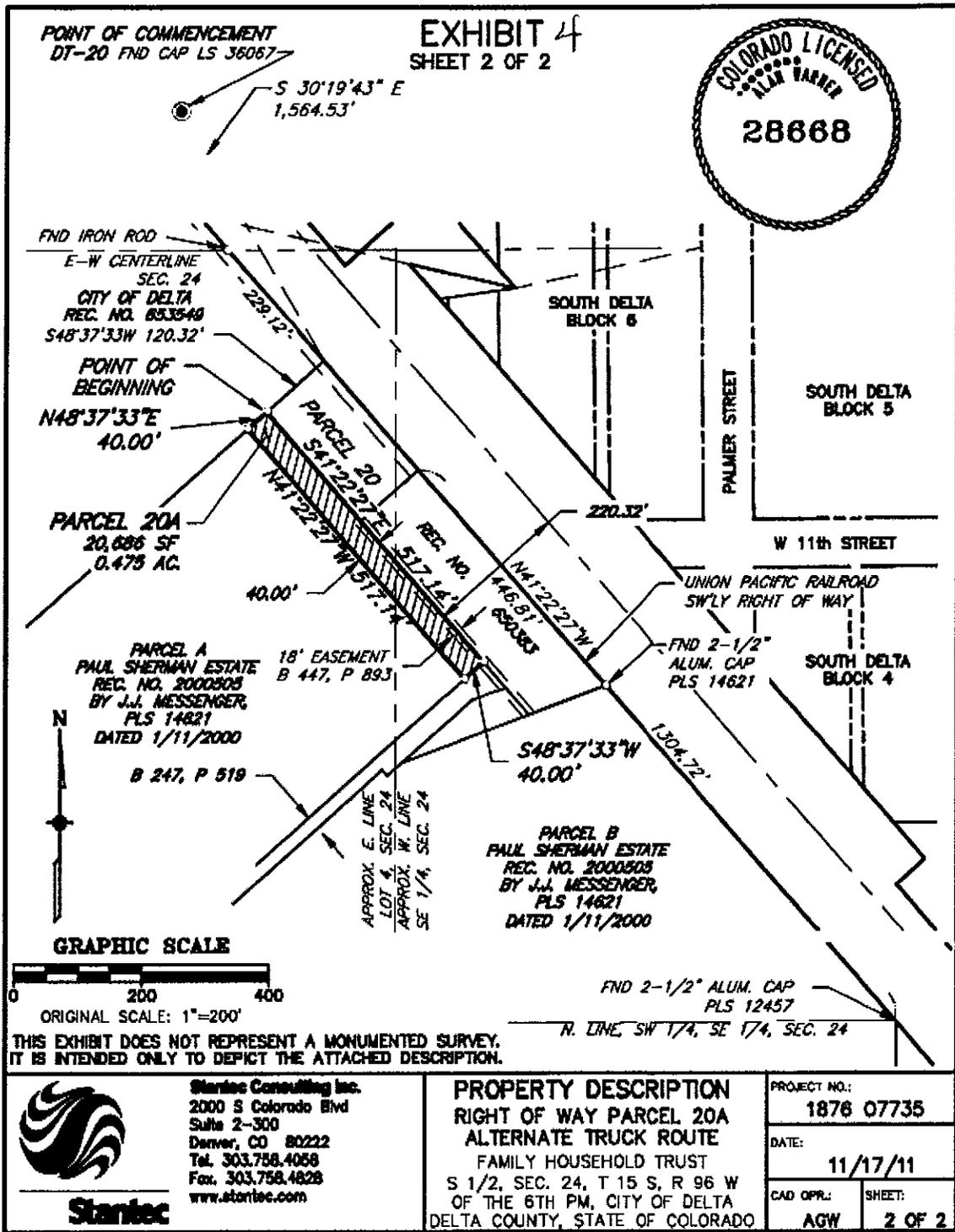
SURVEYOR'S STATEMENT

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ALAN WARNER, PLS 28668
FOR AND ON BEHALF OF
STANTEC CONSULTING INC.



Legal Description – Exhibit – Parcel 20A



Legal Description – Parcel 35

EXHIBIT 5
SHEET 1 OF 2

RIGHT OF WAY DESCRIPTION PARCEL 35

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 15 SOUTH, RANGE 96 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF DELTA, COUNTY OF DELTA, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE LINE BETWEEN THE SOUTHEAST CORNER OF SECTION 24, TOWNSHIP 15 SOUTH, RANGE 96 WEST, 6TH P.M., MONUMENTED BY A 2-1/2 INCH ALUMINUM CAP STAMPED LS 17485, 1997, AND DT-20, MONUMENTED BY A 2-1/2 INCH DIAMETER ALUMINUM CAP STAMPED LS38067, BEARS N 42°53'45" W, A DISTANCE OF 5211.92 FEET, BEARINGS ARE BASED ON THE MESA COUNTY LOCAL COORDINATE SYSTEM KNOWN AS DCLCO2 (2009);

COMMENCING AT CORNER NUMBER 20, DELTA TOWNSITE; THENCE S 35°47'23" E A DISTANCE OF 3,080.25 FEET TO THE INTERSECTION OF THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 24 AND THE SOUTHWESTERLY RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD, WHENCE THE SOUTHWEST CORNER OF SAID SECTION 24 BEARS S 52°55'19" E A DISTANCE OF 2,188.75 FEET, SAID POINT BEING THE POINT OF BEGINNING;

THENCE ALONG SAID SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 24, S 89°54'56" W, A DISTANCE OF 89.91 FEET;

THENCE N 52°52'35" W, A DISTANCE OF 45.05 FEET TO THE SOUTHERLY LINE THAT PARCEL OF LAND DESCRIBED IN RECEPTION NUMBER 652755;

THENCE ALONG THE SAID SOUTHERLY LINE, N 89°54'58" E, A DISTANCE OF 111.87 FEET TO THE SOUTHWESTERLY RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD;

THENCE ALONG SAID RIGHT OF WAY LINE, S 41°22'27" E, A DISTANCE OF 36.25 FEET TO THE POINT OF BEGINNING;

CONTAINING AN AREA OF 2,884 SQUARE FEET OR 0.066 ACRES, MORE OR LESS.

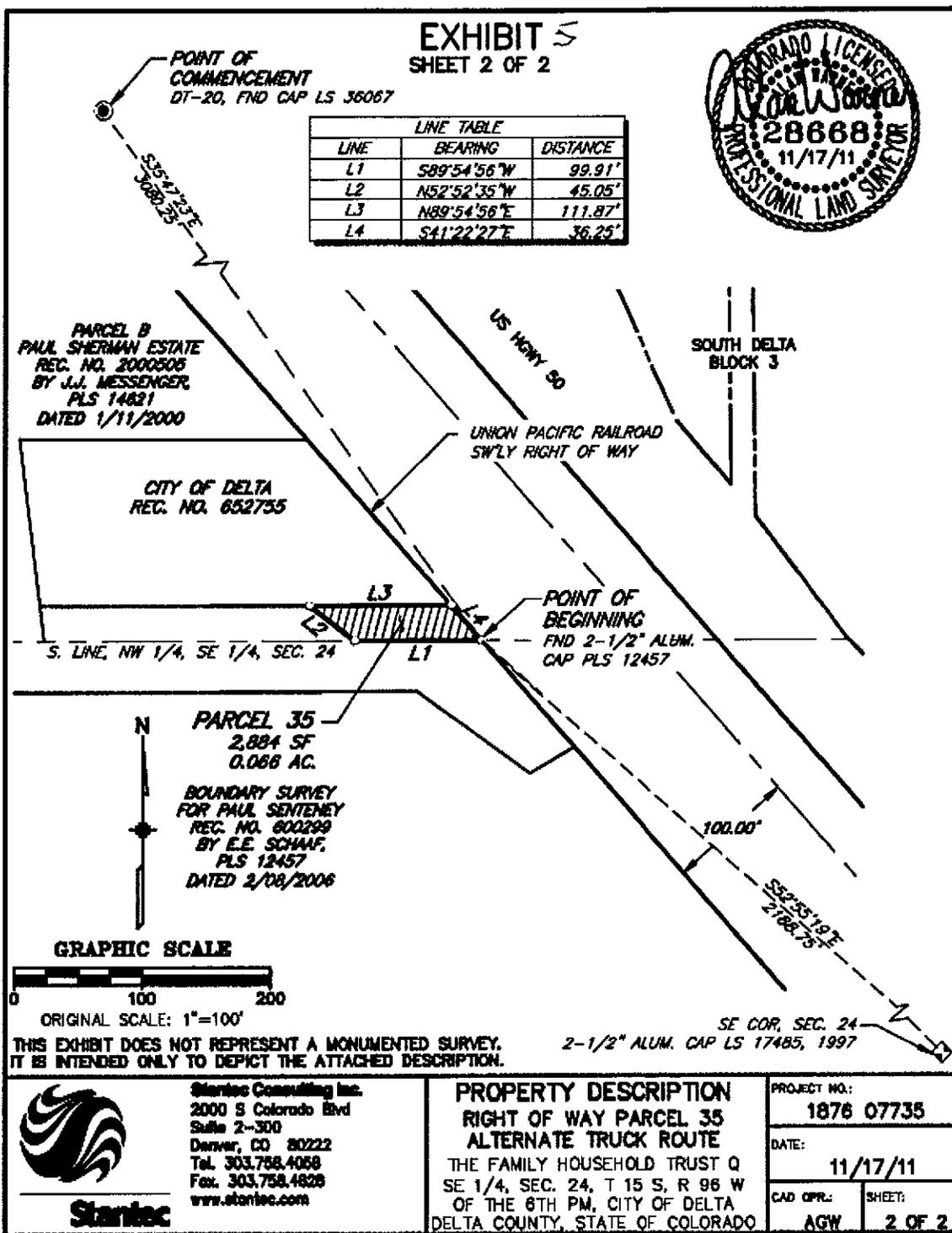
SURVEYOR'S STATEMENT

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ALAN WARNER, PLS 28668
FOR AND ON BEHALF OF
STANTEC CONSULTING INC.



Legal Description – Exhibit – Parcel 35



Legal Description – Parcel 35A

EXHIBIT 6
SHEET 1 OF 2

RIGHT OF WAY DESCRIPTION PARCEL 35A

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 15 SOUTH, RANGE 96 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF DELTA, COUNTY OF DELTA, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE LINE BETWEEN THE SOUTHEAST CORNER OF SECTION 24, TOWNSHIP 15 SOUTH, RANGE 96 WEST, 6TH P.M., MONUMENTED BY A 2-1/2 INCH ALUMINUM CAP STAMPED LS 17485, 1997, AND DT-20, MONUMENTED BY A 2-1/2 INCH DIAMETER ALUMINUM CAP STAMPED LS38067, BEARS N 42°53'45" W, A DISTANCE OF 5211.92 FEET, BEARINGS ARE BASED ON THE MESA COUNTY LOCAL COORDINATE SYSTEM KNOWN AS DCLC02 (2009);

COMMENCING AT CORNER NUMBER 20, DELTA TOWNSITE; THENCE S 35°47'23" E A DISTANCE OF 3,080.25 FEET TO THE INTERSECTION OF THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 24 AND THE SOUTHWESTERLY RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD, WHENCE THE SOUTHWEST CORNER OF SAID SECTION 24 BEARS S 52°55'19" E A DISTANCE OF 2,188.75 FEET; THENCE ALONG SAID SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 24, S 89°54'56" W, A DISTANCE OF 98.91 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 24, S 89°54'56" W, A DISTANCE OF 66.15 FEET;

THENCE N 52°52'35" W, A DISTANCE OF 45.05 FEET TO THE SOUTHERLY LINE THAT PARCEL OF LAND DESCRIBED IN RECEPTION NUMBER 652755;

THENCE ALONG THE SAID SOUTHERLY LINE, N 89°54'56" E, A DISTANCE OF 66.15 FEET;

THENCE S 52°52'35" E, A DISTANCE OF 45.05 FEET TO THE POINT OF BEGINNING;

CONTAINING AN AREA OF 1,802 SQUARE FEET OR 0.041 ACRES, MORE OR LESS.

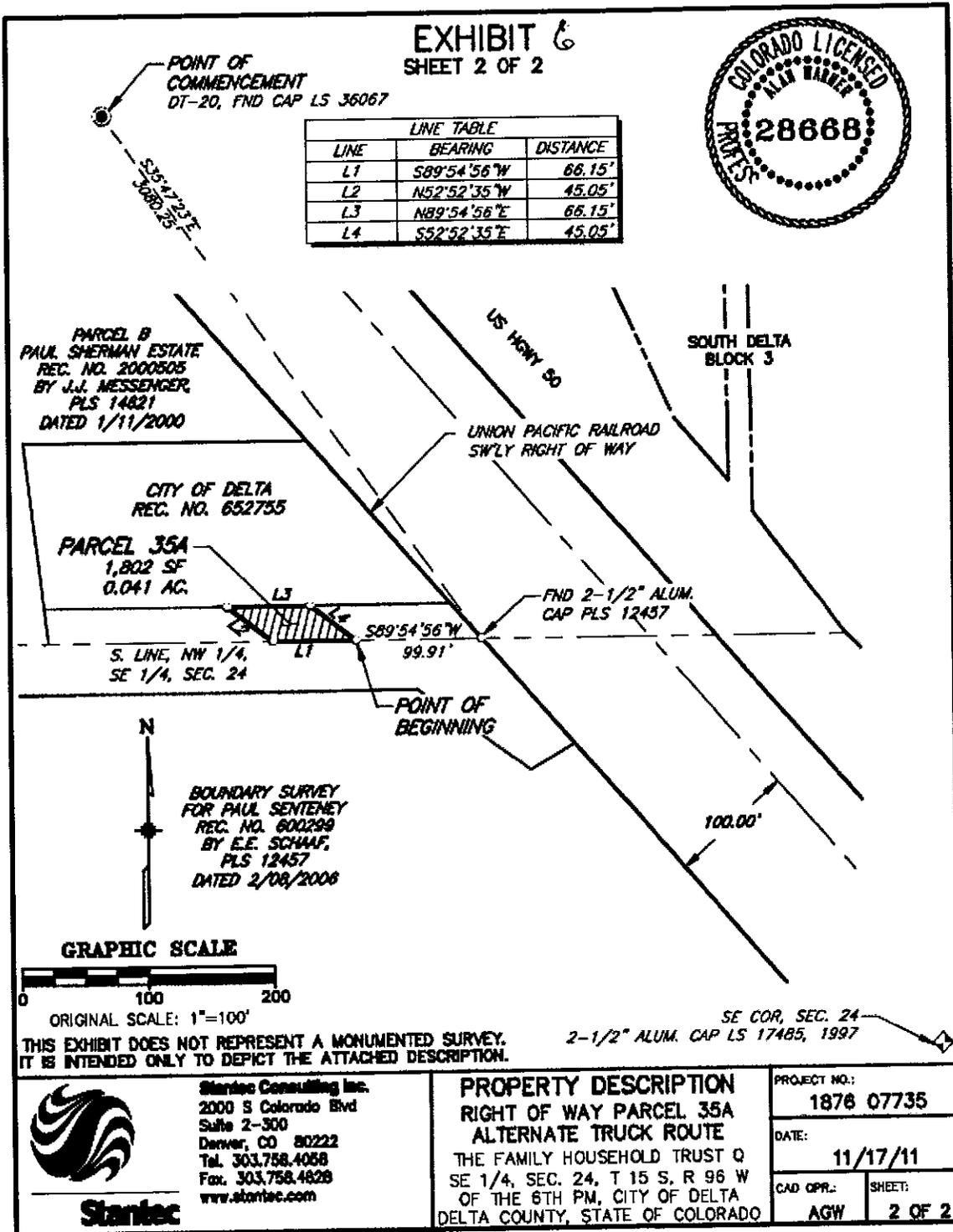
SURVEYOR'S STATEMENT

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**ALAN WARNER, PLS 28668
FOR AND ON BEHALF OF
STANTEC CONSULTING INC.**



Legal Description – Exhibit – Parcel 35A



THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED SURVEY.
IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION.

Legal Description – Parcel 21 VAC

EXHIBIT 7

SHEET 1 OF 2

RIGHT OF WAY DESCRIPTION PARCEL 21 VAC

ALL OF THAT SIXTEEN FOOT WIDE ROADWAY EASEMENT DESCRIBED IN BOOK 64 AT PAGE 333, BOOK 163 AT PAGE 47, BOOK 240 AT PAGE 127, BOOK 270 AT PAGE 372, AND BOOK 277 AT PAGE 539 OF THE DELTA COUNTY RECORDS; LOCATED IN THE DELTA TOWNSITE AND IN LOT 4 AND THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 5 SOUTH, RANGE 96 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF DELTA, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE LINE BETWEEN D1-1, MONUMENTED BY A STONE WITH A CUT CROSS IN CONCRETE, AND D1-20, MONUMENTED BY A 2-1/2 INCH DIAMETER ALUMINUM CAP STAMPED LSJ6067, BEARS S 06°32'17" E, A DISTANCE OF 2700.09 FEET, BEARINGS ARE BASED ON THE MESA COUNTY LOCAL COORDINATE SYSTEM KNOWN AS GCLC02 (2009);

COMMENCING AT CORNER NUMBER 20, DELTA TOWNSITE; THENCE S 02°23'51" E A DISTANCE OF 635.52 FEET TO THE INTERSECTION OF THE SOUTHWESTERLY RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD AND THE SOUTHEASTERLY RIGHT OF WAY OF BRIDGE STREET, BEING THE POINT OF BEGINNING;

THENCE ALONG THE SOUTHWESTERLY RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD THE FOLLOWING THREE COURSES:

- 1 S 41°22'27" E, A DISTANCE OF 605.92 FEET TO DELTA TOWNSITE CORNER NUMBER 23,
- 2 ALONG THE LINE FROM DELTA TOWNSITE CORNER NUMBER 23 TO DELTA TOWNSITE CORNER 19, S 78°11'48" E, A DISTANCE OF 166.85 FEET;
- 3 S 41°22'27" E, A DISTANCE OF 527.44 FEET TO THE NORTHWESTERLY LINE OF THAT PARCEL OF LAND RECORDED AT RECEPTION NUMBER 650383,

THENCE ALONG SAID NORTHWESTERLY LINE, S 48°37'33" W, A DISTANCE OF 16.00 FEET;

THENCE N 41°22'27" W, A DISTANCE OF 522.12 FEET;

THENCE N 78°11'48" W, A DISTANCE OF 166.85 FEET;

THENCE N 41°22'27" W, A DISTANCE OF 611.18 FEET TO THE SOUTHEASTERLY RIGHT OF WAY LINE OF BRIDGE STREET;

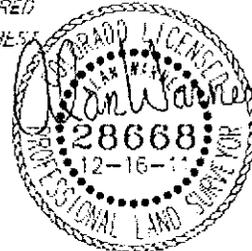
THENCE ALONG SAID LINE, N 48°23'32" E, A DISTANCE OF 16.00 FEET TO THE POINT OF BEGINNING;

CONTAINING AN AREA OF 20,803 SQUARE FEET OR 0.478 ACRES, MORE OR LESS.

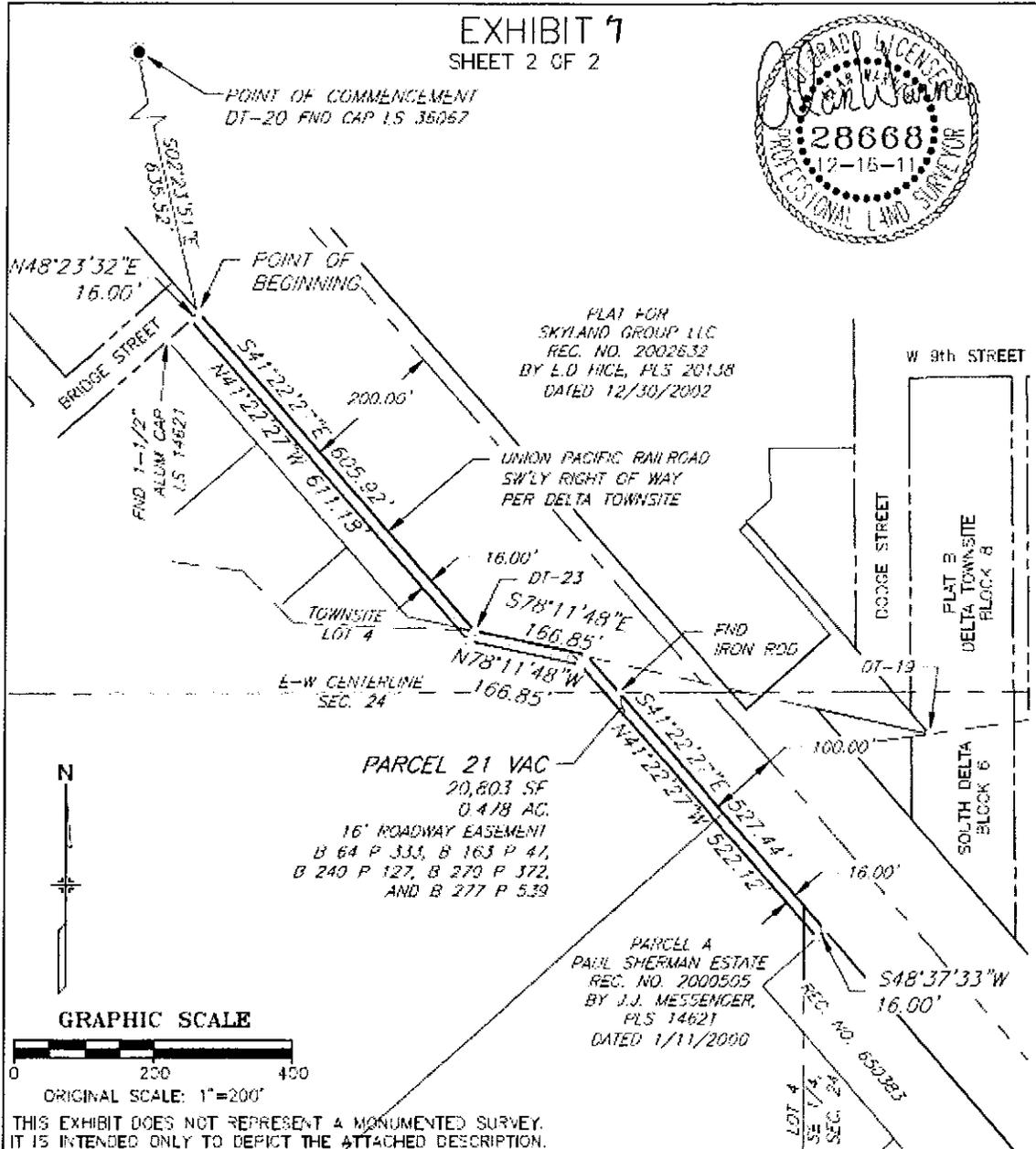
SURVEYOR'S STATEMENT

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ALAN WARNER, PLS 28668
FOR AND ON BEHALF OF
STANTEC CONSULTING INC.



Legal Description – Exhibit – Parcel 21 VAC



 <p>Stantec Consulting Inc. 2000 S Colorado Blvd Suite 2-300 Denver, CO 80222 Tel. 303.758.4058 Fax. 303.758.4828 www.stantec.com</p>	<p>PROPERTY DESCRIPTION RIGHT OF WAY PARCEL 21 VAC ALTERNATE TRUCK ROUTE EASEMENT VACATION DELTA TOWNSITE & LOT 4, & SE 1/4, SEC 24, T 15 S, R 96 W, 6PM, DELTA COUNTY, COLORADO</p>	PROJECT NO: 1876 07735
		DATE 11/24/11
	CAD. CHK.: AGW	SHEET: 2 OF 2



CITY COUNCIL MEETING AGENDA ITEM

MEETING DATE:

2/7/12

Name: Operation Overview of Golf Course Date Memo/Packet Submitted to City Clerk: 2/7/12
(Due no later than Thursday @ 12:00pm)

Dept: Golf Course Description: RFP Proposals Phone: (970) 874-6262

...ALL QUESTIONS must be answered...

Discussed with City Manager? <input checked="" type="radio"/> Yes / <input type="radio"/> No	Reviewed by City Attorney? <input checked="" type="radio"/> Yes / <input type="radio"/> No
Included in Current Year Budget? <input checked="" type="radio"/> Yes / <input type="radio"/> No Budgeted Amount \$ <u>10,000</u> If not budgeted explain: <u>\$7,200.00 is not budget future supplemental needed</u>	Program is... NEW ONGOING <input checked="" type="radio"/> TEMPORARY
Is this a Bid Award? <input checked="" type="radio"/> Yes / <input type="radio"/> No Bidders and Bid Amounts – Attach a Summary of Bids Received	Subject to Annual Renewal? Yes / <input checked="" type="radio"/> No Renewal Date: _____
What process was used? _____ Informal Bid <input checked="" type="checkbox"/> RFP _____ Bid _____ RFQ _____ Other (explain)	Is this a Grant? Yes / <input checked="" type="radio"/> No
Is this to be communicated to the Public? Yes / <input checked="" type="radio"/> No _____ Press Release _____ Newsletter Article _____ Other _____ Channel 10 _____ City website	What is the City's Match? <p style="text-align: center; font-size: 1.2em;">N/A</p>
Purchase Amount: <u>\$17,220.00</u>	Is an Ordinance Required? Yes / <input checked="" type="radio"/> No Is Resolution Required? Yes / <input checked="" type="radio"/> No Are there any publishing requirement? Yes / <input checked="" type="radio"/> No

SUMMARY: The packet of information is in response to a RFP for an operational audit of the golf course.

MEMO



Devils Thumb Golf Club

www.devilsthumbgolfclub.com

9900 Devils Thumb Rd • Delta, Colorado 81416

Phone (970) 874-6262 • Fax (970) 874-9975

Date: Feb. 3, 2012
To: City Council
Cc: Joe Kerby, City Manager
From: Rob Sanders, PGA, General Manager
Re: RFP for operational audit

Recommendation:

Staff recommends approval of the contract with THK and Phelps & Atkinson for the operational review of the golf course.

Background:

City Council the following information that is in the present packet is a Request for Proposal for an operational audit and market study. We went out to bid December 21st to January 10th. During January 10th – 17th golf course staff and three members of the advisory board reviewed the three bids and determined to interview two of the most competitive bids. Throughout the interview process staff and the advisory board felt very good about the comprehensive answers and thoroughness that was provided by the consulting company of THK and Phelps & Atkinson. Their approach to this process was much more in depth and their knowledge of the Colorado market was impressive. The scope of services includes:

- Evaluate and analyze the staffing levels, policies, procedures, job descriptions and internal controls.
- Review the golf facility for efficiency, maintenance upkeep and physical integrity.
- Identify capital improvements that are required to maintain the golf course in a competitive market condition and estimate the associated costs and incremental revenues that will result.
- Analyze the local golf market for such trends as golf activity, fee structures, services and how these trends impact the Devils Thumb Golf Club market share and financial performance. Provide recommendations on golf course policies and fee structure.
- Prepare a five-year financial projection for the golf course.
- Evaluate and analyze the local area and provide a multi-year marketing plan to include print, radio, internet and partnership opportunities.
- Evaluate funding alternatives.
- Evaluate current revenues and expenditures and provide recommendations.

The information that will be provided will be used extensively in budget development, irrigation & fertilization practices, future equipment purchases and market analysis. Also a key component in the scope of services will be recommendation for future funding for the golf course which the other bid did not include.

Cost:

The golf course budget in professional services line item 484131600 has \$10,000 budgeted for 2012. A supplemental appropriation of \$7,200 would be needed to award the contract to THK and Phelps & Atkinson for a total not to exceed \$17,200.

Suggested Motion:

I move to approve the contract with THK and Phelps & Atkinson for the operational review of the golf course in the amount of \$17,200 and authorize the City Manager to sign said contract.

Operational Review and Financial Analysis of the Devils' Thumb Municipal Golf Club

THIS AGREEMENT (the "Agreement") is made and entered into by and between the **City of Delta** (the "City"), a municipal corporation and political subdivision of the State of Colorado, and THK Associates, Inc. (the "Contractor"), a Colorado corporation, as of the date indicated below.

WHEREAS, The Contractor submitted a proposal to the City on January 10, 2012, attached hereto as Exhibit A and incorporated by reference; and

WHEREAS, the City wishes to engage the Contractor to perform the services described in Exhibits A.

NOW, THEREFORE, in consideration of the premises and mutual obligations set forth herein, the parties agree as follows:

1. ENGAGEMENT; SCOPE

The City hereby engages the Contractor to provide the scope of services described in Exhibit A.

2. TERM; TERMINATION

(a) Unless sooner terminated, this Agreement will be effective for a period of one year from the effective date detailed below, or upon completion of the scope of work described above, whichever occurs sooner.

(b) Notwithstanding anything to the contrary contained herein, the City may terminate this Agreement at any time by giving the Contractor such written notice as may be reasonable under the circumstances. Upon receipt of such written notice, the Contractor shall cease all work undertaken hereunder, except as may be necessary to provide for an orderly transition of such work. The Contractor may terminate this Agreement at any time with 60 days written notice to the City.

(c) Upon any termination of this Agreement, the Contractor shall provide a final invoice to the City, showing all costs incurred but unpaid, and the City shall pay such costs, as shown therein. The Contractor shall forthwith deliver all files, reports, and other materials concerning the services provided, maintained or controlled by the Contractor at the time of such termination, subject to all applicable federal and state law.

(d) The Contractor shall have no claim, right or cause of action against the City for termination of this Agreement by City in accordance with the provisions of this paragraph, except as may be otherwise expressly provided with respect to the Contractor's earned but unpaid costs as of the date of such termination.

(e) Nothing herein shall be construed as relieving the Contractor from liability to the City for damages sustained by the City as a result of a breach of this Agreement by the Contractor, and the City may withhold any payments otherwise due to the Contractor as a set-off against all or part of such damages, until such time as the exact amount of damages due the City from the Contractor is determined and that amount paid to (and/or withheld by) the City in full.

3. COMPENSATION AND PAYMENT

For services rendered hereunder, the Contractor shall invoice the City a total amount of professional fees not to exceed Sixteen Thousand Twenty Dollars (\$16,020). In addition, direct project expense AT COST, not to exceed \$1,200. The total contract amount shall not exceed

\$17,220. Contractor shall submit monthly invoices to the City showing the amount of compensation due, the amount of any applicable taxes and the total amount payable. Payment of undisputed amounts shall be due and payable thirty (30) days after the City's receipt of the invoice.

4. RELATIONSHIP OF PARTIES

The Contractor (and each agent, employee and contractor employed or engaged by the Contractor to fulfill the Contractor's obligations hereunder) shall be an independent contractor performing professional services for the City and not an employee of the City or an agent of the City for any purpose beyond the specific engagement for services set forth herein. As independent contractors, the Contractor and its agents and employees shall not qualify for or receive any employee benefits from the City, including but not limited to leave, retirement, Insurance, bonding, use of City vehicles, or any other benefits afforded to City employees.

5. STANDARD OF PERFORMANCE

The Contractor agrees and represents that it has the personnel, experience and knowledge necessary to qualify it for the particular duties to be performed under this Agreement. Contractor shall perform the work described herein in accordance with customary care and skill of other reputable engineering professionals, within Delta County in the performance of the services as set forth in this Agreement.

6. DELIVERABLES AND USE OF DOCUMENTS

All work, work product, and deliverables produced under contract with the City shall remain the exclusive property and shall inure to the benefit of the City as work for hire; the Contractor shall not use, sell, disclose or obtain any other compensation for such work for hire. In addition, the Contractor may not, with regard to all work, work product, deliverables or work for hire required by this Agreement, apply for in its name or otherwise, any copyright, patent or other property right and acknowledges that any such property right created or developed remains the exclusive right of the City. Any reuse or modifications of such deliverables by the City for purposes other than those intended by the Contractor under this agreement shall be at the City's sole risk and without liability to the contractor.

7. EMPLOYEES AND SUBCONTRACTORS

The Contractor shall be solely responsible for payment of wages, salary or benefits to any and all employees or contractors retained by the Contractor in the performance of the Services. Contractor agrees to indemnify, defend and hold harmless the City for any and all claims that may arise from the Contractor's relationships to its employees and subcontractors.

8. INSURANCE

The Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Contractor pursuant to Section 14. Such insurance shall be in addition to any other insurance requirements imposed by this Agreement or by law. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to Section 14 by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

Contractor shall procure and maintain, and shall cause any subcontractor of the Contractor to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be

continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor pursuant to this Section 14. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

A. Workmen's Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Agreement, and Employer's Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease – policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease – each employee. Evidence of qualified self-insured status may be substituted for the Workmen's Compensation requirements of this paragraph.

B. Commercial General Liability insurance with a minimum combined single limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each occurrence and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.

C. Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each occurrence and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) aggregate with respect to each of Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. If the Contractor has no owned automobiles, the requirements of this Paragraph (C) shall be met by each employee of the Contractor providing services to the City under this Agreement.

The policies required by Paragraphs (B) and (C) above shall be endorsed to include the City and its officers and employees as additional insureds. Every policy required above shall be primary insurance and any insurance carried by the City, its officers or its employees, shall be excess and not contributory insurance to that provided by Contractor. No additional insured endorsement to any policy shall contain any exclusion for bodily injury or property damage arising from completed operations. The Contractor shall be solely responsible for any deductibles losses under any policy required above.

The certificates of insurance required by the City shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the City prior to commencement of the Agreement. No other form of certificate shall be used. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the City. The completed certificate of insurance shall be sent to the City.

Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the City may immediately terminate this Agreement, or at its discretion the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connections therewith, and all monies so paid by the City shall be repaid by Contractor to the City upon demand, or the City may offset the cost of the premiums against any monies due to Contractor from the City. The City reserves the right to request and receive

a certified copy of any policy and any endorsement thereto.

The parties hereto understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, {24-10-101 et seq., 10 C.R.S., as from time to time amended, or otherwise available to the City, its officers, or its employees.

9. ASSIGNMENT AND DELEGATION

The Contractor shall not delegate or subcontract any portion of the services to be performed hereunder without the prior written approval of the City or customary in the provision of the Contractor's services. Nor shall the Contractor assign or transfer any interest in this Agreement without the prior written consent of the City; provided, however, that, notwithstanding the foregoing, amounts due hereunder from the City to the Contractor may be assigned to a bank or trust company. Notwithstanding anything to the contrary contained herein, no assignment or transfer of funds and/or the Contractor's right to payment hereunder shall bind the City to pay any person other than the Contractor for services provided hereunder.

10. RECORDS AND AUDIT

The Contractor shall maintain appropriate accounts and records to adequately identify and account for all services provided and costs chargeable to the City hereunder and such other records as may be required by law. Subject to applicable federal and state law, such records will be made available to the City and/or its authorized representative(s) during regular business hours, upon reasonable request, and will be retained for two (2) years after the termination of this Agreement, unless provided otherwise by the City in writing.

11. APPROPRIATIONS

The terms of this Agreement and all amounts payable hereunder are contingent upon sufficient appropriations therefore by the City's Governing Body. If sufficient appropriations are not made, the City shall notify the Contractor of the termination of this Agreement in accordance with the provisions of paragraph 2, above.

12. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be revealed or made available to any person by the Contractor without the prior written approval of the City except if required by law or by court order In which case the Contractor shall be permitted to reveal such confidential information.

13. COMPLIANCE WITH LAWS AND POLICIES; CONFLICT OF INTEREST

(a) In the performance of their obligations hereunder, the parties shall obey and abide by all applicable laws, rules and regulations, and with all applicable ordinances, policies and procedures.

(b) The Contractor hereby covenants, warrants and represents that it presently has no interest and shall not acquire any interest, direct or Indirect, which would conflict in any manner or degree with the performance of its services under this Agreement. Without limiting the generality of the foregoing, the Contractor shall comply with all applicable legal or regulatory provisions concerning conflicts of interest, including but not limited to the provisions of the CSRS (Colorado State Revised Statutes) as the same may be amended from time to time.

(c) Both parties shall abide by all applicable federal and state laws, rules, regulations, and executive orders pertaining to equal employment opportunity; pursuant thereto, shall assure that no person shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from employment with, participation in, be denied the benefits of or be otherwise subjected to discrimination under any program or activity performed under this Agreement; and to promptly take appropriate steps to correct any deficiency that may be found to occur noncompliance with such laws and rules.

14. RELEASE; INDEMNITY

By its receipt of final payment of all amounts due under this Agreement, the Contractor shall release the City, and its officers and employees, from all liabilities, claims, and obligations for payment, arising from or under this Agreement. The Contractor shall indemnify and defend the City and hold the City harmless for and from any and every claim, action, liability, loss, damage, or suit, to the extent caused by the failure of the Contractor to meet its standard of care in performing services hereunder.

15. FORCE MAJEURE

Neither the City nor the Contractor shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

16. LICENSES

The Contractor shall maintain all required licenses, including without limitation all necessary professional and business licenses, throughout the term of this Agreement. Contractor shall require and shall assure that all of the Contractor's employees and subcontractors maintain all required licenses, including without limitation all necessary professional and business licenses.

17. NOTICES

Any notice required or permitted to be given hereunder shall be sufficient if mailed to the address shown below or faxed to the number shown below for the party receiving notice, or to such other address or fax number of which such party has duly notified the other party in accordance with the provisions of this paragraph.

For notice to the City:

Mr. Rob Sanders
PGA/General Manager
City of Delta
9900 Devils Thumb Road
Delta, Colorado 81416
970.874.6262

For notice to the Contractor:

Peter Elzi, Principal
THK Associates, Inc.
2953 S. Peoria Street, Suite 101
Aurora, Colorado 80014
303.770.7201

18. MERGER; AMENDMENT

This Agreement represents the entire agreement between the parties with respect to the matters addressed herein, and all prior agreements, covenants, and understandings between the parties concerning the same have been merged into this written Agreement. This Agreement shall not be altered, modified, changed, or amended except by a written instrument executed by

the parties.

19. SPECIAL PROVISIONS UNDER C.R.S. SECTION 8-17.5-101

This contract is for services that (do) (do not) involve the delivery of a specific end product other than reports. (If no other end product but reports are involved, Exhibit B must be attached and executed by the Contractor containing provisions against employment and/or contracting with illegal immigrants.)

IN WITNESS WHEREOF, the parties have executed this Agreement, effective as of the date executed by both parties.

CITY OF DELTA, COLORADO

By _____

ATTEST:

City Clerk

CONTRACTOR

By _____

Reviewed by the Delta City Attorney this _____ day of _____, _____.

City Attorney



CITY COUNCIL MEETING AGENDA ITEM

MEETING DATE: February 7, 2012

Name: Steve Glammeyer

Date Memo/Packet Submitted to City Clerk: February 2, 2012

(Due no later than Thursday @ 12:00pm)

Dept: Utilities **Description:** Contract for Sale and Purchase of Mutual Ditch & Reservoir Stock

Phone: 874-7901

...ALL QUESTIONS must be answered...

Discussed with City Manager? Yes / No	Reviewed by City Attorney? Yes / No <p style="text-align: center;">Jim Brown</p>
Included in Current Year Budget? Yes / No Budgeted Amount \$ _____ If not budgeted explain: Opportunity to purchase mountain water shares – Will pay out of reserves and do supplemental at the end of year if necessary	Program is... <div style="display: flex; justify-content: space-around;"> NEW ONGOING TEMPORARY </div>
Is this a Bid Award? Yes / No Bidders and Bid Amounts – Attach a Summary of Bids Received	Subject to Annual Renewal? Yes / No Renewal Date: _____
What process was used? _____ Informal Bid _____ RFP _____ Bid _____ RFQ _____ Other (explain)	Is this a Grant? Yes / No
Is this to be communicated to the Public? Yes / No _____ Press Release _____ Newsletter Article _____ Other _____ Channel 10 _____ City website	What is the City's Match? N/A
Purchase Amount: \$66,000.00	Is an Ordinance Required? Yes / No Is Resolution Required? Yes / No Are there any publishing requirement? Yes / No

SUMMARY: This contract is for the purchase of 5.5 shares of the stock of Battlement Mesa Ditch and Reservoir Company. This will make the City the sole owner of all of the shares in the Company.



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

MEMO

To: Mayor and Council
From: Steve Glammeyer, Utilities Director
Date: February 2, 2012
Subject: Contract for Sale and Purchase of Mutual Ditch & Reservoir Stock

Recommendation

It is recommended that the Council approve the contract to purchase 5.5 shares of stock of the Battlement Mesa Ditch and Reservoir Company.

Background

The attached contract is for the purchase of 5.5 shares of stock of the Battlement Mesa Ditch and Reservoir Company. The City was approached late last year about the potential sale of these shares from the Estate of Tony Ferganchick. After some deliberation with the personal representative of the Estate, staff discussed this with Council in an executive session to formulate our strategy for negotiations. Staff was successful in negotiating the purchase price and this contract was drafted to reflect those negotiations. Should the City purchase these shares, it will make us the sole owner of the Battlement Mesa Ditch and Reservoir Company.

Since this matter came to staff very late in the year last year, this is an unbudgeted item in the water fund. However, there is sufficient reserve to cover the expense should we need a supplemental appropriation at the end of the year.

Cost

Cost to purchase the shares is \$66,000.00

Action to be Taken if Approved

The City Manager will sign the contract and it will be forwarded on to the personal representative for the Estate for signature.

Suggested Motion

I move City enter into contract to purchase shares of stock from the Company in the amount of \$66,000.00 and authorize the City Manager to sign said contract.

CONTRACT FOR SALE AND PURCHASE OF
MUTUAL DITCH & RESERVOIR STOCK

This contract, made and entered into this _____ day of February, 2012, by and between

**Brown & Brown, P.C., as Personal Representative of the
Estate of Tony J. Ferganchick, Deceased**

whose address is: 1250 E. Sherwood Dr., Grand Junction, CO 81501, hereinafter designated
“Seller,” and

**City of Delta
a Colorado municipal corporation**

whose address is 360 Main St., Delta, CO 81416, hereinafter designated “Buyer,” IS TO
WITNESS:

1. For and in consideration of a total purchase price of \$66,000.00, to be paid as hereinafter provided, the Seller agrees to sell, assign, and convey and the Buyer agrees to purchase and receive, 5.5 shares of the stock of Battlement Mesa Ditch and Reservoir Company (“the Shares”) representing certain water storage rights for reservoirs located on Grand Mesa, in Delta County, Colorado.
2. It is agreed that the total purchase price shall be paid by the Buyer to the Seller in good funds upon closing of this transaction.
3. Seller represents that it holds merchantable title to the Shares and provided the Buyer performs all of the acts required of it at closing, the Seller agrees to assign and convey the shares to the Buyer by execution and delivery of a good and sufficient assignment of stock certificate no. 126 issued by The Battlement Mesa Ditch and Reservoir Company representing the Shares presently standing in the names of Federal Land Bank of Wichita and Tony J. Ferganchick, free and clear of all liens, encumbrances and defects.
4. Buyer’s obligations under this Contract shall be wholly contingent upon fulfillment of the following conditions:
 - a. Approval of this Contract by the City Counsel of the City of Delta and the appropriation of funds for the purchase price.
 - b. Seller shall furnish evidence satisfactory to counsel for the Buyer that the right of first refusal held by Elmer Ferganchick has been extinguished.

c. Seller shall furnish a signed original letter from the Black Canyon Land Trust indicating that the water rights represented by the Shares are not encumbered by any conservation easements granted by Tony J. Ferganchick during his lifetime.

d. Seller shall furnish the original signed assignment dated November 17, 2011 granted by the successor of Federal Land Bank of Wichita in favor of the Estate of Tony J. Ferganchick for the assignment and conveyance of the certificate for the Shares.

In the event that any of the foregoing contingencies is not satisfied by the closing date specified below, Buyer shall be entitled to terminate this contract by notice to Seller conveyed by mail, electronic mail or facsimile transmission not later than noon on the closing date.

5. Seller represents and warrants to Buyer as follows:

a. Brown and Brown, P.C. is the duly appointed and acting personal representative of the Estate of Tony J. Ferganchick and has full right and authority to enter into this contract and to close the transaction without any further approval by the District Court for Delta County in which the probate of the estate of Tony J. Ferganchick is pending or by any beneficiary of said estate, excepting only the need to extinguish the right of first refusal held by Elmer Ferganchick;

b. Seller has not sold, conveyed, encumbered, pledged, or distributed, or contracted to sell, convey, encumber, pledge or distribute, the Shares or any interest therein to any other person;

c. Seller is not aware of any adverse claim of ownership or claim of any security interest in the Shares by any other person, other than as disclosed in this Contract.

The foregoing representations and warranties shall survive the closing of this transaction.

6. A closing of this contract shall be held on, or by mutual agreement of the parties before, February 9, 2012, at a time and place convenient to the parties, or by such arrangement as is mutually agreeable to the parties. .

7. Time is of the essence in the performance of this contract. Should the Seller default in the performance of any of its obligations under this contract, then the Buyer shall have the right either to require specific performance of the contract by the Seller, or in the alternative, shall have the option of terminating this contract. Should the Buyer default, then the Seller shall have the right to any remedies available at law or equity. A non-defaulting party, who through representation by legal counsel, successfully enforces his rights under the terms of this contract shall be entitled to reimbursement from the defaulting party for reasonable attorney fees and court costs, if any, in said enforcement action.

8. This contract shall be binding upon the parties hereto, their personal representatives, heirs, successors and assigns. Any reference herein to one gender shall include the other and any reference in the singular shall include the plural.

9. Additional provisions:

a. Upon closing of this transaction, Buyer shall covenant not to make any claim, and not to take action as the controlling stockholder of The Battlement Mesa Ditch & Reservoir Company to make any claim, against the Estate of Tony J. Ferganchick, the personal representative of said estate, or any beneficiary of said estate, to recover any unpaid assessments against the Shares or any unpaid costs and expenses for the operation, maintenance, upkeep, repair, and rehabilitation of the water storage structures owned by the Battlement Mesa Ditch and Reservoir Company or for the administration and operation of such company.

Executed the year and day first above written.

Seller: Brown & Brown, P.C., as Personal Representative of the Estate of Tony J. Ferganchick, Deceased.

By _____,
_____, (Vice) President

Buyer: City of Delta, a Colorado municipal corporation

By _____
Joe Kerby, City Manager



CITY COUNCIL MEETING AGENDA ITEM

MEETING DATE: February 7, 2012

Name: Steve Glammeyer

Date Memo/Packet Submitted to City Clerk: February 2, 2012

(Due no later than Thursday @ 12:00pm)

Dept: Utilities **Description:** Resolution of the Directors of Battlement Mesa Ditch & Reservoir Company

Phone: 874-7901

...ALL QUESTIONS must be answered...

Discussed with City Manager? Yes / No	Reviewed by City Attorney? Yes / No <p style="text-align: center;">Jim Brown</p>
Included in Current Year Budget? N/A Budgeted Amount \$ _____ If not budgeted explain:	Program is... <div style="display: flex; justify-content: space-around;"> NEW ONGOING TEMPORARY </div>
Is this a Bid Award? Yes / No Bidders and Bid Amounts – Attach a Summary of Bids Received	Subject to Annual Renewal? Yes / No Renewal Date: _____
What process was used? _____ Informal Bid _____ RFP _____ Bid _____ RFQ _____ Other (explain)	Is this a Grant? Yes / No
Is this to be communicated to the Public? Yes / No _____ Press Release _____ Newsletter Article _____ Other _____ Channel 10 _____ City website	What is the City's Match? N/A
Purchase Amount: N/A	Is an Ordinance Required? Yes / No Is Resolution Required? Yes / No Are there any publishing requirement? Yes / No

SUMMARY: This resolution appoints the officers needed to execute the stock certificate for shares of the Battlement Ditch and Reservoir Company and also amends the form of the certificate.



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

MEMO

To: Mayor and Council
From: Steve Glammeyer, Utilities Director
Date: February 2, 2012
Subject: Resolution of the Directors of Battlement Mesa Ditch & Reservoir Company

Recommendation

It is recommended that the Directors of the Battlement Mesa Ditch and Reservoir Company adopt the resolution amending the bylaws and appointing the officers of the Company.

Background

The attached resolution needs to be adopted by the directors of the Company in order to amend the bylaws and to appoint the necessary officers to sign the new stock certificate forthcoming. The new stock certificate will include amended language and also the new shares of water purchased from the Estate of Tony Ferganchick.

Cost

There is no cost to the City.

Action to be Taken if Approved

All five directors are required to sign the resolution.

Suggested Motion

I move for adoption of the resolution of the Directors of Battlement Mesa Ditch & Reservoir Company.

RESOLUTION OF
THE DIRECTORS OF
BATTLEMENT MESA DITCH AND RESERVOIR COMPANY
a Colorado mutual ditch and reservoir company

DATE: February _____, 2012.

WHEREAS the Board of Directors was reconstituted by the consent of the stockholders to be composed of the duly elected and serving city council persons for the City of Delta; and

WHEREAS, it is necessary and appropriate to elect officers of the company to carry out the activities of the company; and

WHEREAS, Colorado law governing mutual ditch and reservoirs expressly allows the appointment of individuals who are not stockholders to serve as officers of such companies when any stock in the company is held by a Colorado municipality; and

WHEREAS, the City of Delta is the majority stockholder of the company; and

WHEREAS, certain amendments to the bylaws of the company should be adopted to facilitate the appointment of officers and make other changes concerning the form of certificates of stock in the company.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Battlement Mesa Ditch and Reservoir Company as follows:

1. The bylaws of the company are hereby amended as follows:

a. Form of stock certificate is amended a follows:

This is to certify that _____ is the owner of _____ shares of The Battlement Mesa Ditch and Reservoir Company, assessable for the purpose of defraying the expenses of operating, maintaining, repairing, and replacing the water rights and water storage and transmission structures owned by the Company, and the expenses of management and administration of the Company, pursuant to Colorado law governing mutual ditch and reservoir companies and transferable only on the books of the Company in person or by attorney in fact on surrender of this certificate.

b. When a stockholder is a business or municipal entity or an estate of a deceased or incapacitated person, any natural person appointed by such entity may serve as a director or officer of the Company.

2. The following persons are hereby appointed to serve as officers of the company until the next annual meeting of the company:

- a. President, Mary Cooper.
- b. Secretary-Treasurer, Jolene Nelson.

No other offices of the corporation are filled at this time.

Upon the motion of Director _____, seconded by Director _____, the foregoing Resolution was adopted and approved by the affirmative votes of a majority of the Directors of The Battlement Mesa Ditch & Reservoir Company, a Colorado mutual ditch and reservoir company, at a special meeting duly convened, by the consent and participation of all directors, on February 7, 2012.

DATED this _____ day of February, 2012.

Mary Cooper, Director

Guy Pfalzgraff, Director

Robert Jurca, Director

Bill Raley, Director

Ed Sisson, Director