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 **April 5, 2016**
Regular Meeting **7:00 p.m.**

A. **Pledge of Allegiance**

B. **Changes to the Agenda**

C. **Minutes**

D. **Citizen Comments**

E. **Recognition of Councilmembers Cooper, Jurca and Penick**

F. **Appointment of Planning Commission Members**

G. **Public Hearing: Major Street Plan**

H. **Resolution #3 , 2016; Major Street Plan**

I. **Three Mile Plan**

J. **Upper White Ranch Lease**

K. **Approval of the REDI Grant Contract**

L. **Approval of the Memorandum of Understanding with the Interpretive Association of Western Colorado**

M. **City Attorney Comments**

N. **City Manager Comments**

O. **Councilmember Comments**

amended 4/1/2016 jn

Item A:

Pledge of Allegiance

Item B:

Changes to the Agenda

Mayor Ed Sisson called the meeting to order at 7:00 p.m. Also present were Councilmembers Bill Raley, Robert Jurca, Mary Cooper, and Ray Penick along with City Manager David Torgler. 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

It was moved by Councilmember Penick and seconded by Councilmember Jurca to approve the minutes of the March 1, 2016 regular meeting as submitted by the Clerk. All in favor, motion carried.

Citizen Comments

There were none.

Resolution #2, 2016; Intergovernmental Agreement for Access Control Plan

Resolution #2, 2016

> A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DELTA, COLORADO, APPROVING EXECUTION OF THE INTERGOVERNMENTAL AGREEMENT AMONG THE CITY OF DELTA, COLORADO, THE COUNTY OF DELTA, COLORADO, AND THE STATE OF COLORADO DEPARTMENT OF TRANSPORTATION

was read by the Clerk

Utilities and Public Works Director Steve Glammeyer stated that Michelle Hansen with Stolfus is present tonight to give a presentation tonight regarding the Access Control Plan. The plan will replace the State Highway Access Code which is currently used to guide access to the highways. This will create more flexibility with access to the highways.

Ms. Hansen reported that adopting the access control plan is an intergovernmental agreement between the City of Delta, County of Delta and the State of Colorado Department of Transportation. The plan calls for some added local alternative routes that help with circulation that will need to be adopted into the City's master street plan.

The plan addressed Hwy 50 from Starr Nelson Road to Hwy 91 and Hwy 92 from Hwy 50 to Austin, CO. The focus is on vehicular access. Transportation and land use go together. As part of the agreement, it will have the ability to amend over time.

Resolution #2, 2016; Intergovernmental Agreement for Access Control Plan

Ms. Hansen stated that the advantages for the plan are to partnership with other agencies involved and to look at the corridor as a whole, to look at land use and transportation together. This will be a comprehensive plan to have access points work together. The agreement does not identify any current financial obligations.

Ms. Hansen explained the exhibits and stated that the approval needs to be in writing.

There was discussion regarding the public outreach meetings.

Delta County is considering adoption on Monday, March 21st, 2016. Once approval has been submitted from the City of Delta as well as Delta County the agreement will then be forwarded to CDOT.

Mayor Sisson complimented all involved on the work that has been completed.

Councilmember Penick questioned why south Hwy 50 was not included.

Dan Russin with the State of Colorado stated that it was due to funding at this time; however, it will be looked at in the future.

It was moved by Councilmember Cooper and seconded by Councilmember Raley to adopt Resolution #2, 2016; Intergovernmental Agreement for the Access Control Plan. Roll call vote: Councilmembers Cooper, aye; Raley, aye; Penick, aye; Jurca, aye and Sisson, aye. Motion carried.

Ordinance #3, 2016; Second and Final Reading
Sign Code

Ordinance #3, 2016

AMENDED

AN ORDINANCE OF THE CITY OF DELTA, COLORADO, HEREBY DELETING CHAPTER 17.68 OF THE DELTA MUNICIPAL CODE IN ITS ENTIRETY AND ADOPTING A NEW CHAPTER 17.68 OF THE DELTA MUNICIPAL CODE PERTAINING TO THE REGULATION OF SIGNS ON PROPERTY WITHIN THE CITY LIMITS AND AMENDING CHAPTER 17.04.240.A.6

was read by the Clerk.

Community Development Director Glen Black stated that at the last Council meeting enforcement of the sign code was questioned. Since the last meeting staff has worked with the City Attorney to amend to the ordinance to include a section regarding the enforcement concerns.

Ordinance #3, 2016; Second and Final Reading (cont.)
Sign Code

It was moved by Councilmember Cooper and seconded by Councilmember Raley to adopt Ordinance #3, 2016 on second and final reading as amended. Roll call vote: Councilmembers Cooper, aye; Raley, aye; Penick, aye; Jurca, aye and Sisson, aye. Motion carried.

It was moved by Councilmember Penick and seconded by Councilmember Raley

Approval of Mediator for Stantec Litigation

City Manager David Torgler stated that this is approval for the use of the mediator for the Stantec Litigation.

It was moved by Councilmember Jurca and seconded by Councilmember Raley to approve Gene Commander, Inc. for the Stantec Litigation mediation. All in favor, motion carried.

Special Permit for Temporary Closure; Delta Area Chamber of Commerce

The City Clerk reported that the Delta Area Chamber of Commerce has submitted an application for temporary closure for the following events:

- Downtown Delta Fest; Main Street from 7th Street to 3rd Street on June 9th, August 11th and September 8th
- Deltarado Days Street Dance; 4th Street from Main Street to Meeker Street on July 15th
- Deltarado Days Parade; Main Street from 9th Street to 2nd Street on July 16th
- Parade of Lights; Main Street from 9th Street to 2nd Street on December 3rd

The applications are complete and all fees have been paid.

It was moved by Councilmember Raley and seconded by Councilmember Jurca to approve the Delta Area Chamber of Commerce's applications for temporary closure for the events listed. All in favor, motion carried.

Liquor License Renewals

The Clerk stated that the following liquor license renewals have been submitted:

- Tavern; Hoolie's Place
- Tavern; CB's Tavern
- Hotel/Restaurant; Daveto's Italian Restaurant

The applications are complete, all fees have been paid and the police department is recommending renewal on all.

It was moved by Councilmember Cooper and seconded by Councilmember Penick to approve the liquor license renewals listed. All in favor, motion carried.

Report of Changes on Liquor License; City Market #4

The Clerk stated that City Market #4 has changed management and has submitted their liquor license report of changes. This is just a formality as the State has already approved the changes.

It was moved by Councilmember Penick and seconded by Councilmember Jurca to approve the report of changes for City Market #4. All in favor, motion carried.

City Attorney Comments

There were none.

City Manager Comments

Manager Torgler stated that Wilma Erven is out of the office on personal leave. He had Utilities Director Steve Glammeyer give an update on the storm water project. Community Development Director Glen Black also gave an update on the Planning Commission.

Mr. Torgler advised Council that the auditors for the city are in town if they have any questions for them while they are here.

Councilmember Comments

Councilmember Penick commented on the Access Control Plan and the storm water project.

The meeting was adjourned at 7:40 p.m.

_____

Jolene E. Nelson, CMC, City Clerk

Item D:

Citizen Comments

Item E:

<u>City Counc</u>il Recognition

MEMO

To: City Council
From: Glen L. Black
Date: April 5, 2016
Subject: Planning Commission Applications

Community Development

Recommendation: Council appoint Lynn Williams for a second term and appoint Kay Alexander to fill the vacant position on the Planning Commission

Background: Planning Commission has two positions whose terms are up. Tish Oelke has decided to not apply for a second term. Lynn Williams has applied for a second term and Staff recommends Council appoint Lynn. She has been a valuable member of the Commission. Staff has also received an application from Virginia L. Alexander for the position.

Cost: No cost to the City.

Alignment With Strategic Planning: The City Charter under Article IV.I.49 Planning Commission states: "There shall be a City Planning Commission consisting of seven members appointed by the Council who shall be qualified electors of the City".

Actions To Be Taken if Approved: Staff will notify the applicants of Council decision.

City of DELTA

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

Board, Commission or Committee Application

Please return to: City of Delta, 360 Main Street, Delta, Colorado 81416

Name Mary Lynn Williams Date 3-8-16

Mailing Address P.O. Box 544 Delta, Co 81416

Street Address 717 NuVue Phone Number 216-3031

City Delta State Co Zip Code 81416

Occupation Retired City Clerk

How many years (months) have you lived in the: City of Delta 36 years ? Delta County 55 years ?

Board or Commission Applying for:

Planning Commission ✓

Delta Housing Authority

Other (please list)

How did you hear about this opening?

It was announced at the Feb. Planning Commission Meeting.

Please comment on why you desire to be appointed?

To use my 30+ years of experience as a City employee to benefit the City as a way of giving back to the Community.

Have you ever been on a Board or Commission before? (If yes please describe)

1 term on Planning Commission.

Please explain the purpose of the Board or Commission you are applying for as you understand it.

The duties of the Commission are spelled out in the Charter (Section 53). In general, the Commission's job is to review and recommend to City Council concerning planning, zoning, subdivisions, land use and development matters.

Mary Lynn Williams

Signature of Applicant

Page 2 for Planning Commission Applicants only:

In making appointments to the Planning Commission, the Delta City Council desires information from each applicant relative to the following topics. Please complete this information to the best of your ability.

How do you feel growth in the City of Delta should be handled?

Growth should be directed into appropriate areas through the use of zoning and land use regulations. In addition, a balance needs to be attained between encouragement of growth for the economic well-being of the community, the protection of existing business, industrial, and farming interests, and ensuring that new growth pays its own way.

What are your feelings regarding land use controls?

As I indicated above, land use controls and zoning regulations are important for the orderly growth of our community. They help protect residential areas from "unpleasant" aspects of industrial, agricultural and business uses, and provide areas where those uses can operate and even expand without (hopefully) incurring complaints from their neighbors.

How do you feel about Planning?

Planning is important to a community in that it allows for orderly growth over time. The Comprehensive Plan adopted by the City soon after I was hired in the late 70's envisioned a trail along the bluff and a recreational area at the confluence of the Gunnison and Uncompahgre rivers. I remember that the plan was perceived by some as "pie in the sky" that would never come to fruition. However, the Garnet Mesa Trail and Confluence Park exist today, although not in exactly the same place or in the same form as envisioned by the plan. Whenever I think of the importance of planning, that comes to mind!

Mary Lynn Williams

Signature of Applicant

City of DELTA

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

Board, Commission or Committee Application

Please return to: City of Delta, 360 Main Street, Delta, Colorado 81416

Name Virginia L. Alexander Date 3/9/16

Mailing Address

Street Address 338 Leon St Phone Number (720) 361-5973

City Delta State CO Zip Code 81416

Occupation Ret. / Foster Care / Kinship Care

How many years (months) have you lived in the: City of Delta 9 mos ?
Delta County 9 mos ?

Board or Commission Applying for:
Planning Commission ✓
Delta Housing Authority
Other (please list)

How did you hear about this opening? I inquired about it previously & was called ~~by~~ back regarding openings & applying.

Please comment on why you desire to be appointed?
I want to be an active part of my community

Have you ever been on a Board or Commission before? (If yes please describe)
Edgewater CO Parks & Recs Board 2006-2007 period, also Tree Commission

Please explain the purpose of the Board or Commission you are applying for as you understand it.
Its a governmental board that recomends to city council plans regarding existing boundaries, districts, zoning, how to regulate & enforce them. Its goal is to map out positive direction for city growth, developement, & improvement

Signature of Applicant

Page 2 for Planning Commission Applicants only:

In making appointments to the Planning Commission, the Delta City Council desires information from each applicant relative to the following topics. Please complete this information to the best of your ability.

How do you feel growth in the City of Delta should be handled?

Growth is important to maintaining a stable productive community. Physical expansion, economic growth, are integral parts of a stabile productive community. Being a small community there are many aspects of growth & how it affects everyone in the community that have to be considered. Growth is important & we have to grow to benefit our community, always considering the best ways to do that to benefit us all.

What are your feelings regarding land use controls?

Its a broad issue. How much land to we allow to be built on, used for specific expansions, how do we treat land or enhance it, how do our choice affect our natural resources. I feel we have to not just consider a great idea but look at that idea as a catalyst, analyzing it far reaching affects. Managing & changing our natural environment & built environment structures is imperative in protecting our Land.

How do you feel about Planning?

Planning is cricial to implementing ideals, projects, maintenence of those already in place. We not only need regulation but not to plan & prepare for it in order to prevent issues that would harm or affect already existing

Virginia Alexander

Signature of Applicant

MEMO

To: City Council
From: Glen L. Black
Date: April 5, 2016
Subject: Major Street Plan

Community Development

Recommendation: Council hold a public hearing and adopt the revised Major Street Plan.

Background: City Council, working with CDOT and Delta County, has engaged a consultant to work on an access control plan. The result of that work outlined many future access and possible frontage road systems that staff will need to consider for future development. Planning Commission reviewed the revisions at their regular meeting on March 14, 2016. They have recommended the revised major street plan for City Council adoption.

Cost: No costs.

Alignment With Strategic Planning: The City Charter, Article IV, I Department of Planning, Paragraph 53 Comprehensive Plan states:

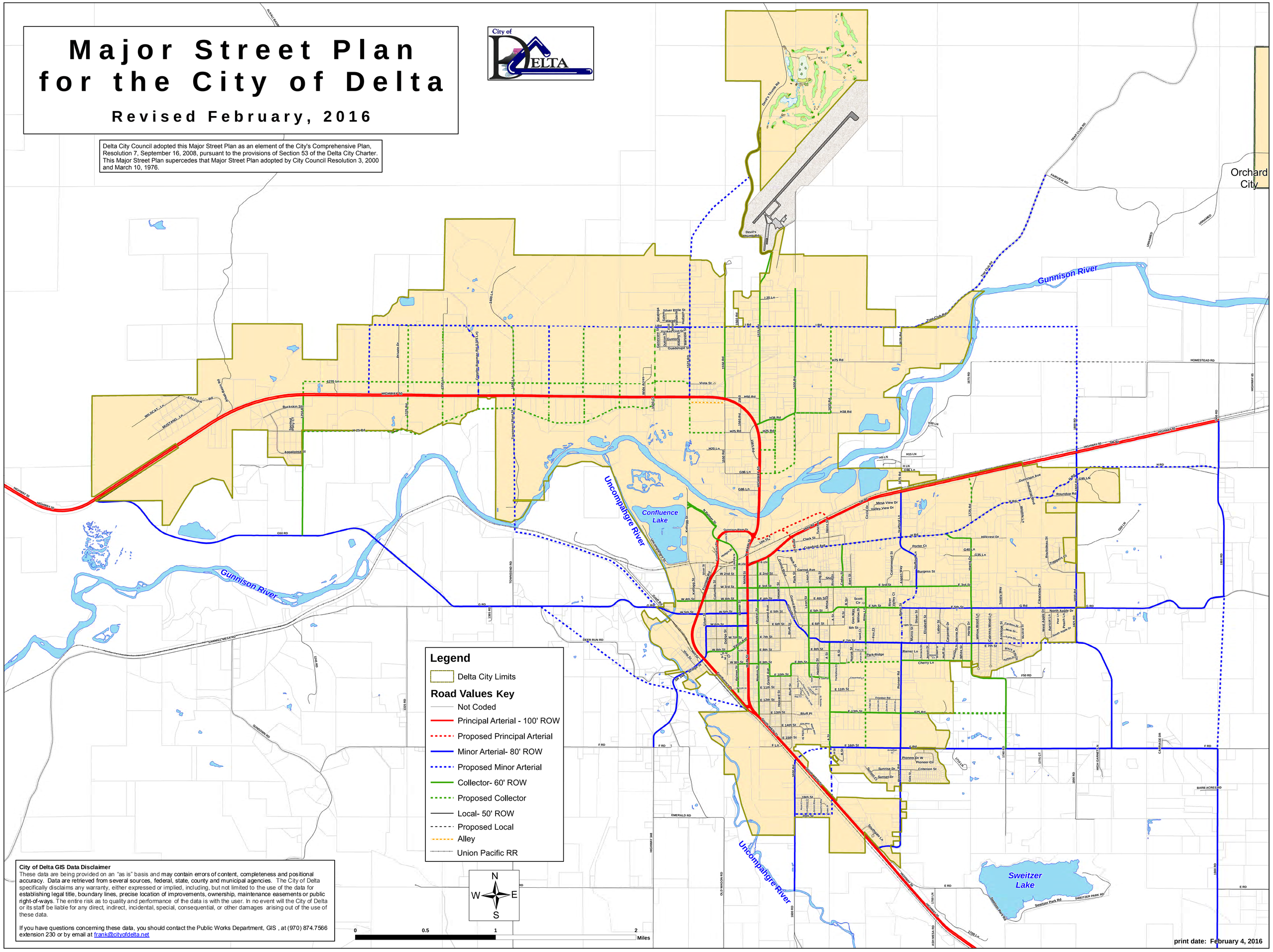
(a) The Commission shall be responsible to recommend to the Council for adoption a Comprehensive Plan, parts thereof, and amendments thereto.
(b) The elements of the plan may be adopted separately and may include but are not limited to the following:
    2. A major street plan
(d) Prior to adoption of the plan or any element thereof, Council shall hold a public hearing with prior published notice thereof.

Actions To Be Taken if Approved: Staff will print copies of the revised Major Street Plan

Major Street Plan for the City of Delta

Revised February, 2016

Delta City Council adopted this Major Street Plan as an element of the City's Comprehensive Plan, Resolution 7, September 16, 2008, pursuant to the provisions of Section 53 of the Delta City Charter. This Major Street Plan supercedes that Major Street Plan adopted by City Council Resolution 3, 2000 and March 10, 1976.



City of Delta GIS Data Disclaimer

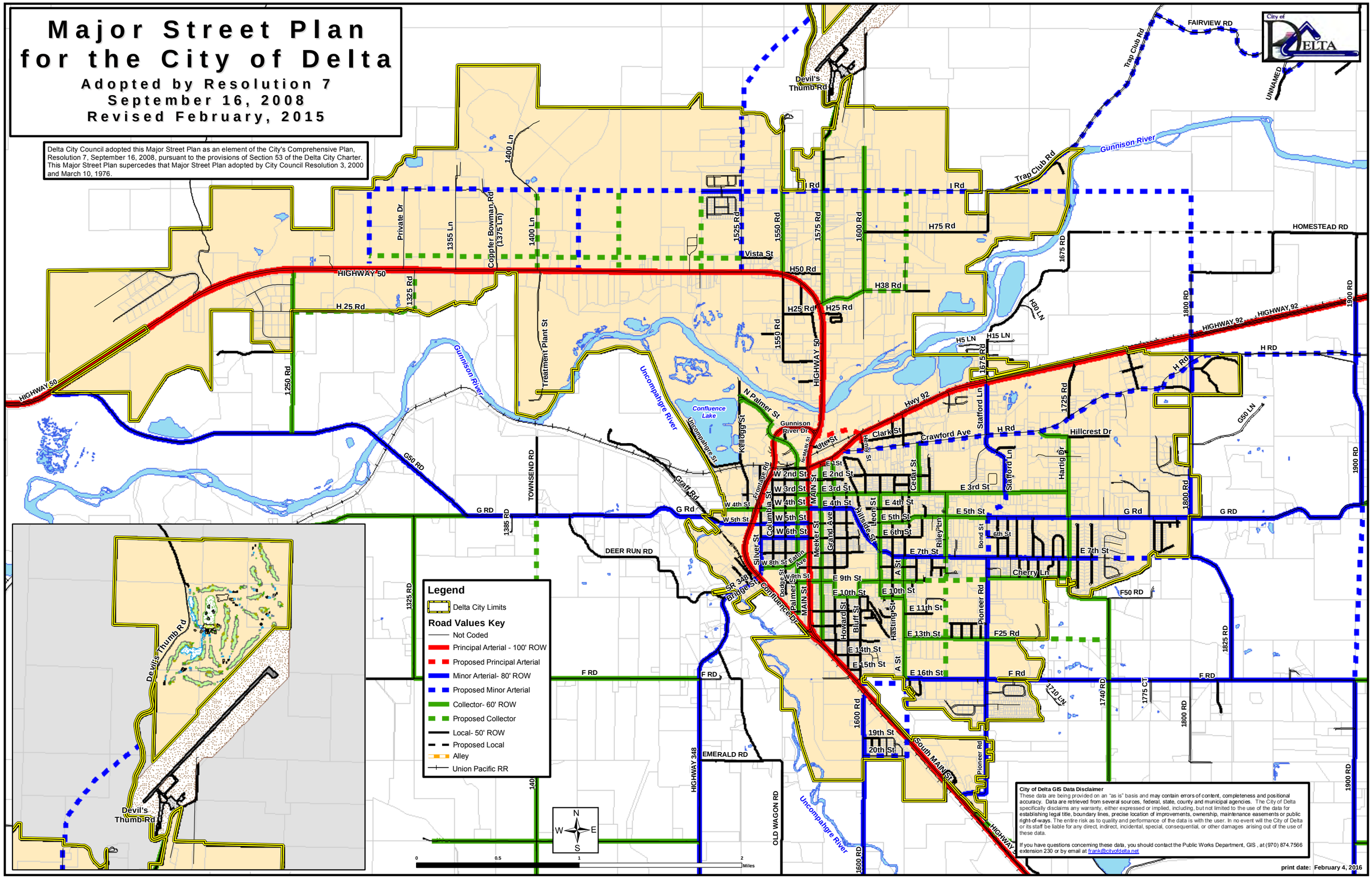
These data are being provided on an "as is" basis and may contain errors of content, completeness and positional accuracy. Data are retrieved from several sources, federal, state, county and municipal agencies. The City of Delta specifically disclaims any warranty, either expressed or implied, including, 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

Major Street Plan for the City of Delta

Adopted by Resolution 7
September 16, 2008
Revised February, 2015

Delta City Council adopted this Major Street Plan as an element of the City's Comprehensive Plan, Resolution 7, September 16, 2008, pursuant to the provisions of Section 53 of the Delta City Charter. This Major Street Plan supercedes that Major Street Plan adopted by City Council Resolution 3, 2000 and March 10, 1976.



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

print date: February 4, 2016

Resolution #3, 2016

A RESOLUTION OF THE CITY OF DELTA, COLOARDO, ADOPTING THE MAJOR STREET PLAN UPDATE 2016

WHEREAS, the Planning Commission has recommended adoption of the Major Street Plan attached hereto, and

WHEREAS, the City Council has held a public hearing with prior published notice on March 15, 2016;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DELTA as follows:

Section 1. The City of Delta, Major Street Plan Update 2016, attached hereto, is hereby adopted.

Section 2. The following elements of the City's of Delta's Major Street Plan are hereby superseded and repealed:

1. All existing Major Street Plans.

ADOPTED this 5th day of April, 2016, by the Delta City Council.

_____
Mayor

ATTEST:

_____
City Clerk

MEMO

To: City Council
From: Glen L. Black
Date: April 5, 2016
Subject: Three Mile Plan

Community Development

Recommendation: Council would approve the Three Mile Plan to define the City's planning area. Approval of the plan allows the City to annex areas in and around the current City boundaries in conformity with State Statutes.

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 14, 2015 meeting and has recommended approval. The boundary has not changed from last year.

Cost: No costs.

Alignment With Strategic Planning: Chapter 3 Page 3-1 discusses the Surrounding Plan Area with a map on Page 3-2.

Actions To Be Taken if Approved: Staff will keep copies of approved plan on file.

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 within their respective service areas.

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

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 TDS as per their certified service areas.

f. Natural Gas: Black Hills 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 Spectrum CATV permit.

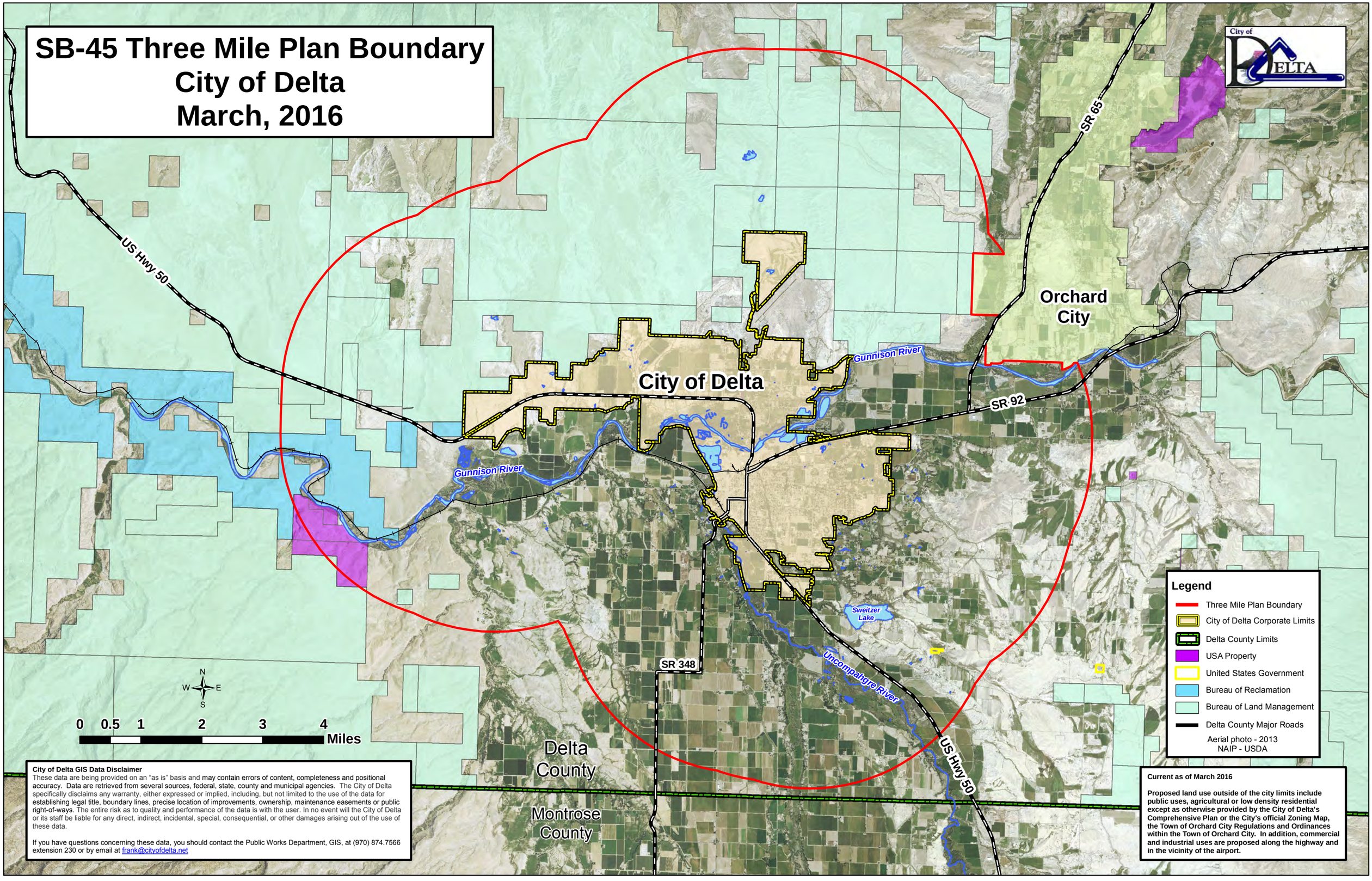
The proposed land uses of the area consist of public land, agricultural uses, and low-density residential uses, except to the extent specifically provided otherwise by the City's Zoning Map, Comprehensive Plan, and Future Land Use Plan map.

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.

SB-45 Three Mile Plan Boundary
City of Delta
March, 2016



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

Current as of March 2016

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

To: City Council
From: Steve Glammeyer, Utilities/PW Director
Date: April 5, 2016
Subject: Upper White Ranch grazing lease

Utilities/Public Works Department

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 30, 2015 and the new lease would start on June 1, 2016. Both parties would like to continue this lease for 2016. The lease provided anticipates keeping the lease amount at $750.

Cost:
There is no cost to the City.

Alignment With Strategic Planning:
While we cannot find a clear statement covering City owned property and our strategic plan for it, we feel we should capture some revenue from the ownership of this property and this lease allows us to do that.

Actions 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.

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into this ____ day of _____, 2016, 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 collectively 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. Lessee is accepting the Premises on an "as-is" basis in its current condition and without any representation or warranty from Lessor, including as to suitability for a particular use or purpose.

2. Term of Lease. The term of this lease shall commence on June 1, 2016, and end on November 30, 2016.

3. Rent Payable. Rent for the lease shall be paid by Lessee to Lessor in the lump sum amount of Seven Hundred Fifty Dollars ($750.00) due on or before the commencement of the term, June 1, 2016.

4. Lessee Duties in Occupying Premises.

A. The Lessee further agrees that he will perform and carry out the stipulations below at Lessee's sole cost and expense:

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

(2) To maintain the forest boundary fence.

(3) To prevent all unnecessary waste, or loss, or damage to the Premises and any 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 grazing requirements.

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

C. Any alteration, addition or improvement made by Lessee after any required consent by Lessor is 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. Surrender of Premises. 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 Premises 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 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 Premises, either by force, summary proceeding, surrender or otherwise, and dispossess and remove therefrom the Lessee and other occupants thereof, and their effects, without liability to Lessor. In such case Lessor may, at its option, re-let the Premises, or any part thereof. 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 Premises.

7. Lessor's Right of Entry. Lessor and its representatives may enter the Premises at any reasonable time for the purpose of inspecting, performing any work which Lessor elects to undertake. 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 Premises. 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 this Lease if and when the 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 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 Premises for such purposes as Lessor may deem necessary. For such 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 its personal property including machinery, trailers, sheep pens and stored feed; and provided further that, in the event such premature termination occurs, 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 Premises for hunting purposes.

E. Lessor shall have the right to operate, use, modify, improve, and maintain existing ponds, ditches, pipelines, reservoirs, and appurtenances on the Premises 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 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 all liability insurance that they deem necessary for the protection of their operations under this lease.

12. Indemnity and Waiver. Lessee assumes all risk, waives all claims and covenants not to sue Lessor for loss, theft, damage or destruction of property, and for bodily injury to persons, including death, in, upon or about the Premises from any cause whatsoever other than as a direct result of the negligent act or omission of Lessor, its employees, agents, or contractors. Lessee shall protect, defend, indemnify and hold Lessor (and Lessor's agents and employees) exempt and harmless from and on account of personal injury, loss of life, and all damage to, destruction, theft and loss of property, caused by or resulting from Lessee's use or occupancy of the Premises; and such indemnification shall include protection against all costs, attorney fees, expenses and liabilities incurred due to any claims, the investigation thereof or the defense of any action or proceeding brought thereon, and from and against any judgments, orders, decrees or liens resulting therefrom, and any fines levied by any authority for violation of any law, regulation or ordinance by virtue of Lessee’s use and occupancy of the Premises or underlying land. Lessor (and its agents or employees) shall not be liable to Lessee (and its employees,

agents, contractors, guests, customers, invitees and licensees) for loss, theft, damage or destruction of property or for bodily injury including death.

13. Subletting. Lessee shall not assign, mortgage or encumber this lease, nor sublet nor permit the Premises, 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 Premises, or any part thereof, is sublet or occupied by anyone other than Lessee, Lessor may, upon any 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 or subletting.

14. 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 12 above.

15. 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.

16. Water Rights. Lessor reserves all water rights connected with the Premises.

17. Lease Renewal. This lease may be renewed only upon mutual written agreement of the parties and no holdover by Lessee shall be permitted.

18. 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.

19. Taxes. The Lessor 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.

20. TABOR. No provision of this Agreement shall be construed or interpreted: i) to directly or indirectly obligate Lessor to make any payment in any year in excess of amounts appropriated for such year; ii) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of Article X, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or iii) as a donation or grant by Lessor to or in aid of any person, company or corporation under applicable law.

21. Governmental Immunity. The Parties hereto understand and agree that the Lessor is relying on and does not waive or intend to waive by this Agreement or any provision hereof, the monetary limitations and any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 *et seq*. as amended from time to time or otherwise available to the Lessor.

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

LESSOR:	LESSEE:
City of Delta, Colorado	
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
		NE¼ of the SW¼
		W½ of the SW¼
		SE¼ of the SW¼
	Section 25	W½ of the NW¼
		NW¼ of the NE¼
		NE¼ of the NW¼
	Section 26	N½ of the NW¼
		SE¼ of the NW¼
		NE¼

MEMO

To: City Council
From: Glen L. Black
Date: April 5, 2016
Subject: REDI Grant

Community Development

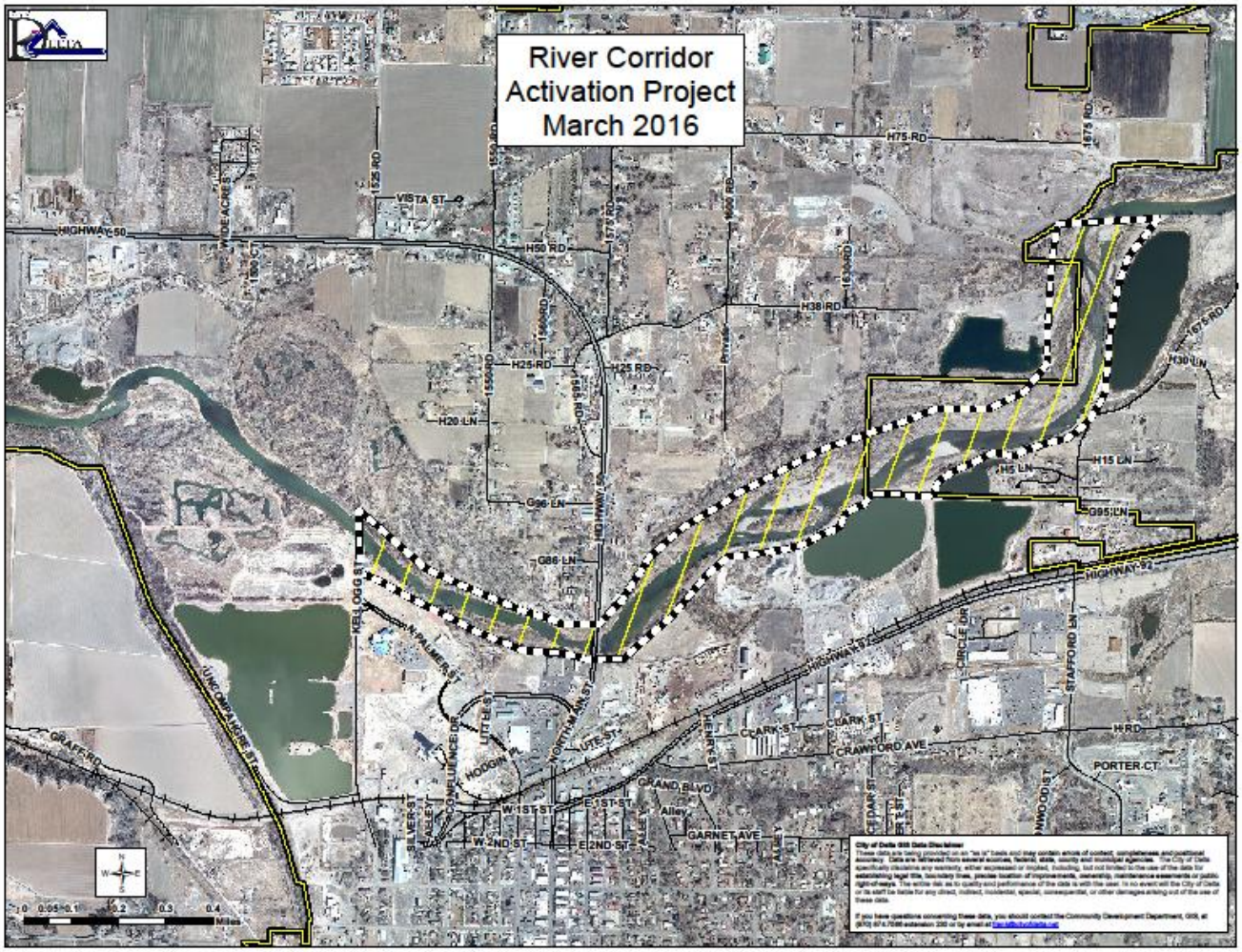
Recommendation: Council authorize the Mayor to execute the documents for the REDI Grant – Delta Gateway Riverfront Planning and Engineering Project.

Background: The City working with Region 10 and DCED has engaged consultants Better City on several economic development studies. One feasibility study is looking at creating a Gateway project for the City including development and improvements of the Gunnison River. The City has applied for and been awarded a REDI Grant for $100,000 to hire an engineering firm to create preliminary engineering plans along a 2 mile stretch of the Gunnison River that will help activate the river corridor as a recreational asset and attract private investment along the riverfront and adjacent acreage. We currently have a Request for Proposals out for qualified firms to create bids.

Cost: The City match will come from in kind work from staff in providing detailed mapping information.

Alignment With Strategic Planning: The City Comprehensive Plan on page 8-8 and 8-12 discusses a connective trail system from Confluence Park to the Cottonwood Park area, which is the area of the project. The trails are also shown on the Master Trail Plan Map on page 8-25.

Actions To Be Taken if Approved: Staff will prepare grant documents for the Mayor's signature.


River Corridor
Activation Project
March 2016
HIGHWAY 50
VISTA ST
H75 RD
H50 RD
H38 RD
H25 RD
H20 LN
H15 LN
H5 LN
G96 LN
G86 LN
G95 LN
HIGHWAY 92
KELLOGG ST
N PALMER ST
UNCOMPAHGRE ST
GRAFF RD
HOOGH PL
LITTLE ST
NORTH MAIN ST
UTE ST
CLARK ST
CRAWFORD AVE
CIRCLE DR
STAFFORD LN
PORTER CT
GRAND BLVD
Alley
GARNET AVE
W 1ST ST
E 1ST ST
W 2ND ST
E 2ND ST
CEDAR ST
NWOOD ST
1.0 0.05 0.1 0.2 0.3 0.4
Miles

COLORADO
Department of Local Affairs
Division of Local Government

March 31, 2016

Ed Sisson, Mayor
City of Delta
360 Main Street
Delta, Colorado 81416

Re: REDI #00086 - Delta Gateway Riverfront Planning and Engineering Project

Dear Mayor Sisson,

Attached you will find your contract for the above referenced Rural Economic Development Initiative project. If the contract is satisfactory as written, please print and execute **three originals** of the contract, signed and dated by an authorized signator (**original signatures**). **Please note that an authorized signator is a County Chief Elected Official, City/Town Mayor, or District Board President. If any other individual should sign this contract, you must provide a letter from the Chief Elected Official documenting the specific individual's delegated authority to sign.**

Please be sure that you return the entire contract and not just the signature page. An attesting signature and seal is not required.

It is very important to remember that no state funds should be obligated before a grant contract is fully executed. Expenditures made prior to the contract being fully executed cannot be reimbursed by the state.

The Department is now requiring that quarterly reports and quarterly pay requests be submitted on all grant projects.

Please send the **three executed** copies of the contract along with the routing memo (below) to:

Department of Local Affairs
ATTENTION: Hannah Cichocki
1313 Sherman Street, Room 521
Denver, CO 80203

If you have any questions, please call Elyse Ackerman at (970) 248-7333 or myself at (303) 864-7731.

Sincerely,

Beth Lipscomb
Internal Services Manager
Department of Local Affairs

Enclosures

cc: Elyse Ackerman, DOLA Regional Manager

GRANT AGREEMENT

Between

STATE OF COLORADO
DEPARTMENT OF LOCAL AFFAIRS

And

CITY OF DELTA

Summary

Award Amount: $100,000.00

Identification #s:

Encumbrance #:	F16RED00086	*(DOLA's primary identification #)*
Contract Management System #:	89129	*(State of Colorado's tracking #)*

Project Information:

Project/Award Number:	REDI #00086
Project Name:	Delta Gateway Riverfront Planning and Engineering Project
Performance Period:	Start Date: _____ End Date: 06/30/16
Brief Description of Project / Assistance:	The Project is the completion of planning work for the riverfront gateway area into downtown Delta.

Program & Funding Information:

Program Name	Rural Economic Development Initiative
Funding source:	State Funds
Catalog of Federal Domestic Assistance (CFDA) Number (if federal funds):	n/a
Funding Account Codes:	REDI 2

TABLE OF CONTENTS

1. PARTIES 2
2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY. 2
3. RECITALS 3
4. DEFINITIONS 3
5. TERM. 4
6. STATEMENT OF PROJECT 5
7. PAYMENTS TO GRANTEE 5
8. REPORTING - NOTIFICATION 6
9. GRANTEE RECORDS 7
10. CONFIDENTIAL INFORMATION-STATE RECORDS 7
11. CONFLICTS OF INTEREST 8
12. REPRESENTATIONS AND WARRANTIES 8
13. INSURANCE 9
14. BREACH 11
15. REMEDIES 12
16. NOTICES and REPRESENTATIVES 14
17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE 14
18. GOVERNMENTAL IMMUNITY 15
19. STATEWIDE CONTRACT MANAGEMENT SYSTEM 15
20. RESTRICTION ON PUBLIC BENEFITS 15
21. GENERAL PROVISIONS 16
22. COLORADO SPECIAL PROVISIONS 19
SIGNATURE PAGE 21
EXHIBIT A – APPLICABLE LAWS
EXHIBIT B – SCOPE OF PROJECT
EXHIBIT C – RESERVED.
EXHIBIT D – RESERVED.
EXHIBIT E – PROJECT PERFORMANCE PLAN
EXHIBIT F – RESERVED.
EXHIBIT G – FORM OF OPTION LETTER
FORM 1 – RESERVED.

1. PARTIES

This Agreement (hereinafter called "Grant") is entered into by and between the **CITY OF DELTA** (hereinafter called "Grantee"), and the STATE OF COLORADO acting by and through the Department of Local Affairs for the benefit of the Division of Local Government (hereinafter called the "State" or "DOLA").

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.

This Grant shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date"). The State shall not be liable to pay or reimburse Grantee for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to *(see checked option(s) below):*

A. ☒ The Effective Date.

B. ☐ The Effective Date; provided, however, that all Project costs, if specifically authorized by the federal funding authority, incurred on or after March 1, 20XX, may be submitted for reimbursement as if incurred after the Effective Date.

C. ☐ insert date for authorized Pre-agreement Costs (as such term is defined in **§4)** , if specifically authorized by the funding authority . Such costs may be submitted for reimbursement as if incurred after the Effective Date.

3. RECITALS

A. Authority, Appropriation, and Approval

Authority to enter into this Grant exists in C.R.S. 24-32-106 and 29-3.5-101 and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Grant.

C. Purpose

The purpose of this Grant is described in **Exhibit B**.

D. References

All references in this Grant to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. Budget

"Budget" means the budget for the Project and/or Work described in **Exhibit B**.

B. Closeout Certification

"Closeout Certification" means the Grantee's certification of completion of Work submitted on a form provided by the State.

C. Evaluation

"Evaluation" means the process of examining Grantee's Work and rating it based on criteria established in **§6** and **Exhibit B.**

D. Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein:

- **i.** Exhibit A (Applicable Laws)
- **ii.** Exhibit B (Scope of Project)
- **iii.** Exhibit E (Project Performance Plan)
- **iv.** Exhibit G (Form of Option Letter)

E. Goods

"Goods" means tangible material acquired, produced, or delivered by Grantee either separately or in conjunction with the Services Grantee renders hereunder.

F. Grant

"Grant" means this agreement, its terms and conditions, attached exhibits, documents incorporated by reference pursuant to the terms of this Grant, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

G. Grant Funds

"Grant Funds" means available funds payable by the State to Grantee pursuant to this Grant.

H. Party or Parties

"Party" means the State or Grantee and "Parties" means both the State and Grantee.

I. Pay Request(s)

"Pay Request(s)" means the Grantee's reimbursement request(s) submitted on form(s) provided by the State.

J. Pre-agreement costs

"Pre-agreement costs," when applicable, means the costs incurred on or after the date as specified in **§2** above, and prior to the Effective Date of this Grant. Such costs shall have been detailed in Grantee's grant application and specifically authorized by the State and incorporated herein pursuant to **Exhibit B**.

K. Project

"Project" means the overall project described in **Exhibit B**, which includes the Work.

L. Project Closeout

"Project Closeout" means the submission by the Grantee to the State of an actual final Pay Request, a final Status Report and a Closeout Certification.

M. Program

"Program" means the grant program specified on the first page of this Grant that provides the funding for this Grant.

N. Review

"Review" means examining Grantee's Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in **§6** and **Exhibit B.**

O. Services

"Services" means the required services to be performed by Grantee pursuant to this Grant.

P. Status Report(s)

"Status Report(s)" means the Grantee's status report(s) on the Work/Project submitted on form(s) provided by the State.

Q. Subcontractor

"Subcontractor" means third-parties, if any, engaged by Grantee to carry out specific vendor related services.

R. Subgrantee

"Subgrantee" means third-parties, if any, engaged by Grantee to aid in performance of its obligations. Subgrantee is bound by the same overall programmatic and grant requirements as Grantee.

S. Subject Property

"Subject Property" means the real property, if any, for which Grant Funds are used to acquire, construct, or rehabilitate.

T. Substantial Progress in the Work

"Substantial Progress in the Work" means Grantee meets all deliverables and performance measures within the time frames specified in **Exhibit E**.

U. Work

"Work" means the tasks and activities Grantee is required to perform to fulfill its obligations under this Grant and **Exhibit B**, including the performance of the Services and delivery of the Goods.

V. Work Product

"Work Product" means the tangible or intangible results of Grantee's Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

5. TERM.

A. Initial Term-Work Commencement

Unless otherwise permitted in **§2** above, the Parties' respective performances under this Grant shall commence on the Effective Date. This Grant shall terminate on **June 30, 2016** unless sooner terminated or further extended as specified elsewhere herein.

B. Two Month Extension

The State, at its sole discretion upon written notice to Grantee as provided in **§16,** may unilaterally extend the term of this Grant for a period not to exceed two months if the Parties are negotiating a replacement Grant (and not merely seeking a term extension) at or near the end of any initial term or any extension thereof. The provisions of this Grant in effect when such notice is given, including, but not limited to prices, rates, and delivery requirements, shall remain in effect during the two month extension. The two-month extension shall immediately terminate when and if a replacement Grant is approved and signed by the Colorado State Controller.

6. STATEMENT OF PROJECT

A. Completion

Grantee shall complete the Work and its other obligations as described herein and in **Exhibit B**. Except as specified in **§2** above, the State shall not be liable to compensate Grantee for any Work performed prior to the Effective Date or after the termination of this Grant.

B. Goods and Services

Grantee shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Grant Funds and shall not increase the maximum amount payable hereunder by the State.

C. Employees

All persons employed by Grantee or Subgrantees shall be considered Grantee's or Subgrantees' employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Grant.

7. PAYMENTS TO GRANTEE

The State shall, in accordance with the provisions of this **§7**, pay Grantee in the following amounts and using the methods set forth below:

A. Maximum Amount

The maximum amount payable under this Grant to Grantee by the State is **$100,000.00 (ONE HUNDRED THOUSAND and XX/100 DOLLARS)**, as determined by the State from available funds. Grantee agrees to provide any additional funds required for the successful completion of the Work. Payments to Grantee are limited to the unpaid obligated balance of the Grant as set forth in **Exhibit B**.

B. Payment

i. Advance, Interim and Final Payments

Any advance payment allowed under this Grant or in **Exhibit B** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Grant or such Exhibit. Grantee shall initiate any payment requests by submitting invoices to the State in the form and manner set forth and approved by the State.

ii. Interest

The State shall not pay interest on Grantee invoices. The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by Grantee previously accepted by the State.

iii. Available Funds-Contingency-Termination

The State is prohibited by law from making fiscal commitments beyond the term of the State's current fiscal year. Therefore, Grantee's compensation is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions, set forth below. If federal funds are used with this Grant in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Grant shall be made only from available funds encumbered for this Grant and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not fully appropriated, or otherwise become unavailable for this Grant, the State may immediately terminate this Grant in whole or in part to the extent of funding reduction without further liability in accordance with the provisions herein.

iv. Erroneous Payments

At the State's sole discretion, payments made to Grantee in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Grantee, may be recovered from Grantee by deduction from subsequent payments under this Grant or other grants or agreements between the State and Grantee or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any person or entity other than the State.

C. Use of Funds

Grant Funds shall be used only for eligible costs identified herein and/or in **Exhibit B**.

i. **Budget Line Item Adjustments.**
Modifications to uses of such Grant Funds shall be made in accordance with **§4.4** of **Exhibit B**. For line item adjustments over 10% but less than 24.99% (a "**Minor Line Item Adjustment**") which are approved, the State shall provide written notice to Grantee in a form substantially equivalent to **Exhibit G** (each an "**Option Letter**"). If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Grant.

ii. **Overall Budget Adjustments.**
Modifications to the overall Budget shall be made in accordance with **§4.5** of **Exhibit B**. For overall Budget adjustments less than 24.99% (a "**Minor Budget Adjustment**") which are approved, the State shall provide written notice to Grantee in an Option Letter. If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Grant.

iii. **Setting Final Initial Budget.**
All requests by the Grantee to align the initial overall Budget with current market conditions shall be made in accordance with **§4.5.1.1** of **Exhibit B**. If such True-up Budget Proposal (as such term is defined in **§4.5.1.1** of **Exhibit B**) is approved, the State shall provide written notice to Grantee in an Option Letter. If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Grant.

D. Matching/Leveraged Funds
Grantee shall provide matching and/or leveraged funds in accordance with **Exhibit B**.

8. REPORTING - NOTIFICATION

Reports, Evaluations, and Reviews required under this **§8** shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with **§19**, if applicable.

A. Performance, Progress, Personnel, and Funds
State shall submit a report to the Grantee upon expiration or sooner termination of this Grant, containing an Evaluation and Review of Grantee's performance and the final status of Grantee's obligations hereunder. In addition, Grantee shall comply with all reporting requirements, if any, set forth in **Exhibit B.**

B. Litigation Reporting
Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Grant or which may affect Grantee's ability to perform its obligations hereunder, Grantee shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of DOLA.

C. Performance Outside the State of Colorado and/or the United States
[Not applicable if Grant Funds include any federal funds] Following the Effective Date, Grantee shall provide written notice to the State, in accordance with **§16 (Notices and Representatives)**, within 20 days of the earlier to occur of Grantee's decision to perform, or its execution of an agreement with a Subgrantee to perform, Services outside the State of Colorado and/or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado and/or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations. All notices received by the State pursuant to this **§8.C** shall be posted on the Colorado Department of Personnel & Administration's website. Knowing failure by Grantee to provide notice to the State under this **§8.C** shall constitute a material breach of this Grant.

D. Noncompliance
Grantee's failure to provide reports and notify the State in a timely manner in accordance with this **§8** may result in the delay of payment of funds and/or termination as provided under this Grant.

E. Subgrants/Subcontracts
Copies of any and all subgrants and subcontracts entered into by Grantee to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subgrants and subcontracts entered into by Grantee related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subgrants be governed by the laws of the State of Colorado.

9. GRANTEE RECORDS

Grantee shall make, keep, maintain and allow inspection and monitoring of the following records:

A. Maintenance

Grantee shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Grantee shall maintain such records (the "Record Retention Period") until the last to occur of the following:

(i) a period of five years after the date this Grant is completed or terminated, or final payment is made hereunder, whichever is later, or
(ii) for such further period as may be necessary to resolve any pending matters, or
(iii) if an audit is occurring, or Grantee has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved.

B. Inspection

Grantee shall permit the State, the federal government (if Grant Funds include federal funds) and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Grantee's records related to this Grant during the Record Retention Period for a period of five years following termination of this Grant or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Grantee's performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Grant, including any extension. If the Work fails to conform to the requirements of this Grant, the State may require Grantee promptly to bring the Work into conformity with Grant requirements, at Grantee's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Grantee to take necessary action to ensure that future performance conforms to Grant requirements and exercise the remedies available under this Grant, at law or in equity in lieu of or in conjunction with such corrective measures.

C. Monitoring

Grantee shall permit the State, the federal government (if Grant Funds include federal funds), and other governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Grantee pursuant to the terms of this Grant using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Grantee's performance hereunder.

D. Final Audit Report

Grantee shall provide a copy of its audit report(s) to DOLA as specified in **Exhibit B.**

10. CONFIDENTIAL INFORMATION-STATE RECORDS

Grantee shall comply with the provisions of this **§10** if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, state records, personnel records, and information concerning individuals.

A. Confidentiality

Grantee shall keep all State records and information confidential at all times and comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of Grantee shall be immediately forwarded to the State's principal representative. Except as otherwise provided in this Grant, Grantee shall keep all tenant, patient and offender information confidential.

B. Notification

Grantee shall notify its agent, employees, Subgrantees, and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by Grantee or its agents in any way, except as authorized by this Grant or approved in writing by the State. Grantee shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Grantee or its agents, except as permitted in this Grant or approved in writing by the State.

D. Disclosure-Liability

Disclosure of State records or other confidential information by Grantee for any reason may be cause for legal action by third parties against Grantee, the State or their respective agents. Grantee shall, to the extent permitted by law, indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Subgrantees, or assignees pursuant to this **§10.**

E. Health Insurance Portability and Accountability Act of 1996 (HIPAA)

DOLA is not a covered entity under HIPAA for purposes of this Grant. If the Grantee is a covered entity under HIPAA, it shall comply with the requirements of HIPAA, and in all instances shall comply with all other federal and state laws protecting the confidentiality of patient information.

11. CONFLICTS OF INTEREST

Grantee shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Grantee's obligations hereunder. Grantee acknowledges that with respect to this Grant, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations to the State hereunder. If a conflict or appearance exists, or if Grantee is uncertain whether a conflict or the appearance of a conflict of interest exists, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Grant.

12. REPRESENTATIONS AND WARRANTIES

Grantee makes the following specific representations and warranties, each of which was relied on by the State in entering into this Grant.

A. Standard and Manner of Performance

Grantee shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in the industry, trades or profession and in the sequence and manner set forth in this Grant.

B. Legal Authority – Grantee and Grantee's Signatory

Grantee warrants that it possesses the legal authority to enter into this Grant and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Grant, or any part thereof, and to bind Grantee to its terms. If requested by the State, Grantee shall provide the State with proof of Grantee's authority to enter into this Grant within 15 days of receiving such request.

C. Licenses, Permits, Etc.

Grantee represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. Grantee warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Grant, without reimbursement by the State or other adjustment in Grant Funds. Additionally, all employees and agents of Grantee performing Services under this Grant shall hold all required licenses or certifications, if any, to perform their responsibilities. Grantee, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation,

withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Grantee to properly perform the terms of this Grant shall be deemed to be a material breach by Grantee and constitute grounds for termination of this Grant.

13. INSURANCE

Grantee and its Subgrantees shall obtain and maintain insurance as specified in this section at all times during the term of this Grant: All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Grantee and the State.

A. Grantee

i. Public Entities

If Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Grantee shall show proof of such insurance satisfactory to the State, if requested by the State. Grantee shall require each subgrant with Subgrantees that are public entities, providing Goods or Services hereunder, to include the insurance requirements necessary to meet Subgrantee's liabilities under the GIA.

ii. Non-Public Entities

If Grantee is not a "public entity" within the meaning of the GIA, Grantee shall obtain and maintain during the term of this Grant insurance coverage and policies meeting the same requirements set forth in **§13(B)** with respect to Subgrantees that are not "public entities".

B. Grantees, Subgrantees and Subcontractors

Grantee shall require each subgrant with Subgrantees and each contract with Subcontractors, other than those that are public entities, providing Goods or Services in connection with this Grant, to include insurance requirements substantially similar to the following:

i. Workers' Compensation

Workers' Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of Grantee, Subgrantee and Subcontractor employees acting within the course and scope of their employment.

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: **(a)** $1,000,000 each occurrence; **(b)** $1,000,000 general aggregate; **(c)** $1,000,000 products and completed operations aggregate; and **(d)** $50,000 any one fire.

iii. Automobile Liability

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of $1,000,000 each accident combined single limit.

iv. Malpractice/Professional Liability Insurance

This section ☒ shall | ☐ shall not apply to this Grant.

Grantee, Subgrantees and Subcontractors shall maintain in full force and effect a Professional Liability Insurance Policy in the minimum amount of $1,000,000 per occurrence and $3,000,000 in the aggregate, written on an occurrence form, that provides coverage for its work undertaken pursuant to this Grant. If a policy written on an occurrence form is not commercially available, the claims-made policy shall remain in effect for the duration of this Grant and for at least two years beyond the completion and acceptance of the work under this Grant, or, alternatively, a two year extended reporting period must be purchased. The Grantee, Subgrantee or Subcontractor shall be responsible for all claims, damages, losses or expenses, including attorney's fees, arising out of or resulting from such party's performance of professional services under this Grant, a subcontract or subgrant.

v. Umbrella Liability Insurance

For construction projects exceeding $10,000,000, Grantee, Subgrantees and Subcontractors shall maintain umbrella/excess liability insurance on an occurrence basis in excess of the underlying insurance described in **§13B(i)-(iv)** above. Coverage shall follow the terms of the underlying

insurance, included the additional insured and waiver of subrogation provisions. The amounts of insurance required in subsections above may be satisfied by the Grantee, Subgrantee and Subcontractor purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the limits specified in each section previously mentioned. The insurance shall have a minimum amount of $5,000,000 per occurrence and $5,000,000 in the aggregate.

vi. Property Insurance

This subsection shall apply if Grant Funds are provided for the acquisition, construction, or rehabilitation of real property.

Insurance on the buildings and other improvements now existing or hereafter erected on the premises and on the fixtures and personal property included in the Subject Property against loss by fire, other hazards covered by the so called "all risk" form of policy and such other perils as State shall from time to time require with respect to properties of the nature and in the geographical area of the Subject Property, and to be in an amount at least equal to the replacement cost value of the Subject Property. Grantor will at its sole cost and expense, from time to time and at any time, at the request of State provide State with evidence satisfactory to State of the replacement cost of the Subject Property**.**

vii.Flood Insurance

If the Subject Property or any part thereof is at any time located in a designated official flood hazard area, flood insurance insuring the buildings and improvements now existing or hereafter erected on the Subject Property and the personal property used in the operation thereof in an amount equal to the lesser of the amount required for property insurance identified in **§vi** above or the maximum limit of coverage made available with respect to such buildings and improvements and personal property under applicable federal laws and the regulations issued thereunder.

viii. Builder's Risk Insurance

The subsection shall apply if Grant Funds are provided for construction or rehabilitation of real property.

Grantee, Subgrantee and/or Subcontractor shall purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial construction/rehabilitation costs, plus value of subsequent modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the property owner has an insurable interest in the property.

a) The insurance shall include interests of the property owner, Grantee, Subgrantee, Subcontractors in the Project as named insureds.

b) All associated deductibles shall be the responsibility of the Grantee, Subcontractor and Subgrantee. Such policy may have a deductible clause but not to exceed $10,000.

c) Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Grantee's, Subgrantee's and Subcontractor's services and expenses required as a result of such insured loss.

d) Builders Risk coverage shall include partial use by Grantee and/or property owner.

e) The amount of such insurance shall be increased to include the cost of any additional work to be done on the Project, or materials or equipment to be incorporated in the Project, under other independent contracts let or to be let. In such event, Subgrantee and Subcontractor shall be reimbursed for this cost as his or her share of the insurance in the same ratio as the ratio of the insurance represented by such independent contracts let or to be let to the total insurance carried.

ix. Pollution Liability Insurance

This subsection shall apply if Grant Funds are provided for the construction or rehabilitation of real property.

If Grantee and/or its Subgrantee or Subcontractor is providing directly or indirectly work with pollution/environmental hazards, they must provide or cause those conducting the work to provide Pollution Liability Insurance coverage. Pollution Liability policy must include contractual liability coverage. The policy limits shall be in the amount of $1,000,000 with maximum deductible of $25,000 to be paid by the Grantee's Subcontractor and/or Subgrantee.

C. Miscellaneous Insurance Provisions

Certificates of Insurance and/or insurance policies required under this Grant shall be subject to the following stipulations and additional requirements:

i. Deductible. Any and all deductibles or self-insured retentions contained in any Insurance policy shall be assumed by and at the sole risk of the Grantee, its Subgrantees or Subcontractors,

ii. In Force. If any of the said policies shall fail at any time to meet the requirements of the Grant as to form or substance, or if a company issuing any such policy shall be or at any time cease to be approved by the Division of Insurance of the State of Colorado, or be or cease to be in compliance with any stricter requirements of the Grant, the Grantee, its Subgrantee and its Subcontractor shall promptly obtain a new policy.

iii. Insurer. All requisite insurance shall be obtained from financially responsible insurance companies, authorized to do business in the State of Colorado and acceptable to Grantee,

iv. Additional Insured

Grantee and the State shall be named as additional insureds on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction Grants require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

v. Primacy of Coverage

Coverage required of Grantee, Subgrantees and Subcontractors shall be primary over any insurance or self-insurance program carried by Grantee or the State.

vi. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Grantee and Grantee shall forward such notice to the State in accordance with **§16** (Notices and Representatives) within seven days of Grantee's receipt of such notice.

vii. Subrogation Waiver

All insurance policies in any way related to this Grant and secured and maintained by Grantee or its Subgrantees and Subcontractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Grantee or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

D. Certificates

Grantee, Subgrantee and Subcontractor shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Grant or of their respective subcontract or subgrant. No later than 15 days prior to the expiration date of any such coverage, Grantee, Subgrantee and Subcontractor shall deliver to the State or Grantee certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Grant, subgrant or subcontract, Grantee, Subgrantee and Subcontractor shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this **§13**.

14. BREACH

A. Defined

In addition to any breaches specified in other sections of this Grant, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of

its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in **§16**. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in **§15**. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Grant in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

15. REMEDIES

If Grantee is in breach under any provision of this Grant or if the State terminates this Grant pursuant to **§15(B)**, the State shall have the remedies listed in this **§15** in addition to all other remedies set forth in other sections of this Grant following the notice and cure period set forth in **§14(B)**, if applicable. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

If Grantee fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Grant and in a timely manner, the State may notify Grantee of such non-performance in accordance with the provisions herein. If Grantee thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Grant or such part of this Grant as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. Grantee shall continue performance of this Grant to the extent not terminated, if any.

i. Obligations and Rights

To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subgrants/subcontracts with third parties. However, Grantee shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Grant’s terms. At the sole discretion of the State, Grantee shall assign to the State all of Grantee's right, title, and interest under such terminated orders or subgrants/subcontracts. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee in which the State has an interest. All materials owned by the State in the possession of Grantee shall be immediately returned to the State.

ii. Payments

The State shall reimburse Grantee only for accepted performance up to the date of termination. If, after termination by the State, it is determined that Grantee was not in breach or that Grantee's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Grant had been terminated in the public interest, as described herein.

iii. Damages and Withholding

Notwithstanding any other remedial action by the State, Grantee also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Grant by Grantee and the State may withhold any payment to Grantee for the purpose of mitigating the State’s damages, until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due to Grantee as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services.

B. Early Termination in the Public Interest

The State is entering into this Grant for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Grant ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Grant in whole or in part.

Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Grant by the State for cause or breach by Grantee, which shall be governed by **§15(A)** or as otherwise specifically provided for herein.

i. **Method and Content**
The State shall notify Grantee of such termination in accordance with **§16**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Grant.

ii. **Obligations and Rights**
Upon receipt of a termination notice, Grantee shall be subject to and comply with the same obligations and rights set forth in **§15(A)(i)**.

iii. **Payments**
If this Grant is terminated by the State pursuant to this **§15(B)**, Grantee shall be paid an amount which bears the same ratio to the total reimbursement under this Grant as the Services satisfactorily performed bear to the total Services covered by this Grant, less payments previously made. Additionally, if this Grant is less than 60% completed, the State may reimburse Grantee for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Grant) incurred by Grantee which are directly attributable to the uncompleted portion of Grantee's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Grantee hereunder.

C. Termination for No Substantial Progress in the Work

The State may elect to terminate this Grant upon receipt and review of any Quarterly Progress Report, submitted per the time periods defined in **Exhibit E** – Project Performance Plan, if such Quarterly Progress Report fails to evidence Substantial Progress in the Work as directed, defined and expected under **Exhibit B**. Further, the State may elect to terminate this Grant if the Grantee fails to complete Project Closeout within **three months** of completion of the Work. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder.

i. **Obligations and Rights**
To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subgrants/subcontracts with third parties. However, Grantee shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Grant's terms. At the sole discretion of the State, Grantee shall assign to the State all of Grantee's right, title, and interest under such terminated orders or subgrants/subcontracts. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee in which the State has an interest. All materials owned by the State in the possession of Grantee shall be immediately returned to the State.

ii. **Payments**
The State shall reimburse Grantee only for accepted performance up to the date of termination.

iii. **Damages and Withholding**
Notwithstanding any other remedial action by the State, Grantee also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Grant by Grantee and the State may withhold any payment to Grantee for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due to Grantee as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services.

D. Remedies Not Involving Termination

The State, at its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. **Suspend Performance**
Suspend Grantee's performance with respect to all or any portion of this Grant pending necessary corrective action as specified by the State without entitling Grantee to an adjustment in price/cost or performance schedule. Grantee shall promptly cease performance and incurring costs in accordance

with the State's directive and the State shall not be liable for costs incurred by Grantee after the suspension of performance under this provision.

ii. Withhold Payment
Withhold payment to Grantee until corrections in Grantee's performance are satisfactorily made and completed.

iii. Deny Payment
Deny payment for those obligations not performed, that due to Grantee's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

iv. Removal
Demand removal of any of Grantee's employees, agents, or Subgrantees whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Grant is deemed to be contrary to the public interest or not in the State's best interest.

v. Intellectual Property
If Grantee infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Grant, Grantee shall, at the State's option **(a)** obtain for the State or Grantee the right to use such products and services; **(b)** replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, **(c)** if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

16. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. State:

Chantal Unfug, Division Director
Division of Local Government
Colorado Department of Local Affairs
1313 Sherman Street, Room 521
Denver, Colorado 80203
Email: chantal.unfug@state.co.us

B. Grantee:

Ed Sisson, Mayor
City of Delta
360 Main Street
Delta, Colorado 81416
Email: n/a

17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

This section ☐ shall | ☒ shall not apply to this Grant.

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Grantee in the performance of its obligations under this Grant shall be the exclusive property of the State and, all Work Product shall be delivered to the State by Grantee upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Grantee shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Grantee's obligations hereunder without the prior written consent of the State.

18. GOVERNMENTAL IMMUNITY

Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the GIA. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the GIA and the risk management statutes, CRS §24-30-1501, et seq., as amended.

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Grantee under this Grant is greater than $100,000 either on the Effective Date or at anytime thereafter, this **§19** applies.

Grantee agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state Grants and inclusion of Grant performance information in a statewide Contract Management System.
Grantee's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Grant, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Grantee's performance shall be part of the normal Grant administration process and Grantee's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Grantee's obligations under this Grant shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Grantee's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Grant term. Grantee shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.
Should the final performance Evaluation and Review determine that Grantee demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Department of Local Affairs, and showing of good cause, may debar Grantee and prohibit Grantee from receiving future grants and bidding on future contracts. Grantee may contest the final Evaluation, Review and Rating by: **(a)** filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or **(b)** under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Grantee, by the Executive Director, upon a showing of good cause.

20. RESTRICTION ON PUBLIC BENEFITS

This section ☐ shall | ☒ shall not apply to this Grant.

Grantee must confirm that any individual natural person is lawfully present in the United States pursuant to CRS §24-76.5-101 et seq. when such individual applies for public benefits provided under this Grant by requiring the applicant to:

- **A.** Produce an identification document in accordance with §2.1.1 through §2.1.3 of Colorado Department of Revenue's Rule #1 CCR 201-17, Rule for Evidence of Lawful Presence, as amended.
- **B.** Execute an affidavit herein attached as **Form 1**, Residency Declaration, stating
  - **i.** That he or she is a United States citizen or legal permanent resident; or
  - **ii.** That he or she is otherwise lawfully present in the United States pursuant to federal law.

[The following applies if Grant is funded with federal funds].
Notwithstanding the foregoing, to the extent that there is any conflict with the provisions above or those set forth in the Residency Declaration attached hereto as **Form 1** and any provision of federal law, the provisions of federal law shall prevail.

21. GENERAL PROVISIONS

A. Assignment and Subgrants

Grantee's rights and obligations hereunder are personal and may not be transferred, assigned or subgranted without the prior, written consent of the State. Any attempt at assignment, transfer, or subgranting without such consent shall be void. All assignments, subgrants, or subcontracts approved by Grantee or the State are subject to all of the provisions hereof. Grantee shall be solely responsible for all aspects of subgranting and subcontracting arrangements and performance.

B. Binding Effect

Except as otherwise provided in **§21(A)**, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

The captions and headings in this Grant are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

D. Counterparts

This Grant may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

E. Entire Understanding

This Grant represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

F. Indemnification-General

Grantee shall, to the extent permitted by law, indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Subgrantees, or assignees pursuant to the terms of this Grant; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the GIA, or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

G. Jurisdiction and Venue

All suits, actions, or proceedings related to this Grant shall be held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

H. List of Selected Applicable Laws

At all times during the performance of this Grant, Grantee shall comply with all applicable Federal and State laws and their implementing regulations, currently in existence and as hereafter amended, including without limitation those set forth on **Exhibit A**, Applicable Laws. Grantee also shall require compliance with such laws and regulations by subgrantees under subgrants permitted by this Grant.

I. Use Covenants

This section ☐ shall | ☒ shall not apply to this Grant:

For Subject Property that is owned by Grantee upon execution of this Grant, Grantee shall record a Use Covenant substantially equivalent to **Exhibit F** with the county in which the property resides as soon as reasonably practicable after execution of this Grant. For Subject Property acquired by Grantee using Grant Funds, Grantee shall record a Use Covenant substantially equivalent to **Exhibit F** with the county in which the property resides as soon as reasonably practicable after acquisition of such property.

J. Modification

i. By the Parties

Except as specifically provided in this Grant, modifications of this Grant shall not be effective unless agreed to in writing by the Parties in an amendment hereto, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATION OF CONTRACTS -

TOOLS AND FORMS. Changes to the Grant shall be authorized to be approved by the following State or DOLA parties:

a) Approval by Division Director
The Division Director of DOLA or his delegee shall have authority to approve changes to the Responsible Administrator and Key Personnel specified in **§5** of **Exhibit B** and the Principal Representative in **§16**.

b) Approval by DOLA Controller
The DOLA Controller shall have authority to approve all changes to the Grant which are not reserved to the Division Director above.

ii. By Operation of Law
This Grant is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Grant on the effective date of such change, as if fully set forth herein.

K. Order of Precedence

The provisions of this Grant shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Grant and its exhibits and attachments including, but not limited to, those provided by Grantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

i. Exhibit A (Applicable Laws)
ii. Colorado Special Provisions
iii. The provisions of the main body of this Grant (excluding the cover page)
iv. Any executed Option Letters
v. Exhibit B (Scope of Project)
vi. Exhibit E (Project Performance Plan)
vii. The cover page of this Grant

L. Severability

Provided this Grant can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

M. Survival of Certain Grant Terms

Notwithstanding anything herein to the contrary, provisions of this Grant requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Grantee fails to perform or comply as required.

N. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Grantee shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing Grantee for them.

O. Third Party Beneficiaries

Enforcement of this Grant and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

P. Waiver

Waiver of any breach of a term, provision, or requirement of this Grant, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Grant and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

22. COLORADO SPECIAL PROVISIONS

A. The Special Provisions apply to all Grants except where noted in *italics*.

i. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).
This Grant shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

ii. FUND AVAILABILITY. CRS §24-30-202(5.5).
Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

iii. GOVERNMENTAL IMMUNITY.
No term or condition of this Grant shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

iv. INDEPENDENT CONTRACTOR
Grantee shall perform its duties hereunder as an independent Grantee and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Grantee or any of its agents or employees. Unemployment insurance benefits shall be available to Grantee and its employees and agents only if such coverage is made available by Grantee or a third party. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Grant. Grantee shall not have authorization, express or implied, to bind the State to any Grant, liability or understanding, except as expressly set forth herein. Grantee shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

v. COMPLIANCE WITH LAW.
Grantee shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

vi. CHOICE OF LAW.
Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this grant. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Grant, to the extent capable of execution.

vii.BINDING ARBITRATION PROHIBITED.
The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Grant or incorporated herein by reference shall be null and void.

viii. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.
State or other public funds payable under this Grant shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Grantee hereby certifies and warrants that, during the term of this Grant and any extensions, Grantee has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Grantee is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Grant, including, without

limitation, immediate termination of this Grant and any remedy consistent with federal copyright laws or applicable licensing restrictions.

ix. EMPLOYEE FINANCIAL INTEREST. CRS §§24-18-201 and 24-50-507.
The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Grant. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee's services and Grantee shall not employ any person having such known interests.

x. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.
[*Not applicable to intergovernmental agreements*] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

xi. PUBLIC GRANTS FOR SERVICES. CRS §8-17.5-101.
[*Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental Agreements, or information technology* services *or products and services*] Grantee certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this Grant and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Grant, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), Grantee shall not knowingly employ or contract with an illegal alien to perform work under this Grant or enter into a grant with a Subgrantee that fails to certify to Grantee that the Subgrantee shall not knowingly employ or contract with an illegal alien to perform work under this Grant. Grantee (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Grant is being performed, (b) shall notify the Subgrantee and the granting State agency within three days if Grantee has actual knowledge that a Subgrantee is employing or contracting with an illegal alien for work under this Grant, (c) shall terminate the Subgrant if a Subgrantee does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Grantee participates in the State program, Grantee shall deliver to the granting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Grantee has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Grantee fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the granting State agency, institution of higher education or political subdivision may terminate this Grant for breach and, if so terminated, Grantee shall be liable for damages.

xii. PUBLIC GRANTS WITH NATURAL PERSONS. CRS §24-76.5-101.
Grantee, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the Effective Date of this Grant.

(Special Provisions - effective 1/1/09)

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS GRANT

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

GRANTEE CITY OF DELTA	STATE OF COLORADO John W. Hickenlooper, GOVERNOR DEPARTMENT OF LOCAL AFFAIRS
By: _____ Name of Authorized Individual (print) Title: _____ Official Title of Authorized Individual _____ *Signature Date: _____	By:_____ Irv Halter, Executive Director Date: _____
	PRE-APPROVED FORM CONTRACT REVIEWER By:_____ Rachel Harlow-Schalk, Financial Assistance Director Date: _____

ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

STATE CONTROLLER
Robert Jaros, CPA

By:_____
Janet Miks, CPA, Controller Delegate

Date:_____

RETURN ROUTING MEMORANDUM

TO: Hannah Cichocki

THROUGH: David Torgler, City Manager, City of Delta

FROM: Beth Lipscomb

DATE: March 31, 2016

RE: Contract Approvals

FOR FINAL APPROVAL ROUTING (3 COPIES ENCLOSED):

RE: REDI #00086 - Delta Gateway Riverfront Planning and Engineering Project

Elyse Ackerman, DOLA Regional Manager

EXHIBIT A – APPLICABLE LAWS

Laws, regulations, and authoritative guidance incorporated into this Grant include, without limitation:

1. Colorado Revised Statutes §29-1-601 et seq., as amended, Colorado Local Governments Audit Law.
2. 5 USC552a, as amended, Privacy Act of 1974.
3. 8 USC 1101, Immigration and Nationality Act.
4. 29 USC Chapter 8, §§201, 206, et seq., as amended, Labor.
5. 29 USC Chapter 14, §§621-634, et seq., as amended, Age Discrimination in Employment.
6. 40 USC Subtitle II, et seq., as amended, Public Buildings and Works.
7. 40 USC 327–330, Section 103 and 107, Contract Work Hours and Safety Standards Act, as amended.
8. 40 CFR 1500-1508, as amended, Council on Environmental Quality Regulations Implementing NEPA.
9. 41 CFR Chapter 60, as amended, Executive Order 11246.
10. 41 USC 701, et seq., Drug Free Workplace Act of 1988.
11. 42 USC Chapter 21, et seq., as amended, Civil Rights.
12. CRS §24-34-302, et seq., as amended, Civil Rights Division.
13. CRS §24-34-501 – 510, et seq., as amended, Colorado Housing Act of 1970.
14. CRS §24-75-601 et seq., as amended, Legal Investment of Public Funds.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

EXHIBIT B – SCOPE OF PROJECT (SOP)

1. PURPOSE

1.1. Rural Economic Development Initiative. The purpose of the Rural Economic Development Initiative is to assist political subdivisions that are or could be socially and/or economically impacted by the closure of a local large employer.

2. DESCRIPTION OF THE PROJECT(S) AND WORK.

2.1. Project Description. The Project is the completion of planning work for the riverfront gateway area into downtown Delta.

2.2. Work Description. The City of Delta (Grantee) will contract for the completion of planning work for the riverfront gateway area into downtown Delta, broadly defined as the area between Highway 50, Highway 92 and the Gunnison River. Work will include preliminary engineering design and permit preparation for a two (2) mile stretch of the Gunnison River, as well as necessary restoration for the river and adjacent riparian areas. Grantee will own all resulting reports and documentation.

2.2.1. A contract for consultant services shall be awarded by Grantee to a qualified firm through a formal Request For Proposals or competitive selection process.

2.3. Responsibilities. Grantee shall be responsible for the completion of the Work and to provide required documentation to DOLA as specified herein.

2.3.1. Grantee shall notify DOLA at least 30 days in advance of Project Completion.

2.4. Recapture of Advanced Funds. To maximize the use of Grant Funds, the State shall evaluate Grantee's expenditure of the Grant Funds for timeliness and compliance with the terms of this Grant. DOLA reserves the right to recapture advanced Grant Funds when Grantee has not or is not complying with the terms of this Grant.

2.5. Eligible Expenses. Eligible expenses shall include: consultant fees, permit fees, RFP/bid advertisements, permit fees, and attorney's fees.

2.6. Cost Savings. Cost Savings derived while completing the Project shall be:

2.6.1. ☐ split on a pro-rata basis between the State and Grantee

2.6.2. ☒ returned to the State

3. DEFINITIONS

3.1. "Cost Savings" means the Project Budget amount less the amount expended to complete the Work. Cost Savings are determined at the time the Work is completed and the final payment request is submitted by the Grantee to the State. Cost Savings do not result in payment by the State to Grantee above actual expenditures beyond the required ratio, but deobligates unexpended Grant Funds and reduces Grantee's matching funds requirement. State shall provide written notice to Grantee verifying any Cost Savings.

3.2. "Cumulative Budgetary Line Item Changes" means a cumulative or increasing accumulation of additional expenses within a specific line item as listed in **§6.2** Budget within this **Exhibit B**.

3.3. Project Budget Line items.

3.3.1. "Consultant Services" means consultant fees, RFP/bid advertisements, permit fees, and attorney's fees.

3.4. "Project Completion" means the Work is sufficiently complete in accordance with the Grant so it can be utilized for its intended purpose without undue interference.

4. DELIVERABLES

4.1. Outcome. The final outcome of this Grant is the completion of preliminary engineering design and permit preparation for the riverfront gateway area into downtown Delta, including identification of restoration needs and estimated costs for implementation.

4.2. Service Area. The performance of the Work described within this Grant shall be located in Delta, Colorado**.**

4.3. Performance Measures. Grantee shall comply with the performance measures detailed in **Exhibit E**.

4.4. Budget Line Item Adjustments. Line Item Adjustments shall not increase the Grant Funds or the total amount of the Budget.

4.4.1. Grantee shall have authority to adjust individual budget line amounts without approval of the State up to an aggregate of 10% of such line item from which the funds are moved. Grantee's Responsible Administrator shall send written notification of allowed adjustments to the State within 30 days of such adjustment.

4.4.2. All changes to individual budget lines amounts which are in excess of 10% but less than 24.99% of such line item from which the funds are moved (each a "**Minor Line Item Adjustment**") shall require prior written approval of the DOLA Controller. Grantee's Responsible Administrator shall submit a written request for changes pursuant to this Section to the State. Such request shall include the amount of such request, the reason for the request and any necessary documentation. If the State approves such request, the State shall unilaterally execute an Option Letter accepting such request pursuant to **§7(c)(i)** of the Grant. Grantee is not authorized to perform until Grantee receives an executed Option Letter accepting such change.

4.4.3. All changes to individual budget lines amounts which are in excess of 24.99% of such line item from which the funds are moved shall require a prior written amendment executed by the Grantee and DOLA pursuant to **§21(J)** of the Grant. Grantee shall submit a written request for changes pursuant to this Section to the State. Such request shall include the amount of such request, the reason for the request and any necessary documentation. Grantee is not authorized to perform until a bi-lateral amendment is fully executed by the DOLA Controller accepting such change.

4.4.4. Signature Authority. All Grantee notices and requests submitted to DOLA pursuant to this **§4.4** (each a "**Line Item Proposal**"), must be signed and dated by a person authorized to bind the Grantee to such Line Item Proposal.

4.5. Overall Budget Adjustments.

4.5.1. All changes to the overall Budget which are less than 24.99% (each a "**Minor Budget Adjustment**") shall require prior written approval of the DOLA Controller. Grantee's Responsible Administrator shall submit a written request for changes pursuant to this Section to the State. Such request shall include the amount of such request, the reason for the request and any necessary documentation. If the State approves such request, the State shall unilaterally execute an Option Letter accepting such request pursuant to **§7(c)(ii)** of the Grant. Grantee is not authorized to perform until Grantee receives an executed Option Letter accepting such change. Minor Budget Adjustments shall not increase the Grant Funds.

4.5.1.1. Exception for Setting Final Initial Budget. Within 30 days of bid opening for its selection of its prime Subcontractor, Grantee shall submit a written request for changes to the overall Budget to revise the initial overall Budget estimate to align it with current market conditions (a "**True-up Budget Proposal**"). Grantee's Responsible Administrator shall submit a written request for changes pursuant to this Section to the State. Such request shall include the amount of such request, the reason for the request and any necessary documentation. If the State approves such request, the State shall unilaterally execute an Option Letter accepting such request pursuant to **§7(c)(iii)** of the Grant. Grantee is not authorized to perform until Grantee receives an executed Option Letter accepting such change. True-up Budget Proposals shall not increase the Grant Funds. The overall Budget adjustment permitted by this **§4.5.1.1** is only permitted once under this Grant.

4.5.2. All changes to the overall Budget which are in excess of 24.99% shall require a prior written amendment executed by the Grantee and DOLA pursuant to **§21(J)** of the Grant. Grantee shall submit a written request for changes pursuant to this Section to the State. Such request shall include the amount of such request, the reason for the request and any necessary documentation.

Grantee is not authorized to perform until a bi-lateral amendment is fully executed by the DOLA Controller accepting such change.

4.5.3. Signature Authority. All Grantee notices and requests submitted to DOLA pursuant to this **§4.5** (each a "**Budget Proposal**"), must be signed and dated by a person authorized to bind the Grantee to such Budget Proposal.

4.6. Quarterly Pay Request and Status Reports. Beginning 30 days after the end of the first quarter following execution of this Grant and for each quarter thereafter until termination of this Grant, Grantee shall submit Pay Requests and Status Reports using a form provided by the State. The State shall pay the Grantee for actual expenditures made in the performance of this Grant based on the submission of statements in the format prescribed by the State. The Grantee shall submit Pay Requests setting forth a detailed description and provide documentation of the amounts and types of reimbursable expenses. For quarters in which there are no expenditures to reimburse, Grantee shall indicate zero (0) in the request and specify status of the Work in the Status Report. The report will contain an update of expenditure of funds by line item as per **§6.2** of this **Exhibit B** Scope of Project as well as a projection of all Work expected to be accomplished in the following quarter, including an estimate of Grant Funds to be expended. This report is due within 30 days of the end of the quarter or more frequently at the discretion of the Grantee. See **Exhibit E** for specific submittal dates.

4.7. DOLA Acknowledgment. The Grantee agrees to acknowledge the Colorado Department of Local Affairs in any and all materials or events designed to promote or educate the public about the Work and the Project, including but not limited to: press releases, newspaper articles, op-ed pieces, press conferences, presentations and brochures/pamphlets.

5. PERSONNEL

5.1. Replacement. Grantee shall immediately notify the State if any key personnel specified in **§5** of this **Exhibit B** cease to serve. Provided there is a good-faith reason for the change, if Grantee wishes to replace its key personnel, it shall notify the State and seek its approval, which shall be at the State 's sole discretion, as the State executed this Grant in part reliance on Grantee's representations regarding key personnel. Such notice shall specify why the change is necessary, who the proposed replacement is, what their qualifications are, and when the change will take effect. Anytime key personnel cease to serve, the State, in its sole discretion, may direct Grantee to suspend Work until such time as replacements are approved. All notices sent under this subsection shall be sent in accordance with **§16** of the Grant.

5.2. Responsible Administrator. Grantee's performance hereunder shall be under the direct supervision of **David Torgler, City Manager (david@cityofdelta.net)**, an employee or agent of Grantee, who is hereby designated as the responsible administrator of this Project. Such administrator shall be updated through the approval process in **§5.1**. If this person is an agent of the Grantee, such person must have signature authority to bind the Grantee and must provide evidence of such authority.

5.3. Other Key Personnel: **Glen Black, Community Development Director (glen@cityofdelta.net)**. Such key personnel shall be updated through the approval process in **§5.1**.

6. FUNDING

The State provided funds shall be limited to the amount specified under the "Grant Funds" column of **§6.2**, Budget, below.

6.1. Matching Funds. Grantee shall provide the required (*see checked item*) ☐ Matching Funds, as listed in the "Matching Funds" column of **§6.2** below during the term of this Project. Funds used as match on previous grant(s) cannot be used as Matching Funds for this Grant.

6.2. Budget

Budget Line Item(s)	Total Cost	Grant Funds	Matching Funds	Matching Funds Source
Consultant Services	$100,000	$100,000	$0	No Match
Total	**$100,000**	**$100,000**	**$0**	

7. PAYMENT

Payments shall be made in accordance with this section and the provisions set forth in **§7** of the Grant.

7.1. Payment Schedule. If Work is subcontracted or subgranted and such Subcontractors and/or Subgrantees are not previously paid, Grantee shall disburse Grant Funds received from the State to such Subcontractor or Subgrantee within fifteen days of receipt. Excess funds shall be returned to DOLA.

Payment	Amount	
Interim Payment(s)	$95,000	Paid upon receipt of actual expense documentation and written Pay Requests from the Grantee for reimbursement of eligible approved expenses.
Final Payment	$5,000	Paid upon Substantial Completion of the Project (as determined by the State in its sole discretion), provided that the Grantee has submitted, and DOLA has accepted, all required reports.
Total	**$100,000**	

7.2. Remittance Address. If mailed, payments shall be remitted to the following address unless changed in accordance with **§16** of the Grant:

City of Delta
360 Main Street
Delta, Colorado 81416

7.3. Interest. Grantee or Subgrantee may keep interest earned from Grant Funds up to $100 per year for administrative expenses.

8. ADMINISTRATIVE REQUIREMENTS

8.1. Reporting. Grantee shall submit the following reports to DOLA using the State-provided forms. DOLA may withhold payment(s) if such reports are not submitted timely.

8.1.1. Quarterly Pay Request and Status Reports. Quarterly Pay Requests shall be submitted to DOLA in accordance with **§4.6** of this **Exhibit B**.

8.1.2. Final Reports. Within 90 days after the completion of the Project, Grantee shall submit the final Pay Request and Status Report to DOLA.

8.2. Monitoring. DOLA shall monitor this Work on an as-needed basis. DOLA may choose to audit the records for activities performed under this Grant. Grantee shall maintain a complete file of all records, documents, communications, notes and other written materials or electronic media, files or communications, which pertain in any manner to the operation of activities undertaken pursuant to an executed Grant. Such books and records shall contain documentation of the Grantee's pertinent activity under this Grant in accordance with Generally Accepted Accounting Principles.

8.2.1. Subgrantee/Subcontractor. Grantee shall monitor its Subgrantees and/or Subcontractors, if any, during the term of this Grant. Results of such monitoring shall be documented by Grantee and maintained on file.

9. CONSTRUCTION/RENOVATION. The following subsections shall apply to construction and/or renovation related projects/activities:

9.1. Plans & Specifications. Construction plans and specifications shall be drawn up by a qualified engineer or architect licensed in the State of Colorado, or pre-engineered in accordance with Colorado law, and hired by the Grantee through a competitive selection process.

9.2. Procurement. A construction contract shall be awarded to a qualified construction firm through a formal selection process with the Grantee being obligated to award the construction contract to the lowest responsive, responsible bidder meeting the Grantee's specifications.

9.3. Subcontracts. Copies of any and all contracts entered into by the Grantee in order to accomplish this Project shall be submitted to DOLA upon request, and any and all contracts entered into by the Grantee or any of its Subcontractors shall comply with all applicable federal and state laws and shall be governed by the laws of the State of Colorado.

9.4. Standards. Grantee, Subgrantees and Subcontractors shall comply with all applicable statutory design and construction standards and procedures that may be required, including the standards required by Colorado Department of Public Health and Environment, and shall provide the State with documentation of such compliance.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

EXHIBIT E – PROJECT PERFORMANCE PLAN

Funding: **REDI** **Project Number**: **00086**	**Name of Grantee** **City of Delta** **Name of Project** **Gateway Riverfront Planning and Engineering Project**	
DESCRIPTION OF PROJECT:	The Project is the completion of planning work for the riverfront gateway area into downtown Delta.	

DOLA Staff: Elyse Ackerman - Regional Manager (970) 248-7333 EA Leslie Hentze- Regional Assistant (970) 248-7313 LH

MILESTONES – Grantee shall…	**By:**	**STATE ROLE-** DOLA shall…	
Award and finalize subcontract(s) and/or sub-grant(s).	Within 30 days of the Effective Date of this Grant Agreement.	Review selection and award documentation, and copy of subcontract(s) and/or sub-grant(s) for project file. Provide feedback to Grantee identifying issues or concerns, if any.	**ACHIEVED: MM/DD/20YY**
Provide DOLA with Project Timeline.	Within 10 days of the Effective Date of the subcontract(s).	Review timeline to ensure timely completion of Project. Provide feedback to Grantee identifying issues or concerns, if any.	**ACHIEVED: MM/DD/20YY**
Consultant initiates work.	Within 10 days of the Effective Date of the subcontract(s).	Monitor progress reports from the Grantee. Help Grantee identify if/when a Grant Agreement amendment is needed. Provide feedback to Grantee identifying issues or concerns, if any.	**ACHIEVED: MM/DD/20YY**
Project Completion.	June 30, 2016	Review past quarterly reports and review final report.	**ACHIEVED: MM/DD/20YY**

Submit **quarterly progress reports**, which includes: Project Performance Plan accomplishments and a Financial Summary Report for: 2nd Quarter 2016 Progress shall be evaluated by the Grantee and documented and included at least upon submittal of Quarterly Progress Reports. Such evaluation shall consist of at least the following monitoring method: a) Question and answer sessions with the Consultant to confirm understanding by all parties as to the nature of the Work and how far along it should be dependent upon the Quarter under review. Specifically, such sessions will determine if: i) A percentage of the planning documents have been developed as per agreed time-line as would be expected under this Grant and described in Exhibit B; and ii) The information contains enough depth and detail to provide options to the Grantee for making decisions regarding restoration of the Gunnison River and adjacent riparian areas in the riverfront gateway area as described in Exhibit B.	(30 calendar days after each quarter): July 30, 2016	Review documents and provide follow up technical assistance as necessary. If needed, respond to a request for training within 10 days.	**ACHIEVED: MM/DD/20YY** **ACHIEVED: MM/DD/20YY** **ACHIEVED: MM/DD/20YY** **ACHIEVED: MM/DD/20YY**
Submit, at a minimum **quarterly** basis, **pay requests** and supporting documentation of expenses.	July 30, 2016	Review backup documentation and proof of payment prior to approving pay request. Reimbursement should not exceed pro rata share.	**ACHIEVED: MM/DD/20YY**

Submit the **Project Final Report** to DOLA within 90 days after the Project Completion or expiration of Grant Agreement.	September 28, 2016	Provide forms to Grantee within 30 days of completion of work or end of the Grant Agreement. Process the Final Report and deobligate any remaining grant funds within 30 days of receiving a complete Final report.	**ACHIEVED: MM/DD/20YY**

QUARTERLY QUESTIONS

List Reimbursement Requests for the three months being reported on: **Month** January **Amount** **Month** January **Amount** **Month** January **Amount**
Were any months "zero payment" (no costs incurred) during this quarter? If so, please provide an explanation.
What are the forecasted costs for the next quarter?
Are the budget lines still adequate? Is a contract amendment needed at this time? Are there any anticipated concerns or issues?
Do you foresee any potential problems meeting the Grant Agreement completion deadline?
Were previously identified problems (if any) corrected? Was a budget adjustment needed/done to address the problem(s)?

EXHIBIT G
Form of Option Letter

Date:	Original Grant CMS #:	Option Letter #	CMS Routing #

1) **OPTIONS:**
   - **a.** Option to issue a new Budget (**§6.2 of Exhibit B**) for a Minor Line Item Adjustment (as defined in **§4.4.2 of Exhibit B**).
   - **b.** Option to issue a new Budget (**§6.2 of Exhibit B**) for a Minor Budget Adjustment (as defined in **§4.5.1 of Exhibit B**).
   - **c.** Option to issue a new Budget (**§6.2 of Exhibit B**) for acceptance of a True-Up Budget Proposal (as defined in **§4.5.1.1 of Exhibit B**).

2) **REQUIRED PROVISIONS**. All Option Letters shall contain the appropriate provisions set forth below:
   - **a. For use with Option 1(a):** In accordance with **§7(C)(i)** of the Original Grant referenced above between the State of Colorado, acting by and through the Colorado Department of Local Affairs**,** and **Grantee's Name** ("**Grantee**"), the State hereby approves the Minor Line Item Adjustment listed on the attached revised Budget for **§6.2 of Exhibit B**. **Section 6.2** of **Exhibit B** of the Original Grant is hereby deleted and replaced with the attached **§6.2 of Exhibit B**. All references to **§6.2 of Exhibit B** in the Original Grant shall refer to the attached Exhibit. Minor Line Item Adjustments shall not increase the Grant Funds or the total amount of the Budget.
   - **b. For use with Option 1(b):** In accordance with **§7(C)(ii)** of the Original Grant referenced above between the State of Colorado, acting by and through the Colorado Department of Local Affairs**,** and **Grantee's Name** ("**Grantee**"), the State hereby approves the Minor Budget Adjustment listed on the attached revised Budget for **§6.2 of Exhibit B**. **Section 6.2** of **Exhibit B** of the Original Grant is hereby deleted and replaced with the attached **§6.2 of Exhibit B**. All references to **§6.2 of Exhibit B** in the Original Grant shall refer to the attached Exhibit. Minor Budget Adjustments shall not increase the Grant Funds.
   - **c. For use with Option 1(c):** In accordance with **§7(C)(iii)** of the Original Grant referenced above between the State of Colorado, acting by and through the Colorado Department of Local Affairs**,** and **Grantee's Name** ("**Grantee**"), the State hereby approves the True-Up Budget Proposal listed on the attached revised Budget for **§6.2 of Exhibit B**. **Section 6.2** of **Exhibit B** of the Original Grant is hereby deleted and replaced with the attached **§6.2 of Exhibit B**. All references to **§6.2 of Exhibit B** in the Original Grant shall refer to the attached Exhibit. True-Up Budget Proposals shall not increase the Grant Funds.

3) **Effective Date**. The effective date of this Option Letter is upon approval of the State Controller or Insert start date, whichever is later.

STATE OF COLORADO
John W. Hickenlooper GOVERNOR
Colorado Department of Local Affairs

By: Irv Halter, Executive Director

Date: _____

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

STATE CONTROLLER
Robert Jaros, CPA

By: _____
Janet Miks, CPA, Controller Delegate

Date: _____

EXAMPLE - DO NOT SIGN

City of DELTA

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

April 1, 2016

TO: Mayor and City Councilmembers

FROM: David Torgler, City Manager

RE: Recommendation to City Council regarding IAWC MOU – Fort Uncompahgre

Review:

The attached and amended Memorandum of Understanding between the City of Delta and the Interpretive Association of Western Colorado (IAWC) allows for the IAWC to manage Fort Uncompahgre and describes and defines the relationship between the City and IAWC regarding the operation of the existing facilities located on City property. The MOU is effective for four (4) years, per Article XI, 141 of the City Code, and provides for three (3) successive four (4) year periods for a total possible Agreement of sixteen years, see MOU Section IV.B and C.

This MOU completes the process begun approximately fourteen months ago; has been reviewed and approved by the City Attorney; and is recommended for approval by City staff and representatives of the IAWC. Chris Miller, Executive Director of the IAWC, may be present at Tuesday's City Council meeting if there are any questions.

Recommendation:

Approve by Motion a Memorandum of Understanding between the City of Delta, Colorado and the Interpretive Association of Western Colorado providing for cooperative management of Fort Uncompahgre facilities at Confluence Park.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
CITY OF DELTA, COLORADO
AND THE
INTERPRETIVE ASSOCIATION OF WESTERN COLORADO
PROVIDING FOR COOPERATIVE MANAGEMENT OF FORT UNCOMPAHGRE FACILITIES AT CONFLUENCE PARK

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this _____ day of _____, 2016, by and between the CITY OF DELTA, COLORADO ("City"), and WESTERN COLORADO INTERPRETIVE ASSOCIATION, INC. d/b/a Interpretive Association of Western Colorado, Inc., a Colorado non-profit corporation ("IAWC");

I. PURPOSE

The purpose of this Memorandum of Understanding ("MOU") or ("Agreement") is to establish and define the partnership between and associated roles of the City and the IAWC on the management of Fort Uncompahgre. The City and the IAWC intend to manage the Fort cooperatively through this Agreement as an Interpretive Center. Specific projects and associated responsibilities will be described in detail in subsequent operating plans. Those operating plans will be consistent with the intent of this document.

For purposes of this MOU Fort Uncompahgre is located on City property on the northeast area of the Confluence Park as outlined in Exhibit I.

II. BACKGROUND

Fort Uncompahgre brings out the flavor and desire to experience the old west. It is a symbol of and the story of the American West. As the only Fort on the Old Spanish Trail network, it allows for a unique perspective for visitors. According to Jon Horn, the lead project manager at Alpine Archeology for researching the north branch of the Old Spanish Trail, Delta County has some of the most intact and visible sections of the Old Spanish Trail. In terms of undeveloped landscape, the area inspires the imagination of life when the west was still being explored and settled.

The City of Delta has operated Fort Uncompahgre through its Recreation, Parks and Culture Department as a living history facility. In 2014, programs offered at the facility were reduced and the Fort was only open to school groups and to groups larger than ten (10) people wishing to rent the Fort.

In May, 2014, the IAWC hosted a weekend at Fort Uncompahgre with re-enactors from Bent's Fort in eastern Colorado to gauge public interest and support for Fort

Uncompahgre. Participation over the weekend saw nearly 200 visitors, many bringing children to experience life in 1840 at a trading post. The limited marketing and funding produced a positive result and the IAWC is moving forward with a proposal for operating the Fort seasonally as a living history museum, an Old Spanish Trail interpretive center, a Public Lands Education and Information Center and a Confluence Park recreation hub.

III GOALS

Through this Agreement, the City and IAWC seek to:

- Utilize the existing site and facilities to promote understanding of the role that Fort Uncompahgre played in the era of the fur trade here in Western Colorado; and
- Preserve the pioneer heritage of Delta; and
- Showcase the role of the area's Native American Ute cultures; and
- Introduce visitors to the historic role of Fort Uncompahgre on the Northern Branch of the Old Spanish Trail; and
- Create venues for cultural and educational events; and
- Promote recreational opportunities on the Gunnison River and surrounding public lands; and
- Work with federal agencies to establish a National Trails Interpretive Center; and
- Increase available hours of operation; and
- Increase public utilization of the site; and
- Maintain and/ or improve the condition of site to ensure long term viability of the site for public access; and
- Maintain and/or expand partnerships with area agencies and individuals that foster diverse activities and users consistent stated preservation goals.

IV. AGREEMENT

The City and IAWC have determined that an agreement is necessary to describe and define the relationship between the City and IAWC regarding the operation of the existing facilities on City property.

In consideration of the mutual covenants contained herein, the City and IAWC agree as follows:

A. The City does hereby agree and authorize IAWC to occupy and use, under the terms and conditions of this Agreement, the following real property in the County of Delta, State of Colorado to wit:

   An aerial photograph is attached hereto as Exhibit 1 and is incorporated by reference as is fully set forth. Exhibit 1 further depicts and describes "the Property."

B. The term of this Agreement and of the initial Agreement for use of the Property shall be for four (4) years (First Term), commencing at midnight, January 1, 2016 and expiring on midnight December 31, 2019.

C. If the IAWC performs pursuant to this Agreement the City shall consider granting to IAWC an option to extend this Agreement for three (3) successive four (4) year periods (Extended Terms) each commencing upon the expiration of the prior term, upon the same terms and conditions set here or as amended per Section W.c or this Agreement.

D. In order to exercise an option for an Extended Term, IAWC shall give written notice to the City of its intention to exercise the option not less than ninety (90) days prior to the expiration of the First Term and any Extended Term of this Agreement. The extension shall then apply automatically unless, prior to the effective date of the new term, the City provides written notice of IAWC's failure to perform any provision of this Agreement, in which case the renewal shall not become effective until and unless such performance issues are adequately addressed as determined by the Delta City Council in its sole discretion and written notice thereof has been provided to IAWC.

E. IAWC agrees to use the property to operate and maintain an Interpretive Center as outlined in this Agreement. General services to be offered, key performance indicators, target objectives, goals and strategies, dates and times of operation and designated special events shall be mutually agreed upon during an annual meeting between the City and the IAWC and shall be captured in an Annual Operations Plan by January 1st of each year or as soon thereafter as practical. The Annual Operations Plan is subject to review and approval by the City Manager.

F. IAWC agrees to maintain the property in a condition equal to or better than its condition at the time of execution of this Agreement. IAWC and the City shall annually conduct a walkthrough of the Property to note current conditions and identify conditions that require maintenance. IAWC will submit an Annual Maintenance Plan for the City Manager's, or his designees, review, consideration and approval before January 1st each year or as soon thereafter as practical. The City Manager, or his designee, shall respond in writing to IAWC's submitted Annual Maintenance Plan within thirty (30) business days after it is submitted with an acceptance, modification, or rejection. The Annual Maintenance Plan shall outline all maintenance to be performed during the upcoming calendar year, and to be performed by the City or IAWC, including but not limited to structures,

infrastructure, parking facilities, grounds, gardens, lighting, signage and fencing. The Annual Maintenance Plan shall include maintenance deadlines.

G. IAWC agrees to issue reports to the City Manager on the conformance to the Annual Operations Plan and Annual Maintenance Plan, all relevant finances and the success of achieving desired goals as requested by the City but not less than twice per year.

H. The City shall retain ownership of all existing inventory items on hand at the time of execution of this Agreement. Said inventory includes but is not limited to all those outlined in Exhibit 2. Photos and written documentation of each item in Exhibit 2 is available in the City's files.

I. IAWC shall retain ownership of any inventory it acquires during the period of this Agreement unless agreed to by both parties in writing. IAWC shall submit to the City Manager an update, at least annually, a list of all inventory items received and that IAWC expects to retain.

J. IAWC shall have the right to establish and collect fees relating to the operation of the Fort, which shall be subject to prior review and approval by the City Manager, which approval shall not be unreasonably withheld. IAWC agrees to invest revenues from Fort-related activities back into the operation and maintenance of the Fort and Interpretive Center. IAWC will retain its standard 10% administration fee to administer grants associated with this project which will be used to cover costs associated with administering these grants.

K. IAWC shall post, in consultation with and approval of the City, signs on-site directing visitors to the Fort and Interpretive Center. The City shall post directional signs on Confluence Drive and other City streets as necessary for visitor way-finding. IAWC and the City shall work jointly with the Colorado Department of Transportation for appropriate signing on State Highways.

L. It is generally recognized that IAWC shall have sole responsibility for managing the property during the period of this Agreement provided that approval for other events and/or activities requested by the City shall not be unreasonable denied.

M. IAWC shall maintain the Fort buildings and Interpretive Center in good order, good appearance and condition similar to that of their design and current condition. IAWC and the City shall conduct a physical inspection and inventory of the facilities prior to taking over operations.

N. The City shall provide and maintain those utilities to the Fort and Interpretive Center that have been historically provided at the time this Agreement was executed, including water, electricity, heat and cooling. IAWC will be responsible for any additional utilities including but not limited to internet connectivity.

O. IAWC shall procure and maintain policies of insurance, which at a minimum, include the following:

   a. Workers' Compensation insurance with minimum limits of Five Hundred Thousand Dollars ($500,000.00) each accident, Five Hundred Thousand Dollars ($500,000.00) disease- policy limit, and Five Hundred Thousand Dollars ($500,000.00) disease- each employee; and
   b. Comprehensive General Liability insurance with minimum combined single limits of One Million Dollars ($1,000,000.00) per occurrence and One Million Dollars ($1,000,000.00) aggregate, applicable to all premises and operations, and including coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations; and
   c. Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than One Million Dollars ($1,000,000.00) each occurrence and Two Million Dollars ($2,000,000.00) aggregate.
   d. The policies required above, except for the Workers' Compensation insurance, shall be endorsed to include the City, and its officers and employees, as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the City, its officers, or its employees, shall be excess and not contributory insurance to that provided by the contractor. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The contractor shall be solely responsible for any deductible losses under each of the policies required above.

   Nothing herein shall be deemed a waiver of the City's governmental immunity nor of any protections afforded to IAWC as a result of its non-profit status.

P. IAWC shall not assign the terms, benefits or obligations of this Agreement without the prior written consent of the City.

Q. Unless otherwise agreed by the parties, all improvements placed on or attached to the property by IAWC shall be and become part of the property. The improvements shall be the sole and separate property of the City, subject to this Agreement. Upon the expiration or termination of the Agreement the City may use, modify or dispose of the improvements, in its sole discretion as it sees fit.

R. This Agreement contains the entire agreement between the parties and cannot be changed or terminated except by a written instrument subsequently executed by the parties hereto.

S. The City and IAWC agree to cooperate and support one another with respect to any grant applications concerning the Property or the use thereof.

T. This Agreement shall be governed by and construed in accordance with the laws of the City of Delta, State of Colorado. In the event of any dispute arising out of this Agreement, the exclusive venue shall be the state courts of Delta County, Colorado, AND BOTH PARTIES AGREE TO WAIVE THE RIGHT TO TRIAL TO JURY. Any fiscal or monetary obligations of the City relating to this Agreement shall at all times be subject to and contingent upon annual budgeting and appropriation by the City in accordance with Colorado law.

U. Default The following are considered a default of this Agreement by IAWC: (1) failure to obtain required insurance coverage; and (2) breach of any material covenant or condition included in this Agreement ("**Event of Default**"). Upon an Event of Default, the City shall provide notice to the IAWC of the Event of Default. IAWC will have fifteen (15) days to cure the Event of Default. If the Event of Default cannot be cured within fifteen (15) days, the City may declare this Agreement terminated upon written notice to IAWC of the same, and the City shall have the following remedies, in addition to any other remedy afforded to it by law or this Agreement:

(a) IAWC 's rights to possession of the Property shall automatically terminate;

(b) IAWC shall immediately and peacefully surrender the Property to the City, and if IAWC fails to do so, the City, without prejudice to any other remedy which the City may have for possession or damages, may enter upon and take possession of the Property through legal process or, if no individual person is then actually on or about the Property and breach of the peace can be avoided, without use of legal process;

(c) The City may have, hold, and enjoy the Property and may alter all locks and other security devices at the Property; and

(d) At any time after such termination of IAWC possessory rights, the City may enter into any other agreement with any other party for use of the Property or any part thereof for such term (which may be greater or less than the balance of the term of this Agreement) and on such conditions as the City, in its absolute discretion, may determine, and may collect and receive the rents therefor; and

V. Notices. All notices under this Agreement shall be in writing and shall be effective ten (10) business days after placing in the United States Mail, postage prepaid, addressed as follows:

To the City: Director
Parks, Recreation and Culture
City of Delta
360 Main Street
Delta, Colorado 81416

Copy: City Manager
City of Delta
360 Main Street
Delta, Colorado 81416

To IAWC: Executive Director
IAWC
2250 Highway 50
Delta, Colorado 81416

W. Miscellaneous.

a. **Relationship of the City and Lessee**. Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between parties hereto, it being understood and agreed that neither the method of computation of rent (if any), nor any other provisions contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship

between the parties hereto other than the relationship of the City and IAWC. Whenever herein the singular number is used, the same shall include the plural, and words of any gender shall include each gender.

b. **Entire Agreement and Execution**. This Agreement and any exhibits hereto contain the entire agreement between the parties and no agreement shall be effective to change, modify or terminate this Agreement in whole or in part unless such agreement is in writing and duly signed by the party against whom enforcement of such change, modification or termination is sought. This Agreement shall not be effective or binding on the City or IAWC until fully executed by both and delivered by each to the other. This Agreement may be executed in counterparts. Each counterpart shall be deemed to be an original hereof.

c. **Modifications**. This Agreement shall not be amended, except by subsequent written agreement of the parties.

d. **Governing Law; Jurisdiction.** The laws of the State of Colorado shall govern the interpretation, validity, performance, and enforcement of this Agreement. Lessee understands and agrees that venue is proper in the County of Delta, State of Colorado, that the courts located therein shall have subject matter jurisdiction to entertain any action brought to enforce this Agreement, and, by execution hereof, voluntarily submits to the personal jurisdiction of such courts.

e. **Lessee Obligations Survive Expiration or Termination**. To the extent necessary to obtain the full performance of Lessee's obligations under this Agreement, such obligations shall survive the expiration or earlier termination of this Agreement or the termination of Lessee's possessory rights hereunder, and shall continue in effect for so long as may be necessary to obtain such performance.

f. **City Remedies Cumulative**. The remedies given to the City throughout this Lease shall be cumulative, non-exclusive, and discretionary, and the City may choose amongst such remedies in any manner that it may consider appropriate under the circumstances. Such remedies shall be in addition and supplemental to all other rights or remedies that the City may have at law or in equity.

g. **Attorney's Fees.** Should this Agreement become the subject of litigation to resolve a claim of default in performance, to the extent permitted by law, the prevailing party shall be entitled to attorneys' fees, expenses, and court costs. All rights concerning remedies and/or attorneys shall survive any termination

of this Agreement.

h. **Recordation**. The City may record this Agreement. Without the prior consent of the City, which consent may be withheld in the City's sole discretion, Lessee shall not record this Agreement or any evidence of this Agreement.

i. **Invalid Provision**. If any provisions of this Agreement shall be determined to be void by any court of competent jurisdiction, then the remainder of this Agreement shall be interpreted to as fully as possible give force and effect to the intent of the parties as evidenced by the original terms and conditions of this Agreement, including the invalidated provision.

j. **Compliance with TABOR**. No provision of this Agreement shall be construed or interpreted: i) to directly or indirectly obligate City to make any payment in any year in excess of amounts appropriated for such year; ii) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of Article X, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or iii) as a donation or grant by City to or in aid of any person, company or corporation under applicable law.

So agreed this ____ day of _____, 2016.

CITY OF DELTA, COLORADO

BY:_____ ATTEST:_____
Ed Sisson, Mayor Jolene Nelson, City Clerk

IAWC:

By:_____
Jody Kliska, President, Board of Directors

STATE OF COLORADO)

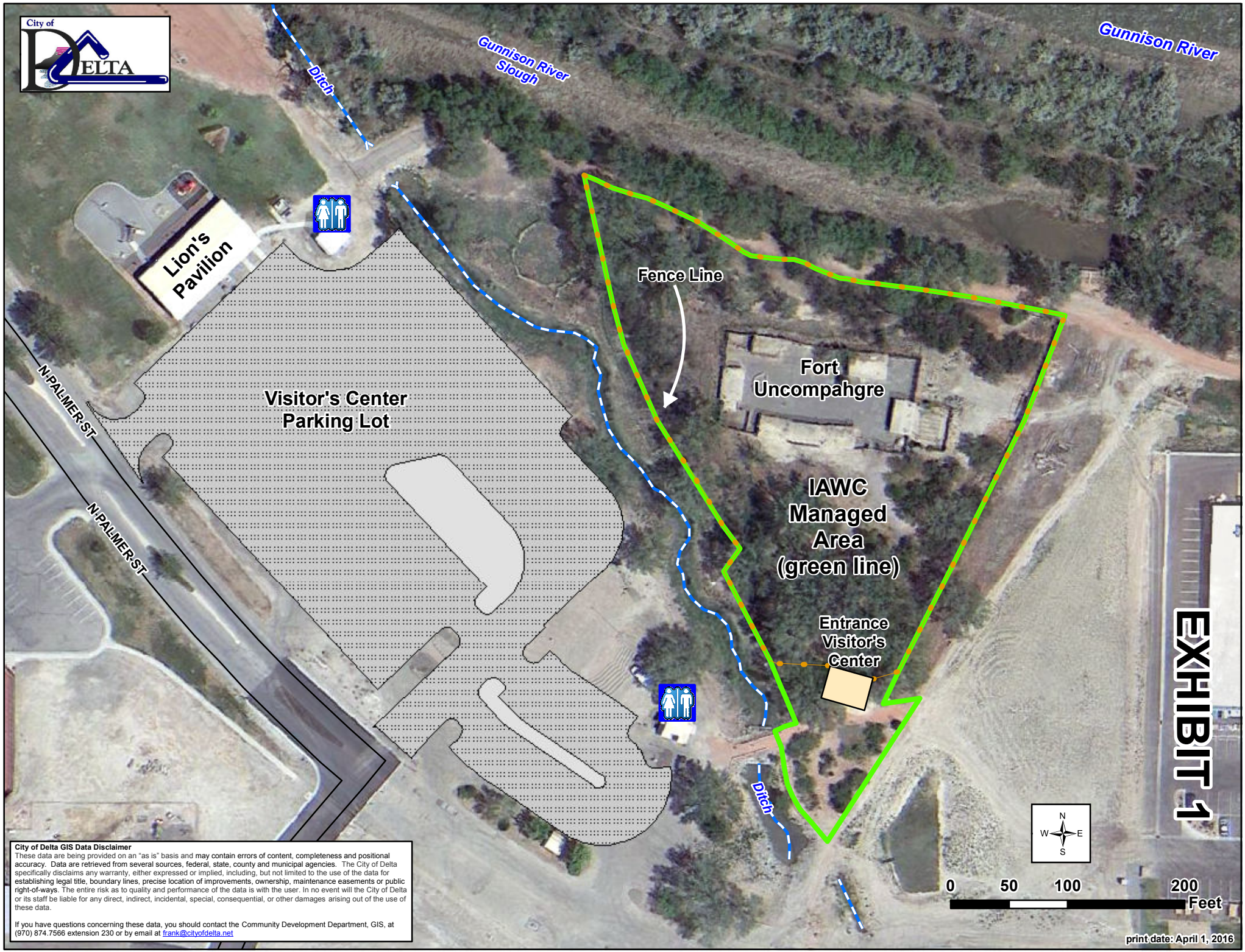
) ss.

COUNTY OF _____)

The foregoing instrument was signed and acknowledge before me this ___ day of _____, 2016, by _____, IAWC _____.
(Name) (Office)

WITNESS my hand and official seal.
My commission expires _____.

_____
Notary Public



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 Community Development Department, GIS, at (970) 874.7566 extension 230 or by email at frank@cityofdelta.net

Memorandum of Understanding
Between the City of Delta and
the Interpretive Association of Western Colorado

Exhibit 2
Inventory

Item	Number	Date	Initials
1/2 scraped deer hide		10/8/2014	RE
1/2 spoiled goat hide		10/8/2014	RE
150lb anvil		10/8/2014	RE
5 gallon water keg		10/8/2014	RE
55 gal barrel	2	10/8/2014	RE
55 gal oak barrel		10/8/2014	RE
ball and cup toy	1	10/8/2014	RE
ball mold	1	10/8/2014	RE
ballstarter	1	10/8/2014	RE
bar scale with pear		10/8/2014	RE
basket		10/8/2014	RE
bead samples		10/8/2014	RE
beaded leather dress		10/8/2014	RE
beaded necklace	4	10/8/2014	RE
bear paw quilt	1	10/8/2014	RE
beaver hides	8-Jan	10/8/2014	RE
beaver hides		10/8/2014	RE
beaver skull	1	10/8/2014	RE
beeswax cake		10/8/2014	RE
bellows		10/8/2014	RE
black bear hide	1	10/8/2014	RE
black felt hat	2	10/8/2014	RE
blacksmith area		10/8/2014	RE
blond bear hide	1	10/8/2014	RE
blue cotton hoodie		10/8/2014	RE
bone awl	3	10/8/2014	RE
bone toothbrush	1	10/8/2014	RE
books for sale		10/8/2014	RE
bottles of cologne	2	10/8/2014	RE
bowl of round balls		10/8/2014	RE
brass beaded necklace	1	10/8/2014	RE
brass tool	1	10/8/2014	RE
broom	1	10/8/2014	RE

Item	Number	Date	Initials
buffalo hide	1	10/8/2014	RE
candle chandolier	2	10/8/2014	RE
candle chandolier	2	10/8/2014	RE
cannon and carriage	1	10/8/2014	RE
card of bone buttons	2	10/8/2014	RE
cash register - empty	1	10/8/2014	RE
cast iron frying pan	2	10/8/2014	RE
castor glands	1	10/8/2014	RE
castor glands (dried)	2	10/8/2014	RE
cavalry sword	1	10/8/2014	RE
ceramic pitcher and bowl	1	10/8/2014	RE
child's mouse hawk	1	10/8/2014	RE
Chinese made scissors	1	10/8/2014	RE
chunk of lye soap	1	10/8/2014	RE
clay and glass candle holder	1	10/8/2014	RE
clay pipe	1	10/8/2014	RE
clay water vessel (broken?)	1	10/8/2014	RE
clerks quarters and stump		10/8/2014	RE
close up adobe shelter/coop		10/8/2014	RE
cone of tying string	1	10/8/2014	RE
cone sugar	1	10/8/2014	RE
coonhide	2	10/8/2014	RE
copper frying pan	1	10/8/2014	RE
copper pot with lid	1	10/8/2014	RE
copper teapot (no lid)	1	10/8/2014	RE
day flask	1	10/8/2014	RE
decoy camera	1	10/8/2014	RE
deer antler	1	10/8/2014	RE
desk with misc stuff		10/8/2014	RE
digging shovel	2	10/8/2014	RE
display board	1	10/8/2014	RE
double bit axe	1	10/8/2014	RE
double size rope bed with straw tick	1	10/8/2014	RE

Item	Number	Date	Initials
draw knives	3	10/8/2014	RE
dream catcher	1	10/8/2014	RE
dried tendon		10/8/2014	RE
dust pan	1	10/8/2014	RE
DVD player with remote	1	10/8/2014	RE
electrified 1,000 eye lamp	1	10/8/2014	RE
elk button scraper for hides	1	10/8/2014	RE
extension cord	1	10/8/2014	RE
faux fur	1	10/8/2014	RE
feather pillow	1	10/8/2014	RE
fire extinguishers	8	10/8/2014	RE
fire iron	1	10/8/2014	RE
fire starting stuff		10/8/2014	RE
fire steel	3	10/8/2014	RE
flat shovel	1	10/8/2014	RE
folding chair and cover	1	10/8/2014	RE
fox furs	2	10/8/2014	RE
foxtail broom		10/8/2014	RE
framed indian pics	4	10/8/2014	RE
fuzzy medicine bag	1	10/8/2014	RE
gardening stuff		10/8/2014	RE
green coffee maker	1	10/8/2014	RE
green tarp	1	10/8/2014	RE
grey wool blanket	1	10/8/2014	RE
hand woven wool belt	1	10/8/2014	RE
handmade iron cooking trivet	1	10/8/2014	RE
handsaw	1	10/8/2014	RE
handstitched bear paw quilt - twin size	1	10/8/2014	RE
hanging birdhouse gourd	8	10/8/2014	RE
hanks of colored seed beads	4	10/8/2014	RE
hawk block	2	10/8/2014	RE
hide packs	4	10/8/2014	RE
hide room with hide press	1	10/8/2014	RE

Item	Number	Date	Initials
historical map of early Colorado	1	10/8/2014	RE
hoe	1	10/8/2014	RE
horn comb	2	10/8/2014	RE
horn scraper	2	10/8/2014	RE
Hudson Bay type wool blanket	1	10/8/2014	RE
indian axe	1	10/8/2014	RE
Indian trade knife (old)	1	10/8/2014	RE
inkwell and 2 quills on small wooden table	2	10/8/2014	RE
iron awl	2	10/8/2014	RE
iron cooking trammel	1	10/8/2014	RE
iron door bars	2	10/8/2014	RE
iron window bars	2	10/8/2014	RE
lance or pontoon	1	10/8/2014	RE
lantern	1	10/8/2014	RE
large block compressed tea	1	10/8/2014	RE
large coyote furs	2	10/8/2014	RE
large lead bar	6	10/8/2014	RE
large stack of deer, elk and beaver hides		10/8/2014	RE
large wheelbarrow	1	10/8/2014	RE
large wooden boxes	2	10/8/2014	RE
lead bar	1	10/8/2014	RE
lead roundballs		10/8/2014	RE
leaf rake	1	10/8/2014	RE
leather beaded shirt and bag	1	10/8/2014	RE
leather poncho	1	10/8/2014	RE
leather sample	1	10/8/2014	RE
leather vest	1	10/8/2014	RE
leg hold traps	1	10/8/2014	RE
lengths of cotton	2	10/8/2014	RE
limbsaw	1	10/8/2014	RE
medicine bag	1	10/8/2014	RE
metal arrowheads		10/8/2014	RE
metal knives	2	10/8/2014	RE

Item	Number	Date	Initials
mexican saddle	1	10/8/2014	RE
mexican water bottle - clay - with cup	1	10/8/2014	RE
misc bead necklaces		10/8/2014	RE
misc bead necklaces		10/8/2014	RE
misc bottles		10/8/2014	RE
misc merchandise for sale		10/8/2014	RE
misc ropes		10/8/2014	RE
mountain lion fur	1	10/8/2014	RE
mounted beaver hide laced in willow hoop	1	10/8/2014	RE
mounted beaver skull	1	10/8/2014	RE
mounted coyote hide	1	10/8/2014	RE
nail keg	2	10/8/2014	RE
needle packets		10/8/2014	RE
north corals		10/8/2014	RE
oil lamp	2	10/8/2014	RE
old black leather boots	1	10/8/2014	RE
old booze bottles		10/8/2014	RE
old cast iron bean pot (broken)	1	10/8/2014	RE
old cast iron bean pot (broken)	1	10/8/2014	RE
old wine bottle	3	10/8/2014	RE
otter fur	1	10/8/2014	RE
packet vermillion		10/8/2014	RE
painted buffalo skull	1	10/8/2014	RE
painted cow skull	1	10/8/2014	RE
pair of child woven grass shoes	1	10/8/2014	RE
partial black bear hide	1	10/8/2014	RE
patchwork quilt	1	10/8/2014	RE
patchy bobcat hide	1	10/8/2014	RE
petrified beaver tail	1	10/8/2014	RE
pewter candleholder	2	10/8/2014	RE
pile of pillow ticking mattress		10/8/2014	RE
pile of sewing thread		10/8/2014	RE
pitchfork	1	10/8/2014	RE

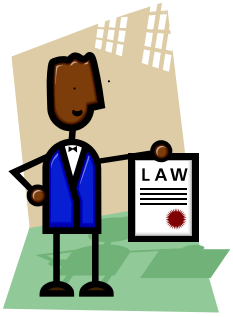
Item	Number	Date	Initials
possibles bag	2	10/8/2014	RE
powder magazine	1	10/8/2014	RE
powderhorn	1	10/8/2014	RE
pruners	1	10/8/2014	RE
prybar	1	10/8/2014	RE
random iron hoops		10/8/2014	RE
random skulls		10/8/2014	RE
random small trade boxes		10/8/2014	RE
rawhide seat chair	1	10/8/2014	RE
red hunting spear	1	10/8/2014	RE
red stripe wool blanket	1	10/8/2014	RE
reed basket	1	10/8/2014	RE
research book "Roubideoux History"	1	10/8/2014	RE
riding crops	2	10/8/2014	RE
rock rake	1	10/8/2014	RE
rope	1	10/8/2014	RE
sarape	2	10/8/2014	RE
screen and keyboard	1	10/8/2014	RE
sheep shears	1	10/8/2014	RE
sheep skull	4	10/8/2014	RE
sifting screen	1	10/8/2014	RE
sighting wedge (in trade room)	1	10/8/2014	RE
small Chinese scissors	2	10/8/2014	RE
small ching scissors	1	10/8/2014	RE
small glass bottle	1	10/8/2014	RE
small hide-scraper	1	10/8/2014	RE
small lead block	?5	10/8/2014	RE
small lead strap	1	10/8/2014	RE
small microwave	1	10/8/2014	RE
small round covered trade boxes	2	10/8/2014	RE
small round trade mirror	1	10/8/2014	RE
small woode boxes with misc supplies	3	10/8/2014	RE
small wooden boxes	6	10/8/2014	RE

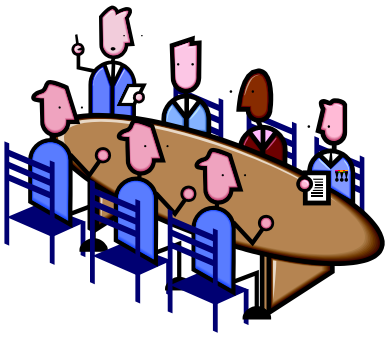
Item	Number	Date	Initials
snowshoes (no binding)	1	10/8/2014	RE
spools of thread	3	10/8/2014	RE
stitching horse	1	10/8/2014	RE
stone Indian hammer	1	10/8/2014	RE
stone leather working heads	3	10/8/2014	RE
straw filled tick		10/8/2014	RE
stretched beaver hide in willow hoop		10/8/2014	RE
striped cloth		10/8/2014	RE
striped cotton/felt blanket		10/8/2014	RE
stump cannon	1	10/8/2014	RE
supplies		10/8/2014	RE
tea block		10/8/2014	RE
Teepee poles	6	10/8/2014	RE
tendon dinew		10/8/2014	RE
throwing hawk	1	10/8/2014	RE
throwing hawk	1	10/8/2014	RE
throwing knife	1	10/8/2014	RE
tin bowl	1	10/8/2014	RE
tin boxes	2	10/8/2014	RE
tin boxes	2	10/8/2014	RE
tin candle holder with candle		10/8/2014	RE
tin cups	5	10/8/2014	RE
tin plate	1	10/8/2014	RE
tincup	1	10/8/2014	RE
tobacco samples	2	10/8/2014	RE
trade mirrors	3	10/8/2014	RE
trashbags		10/8/2014	RE
twin size rope bed with striped wool blanket	1	10/8/2014	RE
various wooden boxes	8	10/8/2014	RE
war club	1	10/8/2014	RE
water coolers	2	10/8/2014	RE
weighted cotton blanket	1	10/8/2014	RE
weighted cotton drop sleeve shirt	1	10/8/2014	RE

Item	Number	Date	Initials
weighted wool blanket	1	10/8/2014	RE
west firepit with benches	1	10/8/2014	RE
wheelchair	1	10/8/2014	RE
Wilma's leftover office stuff		10/8/2014	RE
wine bottle		10/8/2014	RE
wisk broom	1	10/8/2014	RE
wood and glass candleholder	1	10/8/2014	RE
wood and glass lanterns	7	10/8/2014	RE
wood bench	1	10/8/2014	RE
wood clipper	1	10/8/2014	RE
wood coffee table	1	10/8/2014	RE
wooden candle box with candlebits inside	1	10/8/2014	RE
wooden castor oil bait container	1	10/8/2014	RE
wooden chest	1	10/8/2014	RE
wooden indian	1	10/8/2014	RE
wooden nail keg	1	10/8/2014	RE
wooden open top box	1	10/8/2014	RE
wooden powder keg	2	10/8/2014	RE
wooden stick ladder	1	10/8/2014	RE
wooden table and chair	1	10/8/2014	RE
woolen cape	1	10/8/2014	RE
woolen drop front pants	1	10/8/2014	RE
woven red wool "Voyager" belt	1	10/8/2014	RE
replica guns	3	10/8/2014	RE
ancient pottery tribe unknown	3	10/9/2014	RE

Item K, L & M

Attorney Comments



City Manager Comments

Councilmember Comments