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

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

## A G E N D A

Delta City Council  
Regular Meeting

March 20, 2012  
7:00 p.m.

- A. Pledge of Allegiance
- B. Changes to the Agenda
- C. Minutes
- D. Citizen Comments
- E. Recognition of Volunteer of the Year Paul Suppes (Kerby)
- F. Recognition of Planning Commission Board Members (Black)
- G. Public Hearing: Special Events Permit Application (Nelson)  
Delta Area Chamber of Commerce
- H. Three Mile Plan (Black)
- I. Shed and Travel Home Regulations (Black)
- J. Applegate Ventures, LLC Lease of Food and Beverage at Golf Course (Sanders)
- K. Upper White Ranch Grazing Lease (Glammeier)
- L. Council Bill #6, 2012; Second and Final Reading (Glammeier)  
Municipal Energy Agency of Nebraska Participation
- M. Council Bill #7, 2012; Second and Final Reading (Black)  
Preference for Local Business Bidding
- N. Construction and Maintenance Agreement with Union Pacific Railroad (Hatheway)
- O. City Attorney Comments
- P. City Manager Comments
- Q. 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.

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**

City Manager Joe Kerby presented the following proposed changes:

- Page 2 under the title "Bids for Pool Resurfacing" the 1<sup>st</sup> paragraph word change from recommendation to specification.
- Page 5 under Council Bill #4, 2012, 2<sup>nd</sup> to last paragraph where it begins "Manager Kerby"; interject "shared in the executive session" in the 2<sup>nd</sup> sentence after "he explained there might be some information".

It was moved by Councilmember Raley and seconded by Councilmember Sisson to approve the minutes of February 21, 2012 as amended. All in favor, motion carried.

**Citizen Comments**

There were none.

**Financial Report**

Finance Director Tod DeZeeuw presented the financial report for period ending December 31, 2011 and answered questions from Council.

**Tavern Liquor License Renewals:  
Hoolie's Place and CB's Tavern**

The Clerk explained that both renewal applications are complete and the renewal fees have been paid with the exception of Hoolie's Place's liquor occupation tax which will be collect at the time the license is received by the State. She also explained that the police department's recommendations are included in their packets. She stated that Chief Robert Thomas is present to provide some additional information.

Mayor Cooper requested that Council address Hoolie's Place and then move to CB's Tavern.

Chief Robert Thomas reported that the Delta Police Department is recommending approval the liquor license for Hoolie's Place at this time. However, they continuously monitor the establishment. The police department has responded to numerous calls regarding alleged offenses over the last several years. Mr. Thomas stated that he has talked with the owners regarding their ability to police themselves.

Rebecca Angel, 10318 3300 Rd, Hotchkiss, stated that Hoolie's is a place to have enjoyment and good food. They have done various fund raisers this year that has raised funds for individuals within the community. She stated that they take their business seriously. They are individuals who come take part in food and spirit. At times they may take in a little too much spirit. They will keep working their hardest to keep things in control.

It was moved by Councilmember Sisson and seconded by Councilmember Raley to approve the renewals for Rebecca Angel, LLC dba Hoolie's Place. All in favor, motion carried.

It was moved by Councilmember Pfalzgraff and seconded by Councilmember Sisson to approve the renewals for CB's Tavern. All in favor, motion carried.

**Regular Meeting, Delta City Council, March 6, 2012 (Cont.)**

**Council Bill #6, 2012; First Reading**  
**Municipal Energy Agency of Nebraska Participation**

Council Bill #6, 2012

AN ORDINANCE DETERMINING THE NEED FOR PARTICIPATION, AND AUTHORIZING AND DIRECTING SUCH PARTICIPATION BY THE CITY OF DELTA, COLORADO, IN THE OPERATION OF MUNICIPAL ENERGY AGENCY OF NEBRASKA AND TO PRESCRIBE THE TIME WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT

was read by the Clerk.

Utilities Director Steve Glammeyer explained that this sets forth the process to have the City be a member of MEAN's board as a seated member. The next step is to appoint a director and alternate director to represent the City on that board.

Mayor Cooper stated that the City have been a member of MEAN for many years.

Mr. Glammeyer reported that the City is about to finish up their 15<sup>th</sup> year with MEAN and the City has just entered into a 28 year contract that will start in October.

Manager Kerby stated that this takes an additional step over and above what the City has done in the past. He has asked Mr. Glammeyer to become actively involved in the governance of MEAN since the City has a vested interest with the long term contract with them.

Councilmember Pfalzgraff questioned if there are other Colorado municipalities participating.

Mr. Glammeyer reported that there are currently ten other Colorado municipalities participating. He explained that if you are not a long term purchase power contract you can be on the board however there's not much need to be on the board due to the fact that the board handles business particularly to set rates for the long term contract. The management community, which the City is a part of, set the rates for the shorter term contracts. Since we are moving to a long term contract becoming a member of the board would allow the City to have a voice on setting rates.

It was moved by Councilmember Pfalzgraff and seconded by Councilmember Sisson to adopt Council Bill #6, 2012 on first reading. Roll call vote: Councilmembers Pfalzgraff, aye; Sisson, aye; Raley, aye and Cooper, aye. Motion carried.

**Appointment to MEAN Board**

Director Glammeyer stated that since they have moved forward with becoming a board member, Council now needs to appoint a director and alternate director. Staff recommends appointing Steve Glammeyer as director and Joe Kerby as alternate director.

It was moved by Councilmember Sisson and seconded by Councilmember Raley to appoint Steve Glammeyer as director and Joe Kerby as alternate director to the MEAN Board of Directors. All in favor, motion carried.

Councilmember Pfalzgraff commented on making a good choice in choosing these individuals to serve on the MEAN board as they both have knowledge on municipal power.

**Council Bill #7, 2012; First Reading**  
**Preference for Local Business Bidding**

Council Bill #7, 2012

AN ORDINANCE OF THE CITY OF DELTA, COLORADO ADDING CHAPTER 2.75 TO THE DELTA MUNICIPAL CODE FOR THE PURPOSE OF AUTHORIZING CERTAIN PREFERENCES FOR LOCAL BUSINESSES BIDDING ON CITY CONTRACTS

was read by the Clerk.

## **Regular Meeting, Delta City Council, March 6, 2012 (Cont.)**

### **Council Bill #7, 2012 (cont.)**

Gyneer Thomassen reported that this was presented to Council during a work session previously. They received comments at that time and went back and made the changes that Council requested. She stated that their purpose is to be supportive of local businesses.

Ms. Thomassen explained that for every \$100 spent locally at an independent business, \$68 returns to the community. For \$100 spent at a national chain, \$43 returns to the community. She stated that whenever competitive bidding is required preference should be given to qualified local businesses. She explained those requirements for the local business. She also summarized an example of local business bidding.

Councilmember Pfalzgraff commended the group for working on this and incorporating the changes Council requested into the policy.

Attorney Schottelkotte presented a change on the 3<sup>rd</sup> whereas, stating it should read "chain outlets".

Manager Kerby stated that Councilmember Pfalzgraff referred this to a policy when in fact this would be adopted as an ordinance rather than a policy.

It was moved by Councilmember Pfalzgraff and seconded by Councilmember Sisson to adopt Council Bill #7, 2012 on first reading. Roll call vote: Councilmembers Pfalzgraff, aye Sisson, aye; Raley, aye and Cooper, aye. Motion carried.

### **Off-Street Parking Paving Requirements**

Community Director Glen Black explained that at the December 6<sup>th</sup>, 2011 work session Council asked that Planning Commission review the paving standards. Before Council tonight are those recommendations.

Councilmember Pfalzgraff questioned what the basis was for the change under 17.04.230(g).

Mr. Black stated that there were several businesses that were looking at redevelopment with an existing building with gravel parking lots that felt that was rather erroneous to have to pave a six space requirement. They stated that if it would change the economics enough that would make the project no longer viable. He also addressed the concern of the landscaping requirements of parking lots.

There was discussion regarding the changes to the paving of parking lots as well as implementing a maintenance agreement for the gravel parking lots.

Attorney Schottelkotte suggested rather than having an agreement put the requirement into an ordinance.

Mr. Black stated that staff is looking for Council's direction as to what they want to see in the ordinance.

There was more discussion of having the maintenance requirement put into the ordinance.

It was moved by Councilmember Raley and seconded by Councilmember Pfalzgraff to instruct staff to proceed with the recommendations along with City Attorney recommendations to combine into one ordinance. All in favor, motion carried.

### **Approve a Contract to Purchase Property from Hildebrand Enterprises, LLC**

Public Works Director Jim Hatheway stated that this is property located 8<sup>th</sup> Street and Highway 348 which is currently being used by Dairy Farmers of America. Staff offered them \$2100 and they accepted the offer.

It was moved by Councilmember Sisson and seconded by Councilmember Raley to approve the contract to purchase property from Hildebrand Enterprises for benefit of Confluence Drive in the amount of \$2100 and authorize the City Manager to sign said contract. All in favor, motion carried.

**Regular Meeting, Delta City Council, March 6, 2012 (Cont.)**

**McDonald's Assistance Request**

Director Hatheway reported that part of the truck route process on Gunnison River Drive is evaluating access and clean up those accesses, one of the accesses that will result in closure in McDonald's. They currently have three accesses and those would be consolidated into a single access. He explained that there is some impact to the property because of the closure of the accesses. Because of those impacts the business owner Debbie Long-Shea has requested that the City consider some kind of cost share to mitigate the cost of her business to adapt of the loss of those accesses. Ms. Shea is working with Kroger to come to an agreement to have an access adjacent to the fueling facilities. McDonald's is also going through a remodel process which is dictated by their corporate office.

Mr. Hatheway explained the options that have been proposed to the City. The first being a 50% cost share is an option due to the bulk of that contract can be contributed to the loss of the accesses. The second option would be to allow the City's contractor to make the improvements to the property as part of the truck route. Ms. Shea did contact the corporate office and it's their understanding that McDonald's will not accept the City's contractor. The option would then be to pay McDonald's contractor to make those improvements to the frontage as opposed to the City.

Councilmember Sisson questioned where the accesses will be.

Mr. Hatheway stated that they are consolidating three accesses into one off of Gunnison River Drive. He explained where the access would be and the impact it has on McDonald's.

Debbie Long-Shea, 3325 Mahogany Drive, Montrose, stated that McDonald's is a positive contributor to the City and employer over 50 people. She explained the remodel that they are required to and the site work that is also being required due to the truck route she cannot do both of them financially. She also explained the impacts of the consolidation of once access and the traffic flow concern.

Mayor Cooper questioned if the 50% is the break point.

Mr. Shea stated that even the 50% is difficult for her. She explained that the cost of the remodel is around \$600,000 and McDonald's corporation is only paying 45% of that. So with the remodel and now the site work it has impacting her business greatly.

There was discussion regarding when the improvements on Gunnison River Drive would take place should the City approve the 50% cost share as well as when the remodel would begin.

Councilmember Pfalzgraff questioned the 50% cost share.

Mr. Hatheway explained that the request is 50% of \$104,000 which is \$52,000. As the improvements are made to the site that are outlined by staff, staff would verify them and then Ms. Shea would provide the invoice from her contractor for the work completed and then the City would reimburse 50% of the value of those improvements.

Councilmember Pfalzgraff questioned if that would only be improvements on the north side of the building.

Mr. Hatheway stated that Ms. Shea is requesting is 50% of all of site work. Staff is brining this to Council for them to decide whether they want to just fund the improvements on the north side or fund the entire site improvements or come up with some other amount to help fund the improvements.

There was additional discussion regarding the 50% of \$104,000 cost share.

It was moved by Councilmember Raley and seconded by Councilmember Sisson grant Ms. Shea's request for shared funding not to exceed the amount of \$52,000 for the site improvements at McDonald's due to the access closures created by the Construction of Confluence Drive. All in favor, motion carried.

**Regular Meeting, Delta City Council, March 6, 2012 (Cont.)**

**Ordinance #5, 2012; Second and Final Reading  
Power of Condemnation**

Ordinance #5, 2012

AN ORDINANCE OF THE CITY OF DELTA, COLORADO TO ADD CHAPTER 1.12 TO THE DELTA MUNICIPAL CODE ESTABLISHING THE PROCEDURE FOR AUTHORIZING EXERCISE OF THE CITY'S POWER OF CONDEMNATION (EMINENT DOMAIN).

was read by the Clerk.

It was moved by Councilmember Pfalzgraff and seconded by Councilmember Sisson to adopt Council Bill #5, 2012 on second and final reading. Roll call vote: Councilmembers Pfalzgraff, aye; Sisson, aye; Raley, aye and Cooper, aye. Motion carried. Council Bill #5, 2012 was adopted on second and final reading as Ordinance #5, 2012.

**City Attorney Comments**

There were none.

**City Manager Comments**

Manager Kerby commented on the following items:

- The new mural is being completed.
- Staff continues to do improvement the Gunnison Valley substation for preparation of the ongoing construction of the transmission line.
- Utilities Director Steve Glammeyer and his staff have done a great job in getting water down from the mesa to start watering at the golf course.
- Improvements to the Fairlamb Plaza will resume in the next week.
- The Parks Department has been working on the dog park to get an irrigation system in place.
- The pool will be closed April 1<sup>st</sup> for at least 30 days for the improvements that Council approved.
- At the next City Council meeting they will be recognizing Gerald Roberts and Tish Oelke for the service in the planning commission.
- The Chamber's annual banquet is scheduled for Saturday at the Elks.
- Staff will be bringing the salary survey as well as the health benefits to Council in May.
- The auditors are here conducting the audit for 2011.

**Councilmember Comments**

Mayor Cooper commented on the arrival of her new grand baby.

**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.

At 7:56 p.m., Mayor Cooper recessed the Regular Meeting and convened the Executive Session.

At 8:49 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, City Attorney Michael Schottelkotte, Public Works Director Jim Hatheway and Rob Pratt and Brad Rodenburg via phone. 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

**Regular Meeting, Delta City Council, March 6, 2012 (Cont.)**

**Executive Session (cont.)**

occurred during the Executive Session in violation of the Open Meetings Law, to state his or her concerns for the record. No concerns were stated

The meeting was immediately adjourned.

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Jolene E. Nelson, City Clerk



**CITY COUNCIL  
MEETING AGENDA  
ITEM**

MEETING DATE: 3/20/12

Name: Joe Kerby Date Memo/Packet Submitted to City Clerk: 3/16/12  
(Due no later than Thursday @ 12:00pm)

Dept: Administration Description: Chamber Volunteer of the year Phone: 874-7909

**...ALL QUESTIONS must be answered...**

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

SUMMARY: Paul Suppes - City of Delta Parks Director was nominated for the Chamber of Commerce Volunteer of the Year Award. At the Chamber of Commerce Awards Banquet held on March 10<sup>th</sup> 2012 Paul was officially awarded this Distinction. Congratulations Paul!!!

# MEMO

## Community Development

www.cityofdelta.net



360 Main St. • Delta, Colorado 81416  
Phone (970) 874-7903 • Fax (970) 874-6931

**Date:** March 20, 2012

**To:** Mayor, City Council and City Manager

**From:** Glen L. Black, Director of Community Development

A handwritten signature in purple ink, appearing to read "GLB".

**Re:** Recognition of Term Limited Planning Commission Members

### **BACKGROUND**

According to the City Charter, "There shall be a City Planning Commission consisting of seven members appointed by the Council who shall be qualified electors of the City. Terms. Members of the Planning Commission shall be appointed for staggered three-year terms with no Commissioner eligible to serve more than six consecutive years."

Gerald Roberts: Gerald was appointed to the City of Delta Planning Commission in April 2006 and was reappointed to a second term in April 2009. Gerald has faithfully served the citizens of Delta on the Planning Commission for six years, and recently served as Chairman of the Planning Commission.

Tish Oelke: Tish was appointed to the City of Delta Planning Commission in April 2006 and was reappointed to a second term in April 2009. Tish has faithfully served the citizens of Delta on the Planning Commission for six years, and recently served as Vice-Chairman of the Planning Commission.

Staff would like to thank Gerald and Tish for their service on the Planning Commission. During their tenure on the Planning Commission the comprehensive plan was updated and there were several large development projects that were reviewed and approved by the Planning Commission. Additionally, the zoning map was amended and the Planning Commission made recommendations to the City Council regarding updates certain sections of the Municipal Code.

Thank you for your attention.



# CITY COUNCIL MEETING AGENDA ITEM

**MEETING DATE: March 6, 2012**

**Name:** Jolene E. Nelson      **Date Memo/Packet Submitted to City Clerk:** March 16, 2012

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

**Dept:** City Clerk    **Description:** Special Events Permit Application Delta Area Chamber of Commerce

**...ALL QUESTIONS must be answered...**

Discussed with City Manager?      Yes	Reviewed by City Attorney?      No
Included in Current Year Budget? <b>N/A</b>  Budgeted Amount \$ _____ If not budgeted explain:  Purchase Amount \$ _____	Program is...  TEMPORARY
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? <b>N/A</b> _____ Informal Bid      _____ RFP _____ Bid      _____ RFQ _____ Other (explain)	Is this a Grant?      No  What is the City's 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:** See attached memo



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## MEMO

To: City Council, City Manager  
From: Jolene E. Nelson, City Clerk  
Date: March 16, 2012  
Subject: Delta Area Chamber of Commerce Special Events Permit Application

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### **Recommendation**

Staff sees no problem in approving this application for a Special Events Liquor Permit to Delta Area Chamber of Commerce for an event scheduled for March 30, 2012 at Bill Heddles Recreation Center.

### **Background**

Delta Area Chamber of Commerce has submitted an application for a Special Events Liquor Permit for the Home and Garden Show to be held on March 16, 2012. The application specifies that they plan to serve malt, vinous and spirituous liquor from 5:30 pm to 7:00 pm. The application is complete and the fees, \$35 to the City, and \$25.00 to the State, have been paid. A sign notifying the public of this hearing has been posted at the site for at least ten days as required by law. As of the writing of this memo, no comments either for or against the approval of the application have been received by the City Clerk.

### **Cost**

There is no cost to the City.

### **Action to be Taken if Approved**

The Mayor and Clerk will sign the application, and the Clerk will mail it to the State, who will review it and issue the permit.

### **Suggested Motion**

I move to approve Delta Area Chamber of Commerce's application for a special events liquor permit for March 30, 2012.

## APPLICATION FOR A SPECIAL EVENTS PERMIT

Department Use Only

**IN ORDER TO QUALIFY FOR A SPECIAL EVENTS PERMIT, YOU MUST BE NONPROFIT  
AND ONE OF THE FOLLOWING (See back for details.)**

- |  |  |  |
|--|--|--|
| <input checked="" type="checkbox"/> SOCIAL | <input type="checkbox"/> ATHLETIC                              | <input type="checkbox"/> PHILANTHROPIC INSTITUTION           |
| <input type="checkbox"/> FRATERNAL         | <input type="checkbox"/> CHARTERED BRANCH, LODGE OR CHAPTER    | <input type="checkbox"/> POLITICAL CANDIDATE                 |
| <input type="checkbox"/> PATRIOTIC         | <input type="checkbox"/> OF A NATIONAL ORGANIZATION OR SOCIETY | <input type="checkbox"/> MUNICIPALITY OWNING ARTS FACILITIES |
| <input type="checkbox"/> POLITICAL         | <input type="checkbox"/> RELIGIOUS INSTITUTION                 |  |

<b>LIAB TYPE OF SPECIAL EVENT APPLICANT IS APPLYING FOR:</b>	<b>DO NOT WRITE IN THIS SPACE</b>
2110 <input checked="" type="checkbox"/> MALT, VINOUS AND SPIRITUOUS LIQUOR \$25.00 PER DAY	LIQUOR PERMIT NUMBER
2170 <input type="checkbox"/> FERMENTED MALT BEVERAGE (3.2 Beer) \$10.00 PER DAY	

1. NAME OF APPLICANT ORGANIZATION OR POLITICAL CANDIDATE <i>Delta Area Chamber of Commerce</i>	State Sales Tax Number (Required) <i>004001876-0000</i>
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2. MAILING ADDRESS OF ORGANIZATION OR POLITICAL CANDIDATE (include street, city/town and ZIP) <i>301 Main Street Delta, CO 81416</i>	3. ADDRESS OF PLACE TO HAVE SPECIAL EVENT (include street, city/town and ZIP) <i>Bill Heddles Recreation Center 530 Gunnison River Drive Delta, CO 81416</i>
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NAME	DATE OF BIRTH	HOME ADDRESS (Street, City, State, ZIP)	PHONE NUMBER
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4. PRES./SEC'Y OF ORG. or POLITICAL CANDIDATE	
5. EVENT MANAGER <i>Gyneer Thomassen</i>	<i>ECKER # CO 81418 14340 Sunny Slope Dr 874-921</i>

6. HAS APPLICANT ORGANIZATION OR POLITICAL CANDIDATE BEEN ISSUED A SPECIAL EVENT PERMIT THIS CALENDAR YEAR? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES HOW MANY DAYS? _____	7. IS PREMISES NOW LICENSED UNDER STATE LIQUOR OR BEER CODE? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES TO WHOM? _____
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8. DOES THE APPLICANT HAVE POSSESSION OR WRITTEN PERMISSION FOR THE USE OF THE PREMISES TO BE LICENSED?  Yes  No

LIST BELOW THE EXACT DATE(S) FOR WHICH APPLICATION IS BEING MADE FOR PERMIT

Date	Date	Date	Date	Date
Hours From				
To	To	To	To	To

**OATH OF APPLICANT**

*I declare under penalty of perjury in the second degree that I have read the foregoing application and all attachments thereto, and that all information therein is true, correct, and complete to the best of my knowledge.*

SIGNATURE <i>Gyneer Thomassen</i>	TITLE <i>Vice-President</i>	DATE <i>2/27/12</i>
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**REPORT AND APPROVAL OF LOCAL LICENSING AUTHORITY (CITY OR COUNTY)**

The foregoing application has been examined and the premises, business conducted and character of the applicant is satisfactory, and we do report that such permit, if granted, will comply with the provisions of Title 12, Article 48, C.R.S., as amended.

**THEREFORE, THIS APPLICATION IS APPROVED.**

LOCAL LICENSING AUTHORITY (CITY OR COUNTY)	<input type="checkbox"/> CITY <input type="checkbox"/> COUNTY	TELEPHONE NUMBER OF CITY/COUNTY CLERK
SIGNATURE	TITLE	DATE

**DO NOT WRITE IN THIS SPACE - FOR DEPARTMENT OF REVENUE USE ONLY**

LIABILITY INFORMATION			
License Account Number	Liability Date	State	TOTAL
		-750 (999)	\$ .

## APPLICATION INFORMATION AND CHECKLIST

**THE FOLLOWING SUPPORTING DOCUMENTS MUST BE ATTACHED TO THIS APPLICATION FOR A PERMIT TO BE ISSUED:**

- Appropriate fee.
- Diagram of the area to be licensed (not larger than 8 1/2" X 11" reflecting bars, walls, partitions, ingress, egress and dimensions.  
**Note:** If the event is to be held outside, please submit evidence of intended control, i.e., fencing, ropes, barriers, etc.
- Copy of deed, lease, or written permission of owner for use of the premises.
- Certificate of good corporate standing (NONPROFIT) issued by Secretary of State within last two years; **or**
- If not incorporated, a NONPROFIT charter; **or**
- If a political Candidate, attach copies of reports and statements that were filed with the Secretary of State.

- APPLICATION MUST FIRST BE SUBMITTED TO THE LOCAL LICENSING AUTHORITY (CITY OR COUNTY) AT LEAST THIRTY (30) DAYS PRIOR TO THE EVENT.**
- THE PREMISES TO BE LICENSED MUST BE POSTED AT LEAST TEN (10) DAYS BEFORE A HEARING CAN BE HELD. (12-48-106 C.R.S.)**
- AN APPROVED APPLICATION MUST BE RECEIVED BY THE LIQUOR ENFORCEMENT DIVISION AT LEAST TEN (10) DAYS PRIOR TO THE EVENT.**
- CHECK PAYABLE TO THE COLORADO DEPARTMENT OF REVENUE**

(12-48-102 C.R.S.)

A Special Event Permit issued under this article may be issued to an organization, whether or not presently licensed under Articles 46 and 47 of this title, which has been incorporated under the laws of this state for the purpose of a social, fraternal, patriotic, political or athletic nature, and not for pecuniary gain or which is a regularly chartered branch, lodge or chapter of a national organization or society organized for such purposes and being non profit in nature, or which is a regularly established religious or philanthropic institution, and to any political candidate who has filed the necessary reports and statements with the Secretary of State pursuant to Article 45 of Title 1, C.R.S. A Special Event permit may be issued to any municipality owning arts facilities at which productions or performances of an artistic or cultural nature are presented for use at such facilities.

If an event is cancelled, the application fees and the day(s) are forfeited.

OFFICE OF THE SECRETARY OF STATE  
OF THE STATE OF COLORADO

**CERTIFICATE**

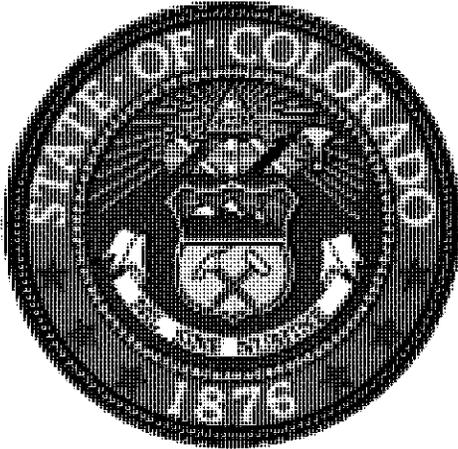
I, Scott Gessler, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

**DELTA AREA CHAMBER OF COMMERCE, INC.**

is a **Nonprofit Corporation** formed or registered on 04/19/1982 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 19871472178.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 02/24/2012 that have been posted, and by documents delivered to this office electronically through 02/27/2012 @ 12:16:26.

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, authenticated, issued, delivered and communicated this official certificate at Denver, Colorado on 02/27/2012 @ 12:16:26 pursuant to and in accordance with applicable law. This certificate is assigned Confirmation Number 8178095.



Handwritten signature of Scott Gessler in black ink.

Secretary of State of the State of Colorado

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

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

STATE OF COLORADO

CITY OF DELTA

LIQUOR PERMIT

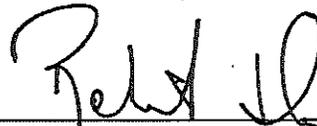
I, Robert Thomas, Chief of Police for the City of Delta, hereby issues a Liquor Permit for open consumption of 3.2 beer and wine beverages, in plastic or aluminum containers, at and within Public Property, within the City of Delta. Pursuant to City Policy number 208-3 adopted May 18, 1993.

NAME OF ORGANIZATION: Home and Garden Show

AUTHORIZED REPRESENTATIVE: Gyneepher Thomassen  
238 Main Street  
Delta, CO 81416  
(970) 874-9210

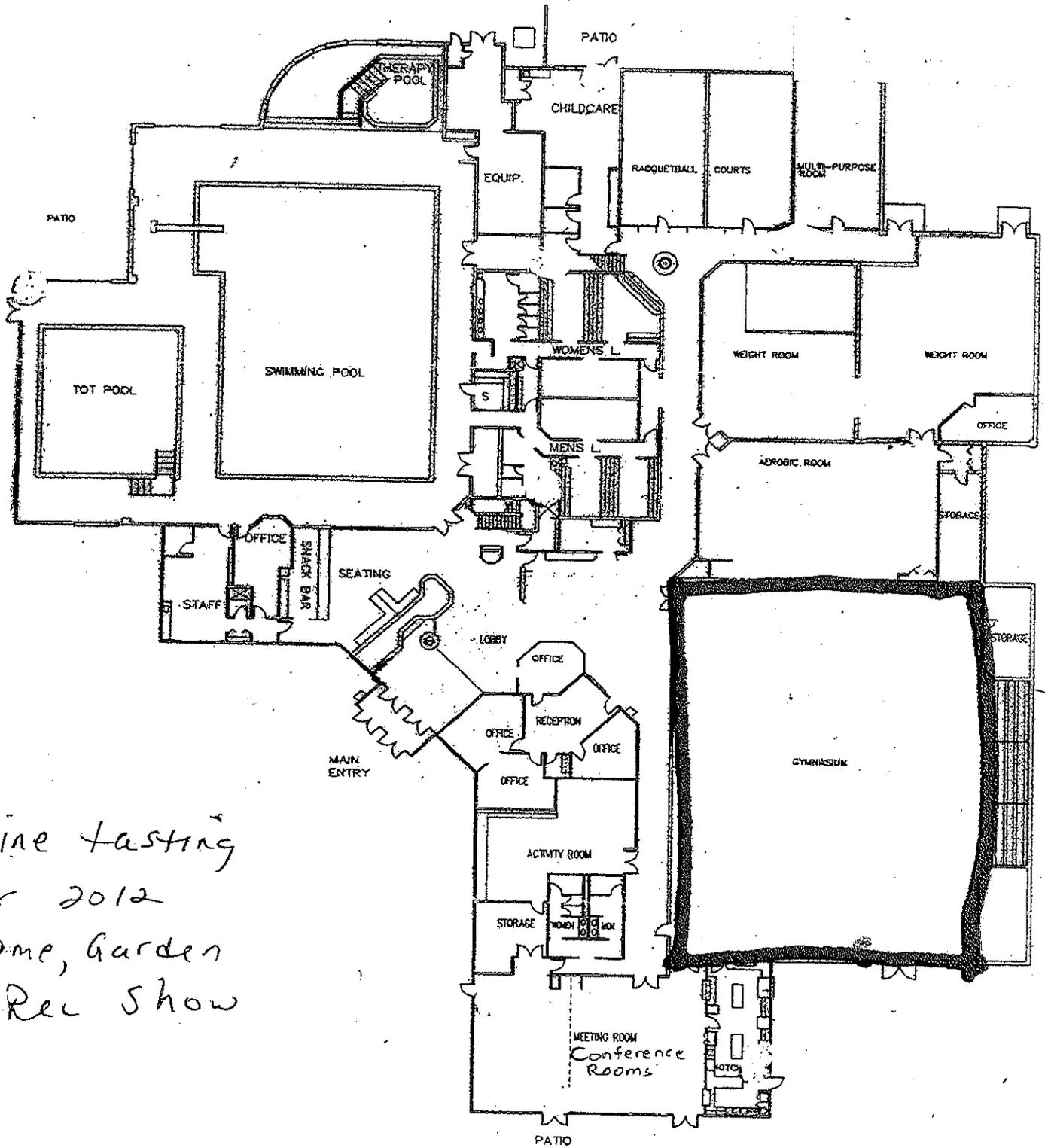
Location: Bill Heddles Recreation Center

This permit is issued for Friday, March 30, 2012 from the hours of 5:30 pm., until 7:00 pm, and is only good for the above-designated date and time. This permit may be revoked at any time for any improper conduct, by authority of the Delta Police Department.



Robert Thomas, Chief of Police

BILL HEDBERG RECREATION CENTER  
DELTA COLORADO



wine tasting  
for 2012  
Home, Garden  
& Rec Show

Delta Area Chamber of Commerce







# CITY COUNCIL MEETING

## AGENDA ITEM

**MEETING DATE:** March 20, 2012     **Date Memo/Packet Submitted to City Clerk:** March 15, 2012  
 (Due no later than Thursday @ 12:00pm)

**Name:** Glen L. Black                      **Dept:** Community Development                      **Phone:** 970-874-7903  
**Description:** Three Mile Plan SB45

***...ALL QUESTIONS must be answered...***

Discussed with City Manager?     Yes	Discussed with City Attorney?     No
Included in Current Year Budget?     No  Budgeted Amount \$ _____ If not budgeted explain:	Program is...  Annual
Is this a Bid Award?     No  Bidders and Bid Amounts – Attach a Summary of Bids Received	Subject to Annual Renewal?     Yes  Renewal Date: March of each year
What process was used? _____ Informal Bid     _____ RFP _____ Bid     _____ RFQ _XX_ Other (explain) Annual Review by Planning Commission	Is this a Grant?     No
Is this to be communicated to the Public? No _____ Press Release     _____ Newsletter Article _____ Other     _____ Channel 10     _____ City website	What is the City's Match?     N/A
Purchase Amount:	Is an Ordinance Required?     No  Is Resolution Required?     No  Are there any publishing requirement?     No

**SUMMARY:** This is an annual review and recommendation from the Planning Commission for City Council review and adoption. This is a state requirement to allow a municipality to annex property.

# MEMO



## Community Development

360 Main St. • Delta, Colorado 81416  
Phone (970) 874-7903 • Fax (970) 874-6931

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**Date:** March 20, 2012  
**To:** Mayor, City Council and City Manager  
**From:** Glen L. Black, Director of Community Development *GLB*  
**Re:** Three Mile Plan

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### **RECOMMENDATION**

City Council would approve the Three Mile Plan to define the City's planning area.

### **BACKGROUND**

Statute C.R.S. 31-12-105(e)(I) requires the City to review and update annually the plan which considers areas within three miles of the City's boundaries. Planning Commission reviewed the plan at their March 5, 2012 meeting (please see the attached report). The boundary has changed from 2011 because of the disconnection of a portion of Jennings Landing No. 3.

### **SUGGESTED MOTION**

I would move to approve the Three Mile Plan as presented. Disapproval would be indicated by a "nay" vote.

Thank you for your attention.



## **Three Mile Plan**

### **Overview**

The following plan is hereby developed to comply with C.R.S. 31-12-105 (e)(I), which states the following:

(e) (I) Except as otherwise provided in this paragraph (e), no annexation may take place that would have the effect of extending a municipal boundary more than three miles in any direction from any point of such municipal boundary in any one year..... Prior to completion of any annexation within the three-mile area, the municipality shall have in place a plan for that area that generally describes the proposed location, character, and extent of streets, subways, bridges, waterways, waterfronts, parkways, playgrounds, squares, parks, aviation fields, other public ways, grounds, open spaces, public utilities, and terminals for water, light, sanitation, transportation, and power to be provided by the municipality and the proposed land uses for the area. Such plan shall be updated at least once annually.....

### **The Plan**

The City of Delta's Three Mile Plan includes the following:

1. A boundary map showing a three mile area around the City.
2. The City of Delta Comprehensive Plan, including the Future Land Use Plan map.
3. The Growth Management Agreement between the City and Delta County recorded January, 2007 in the Delta County Records.
4. The Delta County Road and Bridge Map, incorporated to the extent of the three mile area shown on the boundary map.
5. The Capital Improvement Plans.
6. The Major Street Plan.

Public utilities in the three mile area include the following:

- a. Power providers: Include the City of Delta and Delta-Montrose Electric Association pursuant to the Service Area Agreement.
- b. Sewer: Available in and near the City from the City of Delta. City sewer is extended as per City ordinances at the cost of the applicant, or pursuant to special financial projects. Other areas are planned for agricultural or low density residential until City sewer is extended. Individual Sewage Disposal Systems (ISDS) are authorized under certain circumstances in the City.
- c. Water service: Domestic water services are provided in the area by the City of Delta and Tri-County Water Conservancy District within their respective service areas as provided



by agreement between the parties. Such service area contracts are hereby incorporated by reference as part of this Plan.

- d. Trash collection: City trash service is provided within the City. Private collection services operate outside and within the City. Delta County operates the Delta County Landfill.
- e. Telephone: Century Link Communications and Delta County Telecom as per their certified service areas.
- f. Natural Gas: Source Gas provides service available in the City, in fringe areas of the City, and along the main pipeline only.
- g. Cable TV: Available in and near the City only, pursuant to CATV permit.

The proposed land uses of the area consist of public land, agricultural uses, and low-density residential uses, except to the extent specifically provided otherwise by the City's Zoning Map, Comprehensive Plan, and Future Land Use Plan map.

No transportation services are proposed to be provided by the City other than streets, alleys or bikeways, and recreation pathways.

To the extent that any item mentioned in C.R.S. 31-12-105 (1) (e) is not reflected in the items of this Plan, the Plan should be construed to mean that no such facilities are contemplated to be provided.

In the event of any conflict between anything in the foregoing elements of the Three Mile Plan and City ordinances or regulations, the City ordinances and regulations shall control. The City of Delta Comprehensive Plan and other city elements of the above documents shall control with respect to any conflicts with provisions of the plan incorporated from other "non-City" entities.

Town of Orchard City plans, ordinances and regulations shall control within the Town of Orchard City.

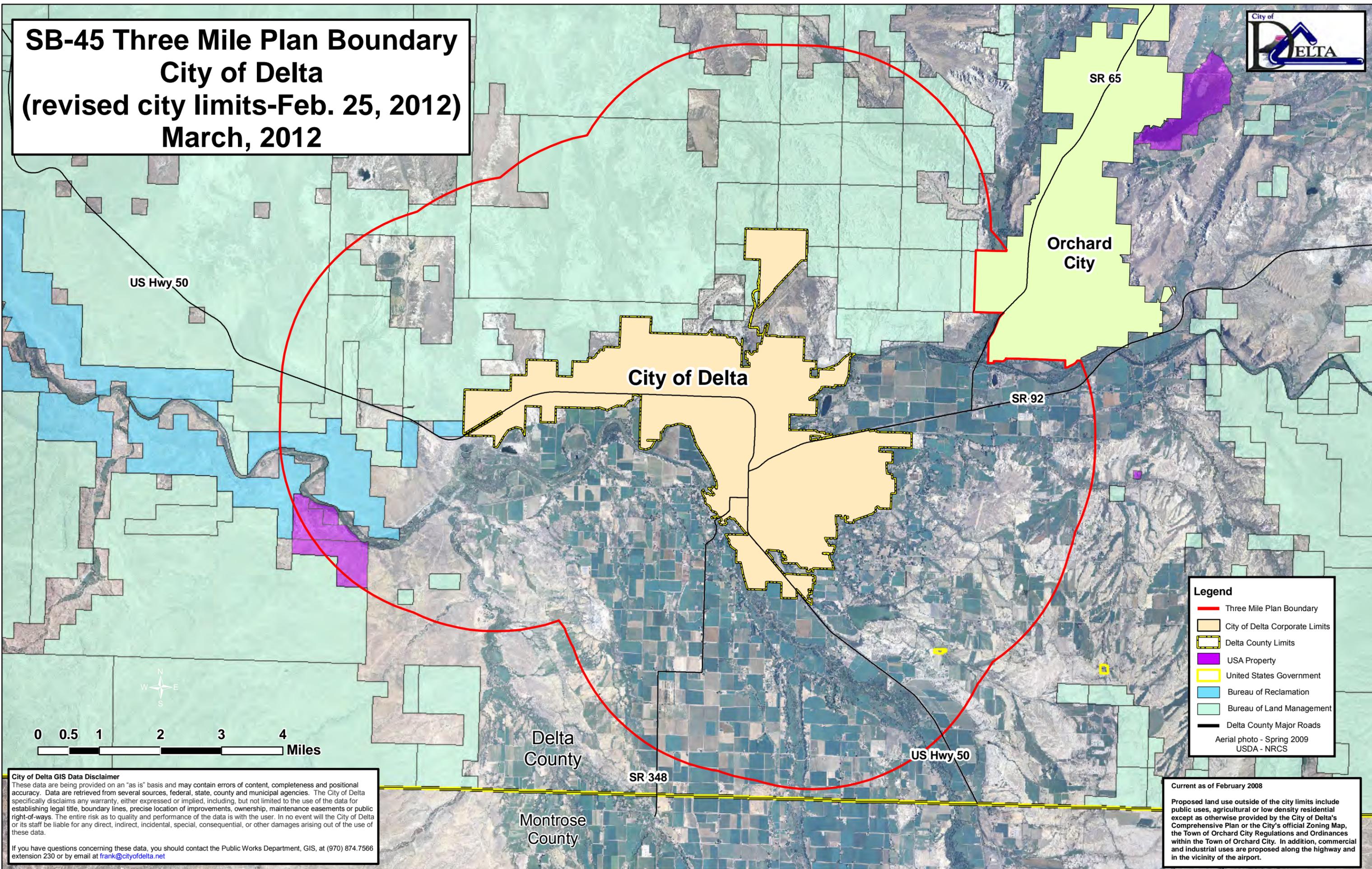
### **Staff Recommendation**

Staff recommends approval of the Three Mile Plan.

### **Example Motion**

I move that Planning Commission recommend **approval/disapproval** of the Three Mile Plan

**SB-45 Three Mile Plan Boundary  
City of Delta  
(revised city limits-Feb. 25, 2012)  
March, 2012**



US Hwy 50

SR 65

Orchard City

City of Delta

SR 92



Delta County

US Hwy 50

SR 348

Montrose County

**Legend**

- Three Mile Plan Boundary
- City of Delta Corporate Limits
- Delta County Limits
- USA Property
- United States Government
- Bureau of Reclamation
- Bureau of Land Management
- Delta County Major Roads

Aerial photo - Spring 2009  
USDA - NRCS

**City of Delta GIS Data Disclaimer**  
These data are being provided on an "as is" basis and may contain errors of content, completeness and positional accuracy. Data are retrieved from several sources, federal, state, county and municipal agencies. The City of Delta specifically disclaims any warranty, either expressed or implied, including, but not limited to the use of the data for establishing legal title, boundary lines, precise location of improvements, ownership, maintenance easements or public right-of-ways. The entire risk as to quality and performance of the data is with the user. In no event will the City of Delta or its staff be liable for any direct, indirect, incidental, special, consequential, or other damages arising out of the use of these data.  
  
If you have questions concerning these data, you should contact the Public Works Department, GIS, at (970) 874.7566 extension 230 or by email at [frank@cityofdelta.net](mailto:frank@cityofdelta.net)

Current as of February 2008  
  
Proposed land use outside of the city limits include public uses, agricultural or low density residential except as otherwise provided by the City of Delta's Comprehensive Plan or the City's official Zoning Map, the Town of Orchard City Regulations and Ordinances within the Town of Orchard City. In addition, commercial and industrial uses are proposed along the highway and in the vicinity of the airport.



# MEMO

## Community Development

www.cityofdelta.net



360 Main St. • Delta, Colorado 81416  
Phone (970) 874-7903 • Fax (970) 874-6931

**Date:** March 20, 2012  
**To:** Mayor, City Council and City Manager  
**From:** Glen L. Black, Director of Community Development  
**Re:** Sheds and Travel Homes

*GLB*

### RECOMMENDATION

City Council consideration of the recommendation from Planning Commission regarding Delta Municipal Code sections 17.04.220.B.1.a and 17.04.220.B.1.c Tabulated Regulations – Travel Home and Storage Shed setbacks

### BACKGROUND

City Council requested that the Planning Commission make a recommendation regarding Sheds and Travel Homes at the City Council Work Session held on December 6, 2011.

The Planning Commission reviewed this item at the Planning Commission meetings held on February 6, 2012 and March 5, 2012. Below is the recommendation from the Planning Commission meeting held on March 5, 2012.

### STAFF REVIEW AND DISCUSSION

#### Storage Shed Recommendation

The Planning Commission's recommendation to City Council is to change the Delta Municipal Code to allow sheds anywhere on the lot behind the front setback.

The suggested code language is as follows:

- c. Those storage sheds accessory to a single family residence which are exempted from building permit requirements may be located in those setback areas not adjacent to a street as long as the structure is located entirely to the rear of the main residence, of the front setback. The shed must be located is built so that it does not shed rain or snow onto the property of another. Provided, however, Sheds located on lots with streets on opposite sides of the lot, may have a shed located along the street to the rear of the residence if it does not create a sight barrier for traffic on adjacent streets, and is not located within the overlap area of two setbacks along streets.

## Travel Homes Discussion and Recommendation

The Planning Commission's recommendation to City Council is to change the Delta Municipal Code to allow all trailers (including travel homes) that are operable and licensed to be parked within the property boundaries in such a manner to avoid interference with the adjacent property owners and not create a safety hazard.

The suggested code language is as follows:

B. 1. No part of any building, except for the outer 18 inches of the eaves, may be located, ~~and no travel home may be parked or stored,~~ any closer to a property line than the setback specified in the following table with the following exceptions:

a. ~~A travel home may be parked in the rear setback area if it abuts an alley.~~ Travel homes and trailers may be parked anywhere upon private property as long as the trailer is licensed and operable, does not interfere with the adjacent property owner and does not create a safety hazard.

### **ACTION TO BE TAKEN IF APPROVED**

Direct staff to draft an Ordinance for City Council consideration to enact the proposed changes.

### **SUGGESTED MOTION**

I move Council direct staff to prepare an ordinance to amend Delta Municipal Code sections 17.04.220.B.1.a and 17.04.220.B.1.c as recommended by Planning Commission (Disapproval would be indicated by a "nay" vote)

Thank you for your attention.



# CITY COUNCIL MEETING AGENDA ITEM

MEETING DATE: 3/14/12

Name: Rob Sanders, PGA Date Memo/Packet Submitted to City Clerk: 3/14/12  
(Due no later than Thursday @ 12:00pm)  
 Dept: Golf Course Description: Food & Beverage Lease Phone: (970) 874-6262

**...ALL QUESTIONS must be answered...**

Discussed with City Manager? <input checked="" type="radio"/> Yes / No	Reviewed by City Attorney? <input checked="" type="radio"/> Yes / No <i>Dates only thing that changed</i>
Included in Current Year Budget? <input checked="" type="radio"/> Yes / No  Budgeted Amount \$ <u>6,600</u> If not budgeted explain: <u>Snack Bar Rental Revenue</u>	Program is...  NEW <input checked="" type="radio"/> ONGOING                      TEMPORARY
Is this a Bid Award? Yes / <input checked="" type="radio"/> No <i>Renewal</i>  Bidders and Bid Amounts – Attach a Summary of Bids Received	Subject to Annual Renewal? <input checked="" type="radio"/> Yes / <input checked="" type="radio"/> No  Renewal Date: <u>March of 2015</u>
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>Renewal</u>	Is this a Grant? Yes / <input checked="" type="radio"/> No
Is this to be communicated to the Public? 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>N/A</u>
Purchase Amount:  <u>N/A</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: Renewal of Food and Beverage Lease to Applegate Ventures LLC

# MEMO



## Devils Thumb Golf Club

www.devilsthumbgolfclub.com

9900 Devils Thumb Rd • Delta, Colorado 81416

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

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**Date:** March 12, 2012  
**To:** City Council  
**Cc:** Joe Kerby, City Manager  
**From:** Rob Sanders, PGA, General Manager  
**Re:** Renewal of Food and Beverage Lease

---

### Recommendation

City Council would approve the lease agreement with Applegate Ventures LLC for lease of the food and beverage at Devil's Thumb Golf Club.

### Background

This memo is in regards to renewal of the food and beverage lease to Applegate Ventures LLC. This has been our first full year with Josh Applegate leasing out our food and beverage facility and he has expressed desire to release for the next three years. There have been a couple of changes from this lease to the previous one. The first is that he has requested that his annual pass that was part of his lease last year be changed from a single golf pass to a couples golf pass by adding his wife Jen Applegate. Second that the road to the golf course be plowed up to the gates or entry way during the winter months. Third on the days the golf course is closed due to inclement weather between the months of November – March that there be a prororation in place at a rate of \$18.08 per day. In summary Applegate Ventures LLC would only pay the City of Delta rent on the days the golf course is open for business.

### Suggested Motion

I move to approve the lease agreement with Applegate Ventures, LLC for the lease of food and beverage services at Devil's Thumb Golf Club and authorize the City Manager to sign said agreement. Disapproval would be indicated by a "nay" vote.

Thank you for your attention.

## LEASE OF BUSINESS PREMISES

THIS LEASE is made by and between the CITY OF DELTA ("City") and Applegate Ventures, LLC, ("Lessee").

IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. **Description of Premises:**

City agrees to lease to lessee the snack bar at Devil's Thumb Golf Course, together with the right to serve food and beverages within the confines of the entire Devil's Thumb Golf Course, City of Delta, County of Delta, and State of Colorado, as shown on Exhibit B. Address: 968 1560 Road, Delta, Colorado 81416.

2. **Term:**

The term of this Lease shall begin on April 1, 2012, and terminate three years later. The Lease shall be reviewed annually thereafter and the rent and other terms may be changed. If the parties are unable to agree on such changes, if any, and on overall extension of the Lease, the Lease, shall terminate. The term may be extended only by written agreement of the parties.

Lessee can terminate the Lease at any time with 60-day prior written notice to City.

3. **Rent:**

A. Rent shall be \$550.00 per month. Rent will be pro-rated during the months November through March based on days of closure due to weather condition at a rate of \$18.08 per day. Payment shall be made to the City on the first day of the month.

B. Lessee shall provide minimum services are specified:

1. Devil's Thumb Golf Club Snack Bar, including vending machines and regular snack bar operation.
2. Snack Bar shall be open during the hours set forth and shall provide the food service as set out in Exhibit A.
3. A concession cart furnished by the City will also be operated on the Course by the Lessee on the schedule described in Exhibit A.

4. **Use of Premises:**

The premises are to be used only for the purposes described herein. Lessee shall restrict its use to such purposes and shall not use or permit the use of the premises for any other purpose without the written consent of the City.

5. **Restrictions on Use.**

Lessee shall not keep, use or sell anything prohibited by any policy of fire insurance covering the premises, and shall comply with all requirements on the insurance policies covering the premises necessary to keep in force the fire and liability insurance. Lessee shall pay, as additional rent, and increased insurance premiums incurred by City as a result of Lessee's activities.

6. **Waste, Nuisance or Unlawful Activity:**

Lessee shall not allow any waste or nuisance on the premises, or use or allow the premises to be used for any unlawful purpose. Lessee shall be responsible for keeping the premises clear from all trash and refuse.

7. **Utilities:**

City shall provide City water, sewer/septic, trash collection and electricity to the premises for the term of this Lease, without charge to Lessee for use in conducting the business activities described herein.

8. **Repairs, Maintenance and Cleaning:**

Lessee shall maintain the premises in clean and sanitary condition and in good repair at Lessee's expense. The City shall maintain proper snow plowing up to the premises.

**9. Delivery, Improvement and Surrender of Premises:**

City represents that the premises are in fit condition for use by Lessee. Acceptance of the premise by Lessee shall be construed as recognition that the premises are in a good state of repair and in a sanitary condition. Lessee shall surrender the premises at the end of the Lease term, or any renewal thereof, in the same condition as when lessee took possession, allowing for reasonable use and wear, and damage by acts of God, including fires and storms. Before delivery, Lessee shall remove all business signs placed on the premises by Lessee and restore the portion of the premises on which they were placed in the same or equal condition as when received. Any fixtures or improvements of a permanent nature installed by lessee shall become the property of City at the expiration of the Lease, unless other arrangements are made. No such improvements shall be made to the premises without City's prior written consent.

**10. Signs, Awnings, and Marquees Installed by Lessee:**

Lessee shall not construct or place signs, awnings, marquees, or other structures projecting from the exterior of the premises without prior written consent of City.

**11. Indemnity of City and Hold Harmless**

The Lessee agrees to indemnify and hold harmless City, its officers, employees, insurers, and self-insurance pool from and against all liability, claims, and demands on account of injury, loss, or damage to other persons and property, including, but without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Lease, if such injury, loss or damage is cause or is claimed by caused solely by the act, omission, error, mistake, negligence, or other fault of the Lessee, or which arise out of any Workmen's Compensation claim of any employee of the Lessee or of any employee of any subcontractor of the Lessee. The Lessee agrees to investigate, handle, respond to, and to provide defense for and defend against any such liability, claims or demands at the sole expense of the Lessee, or at the option of City, agrees to pay City or reimburse City for the defense costs incurred by City in connection with any such liability, claims or demands. The Lessee also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent. (The obligation of this section 11 shall not extend to any injury, loss or damage which is caused solely by the act, omission, or other fault of the City, its officers, or its employees.)

12. **Liability Insurance:**

The Lessee agrees to procure and maintain, at its own costs, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Lessee pursuant to Section 11. Such insurance shall be in addition to any other insurance requirements imposed by this Lease or by law. The Lessee shall not be relieved of any liability, claims, demands, or other obligating assumed pursuant to Section 11 by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types.

Lessee shall procure and maintain, and shall cause any subcontractor of the Lessee to procure and maintain, the minimum insurance coverage listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to City. All coverage shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Lessee pursuant to Section 11. In 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 contract, and Employee's Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) per each accident and 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 upon written consent of City.

B. Commercial General Liability insurance with 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 from property damage (including completed operations), personal injury (including coverage for contractual employee acts), blanket contractual and independent contractors. The policy shall contain a severability of interest provision.

The policy required by subparagraph (B) above shall be endorsed to include City and City's officers and employees as additional insureds. Every policy required above shall be primary insurance and any insurance carried by City, its officers, or its employees, or carried by or provided through any insurance pool of City, shall be excess and not contributory insurance to that provided by Lessee. No additional insured endorsement to any policy shall contain any exclusion for bodily injury or property damage arising from completed operations. The Lessee shall be solely responsible for any deductible losses under any policy required above in connection with its liability under Section 11 above.

The Certificate of Insurance provided to the City shall be completed by the Lessee's insurance agent as evidence that policies providing the required coverage, conditions and minimum limits are in full force and effect, and shall be reviewed and approved by City prior to commencement of the Lease. The Certificate shall identify this Lease and shall provide that the coverage afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to City. The completed Certificate of Insurance shall be sent to City by Lessee or pertinent insurance agent.

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

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 Lease the monetary limitations (presently \$150,000.00 per person and \$600,000.00 per occurrence) or any other rights, immunities, and protections provided by C.R.S. Article 24-10, as from time to time amended, or otherwise available to the City, its officers or its employees.

**13. Property Insurance:**

City shall have City's property on the leased premises covered under City's CIRSA property insurance policies, to include the interests of the City and Lessee, and provide Lessee with a certificate of such insurance. Lessee shall be responsible for losses not covered due to said policy's deductible, or for losses outside the scope of such policy's coverage. Lessee shall be responsible for insuring Lessee's own property at Lessee's expense.

**14. Assignment or Sublease:**

Lessee shall not assign this Lease or sublet the premises without the prior written approval of the City, which shall not be unreasonably refused. The financial status, the experience, and moral character of the proposed assignee may be considered by the City in the event of a request for consent to assignment.

**15. Breach:**

The appointment of a receiver to take possession of the assets of Lessee, a general assignment for the benefit of the creditors of Lessee, any action taken or allowed to be taken by Lessee under any bankruptcy act, and/or the failure of Lessee to comply with each and every term and condition of this Lease shall constitute a breach of this Lease. Lessee shall have 10 days after receipt of written notice from City of any breach to correct the conditions of breach specified in the notice.

**16. Remedies of City for Breach by Lessee:**

City shall have the following remedies in addition to its other rights and remedies in the event Lessee breaches this Lease Agreement and fails to make corrections after City has given notice of breach as set forth in Section 15 above.

A. City may reenter the premises immediately and remove the property and personnel of Lessee and store the property in a public warehouse or at a place selected by City, at the expense of Lessee.

B. After reentry, City may terminate the Lease by giving 10 days written notice of termination to Lessee. Without such notice, reentry will not terminate the Lease. On termination, City may recover from Lessee all damages proximately resulting from the breach, including the cost of recovering the premises and unpaid rent for the remainder of the lease term, which sum shall be immediately due to City from Lessee.

C. After reentering, City may relet the premises or any part thereof for any term without terminating the Lease, at such rent and on such terms as it may choose. City may make repairs to the premises. The duties and liabilities of the parties if the premises are relet as provided herein shall be as follows:

1) In addition to Lessee's liability to City for breach of the Lease, Lessee shall be liable for all expenses of the reletting, for reasonable and necessary repairs made, and for the difference between the rent received by City under the New Lease agreement and the rent installments that are due for the same period under this lease.

**17. Remedies of Lessee for Breach by City:**

In the event City breaches any condition of this Lease, Lessee may give written notice of such breach and the City shall then have 10 days within which to correct the breach. If the City does not so correct, Lessee may take such steps as are necessary to correct the breach and charge the costs thereof against his rental or may terminate the Lease.

**18. Notices:**

All notices to be given to the City shall be delivered to the Golf Pro at Devil's Thumb Golf Course. Notices to Lessee may be mailed to the following address:  
637 Howard St.  
Delta, CO 81416

**19. Standards of Operation:**

A. Lessee shall maintain high standards of service and quality of food and operate in accordance with all applicable Federal, State and/or local Health Department regulations.

- B. required menu items and hours of operation are set out in Exhibit "A".
- C. Lessee and Lessee's employees shall provide friendly and courteous service at all times.
- D. Lessee shall obtain applicable city and state sales tax licenses.
- E. Lessee shall comply with all applicable Federal, State, City and local government requirements.
- F. Lessee must establish and maintain an attractive uniform dress code for its employees appropriate for Devil's Thumb Golf Club operations.
- G. The City may temporarily suspend operating in the event conditions of unreasonable risk (natural or man-made) should occur.

**20. Additional Provisions and Conditions:**

- A. The City shall have the right to sell or to authorize other concessionaires to sell food and other items for special events in the event Lessee declines the opportunity. However, they may not use Lessee's kitchen or bar facilities. Other concessionaires will be required to provide all documentation of liability insurance, Workmen's Compensation insurance, sales tax certificate, and business license, to the City and to follow all applicable Health Department Regulations.
- B. The City shall have the right to sell goods and services (no food or beverages) for special events, with specific dates and terms agreed upon annually by Lessee and the City. The City may not use Lessee's Kitchen or Bar facilities.
- C. Upon termination of this Lease for any reason, or upon Lessee's abandonment of, or eviction from the premises, Lessee shall promptly and fully cooperate with the transfer of the aforementioned liquor license to the City or to any other assignee or designee of the City. In the event of a material breach of this provision, Lessee shall be liable to the City for special liquidated damages in the amount of \$300.00 per day until the breach is cured by Lessee, such amount being the City's reasonably estimated losses for the breach.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

LESSOR:  
City of Delta, Colorado

LESSEE:  
Applegate Ventures LLC

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Joshua T. Applegate, Member

ATTEST:

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

## EXHIBIT A

Coffee, tea, soda pop, bottled water, fruit juices, snack foods, low-fat snacks, hamburgers, hot dogs, sandwiches, alcoholic beverages including beer, call and blended drinks.

Minimum hours of operation:

Weekends 7 a.m. to 7 p.m., and weekdays 8 a.m. to 7 p.m., or as needed to facilitate reasonable demands of the golfing public to be determined by the Lessee.

Upon mutual consultation and consent between Lessor and Lessee, the above menu and hours may be adjusted to reflect the market, and seasonal and patronage demands, etc.

Hours of operation for concession cart to be determined by Lessee to facilitate reasonable demands of the Golfing Public.

## AMENDMENT OF LEASE OF PREMISES

It is hereby acknowledged that all parties are aware of the following amendments that will amend, modify and clarify the Lease of Business Premises between them dated March 23, 2012.

1. *Amendment to Term: Paragraph 2, Page 1* – Either party shall have the ability to terminate agreed Lease at any time with 60-day prior written notice to the appropriate party.

2. *Amendment to Rent: Paragraph 3, Page 1* – Payment shall be made to the City of Delta at 360 Main St. Delta, CO 81416 Attention: Finance Director

3. *Amendment to Restriction of Use: Paragraph 5, Page 2* – Lessee shall be provided a copy of City's fire policy for location to insure that vision, plans and operations do not conflict with City's existing insurance policy and to be made aware of any increased premiums that would be incurred to City's premium as result in Lessee's operation and activity.

4. *Amendment to Utilities: Paragraph 7, Page 2*- City shall provide City water, sewer/septic, trash collection, electricity and propane to the premises for the term of this Lease, without charge to Lessee for use in conducting business activities described herein.

5. *Amendment to repairs, Maintenance and Cleaning: Paragraph 8, Page 2* – Lessee shall have facility premises, equipment and ventilation systems professionally inspected by a commercial inspector to insure all equipment and ventilation systems are in satisfactory working condition at Lessee's expense. All inspection objections shall be directed to City prior to Lease being fully agreed upon by both parties. Letter from Lessee's company of choice to accompany any inspection objections. City agrees to promptly correct only those conditions discovered by Lessee's inspection which would constitute health or safety hazard under applicable laws.

6. *Amendment to Indemnity of City and Hold Harmless: Paragraph 11, Page 3* – Lessee agrees to indemnify City, its officers, employees, insurers, and self insurance pool from against liability, claims, and demands on account of injury, loss, or damage to other persons and property with the exemption of negligent actions of the City, its officers, employees, insurers, and self insurance pool.

7. *Amendment to Include:* Kitchen equipment leased herein shall be properly serviced and maintained at the expense of the City. Replacement of equipment will be at the City's discretion.

8. *Amendment to Include:* City and Devil's Thumb Golf Club shall provide Lessee the ability to advertise and administer "Grill" page on the website, subject, however, to City's reasonable supervision and control.  
[www.devilsthumbgolfclub.com](http://www.devilsthumbgolfclub.com)

9. *Amendment to Include:* Lessee shall have permission to provide vending machines in the areas of the Golf Shack located on the Driving Range and at the Restrooms located in between the holes of number 3 and 13 at Lessee's expense.

10. *Amendment to Include:* Lessee shall be provided Applegate Ventures, LLC (Josh & Jeni Applegate, member) an Unlimited Annual Couples Golf Pass that would allow for unrestricted playing privileges to include green fees, golf cart and range balls.

11. *Amendment to Include:* Lessee shall have the ability to fuel beverage cart at Turf Care Center and all fuel to be logged with dual control and fuel charges shall be payable at the time of fueling to City.

12. *Amendment to Include:* All business records to be kept confidential and sole property to Applegate Ventures, LLC including but not limited to Point of Sale transactions, Income Statements, Financial Statements and records.

LESSOR:  
City of Delta, Colorado

LESSEE:  
Applegate Ventures, LLC

By: \_\_\_\_\_  
City Manager

\_\_\_\_\_  
Joshua T. Applegate, member

ATTEST:

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



# CITY COUNCIL MEETING AGENDA ITEM

**MEETING DATE: March 20, 2012**

**Name:** Steve Glammeyer

**Date Memo/Packet Submitted to City Clerk:** \_\_\_\_\_

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

**Dept:** Utilities      **Description:** Upper White Ranch Grazing Lease      **Phone:** 874-7901

**...ALL QUESTIONS must be answered...**

Discussed with City Manager? <b>Yes / No</b>	Reviewed by City Attorney? <b>Yes / No</b>
Included in Current Year Budget? <b>Yes / No N/A</b>  Budgeted Amount \$ _____ If not budgeted explain:	Program is...  <b>NEW                      ONGOING                      TEMPORARY</b>
Is this a Bid Award? <b>Yes / No</b>  Bidders and Bid Amounts – Attach a Summary of Bids Received	Subject to Annual Renewal? <b>Yes / No</b>  Renewal Date: <u>May 1 each year</u>
What process was used? <b>N/A</b> _____ Informal Bid              _____ RFP _____ Bid                              _____ RFQ _____ Other (explain)	Is this a Grant? <b>Yes / No</b>
Is this to be communicated to the Public? <b>Yes / No</b> _____ Press Release              _____ Newsletter Article _____ Other _____ Channel 10      _____ City website	What is the City's Match? <b>N/A</b>
Purchase Amount: <b>N/A</b>	Is an Ordinance Required? <b>Yes / No</b>  Is Resolution Required? <b>Yes / No</b>  Are there any publishing requirement? <b>Yes / No</b>

**SUMMARY:** Annual lease with Sanburgs and Longs for grazing of cattle as they move from private property to BLM leased property.



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

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## MEMO

To: Mayor and Council  
From: Steve Glammeyer, Utilities Director  
Date: March 5, 2012  
Subject: Renewal of Lease for Upper White Ranch property

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### Recommendation

It is recommended that the Council approve the lease agreement with Mr. Dan and Roy Long and Mr. Rolf Sanburg for the use of the Upper White Ranch property for grazing purposes.

### Background

The attached lease is for the use of the Upper White Ranch property for grazing purposes. We have historically had a lease agreement with the Longs and Sanburgs to use this land for this purpose. The current lease expired on November 31, 2011 and the new lease would start on May 1, 2012. Both parties would like to continue this lease for 2012.

### Cost

There is no cost to the City.

### Action to be Taken if Approved

The City Manager and each of the parties will need to sign the agreement for it to be in effect.

### Suggested Motion

I move the City enter into the lease agreement with Mr. Dan and Roy Long and Mr. Rolf Sanburg for the use of the Upper White Ranch for the purposes of grazing livestock and authorize the City Manager to sign said lease.

## LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the City of Delta, Colorado, a municipal corporation, having a business address of 360 Main Street, Delta, Colorado 81416, (hereinafter referred to as "Lessor") and Dan Long, and Rolf Sanburg, (all of which are U. S. Forest Service point allotment permittees), of 1668 - 2020 Lane, Eckert, Colorado 81418 (hereinafter referred to as "Lessee").

The Parties agree as follows:

1. Premises. On this date, Lessor has leased unto Lessee the real property described on Exhibit A attached hereto and incorporated herein by this reference.

2. Term of Lease. The term of this lease shall commence on May 1, 2012, and end on November 31, 2012.

3. Rent Payable. Rent for the lease shall be paid by Lessee to Lessor in the amount of Seven Hundred Fifty Dollars (\$750.00) on or before May 1, 2012.

4. Lessee Duties in Occupying Premises.

A. The Lessee further agrees that he will perform and carry out the stipulations below:

(1) To use the premises only as a livestock pasture and no other purpose.

(2) To maintain the forest boundary fence.

(3) To prevent all unnecessary waste, or loss, or damage to the property of the Lessor.

(4) Lessee shall not remove or allow the removal of any fences, trees, shrubs or other improvements.

(5) To comply with provisions of all applicable state, local and federal laws regarding the leased premises.

(6) To avoid overgrazing and to use the premises in a good and farmlike manner consistent with BLM requirements.

B. The Lessee further agrees, unless he shall first have obtained the written consent of the Lessor, not to erect or permit to be erected any fence, structure or building or to incur any expense to the Lessor for such purposes.

C. Any alteration, addition or improvement made by Lessee after such consent shall be given, and any fixtures installed as part thereof shall, at Lessor's option, become the property of the Lessor upon the expiration or other sooner termination of this lease; provided, however, that Lessor shall have the right to require Lessee to remove such fixtures at Lessee's cost on termination of this lease.

5. Termination. At the expiration of the lease term, or upon earlier termination of this lease as hereinafter provided, Lessee shall surrender the leased premises in the condition in which the same existed at the beginning of the lease term, reasonable use, wear, and damage by the elements excepted.

6. Lessee Default. If the leased property shall be deserted or vacated, or if proceedings are commenced against Lessee in any Court under a bankruptcy act, or a Court appoints a trustee or receiver of Lessee's property either before or after the commencement of the lease term, or if there shall be a default in the payment of rent or any part thereof for more than five (5) days after written notice of such default by Lessor, or if there shall be a default in the performance of any other covenant, agreement, condition, rule or regulation herein contained or hereafter established on the part of Lessee for more than twenty (20) days after written notice of such default by Lessor, this lease may be declared null and void and Lessor shall have the right to reenter or repossess the leased property, either by force, summary proceeding, surrender or otherwise, and dispossess and remove therefrom the Lessee or other occupants thereof, and their effects, without liability. In such case Lessor may, at its option, re-let the leased property, or any part thereof, as the agent of lessee, and Lessee shall pay Lessor the difference between the rent hereby reserved and agreed to be paid by Lessee for the portion of the term remaining at the time of reentry or repossession, and the amount, if any, received or to be received under such portion of the term. Lessee hereby expressly waives service of notice of intention to reenter or of instituting legal proceedings to that end. Lessee waives and will waive all right to a trial by jury in any summary proceeding hereafter instituted by Lessor against Lessee in respect to the leased property.

7. Lessor's Right of Entry. Lessor and its representatives may enter the leased property at any reasonable time for the purpose of inspecting the leased property, performing any work which Lessor elects to undertake, exhibiting the leased property for sale, lease, financing, or posting notice of non-responsibility under any mechanic's lien law. Lessor reserves a right of ingress and egress to, from and across said lands.

8. Mineral Rights. Nothing in this lease shall confer upon the Lessee any right to oil, gas or minerals underlying the land. Such oil, gas and mineral rights are hereby reserved by the Lessor together with the full right to enter upon the premises to bore, search, excavate, work, and remove the minerals, to deposit excavated rubbish, to pass over the premises with vehicles, and to lay down and work any railroad track or tracks, tanks, pipelines, power lines, and structures as may be necessary or convenient for the above purpose. The Lessor agrees to release the Lessee from obligation to continue farming this property when development of mineral resources interferes materially with the Lessee's opportunity to use the premises.

9. Lessor's Additional Reserved Rights. Lessor expressly reserves the following additional rights with respect to the leased premises:

A. To sell all of the same to third parties of its choosing subject to the lease terms and conditions. Prior to such sale, Lessor may list and show the premises for sale purposes.

B. To develop any portion of the leased premises for such commercial purposes as Lessor may deem necessary. For such commercial purposes, Lessor may construct or modify roads, water lines, reservoirs, utility lines, ditches and irrigation systems. Lessor may conduct or allow such operations in any reasonable manner even if it materially interferes with Lessee's operations.

C. To terminate this lease for any reason prior to expiration of the lease terms; provided, however, that in the event of such premature termination, Lessee shall be permitted a period of thirty (30) days in which to remove his personal property including machinery, trailers, sheep pens and stored feed; and provided further that, in the event such premature termination occurs during the "agricultural season" (March 15-October 15), Lessee shall be entitled to a prorata refund of rent actually paid to Lessor.

D. Lessor shall retain all hunting rights and may allow the public access to the property.

E. Lessor shall have the right to operate, use, modify, improve, and maintain existing ponds, ditches, pipelines, reservoirs, and appurtenances on the property as it deems appropriate.

10. Compensation for Damage to Property. At the end of this lease, the Lessee shall pay to the Lessor a reasonable compensation for any damage to the property for which the Lessee is responsible, after due allowance is made for damage resulting from ordinary wear and depreciation or from causes beyond the Lessee's control.

11. Insurance Provisions. Lessee shall carry any and liability insurance that they deem necessary for the protection of their operations under this lease. Lessee shall indemnify, and hold harmless, Lessor from and against and against all liability for personal injuries and property losses sustained by any person or entity, including Lessee themselves, as approximate result of Lessee's operations under this lease.

12. Subletting. Lessee shall not assign, mortgage or encumber this lease, nor sublet nor permit the leased property, or any part thereof, to be used by another without the prior written consent of Lessor in each instance. If this lease is assigned or the leased property, or any part thereof, is sublet or occupied by anyone other than Lessee, Lessor may, at default by Lessee, collect rent from the assignee, sub-tenant or occupant and apply the net amount collected to the rent herein reserved. No such assignment, subletting, occupancy or collection shall be deemed a

waiver of this covenant or the acceptance of the assignee, sub-tenant or occupant as tenant, or a release of the Lessee from the further performance. An assignment or subletting shall not be construed to relieve Lessee from obtaining the consent in writing of Lessor to any further assignment for subletting.

13. Binding Effect. All terms, covenants and conditions hereof shall be binding and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto, provided that nothing in this paragraph shall be deemed to permit any assignment, subletting, occupancy or use contrary to the provisions of paragraph 13 above.

14. Litigation Expenses and Attorney Fees. In case Lessor shall, without fault on its part, be made party to any litigation commenced by or against Lessee, Lessee shall pay all costs and reasonable attorney fees incurred by or against Lessor or in connection with such litigation and indemnify and save harmless Lessor for all liability incurred. Lessee shall also pay all costs incurred for Lessor's enforcement of any of the covenants, terms and provisions of this lease, and Lessor shall be entitled to reimbursement for those litigation costs and attorney fees.

15. Water Rights. Lessor reserves all water rights connected with said leased property.

16. Lease Renewal. This lease may be renewed only upon mutual written agreement of the parties and no holdover by Lessee shall be deemed to create any holdover rights unless Lessor assents in writing or accepts new rent. Unless otherwise mutually agreed by the parties, any renewal of this lease shall be upon the identical terms and conditions specified herein.

17. Breach of Lease. Breach of this lease agreement by either party shall entitle the non-defaulting party to all consistent legal and equitable remedies afforded by Colorado law including particularly those expressed herein.

18. Taxes. The City is exempt from ad valorem and other taxes. If any taxes are assessed as a result of this lease, they shall be paid by Lessee.

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

LESSOR:  
City of Delta, Colorado

LESSEE:

By: \_\_\_\_\_  
City Manager

\_\_\_\_\_  
Dan Long

ATTEST:

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

\_\_\_\_\_  
Rolf Sanburg

Exhibit A

Upper White Ranch Only

The following described real estate located in Delta, Colorado, to wit:

Range 96, Township 13 South	Section 24	Lots 6 and 7	NE <sup>1</sup> / <sub>4</sub> of the SW <sup>1</sup> / <sub>4</sub> W <sup>1</sup> / <sub>2</sub> of the SW <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub> of the SW <sup>1</sup> / <sub>4</sub>
	Section 25		W <sup>1</sup> / <sub>2</sub> of the NW <sup>1</sup> / <sub>4</sub> NW <sup>1</sup> / <sub>4</sub> of the NE <sup>1</sup> / <sub>4</sub> NE <sup>1</sup> / <sub>4</sub> of the NW <sup>1</sup> / <sub>4</sub>
	Section 26		N <sup>1</sup> / <sub>2</sub> of the NW <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub> of the NW <sup>1</sup> / <sub>4</sub> NE <sup>1</sup> / <sub>4</sub>



# CITY COUNCIL MEETING AGENDA ITEM

**MEETING DATE: March 20, 2012**

**Name:** Steve Glammeyer

**Date Memo/Packet Submitted to City Clerk:** \_\_\_\_\_

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

**Dept:** Utilities      **Description:** Council Bill #6, 2012      **Phone:** 874-7901

**...ALL QUESTIONS must be answered...**

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

**SUMMARY:** Second and final reading of Council Bill #2, 2012.

Suggested Motion: I move to adopt Council Bill #2, 2012 on second and final reading.

Council Bill # 6, 2012

AN ORDINANCE DETERMINING THE NEED FOR PARTICIPATION, AND AUTHORIZING AND DIRECTING SUCH PARTICIPATION BY THE CITY OF DELTA, COLORADO, IN THE OPERATION OF MUNICIPAL ENERGY AGENCY OF NEBRASKA AND TO PRESCRIBE THE TIME WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL MEMBERS OF THE CITY OF DELTA, COLORADO:

Section 1. The City Council hereby finds and declares that, in consideration of the present and future needs of this City for electric power and energy, and the inadequacy and unsuitability of the City's supply of electric power and energy available to meet those needs, and in consideration of the economic and other advantages which will be realized by cooperative action with other municipalities, it would be in the public welfare and in the interest of the customers of the City's electric utility that the City become a participant in the Municipal Energy Agency of Nebraska, an agency which has been formed pursuant to the Municipal Cooperative Financing Act contained in the Nebraska Revised Statutes §18-2401 et seq., as a participating municipality. At the present time, the Agency is comprised of the municipalities of:

Nebraska: Alliance, Ansley, Arnold, Bayard, Beaver City, Benkelman, Blue Hill, Bridgeport, Broken Bow, Burwell, Callaway, Chappell, Crete, Curtis, Fairbury, Falls City, Gering, Grant, Imperial Public Power District, Kimball, Lyman, Mitchell, Morrill, Nebraska City, Oxford, Pender, Pierce, Red Cloud, Shickley, Sidney, Stuart, West Point, Wisner, Wood River;

Colorado: Aspen, Fleming, Fort Morgan, Fountain, Glenwood Springs, Gunnison, Haxtun, Julesburg, Lyons, Yuma;

Iowa: Breda, Indianola Municipal Utilities, Sergeant Bluff, Wall Lake, Waverly Light and Power;

Wyoming: Basin, Torrington

It is anticipated that there may be other municipalities that may become participants pursuant to the provisions of the Municipal Cooperative Financing Act.

The general description of the business in which the Agency engages, and the location and method of operation of the proposed plants and systems of the Agency are:

To generate and supply electrical energy and engage in the ownership and operation of power projects as defined in the Municipal Cooperative Financing Act, within and without the State of Nebraska, and exercise all other powers granted by law relating to the above activities. The principal place of business shall be Lincoln, Nebraska.

Section 2. It is hereby ordered and directed that the City of Delta, Colorado, acting through its Mayor and City Clerk, become a participating municipality in Municipal Energy Agency of Nebraska, an organization which has been created pursuant to the Municipal Cooperative Financing Act contained in the Nebraska Revised Statutes §18-2401 et seq. and do all things necessary to become a participant in such Agency. This would include the submission of an application to the Municipal Energy Agency of Nebraska expressing this City's desire and need to become a participating municipality and the appointment of a director to the Agency.

Section 3. This Ordinance shall be in full force and take effect after its passage, approval, and publication as provided by law.

Passed and approved on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

(SEAL)

ADOPTED ON SECOND AND FINAL READING, AND ORDERED PUBLISHED,  
THIS \_\_\_\_\_ DAY OF MARCH, 2012.

CITY OF DELTA, COLORADO

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

ATTEST:

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



# CITY COUNCIL MEETING AGENDA ITEM

**MEETING DATE: March 20, 2012**

**Name:** Glen Black      **Date Memo/Packet Submitted to City Clerk:** 3-15-12 (Due no later than Thursday @ 12:00pm)  
**Dept:** Community Development      **Description:** Local Preference Purchasing Policy Council Bill 7, 2012  
**Phone:** ext: 227

**...ALL QUESTIONS must be answered...**

Discussed with City Manager?      YES	Reviewed by City Attorney?      YES
Included in Current Year Budget?      N/A  Budgeted Amount \$ _____ If not budgeted explain:	Program is...  ONGOING
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 _____ X _____ Other (explain) CRP Committee ERC	Is this a Grant?      NO
Is this to be communicated to the Public?      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  Is Resolution Required?      NO  Are there any publishing requirement?      Yes Normal

**SUMMARY:** Council reviewed this item at the work session on January 3, 2012 and requested changes that have been incorporated into the ordinance. The Council passed this Ordinance on first reading, March 6, 2012. This is for **second** reading of Council Bill 7, 2012.

**SAMPLE MOTION:** I move to adopt Council Bill No. 7, 2012 on second and final reading

COUNCIL BILL# \_\_\_\_\_, 2012

ORDINANCE NO. \_\_\_\_\_, 2012

**AN ORDINANCE OF THE CITY OF DELTA, COLORADO ADDING  
CHAPTER 2.75 TO THE DELTA MUNICIPAL CODE FOR THE  
PURPOSE OF AUTHORIZING CERTAIN PREFERENCES FOR  
LOCAL BUSINESSES BIDDING ON CITY CONTRACTS.**

WHEREAS, the Delta City Council recognizes that individuals and entities who have established businesses in the City limits contribute substantially to the local economy by, among other things, employing local residents and paying local sales taxes; and

WHEREAS, the Council believes that local business owners should be given certain preference over other contractors in contract settings that involve competitive bidding for City of Delta public works, services and material supply projects, provided that the local business owners are otherwise qualified to perform the contract work.

WHEREAS, available statistics indicate that for every \$100.00 spent in locally owned independent stores, as much as \$68.00 returns to the pertinent source community through taxes, payroll and other expenditures, while the same amount spent at national chain outlets typically return as little as \$43.00 to the local community and the same amount spent for on-line purchases returns nothing to the community.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DELTA, COLORADO, AS FOLLOWS:

A new Chapter 2.75 is hereby added to the Delta Municipal Code which provides as follows:

Chapter 2.75

PREFERENCES FOR LOCAL CONTRACTORS BIDDING ON CITY PROJECTS.

Sections:

2.75.010 General Application

2.75.020 Exceptions

2.75.030 Penalties for Providing False Bid Information

2.75.010 General Application.

Except as otherwise provided in this Chapter, whenever competitive bidding is required by law for any contract involving materials, services and/or labor furnished to the City of Delta,

preference shall be given to each qualified local business in the manner more particularly described in this Section.

A. Definition of Qualified Local Business:

A qualified local business means an individual or entity who, at the time of submitting a bid for a contract relating to a City of Delta purchase or work project, (1) currently maintains one or more fixed business offices or taxable distribution points located within Delta County, Colorado, (2) has a pre-established mailing address, other than a mere post office box, also located in Delta County, Colorado and (3) the majority of employees performing the work are residents of Delta County.

B. Award of Specific Contracts:

In the course of evaluating bids or proposals pertaining to any contract for the purchase or lease of supplies, materials, equipment, or other personal property and/or any contract for labor to be performed on a public works project and/or any professional services contract, the City will strive to extend an five percent (5%) preference, but not to exceed Ten Thousand Dollars (\$10,000.00), to each otherwise eligible contract bidder who sufficiently demonstrates ownership of a qualified local business in the related bid proposal documents. It is provided, however, that when applying this provision to specific contract settings, the City will continue to give appropriate consideration and weight to all other relevant information and factors customarily used for comparison of bids in the process of selecting the lowest responsible bidder including, but not limited to the following: (1) the relative quality of any proposed material items and their conformity with pertinent contract specifications, (2) the relative benefit to the City of proposed delivery and discount terms and conditions and proposed terms of warranty and repair for material items, (3) the overall experience, qualification and reputation of the bidder for performance of similar contracts, etc.

2.75.020 Exceptions

The following contracts shall not be eligible for preferences contemplated by Section 2.75.010:

- A. Contracts for which application of the provisions of said Section would be prohibited by State or Federal law or regulations.
- B. Contracts funded in whole or in part by grants, donations or gifts to the City of Delta, the conditions of which prohibit or discourage preferences of the sort allowed by Section 2.75.010.
- C. Contracts for redressing emergency conditions in the City of Delta where any delay in completion or performance of the contract would jeopardize public health, safety or welfare, or where in the judgment of the City Manager, or his or her designee, the operational effectiveness of a significant City of Delta function would be seriously impaired if the contract were not entered into expeditiously without resort to competitive bidding processes.

- D. Contracts in which there is only one bidder for supplies, material, equipment or other property to be furnished to the City.
- E. Any other contract setting in which the City determines the application of a preference would be fundamentally adverse to the City of Delta's interests.

2.75.030 Penalties For Providing False Bid Information

If the City Manager, or his or her designee, determines that a person or entity submitting a bid for a City contract has made an intentional misstatement of fact to obtain a contract preference under this Chapter, the City of Delta may pursue all consistent legal and/or equitable remedies afforded by Colorado law and, in addition, may impose the following penalties:

- A. A finding of such an intentional misstatement by a contract bidder shall furnish a basis for disqualifying all current and future bids on City contracts from that bidder and his or its related business for a period of at least one full year from the date of the finding.
- B. An intentional misstatement made to obtain a price preference under this Chapter shall subject the recipient of any such price preference to a civil penalty of treble the amount of the price preference actually received, or Three Hundred Dollars (\$300.00), whichever is greater. The City may collect such penalty, plus all reasonable attorney fees and costs incurred in the course of collection efforts, through civil proceedings filed in the appropriate Court in Delta County, Colorado.

ADOPTED ON FIRST READING AND ORDERED PUBLISHED

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2012.

\_\_\_\_\_  
Mayor

ATTEST:

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

ADOPTED ON SECOND AND FINAL READING, AND ORDERED PUBLISHED,

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2012.

\_\_\_\_\_  
Mayor

ATTEST:

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



**CITY COUNCIL  
MEETING AGENDA  
ITEM**

MEETING DATE: 20 MAR

Name: HATHWAY Date Memo/Packet Submitted to City Clerk: 3/15  
 (Due no later than Thursday @ 12:00pm)  
 Dept: PW Description: C/M Agreement UPRR Phone: 4-7506

...ALL QUESTIONS must be answered...

Discussed with City Manager? <input checked="" type="radio"/> Yes / <input type="radio"/> No	Reviewed by City Attorney? Yes / <input checked="" type="radio"/> No <i>Reviewed by S Hillyard</i>
Included in Current Year Budget? <input checked="" type="radio"/> Yes / <input type="radio"/> No Budgeted Amount \$ <u>Truck Route Expense</u> 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? <input type="checkbox"/> Informal Bid <input type="checkbox"/> RFP <input type="checkbox"/> Bid <input type="checkbox"/> RFQ <input checked="" type="checkbox"/> Other (explain) <u>Agreement</u>	Is this a Grant? Yes / <input checked="" type="radio"/> No
Is this to be communicated to the Public? 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:	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: See Memo



## MEMO

To: *Mayor and Council*

From: *Jim Hatheway, Public Works Director*

Date: *15 March 12*

Subject: *Construction and Maintenance Agreement UPRR*

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### **RECOMMENDATION**

The Public Works Department is recommending that the City accept the Construction and Maintenance (C&M) Agreement to construct an overpass over the North Fork Subdivision for Confluence Drive.

### **BACKGROUND**

As part of UPRR's agreement to allow the City to construct the Confluence Drive overpass, a C&M agreement must be signed. This is a standard UPRR requirement. The agreement identifies the responsibilities of both parties as it relates to construction of the overpass and maintenance of the facilities within the overpass footprint. UPRR has agreed to pay the City \$150,000 once the realignment portion of the project is complete and accepted. A draft of the document is attached with the last email exchange for the final corrections.

### **COST**

The cost to execute the agreement is \$23,516.00

This project has been budgeted in 80-19.

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

Staff requests that City Council approve the Construction and Maintenance Agreement and authorize City Staff to pay the \$23,516.00 to execute the agreement.

### **SUGGESTED MOTION**

I move the City authorize City Staff to execute the Construction and Maintenance Agreement with UPRR and pay the amount of \$23,516.00 as required in the agreement. (Opposition to the motion is signified by a no vote)



Jim Hatheway &lt;jim@cityofdella.net&gt;

## SH 50 aka Confluence Drive

1 message

**Kelly A. Abaray** <KAABARAY@up.com>

Tue, Feb 7, 2012 at 4:47 PM

To: shillyard@att.net, jim@cityofdella.net

Cc: "Alice M. De Stigter" <AMDESTIG@up.com>, "Sharon F. Russell" <SFRUSSELL@up.com>, "David E. Peterson" <DEPETERS@up.com>

Susan and Jim,

In your future responses, please copy me to help expedite the review. With that being said, UPRR cannot agree to your proposed change in Exhibit B, Section 1 D. Under your language, the City would be able to disapprove of future track projects or any parallel easement we may want to grant. I did incorporate the language for the City to review the plans but will not approve of the City's right to disapprove of any plans.

I added the language you wanted in Exhibit B, Section 1A but it must be approved by Omaha. I am waiting for your final sign-off on changes until I run the language up the flag pole in Omaha.

I addressed Jim's issues with the crossing closures / removal. The City can remove the crossings IF it is done once the City owns the property. Since this maybe after the Closures are approved, the City will still need to barricade the roads. I made the changes in the estimate Exhibit and in the Agreement.

Attached is the revised estimate and the most recent changes. Let me know if you accept the changes as soon as possible. I will then send the proposed language to Omaha for the final approval.

Sincerely,

**Kelly Abaray**  
 Manager Industrial & Public Projects - UPRR  
 Denver, CO  
[kaabaray@up.com](mailto:kaabaray@up.com)  
 Office: [303-405-5039](tel:303-405-5039)

— Forwarded by Kelly A. Abaray/UPC on 02/07/2012 04:39 PM —

From: Alice M. De Stigter/UPC  
 To: "Kelly Abaray" <KAABARAY@UP.COM>  
 Date: 02/02/2012 11:48 AM  
 Subject: Fw: Public Hwy Overpass Crossing Agreement

For our discussion

**From:** Susan Hillyard [[shillyard@att.net](mailto:shillyard@att.net)]  
**Sent:** 02/01/2012 08:29 AM PST  
**To:** Alice De Stigter  
**Cc:** susan hillyard <[shillyard@att.net](mailto:shillyard@att.net)>  
**Subject:** Public Hwy Overpass Crossing Agreement

Hello Alice - Jim Hatheway and I met this morning to review the latest version of the Agreement and all of the exhibits. Jim has a couple questions for Kelly and I have a couple for you and then I think we are ready to get it signed.

My comments are on Exhibit B to the Public Highway Overpass Crossing Agreement - Section 1: A. The City also wants to use the electric lines to serve customers on the north side of the overpass.

Section 1: A. 4th sentence now reads as follows: Any lines constructed on the Railroad's property by or under the authority of the City for the purpose of conveying electric power or communications incidental to the City's use of the property for highway purposes shall be constructed ...

I would like to add a new 4th sentence and revise the old 4th, now to be 5th, sentence as follows: The City may construct electric transmission lines on the crossing structure for the purpose of supplying electric power and/or communications for municipal purposes. Any lines constructed on the Railroad's property by or under the authority of the City for such purposes shall be constructed in accordance with specifications and requirements of the Railroad and City...continue the rest of the sentence as is.

Section 1: D. The City would like to add a third sentence to this section as follows: The City shall receive 30 days prior written notice of such use by the Railroad, or others, with copies of the plans and specifications therefore and shall have the right to approve or disapprove such use or plans within such 30 day period, which consent shall not be unreasonably withheld.

Please give me a call as soon as you have had a chance to review these. Thanks, Susan

Susan B. Hillyard, P.C.  
601 Grand Avenue  
P.O. Box 808  
Delta, CO 81416  
Telephone: (970) 874-6999  
Fax: (970) 874-1599

\*\*

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2 attachments

 2601-46 City of Delta, Co - SH-50 Overpass. 02-07-2012.doc  
262K

 **Summary Est, HWY 50, Delta, CO,02-07-2012.docx**  
14K

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# PUBLIC HIGHWAY OVERPASS CROSSING AGREEMENT

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BETWEEN

UNION PACIFIC RAILROAD COMPANY

AND THE

CITY OF DELTA

COVERING THE

CONSTRUCTION, MAINTENANCE AND USE OF THE PROPOSED OVERPASS  
GRADE SEPARATED PUBLIC ROAD CROSSINGS AT:

- CONFLUENCE DRIVE, MILE POST 51.57, NORTH FORK SUBDIVISION,  
DOT # 440-479H  
IN

DELTA,  
DELTA COUNTY,  
COLORADO

*DRAFT REVIEWED  
BY CITY & SUSAN  
HILYARD CITY COUNSEL  
FOR PUC PROJECTS*

Extra Copy

UPRR Folder No.: 2601-46

UPRR Audit No.: \_\_\_\_\_

## PUBLIC HIGHWAY OVERPASS CROSSING AGREEMENT

Confluence Drive Overpass- DOT No. 440-479H  
Railroad Mile Post 51.57 - North Fork Subdivision  
Delta, Delta County, Colorado

THIS AGREEMENT ("Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ ("Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179 ("Railroad") and the **CITY OF DELTA**, a municipal corporation of the State of Colorado to be addressed at 360 Main Street, Delta, Colorado 81416 ("City").

### RECITALS:

The City desires to undertake as its project (the "Project") the construction of a new grade-separated public road crossing for SH-50 (hereinafter, "Confluence Drive Overpass", (DOT No. 440-479H), at Railroad's Mile Post 51.57 on the Railroad's North Fork Subdivision in Delta, Delta County, Colorado (the "Crossing Area"). The Crossing Area is shown on the Railroad location Print marked Exhibit A and specified in the Detailed Prints collectively marked Exhibit A-1, with each exhibit being attached hereto and hereby made a part hereof. The portion of the roadway located within the Crossing Area is the "Roadway".

Under this Agreement, the Railroad will be granting rights to the City to facilitate the construction of the Roadway. The portion of Railroad's property that City needs to use in connection with the Roadway is described in the Legal Description marked Exhibit A-2 and also shown on the Illustrative Print of the Legal Description marked Exhibit A-3, with each exhibit being attached hereto and hereby made a part hereof (the "Crossing Area").

The Railroad and the City are entering into this Agreement to cover the above.

### AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

#### **Section 1. EXHIBIT B**

The General Terms and Conditions marked Exhibit B, are attached hereto and hereby made a part hereof.

#### **Section 2. RAILROAD GRANTS RIGHT**

For and in consideration of the sum of **TWENTY-THREE THOUSAND FIVE HUNDRED SIXTEEN DOLLARS (\$23,516.00)** to be paid by the City to the Railroad upon the execution and delivery of this Agreement and in further consideration of the City's agreement to perform and comply with the terms of this Agreement, the Railroad hereby grants to the City the right to construct, maintain and repair the Roadway over and across the Crossing Area.

**Section 3. DEFINITION OF CONTRACTOR**

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the City to perform any Project work on any portion of the Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.

**Section 4. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE**

A. Prior to Contractor performing any work within the Crossing Area and any subsequent maintenance and repair work, the City shall require the Contractor to:

- execute the Railroad's then current Contractor's Right of Entry Agreement
- obtain the then current insurance required in the Contractor's Right of Entry Agreement; and
- provide such insurance policies, certificates, binders and/or endorsements to the Railroad.

B. The Railroad's current Contractor's Right of Entry Agreement is marked Exhibit E, attached hereto and hereby made a part hereof. The City confirms that it will inform its Contractor that it is required to execute such form of agreement and obtain the required insurance before commencing any work on any Railroad property. Under no circumstances will the Contractor be allowed on the Railroad's property without first executing the Railroad's Contractor's Right of Entry Agreement and obtaining the insurance set forth therein and also providing to the Railroad the insurance policies, binders, certificates and/or endorsements described therein.

C. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

*Senior Manager - Contracts  
Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street, Mail Stop 1690  
Omaha, NE 68179-1690  
UPRR Folder No. 2601-46*

D. If the City's own employees will be performing any of the Project work, the City may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

**Section 5. FEDERAL AID POLICY GUIDE**

If the City will be receiving any federal funding for the Project, the current rules, regulations and provisions of the Federal Aid Policy Guide as contained in 23 CFR 140, Subpart I and 23 CFR 646, Subparts A and B are incorporated into this Agreement by reference.

**Section 6. NO PROJECT EXPENSES TO BE BORNE BY RAILROAD AND RAILROAD CONTRIBUTION**

- A. The City agrees that no Project costs and expenses are to be borne by the Railroad. Any work performed by the Railroad in support of this project will be billed separately and will be promptly paid by the City. This work will include any engineering plan review, inspections, flagging, or adjustments to Railroad facilities. Additionally, if any property is required from the Railroad for the project or if the Rail property or is found to have been adversely impacted by the project, funds due to the Railroad as a result of the foregoing must be paid out of the project monies to the Railroad.
- B. The Railroad agrees to contribute \$150,000.00 funding for the Project in consideration for the closure of two-private, at-grade crossings identified as DOT 253-417V at MP 372.6 on the Montrose Subdivision and DOT 907-879W opposite MP 373.10 on the Montrose Subdivision, Wye Track, and one-public, at-grade crossing identified as DOT 905-747E, 7<sup>th</sup> Street, opposite MP 373.10 on the Montrose Subdivision, Producer Co-op Track. Payment shall be made upon UPRR's acceptance of the track shift project by Delta, on the Montrose Industrial Lead in Delta, CO. Crossing closure inventory information is attached as Exhibit A-4. The crossing closure Resolution by City to cover the public crossing closure is attached as Exhibit A-5. City will apply to Colorado Public Utilities Commission for formal approval for public crossing closure within 60 days of execution of this Agreement. City will supply all necessary posting for said public closure. The City will remove all crossing surfaces and rail at said crossings once the Property Sale Agreement and all conditions set forth therein are complete, and reimburse Railroad for crossing removal. An estimate crossing removal costs is included in Exhibit C, attached hereto. City will barricade crossings with Type II or Type IV barricades per Manual of Uniform Traffic Control Devices, 2009 Edition. ~~Railroad~~ The City will remove crossing surface materials at each crossing location. The City has the right to relinquish all rights to use of the Private Crossing as well as all rights to future crossings accessing the same area, and will execute such additional documents as are necessary to fully relinquish such rights.

**Section 7. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO CITY; CITY'S PAYMENT OF BILLS**

- A. The work to be performed by the Railroad, at the City's sole cost and expense, is described in the Summary Estimate dated November 14, 2011/February 7, 2012, marked Exhibit C, attached hereto and hereby made a part hereof (the "Estimate"). As set forth in the Estimate, the Railroad's estimated cost for the Railroad's work associated with the Project is \$5270,320.00.
- B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the City in the event the City does not commence construction on the portion of the Project located on the Railroad's property within six (6) months from the date of the Estimate.
- C. The City acknowledges that the Estimate does include an estimate for flagging or other protective service costs that are to be paid by the City or the Contractor in connection with flagging or other protective services provided by the Railroad in connection with the Project. All of such costs incurred by the Railroad are to be paid by the City or the Contractor as determined by the Railroad and the City. If it is determined that the Railroad will be billing the Contractor directly for such costs, the City agrees that it will pay the Railroad for any flagging costs that have not



been paid by any Contractor within thirty (30) days of the Contractor's receipt of billing.

- D. The Railroad shall send progressive billing to the City during the Project and final billing to the City within one hundred eighty (180) days after receiving written notice from the City that all Project work affecting the Railroad's property has been completed.
- E. The City agrees to reimburse the Railroad within thirty (30) days of its receipt of billing from the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, all actual costs of engineering review (including preliminary engineering review costs incurred by Railroad prior to the Effective Date of this Agreement), construction inspection, flagging (unless flagging costs are to be billed directly to the Contractor), procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead labor/construction costs including Railroad's standard additive rates.

**Section 8. PLANS**

- A. The City, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Project and submit such plans and specifications to the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, for prior review and approval. The plans and specifications shall include all Roadway layout specifications, cross sections and elevations, associated drainage, and other appurtenances.
- B. The final one hundred percent (100%) completed plans that are approved in writing by the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.
- C. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing.
- D. The Railroad's review and approval of the Plans will in no way relieve the City or the Contractor from their responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that the Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by the City or Contractor on the Plans is at the risk of the City and Contractor.

**Section 9. NON-RAILROAD IMPROVEMENTS**

- A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocation, replacing, removing and abandoning in place all non-railroad owned facilities (the "Non Railroad Facilities") affected by the Project including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required under Section 8. The Non Railroad Facilities plans and specifications shall comply with Railroad's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines. Railroad has no obligation to supply additional land for any Non Railroad Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted Non Railroad Facilities plans and specifications comply with Railroad's



standard specifications and requirements. Railroad has no obligation to permit any Non Railroad Facilities to be abandoned in place or relocated on Railroad's property.

- B. Upon Railroad's approval of submitted Non Railroad Facilities plans and specifications, Railroad will attempt to incorporate them into new agreements or supplements of existing agreements with Non Railroad Facilities owners or operators. Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for Non Railroad Facilities. Non Railroad Facilities work shall not commence before a supplement or new agreement has been fully executed by Railroad and the Non Railroad Facilities owner or operator, or before Railroad and City mutually agree in writing to (i) deem the approved Non Railroad Facilities plans and specifications to be Plans pursuant to Section 8B, (ii) deem the Non Railroad Facilities part of the Structure, and (iii) supplement this Agreement with terms and conditions covering the Non Railroad Facilities.

#### **Section 10. RAILROAD'S COORDINATION REQUIREMENTS**

The City, at its expense, shall ensure that the Contractor complies with all of the terms and conditions contained in the Railroad's Coordination Requirements that are described in Exhibit D, attached hereto and hereby made a part hereof, and other special guidelines and/or requirements that the Railroad may provide to the City for this Project.

#### **Section 11. EFFECTIVE DATE; TERM; TERMINATION**

- A. This Agreement is effective as of the Effective Date first herein written and shall continue in full force and effect for as long as the Structure remains on the Railroad's property.
- B. The Railroad, if it so elects, may terminate this Agreement effective upon delivery of written notice to the City in the event the City does not commence construction on the portion of the Project located on the Railroad's property within twelve (12) months from the Effective Date.
- C. If the Agreement is terminated as provided above, or for any other reason, the City shall pay to the Railroad all actual costs incurred by the Railroad in connection with the Project up to the date of termination, including, without limitation, all actual costs incurred by the Railroad in connection with reviewing any preliminary or final Project Plans.

#### **Section 12. CONDITIONS TO BE MET BEFORE CITY CAN COMMENCE WORK**

Neither the City nor the Contractor may commence any work within the Crossing Area or on any other Railroad property until:

- (i) The Railroad and the City have executed this Agreement.
- (ii) The Railroad has provided to the City the Railroad's written approval of the Plans.
- (iii) Each Contractor has executed Railroad's Contractor's Right of Entry Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements required under the Contractor's Right of Entry Agreement.
- (iv) Each Contractor has given the advance notice(s) required under the Contractor's Right of Entry Agreement to the Railroad Representative named in the Contractor's Right of Entry Agreement.

**Section 13. FUTURE PROJECTS**

Future projects involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the Structure shall not commence until Railroad and City agree on the plans for such future projects, cost allocations, right of entry terms and conditions and temporary construction rights, terms and conditions.

**Section 14. ASSIGNMENT, SUCCESSORS AND ASSIGNS**

- A. City shall not assign this Agreement without the prior written consent of Railroad.
- B. Subject to the provisions of Paragraph A above, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad and City.

**Section 15. SPECIAL PROVISIONS PERTAINING TO AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

If the City will be receiving American Recovery and Reinvestment Act ("ARRA") funding for the Project, the City agrees that it is responsible in performing and completing all ARRA reporting documents for the Project. The City confirms and acknowledges that Section 1512 of the ARRA provisions applies only to a "recipient" receiving ARRA funding directly from the federal government and, therefore, (i) the ARRA reporting requirements are the responsibility of the City and not of the Railroad, and (ii) the City shall not delegate any ARRA reporting responsibilities to the Railroad. The City also confirms and acknowledges that (i) the Railroad shall provide to the City the Railroad's standard and customary billing for expenses incurred by the Railroad for the Project including the Railroad's standard and customary documentation to support such billing, and (ii) such standard and customary billing and documentation from the Railroad provides the information needed by the City to perform and complete the ARRA reporting documents. The Railroad confirms that the City and the Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for the Project as provided in Exhibit B of this Agreement.



IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date first herein written.

**UNION PACIFIC RAILROAD COMPANY**  
*(Federal Tax ID #94-6001323)*

By: \_\_\_\_\_  
JAMES P. GADE  
Director Contracts

ATTEST:

**CITY OF DELTA**

\_\_\_\_\_ By \_\_\_\_\_  
Title \_\_\_\_\_

(Seal)

Pursuant to Resolution/Order No. \_\_\_\_\_  
dated: \_\_\_\_\_, 20\_\_\_\_  
hereto attached

2601-46 City of Delta, Co - SH-50 Overpass, AMD2ND 112211.doc

Comment [AMD1]:

# EXHIBIT A

To Public Highway Overpass Crossing  
Agreement

Cover Sheet for the  
Railroad Location Print

# EXHIBIT A-1

To Public Highway Overpass Crossing  
Agreement

Cover Sheet for the  
Detailed Prints

# EXHIBIT A-2

To Public Highway Overpass Crossing  
Agreement

Cover Sheet for the  
Legal Description

# EXHIBIT A-3

To Public Highway Overpass Crossing  
Agreement

Cover Sheet for the  
Illustrative Print of Legal Description

# EXHIBIT A-4

To Public Highway Overpass Crossing  
Agreement

Cover Sheet for the  
Crossing Inventory Information Sheets

# EXHIBIT A-5

To Public Highway Overpass Crossing  
Agreement

Cover Sheet for the  
Crossing Closure Resolution

# EXHIBIT B

To Public Highway Overpass Crossing  
Agreement

Cover Sheet for the  
General Terms and Conditions

## EXHIBIT B

### TO PUBLIC HIGHWAY OVERPASS CROSSING AGREEMENT

#### GENERAL TERMS AND CONDITIONS

##### SECTION 1 - CONDITIONS AND COVENANTS

- A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The City shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the City shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the Railroad's property by or under authority of the City for the purpose of conveying electric power or communications incidental to the City's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad and City, and in such manner as not adversely to affect communication or signal lines of the Railroad, the City or their licensees now or hereafter located upon said property. The City may construct electric transmission lines on the crossing structure for the purpose of supplying electric and power and/or communications for municipal purposes. Any line constructed on the Railroad's property by or under the authority of the City for such purposes shall be constructed in accordance with specifications and requirements of the Railroad and City. No nonparty shall be admitted by the City to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.
- B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes.
- C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The City shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's property, unless the City at its own expense settles with and obtains releases from such nonparties.
- D. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property and the right to cross the Crossing Area with all kinds of equipment. The Railroad further reserves the right to attach signal, communication or power lines to the Structure, provided that such attachments shall comply with City's specifications and will not interfere with the City's use of the Crossing Area. The Railroad shall provide the City with 30 days prior written notice of such use by the Railroad, or others, with copies of the plans and specifications therefore.
- E. So far as it lawfully may do so, the City will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Crossing Area, excepting taxes levied upon and against the property as a component part of the Railroad's operating property.
- F. If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Structure and its appurtenances, or for the performance of any work in connection with the Project, the City will acquire all such other property and rights at its own expense and without expense to the Railroad.

##### SECTION 2 - CONSTRUCTION OF STRUCTURE

- A. The City, at its expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Project, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.
- B. Except as may be otherwise specifically provided herein, the City, at its expense, will furnish all necessary labor, material and equipment, and shall construct and complete the Structure and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper drainage facilities, guard rails or barriers, and right of way fences between the Structure and the railroad tracks. Upon completion of the Project, the City shall remove from the Railroad's property all temporary structures and false work, and will leave the Crossing Area in a condition satisfactory to the Railroad.

- C. All construction work of the City upon the Railroad's property (including, but not limited to, construction of the Structure and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President Engineering-Design of the Railroad or his authorized representative and in compliance with the Plans, the Railroad's Coordination Requirements set forth in Exhibit D and other guidelines furnished by the Railroad.
- D. All construction work of the City shall be performed diligently and completed within a reasonable time. No part of the Project shall be suspended, discontinued or unduly delayed without the Railroad's written consent, and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of the City. The City hereby assumes the risk of any such delays and agrees that no claims for damages on account of any delay shall be made against the Railroad by the City and/or the Contractor.

### SECTION 3 - INJURY AND DAMAGE TO PROPERTY

If the City, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the City is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the City at the City's own expense, or by the Railroad at the expense of the City, and to the satisfaction of the Railroad's Assistant Vice President Engineering-Design.

### SECTION 4 - RAILROAD MAY USE CONTRACTORS TO PERFORM WORK

The Railroad may contract for the performance of any of its work by other than railroad forces. The Railroad shall notify the City of the contract price within ninety (90) days after it is awarded. Unless the Railroad's work is to be performed on a fixed price basis, the City shall reimburse the Railroad for the amount of the contract.

### SECTION 5 - MAINTENANCE AND REPAIRS

- A. The City, at its expense, shall maintain, repair and renew, or cause to be maintained, repaired and renewed, the entire Structure, including, but not limited to, the superstructure, substructure, piers, abutments, walls, approaches and all backfill, grading and drainage required by reason of the Structure, as well as all graffiti removal or overpainting involving the Structure.
- B. The Railroad, at its expense, will maintain, repair and renew, or cause to be maintained, repaired and renewed, the rails, ties, ballast and communication and signal facilities owned by the Railroad beneath the Structure as well as any City approved infrastructure attached to the Structure by the Railroad.

### SECTION 6 - SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the City that the work will be performed in a safe manner and in conformity with the following standards:

- A. Definitions. All references in this Agreement to the City shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the City shall include work both within and outside of the Railroad's property.
- B. Entry on to Railroad's Property by City. If the City's employees need to enter Railroad's property in order to perform an inspection of the Structure, minor maintenance or other activities, the City shall first provide at least ten (10) working days advance notice to the Railroad Representative. With respect to such entry on to Railroad's property, the City, to the extent permitted by law, agrees to release, defend and indemnify the Railroad from and against any loss, damage, injury, liability, claim, cost or expense incurred by any person including, without limitation, the City's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of City's employees on Railroad's property, except to the extent that any Loss is caused by the sole direct negligence of Railroad.
- C. Flagging.



- (f) If the City's employees need to enter Railroad's property as provided in Paragraph B above, the City agrees to notify the Railroad Representative at least thirty (30) working days in advance of proposed performance of any work by City in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30) day notice, the Railroad Representative will determine and inform City whether a flagman need be present and whether City needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill City for such expenses incurred by Railroad. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, City agrees that City is not relieved of any of its responsibilities or liabilities set forth in this Agreement.
- (g) The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, City shall pay on the basis of the new rates and charges.
- (h) Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though City may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, City must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman; if five (5) days notice of cessation is not given, City will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.
- D. **Compliance With Laws.** The City shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The City shall use only such methods as are consistent with safety, both as concerns the City, the City's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The City (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the City to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the City shall reimburse and, to the extent it may lawfully do so, indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The City further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.
- E. **No Interference or Delays.** The City shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.
- F. **Supervision.** The City, at its own expense, shall adequately police and supervise all work to be performed by the City, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the City for safe conduct and adequate policing and supervision of the

Project shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the City with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the City will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.

- G. **Suspension of Work.** If at any time the City's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the City is being or is about to be done or prosecuted without due regard and precaution for safety and security, the City shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.
- H. **Removal of Debris.** The City shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the City at the City's own expense or by the Railroad at the expense of the City. The City shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during snow removal from the Crossing Area.
- I. **Explosives.** The City shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.
- J. **Excavation.** The City shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The City shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The City, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the City in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering-Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.
- K. **Drainage.** The City, at the City's own expense, shall provide and maintain suitable facilities for draining the Structure and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The City, at the City's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial), and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the City, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The City shall not obstruct or interfere with existing ditches or drainage facilities.
- L. **Notice.** Before commencing any work, the City shall provide the advance notice that is required under the Contractor's Right of Entry Agreement.
- M. **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. City shall telephone the Railroad during normal business hours (7:00 a.m. to 5:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-338-9199 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the City. If it is, City will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

#### SECTION 7 - INTERIM WARNING DEVICES

If at anytime it is determined by a competent authority, by the City, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the City shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the construction or reconstruction of the Structure has been completed.

#### **SECTION 8 - OTHER RAILROADS**

All protective and indemnifying provisions of this Agreement shall inure to the benefit of the Railroad and any other railroad company lawfully using the Railroad's property or facilities.

#### **SECTION 9 - BOOKS AND RECORDS**

The books, papers, records and accounts of Railroad, so far as they relate to the items of expense for the materials to be provided by Railroad under this Project, or are associated with the work to be performed by Railroad under this Project, shall be open to inspection and audit at Railroad's offices in Omaha, Nebraska, during normal business hours by the agents and authorized representatives of City for a period of three (3) years following the date of Railroad's last billing sent to City.

#### **SECTION 10 - REMEDIES FOR BREACH OR NONUSE**

- A. If the City shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Structure and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the City will reimburse the Railroad for the expenses thereof.
- B. Nonuse by the City of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the City hereunder.
- C. The City will surrender peaceable possession of the Crossing Area and Structure upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

#### **SECTION 11 - MODIFICATION - ENTIRE AGREEMENT**

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the City and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the City shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof constitute the entire understanding between the City and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.

# EXHIBIT C

To Public Highway Overpass Crossing  
Agreement

Summary Estimate

# EXHIBIT D

To Public Highway Overpass Crossing  
Agreement

Railroad's Coordination Requirements

## EXHIBIT D

### TO PUBLIC HIGHWAY OVERPASS CROSSING AGREEMENT

#### RAILROAD COORDINATION REQUIREMENTS

##### 1.01 DEFINITIONS

Agreement:	Agreement that has been signed, or will be signed, between Railroad and Agency covering the construction and maintenance of the Project.
Agency:	City of Delta
AREMA:	American Railway Engineering and Maintenance-of-way Association
Contractor:	The contractor or contractors hired by the Agency to perform any project work on any portion of Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.
MUTCD:	Manual on Uniform Traffic Control Devices
Project:	Construction, maintenance and use of the new SH-50 Overpass grade separated public road crossing
Railroad:	Union Pacific Railroad Company
Railroad Project Representative:	Railroad's Manager of Industry and Public Projects for this Project (see Section 1.03)
Railroad MTM Representative:	Railroad's Manager of Track Maintenance for this Project (see Section 1.03)
Requirements:	The Railroad Coordination Requirements set forth in this Exhibit.

##### 1.02 DESCRIPTION

This Project includes construction work within Railroad's right-of-way. These Requirements describe coordination with the Railroad when work by the Contractor will be performed upon, over or under the Railroad right-of-way or may impact current or future Railroad operations. The Contractor will coordinate with the Railroad while performing the work outlined in this Agreement and shall afford the same cooperation with the Railroad as it does with the Agency. All submittals and work shall be completed in compliance with these Requirements, Railroad guidelines and requirements, AREMA recommendations and/or as directed by the Railroad Local Representative and/or the Railroad MTM Representative.

##### 1.03 UPRR CONTACTS

The Railroad Project Representative for this project is:

*Kelly Abaray  
Manager Industry & Public Projects  
Union Pacific Railroad Company  
1400 West 52<sup>nd</sup> Avenue  
Denver, CO 80221  
Phone: 303-405-5039  
Fax: 303-964-4097*

For Railroad flagging services and track work, contact the following Railroad MTM Representative:

*Paul Crespi  
Manager Track Maintenance  
Union Pacific Railroad Company  
2790 D. Road  
Grand Jct., 81501 phone: (970) 248-4254 email: PACRESPI@up.com*

#### **1.04 PLANS / SPECIFICATIONS**

The plans and specifications for this Project, affecting the Railroad, are subject to the written approval by the Railroad. Changes in the plans made after the execution of the Agreement and/or the awarding of the Project to the Contractor are subject to the prior review and written approval of the Agency and the Railroad. No construction work shall commence until final stamped plans and/or changes to final stamped plans have been reviewed and approved by the Railroad in writing. The Railroad's review and approval of the Agency's and/or Contractor's plans in no way relieves the Agency and Contractor from their responsibilities, obligations and/or liabilities under this Agreement, Agency's agreement with the Contractor for the Project, and/or in the separate Contractor's Right of Entry Agreement referenced in Section 1.06. Railroad's approval will be given with the understanding that the Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of Agency's and/or Contractor's plans and that any reliance by the Agency or the Contractor with respect to such plans is at the risk of the Agency and the Contractor.

#### **1.05 UTILITIES AND FIBER OPTICS**

- A. All installations shall be constructed in accordance with current AREMA recommendations and Railroad specifications and requirements. Railroad general guidelines and the required application forms for utility installations can be found on the Railroad website at <http://www.unr.com/reus/pipeline/install.shtml>.
- B. It shall be the responsibility of the Contractor, at its expense, to make arrangements directly with utility companies involving the protection, encasement, reinforcement, relocation, replacement, removing or abandonment in place of non-railroad facilities affected by the Project. Railroad has no obligation to supply additional Railroad property for non-railroad facilities affected by this Project, nor does the Railroad have any obligation to permit non railroad facilities to be abandoned in place or relocated on Railroad's property. Any facility and/or utility that crosses Railroad right of way must be covered under an agreement with the Railroad including, without limitation, any relocations of an existing facility and/or utility.
- C. Any longitudinal fiber optic lines on Railroad right of way shall be treated as Railroad facilities. Project design may need to be altered to accommodate such facilities.
- D. Any fiber optic relocations or protections that are required due to this Project will be at the Agency's expense.

#### **1.06 GENERAL**

- A. It is essential that the proposed construction shall be performed without interference to Railroad operations and in compliance with all applicable Railroad and Federal Railroad Administration rules and regulations. The Railroad shall be reimbursed by the Contractor or Agency for train delay costs and lost revenue claims due to any delays or interruption of train operations resulting from the Contractor's construction or other activities.
- B. Track protection is required for all work equipment (including rubber tired equipment) operating within 25 feet from nearest rail. All work shall be designed and executed outside the temporary construction clearance envelope defined in Section 1.12.
- C. The Contractor is also advised that new facilities within the Project may be scheduled to be built by the Railroad and that certain Contractor's activities cannot proceed until that work is complete. The Contractor shall be aware of the limits of responsibilities, allow sufficient time in the schedule for that work to be accomplished and shall coordinate its efforts with the Railroad.

#### **1.07 RAILROAD OPERATIONS**

- A. The Contractor shall be advised that trains and/or equipment should be expected on any track, at any time, and in either direction. The Contractor shall communicate with the Railroad MTM Representative to improve the Contractor's understanding of Railroad traffic volume and operation at the Project site. The Contractor's bid shall be structured assuming intermittent track windows as defined in Section 1.07 C.
- B. All Railroad tracks within and adjacent to the Project site are to be assumed as active and rail traffic over these facilities shall be maintained throughout the Project. Activities may include both through moves and switching moves to local customers. Railroad traffic and operations can occur continuously throughout the day and night on these tracks and shall be maintained at all times as defined herein. The Contractor shall coordinate and schedule the work so that construction activities do not interfere with Railroad's operations.

C. Work windows for this Project shall be coordinated with the Agency or Contractor and the Railroad Project Representative and the Railroad MTM Representative. Types of work windows include Conditional Work Windows and Absolute Work Windows, as defined below:

1. **Conditional Work Window:** A period of time in which Railroad's operations have priority over construction activities. When construction activities may occur on and adjacent to the railroad tracks within 25 feet of the nearest track, a Railroad flag person will be required. At the direction of the flag person, upon approach of a train and when trains are present on the tracks, the tracks must be cleared (i.e., no construction equipment, materials or personnel within 25 feet from the nearest active track or as directed by the Railroad MTM Representative). Conditional Work Windows are available for the project subject to Railroad's local operating unit review and approval.
2. **Absolute Work Window:** A period of time in which construction activities are given priority over Railroad's operations. During this time the designated Railroad track(s) will be inactive for train movements and may be fouled by the Contractor. Before the end of an Absolute Work Window, all Railroad tracks and signals must be completely operational for normal train operations. Also, all Railroad, Public Utilities Commission and Federal Railroad Administration requirements, codes and regulations for operational tracks must be complied with. Should the operating tracks and/or signals be affected, the Railroad will perform inspections of the work prior to placing the affected track back into service. Railroad flag persons will be required for construction activities requiring an Absolute Work Window. Absolute Work Windows will generally not be granted. Any request will require a detailed written explanation for Railroad review and approval.

#### **1.08 RIGHT OF ENTRY, ADVANCE NOTICE AND WORK STOPPAGES**

- A. Prior to beginning any work within the Railroad right-of-way, the Contractor shall enter into an agreement with the Railroad in the form of the Contractor's Right of Entry Agreement, attached as Exhibit E, or latest version thereof provided by the Railroad. There is a fee for processing of the agreement which shall be borne by the Contractor. The right of entry agreement shall specify working time frames, flagging, inspection and insurance requirements and any other items specified by the Railroad.
- B. The Contractor shall give advance notice to the Railroad as required in the Contractor's Right of Entry Agreement before commencing work in connection with construction upon or over Railroad's right-of-way and shall observe the Railroad rules and regulations with respect thereto.
- C. All work upon the Railroad right-of-way shall be done at such times and in such a manner as not to interfere with or endanger the operations of the Railroad. Whenever work may affect the operations or safety of trains, the method of doing such work shall first be submitted to the Railroad MTM Representative for approval, but such approval shall not relieve the Contractor from liability. Any work to be performed by the Contractor, which requires flagging service or inspection service, shall be deferred until the flagging/ protection required by the Railroad is available at the job site. See Section 1.21 for railroad flagging requirements.
- D. The Contractor shall make requests in writing to both the Railroad Project Representative and the Railroad MTM Representative for both Absolute and Conditional Work Windows, at least two weeks in advance of any work. The written request must include:
  1. Description of work to be done.
  2. The days and hours that work will be performed.
  3. The exact location of the work and proximity to the tracks.
  4. The type of window and amount of time requested.
  5. The designated contact person for the Contractor.

The Contractor shall provide a written confirmation notice to the Railroad MTM Representative at least fifteen (15) days prior to commencing work in connection with the approved work windows when work will be performed within 25 feet of any track center line. All work shall be performed in accordance with previously approved work plans.

- E. Should a condition arise from, or in connection with, the work which requires immediate and unusual actions to be made to protect operations and property of the Railroad, the Contractor shall undertake such actions. If, in the judgment of the Railroad MTM Representative, such actions are insufficient, the Railroad MTM Representative may require or provide such

actions as deemed necessary. In any event, such actions shall be at the Contractor's expense and without cost to the Railroad. The Railroad or Agency have the right to order the Contractor to temporarily cease operations in the event of an emergency or if, in the opinion of the Railroad NITM Representative, the Contractor's operations may inhibit the Railroads operations. In the event such an order is given, the Contractor shall immediately notify the Agency of the order.

#### **1.09 INSURANCE**

The Contractor shall not begin work within the Railroad's right-of-way until the Railroad has been furnished the insurance policies, binders, certificates and endorsements required by the Contractor's Right-of-Entry Agreement, and the Railroad Project Representative has advised the Agency that such insurance is in accordance with such Agreement. The required insurance shall be kept in full force and effect during the performance of work and thereafter until the Contractor removes all tools, equipment, and material from Railroad property and cleans the premises in a manner reasonably satisfactory to the Railroad.

#### **1.10 RAILROAD SAFETY ORIENTATION**

All personnel employed by the Agency, Contractor and all subcontractors must complete the Railroad's course "Orientation for Contractor's Safety" and be registered prior to working on Railroad property. This orientation is available at [www.contractororientation.com](http://www.contractororientation.com). This course is required to be completed annually. The preceding training does not apply for longitudinal fiber optic installations.

#### **1.11 COOPERATION**

The Railroad shall cooperate with the Contractor in the scheduling of Project work with the understanding that Railroad's train operations at the job site shall have priority over the Contractor's activities.

#### **1.12 CONSTRUCTION CLEARANCES**

The Contractor shall abide by the twenty-one (21) foot temporary vertical construction clearance defined in section 4.4.1.1 and twelve (12) foot temporary horizontal construction clearance defined in section 4.4.1.2 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects. It shall be the Contractor's responsibility to obtain such guidelines from the Agency or Railroad.

Reduced temporary construction clearances, which are less than construction clearances defined above, will require special review and approval by the Railroad.

Any proposed variance on the specified minimum clearances due to the Contractor's operations shall be submitted to the Railroad Project Representative through the Agency at least thirty (30) days in advance of the work. No work shall be undertaken until the variance is approved in writing by the Railroad Project Representative.

#### **1.13 SUBMITTALS**

- A. Construction submittals and Requests for Information (RFI) shall be submitted per Section 3.5 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects.
- B. The minimum review times, as indicated in tables 3-1 and 3-2 of Section 3.5 of the BNSF and UPRR Guidelines for Railroad Grade Separation Projects, should be anticipated for review of all submittals. Guidelines for Railroad Grade Separation Projects, should be anticipated for review of all submittals. The details of the construction affecting the Railroad tracks and property, not already included in the contract plans, shall be submitted by the Agency to the Railroad Project Representative for the Railroad's review and written approval before such construction is undertaken. The Railroad shall not be liable to Agency, Contractor, and or any other person or entity if the Railroad's review exceeds a four-week review time.
- C. As Built Submittals shall be submitted per Section 3.6 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects.

**1.14 MAINTENANCE OF PROPER DRAINAGE AND DAMAGE TO RAILROAD FACILITIES**

- A. The Contractor, at its expense, shall be required to maintain all ditches and drainage structures free of silt or other obstructions which may result from the Contractor's operations and to repair and restore any Railroad property, tracks and facilities of Railroad and/or its tenants.
- B. The Contractor must submit a proposed method of erosion control and have the method reviewed and approved by the Railroad prior to beginning any grading on the project site. Erosion control methods must comply with all applicable local, state and federal regulations.

**1.15 SITE INSPECTIONS BY RAILROAD PROJECT REPRESENTATIVE, RAILROAD MTM REPRESENTATIVE OR RAILROAD'S CONTRACTOR**

- A. In addition to the office reviews of construction submittals, site observations will be performed by the Railroad Project Representative, Railroad MTM Representative or Railroad's Contractor at significant points during construction per Section 4.11 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects.
- B. Site inspections are not limited to the milestone events listed in the guidelines. Site visits to check the progress of work may be performed at any time throughout the construction process as deemed necessary by the Railroad.
- C. A detailed construction schedule, including the proposed temporary horizontal and vertical clearances and construction sequence for all work to be performed, shall be provided by the Contractor to the Agency for submittal to the Railroad's Project Representative for review and approval prior to commencement of work. This schedule shall also include the anticipated dates on which the above listed events will occur. This schedule shall be updated for all critical listed events as necessary but at least monthly so that site visits may be scheduled.

**1.16 RAILROAD REPRESENTATIVES**

- A. Railroad representatives, conductors, flag persons or watch persons will be provided by the Railroad at the expense of the Agency or Contractor (as stated elsewhere in these bid documents) to protect Railroad facilities, property and movements of its trains and engines. In general, the Railroad will furnish such personnel or other protective services as follows:
  - 1. When any part of any equipment or object, such as erection or construction activities, is standing or being operated within 25 feet, measured horizontally from centerline, of any track on which trains may operate.
  - 2. For any excavation below the elevation of track subgrade when, in the opinion of the Railroad MTM Representative, the track or other Railroad facilities may be subject to settlement or movement.
  - 3. During any clearing, grubbing, excavation or grading in proximity to Railroad facilities which, in the opinion of the Railroad MTM Representative, may affect Railroad facilities or inhibit operations.
  - 4. During any Contractor's operations when, in the opinion of the Railroad MTM Representative, the Railroad facilities, including, but not limited to, tracks, buildings, signals, wire lines or pipe lines, may be endangered.
- B. The Contractor shall arrange with the Railroad Local Representative to provide the adequate number of flag persons to accomplish the work.

**1.17 WALKWAYS REQUIRED**

Parallel to the outer side of each exterior track of multiple operated track and on each side of single operated track, an unobstructed continuous space suitable for trainman's use in walking along trains, extending in width not less than twelve feet (12') perpendicular from centerline of track, shall be maintained. Any temporary impediments to walkways and track drainage encroachments or obstructions allowed during working hours must be covered, guarded and/or protected as soon as practical. Walkways with railings shall be constructed by the Contractor over open excavation areas when in close proximity of track, and railings shall not be closer than 9' perpendicular from the center line of tangent track or 9' - 6" horizontal from curved track.



### 1.18 COMMUNICATIONS AND SIGNAL LINES

If required, the Railroad, at Agency's expense, will rearrange its communications and signal lines, grade crossing warning devices, train signals, tracks and facilities that are in use and maintained by Railroad forces in connection with its operation. This work by the Railroad will be done by its own forces or by contractors under a continuing contract and may or may not be a part of the work under this contract.

### 1.19 TRAFFIC CONTROL

The Contractor's operations which control traffic across or around Railroad facilities shall be coordinated with and approved by the Railroad MTM Representative and shall be in compliance with the MUTCD.

### 1.20 CONSTRUCTION EXCAVATIONS-CALL BEFORE YOU DIG NUMBER

- A. The Contractor shall be required to take special precautions and care in connection with excavating and shoring. Excavations for construction of footings, piers, columns, walls or other facilities that require shoring shall comply with requirements of OSHA, AREMA and Railroad "Guidelines for Temporary Shoring".
- B. In addition to calling the "811" number and/or the local "one call center", the Contractor shall call the Railroad's "Call Before Your Dig" number at least 48 hours prior to commencing work at 1-800-335-9199 during normal business hours (8:30 a.m. to 8:00 p.m. Central Standard Time, Monday through Friday, except holidays - also a 24 hour, 7 day a week number for emergency calls) to determine location of fiber optics. If a telecommunications system is buried anywhere on or near Railroad property, the Contractor will co-ordinate with the Railroad and the Telecommunication Company(ies) to arrange for relocation or other protection of the system prior to beginning any work on or near Railroad property. The determination of whether fiber optics will be affected by the Project shall be made during the initial design phase of the Project.
- C. The Railroad does not allow temporary at grade crossings unless absolutely necessary and there is no alternative route available to contractor to access the project site. Alternative plans should be considered to avoid crossing Railroad tracks at grade.

### 1.21 RAILROAD FLAGGING

Performance of any work by the Contractor in which person(s) or equipment will be within twenty-five (25) feet of any track, or that any object or equipment extension (such as, but not limited to, a crane boom) will reach within twenty-five (25) feet of any track, require railroad flagging services or other protective measures. The Contractor shall give an advance notice to the Railroad as required in the Contractor's Right of Entry Agreement before commencing any such work, allowing the Railroad to determine the need for flagging or other protective measures which ensure the safety of Railroad's operations, employees and equipment. Contractor shall comply with all other requirements regarding flagging services covered by the Contractor's Right of Entry Agreement. Any costs associated with failure to abide by these requirements will be borne by the Contractor.

The estimated pay rate for each flag person is \$1,000.00 per day for a(n) 8-hour work day with time and one-half for overtime, Saturdays, Sundays; double time and one-half for holidays. Flagging rates are set by the Railroad and are subject to change due to, but not limited to, travel time, setup plus, per diem and rest time (if work is required at night).

### 1.22 CLEANING OF RIGHT-OF-WAY

The Contractor shall, upon completion of the work to be performed within the right-of-way and/or properties of the Railroad and adjacent to its tracks, wire lines and other facilities, promptly remove from the Railroad right-of-way all Contractor's tools, implements and other materials whether brought upon the right-of-way by the Contractor or any subcontractors employee or agent of Contractor or of any subcontractor, and leave the right-of-way in a clean and presentable condition to the satisfaction of the Railroad.

### 1.23 CONTRACTOR'S RESPONSIBILITY OF SUPERVISION

The Contractor, at its expense, shall adequately supervise all work to be performed by the Contractor. Such responsibility shall not be lessened or otherwise affected by Railroad's approval of plans and specifications, or by the presence at the work site of the Railroad Project Representative, Railroad MTM Representative or any other Railroad representative or Railroad contractor providing inspection services, or by the compliance by the Contractor with any requests or recommendations made by such



representatives. The Contractor will give due consideration to suggestions and recommendations made by such representatives for the safety and protection of the Railroad's property and operations.

**1.24 USE OF EXPLOSIVES AT PROJECT SITE PROHIBITED**

The Contractor's use of explosives at the Project site is expressly prohibited unless authorized in advance in writing by the Railroad Project Representative.

# **EXHIBIT E**

**To Public Highway Overpass Crossing  
Agreement**

**Cover Sheet for the  
Contractor's Right of Entry Agreement**



March 15, 2012 February 7, 2012

UPRR Folder No.: 2601-46

To the Contractor:

Before Union Pacific Railroad Company can permit you to perform work on its property for the construction of the new SH-50 Overpass grade separated public road crossing, it will be necessary for you to complete and execute two originals of the enclosed *Contractor's Right of Entry Agreement*. Please:

1. Fill in the complete legal name of the contractor in the space provided on Page 1 of the Contractor's Right of Entry Agreement. If a corporation, give the state of incorporation. If a partnership, give the names of all partners.
2. Fill in the date construction will begin and be completed in Article 5, Paragraph A.
3. Fill in the name of the contractor in the space provided in the signature block at the end of the Contractor's Right of Entry Agreement. If the contractor is a corporation, the person signing on its behalf must be an elected corporate officer.
4. Execute and return all copies of the Contractor's Right of Entry Agreement together with your Certificate of Insurance as required in Exhibit B, in the attached, self-addressed envelope.
5. Include a check made payable to the Union Pacific Railroad Company in the amount of \$500.00. If you require formal billing, you may consider this letter as a formal bill. In compliance with the Internal Revenue Service's new policy regarding their Form 1099, I certify that 94-6001323 is the Railroad Company's correct Federal Taxpayer Identification Number and that Union Pacific Railroad Company is doing business as a corporation.

Under Exhibit B of the enclosed Contractor's Right of Entry Agreement, you are required to procure Railroad Protective Liability Insurance (RPLI) for the duration of this project. As a service to you, Union Pacific is making this coverage available to you. If you decide that acquiring this coverage from the Railroad is of benefit to you, please contact Mr. Bill Smith of Marsh USA @ 800-729-7001, e-mail: [william.j.smith@marsh.com](mailto:william.j.smith@marsh.com).

This agreement will not be accepted by the Railroad Company until you have returned all of the following to the undersigned at Union Pacific Railroad Company:

1. Executed, unaltered duplicate original counterparts of the Contractor's Right of Entry Agreement;
2. Your check in the amount of \$500.00 to pay the required balance due of the required Contractor's Right of Entry fee. (The Folder Number and the name "Paul G. Farrell" should be written on the check to insure proper credit). If you require formal billing, you may consider this letter as a formal bill;

Real Estate Department  
UNION PACIFIC RAILROAD COMPANY  
1400 Douglas Street, MS 1690  
Omaha, Nebraska 68179-1690  
fax 402.501.0940



3. Copies of all of your up-to-date General Liability, Auto Liability & Workman's Compensation Insurance Certificates (*yours and all contractors*'), naming Union Pacific Railroad Company as additional insured;
4. Copy of your up-to-date Railroad Protective Liability Insurance Certificate (*yours and all contractors*'), naming Union Pacific Railroad Company as additional insured.

**RETURN ALL OF THESE REQUIRED ITEMS TOGETHER IN ONE ENVELOPE.  
DO NOT MAIL ANY ITEM SEPARATELY.**

If you have any questions concerning this agreement, please contact me as noted below. Have a safe day!

Sincerely,

*Paul G. Farrell*

PAUL G. FARRELL  
Senior Manager Contracts  
Phone: (402) 544-8620  
e-mail: [pgfarrell@up.com](mailto:pgfarrell@up.com)

Real Estate Department  
UNION PACIFIC RAILROAD COMPANY  
1400 Douglas Street, MS 1690  
Omaha, Nebraska 68179-1690  
fax: 402.501.0340

UPRR Folder No.: 2601-46

UPRR Addit No. \_\_\_\_\_

## CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

**THIS AGREEMENT** is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and

\_\_\_\_\_  
*(Name of Contractor)*  
a \_\_\_\_\_ corporation ("Contractor"),  
*(State of Incorporation)*

### RECITALS:

Contractor has been hired by the *City of Delta* ("City") to perform work relating to construction of the new SH-50 Overpass grade separated public road crossing (the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of Railroad's Mile Post 51.57 on the Railroad's North Fork Subdivision located at or near Delta, Delta County, Colorado, as such location is in the general location shown on the Railroad Location Print marked Exhibit A, and as specified on the Detailed Prints collectively marked Exhibit A-1, each attached hereto and hereby made a part hereof, which work is the subject of a contract dated

\_\_\_\_\_ between the Railroad and the City.  
*(Date of Contract)*

Railroad is willing to permit Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this Agreement

### AGREEMENT:

**NOW, THEREFORE**, it is mutually agreed by and between Railroad and Contractor, as follows:

#### **ARTICLE 1 - DEFINITION OF CONTRACTOR**

For purposes of this Agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

#### **ARTICLE 2 - RIGHT GRANTED; PURPOSE**

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing

the work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

**ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C AND D.**

The General Terms and Conditions contained in Exhibit B, the Insurance Requirements contained in Exhibit C and the Minimum Safety Requirements contained in Exhibit D, attached hereto, are hereby made a part of this Agreement.

**ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE**

- A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.
- B. Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

*Paul Crispin  
Manager Track Maintenance  
Union Pacific Railroad Company  
50 Depot Street  
Helper, UT 84526  
phone: 801-212-5280  
fax: 801-978-5311*

- C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of Exhibit B. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

**ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS**

The Contractor, at its expense, shall provide on a monthly basis a detailed schedule of work to the Railroad Representative named in Article 4B above. The reports shall start at the execution of this Agreement and continue until this Agreement is terminated as provided in this Agreement or until the Contractor has completed all work on Railroad's property.

**ARTICLE 6 TERM; TERMINATION.**

- A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until \_\_\_\_\_, unless sooner terminated as herein provided, or  
*(Expiration Date)*

at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.

- B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

**ARTICLE 7 CERTIFICATE OF INSURANCE**

- A. Before commencing any work, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in Exhibit C of this Agreement, and (ii) the insurance endorsements obtained by each subcontractor as required under Section 12 of Exhibit B of this Agreement.

- B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

*Union Pacific Railroad Company  
1400 Douglas Street, MS 1690  
Omaha, Nebraska 68179-1690  
Attn: Senior Manager Contracts  
UPRR Folder No. 2601-46*

**ARTICLE 8 DISMISSAL OF CONTRACTOR'S EMPLOYEE**

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

**ARTICLE 9 ADMINISTRATIVE FEE**

Upon the execution and delivery of this Agreement, Contractor shall pay to Railroad FIVE HUNDRED DOLLARS (\$500.00) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

**ARTICLE 10 CROSSINGS**

No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

**ARTICLE 11 EXPLOSIVES**

Explosives or other highly flammable substances shall not be stored on Railroad's property without the prior written approval of Railroad.



**IN WITNESS WHEREOF**, the parties hereto have duly executed this agreement in duplicate  
as of the date first herein written.

**UNION PACIFIC RAILROAD COMPANY**  
*(Federal Tax ID #94-6001323)*

By: \_\_\_\_\_  
PAUL G. FARRELL  
Senior Manager Contracts

\_\_\_\_\_  
*(Name of Contractor)*

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

Title: \_\_\_\_\_

**EXHIBIT B**

**TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

**GENERAL TERMS AND CONDITIONS**

**Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.**

- A. Contractor agrees to notify the Railroad Representative at least thirty (30) working days in advance of Contractor commencing its work and at least thirty (30) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.
- B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

**Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED**

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wire lines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

- B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

**Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.**

- A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroad's tracks except at existing open public crossings.
- B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

**Section 4. LIENS.**

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialman's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

**Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.**

- A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.
- B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

**Section 6. PERMITS - COMPLIANCE WITH LAWS.**

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

**Section 7. SAFETY.**

- A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and



programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in Exhibit D, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of Exhibit D to each of its employees before they enter the job site.

- B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.
- C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

**Section 8. INDEMNITY.**

- A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees (individually an "Indemnified Party" or collectively "Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.
- B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.
- C. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Indemnified Parties under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.
- D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against any Indemnified Party.
- E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

**Section 9. RESTORATION OF PROPERTY.**

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.



**Section 10. WAIVER OF DEFAULT.**

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

**Section 11. MODIFICATION - ENTIRE AGREEMENT.**

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

**Section 12. ASSIGNMENT - SUBCONTRACTING.**

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 28, and CA 20 48 (or substitute forms providing equivalent coverage); (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

## EXHIBIT C

### TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

#### INSURANCE REQUIREMENTS

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

- A. **Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

- B. **Business Automobile Coverage** insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less than \$5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-8D) if required by law.

- C. **Workers' Compensation and Employers' Liability** insurance. Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state where the work is being performed.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

- D. **Railroad Protective Liability** insurance. Contractor must maintain "Railroad Protective Liability" (RPL) insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$8,000,000. The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this Agreement. Contractor shall provide this Agreement to Contractor's insurance agent(s) and/or broker(s) and Contractor shall instruct such agent(s) and/or broker(s) to procure the insurance coverage required by this Agreement. A BINDER OF INSURANCE STATING THE POLICY IS IN PLACE MUST BE SUBMITTED TO RAILROAD BEFORE WORK MAY COMMENCE AND UNTIL THE ORIGINAL POLICY IS FORWARDED TO UNION PACIFIC RAILROAD.

- E. **Umbrella or Excess** insurance. If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

- F. Pollution Liability Insurance. Pollution Liability coverage must be included when the scope of the work as defined in the Agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious to or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

If required, coverage may be provided in a separate policy form or by endorsement to Contractors CGL or RPL. In any form coverage must be equivalent to that provided in ISO form CG 24 15 "Limited Pollution Liability Extension Endorsement" or CG 28 31 "Pollution Exclusion Amendment" with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution (legal) liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

#### OTHER REQUIREMENTS

- G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.
- L. The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

## EXHIBIT D

### TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

#### MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

#### I. Clothing

- A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Contractor's employees must wear:

- (i) Waist-length shirts with sleeves.
- (ii) Trousers that cover the entire leg. If flared-leg trousers are worn, the trouser bottoms must be tied to prevent catching.
- (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.

- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.

- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

#### II. Personal Protective Equipment

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
  - 100 feet of a locomotive or roadway/work equipment
  - 15 feet of power operated tools
  - 150 feet of jet blowers or pile drivers
  - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

#### III. On Track Safety

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized workwear approved by the Railroad Representative.



(a) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

#### N. Equipment

- A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
- Familiar and comply with Railroad's rules on lockout/tagout of equipment.
  - Trained in and comply with the applicable operating rules if operating any hi-rail equipment on-track.
  - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

#### V. General Safety Requirements

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
- (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
  - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
  - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
  - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
  - (v) Before stepping over or crossing tracks, look in both directions first.
  - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

EXHIBIT "C"  
SUMMARY ESTIMATE

UNION PACIFIC RAILROAD COMPANY  
FOR THE  
CITY OF DELTA, COLORADO

DESCRIPTION OF WORK: Inspection, plan review and flagging associated with construction of HWY 50 Truck By-pass, Grade Separation

LOCATION: Delta SERVICE UNIT: 14 STATE: Colorado DATE: February 7, 2012

<u>DESCRIPTION</u>	<u>RAILROAD TOTAL</u>	<u>CITY TOTAL</u>
<u>RAILROAD PLAN REVIEW AND INSPECTION</u> ENGINEERING	\$0	\$10,000
<u>RAILROAD PARTICIPATION</u> PAYMENT TO STATE	\$150,000	
<u>RAILROAD FLAGGING</u> 40 DAYS AT \$1,058 / DAY		\$42,320
<u>TOTAL PROJECT EXPENSE</u>	<u>\$150,000</u>	<u>\$52,320</u>

EXISTING REUSABLE MATERIAL - NONE

SALVAGE NONUSABLE MATERIAL - NONE

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OF AMOUNT OF MATERIAL OR LABOR REQUIRED, THE CITY OF DELTA'S CONTRACTOR WILL BE BILLED FOR ACTUAL CONSTRUCTION COST AT THE CURRENT RATES EFFECTIVE THEREOF.