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

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

## A G E N D A

**Delta City Council  
Regular Meeting**

**May 6, 2014  
7:00 p.m.**

- A. Pledge of Allegiance**
- B. Changes to the Agenda**
- C. Minutes**
- D. Citizen Comments**
- E. Garnet Mesa Elementary 3<sup>rd</sup> Grade Class Dog Park Ordinance Change Presentation**
- F. Public Hearing: Special Events Permit Application; HopeWest**
- G. Appropriation for Ballot Campaign**
- H. Upper White Ranch Lease**
- I. City Attorney Comments**
- J. City Manager Comments**
- K. Councilmember Comments**
- L. Executive Session: For the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under CRS Section 24-6-402(4)(e); and more specifically for discussion concerning the Hamon and UPRR Contracts.**
- M. Discussion and Possible Approval of the First Amendment to Property Exchange Agreement with UPRR**
- N. Executive Session: For the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under CRS Section 24-6-402(4)(e) and for the purposes of receiving legal advice on specific legal questions under CRS Section 24-6-402(4)(b) and more specifically for discussion regarding the Senteney property.**

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 Justin Clifton and City Attorney David Smith. 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.

**Oath of Office: Councilmember Bill Raley and Councilmember Ed Sisson**

The City Clerk administered the Oath of Office to Councilmember-Elect Ed Sisson and Councilmember-Elect Bill Raley who were elected on April 1, 2014.

**Appointment of Mayor and Mayor Pro Tem**

City Manager Justin Clifton explained that the Charter requires the Council to appoint the Mayor and Mayor Pro Tem every two years after a regular municipal election. He summarized different ways the Council can choose to appoint the Mayor and Mayor Pro Tem.

It was moved by Councilmember Raley and seconded by Councilmember Jurca to nominate Ed Sisson for Mayor. All were in favor.

Manager Clifton stated that if that is the end of nominations, a motion needs to be made appointing the individuals chosen.

It was moved by Councilmember Penick and seconded by Councilmember Raley to appoint Ed Sisson as Mayor. All in favor, motion carried.

It was moved by Councilmember Penick and seconded by Councilmember Raley to appoint Mary Cooper as Mayor Pro Tem. All in favor, motion carried.

**City Council Board & Committee Appointments**

Manager Clifton stated that these appointments were reviewed at a work session a few months ago; however, it was decided to hold off making any changes until after the election. He also stated that some of the committees are no longer meeting; therefore, Council could remove those various committees.

There was discussion regarding the various boards.

Councilmember Jurca stated that the Community Revitalization Program committee should be removed.

## **Regular Meeting, Delta City Council, April 15, 2014 (cont.)**

### **City Council Board & Committee Appointments (cont.)**

Councilmember Cooper requested that Justin Clifton be added to the Delta County Economic Development. She suggested making Mr. Clifton the primary/voting member and the Councilmember the additional member.

It was moved by Councilmember Jurca and seconded by Councilmember Penick to approve the City Council Board and Committee Appointments with the amendments as stated. All in favor, motion carried.

### **Minutes**

It was moved by Councilmember Cooper and seconded by Councilmember Penick to approve the minutes of the April 1, 2014 City Council meeting as submitted by the Deputy Clerk. All in favor, motion carried.

### **Citizen Comments**

There were none.

### **DIP Request for Incentives**

Manager Clifton reported that this item was tabled at a previous meeting due to Council's request to have the applicant provide additional information. Staff estimates the fees to be around \$9,000. Since the last meeting, staff has learned additional information that may be pertinent to making a decision on this matter. First, the state has been making grants to local businesses that meet job expansion criteria through the REDI program. This program was initially tailored to communities like Delta based on our proximity to a major correctional facility. That program, administered in part from the state Office of Economic Development and International Trade, views local contributions to expanding businesses very favorably. In a sense, the local efforts are viewed as a type of cash match. This encourages further investment in our area because the support of the REDI program is leveraged with local contributions and grant dollars can go further.

Sarah Carlquist stated that she and Mr. Clifton had toured the facility at DIP and was able to view the operation that is conducted there. She also stated that DIP employs 15 people; they also have a multiplier where they employ one full time person that is dedicated to fitting their supply needs with Doughty Steel. They also provide a lot of service for UPS and FedEx as far as all of their shipping needs. DIP wants to complete the addition to their facility using local labor. With DIP investing in the local community they are requesting that the City and County to invest in them.

Mr. Clifton was impressed with DIP's ability to resource some of their materials locally. They also support other Colorado jobs. The reason the state is interested, is because with that kind of synergy it's a bigger impact on jobs.

Ms. Carlquist stated that DIP is a longtime employer for the area.

**Regular Meeting, Delta City Council, April 15, 2014 (cont.)**

**DIP Request for Incentives (cont.)**

Mr. Clifton stated that he would like to emphasize that there currently is not a program for incentives. Furthermore, Council has not allocated monies for such purposes. He explained that all of the fees would be collected in the general fund so in the event of any Council contribution, the fees would be discounted by the amount set by Council.

Mayor Sisson questioned if DIP is asking for money.

Mr. Clifton stated that they are. He then explained the cost of the fees.

Councilmember Penick questioned what all is included in the fees.

Community Development Director Glen Black stated that it includes the building permit fees which include the use tax, building permit and the plan check fees.

There was clarification on the use tax.

Councilmember Penick also questioned if the expansion includes additional employees.

Ms. Carlquist stated that with the REDI program to receive funds the business not only has to show capital improvement, they also have to job creation. She believes DIP is estimating job creation of 5 people within the next year.

Mr. Clifton stated that he thought the application he reviewed showed a commitment of 2 people. He explained that as they amend the application they are shooting for a number that is not too low or too high because they have to give money back if they don't fill that commitment.

There was discussion regarding what types of jobs would possibly be created.

Councilmember Cooper stated that she is not comfortable with discounting the full amount of \$9000 but would consider half.

Mr. Clifton reported that part of the state's assessment is looking at what are the opportunities to have capital investment in the community, job creation in the community and also what are the odds the business my relocate. He thought any contribution would be appreciated.

Councilmember Penick moved to allow incentives to DIP in the amount of \$5000 with the caveat that they must hire their two employees within one year.

Mr. Clifton questioned if it would be acceptable to say with the same commitment of the REDI program.

Councilmember Penick agreed.

Councilmember Cooper questioned how that would be administered.

Mr. Clifton stated that they are required to report to the state and the city has a good working relationship with the state to receive follow up.

**Regular Meeting, Delta City Council, April 15, 2014 (cont.)**

**DIP Request for Incentives (cont.)**

Councilmember Raley questioned how the Community Development Department will administer the funds.

Mr. Black stated that they would show what the total amount was for the fees and then show the amount that was discounted.

Councilmember Raley seconded Councilmember Penick's motion.

Councilmember Jurca questioned if there is anything they can add to the motion to hold the company accountable to use local contractors.

Mr. Clifton stated that Council can structure the approval anyway they would like; however, the nice thing about mirroring the requirements of the state is that they are already under contract for those requirements. New language would have to be created.

Councilmember Cooper commented that this is a local business expanding their business not a new company looking to come in to town.

Mayor Sisson called for a vote on Councilmember Penick's motion. Voting aye: Councilmembers Cooper, Penick, Raley and Sisson. Voting nay was Councilmember Jurca.

**Chamber Funding Request**

Manager Clifton stated that the Chamber is requesting some funding for the street fairs. He received an inquiry concerning any data that is available showing increased activity in the area during the street fairs. He stated that internally staff is not able to calculate daily use since sales tax is paid on a monthly or quarterly basis.

Kami Collins, Director of the Chamber, summarized the events and the type of businesses that participated. When she received the question from Mr. Clifton she called some of her businesses members along Main Street, and most noticed more activity moving downtown during the street fairs.

Councilmember Cooper questioned what the costs are to set up the road closure.

Ms. Collins stated that they send three or four staff in the morning and they are there approximately 15 minutes. The Chamber tears down after the event.

Councilmember Penick questioned if there is a balance in the fund that they use for this type of contribution.

Mr. Clifton stated that Chamber specific events were not included in the 2014 budget.

Councilmember Cooper questioned what the Chamber would use the monies for.

Ms. Collins stated they would use it for advertising and live music which draws people to the event.

## **Regular Meeting, Delta City Council, April 15, 2014 (cont.)**

### **Chamber Funding Request (cont.)**

There was discussion regarding the live music.

Councilmember Raley stated that the Saturday Markets get people downtown for a Saturday.

Councilmember Raley questioned where the money would come from.

Mr. Clifton stated that the budget document is used as a guide. There are a number of revenue items that will come in higher and some expense items that may potentially come in lower.

It was moved by Councilmember Penick seconded Jurca, to give the Delta Area Chamber of Commerce \$1000 for their 2<sup>nd</sup> Saturday Street Fairs. All in favor, motion carried.

### **Chamber Street Closure Requests**

Manager Clifton stated that this request is to close the street for the 2<sup>nd</sup> Saturday Street Fairs. He stated there is one amendment to the request.

Ms. Collins stated that for all of the events listed, they are requesting West 3<sup>rd</sup> Street between Main and Palmer Streets be closed for the events. The chamber is working with the museum for their 50<sup>th</sup> anniversary event this year. Ms. Collins is requesting to close East 3<sup>rd</sup> Street between Main and Meeker Streets for the October event.

Councilmember Penick questioned the Chief if he had any safety concerns closing 3<sup>rd</sup> Street on both sides of Main.

Chief Robert Thomas stated he supports their effort and does not have any concerns.

It was moved by Councilmember Cooper and seconded by Councilmember Penick to approve the Delta Area Chamber of Commerce's Street Closure Permit for May 10, June 14, August 9, September 13 and October 11, 2014 for West 3<sup>rd</sup> Street between Main and Palmer Streets and October 11, 2014 for East 3<sup>rd</sup> Street between Main and Meeker Streets. All in favor, motion carried.

### **Retail Liquor Store Renewal; D&B Liquors**

The Clerk explained that D&B Liquors has submitted their annual retail liquor store renewal. The application is complete and all fees have been paid. The police department is recommending renewal.

It was moved by Councilmember Jurca seconded Raley to approve D&B Liquors Retail Liquor Store renewal. All in favor, motion carried.

### **Report of Changes; CB's Tavern**

The Clerk reported that CB's Tavern has submitted a report of changes application to modify the premises for their current liquor license. The application states that they are expanding their area to include a banquet room. The applicant is working with the Community Development

## **Regular Meeting, Delta City Council, April 15, 2014 (cont.)**

### **Report of Changes; CB's Tavern (cont.)**

Department to be in compliance with all building regulations. The Clerk explained that since the applicant is expanding the area the state requires them to submit the modification application. The application is complete and all fees have been paid.

It was moved by Councilmember Cooper and seconded by Councilmember Penick to approve the report of change application submitted by CB's Tavern. All in favor, motion carried

### **Dairy King Minor Subdivision**

Community Development Director Glen Black stated that staff is recommending Council approve the minor subdivision contingent upon all corrections being made and compliance with all City of Delta requirements and any other regulatory/permitting agency requirements. The Planning Commission reviewed the Dairy King Minor Subdivision at the April 7, 2014 meeting and is also recommending approval. The applicant is requesting to divide 5.01 acre parcel into two lots. The existing parcel currently has two zoning designations, the Old Dairy King restaurant and a single wide trailer are located on a portion zoned B-2 and the remaining lot containing a residence, shop and barn is zoned A-1. Staff has reviewed the proposed subdivision and application and has found the proposal in substantial compliance with the requirements of the Delta Municipal Code. All fees have been received including the payment in lieu of parks fee.

Mr. Black explained that the existing single wide trailer will encroach into the newly created set back line. The trailer is a legally nonconforming use and would not be allowed to be replaced. Staff is in favor of allowing the encroachment to occur, since the trailer will eventually be removed from the property. For clarity there will be an addition to the plat note.

It was moved by Councilmember Penick and seconded by Councilmember Cooper to approve the Dairy King Minor Subdivision with staff and Planning Commission recommendations. All in favor, motion carried

### **Three Mile Plan**

Mr. Black stated that this is a State Statute requirement which 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 April 7, 2014 meeting. The boundary has not changed from the 2013 plan.

It was moved by Councilmember Raley and seconded by Councilmember Jurca to approve the three mile plan as presented. All in favor, motion carried.

### **Purchase of Trucks**

Manager Clifton reported this is a request to purchase three vehicles that are scheduled for replacement.

Councilmember Penick stated that is over budget by \$2300; however, there were savings of \$10,000 on a purchase earlier.

**Regular Meeting, Delta City Council, April 15, 2014 (cont.)**

**Purchase of Trucks (cont.)**

Fleet Manager Rod Myers stated that was correct.

Councilmember Jurca questioned if the replaced vehicles would be sold.

Mr. Myers stated that they will be sold.

Mr. Clifton stated that Mr. Myers has done a good job examining the fleet and has looked for opportunities to save.

It was moved by Councilmember Penick and seconded by Councilmember Jurca to approve the purchase of three trucks in the amount of \$79,335 from Hellman Motor Company. All in favor, motion carried.

**City Attorney Comments**

There were none.

**City Manager Comments**

Manager Clifton commented on the following items:

- May work sessions.
- Tree planning on April 18<sup>th</sup>.
- The REDI program.
- Council's approval for used equipment.
  - Rod Myers, Fleet Manager reported on the savings purchasing a used mower.

**Councilmember Comments**

Councilmember Cooper reported that Delta County Economic Development is having the annual meeting at Orchard City Town Hall next week. She will be attending the CML Executive Board meeting in Denver. Ms. Cooper thanked everyone for their vote of confidence.

Councilmember Raley stated that he is enjoying the work sessions; they are very enlightening and provide Council a better picture of the City.

Councilmember Penick stated that the City staff is being very diligent with the citizen's money and he appreciates all their work.

Mayor Sisson commented on a meeting at the hospital and they discussed the amount of Medicaid patients they are taking in which is hurting the hospital's bottom line. He stated that it has been an honor and a privilege serving as the Mayor. He also thanked everyone for their votes.

The meeting was adjourned at 7:47 p.m.

/s/ Jolene E. Nelson  
Jolene E. Nelson, CMC, City Clerk

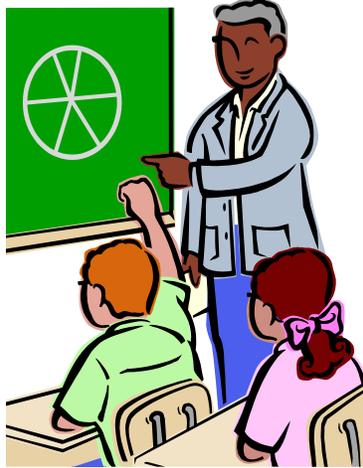
Item D:

Citizen Comments



Item E:

Garnet Mesa Elementary 3<sup>rd</sup> Grade Class Dog Park Ordinance Change Presentation



# MEMO

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To: Mayor and City Council  
From: Jolene Nelson, CMC, City Clerk  
Date: May 6, 2014  
Subject: Special Event Permit Application; HopeWest



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*Office of the City Clerk*

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**Recommendation:**

Staff recommends approving the application for a Special Events Liquor Permit for HopeWest Event for their fund raiser scheduled at Bill Heddles Recreation Center, 530 Gunnison River Drive on August 23, 2014.

**Background:**

HopeWest has submitted an application for a Special Events Liquor Permit for their fund raiser to be held at Bill Heddles Recreation Center, 530 Gunnison River Drive on August 23, 2014. The application specifies that they plan to sell alcoholic beverages from 4:00 p.m. to 12:00 a.m. on Saturday.

The application is complete and the fees, \$35 to the City and \$25 to the State, have been paid.

A sign notifying the public of this hearing has been posted at the site for at least ten days as required by law. As of the writing of this memo, no comments either for or against the approval of the application have been received by the City Clerk.

**Cost:**

There is no cost to the City.

**Alignment With Strategic Planning:**

Per Delta Municipal Code 5.10.010 “the Delta City Council is hereby designated the local licensing authority for the purposes of exercising the duties and powers provided for in the Colorado Beer Code and the Colorado Liquor Code.”

**Actions To Be Taken if Approved:**

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

## APPLICATION FOR A SPECIAL EVENTS PERMIT

Department Use Only

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

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

<b>LIAB TYPE OF SPECIAL EVENT APPLICANT IS APPLYING FOR:</b> 2110 <input checked="" type="checkbox"/> MALT, VINOUS AND SPIRITUOUS LIQUOR \$25.00 PER DAY 2170 <input type="checkbox"/> FERMENTED MALT BEVERAGE (3.2 Beer) \$10.00 PER DAY	<b>DO NOT WRITE IN THIS SPACE</b> LIQUOR PERMIT NUMBER
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1. NAME OF APPLICANT ORGANIZATION OR POLITICAL CANDIDATE <i>HOPE WEST</i>	State Sales Tax Number (Required) <i>98.10595.0000</i>
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2. MAILING ADDRESS OF ORGANIZATION OR POLITICAL CANDIDATE (include street, city/town and ZIP) <i>PO Box 24/195 Stafford Ln Delta, CO 81416</i>	3. ADDRESS OF PLACE TO HAVE SPECIAL EVENT (include street, city/town and ZIP) <i>Bill Heddles Rec Center 530 Gunnison River Dr. Delta, CO 81416</i>
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NAME	DATE OF BIRTH	HOME ADDRESS (Street, City, State, ZIP)	PHONE NUMBER
4. PRES./SEC'Y OF ORG. or POLITICAL CANDIDATE <i>Lynn Shirk</i>		<i>195 Stafford Ln. Delta 81416</i>	<i>970.210.7308</i>

5. EVENT MANAGER <i>Trisha Whittington</i>	HOME ADDRESS (Street, City, State, ZIP) <i>3090B N 12th St Delta, CO 81506</i>
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6. HAS APPLICANT ORGANIZATION OR POLITICAL CANDIDATE BEEN ISSUED A SPECIAL EVENT PERMIT THIS CALENDAR YEAR? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES HOW MANY DAYS? _____	7. IS PREMISES NOW LICENSED UNDER STATE LIQUOR OR BEER CODE? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES TO WHOM? _____
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8. DOES THE APPLICANT HAVE POSSESSION OR WRITTEN PERMISSION FOR THE USE OF THE PREMISES TO BE LICENSED?  Yes  No

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

Date		Date		Date		Date		Date	
Hours	From	Hours	From	Hours	From	Hours	From	Hours	From
<i>8/23/2014</i>									
	From <i>4:00 p.m.</i>		From		From		From		From
	To <i>12:00 a.m.</i>		To		To		To		To

**OATH OF APPLICANT**

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

SIGNATURE <i>Lynn Shirk</i>	TITLE <i>Comm. Devel. Coord.</i>	DATE <i>3/17/14</i>
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**REPORT AND APPROVAL OF LOCAL LICENSING AUTHORITY (CITY OR COUNTY)**

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

**THEREFORE, THIS APPLICATION IS APPROVED.**

LOCAL LICENSING AUTHORITY (CITY OR COUNTY)	<input type="checkbox"/> CITY <input type="checkbox"/> COUNTY	TELEPHONE NUMBER OF CITY/COUNTY CLERK
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SIGNATURE	TITLE	DATE
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**DO NOT WRITE IN THIS SPACE - FOR DEPARTMENT OF REVENUE USE ONLY**

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

Item G:

**Appropriation for Ballot Campaign**



# MEMO

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To: City Council  
From: Steve Glammeyer, Utilities/PW Director  
Date: May 6, 2014  
Subject: Upper White Ranch grazing lease



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*Utilities Department*

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**Recommendation:**

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

**Background:**

The attached lease is for the use of the Upper White Ranch property for grazing purposes. We have historically had a lease agreement with the Longs and Sanburgs to use this land for this purpose. The current lease expired on November 30, 2013 and the new lease would start on June 1, 2014. Both parties would like to continue this lease for 2014. 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 \_\_\_\_\_, 2014, 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, 2014, and end on November 30, 2014.

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, 2014.

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:  
City of Delta, Colorado

LESSEE:

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

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

ATTEST:

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

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

Exhibit A

Upper White Ranch Only

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

Range 96, Township 13 South

Section 24    Lots 6 and 7  
                  NE<sup>1</sup>/<sub>4</sub> of the SW<sup>1</sup>/<sub>4</sub>  
                  W<sup>1</sup>/<sub>2</sub> of the SW<sup>1</sup>/<sub>4</sub>  
                  SE<sup>1</sup>/<sub>4</sub> of the SW<sup>1</sup>/<sub>4</sub>

Section 25    W<sup>1</sup>/<sub>2</sub> of the NW<sup>1</sup>/<sub>4</sub>  
                  NW<sup>1</sup>/<sub>4</sub> of the NE<sup>1</sup>/<sub>4</sub>  
                  NE<sup>1</sup>/<sub>4</sub> of the NW<sup>1</sup>/<sub>4</sub>

Section 26    N<sup>1</sup>/<sub>2</sub> of the NW<sup>1</sup>/<sub>4</sub>  
                  SE<sup>1</sup>/<sub>4</sub> of the NW<sup>1</sup>/<sub>4</sub>  
                  NE<sup>1</sup>/<sub>4</sub>

**Attorney Comments**



**City Manager Comments**



**Councilmember Comments**



**Item L:**

**Executive Session:**

For the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under CRS Section 24-6-402(4)(e); and more specifically for discussion concerning the Hamon and UPRR Contracts.

**Item M:**

**Discussion and Possible Approval of the First Amendment to Property Exchange Agreement with UPRR**

**Item N:**

**Executive Session:**

For the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under CRS Section 24-6-402(4)(e) and for the purposes of receiving legal advice on specific legal questions under CRS Section 24-6-402(4)(b) and more specifically for discussion regarding the Senteney property.