



**A G E N D A**  
**AMENDED**

**Delta City Council  
Regular Meeting**

**December 19, 2023  
7:00 p.m.**

- A. Pledge of Allegiance
- B. Changes to the Agenda
- C. Citizen Comments
- D. Approval of the December 5, 2023 Regular Meeting Minutes
- E. Public Hearing Continued from December 5, 2023: Tavern Liquor License Application; Ute St Tavern and Delta Tin Hall on the Back 40, LLC
- F. Cunningham Orchard Estates Subdivision Preliminary Plat
- G. Intergovernmental Agreement with Delta County Regarding Purchase, Installation, and Operation of an Electric Vehicle Charger at 124 E. 6<sup>th</sup> Street, Delta, CO (Library)
- H. Resolution #17, 2023; Updating the Incentive Policy
- I. Resolution #18, 2023; Purchase of 540 W. 4<sup>th</sup> Street, Delta, CO
- J. Resolution #19, 2023; Adopting Ballot Issue Language for the 2024 April Election
- K. Colorado Municipal League Policy Committee Appointment
- L. City Attorney Comments
- M. City Manager Comments
- N. Councilmember Comments
- O. Executive Session  
To discuss the purchase, acquisition, lease, transfer, or sale of real, personal, or other property interest under CRS Section 24-6-402(4)(a); more specifically to discuss purchase or acquisition of property located at 264 Main Street, Delta, CO.

Please preregister for the meeting:  
Join Zoom Meeting  
<https://us06web.zoom.us/j/89209114116>  
One tap mobile  
+17193594580. 89209114116#

**Amended 12/15/2023 @ 3:45pm (JN)**

Item A:

**Pledge of Allegiance**



Item B:

**Changes to the Agenda**

Item C:

Citizen Comments



Mayor Kevin Carlson called the meeting to order at 7:00 p.m. Also present were Councilmembers Cathy Boyd, William Tedrow, Ryan Crick and Mark Broome, along with City Manager Elyse Casselberry and City Attorney David McConaughy. A meeting notice was posted on the City's website and 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**

Councilmember Broome requested a moment of silence in remembrance of Pearl Harbor.

**Citizen Comments**

There were none.

**Approval of the November 21, 2023 Regular Meeting Minutes**

It was moved by Councilmember Tedrow and seconded by Councilmember Boyd to approve the November 21, 2023 Regular Meeting Minutes as presented. All in favor, motion carried.

**Public Hearing: Tavern Liquor License Application; Ute St Tavern and Delta Tin Hall on the Back 40, LLC**

The Mayor recessed the regular meeting and convened a public hearing.

City Clerk Jolene Nelson reported that St Tavern and Delta tin Hall on the Back 40, LLC has applied for a Tavern Liquor License. After review of the application staff has determined the following preliminary findings:

- The owner of the LLC is Robert Miller.
- Has been subject to a criminal record check through the Colorado Bureau of Investigation and no record within the last 15 years was located.
- The location of the business is 209-215 Ute Street in Delta.
- No information has been provided on the control plan
- No information has been provided on how the applicant will comply with the food requirements.
- The diagram of the proposed area has not been determined to be in possession of the applicant. It is difficult to determine with the proposed area is within the leased area as defined in the lease agreement.
- The applicant will need to work with the Community Development Department to obtain a certificate of occupancy of the proposed building/location for the business type they are proposing.
- There has not been a denial of an application for a Tavern License at the location for which the application is made.
- A sign was posted at the site as required by law.

**Regular Meeting, Delta City Council, December 5, 2023 (Cont.)**

**Public Hearing: Tavern Liquor License Application; Ute St Tavern and Delta Tin Hall on the Back 40, LLC (cont.)**

- A public notice was in the Delta County Independent as required by law and posted on the City's website.
- Within the corporate limits of the City of Delta, there are the following existing liquor outlets:

Beer and Wine	3
Club	1
Hotel & Restaurant	12
Retail Liquor Store	4
Tavern	0
Fermented Malt Beverage and Wine	6

Dan Carr with Dill Carr Stonraker Hutchings is representing the applicant which is owned by Robert Miller. He stated that this is a difficult real estate project that the applicant is working through. He has submitted a residential development site plan as well. Before the residential project moves forward, the applicant would like to use the area for an event venue to bring in some entertainment. They will work with the Community Development Department to obtain all necessary building permits and certificates required before operating the business in the property location. They will have the requirement food during regular business hours and will have food trucks for the events. The proposed area is completely fenced. That area will not be utilized all of the time. He has one witness to present this evening to address the needs and desires component of the application.

Chris Miller, 245 Columbia Street, who is of no relation to the applicant, stated that Delta is starting to be known for the music and events. The proposed application will add value to the community and the outdoor entertainment area.

There was extension discussion regarding the proposed licensed area. Mr. Carr explained that the two buildings on Ute Street will be the main operational and the larger area is for events. It was requested that there be some clarification that the proposed area is within the licensed area.

Councilmember Broome questioned where and how the liquor will be stored.

Mr. Carr reported that the liquor will be in the building at 209 Ute Street under lock and key. Personnel only will have access to the alcohol.

Councilmember Tedrow questioned the location as the address on the application reads 209-215 Ute Street. He questioned if it is just 209 and 215 Ute Street.

Mr. Carr stated that 209 and 215 Ute Street are the two building right next to each other and connected by a breeze way.

City Attorney David McConaughy stated that there few items that the applicant needs to address. At this time, Council could continue the public hearing to allow the applicant to present the questions they have regarding the application as it has been submitted.

It was moved by Councilmember Crick and seconded by Councilmember Broome to continue the public hearing for the proposed liquor license until December 19, 2023 to allow the applicant to

**Regular Meeting, Delta City Council, December 5, 2023 (Cont.)**

**Public Hearing: Tavern Liquor License Application; Ute St Tavern and Delta Tin Hall on the Back 40, LLC (cont.)**

address the proposed license area, diagram of the building to show storage of the liquor, amending the application to reflect the proposed addresses. All in favor, motion carried.

**Reconsideration of Bids and Award of Contract for the Hillside Reconstruction Project**

City Manager Elyse Casselberry reported that at the November 7, 2023 meeting Council award a bid for the Hillside Reconstruction Project which was not the ultimate low bid. That award was contingent upon CDOT's approval. On November 21, 2023 right before the Council meeting, staff received notice from CDOT that declined that award as they believe the City did not provide adequate information to move forward with the second lowest bid. At this time, staff is recommending that Council rescind their prior motion and move forward with awarding the bid/contract to K&K Concrete.

Councilmember Boyd questioned when they would begin construction.

Drew Abbott with K&K Concrete stated that they are excited to move forward with this job and will begin after the first of the year.

It was moved by Councilmember Boyd and seconded by Councilmember Broome to rescind the November 7<sup>th</sup>, 2023 motion awarding the Hillside Reconstruction Project to Well Excavating and award the contract to K&K Concrete. Voting in favor: Councilmembers Broome, Crick, Boyd and Carlson. Voting against: Councilmember Tedrow.

**Public Hearing: Utility Rates**

The Mayor recessed the regular meeting and convened a public hearing.

Electric Department Manager Adam Suppes stated these rates have been discussed in great detail during the last few years. The goal is to level out the rates over time rather than having one large increase. The proposed rates are still competitive regionally. These rate changes will help keep the fund balances in the black.

City Clerk Jolene Nelson reported that notification of this hearing has been completed as required by law.

Ouida Touchon, 545 Howard Street, commented on the rate increase. She believes that Delta is a unique community. She is concerned about the broad group of seniors in Delta with limited income being able to handle the increase. She suggested to seek alternative solutions and to creatively think about what is actually needed opposed to increasing rates.

Josh Vigil, 1641 A Street, stated that when looking at a spreadsheet the questions becomes what is in the third column. Are we funding other things and are we treating our citizens right?

The Mayor called for public comment and when there was none he closed the public hearing and reconvened the regular meeting.

**Regular Meeting, Delta City Council, December 5, 2023 (Cont.)**

**Public Hearing: Utility Rates (cont.)**

City Manager Elyse Casselberry stated that she is willing to meet with anyone that has questions regarding the rate increase. She explained that there is a long-term imbalance that will need to be discussed in the near future and the community will need to help decide how the City should move forward.

**Ordinance #11, 2023; Second and Final Reading  
2024 Appropriations**

Ordinance #11, 2023

AN ORDINANCE APPROPRIATING SUMS OF MONEY TO THE VARIOUS FUNDS AND SPENDING AGENCIES IN THE AMOUNTS AND FOR THE PURPOSES SET FORTH BELOW FOR THE CITY OF DELTA, COLORADO, FOR THE 2024 BUDGET YEAR

was read by the Clerk.

It was moved by Councilmember Crick and seconded by Councilmember Tedrow to adopt Ordinance #11, 2023 on second and final reading. Roll call vote: Councilmembers Broome, Crick, aye; Boyd, aye; Tedrow, aye and Carlson, aye. Motion carried.

**Resolution #16, 2023; 2024 Fee Schedule**

City Clerk Jolene Nelson reported that the fee schedule was amended from what is in the packet. The recreation center fees were not updated on that version. She provided Council the updated version. The fee schedule also reflects the changes as discussed during the budget process.

RESOLUTION NO. 16, 2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DELTA ADOPTING A SCHEDULE OF FEES FOR CITY SERVICES

was read by the Clerk.

Staff answered questions regarding animal licenses as well as Veteran discounts.

It was moved by Councilmember Tedrow and seconded by Councilmember Crick to adopt Resolution #16, 2023. Roll call vote: Councilmembers Broome, aye; Crick, aye; Boyd, aye; Tedrow, aye and Carlson, aye. Motion carried.

**Public Building Electrification Grant Commitment of Electrification of the Community Safety Center**

City Manager Elyse Casselberry stated that as Council may recall, staff recommended holding back the cost of the HVAC systems for the Community Safety Center's contract. Staff worked



**Regular Meeting, Delta City Council, December 5, 2023 (Cont.)**

**Public Building Electrification Grant Commitment of Electrification of the Community Safety Center (cont.)**

with the Governor's Energy Office to determine if they would be willing to help the City move forward in electrification of the building. This will reduce costs in the long term. The Energy Office has reported that they will assist the City of Delta in these costs. They need a letter of commitment to move forward with the grant.

It was moved by Councilmember Crick and seconded by Councilmember Boyd to submit a letter of commitment to the Governor's Energy Office for the electrification grant for the Community Safety Center and authorize the Mayor to sign the letter. All in favor, motion carried.

**Ordinance #13, 2023; Second and Final Reading  
Charter Commission**

ORDINANCE NO. 13, 2023

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
DELTA REGARDING THE FORMATION OF A CHARTER  
COMMISSION BY ELECTION

was read by the Clerk.

It was moved by Councilmember Tedrow and seconded by Councilmember Boyd to adopt Ordinance #13, 2023 on second and final reading. Roll call vote: Councilmembers Broome, aye; Crick, aye; Boyd, aye; Tedrow, aye and Carlson, aye. Motion carried.

City Clerk Jolene Nelson reminded Council of the fair campaign laws now that the ordinance is adopted.

**City Attorney Comments**

There were none.

**Monthly Manager Report/City Manager Comments**

Community Development Manager Joe Gillman provided Council information on the FEMA Flood Risk Map Update. Notices were sent out to property owners within the floodplain and information is also available on the City's website.

City Manager Elyse Casselberry let Council know that the Soper/Wang Appeal will be held in January due to timing of notices.

Manager Casselberry has been elected the Chair of the Colorado Leading Women Government that is part of the Colorado City & County Management Association.

## **Regular Meeting, Delta City Council, December 5, 2023 (Cont.)**

### **Councilmember Comments**

Councilmember Broome invited everyone to VFW and American Legion events in December. He would like to explore ideas on how to offer Veteran discounts. He commented on the rate increase and encouraged everyone to help their families and friends that have fixed incomes.

City Manager Elyse Casselberry reminded everyone about programs throughout the community that can also assist in utility bills.

Councilmember Crick thanked staff for the hard work they did on the budget. Although increasing rates is difficult, we have to keep up with the increasing costs to maintain the systems. He commented on the sidewalks along Highway 50 during the recent snow storm. He congratulated the Delta High School Football Team for becoming State Champions.

Councilmember Tedrow also thanked staff for all they do and congratulated the football team. He also commented on the street sweeper working diligently.

Councilmember Boyd stated that there is a news stations segment that did a great job on the football team. She is continually amazed at the work that staff accomplishes each month and thanked them for all they do. The work at the bottom of 9<sup>th</sup> Street Hill is great to see. She commented on the housing authority and the new unit. They are hoping to bring a proposal next year for another housing project. She commented on the parade of lights and Christmas at the Fort. She encouraged anyone that is able to help to participate in the Giving Tree. There are a lot of families in need at this time. She questioned if the City is serving at the Abraham Connection again this year.

Manager Casselberry stated that she will see if there is still availability to serve.

Mayor Carlson also commented on the Parade of Lights as well at the football team. He will be attending the Project 7 Resiliency meeting and will bring back the information. He was reminded why he is on this board and that he is the Mayor. He encouraged everyone to spend time with their families during the Christmas season. He also commented on the light along Main Street. He would like to see the City host a Christmas Light contest.

### **Executive Session**

It was moved by Councilmember Crick and seconded by Councilmember Boyd to convene an Executive Session To discuss the purchase, acquisition, lease, transfer, or sale of real, personal, or other property interest under CRS Section 24-6-402(4)(a); more specifically to discuss purchase or acquisition of property located at 264 Main Street, Delta, CO. All in favor, motion carried.

At 8:50 p.m., the Regular Meeting was recessed. The Executive Session was convened a short time later.

At 9:13 p.m., the Mayor reconvened the Regular Meeting and announced that the Executive Session had been concluded. He stated that in addition to himself, the participants in the Executive Session were Councilmembers Cathy Boyd, Ryan Crick, William Tedrow, and Mark

**Regular Meeting, Delta City Council, December 5, 2023 (Cont.)**

**Executive Session (cont.)**

Broome, as well as City Manager Elyse Casselberry and City Clerk Jolene Nelson. For the record, the Mayor asked any person participating in the Executive Session who believed that any substantial discussion of any matters not included in the motion to go into Executive Session occurred during the Executive Session in violation of the Open Meetings Law, to state his or her concerns for the record. No concerns were stated.

The meeting was immediately adjourned.

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Jolene E. Nelson, CMC, City Clerk

# Colorado Liquor Retail License Application

Uploaded to 

Date
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\* Note that the Division will not accept cash  Paid by check  Paid online

New License  New-Concurrent  Transfer of Ownership  State Property Only  Master file

- All answers must be printed in black ink or typewritten
- Applicant must check the appropriate box(es)
- Applicant should obtain a copy of the Colorado Liquor, Beer and Wine Code: [SBG.Colorado.gov/Liquor](http://SBG.Colorado.gov/Liquor)

1. Applicant is applying as a/an  Individual  Limited Liability Company  Association or Other  
 Corporation  Partnership (includes Limited Liability and Husband and Wife Partnerships)

2. Applicant If an LLC, name of LLC; if partnership, at least 2 partner's names; if corporation, name of corporation  
 Ute St Tavern and Delta Tin Hall on the Back 40 LLC FEIN Number  
93-3159274

2a. Trade Name of Establishment (DBA) State Sales Tax Number  
 Back 40 94621419 Business Telephone  
214-651-1656

3. Address of Premises (specify exact location of premises, include suite/unit numbers)  
 209 and 215 Ute Street

City Delta	County Delta	State CO	ZIP Code 81416
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4. Mailing Address (Number and Street) 6604 Forest Creek Drive	City or Town Dallas	State TX	ZIP Code 75230
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5. Email Address  
 nationalgaspartners@gmail.com

6. If the premises currently has a liquor or beer license, you **must** answer the following questions

Present Trade Name of Establishment (DBA)	Present State License Number	Present Class of License	Present Expiration Date
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<b>Section A Nonrefundable Application Fees*</b>	<b>Section B (Cont.) Liquor License Fees*</b>
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<input type="checkbox"/> Application Fee for New License ..... \$1,100.00 <input checked="" type="checkbox"/> Application Fee for New License w/Concurrent Review ..... \$1,200.00 <input type="checkbox"/> Application Fee for Transfer ..... \$1,100.00	<input type="checkbox"/> Liquor-Licensed Drugstore (County) ..... \$312.50 <input type="checkbox"/> Lodging & Entertainment - L&E (City) ..... \$500.00 <input type="checkbox"/> Lodging & Entertainment - L&E (County) ..... \$500.00
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<b>Section B Liquor License Fees*</b>	
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<input type="checkbox"/> Add Optional Premises to H & R..... \$100.00 X _____ Total _____ <input type="checkbox"/> Add Related Facility to Resort Complex \$75.00 X _____ Total _____ <input type="checkbox"/> Add Sidewalk Service Area..... \$75.00 <input type="checkbox"/> Arts License (City) ..... \$308.75 <input type="checkbox"/> Arts License (County) ..... \$308.75 <input type="checkbox"/> Beer and Wine License (City)..... \$351.25 <input type="checkbox"/> Beer and Wine License (County)..... \$436.25 <input type="checkbox"/> Brew Pub License (City) ..... \$750.00 <input type="checkbox"/> Brew Pub License (County)..... \$750.00 <input type="checkbox"/> Campus Liquor Complex (City)..... \$500.00 <input type="checkbox"/> Campus Liquor Complex (County) ..... \$500.00 <input type="checkbox"/> Campus Liquor Complex (State)..... \$500.00 <input type="checkbox"/> Club License (City) ..... \$308.75 <input type="checkbox"/> Club License (County) ..... \$308.75 <input type="checkbox"/> Distillery Pub License (City)..... \$750.00 <input type="checkbox"/> Distillery Pub License (County) ..... \$750.00 <input type="checkbox"/> Hotel and Restaurant License (City)..... \$500.00 <input type="checkbox"/> Hotel and Restaurant License (County) ..... \$500.00 <input type="checkbox"/> Hotel and Restaurant License w/one opt premises (City) ..... \$600.00 <input type="checkbox"/> Hotel and Restaurant License w/one opt premises (County)..... \$600.00 <input type="checkbox"/> Liquor-Licensed Drugstore (City) ..... \$227.50	<input type="checkbox"/> Manager Registration - H & R ..... \$30.00 <input type="checkbox"/> Manager Registration - Tavern ..... \$30.00 <input type="checkbox"/> Manager Registration - Lodging & Entertainment..... \$30.00 <input type="checkbox"/> Manager Registration - Campus Liquor Complex ..... \$30.00 <input type="checkbox"/> Optional Premises License (City)..... \$500.00 <input type="checkbox"/> Optional Premises License (County) ..... \$500.00 <input type="checkbox"/> Racetrack License (City)..... \$500.00 <input type="checkbox"/> Racetrack License (County)..... \$500.00 <input type="checkbox"/> Resort Complex License (City)..... \$500.00 <input type="checkbox"/> Resort Complex License (County)..... \$500.00 <input type="checkbox"/> Related Facility - Campus Liquor Complex (City) ..... \$160.00 <input type="checkbox"/> Related Facility - Campus Liquor Complex (County) ..... \$160.00 <input type="checkbox"/> Related Facility - Campus Liquor Complex (State)..... \$160.00 <input type="checkbox"/> Retail Gaming Tavern License (City) ..... \$500.00 <input type="checkbox"/> Retail Gaming Tavern License (County)..... \$500.00 <input type="checkbox"/> Retail Liquor Store License-Additional (City)..... \$227.50 <input type="checkbox"/> Retail Liquor Store License-Additional (County) ..... \$312.50 <input type="checkbox"/> Retail Liquor Store (City)..... \$227.50 <input type="checkbox"/> Retail Liquor Store (County) ..... \$312.50 <input checked="" type="checkbox"/> Tavern License (City)..... \$500.00 <input type="checkbox"/> Tavern License (County)..... \$500.00 <input type="checkbox"/> Vintners Restaurant License (City) ..... \$750.00 <input type="checkbox"/> Vintners Restaurant License (County)..... \$750.00
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Questions? Visit: [SBG.Colorado.gov/Liquor](http://SBG.Colorado.gov/Liquor) for more information

**Do not write in this space - For Department of Revenue use only**

Liability Information

License Account Number	Liability Date	License Issued Through (Expiration Date)	Total \$
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Ute St. Tavern and Delta Tin Hall on the Back 40 LLC

The property constituting the fenced in open space to the Northwest of 209-215 Ute Street is approximately 26.4 acres and is controlled by Ute St. Tavern and Delta Tin Hall on the Back 40 LLC, which is owned by Robert Miller.

Thank you,

A handwritten signature in black ink, appearing to read "Robert Miller", written over a horizontal line.

Robert Miller, Member

Ute St. Tavern and Delta Tin Hall on the Back 40 LLC



To: City of Delta City Council  
From: Joe Gillman, Community Development Manager; Mike Markus, City Planner; and Raini Ott, Contract City Planner  
Date: December 19, 2023  
Subject: Cunningham Orchards Estates 2022 Preliminary Plat

### Request Summary

The subject request is for approval of a Preliminary Plat for the Cunningham Orchards Estates 2022 Subdivision consisting of 14.59 acres total to be divided into 46 residential lots on 11.17 acres, 2.57 acres of dedicated road right-of-way, and tracts for stormwater management, open space, and trails (“Subject Request”). The proposed residential lot sizes range from approximately 8,900 to 15,000 square feet. The subject properties are zoned R-1 Residential and located off Pioneer Road at its intersection with Criterion Street; they are identified as Tract C (park) and Outlots A and B of Cunningham Orchard Estates Final Plat Filing No. 3 (Reception No. 729219) (“Subject Properties”) (Figure 1). The request is submitted by property owner Delta High Country, LLC; developer Larry Hinger; and representative Randy Fender with Mesa Engineering (“Applicant”).

Based on review pursuant to Section 16.04.050(D), City staff and the City of Delta Planning Commission recommend conditional approval of the request. Refer to the [October 9, 2023, Planning Commission staff report packet](#) for a detailed criteria review, copies of all application materials and referral agency comments, and additional background information.

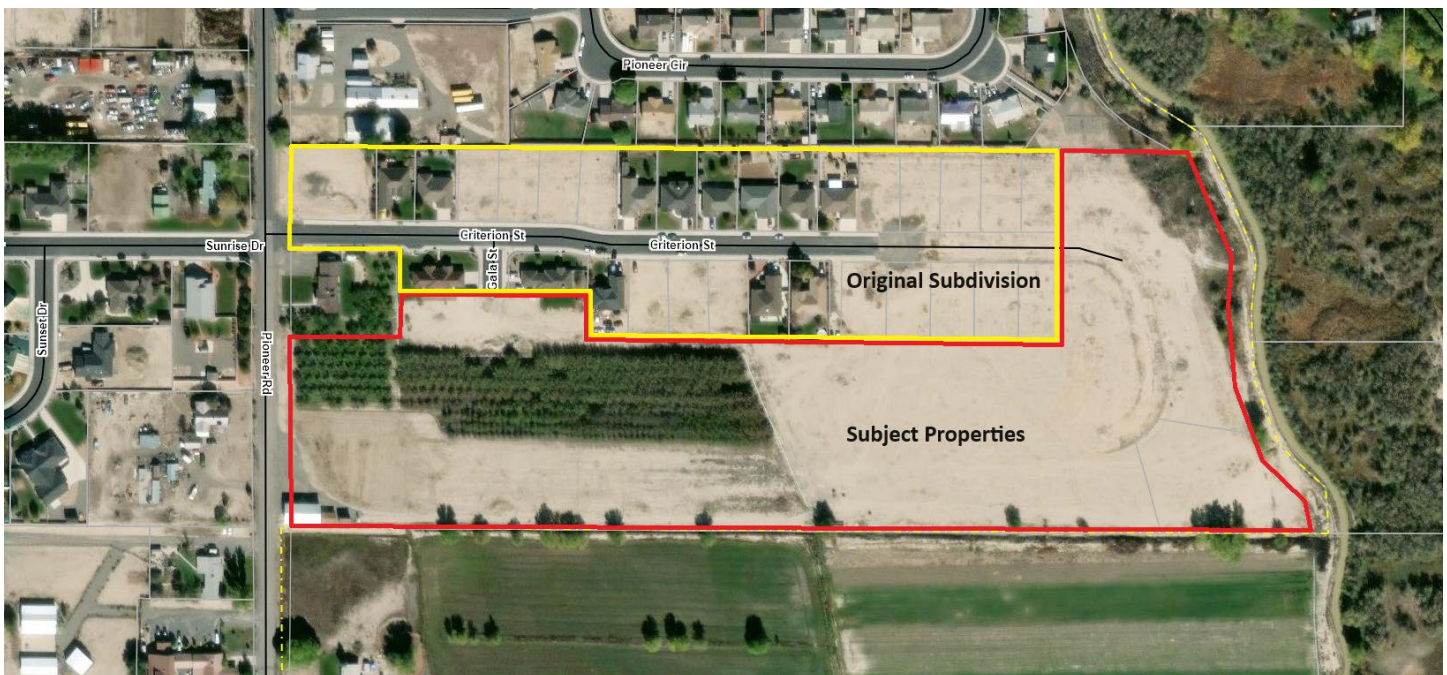


Figure 1: Aerial of Subject Properties (red outline), Original Subdivision (yellow outline), and Surrounding Area



## Background Information

The Subject Properties were previously platted under Final Plat Filing Nos. 1, 2, and 3 of the original Cunningham Orchard Estates Subdivision (“Original Subdivision”) and were most recently used as an orchard. The City-County boundary is located along the southern and eastern boundaries of the Subject Properties. The existing land uses to the south and east, outside City limits, consist primarily of agricultural and low-density residential uses. To the north is the Original Subdivision and uses include low- to medium-density residential. Across Pioneer Road to the west, there is a residential subdivision which is zoned R-R Rural Residential for low- to medium-density development.

Filing Nos. 1, 2, and 3 of the Original Subdivision created 30 residential lots; Tract A (stormwater retention); Tract C (park); Tract D (open space/ditch canal); Outlots A and B; dedicated City road right-of-way for portions of Criterion Street, Gala Street, and emergency access; and public and private easements for various purposes (Figure 2). The Subject Request for Preliminary Plat entails replatting Outlots A and B, as well as Tract C, to create the remaining 46 residential lots contemplated by the Original Subdivision in three Final Plat filing phases (Filing Nos. 4, 5, and 6) (Figure 3); however, all approvals for the Original Subdivision have expired.



Figure 2: Overview of Previous Filings and Remaining Acreage

PRELIMINARY PLAT  
**CUNNINGHAM ORCHARD ESTATES 2022**

(EXCEPT PREVIOUS FILINGS 1, 2 AND 3, RECORDED AT REC. #599229, #717546 AND #729219, RECORDS OF DELTA COUNTY)

A PORTION OF THE S1/2 NW1/4 NW1/4 OF SEC. 29 AND OF THE S1/2 NE1/4 NE1/4 OF SEC. 30  
T.15 S., R.95 W., 6TH P.M., CITY OF DELTA, COUNTY OF DELTA, STATE OF COLORADO

SHEET 2 OF 2

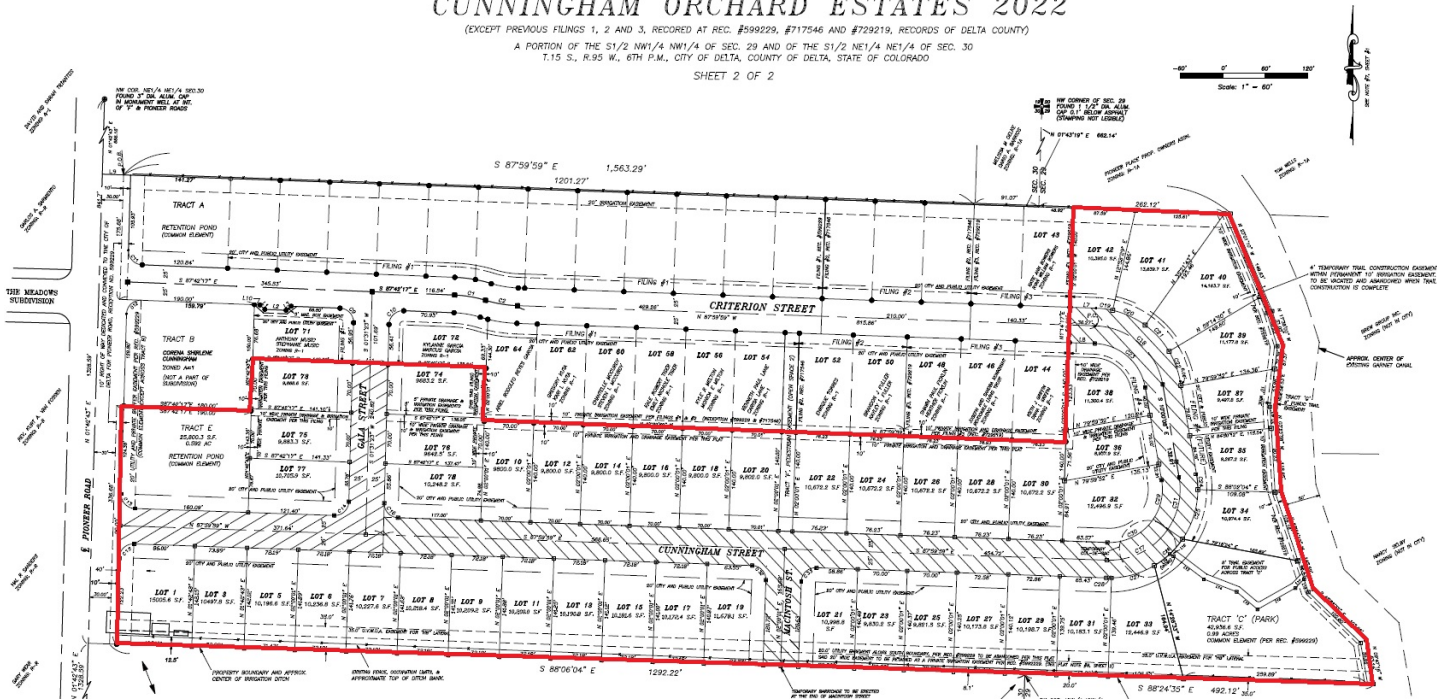


Figure 3: Cunningham Orchard Estates 2022 Preliminary Plat Subdividing 46 Residential Lots (outlined in red)

There is an existing Subdivision Improvements Agreement (SIA) associated with Final Plat Filing No. 1 of the Original Subdivision that was signed and recorded on January 4, 2006 (Reception No. 599230). There are several outstanding requirements of the SIA, including for irrigation system, ditch piping, park land, trail, open space, landscaping, and fencing improvements, as well as the installation of a buffer on Tract A along Pioneer Road. A response from the Cunningham Orchard Estates Homeowners Association (HOA) dated July 18, 2022, provides an overview of the current status of these improvements (Attachment A, pages 3-4). As part of the Subject Request for the new 46-lot subdivision, staff recommends requiring a new SIA prior to recording any Final Plat as a condition of approval. As recommended, the new SIA must include any remaining items not yet completed from the Original Subdivision. The Applicant will be responsible for submitting sufficient evidence for any outstanding improvements that have been completed, and the new SIA may require the City to collect additional escrow funds or other security, as the costs are likely very different from 2006.

### Review Procedure

The review procedure for Preliminary Plat is outlined under Section 16.04.050(D) and requires review by the Planning Commission and City Council at regularly scheduled meetings. Such requests are referred to relevant City departments and external agencies for review and comment, and public notice is provided by posting a sign on the subject properties for seven days preceding the scheduled Planning Commission meeting.

### Referral Agency Comments

The request was distributed to the relevant City departments for review and comments, as well as to external agencies. In this case, referrals were sent to Delta County, Colorado Department of Transportation (CDOT), Delta County School





District, Delta-Montrose Electric Association (DMEA), US Postal Service, US Army Corps of Engineers, UVWUA, and BOR. All referral agency responses received are included in the [October 9, 2023, Planning Commission staff report packet](#).

### ***Public Notice & Comments***

Public notice of the City Council meeting is required to be posted on the subject properties at least seven days prior to the preceding Planning Commission meeting. For the subject request, the public notice sign was posted as of October 2, 2023. In addition, notice was provided as an agenda item for the December 19, 2023, City Council meeting.

All noticing requirements have been met for the Subject Request. As of publication of this report, staff received one public comment voicing concerns about incomplete improvements from the Original Subdivision (Attachment A, page 1). In addition, staff and the Applicant received correspondence from the existing HOA regarding the incomplete improvements and stating that the HOA is willing to cooperate with the Applicant moving forward (Attachment A, pages 2-4).

### **Criteria Review**

As detailed in the [October 9, 2023, Planning Commission staff report](#), staff recommends the City Council conditionally approve the Subject Request since staff finds that all requirements and minimum design standards for a preliminary plat can be met, with certain conditions.

### **Planning Commission Review**

On October 9, 2023, the City of Delta Planning Commission held a duly noticed public meeting to review the Subject Request. Planning Commissioners present included Susan Welk-Valdez, Chair; Fay Mathews, Vice-Chair; Gerald Roberts; Cecilia Tafoya; and Ron White. Absent were Commissioners Tony Romero and Katie Bowers. As detailed in the staff report, staff recommended the Planning Commission recommend conditional approval of the Subject Request to City Council since staff found that all requirements and minimum design standards could be met, with certain conditions. Refer to the [October 9, 2023, Planning Commission staff report packet](#) for a detailed criteria review, copies of all application materials and referral agency comments, and additional background information. The approved minutes from the October 9, 2023, Planning Commission meeting are included in Attachment B.

At the October 9 meeting, staff presented the Subject Request and recommended action. After staff addressed questions from the Commission about the incomplete subdivision improvements, BOR claim on right-of-way, trail easements, liabilities of the HOA for the private park, and recommended conditions, the Applicant presented their request. The Commission then asked the Applicant questions about why improvements from the Original Subdivision were never completed, inconsistencies in the record, and the park and private covenants. City staff clarified that the recommended conditions of approval are intended to address these outstanding issues and provide a path forward for the request.

The meeting was then opened for public comment, and a total of four members of the public spoke. Comments mainly voiced concerns about the incomplete improvements from the Original Subdivision and holding the Applicant accountable.

After public comment was closed, the Commission discussed the Subject Request and staff's recommendation. The Commission voiced concerns about the incomplete improvements and promises not kept by the Applicant, but also discussed that approval of the Preliminary Plat will provide a new SIA and a path forward to resolve outstanding issues. A





motion was made by Commissioner White and seconded by Commissioner Tafoya to recommend approval to City Council with the conditions as discussed in the staff report and presentation. All voted yes, and the motion passed.

### **Recommendation**

Staff and the Planning Commission recommend City Council conditionally approve the Cunningham Orchard Estates 2022 Subdivision Preliminary Plat since it is found that all review criteria under Section 16.04.050(D) can be met and the Applicant can comply with all other requirements, with the conditions listed below. In addition, staff and the Commission recommend approval of a deviation from Section 16.04.070(C)(5) to allow for Macintosh Street to dead-end with a temporary barricade, as proposed. Recommended conditions of approval include the following:

1. Prior to commencement of any earthwork or construction activities for the next phase of development, the Applicant must:
  - a. Provide detailed drawings and/or manufacturer’s specifications for City staff review and approval to demonstrate compliance with Section 2.50.01 for play structures within the park.
  - b. Provide manufacturer’s specifications/cut sheets to verify all new security light fixtures will be downlit and shielded as required.
  - c. Have all landscaping and irrigation plans wet stamped by a licensed Colorado landscape architect.
  - d. Obtain any necessary permits from the US Army Corps of Engineers.
2. Prior to Final Plat Filing No. 4 approval, the Applicant must:
  - a. Complete minor corrections to the plat as identified by City staff for full compliance.
  - b. Enter into a new SIA and lien agreement that includes any outstanding improvements from the 2006 agreement and updated escrow amounts, as well as provisions to ensure compliance with Condition No. 3 herein regarding future re-evaluation of stormwater impacts. The Applicant is responsible for submitting sufficient evidence for any improvements that have been completed.
  - c. Demonstrate the legal authority to amend the private covenants or otherwise ensure the maintenance of all common elements by all property owners in the subdivision in perpetuity. If legal authority cannot be demonstrated, the Applicant may submit a request to City Council to instead pay the parks fee in lieu of proving developed park land.
  - d. Coordinate with City staff to have all remaining utilities that were previously installed but not accepted inspected. Any deficiencies identified must be addressed in accordance with the City Standards and Specifications.
  - e. Update the Attorney Certificate (which could alternatively be a Title Company Certificate) on the plat to list any exceptions to the title and all relevant title information must be submitted for review and approval by the City Attorney. Depending on the title exceptions, additional conditions may be required.
3. Prior to any Final Plat approvals following Filing No. 4, the Applicant must re-evaluate stormwater drainage in the southwest corner of the subdivision on Lot 1 to the retention ponds on Tracts A and E and provide sufficient mitigation measures, as applicable.

### **Attachments**

- A – Public Comments
- B – October 9, 2023, Planning Commission Minutes



February 6, 2023

Delta City Planning Commission  
% Sharleen R. Walker  
City of Delta  
Community Development  
Planning and Building Technician

Ref: Cunningham Estates further development

We may or may not attend the Planning Commission meeting to be held this evening but wish this letter be part of the record. We are the owners of the home at 1443 Criterion Street and are currently using it to supplement our retirement fixed income by renting it. Due to our advancing ages, we may choose to occupy the residence at some future date.

We received a copy of a Declaration of Covenants establishing the Cunningham Estates Homeowners' Association when we purchased the home. We were encouraged to learn from our realtor that irrigation water was available to owners of the residences, and this was confirmed in the Covenants:

**“Section 10 – Irrigation Water – Underground irrigation lines shall be provided to each lot in the subdivision by declarant.”**

It was only after purchasing the home we learned there was no irrigation water available, that a wide easement allowed for it but no irrigation pipe had been installed. We learned from an HOA meeting that a current number of lots had to be developed before irrigation and that there was an on-going adversarial relationship with the developer. That “promise,” that was an incentive to buy a lot, is now 24 years old.

In perusing the Covenants written by and for the developer, Larry Hinger, I cannot but notice that he attains control over most everything until some magical date when decisions revert to the HOA. He can remove officers of the HOA at his whim. (Article X, Section 3).

**“Common areas will be established by the Declarant for the use and enjoyment of the owners and will be designated as parks, tracts and open spaces...”** The HOA was originated in 2009 and no parks, tracts or open spaces have been established. Does “established” mean actually built or merely promised on paper? Does every new lot need to be sold before Mr. Hinger is forced to provide common areas “for the use and enjoyment of the owners?”

My wife and I cannot understand the Delta City Planning Commission’s recommendation for approval the construction of the second phase of Cunningham Estates to benefit financially a man with so many promises left unfilled. The way the original Covenants were written in 2009, they were about to expire after 25 years, but Mr. Hinger still controls it ALL and will until forced to relinquish it after he realizes ALL his profit.

Sincerely,

Leonard and Lynn Maki

Cc: Clayton Neumiller

Cunningham Orchard Estates  
1431 Criterion St.  
Delta, Colorado 81416

Dear Larry Hinger,

November 7, 2022

We are contacting you regarding Cunningham orchard estates. We as a homeowners association would very much like to improve our working relationship with the developer and the city so that we all may meet our collective goals. This way we can be on the right path in our roles. We feel that if we improve our communication skills we may work through our differences. The home owners association is asking to find a way to fulfill the subdivision improvement agreement #599230 and irrigation to its members of the association prior to filing 4. Our flexibility is there, lets communicate to help the subdivision that has such great potential as a community and a development realize its goals. We look forward to your correspondence.

Yours respectfully

Cunningham Orchard Estates Homeowners association

President Clayton Neumiller



Vice president Candy Heerschap



Secretary/Treasurer Nancy Stevens





July 18, 2022

Larry Hinger – High Country Properties, LLC

Clayton Neumiller – HOA president

In response to the preliminary plat application for the remainder of the Cunningham Orchards subdivision, the City needs to determine the status of the outstanding items secured through the subdivision improvement agreement, reception number 599230. Please take a look at the table below and mark and/or verify what has been completed and what still needs to be completed.

The table below also contains a column for funds that have been escrowed that will be returned upon the completion of the items or the City can use the funds to complete the improvement if not completed otherwise..

Main Item	Specific Items	Completed	Not Complete	Total Escrow Funds
Irrigation System & Ditch Piping	Irrigation System		Not Complete	\$2,857.14
	Ditch Piping			Included in amount above
Park Improvements (was supposed to be completed within four years of January 2006)			Not Complete	\$28,571.43
	Irrigation Plan and Installation in Park	Plan Complete	Installation NOT	
	Landscaping of Park (turf, shrubs, trees)		NOT	
	Pedestrian Trail		NOT	
	Tables (three)		NOT	
	Landscaping (Buffer & Tract A – detention pond)			Not Complete
	Irrigation & Landscaping Plan and Installation in buffer zone along Pioneer Road		Plan NOT Installation NOT	To be completed and funded in future filings.

- Need Irrigation Plan

Tree By Road dead

	Irrigation & Landscaping Plan and Installation Tract A (Detention Pond)	Plan Complete	Installation <u>NOT</u>	\$14,285.71
Fencing				\$2,857.14
	Fence along ditch at back of property		<u>NOT</u>	

Please complete the above table and return it to City hall or email it to [comdev@cityofdeltanet](mailto:comdev@cityofdeltanet). Let us know if you have any questions.

*(NOT Complete on Installation)*

Sincerely,  
Shay Coburn  
Community Development Manager

srw

 7-22-22  
HOA president



A regular meeting of the City of Delta Planning Commission was held on Monday, October 9, 2023 at 7:00 pm in the City Council Chambers of City Hall at 360 Main Street, Delta, Colorado. Said meeting was posted in accordance with the Sunshine Law.

PRESENT: Susan Welk-Valdez, Chair; Fay Mathews, Vice-Chair; Gerald Roberts, Commissioner; Cecilia Tafoya, Commissioner; Ron White, Commissioner; Joe Gillman, Community Development Manager; Lindsay Reed, Planning and Building Technician; Raini Ott, Contract Planner.

ABSENT: Tony Romero, Commissioner; Katie Bowers, Commissioner

**CHANGES TO THE AGENDA**

There were no changes to the agenda.

**MINUTES**

A motion was made by Commissioner Mathews, seconded by Commissioner White to approve the minutes of the Planning Commission held on September 11, 2023 as corrected. All voted yes. Motion passed.

**CITIZEN COMMENTS**

None.

**PUBLIC HEARING**

Chairman Welk-Valdez opened the public hearing for approval of a Preliminary Plat for the Cunningham Orchards Estates 2022 Subdivision consisting of 14.59 acres total to be divided into 46 residential lots on 11.17 acres, 2.57 acres of dedicated road right-of-way, and tracts for stormwater management, open space, and trails as applied by Delta High Country, LLC and Larry Hinger. Raini Ott, Contract Planner, reviewed the staff report with the Planning Commission.

***Subject Request***

*The subject request is for approval of a Preliminary Plat for the Cunningham Orchards Estates 2022 Subdivision consisting of 14.59 acres total to be divided into 46 residential lots on 11.17 acres, 2.57 acres of dedicated road right-of-way, and tracts for stormwater management, open space, and trails (“the Subject Request”) (Attachment A). The*

*proposed residential lot sizes range from approximately 8,900 to 15,000 square feet. The subject properties are zoned R-1 Residential and located off Pioneer Road at its intersection with Criterion Street; they are identified as Tract C (park) and Outlots A and B of Cunningham Orchard Estates Final Plat Filing No. 3 (Reception No. 729219) (“the Subject Properties”) (Figure 1). The request is submitted by property owner Delta High Country, LLC, and developer Larry Hinger (“the Applicant”).*



**Background Information**

*The Subject Properties were previously platted under Final Plat Filing Nos. 1, 2, and 3 of the original Cunningham Orchard Estates Subdivision (“Original Subdivision”) and were most recently used as an orchard. The City-County boundary is located along the southern and eastern boundaries of the Subject Properties, and they are currently occupied by two existing structures which are to be removed at a future phase of development, including a fruit storage building and packing building. The existing land uses to the south and east, outside City limits, consist primarily of agricultural and low-density residential uses. To the north is the Original Subdivision and uses include low- to medium-density residential. Across Pioneer Road to the west, there is a residential subdivision which is zoned R-R Rural Residential for low- to medium density development.*

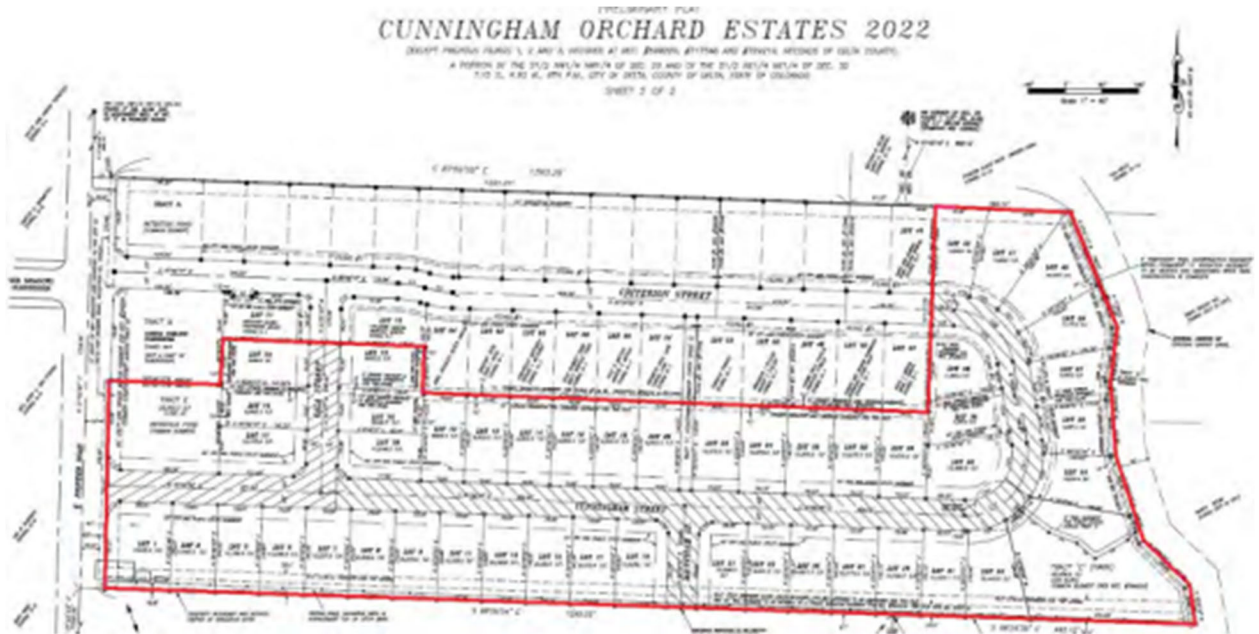
*Filing Nos. 1, 2, and 3 of the Original Subdivision created 30 residential lots; Tract A (stormwater retention); Tract C (park); Tract D (open space/ditch canal); Outlots A and B; dedicated City road right-of-way for portions of Criterion Street, Gala Street, and*



*emergency access; and public and private easements for various purposes (Figure 2). The Subject Request for Preliminary Plat entails replatting Outlots A and B, as well as Tract C, to create the remaining 46 residential lots contemplated by the Original Subdivision in three Final Plat filing phases (Filing Nos. 4, 5, and 6) (Figure 3); however, all approvals for the Original Subdivision have expired, as discussed in more detail below.*



*The City received referral responses from the Uncompahgre Valley Water Users Association (UVWUA) and US Bureau of Reclamation (BOR) on the Subject Request, which claim that BOR owns, in fee simple, 50 feet of right-of-way on either side of the existing Garnet Canal ditch centerline (Attachment C, pages 5-11). Although sufficient evidence of this claim has not been presented to date, the updated Preliminary Plat submitted by the Applicant excludes the area in its entirety from the Subject Request, including exclusion of Tract D of the Original Subdivision. City staff supports this adjustment, as presented by the Applicant, because it avoids any controversy over whether or not BOR's consent would be required to include the land BOR claims to own within the platted area. In addition, a title report was submitted that indicates the Applicant owns the Subject Properties included on the plat. The City Attorney does not necessarily agree that BOR owns what it claims to own, but the City Attorney will not issue any title opinion on this subject. Ultimately, resolution of BOR's claim might require court action; however, that is avoided here by simply excluding the disputed area from the plat.*



*The Sketch Plan for the Original Subdivision was approved in December 2003, and the Preliminary Plat was approved in April 2005. Final Plat Filing No. 1 was approved on November 1, 2005 (Reception No. 599229), and Filing Nos. 2 and 3 were approved more than a decade later, in 2020 and 2021 respectively (Reception Nos. 717546 and 729219) (Attachment B, pages 1-6). Section 16.04.05(E)(1) states that no final plat shall be approved if submitted beyond 10 years after approval of the associated preliminary plat. Staff previously allowed Filing Nos. 2 and 3 to move forward in 2020 and 2021, despite the 10-year expiration, given that there were no substantial changes compared to the Preliminary Plat for the Original Subdivision. However, prior to approval of any additional final plats beyond Filing No. 3, the Applicant was required to resubmit a preliminary plat for review and approval as changes to the subdivision design and layout are necessary to comply with current criteria and standards (Attachment B, pages 7-10). At the time of Final Plat Filing No. 3, City staff and the Applicant came to an agreement that the requirement for a new sketch plan would be waived. There is an existing Subdivision Improvements Agreement (SIA) associated with Final Plat Filing No. 1 that was signed and recorded on January 4, 2006 (Reception No. 599230) (Attachment B, pages 11-13). There are several outstanding requirements of the SIA, including for irrigation system, ditch piping, park land, trail, open space, landscaping, and fencing improvements, as well as the installation of a buffer on Tract A along Pioneer Road (Attachment A, page 45). A response from the Cunningham Orchard Estates Homeowners Association (HOA) dated*



*July 18, 2022, provides an overview of the current status of these improvements (Attachment C, pages 3-4). As part of the Subject Request for the new 46-lot subdivision, staff recommends requiring a new SIA prior to recording any final plat as a condition of approval. As recommended, the new SIA must include any remaining items not yet completed from the Original Subdivision. The Applicant will be responsible for submitting sufficient evidence for any outstanding improvements that have been completed, and the new SIA may require the City to collect additional escrow funds or other security, such as a letter of credit, as the costs are likely very different from 2006.*

*As part of the Original Subdivision, the Applicant installed utilities through the curve of Criterion Street on the far east side of the development; however, most of these utilities, with the exception of sewer, were never inspected or approved by the City. The Applicant will need to coordinate with City staff to inspect the condition of remaining utilities and remedy any defects found before the City can accept the improvements, and staff recommends a condition of approval to that effect.*

#### **Criteria Review**

*The review procedure for a preliminary plat is outlined under Section 16.04.050(D) and includes posting a sign on the subject properties for adequate public notice. As discussed below in detail, staff recommends the Planning Commission recommend to City Council conditional approval of the Subject Request since staff finds that all requirements and minimum design standards for a preliminary plat can be met, with certain conditions. It is important to note that not all requirements are detailed in this staff report and that the Subject Request's compliance is summarized; discussion is primarily presented in relation to recommended conditions of approval. See Attachment D for relevant code sections.*

*As part of the review procedure for a preliminary plat, City departments and divisions, relevant external agencies, and members of the public are provided an opportunity to review and comment on the request. In this case, external referrals were sent to Delta County, Colorado Department of Transportation (CDOT), Delta County School District, Delta-Montrose Electric Association (DMEA), US Postal Service, US Army Corps of Engineers, UVWUA, and BOR. Responses received are included in Attachment C and incorporated into the criteria review discussion as appropriate.*

*For approval of a preliminary plat, requirements under Sections 16.04.050(D)(6) and (D)(7) must be met, including compliance with Required Improvements and Dedications under Section 16.04.060(A) and the Minimum Design Standards under Section 16.04.070. Staff finds that, in general, these requirements and standards have been met or can be met with the recommended conditions of approval. The following segment of*



*this report discusses specific requirements as they relate to deviations requested from the standards and recommended conditions of approval to ensure full compliance.*

*Section 16.04.050(D)(7): The following shall be submitted accompanying the preliminary plat together with plans and specifications prepared by a registered professional engineer consistent with City Standards and Specifications, for all required or proposed improvements. All plans and reports shall be wet-stamped by the engineer. Standard details are available from the City in digital format.*

*(d) Plan and profiles for the storm drainage system showing location, pipe sizes, appurtenances, pond cross sections, grades and discharge points and supporting calculations. Standard details must be included for all storm sewer appurtenances. Storm drainage report and calculations are required. Design of storm sewer and/or storm water systems shall be in accordance with the City of Delta's Stormwater Management Manual, in addition to other applicable standards.*

*The City Engineer has concerns regarding the long-term adequacy of the stormwater drainage system to prevent negative impacts on proposed lots and adjacent properties and infrastructure, including Pioneer Road, as buildout of the subdivision occurs. To provide greater flexibility for the Applicant while ensuring the protection of public health, safety, and welfare, staff recommends a condition of approval requiring the Applicant to re-evaluate stormwater drainage at a future date but prior to approval of any final plats beyond Filing No. 4.*

*As recommended, the Applicant must re-evaluate stormwater drainage in the southwest corner of the subdivision on Lot 1 to the retention ponds on tracts A and E and provide sufficient mitigation, measures, as applicable. This must be reflected in the new SIA, to be executed prior to approval of Final Plat Filing No. 4, and will include submitting an updated drainage plan and calculations for City review and approval that demonstrate the adequacy of existing drainage infrastructure to handle anticipated flows in the long term as the subdivision is built out. If existing infrastructure at that time is not adequate to prevent current and future drainage impacts to Pioneer Road, City infrastructure, Lot 1, and any other adjacent properties, then additional mitigation measures will be required which may result in Lot 1 being used to accommodate such facilities and necessitate amendments to the plat and private*



*covenants to ensure maintenance in perpetuity. Therefore, as conditioned, staff finds this requirement can be met.*

*(e) Plans for proposed streets, sidewalks, bike paths, trails and walkways showing grade and cross-sections. Grades shall be shown on a plan and profile drawing showing finished grade elevation profiles and left and right top of curb or finished grade elevation profiles. The design shall be based on soils analysis by a qualified geotechnical engineer or soils laboratory, on samples taken in the proposed construction area, which shall be submitted to the City. Street names, street light and street sign locations shall be shown.*

*As shown on the proposed plat, Macintosh Street will be constructed as a dead-end stub to be extended at some point in the future and to provide additional access to the subdivision in compliance with the Fire Code. Section 16.04.070(C)(5) prohibits dead-end streets unless a temporary turnaround is provided in the interim, except that the City may waive this provision when the length of the street is less than the depth of one abutting lot. Since this is the case with Macintosh Street and since the intersection of Cunningham and Macintosh Streets provides a de facto hammerhead turnaround, the Fire Official and City staff find that a temporary turnaround is not necessary and the temporary barricade proposed instead will suffice. Therefore, as part of this Preliminary Plat approval, staff recommends granting a deviation from Section 16.04.070(C)(5) to address this unique circumstance.*

*(i) Plans for parks, open space, and recreation facilities, including equipment, fencing, landscaping and irrigation systems.*

*Based on Sections 16.04.070(G)(7) and (10), a total of 1.9 acres of developed park land is required for the 46 residential lots under the Subject Request and for the Original Subdivision that includes 30 lots. The Applicant has opted to provide this developed park land and dedicate it to the HOA for maintenance in perpetuity instead of paying the park fee in lieu. Dedication of most of the required park land acreage occurred under Filing No. 1, but the improvements were never constructed and the areas remain undeveloped. The remaining acreage is to be dedicated on future Final Plat Filing No. 6, which will provide a total of approximately two acres of developed park land. In the meantime, the Applicant will*



*construct improvements on the previously dedicated tracts, including in the park on Tract C, as required and as stipulated in their phasing plan (Attachment A, pages 2 and 31).*

*To fully comply with the requirements for private, HOA-owned and -maintained park improvements, there are a few minor details that must be submitted for review and approval by City staff, including play equipment and security lighting fixture specifications. As such, staff recommends a condition of approval to submit additional details prior to commencement of earthwork or any construction activities for the next phase (Filing No. 4). In addition, the final park plans must be wet stamped by a licensed landscape architect prior to construction. Therefore, as conditioned, staff finds this requirement can be met.*

*(l) Draft covenants (if applicable).*

*The draft of covenants submitted for the proposed subdivision do not adequately address concerns about ownership and maintenance responsibility for park, open space, and other common areas since it is unclear if the Applicant has the authority to unilaterally amend the existing covenants in effect for the Original Subdivision (Attachment A, pages 32-40). However, the existing HOA states they are willing to cooperate with the Applicant moving forward (Attachment C, page 2).*

*As noted under Section 16.04.050(D)(7)(i) above, there are certain requirements for developed park land that is owned and maintained by an HOA. The requirements for park land within a subdivision when not owned and maintained by an HOA, but instead dedicated to the City for public use, are the same as for all City-owned parks and include public restrooms and parking areas. Since the park on Tract C and other open space areas provided cannot meet the requirements for a City-owned park, if HOA responsibility cannot be secured via the covenants then a fee in lieu of providing developed park land would be required as the alternative, per Section 16.04.070(G)(9).*

*To ensure that developed park land is provided as required, staff recommends requiring the Applicant to submit updated draft covenants that directly address this concern as a condition of*



*approval prior to Final Plat. The Applicant needs to provide documentation that demonstrates the authority to unilaterally amend the Declaration recorded on July 1, 2022, or evidence that the Declaration has been properly amended with consent of the HOA and existing members. If HOA ownership and responsibility cannot be established, including all current property owners within the Original Subdivision and future property owners of lots under the Subject Request, then the Applicant has a couple of alternative options to satisfy the requirement, including the option to submit a request to City Council to instead pay the parks fee in lieu of providing park land. Therefore, as conditioned, staff finds this requirement can be met.*

#### **Public Comments**

*As part of the review procedure for a preliminary plat, notice of the Subject Request was posted on the property. As of publication of this staff report, staff received one public comment voicing concerns about incomplete improvements from the Original Subdivision (Attachment C, page 1). In addition, staff and the Applicant have received correspondence from the existing HOA regarding the incomplete improvements and stating that the HOA is willing to cooperate with the Applicant moving forward (Attachment C, pages 2-4).*

#### **Recommendation**

*Staff recommends that the Planning Commission recommend to City Council conditional approval of the Subject Request for the Cunningham Orchard Estates 2022 Subdivision Preliminary Plat since it is found that all review criteria under Section 16.04.050(D) can be met and the Applicant can comply with all other requirements, with the conditions listed below. In addition, as part of the recommendation to City Council, staff recommends that the Planning Commission recommend approval of a deviation from Section 16.04.070(C)(5) to allow for Macintosh Street to dead-end with a temporary barricade, as proposed.*

- 1. Prior to commencement of any earthwork or construction activities for the next phase of development, the Applicant must:
  - a. Provide detailed drawings and/or manufacturer's specifications for City staff review and approval to demonstrate compliance with Section 2.50.01 for play structures within the park.*
  - b. Provide manufacturer's specifications/cut sheets to verify all new security light fixtures will be downlit and shielded as required.**



- c. Have all landscaping and irrigation plans wet stamped by a licensed Colorado landscape architect. d. Obtain any necessary permits from the US Army Corps of Engineers.*
2. *Prior to Final Plat Filing No. 4 approval, the Applicant must:*
- a. Complete minor corrections to the plat as identified by City staff for full compliance.*
  - b. Enter into a new SIA and lien agreement that includes any outstanding improvements from the 2006 agreement and updated escrow amounts, as well as provisions to ensure compliance with Condition No. 3 herein regarding future re-evaluation of stormwater impacts. The Applicant is responsible for submitting sufficient evidence for any improvements that have been completed.*
  - c. Demonstrate the legal authority to amend the private covenants or otherwise ensure the maintenance of all common elements by all property owners in the subdivision in perpetuity. If legal authority cannot be demonstrated, the Applicant may submit a request to City Council to instead pay the parks fee in lieu of proving developed park land.*
  - d. Coordinate with City staff to have all remaining utilities that were previously installed but not accepted inspected. Any deficiencies identified must be addressed in accordance with the City Standards and Specifications.*
  - e. Update the Attorney Certificate (which could alternatively be a Title Company Certificate) on the plat to list any exceptions to the title and all relevant title information must be submitted for review and approval by the City Attorney. Depending on the title exceptions, additional conditions may be required.*
3. *Prior to any Final Plat approvals following Filing No. 4, the Applicant must re-evaluate stormwater drainage in the southwest corner of the subdivision on Lot 1 to the retention ponds on Tracts A and E and provide sufficient mitigation measures, as applicable.*

Chairman Welk-Valdez opened the floor to commissioners for questions to staff.

Commissioner White questioned if notices had been given to the developer regarding the subdivision improvements. Staff was unsure but applicant has been aware that these improvements would need to be complete with future filings. Questions were asked if Tract D can be used as public access and be used as open space.





Planner Ott responded the 50 feet from the centerline would not be used as public trail or access. The proposed plat shows an easement for public trail in the future.

City Attorney McConaughy explained he believes the prior plat includes a trail in the easement area and is not being addressed on the preliminary plat. There was discussion on who owns the trail and will be sorted out in the future.

Commissioner Roberts questioned the 8-foot easement in the park designation and if it's part of the park. Planner Ott explained it follows the physical trail that will be constructed in the park, specifically to grant public access to future trail system. It was clarified by City Attorney McConaughy the park is private but the trail is public.

Commissioner White asked how the HOA would manage liabilities for the use of the facilities in the park to the general public. City Attorney McConaughy suggested they should have insurance or it could be discussed before final plat.

Commissioner Roberts asks if all requirements have been met in existing subdivision. City Attorney McConaughy stated the conditions are to fix that.

Chairman Welk-Valdez opened the floor to the Applicant presentation.

Larry Hinger, applicant, asked for Randy Fender to speak for him.

Randy Fender, 330 S Main, Montrose, CO, owner of Mesa Engineering, stated he is here to comply with what the city wants and are satisfied with what the recommendations are.

Commissioner White questioned why improvements required by the original plat haven't been met. Mr. Fender asked what the improvements are. Discussion was made on additional emergency access based on the 25-lot regulation.

Chairman Welk-Valdez questioned the new SIA and that it includes things not previously done and asked the reason these were not done. Mr. Fender stated the park was paid fee in lieu. There was discussion on the retention pond and the irrigation system.

Commissioner White stated that there are inconsistencies with the record. Mr. Fender explained putting power in the easements to extend the irrigation. Comment was made on fencing, expired permits and conditions of the first filing.

Mr. Fender stated they didn't get to finish the filings the way they were designed.



Chairman Welk-Valdez questioned the park and CCR's and if there was intent to change them or opting out of the park. Applicant Hinger answered no.

Commissioner Roberts asked why the first filing requirements have not been completed. There was conversation on the fence, irrigation and trail easement as well as the conditions.

City Attorney McConaughy clarified to the Commission, if approved with conditions on Staff Report a new SIA has to be approved by City Council. The SIA will include a list of every improvement that still needs to be done. This has to be completed prior to selling lots or post a letter of credit to the City.

Chairman Welk-Valdez opened the floor to public comment.

Larry Maki, 1443 Criterion St, asked if Commissioners received a copy of the HOA petition. Mr. Maki passed the petition out to Commissioners and read it into the record. Attached as Exhibit A.

Dwayne Albritton, 1485 Criterion St, stated that his general idea is that no one is holding applicant accountable and asked if the Commission can do anything to make Applicant Hinger abide by the agreement in the SIA. Chairman Welk-Valdez stated to refer back to the to the new SIA.

Nancy Stevens, Partial Secretary/ Treasurer of HOA, stated the issue is that they bought their homes in good faith and that the pipes are in but not hooked up. Also commented was that the HOA doesn't have the information that the Planning Commission has and that the sign should be placed in front of the subdivision.

Martin Heerschap, 1437 Criterion St, commented on irrigation water and that the audience screen was not working.

Chairman Welk-Valdez closed the public hearing and asked the Commissioners to begin discussion.

Commissioner White commented on the incomplete SIA and if approvals were premature. He would like more information that the Commission does not have.

Chairman Welk-Valdez questioned why conditions can get done now and not then. Commissioner White discussed that development was started without necessary easements and the satisfaction of requirements.



Commissioner Mathews voiced concern with promises not kept and that the sign was posted where it should have been.

Commissioner Tafoya voiced concerned with how people are going to get water if this doesn't move forward.

There was more discussion on how the improvements will get done with the new SIA and Section 16.04

Commissioner White questioned if the developer can sell the property in bulk. City Attorney McConaughy answered yes and explained different options available.

Manager Gillman commented that there have been a lot of questions about SIA and the requirements set in 2009-2010. The city has some money in escrow in lieu of improvements. City does not have the money to finish improvements but has a vested interest in seeing things get done.

A motion was made by Commissioner White, seconded by Commissioner Tafoya to recommend approval of the Preliminary Plat for the Cunningham Orchards Estates 2022 Subdivision with the conditions set in the presentation tonight by staff to City Council. All voted yes. Motion passed.

There was further conversation regarding a time limit to be put on the improvements for the SIA.

**STAFF COMMENTS**

No Comments

**COMMISSIONER COMMENTS**

Commissioners expressed prayers to the Kraai family, commented on the superb job by the Delta Fire Department and the importance of the building the laundromat occupied.

Commissioner Tafoya commented on the great job the City is doing with Main St.

Manager Gillman stated there have been mixed responses from public regarding downtown. There was conversation on decreased traffic speed and the number of businesses on Main Street.

Commissioner Mathews also commented that the Fire Board would like to see the light activated on the Bypass at 348.



**ADJOURNMENT**

A motion was made by Commissioner White, seconded by Commissioner Mathews to adjourn the regular Planning Commission meeting. All voted yes. Motion passed. The meeting was adjourned at 8:25 pm with no further action taken.

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Lindsay Reed  
Planning and Building Technician

**INTERGOVERNMENTAL AGREEMENT**  
**REGARDING PURCHASE, INSTALLATION, AND OPERATION OF**  
**AN ELECTRIC VEHICLE CHARGER TO BE LOCATED AT 124 E. 6<sup>th</sup> STREET,**  
**DELTA, COLORADO**

This Intergovernmental Agreement (**IGA**) is entered into between the City of Delta (“**City**”) and Delta County, a body politic and corporate, acting through its Board of County Commissioners (“**County**”) concerning the installation and operation of an electric vehicle charger at 124 East 6<sup>th</sup> Street, Delta, Colorado.

**RECITALS**

- A. The County is pursuing this IGA as Administrator of the Colorado Energy Office Charge Ahead Colorado grant and as Third-Party Supplemental Environmental Project (SEP) Administrator pursuant to the Delta County Electric Vehicle (EV) Fast Charger Project.
- B. The City owns the building and property (Property) located at 124 East 6<sup>th</sup> Street, Delta, Colorado.
- C. The County desires to assist the City with the installation of an electric vehicle (EV) charging station.
- D. The parties have determined that it is in each of their best interests and the interests of the citizens of the County and the City to cooperate in the installation and operation of an EV charging station.
- E. The parties are authorized and encouraged to work together to provide public services and facilities authorized to each pursuant to Colo. Const. Art. XX, and Art. XIV and C.R.S. §§ 29-1-203 and 24-90-109.

**AGREEMENT**

NOW, THEREFORE, THE PARTIES HAVE ENTERED INTO THIS  
INTERGOVERNMENTAL AGREEMENT TO ACHIEVE THE PURPOSES  
STATED ABOVE.

- I. General Agreement. Through grants and project funding as listed in Recital A above, the County will provide funds and resources to install a Level 3 electric vehicle (EV) charging station. The County will coordinate with the City on the installation and operation of the charging station. The City will accept ownership, ongoing operation and responsibility for the charging station.

II. Installation, Construction and Commissioning.

A. The County will:

1. Manage available grant funding through the Colorado Energy Office Charge Ahead Colorado grant.
2. Manage other sources of available funding, including through the CDPHE Delta County Electric Vehicle (EV) Fast Charger Project.
3. Manage all expenses associated with preliminary engineering, design, construction, commissioning and administration activities.
4. The County will provide all planning, installation, construction and construction supervision services in consultation with the City and other necessary representatives.
5. The County will administer the design, qualification of bidders, competitive bid letting, contract award and construction management.
6. Unless otherwise agreed to in writing the County shall not be responsible for any costs of the development and construction of the Project that exceeds the available funds from outside sources (grants, etc.).
7. The County will gift all EV charging station equipment to the City at the conclusion of construction.

B. The City will:

1. Provide regulatory, building permitting, and other construction permitting and assistance in a timely manner in an effort to complete the Project by \_\_\_\_\_, 2024, subject to current conditions in the construction market.
2. Grant a right of entry onto its property to perform inspections, surveys, construction, and installation of the EV charging station.
3. Allow for the installation of any additional electrical service facilities across its property which may be necessary to provide a power source to the EV charging station.
4. Execute all documents necessary and provide all permits and approvals necessary for the construction and installation of the EV charging station, and waive all tap fees, inspection fees, permit fees, and other fees or exactions ordinarily associated with such Project.

5. After Project completion, accept ownership of the EV charging station and all associated infrastructure. As a condition the City acknowledges the EV charging station is in good and workable condition. Upon completion of installation and construction the City will be considered to be the owner of the charging station and thereafter responsible for providing maintenance, including maintenance of an electric power supply. By accepting ownership and responsibility of the EV charging station the City hereby waives any claims for damages or otherwise against the County, its Board of County Commissioners, officers, employees, successors or assigns which may arise out of or relate to the installation, construction or operation of the EV charging station.
6. Operate the EV charging station as a publicly available charger. The City shall be required to maintain the charging station as a publicly available EV charging station at its site for a period of at least five (5) years.
7. The City shall have the right to set and collect user or convenience fees to offset cost associated with electricity supply and maintenance of the EV charging station.
8. Ensure multiple pay options which users may employ to pay for any fee charged for use of the EV charging stations.
9. Register the location, hours of availability and other details about the EV charging station in any mapping or other relevant EV charging station database.

### III. General Provisions.

#### A. Representations.

1. Each of the parties represents to the other that it has full authority to enter into and to perform the provisions of the IGA and has taken all steps necessary to implement that authority.
2. Each party represents to the other that, as to its performance, this is not a multiple fiscal year obligation as to that party and/or that it has authority under Article X, Section 20 of the *Colorado Constitution* to perform its obligations and is bound by this IGA upon execution.
3. Each party represents to the other that it has available and has appropriated or will appropriate any funds required of it hereunder for this purpose on or before the date of any construction contract award by the County.
4. No rights, duties or obligations described herein shall be assigned by any hereto without the prior express written consent of the other party.

5. Each party represents and agrees that after the construction and commissioning of the EV Charger the County will have no responsibility regarding the EV Charger, related infrastructure, its operation, use, maintenance or liability.
6. All fiscal obligations of the County or the City under this agreement shall, at all times, be subject to annual budgeting and appropriation by their respective governing bodies.
7. Nothing herein shall be construed as a waiver of governmental immunity by either the City or the County.

B. Authorized Representatives.

The following persons are the authorized representatives of each party whose representations may be relied upon as representations of the party and who have authority to bind the party for purposes of this IGA.

City of Delta:

Kevin Carlson  
 Mayor  
[kevin@cityofdelta.net](mailto:kevin@cityofdelta.net)  
 (970) 874-7566

Board of County Commissioners  
 Delta County, Colorado:

Mike Lane  
[mlane@deltacountyco.gov](mailto:mlane@deltacountyco.gov)  
 (970) 874-2100

C. Term.

1. This IGA shall remain in effect until its purposes have been fulfilled or at such time as it is terminated by mutual written consent of the parties.

2. This IGA is entered into and effective on the date signed by the last party indicated below.

City of Delta

\_\_\_\_\_  
 Kevin Carlson, Mayor                      date

Delta County

\_\_\_\_\_  
 Mike Lane, Vice-Chair                      date



## RESOLUTION #17, 2023

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DELTA, COLORADO, AMENDING THE POLICY TO PROVIDE ECONOMIC INCENTIVES FOR DEVELOPMENT

WHEREAS, the City of Delta and its citizens derive economic benefits from the establishment of new businesses and the expansion of existing businesses through the creation of jobs, attracting new investment in the City, increased tax revenues to fund City operations, services, and capital projects, and other public benefits; and

WHEREAS, the City has a need for affordable and attainable housing to attract residents and employees for businesses and to allow its citizens to lead good lives and to have funds available to invest in City businesses and to purchase goods and services from City businesses; and

WHEREAS, due to the City's focus on incentivizing development and other challenges impacting the City's ability to attract and grow businesses and development of needed housing; and

WHEREAS, the City Council desires to adopt a policy to provide incentives for affordable housing and economic development in the form of fee waivers and other opportunities to encourage investment in the City, subject to certain criteria set forth below; and

WHEREAS, the City Council finds and determines that adoption of the policies described herein would provide public benefits to the City and its citizens.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Delta, Colorado as follows:

1. **Recitals.** The foregoing recitals are incorporated by reference as findings and determinations of the City Council.

2. **Policy.** Subject to the annual renewal of this policy by the City Council, the City of Delta will consider rebates of fees, rebates of certain taxes, donation of materials or City labor, or other "incentives" for qualifying entities. Qualifying entities typically include businesses that contribute to economic growth and sales tax revenue and will be considered on a case-by-case basis under the following circumstances:

- New businesses opening a physical location within the City of Delta municipal boundary.
- Existing businesses that are expanding their operations requiring relocation to a new facility or substantial remodel of an existing facility that necessitates building and related permits.
- Rental projects providing affordable or attainable housing and in need of local match to increase competitiveness for state or federal grants or other financial programs (i.e. Low income tax credits).
- Projects providing workforce housing for rent with guarantees to maintain rents for 15 years that are not otherwise eligible for state or federal resources because they are serving workforce with median incomes above 60% but below 100% of Delta County area median income.

- Rental Projects for multi-family housing at market rate during times of housing constraints where vacancy rates are extremely low.
- For sale deed-restricted housing for households between 60% and 100% Delta County area median income.

Projects that meet the above criteria may be considered for any combination of the following incentives:

- Rebating the building permit fee (excluding hard costs incurred by the City for plan review).
- Rebating up to 50% of the applicable sales and/or use tax received by the City for project materials.
- Donation of materials or City labor by the City to expand the required improvements that benefit or have the potential to benefit the public infrastructure network surrounding the project site. For example:

In the event a new project needs to install a water main to serve their project, if this new water main will increase the capacity of the system to serve surrounding properties as well either now or in the future, the City may donate the water main materials.

In the event a new project needs to extend power service to its property, if this extension will enable further development past or surrounding the project in question, the city may donate materials to facilitate this expansion.

This is in no way an exhaustive list but is meant to provide examples. Proposed donation of materials or City labor to close a current or future infrastructure gap will be evaluated by the Incentive Committee.

Project eligibility will be evaluated for specific incentives based on the parameters listed above and the materials included in the incentive application.

- Donation (transfer from General Fund to water/sewer funds) of all or a portion of water/sewer tap and system improvement fees only when such donation is determined to be fiscally viable for the City, and when such donation will make a significant contribution of the local match to a project for state or federal grant purposes.

3. **Application.** The City Manager and City Clerk are directed and authorized to adopt, make available, and revise from time to time in their discretion an application form to be used by individuals and businesses to apply for the incentives provided herein.

4. **Incentive Committee.** An incentive committee is hereby established that consists of the City Manager, Mayor, one other member of the City Council to be appointed by the motion of the City Council who shall serve until the expiration of his or her term on Council, resignation, or until replaced by further motion of the City Council, one member of the Planning Commission to be chosen by the Planning Commission with a term of one year and one at-large member interested to serve on the committee (business owner preferred) who shall also be appointed by motion of the

City Council with a term of one year. This group will evaluate all requests from businesses or projects and determine which incentive or combination of incentives are approved. The City Manager will report to the Council routinely on any businesses that have been granted waivers pursuant to this policy.

**5. Covenants; Contracts.** Incentives granted by the City may be conditioned upon a contract with the property owner guaranteeing compliance with the applicable criteria listed above for a period of not less than 5 years, which may be recorded in the Delta County real estate records as a restrictive covenant against the subject property. The form of agreement shall be tailored to ensure that the public purposes of this policy shall be satisfied and may condition the fee waivers or other incentives on such compliance. The City Attorney is authorized to draft such agreements based on the specific situation, and the City Manager is authorized to execute such agreements on behalf of the City. The City Manager may, but is not required to, present any particular terms of such agreements to the City Council for input, approval, or revision. Notwithstanding the foregoing, any incentive that includes the transfer of funds for tap fees or system improvement fees from the General Fund to the Water/Sewer Enterprise Fund shall require approval by the City Council at a public meeting.

**6. No Entitlements.** The policy adopted by this Resolution shall be implemented at the sole discretion of the City, and no property owner, developer, or other applicant shall have any guaranteed right of approval for any particular project or any particular incentive. Additionally, all proposals for development shall remain subject to all zoning and land use approvals and other provisions of the Delta Municipal Code, and approval of an incentive shall not be deemed approval of any required permit or other requirement of the Municipal Code.

**7. Annual Review; Rescission.** The City Council may rescind this policy at any time and must reauthorize it annually. Unless reauthorized, this policy shall expire on December 31, 2024 or on December 31 of any subsequent year.

**8. Annual Appropriation.** Any agreement for repayment or rebate of any sales or use taxes or other monetary disbursements from the City to effectuate this policy or any agreement authorized hereby shall at all times be subject to annual budgeting and appropriation of funds for that purpose by the City Council in accordance with Colorado law. In the event that the City Council fails to budget or appropriate funds to pay any rebates or other monies in a given year, the City Council shall in good faith consider including such payments in the budget and appropriations in the following year without invalidating or breaching any applicable contract, provided that the applicant shall not be entitled to any interest or late fees in the event that payment is delayed accordingly.

**9. Savings Clause.** In the event that any provision of this policy is found to be illegal or unenforceable, all remaining provisions shall remain in effect; provided, however, in such event the City Council shall promptly consider whether to rescind, revise, or continue the remaining provisions.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

ATTEST:

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

\_\_\_\_\_  
Mayor

**CITY OF DELTA, COLORADO  
RESOLUTION NO. 18, 2023**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DELTA  
AUTHORIZING THE CLOSING OF THE PURCHASE OF CERTAIN REAL  
PROPERTY LOCATED AT 540 WEST 4TH STREET, DELTA, COLORADO.

WHEREAS, the City of Delta, Colorado (“City”) is a duly organized and existing home rule municipality in the State of Colorado, created and operating pursuant to Article XX of the Constitution of the State of Colorado and the home rule charter of the City; and

WHEREAS, the City is currently under contract to purchase certain real property located at 540 West 4<sup>th</sup> Street, Delta, Colorado 81416 (the “Property”); and

WHEREAS, by Resolution No. 4, 2023, the City approved and authorized the purchase of the Property on the terms set forth in the in the Contract to Buy and Sell Real Estate (Commercial) dated January 31, 2023 (the “Contract”); and

WHEREAS, the Contract was later amended by Agreements to Amend/Extend Contract dated March 14, 2023, August 16, 2023, and December 5, 2023 (together with the Contract, referred to herein as the “Amended Contract”); and

WHEREAS, the City Council now desires to conditionally approve and authorize the purchase of the Property pursuant to the Amended Contract.

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

1. Recitals Incorporated by Reference. The foregoing recitals are incorporated herein as findings and determinations of the City Council.
2. Approval and Authorization. The City Council hereby approves and authorizes the purchase of the Property on the terms set forth in the Amended Contract. The City Council hereby delegates authority to City Staff to approve the final closing documents and, subject to such approval, authorizes the Mayor or City Manager to execute such documents and take such actions as may be necessary to effectuate the closing and purchase of the Property.
3. Effective Date. This Resolution shall take effect upon adoption hereof.

ADOPTED this 19<sup>th</sup> day of December, 2023.

DELTA CITY COUNCIL

ATTEST:

\_\_\_\_\_  
Mayor

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

Resolution No. 19, 2023

A RESOLUTION OF THE DELTA CITY COUNCIL,  
AUTHORIZING A MAIL BALLOT ELECTION ON APRIL 2,  
2024, FIXING BALLOT TITLES AND QUESTIONS, AND  
SETTING FORTH OTHER DETAILS RELATING THERETO.

WHEREAS, the City of Delta (the “City”), is a duly organized and existing home rule municipality of the State of Colorado, created and operating pursuant to Article XX of the Constitution of the State of Colorado and the home rule charter of the City; and

WHEREAS, the members of the City Council of the City (the “Council”) have been duly elected and qualified; and

WHEREAS, April 2, 2024, is the date of the next regular election in the City and one of the election dates at which ballot issues may be submitted to the eligible electors of the City; and

WHEREAS, pursuant to Article VII of the City’s Charter, the Council may refer matters to the electorate, and the conduct of the election shall be governed by applicable Colorado statutes; and

WHEREAS, the City has determined that the City Clerk (the “Clerk”) will conduct the election on April 2, 2024 as a mail ballot election pursuant to the Colorado Municipal Election Code and Article 7.5 of the Uniform Election Code; and

WHEREAS, the Council hereby determines that it is necessary to submit to the electors of the City, at the regular election to be held on April 2, 2024, questions as further described in the ballot issues set forth below; and

WHEREAS, it is necessary to set forth certain procedures concerning the conduct of the election.

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

Section 1. All action heretofore taken (not inconsistent with the provisions of this resolution) by the City and the officers thereof, directed towards the election and the objects and purposes herein stated is hereby ratified, approved and confirmed.

Section 2. Unless otherwise defined herein, all terms used herein shall have the meanings defined in the Municipal Election Code and the Uniform Election Code.

Section 3. The Council hereby determines that the regular election to be held on April 2, 2024, shall be conducted as a coordinated mail ballot election pursuant to Article 7.5 of the Uniform Election Code; however, to the extent that procedures for the election are not provided in Article 7.5 of the Uniform Election Code, the Municipal Election Code shall apply.

Section 4. The Council hereby determines that at the regular election to be held on April 2, 2024, there shall be submitted to the eligible electors of the City the questions set forth in Sections 5 and 6 hereof.

Section 5. The following ballot issue, certified in substantially the form set forth below, is hereby referred to the registered electors of the City and shall appear on the ballot of the City of Delta at the April 2, 2024 election:

CITY OF DELTA BALLOT QUESTION 1:

Should the City of Delta form a charter commission?

If the Charter commission is formed, please select among the following up to nine (9) candidates for the commission:

*(list all candidates after certification of petitions)*

Section 6. The following ballot issue, certified in substantially the form set forth below, is hereby referred to the registered electors of the City and shall appear on the ballot of the City of Delta at the April 2, 2024 election:

CITY OF DELTA BALLOT QUESTION 2:

Shall the establishment and operation of retail marijuana businesses be permitted in the City of Delta, subject to the requirements of Colorado law and other regulations to be adopted by the City?

Section 7. The Clerk is hereby appointed as the designated election official of the City for purposes of performing acts required or permitted by law in connection with the election.

Section 8. The City acting through the Council shall be authorized to proceed with the necessary action to implement and enforce either or both of the questions above if such measure is approved by the registered electors of the City.

Section 9. Pursuant to Section 31-10-1308(2), C.R.S. and Section 1-11-203.5, C.R.S., any election contest arising out of a ballot issue or ballot question election concerning the

order of the ballot or the form or content of the ballot title shall be commenced by petition filed with the proper court within five days after the title of the ballot issue or ballot question is set.

Section 10. If any section, paragraph, clause or provision of this resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall in no manner affect any remaining provisions of this resolution.

Section 11. All resolutions or parts of resolutions inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any resolution or part of any resolution heretofore repealed.

Section 12. The effective date of this resolution shall be immediately upon adoption.

INTRODUCED, PASSED AND ADOPTED at a regular meeting of the City Council of the City of Delta, Colorado, on this 19<sup>th</sup> day of December, 2023.

( S E A L )

\_\_\_\_\_  
Mayor

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

STATE OF COLORADO )  
 )  
COUNTY OF DELTA ) SS.  
 )  
CITY OF DELTA )

I, Jolene E. Nelson, the City Clerk of the City of Delta, Colorado (the “City”), do hereby certify:

1. The foregoing pages are a true and correct copy of a resolution (the “Resolution”) passed and adopted by the City Council of the City (the “Council”) at a regular meeting of the Council held on December 19, 2023.

2. The Resolution was duly introduced, moved and seconded and passed on at the regular meeting of December 19, 2023 by an affirmative vote of a majority of the members of the Council as follows:

Name	“Yes”	“No”	Absent	Abstain
Kevin Carlson, Mayor				
Cathy Boyd, Mayor Pro Tem				
Ryan Crick				
Mark Broome				
William Tedrow				

3. The members of the Council were present at the meeting and voted on the passage of such Resolution as set forth above.

4. The Resolution was approved and authenticated by the signature of the Mayor, sealed with the City seal, attested by the Clerk and recorded in the minutes of the Council.

5. There are no bylaws, rules or regulations of the Council which might prohibit the adoption of said Resolution.

6. Notice of the regular meeting of December 19, 2023, in the form attached hereto as Exhibit A was posted at the City Hall not less than twenty-four hours prior to the meeting in accordance with law.

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City Clerk

(SEAL)



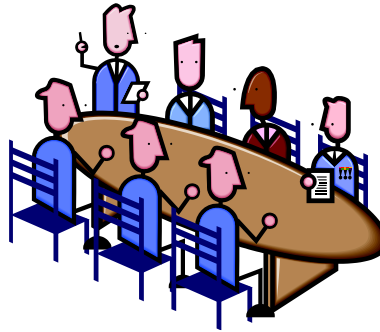
EXHIBIT A

*Attached agenda*

**City Attorney Comments**

**City Manager Comments**

**Councilmember Comments**



### **Executive Session**

**To discuss the purchase, acquisition, lease, transfer, or sale of real, personal, or other property interest under CRS Section 24-6-402(4)(a); more specifically to discuss purchase or acquisition of property located at 264 Main Street, Delta, CO.**