



A G E N D A

**Delta City Council
Regular Meeting**

**April 2, 2024
7:00 p.m.**

- A. Pledge of Allegiance**
- B. Changes to the Agenda**
- C. Citizen Comments**
- D. Approval of the March 19, 2024 Regular Meeting Minutes**
- E. All Points Transit Sponsorship Request**
- F. Memorandum of Understanding with Uncompahgre Development Company**
- G. Ordinance #3, 2024; First Reading
Supplemental Appropriations**
- H. Ordinance #2, 2024; Second and Final Reading
Total Power Requirements Power Purchase Agreement Approval and Amending the
Delta Municipal Code to Reaffirm and Codify the Establishment of an Electrical
Utility Enterprise**
- I. Proclamation – National Donate Life Month**
- J. City Attorney Comments**
- K. Monthly Manager Report/City Manager Comments**
- L. Councilmember Comments**

Please preregister for the meeting:
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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, and Mark Broome, along with City Manager Elyse Casselberry and City Attorney Nicole Garrimone-Campagna via zoom. 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

City Clerk Jolene Nelson stated that citizen comments were mistakenly omitted from the agenda and needs to be added.

Citizen Comments

Tom George, 258 Dodge Street, commented on the City of Delta taking steps to prevent the city becoming a sanctuary city.

Rochelle Russo, 144 Dodge Street, stated that an adjacent property has a sewer issue. The city should be more careful of providing information when advising property owners their options.

Ernie Norfleet, 1749 G Road, presented William Tedrow an invoice for work that has not been paid for from Mr. Tedrow's business.

Vivian Carruth, 585 Bluff Place, questioned what anyone is doing with the rubbish from Delta Dry Cleaners as it is an eye sore.

City Manager Elyse Casselberry reported that staff has been working with the property's owners communicating with the State as well as EPA to find a possible solution to help get the property cleaned up. There are excessive costs with the suspected asbestos in the pile of rubbish. They are waiting for final word; however, if the EPA selects the property there may be some financial support to clean up the property.

Consent Agenda

- a. Approval of the February 20, 2024 Regular Meeting Minutes**
- b. Approval of Street Closure Applications for the Western Sky Balloon Festival**
- c. Approval of Street Closure Application for Cinco De Mayo**
- d. Approval of Street Closure Application for Soap Box Derby Race**
- e. Approval of Police Patrol Units Purchase**

Councilmember Broome commented that the City of Delta should be exploring more cultural events not just Cinco De Mayo.

Mayor Carlson stated that if any organization would like to approach the City with a request, we would definitely take a look at doing something similar to Cinco De Mayo.

Regular Meeting, Delta City Council, March 19, 2024 (Cont.)

Consent Agenda (cont.)

It was moved by Councilmember Boyd and seconded by Councilmember Tedrow to approve the consent agenda as presented. All in favor, motion carried.

Resolution #4, 2024; Amending the Fee Schedule to Include Veteran Discount Bill Heddles Recreation Center

RESOLUTION NO. 4, 2024

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
DELTA AMENDING THE CITY'S SCHEDULE OF FEES AND
CHARGES

was read by the Clerk.

Mayor Carlson questioned if the fee schedule included all City of Delta fees.

City Clerk Jolene Nelson explained that in 2022 the City Council adopted an ordinance that started the codification process. During that discussion, fees were taken out of the municipal code and a fee schedule was implemented. Staff continues to identify the fees that need to be added to the schedule.

It was moved by Councilmember Broome and seconded by Councilmember Boyd to adopt Resolution #4, 2024. Roll call vote: Councilmember Broome, aye; Tedrow, aye; Boyd, aye and Carlson, aye. Motion carried.

Consideration to Award and Approval Contract for Materials Testing for the Hillside Project

City Engineer David Hood reported that staff submitted a Request for Qualifications for the material testing for the Hillside Project. Staff rated the proposals based on their ability to do the required testing. Yeh and Associates, Inc. was within the matrix that staff used. Yeh also met CDOT's specification. This contract will be within the budgeted amount for the project.

There was some discussion regarding the testing requirements.

It was moved by Councilmember Carlson and seconded by Councilmember Broome to award the materials testing contract for the Hillside Project to Yeh Associates, Inc. as presented and authorize the Mayor to sign the contract. All in favor, motion carried.

Consideration to Renew and/or Schedule a Show Cause Hearing for the Quick Buy Wine & Liquor Retail Liquor Store License

City Clerk Jolene Nelson explained that Kohinoor LLC dba Quick Buy Wine & Liquor has submitted their annual liquor license renewal. Since the last renewal, the applicants have had another violation of selling alcohol to a minor. She explained that the municipal code requires the Clerk to submit the renewal to the Council for approval if there were any violations since the time of the last renewal. She also received a letter from Chief Luke Fedler of the Delta Police Department requesting the City Council to consider denial.

Regular Meeting, Delta City Council, March 19, 2024 (Cont.)

Consideration to Renew and/or Schedule a Show Cause Hearing for the Quick Buy Wine & Liquor Retail Liquor Store License (cont.)

Clerk Nelson went on to say that the State and the applicant have not entered into a Stipulation Agreement regarding the violation as this time. The State is working with the applicant to determine what that might look like. She explained that the Council can approve the renewal this evening or they can schedule the matter for a show cause hearing to determine whether the renewal should be granted or if a suspension and/or denial should be considered. A show cause hearing would be before the City Council with all parties and held as a quasi-judicial hearing.

There was extensive discussion regarding the concern about liquor being sold to minors in this community. The Council is also concerned about the sale of tobacco to minors. The City of Delta does not have tobacco licensing requirements only the State issues licenses in this community at this time.

It was moved by Councilmember Broome and seconded by Councilmember Carlson to schedule Quick Buy Wine & Liquor's renewal application for a show cause hearing. All in favor, motion carried.

Ordinance #1, 2024; Second and Final Reading
Amending Chapter 8.24 of the Delta Municipal Code Declaring Gambling as a Public Nuisance

ORDINANCE NO. 1, 2024

AN ORDINANCE OF THE CITY OF DELTA, COLORADO,
AMENDING CHAPTER 8.24 OF THE DELTA MUNICIPAL CODE
DECLARING GAMBLING AS A PUBLIC NUISANCE

was read by the Clerk.

It was moved by Councilmember Tedrow and seconded by Councilmember Boyd to adopt Ordinance #1, 2024 on second and final reading. Roll call vote: Councilmember Broome, aye; Tedrow, aye; Boyd, aye and Carlson, aye. Motion carried.

Ordinance #2, 2024; First Reading
Total Power Requirements Power Purchase Agreement Approval and Amending the Delta Municipal Code to Reaffirm and Codify the Establishment of an Electrical Utility Enterprise

Electric Department Manager Adam Suppes stated that staff met with the City Council in a work session regarding this agreement. This is an updated and reinstated agreement for the current power supplier which was originally created in 1982. All members of MEAN have been presented this agreement. Municipalities in Colorado has some concerns regarding the agreement and with the lead of our attorneys with Garfield and Hecht, there was amendments that were made. Most of the amendments were to become in compliance with TABOR.

There were some questions regarding the dates. Staff will confirm those dates and update the Council on second reading of the ordinance.

Regular Meeting, Delta City Council, March 19, 2024 (Cont.)

Ordinance #2, 2024 (cont.)

Councilmember Broome questioned the solar power limitation.

Manager Suppes explained that is only a limitation on the municipality generating the power and does not limit private land owners to use solar. The limitation can also be adjusted at any time by the MEAN Board's direction.

ORDINANCE NO. 2, 2024

AN ORDINANCE AUTHORIZING AND DIRECTING EXECUTION OF THE AMENDED AND RESTATED TOTAL POWER REQUIREMENTS POWER PURCHASE AGREEMENT BY THE CITY OF DELTA, COLORADO, WITH THE MUNICIPAL ENERGY AGENCY OF NEBRASKA; TO ACKNOWLEDGE AND PROVIDE FOR LIMITATIONS ON USE OF THE ELECTRICITY; AND AMENDING THE DELTA MUNICIPAL CODE TO REAFFIRM AND CODIFY THE ESTABLISHMENT OF AN ELECTRICAL UTILITY ENTERPRISE

was read by the Clerk.

It was moved by Councilmember Broome and seconded by Councilmember Boyd to adopt Ordinance #2, 2024 on first reading. Roll call vote: Councilmember Broome, aye; Tedrow, aye; Boyd, aye and Carlson, aye. Motion carried.

Consideration to Award RFP for IT Services and Approve Contract

City Manager Elyse Casselberry stated that the City has had some changes over the last several years for IT services. Recently the City hired a temporary IT service provider while the City sent out a Request for Proposals. Staff received ten responses and reviewed those responses to determine the services and the onsite needs the City has regarding the services. She summarized the bids received. Staff is recommending awarding the IT services contract to Trioptimum Technologies.

Mayor Carlson questioned if staff believed this company could meet the needs of the City.

Manager Casselberry stated staff has no concerns. In fact, they are the temporary provider that has been doing an exceptional job.

Councilmember Broome questioned if they could help with the audio and visual needs as well.

Manager Casselberry stated that is not the services they provide and the City would have to work with an AV company to help with those needs.

It was moved by Councilmember Boyd and seconded by Councilmember Tedrow to award the contract for IT services to Trioptimum Technologies, Inc. and authorize the Mayor to sign the contract. All in favor, motion carried.

Regular Meeting, Delta City Council, March 19, 2024 (Cont.)

Consideration of Proposed Right-of-Way Vacation and Easement Use Agreement – LOOK Industrial Park, LLC

Community Development Manger Joe Gillman reported that staff and Council have been working with LOOK Buildings regarding a property located next to their business. The request this evening is for approval to move forward with a City right-of-way vacation and associated easement use agreement for approximately .02 acres portion of a 1.3-acre parcel. He provided some history of the past discussion. It has been determined that this should be processed as a right-of-way vacation pursuant to the roadway vacation procedures. Pending direction from Council, a surveyor will be directed to prepare a right-of-way vacation plat. A right-of-way vacation ordinance, right-of-way plat and easement use agreement will then be drafted and presented to the City council for official consideration and adoption.

LOOK Buildings has agreed to pay for appraisal, survey, preparation of the plat, plat review, plat filing and attorney fees associated with this proposal. The City will then agree to transfer the parcel at no cost to LOOK Buildings. This proposal will allow the City to maintain its ability to utilize the remainder of the right-of-way for infrastructure purposes as needed.

Councilmember Broome questioned if this will create conflict on the proposed changes to that intersection.

City Manager Elyse Casselberry stated the property in question is more south of that intersection.

It was moved by Councilmember Broome and seconded by Councilmember Tedrow to move forward with the proposed right-of-way vacation and easement use agreement with LOOK Buildings. All in favor, motion carried.

Consideration of Purchase and Sale Agreement with Mainspring Foundation for the Property Located at 1133 Main Street, Delta, CO

City Manager Elyse Casselberry stated that this is an updated purchase and sale agreement with Mainspring Foundation for the Municipal Light & Power building. She provided some history on this project. She also summarized the amendments to the agreement which include language around the ability for Mainspring to back out of the contract before it closes. This change is slightly better for the City. The second change was around liens, although there cannot be liens on local government property, Mainspring was concerned and so the attorneys agreed on some language that would address those concerns.

City Attorney Nicole Garrimone-Campgna also stated that there were some changes in warranties which increased to three years. She also stated that there are a few legal matters that she needs to discuss with the Council in executive session.

Executive Session

It was moved by Councilmember Carlson and seconded by Councilmember Boyd to convene an Executive Session Pursuant to C.R.S. § 24-6-402(4)(b) for a conference with the City's attorney for the purpose of receiving legal advice on specific legal questions and/or pursuant to C.R.S. § 24-6-402(4)(e) for the purpose of determining positions relative to matters that may be subject to

Regular Meeting, Delta City Council, March 19, 2024 (Cont.)

Executive Session (cont.)

negotiations, developing strategy for negotiations, and/or instructing negotiators regarding the proposed contract for sale of property to Mainspring. All in favor, motion carried.

At 8:13 p.m., the Regular Meeting was recessed. The Executive Session was convened a short time later.

At 8:25 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, William Tedrow, and Mark Broome, as well as City Manager Elyse Casselberry, City Attorney Nicole Garrimone-Campgana and Electric Department Manager Adam Suppes. 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.

Consideration of Purchase and Sale Agreement with Mainspring Foundation for the Property Located at 1133 Main Street, Delta, CO (cont.)

It was moved by Councilmember Boyd and seconded by Councilmember Tedrow to approve the Purchase and Sale Agreement with Mainspring Foundation for the property located at 1133 Main Street, Delta, CO. All in favor, motion carried.

City Attorney Comments

There were none.

Monthly Managers Report/City Manager Comments

City Manager Elyse Casselberry provided an update on the following:

- Grant for the shelter project. Staff received notification today that the \$1 million digester loan was approved.
- Received notification today \$1 million digester was approved
- Bids are out for the 16th and A Streets overlay

Councilmember Comments

Councilmember Broome wants to continue the discussion with the County regarding the criminal justice reform and how it is affecting our community. He would like to see more municipalities and counties jump on board. Discussion need to also be had about the sanctuary city issue.

Councilmember Tedrow stated that he is looking forward to the upcoming events. Huge thanks to staff for all they do.

Councilmember Boyd thanked City Engineer David Hood for the clarification on the Hillside Project and relaying that to neighbors. She congratulated Amanda Hatch for Coach of the Year for the swim team. The DHA Debate team also had a successful year. She reminded staff about the door at the library. Support your local businesses.

Regular Meeting, Delta City Council, March 19, 2024 (Cont.)

Councilmember Comments (cont.)

Mayor Carlson wished Whitnee Lear with Community Engagement a Happy Birthday. He also thanked staff for all they do. He would like to see the speech and debate team come to Council to recognize them. He stated that the City is trying to be proactive and not just reactive. It takes one step at a time. He thanked Mark Broome and Cathy Boyd for their involvement on the Council.

The meeting was adjourned at 8:42pm.

Jolene E. Nelson, CMC, City Clerk



Oktoberfest BREWS & BITES

BENEFITING



501c3

Friday, May 17th • 5:00 - 8:00 pm
The Grove in Delta

You're Invited to the 3rd Annual Brews & Bites by Oktoberfest in Delta

Join us for an evening of live music by Black Canyon Boys & Derek Eames Ohl, beer and wine tastings, and delicious food on the gorgeous grounds of The Grove.

SPONSORSHIP LEVELS

All sponsorships include tickets to "Brews & Bites" at The Grove with a premiere catered event experience, as well as recognition on event signage and social media promotions

Presenting Sponsor:

\$2000

15 tickets to
Delta "Brews & Bites"
at The Grove

Gold Sponsor:

\$1000

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Delta "Brews & Bites"
at The Grove

Silver Sponsor:

\$500

6 tickets to
Delta "Brews & Bites"
at The Grove

Bronze Sponsor:

\$250

4 tickets to
Delta "Brews & Bites"
at The Grove

We need your help. As our region and community continue to grow, safe and reliable transportation that is accessible to everyone is even more important than ever. Oktoberfest gives businesses and community members a chance to have a great time while supporting All Points Transit's essential programs. Your event sponsorship will directly support All Points Transit's mission to provide safe and reliable transportation to older adults, persons with disabilities and the general public in communities throughout four counties on the Western Slope of Colorado. Become a sponsor today!

To sponsor or donate an item, contact:

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**MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF DELTA,
UNCOMPAHGRE DEVELOPMENT COMPANY, A NON-PROFIT 501 (C)(4),
REGARDING A SHARED INTEREST AND DESIRE FOR COOPERATION AND
COORDINATION TO ADDRESS THE URGENT NEED FOR AFFORDABLE
HOUSING IN THE CITY OF DELTA AND DELTA COUNTY**

THIS MEMORANDUM OF UNDERSTANDING (MOU) is entered into as of the _____ day of _____, 2024, by and between the City of Delta, Colorado, a Colorado home rule municipality (hereafter the “City”), and the Uncompahgre Development Company, a Colorado nonprofit corporation, (hereafter “UDC”).

Statement of Intent

It is the intent of both parties, the City and UDC, to work together to address the urgent need for affordable housing within the City of Delta. Development of affordable housing is essential for economic development of the region, and critical for employers within the City and Delta County.

UDC and the City own adjacent properties near Pioneer Rd and 7th Street (hereafter referred to as the “7th Street Project”), as identified on Exhibit A, that is ideally situated for a future affordable housing project. The 7th Street Project is intended to serve the housing needs of the region’s workforce (80% to 120% Area Median Income).

The City intends to contribute Lot 3 identified in Exhibit A to the 7th Street Project for little to no cost. UDC intends to contribute Lot 2 identified on Exhibit A to the 7th Street Project for little to no cost.

Lot 1 identified on Exhibit A is currently for sale, and under contract for purchase by members of UDC. It is the intent of these UDC members to transfer or assign the purchase contract for said Lot 1 to UDC in accordance with the terms of said purchase contract. Lot 1 provides necessary future access for successful development of affordable housing at the 7th Street Project.

It is in the best interest of the City and UDC to work together for successful development of the 7th Street Project. This Memorandum of Understanding outlines how the City and UDC will work together to move the 7th Street project forward.

Memorandum of Understanding

Section 1: Mutual Covenants

- A. UDC will continue to work to acquire Lot 1 at its expense, currently under contract by UDC members and to be assigned to UDC, for \$295,000 (“Lot 1 Purchase Price”). Upon successful acquisition by UDC, said property shall be considered part of the 7th Street Project.

- B. The City will contribute up to \$3,500 for an asbestos assessment and Phase 1 report for Lot 1 as part of the due diligence efforts of UDC prior to closing.
- C. UDC will pay the cost of acquiring Lot 1, plus up to \$10,000 to cover additional costs associated with the successful acquisition, cleaning, and minor repair of said property.
- D. Upon successful acquisition of Lot 1, UDC will immediately convey Lot 1 and Lot 2 to the City, free of all monetary liens and encumbrances except as agreed to by the City. In exchange, the City will pay UDC \$194,500, subject to City budgeting and appropriations. The deed for Lot 1 and payment from the City will be exchanged by the parties within 5 business days of the date UDC notifies the City of its intent to transfer Lot 1 and Lot 2 to the City.
- E. UDC and the City will continue to work together to prepare all properties associated with the 7th Street project for development including seeking grants, initiating engineering and design, land use approvals including rezoning and subdivision, and finalizing a plan for construction and sale of developed houses/units (single family, duplex, and multi-family or other housing configurations).
- F. UDC and the City will explore and seek to implement partnership structures that will best suit the successful development of an affordable housing project at the 7th Street properties. Intent is for both parties to transfer their respective properties to a partnership structure agreed upon by the parties.
- G. The City will pursue grant funds to cover the balance of the Lot 1 Purchase Price. In the event the City is unsuccessful at acquiring grant funds for the balance of the Lot 1 Purchase Price plus UDC's costs incurred under Subsection C, above, the City and UDC agree that UDC's investment of up to \$110,500 (the "UDC Investment") in Lot 1 will be repaid from the closing proceeds from the sale of future homes/units within the 7th Street Project.
- H. The City reserves the right to establish a new statutorily authorized entity, such as a housing authority, and to assign the City's property ownership and obligations to such entity.

Section 2. Interim Management

- A. Should UDC convey Lot 1 and Lot 2 to the City, the City may engage UDC to act as interim property manager for Lot 1 until it is developed as part of the 7th Street Project. UDC may, with prior approval of the City, lease Lot 1 to an individual or

family, meeting basic financial and background screening requirements, with the following considerations:

- a. Priority first to a City of Delta or Delta County employee, or other local government employee, followed by priority to any employee working in Delta County of a Delta County based employer.
 - b. Any such lease shall be month to month utilizing a lease form approved by the City. UDC will ensure the property is vacated at least 60 days prior to commencement of any construction or demolition associated with implementation of the 7th Street Project.
 - c. UDC may keep all rents received for Lot 1, and shall be responsible for any necessary maintenance or repair of Lot 1 while it is being leased.
- B. The City may engage UDC to assist with furthering the entire 7th Street Project including all property owned by the City within the 7th Street Project.

Section 3. Termination and Option to Purchase

- A. This MOU may be terminated by either party at any time with sixty (60) days written notice should the terminating party determine, in its sole, subjective discretion, that a successful affordable housing project for the 7th Street Project is infeasible or that the party is unwilling or unable to continue to participate in the 7th Street Project.
- B. Both UDC and the City acknowledge that successful implementation of an affordable housing project for the 7th Street Project may take several years to achieve, and that nothing in this MOU is intended to imply a fiscal obligation on either party. If within three years from the date of this MOU, UDC and the City have been unable to successfully move the 7th Street Project forward, including obtaining all land use approvals or grant funds necessary for full development of the 7th Street Project, then both parties agree to begin discussions about viability of project. If, as a result of those discussions, the parties mutually agree that the 7th Street Project is not feasible, the MOU will terminate and the parties will work in good faith to reach an agreement about which party will retain ownership of Lot 1, Lot 2, and Lot 3
- C. In the event the City unilaterally terminates this MOU as provided in Section 3(A) UDC shall have the option to purchase Lot 1, Lot 2, and Lot 3 from the City as set forth below. UDC shall notify the City of its election to exercise its option within 30 days of the date this MOU terminates, and the transfer of Lot 1, Lot 2, and Lot 3 shall occur within 30 days of the date of the option exercise notice unless otherwise agreed by the parties.
- a. UDC shall have the option to purchase Lot 1 and Lot 2 as follows:
 - i. If UDC transferred Lot 1 and Lot 2 to the City for \$194,500, and UDC has received no reimbursement for the UDC Investment in accordance with Section 1.G or 2(A)(c), above, the purchase price for Lot 1 and Lot 2 will be \$194,500.

- ii. If UDC transferred Lot 1 and Lot 2 to the City for \$194,500 and UDC has been reimbursed for all or any portion of the UDC Investment in accordance with Section 1.G and/or 2(A)(c), above, the purchase price for Lot 1 and Lot 2 will be \$194,500 plus any amounts received by UDC towards the UDC Investment.
- iii. UDC shall have the option to purchase Lot 3 for its appraised value at the time the option is exercised.
- iv. In the event it is determined the City retain ownership of all lots, the City must repay UDC for any balance remaining from the UDC Investment and any additional documented investment previously agreed to by the City, other than repairs and maintenance, in accordance with Section 2 above.

Section 4: Obligations and Status of the Parties

The parties acknowledge that no contractual relationship is created between them by this Memorandum of Understanding, but they agree to work together in the true spirit of partnership to ensure the successful development of the 7th Street Project and to demonstrate financial, administrative, and managerial commitment to the 7th Street Project by means of the actions identified above.

No party shall hold itself out as an employee, partner, or agent of the other party, and no party shall have authority to bind the other party in any manner. Nothing in this Agreement shall be deemed to create a partnership, joint venture, or other relationship between the parties.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be duly executed in duplicate by their respective officers as of the day and year first above written, each party hereto retaining an executed copy hereof.

CITY OF DELTA, COLORADO

By: _____
Kevin Carlson, Mayor

UNCOMPAHGRE DEVELOPMENT COMPANY

By: _____
Bill Hellman, President

EXHIBIT A

Lot 1: 1397 7th Street, Parcel No. 345519146001; .697-acre parcel with house; purchase contract pending

Lot 2: Parcel No. 345519146002, a .697-acre vacant parcel owned by UDC

Lot 3: Parcel No. 345519146003, 6.487-acre vacant parcel by the City

Ordinance #3, 2024

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

WHEREAS, the City Council has adopted the annual budget on November 7th, 2023; and

WHEREAS, the City has received additional and unanticipated revenues in the form of grants and other revenue sources and there exists unappropriated surplus in the various funds; and

WHEREAS, it is not only required by law, but also necessary to appropriate the additional revenues and surplus to and for the purposes described below, so as not to impair the operations of the City.

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

Section 1. That the following supplemental appropriations, in addition to those appropriated by Ordinance #11 Series of 2023, are hereby appropriated from the revenue and surplus of each fund, to each fund, as follows:

C.W.C.I. Fund	\$194,500
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ADOPTED on first reading and ordered published this _____ day of _____, 2024.

Mayor

ATTEST:

City Clerk

ADOPTED on second and final reading and ordered published
this _____ day of _____, 2024

Mayor

ATTEST:

City Clerk

**CITY OF DELTA, COLORADO
ORDINANCE NO. 2, 2024**

AN ORDINANCE AUTHORIZING AND DIRECTING EXECUTION OF THE AMENDED AND RESTATED TOTAL POWER REQUIREMENTS POWER PURCHASE AGREEMENT BY THE CITY OF DELTA, COLORADO, WITH THE MUNICIPAL ENERGY AGENCY OF NEBRASKA; TO ACKNOWLEDGE AND PROVIDE FOR LIMITATIONS ON USE OF THE ELECTRICITY; AND AMENDING THE DELTA MUNICIPAL CODE TO REAFFIRM AND CODIFY THE ESTABLISHMENT OF AN ELECTRICAL UTILITY ENTERPRISE

WHEREAS, the City of Delta (“City”) is a home rule municipality duly organized and existing under Article XX of the Colorado Constitution and the Delta Home Rule Charter (“Charter”); and

WHEREAS, Section 38 of the Charter provides for the establishment and operation of a municipal light and power system including authorization for the City to issue interest-bearing revenue bonds payable solely out of the earnings and revenues of the system; and

WHEREAS, the provisions of Section 38 of the Charter are generally consistent with the intent and purpose of operating the City’s electrical utility system as an “Enterprise” within the meaning of Article X, Section 20 of the Colorado Constitution; and

WHEREAS, the City has previously acknowledged and reaffirmed its authorization and intent to operate the electrical utility system as an Enterprise, including without limitation by the City’s approval and enactment of Ordinance No. 3, 2005; and

WHEREAS, the City Council desires again to reaffirm that the electrical utility system is established as an Enterprise and to codify the same in the Delta Municipal Code; and

WHEREAS, in connection with operation of its electrical utility system, the City contracts with the Municipal Energy Agency of Nebraska (“MEAN”) to provide electricity to the City; and

WHEREAS, the City Council hereby finds and declares it to be in the public interest and in the interest of the customers of the City’s electric utility that the City adopt and execute Service Schedule M, Amended and Restated Total Power Requirements Power Purchase Agreement with MEAN.

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

1. Recitals. The foregoing recitals are incorporated herein as findings and determinations of the City Council.
2. Electrical Utility Enterprise. The Delta Municipal Code is hereby amended by the addition of a new Section 13.04.220 as follows:

13.04.220 Electrical System Enterprise.

The City’s Municipal Light and Power System, as authorized pursuant to Section 38 of the Home Rule Charter, including the City Electric System as defined in Section 13.04.010 of the Municipal Code, has been established and shall be operated as an “Enterprise” within the meaning of Article X, Section 20 of the Colorado Constitution.

3. Approval of MEAN Contract. It is hereby ordered and directed that the City of Delta, acting through its Mayor and City Clerk, execute Service Schedule M, Amended and Restated Total Power Requirements Power Purchase Agreement, a copy of the schedule being attached hereto and made a part hereof. The City of Delta does hereby adopt and approve each of the objectives, terms and conditions set forth in Service Schedule M.

4. Acknowledgements. The City acknowledges that certain of the generating facilities used by MEAN to provide electricity to the City have been financed with tax-exempt bonds and the use of the electric output of such generating facilities is restricted by federal tax regulations. In order to permit MEAN to comply with such federal tax regulations, the City agrees to use all of the electricity delivered to it by MEAN solely to serve customers in its long-term service area pursuant to generally applicable and uniformly applied rates and charges. “Long-term service area” means any area that the City has provided electric service to for at least ten years. Any other use, resale or remarketing of the electricity delivered by MEAN to the City must be approved in writing by MEAN.

5. Effective Date. This Ordinance shall become effective thirty (30) days after final passage and publication pursuant to Section 19(c) of the Charter.

INTRODUCED on _____, 2024, at which time copies were available to the Council and to those persons in attendance at the meeting, read by title, passed on first reading, and ordered published as required by the Charter.

CITY OF DELTA, COLORADO

By: _____
Mayor

ATTEST:

City Clerk

INTRODUCED a second time at a meeting of the City Council on _____, 2024, read by title and number, passed, approved, and ordered published as required by the Charter.

CITY OF DELTA, COLORADO

By: _____
Mayor

ATTEST:

City Clerk

SERVICE SCHEDULE M

Amended and Restated Total Power Requirements Power Purchase Agreement

This agreement, dated June 1, 2024, is made by and between the Municipal Energy Agency of Nebraska (MEAN) and the City of Delta, Colorado (Participant) to be effective as of the Effective Date provided below. With regard to participants that have executed an Original Agreement: This agreement was made originally as of October 1, 2012, and is hereby amended and restated effective as of the Effective Date provided below, by and between MEAN and the Participant.

WITNESSETH:

WHEREAS, MEAN is authorized and empowered under the Act to purchase or lease any plant, works, system, facilities and real and personal property of any nature whatsoever, together with all parts thereof and appurtenances thereto, used or useful in the generation, production, transmission, conservation, transformation, distribution, purchase, sale, exchange or interchange of electric power and energy, or any interest therein or right to capacity thereof, and to purchase electric power and energy from any source located within or without the State of Nebraska; and

WHEREAS, the Participant owns and operates certain electric distribution systems, and may own and operate electric generating facilities or a transmission system, or both, and may have a contract for the direct purchase of firm power and energy from WAPA; and

WHEREAS, MEAN is willing to sell to the Participant all of the Participant's electric power and energy requirements, in excess of existing WAPA allocations and certain limited resources as set forth herein, on a wholesale basis; and

WHEREAS, the Participant has determined that it is desirable to enter into this Agreement to purchase electric power and energy from MEAN; and

WHEREAS, MEAN has issued or intends to issue notes, bonds or other evidences of indebtedness to enable it to accomplish the efficient supplying of electric power and energy to the Participant and other contracting entities, public or private, and in order to issue such notes, bonds or other evidences of indebtedness it is necessary for MEAN to have binding contracts with the Purchasers and to pledge the payments to be received pursuant to such contracts as security for the payment of such notes, bonds or other evidences of indebtedness, all as may be required by the bond resolution or other document pursuant to which such obligations shall be issued; and

WHEREAS, to the extent MEAN and the Participant have previously entered into a Service Schedule M, Total Power Requirements Power Purchase Agreement (referred to herein as the "Original Agreement"), MEAN and the Participant desire to amend and restate the Original Agreement in its entirety, effective as of the date set forth below, on the terms set forth below.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, it is mutually agreed as follows:

SECTION I
Definitions

- 1.01 Capitalized terms used in this Agreement and the Exhibits but not otherwise defined shall have the meaning set forth in Exhibit A.

SECTION II
Service to be Provided

- 2.01 MEAN shall sell and deliver to the Participant and the Participant shall take from MEAN and pay MEAN for all electric power and energy required by the Participant for the operation of its electric system, less power and energy allocated and delivered to the Participant from WAPA (WAPA Allocation). Such power shall include required operating reserves. If the Participant's WAPA Allocation is terminated or modified, then, pursuant to this paragraph, the Participant's power and energy requirements not supplied by WAPA shall be supplied by MEAN, provided, however, that unless otherwise agreed by MEAN in writing, power and energy requirements related to any increase in the WAPA Allocation shall continue to be supplied by MEAN and the increase in WAPA Allocation will be treated as if it were a MEAN generation resource for billing purposes.
- i. Environmental Attributes.
- a. Participant acknowledges that MEAN may from time to time offer specified levels of renewable energy by contract to its participants and that participants executing renewable energy agreements with MEAN are entitled to certain environmental attributes associated with the power and energy sold under such renewable agreements. Accordingly, the power and energy sold to Participant under this Agreement shall exclude any environmental attributes associated with energy sold under such renewable agreements.
- b. Participant shall not resell environmental attributes associated with WAPA firm electric service.
- ii. PURPA: MEAN's administration and implementation of PURPA shall be as provided in the applicable Policies and Procedures (currently the Renewable Distributed Generation Policy).
- 2.02 MEAN shall serve as Participant's exclusive agent for transmission of firm power and energy on the transmission system of the applicable transmission provider (Transmission Provider), which shall be Tri-State Generation and Transmission Association, Inc. or any RTO, ISO, or market operator to which such party transfers functional control of its transmission facilities. As part of this service, to the extent applicable in a market, MEAN will be responsible for determining the appropriate methodology for congestion hedging related to service to Participant as provided in Section 5.10.
- 2.03 If at any time Participant receives firm electric service from WAPA, MEAN shall serve as Participant's exclusive agent for scheduling and transmission of firm power and energy from WAPA, including without limitation WAPA's Loveland Area Projects (LAP), Salt Lake City Integrated Projects (SLC) and Upper Great Plains (UGP). As scheduling agent for Participant's firm power and energy from WAPA, MEAN will use reasonable efforts to ensure WAPA power is scheduled to comply with contractual requirements currently required under the Participant's contract with WAPA, and will use reasonable efforts to schedule WAPA power to the maximum advantage of the Participant. MEAN will manage all

market activities related to the firm power and energy from WAPA, including without limitation retaining all benefits and expenses in the markets. The Participant shall advise WAPA, in writing, that MEAN is designated by the Participant, pursuant to this Agreement, as the scheduling and transmission agent for the Participant's allocation(s) of WAPA capacity and energy, and that the Participant requests that all communications to Participant pertaining to the Participant's WAPA power allocation(s) or transmission service arrangements shall also be copied to MEAN, and that all communications to MEAN pertaining to the Participant's WAPA power allocation(s) or transmission service arrangements shall also be copied to Participant.

- 2.04 Integrated Resource Planning: During and for the term of this Agreement, MEAN will include Participant in MEAN's integrated resource planning.
- 2.05 NERC Responsibilities: MEAN's NERC standards obligations shall be limited to the MEAN duties regarding NERC compliance described in the applicable Policies and Procedures (currently Article II of the AMPP).
- 2.06 Other Services: MEAN may from time to time offer other rate-based services to Participant, which services will be subject to the terms and conditions issued by MEAN. The terms and conditions for such rate-based services may be modified at any time by MEAN and will apply to Participant upon issuance. MEAN may also from time to time offer non-rate based services to Participant by separate written agreement.
- 2.07 Notwithstanding anything to the contrary in this Agreement, Participant consents and agrees that MEAN may perform any and all of its duties and exercise its rights and powers under this Agreement by or through agents, subcontractors or employees appointed by MEAN. In addition, MEAN may delegate any or all of its duties under this Agreement to agents, employees or third parties appointed by MEAN.

SECTION III

Term

- 3.01 If the Effective Date set forth in Exhibit A is April 1, 2024, the Term is as follows: The initial term of this Agreement shall begin as of the Effective Date and shall continue for thirty (30) years. Commencing on April 1, 2029 and on each fifth anniversary of April 1 thereafter (each an "Extension Date"), the term of this Agreement will extend automatically for five additional years, so that the term will be thirty (30) years from such Extension Date, unless and until terminated as provided below, provided, however, that Participant will remain responsible for the amount equal to its Share, as defined below in Section 3.03.vi., multiplied by the Unfunded Resource Obligations, as defined below in Section 3.03.v.
- 3.02 If the Effective Date set forth in Exhibit A is later than April 1, 2024, the Term is as follows: The initial term of this Agreement shall begin as of the Effective Date and shall continue through March 31, 2054. Commencing on April 1, 2029 and on each fifth anniversary of April 1 thereafter (each an "Extension Date"), the term of this Agreement will extend automatically for five additional years, so that the term will be thirty (30) years from such Extension Date, unless and until terminated as provided below, provided, however, that Participant will remain responsible for the amount equal to its Share multiplied by the Unfunded Resource Obligations.

3.03 Termination:

- i. Either the Participant or MEAN may terminate the Agreement effective at the end of the then-current term by providing written notice to the other party within the applicable Notice Window, as defined below. Notice of termination may not be withdrawn unilaterally.
- ii. Notice Window shall mean the one (1) year period corresponding to MEAN’s Fiscal Year which ends twenty-five (25) years prior to the desired date of termination, which Notice Window will occur every five (5) years beginning the first day of MEAN’s Fiscal Year in 2028.
- iii. Examples of the Notice Window and Termination Date concepts are set forth below:

Notice Window (MEAN Fiscal Year)	Termination Date (if termination notice is provided during the applicable Notice Window)	Extension Term (if neither party provides termination notice during the applicable Notice Window)
2028-2029	March 31, 2054	Through March 31, 2059
2033-2034	March 31, 2059	Through March 31, 2064
2038-2039	March 31, 2064	Through March 31, 2069
2043-2044	March 31, 2069	Through March 31, 2074
2048-2049	March 31, 2074	Through March 31, 2079
2053-2054	March 31, 2079	Through March 31, 2084

- iv. MEAN shall have an estimate prepared of Agency Resource Obligations. This estimate shall be prepared on or before the January 1 immediately preceding the start of each Notice Window. MEAN may use a third-party to prepare all or some portion of each estimate. Each estimate shall be provided to a Participant upon request. If requested by MEAN, a Participant shall keep each estimate confidential. Each estimate is non-binding. Each estimate is provided only for informational purposes. Each estimate is only applicable to this subsection, and is not applicable to subsection vii below. The invoiced amount, under subsection vii below, is expected to vary from each estimate under this subsection, and the invoiced amount may be substantially higher than the estimate. The reasons for any such variation include, but are not limited to, the following:

- 1. This is an estimate;
- 2. The estimate of costs and expenses paid or incurred or to be paid or incurred by MEAN associated with or resulting from the termination, retirement from service and decommissioning of, Related Projects, which is one component of the Agency Resource Obligations, may be from third-party sources, and not from the owners or operators of the Related Projects; and
- 3. The estimate is made as of the applicable Notice Window, yet the invoiced cost will not be determined until the corresponding Termination Date (which is approximately 25 years after the applicable Notice Window).

MEAN has no obligation to update any estimate provided per this subsection.

- v. Unfunded Resource Obligations shall mean an amount determined by MEAN to be the portion of the following that remains unfunded as of the Termination Date: (i) an estimate of any and all costs and expenses paid or incurred or to be paid or incurred by MEAN associated with or resulting from the termination, retirement from service and decommissioning of, Related Projects; (ii) any and all notes, bonds or other evidences of indebtedness issued by MEAN or by the Public Power Generation Agency or its successor, outstanding as of April 1, 2024 and associated with one or more Related Project; and (iii) any and all notes, bonds or other evidences of indebtedness issued to refund the notes, bonds or other evidences of indebtedness described in (ii).
- vi. Share shall mean a ratio equal to that utilized by MEAN, in the Fiscal Year in which termination of this Agreement occurs, to calculate Participant's share of fixed costs. The method for determining such ratio shall be the same as the method used to calculate Participant's share of fixed costs under the then-current Schedule of Rates and Charges under Section IV.
- vii. On or before the December 1 immediately preceding the scheduled expiration or termination of this Agreement, MEAN shall prepare an invoice calculating the amount equal to Participant's Share multiplied by the Unfunded Resource Obligations. Participant shall pay MEAN the invoiced amount in accordance with the terms noted on the invoice. Payment in full of such amount shall be received by MEAN no later than the scheduled expiration or termination of this Agreement.
- viii. The provisions of this Section 3.03 shall survive expiration or termination of this Agreement.

3.04 Transition of Market Registration upon Expiration or Termination: This Section 3.04 is applicable to Participants whose load or resources are registered in a market at the time of scheduled expiration or termination of this Agreement. Participant agrees to make the necessary arrangements pursuant to the applicable Rules for (i) or (ii) below to facilitate a timely transition upon expiration or termination of this Agreement: (i) for Participant to become a market participant of the applicable market and meter agent for the loads and resource(s) which are the subject of this Agreement and manage settlements, transmission services, participate in the transmission congestion rights process, and perform capacity and resource adequacy reporting and requirements, or (ii) to transfer responsibility to a third-party market participant for market participation, meter agent submittals and settlements for such loads and resource(s) and for management of settlements, transmission services, participation in the transmission congestion rights process, and performance of capacity and resource adequacy reporting and requirements. Participant will meet the applicable Authority deadlines for a timely transition.

- i. If Participant does not timely transition upon expiration or termination of this Agreement as described above, the time period, if any, between the expiration or termination of the Term and the date of timely transition shall be referred to herein as the Late Transition Period. Unless and until MEAN and its third-party market participant are relieved of all responsibility for market participation, meter agent submittals, settlements, management of transmission services, participation in the transmission congestion rights process, and performance of capacity and resource adequacy reporting and requirements, on Participant's behalf to and by the market operator, services may continue as provided in this Agreement or MEAN, in its sole discretion, at any time:
 - a. may elect to cease providing services to Participant, or

- b. may elect to cease marketing Participant's load and resources but continue providing some or all of the other services to Participant, or
- c. may elect to continue marketing Participant's load and resources but cease providing some or all of the other services to Participant.

During the Late Transition Period, MEAN in its sole discretion may pass through any third party charges/credits incurred for Participant's load and resources in lieu of the standard charges for power and energy under the Schedule of Rates and Charges described in Section 4.02. For services provided during any time period in which the standard charges for power and energy under the Schedule of Rates and Charges are not applied to Participant, the Late Transition Rate described in Section 4.03.ii. shall apply, except with regard to the following: the pass-through function for resettlements and back charges, which shall be charged as set forth in Section 4.09. Regardless of MEAN's election under this paragraph, during the Late Transition Period MEAN will continue to pass-through third-party charges related to transmission, subtransmission, distribution, losses, ancillary services, the WAPA Allocation and other charges as provided in this Agreement.

If MEAN elects to continue providing any services during the Late Transition Period, the terms and conditions of this Agreement shall continue to apply but may be modified by MEAN at any time upon fifteen (15) days' advance written notice to Participant. If MEAN elects to discontinue providing some or all of the services during the Late Transition Period, the terms and conditions of this Agreement requiring MEAN to perform such services shall no longer be applicable, but all other terms and conditions of this Agreement shall remain in effect through the Late Transition Period.

- ii. Participant acknowledges and agrees that in the event of a termination of services as permitted by this Section 3.04, MEAN shall not be responsible for any penalties or charges incurred by the Participant arising out of or in connection with the termination of services, including, without limitation, market charges (such as day ahead, real-time, imbalance charges), fees and charges for transmission, ancillary services, applicable Authority fees and charges, taxes, and any applicable surcharges, and MEAN shall pass through to Participant, and Participant shall pay, any and all such penalties or charges incurred by MEAN or its third-party contractor related to market participation or performance of the duties of a meter agent.
- iii. The provisions of Section 3.04 shall survive expiration or termination of this Agreement.

SECTION IV Rates; Charges; Payments

- 4.01 Operating Expenses: Payments made by the Participant under this Agreement shall be made as an operating expense of the Participant's electric utility system, or other integrated utility system of the Participant of which the Participant's electric utility system may be a part, and from other funds of such system legally available therefor.
- 4.02 Modification of Schedule of Rates and Charges: The provisions of the Schedule of Rates and Charges may be modified or adjusted by the following procedures:

- i. Rate Review. The Schedule of Rates and Charges for service hereunder shall be contained in Exhibit B, as such Exhibit may be amended from time to time. MEAN shall design the Schedule of Rates and Charges for Total Requirements Service in accordance with this Agreement, which rates shall be nondiscriminatory, fair and reasonable (based primarily upon the cost of providing the electric power and energy or the service to which the rate or charge relates) and designed to be sufficient, but only sufficient, along with all other revenues of MEAN, to pay all Project Costs. The ratemaking methods used to develop these rates and charges shall be consistent with prudent utility wholesale rate-making procedures with the objective of recovering all Project Costs. These rates shall be determined by the Board of Directors of MEAN.

At such intervals as it shall determine appropriate, but in any event at least once each calendar year, the Board of Directors of MEAN shall review and, if necessary, revise the Schedule of Rates and Charges to insure that the rates thereunder continue to cover its estimate of the revenue requirements. Notice of such rate revisions shall be given to the Participant in accordance with the applicable Policies and Procedures for such notice, which Policies and Procedures shall provide that notice shall be given at least fifteen (15) days prior to the date the revised rate becomes effective.

The rates and charges established pursuant to this Agreement may contain various components including without limitation the following: fixed cost recovery charge, energy charge, green energy charge, renewable energy credit purchase charge, customer charge, automatic adjustment clauses including but not limited to a pooled energy adjustment, and a demand charge.

MEAN agrees that it will not charge any Purchaser rates more favorable than the rates charged Requirements Purchasers other than sales of surplus electric power and energy and sales to Contract Purchasers.

- ii. Records and Accounting: MEAN shall keep, or cause to be kept, accurate records and accounts in accordance with accounting principles generally accepted in the United States of America for regulated utilities. Participant shall have the right at any reasonable time to examine such accounts. MEAN shall cause such accounts to be audited annually by a firm of independent public accountants and shall make such audits available to Participant.
- iii. The Participant hereby recognizes that the Schedule of Rates and Charges in effect from time to time shall at all times be designed to ensure compliance by MEAN with the provisions of any Board Resolution with respect to Bonds outstanding.

4.03 The Schedule of Rates and Charges, as it may be modified from time to time, shall apply to Participant unless MEAN elects to pass through third party charges/credits for Participant's load and resources as described in Section 3.04. In addition, the following provisions shall apply:

- i. Termination Fee: The following termination fee shall apply if Participant's load or resources are registered in a market at the time of expiration or termination of this Agreement, due to the need for market registration arrangements to be changed with the market operator when the Participant transitions to a new market participant: Participant shall pay MEAN an administrative fee for any MEAN time required to unwind or change the market registration arrangements that were set up for the Participant pursuant to this Agreement. The

administrative fee shall be charged at MEAN's then-current hourly rate (subject to change from time to time as provided in the Schedule of Rates and Charges or upon written notice from MEAN to Participant) (Administrative Fee) plus any costs incurred from MEAN's third-party market participant and any costs assessed by the RTO/ISO or market operator. The provisions of this Section 4.03.i. shall survive expiration or termination of this Agreement.

- ii. Late Transition Rate: The rate for any services MEAN elects to provide during any time period in which the standard charges for power and energy under the Schedule of Rates and Charges are not applied to Participant, excluding the pass-through function for resettlements and back charges which shall be charged as set forth in Section 4.09, shall be two hundred percent (200%) of MEAN's then-current hourly rate, per month, plus any costs incurred from MEAN's third-party contractor related to market participation (collectively referred to as the Late Transition Rate). The provisions of this Section 4.03.ii. shall survive expiration or termination of this Agreement.

4.04 Invoices shall be rendered, and payment shall be made, in accordance with the General Terms and Conditions of Service. Except as provided in Section 12.02, the provisions of the General Terms and Conditions of Service govern any dispute by Participant of all or any part of the charges submitted by MEAN.

4.05 Governmental Imposition: The rates charged under this Agreement will be adjusted to reflect the impact of any Governmental Imposition. In addition, any Governmental Imposition assessed to MEAN after expiration or termination of this Agreement and relating to or arising out of service under this Agreement shall be passed through by MEAN to Participant and shall be paid by Participant.

4.06 If and to the extent MEAN is billed therefor, MEAN shall invoice Participant on a cost pass-through basis for firm capacity and energy allocations from WAPA and the cost of transmission, subtransmission, distribution, applicable losses as described in Section 5.08, and associated ancillary services. The provisions of this Section 4.06 shall survive expiration or termination of this Agreement.

4.07 Power Factor: If the Participant's power factor at any Point of Delivery is less than the percentage required by the Transmission Provider or any intervening carrier agency, the rates may be adjusted to reflect the required power factor and any third party charges, fines or penalties will be passed through to Participant.

4.08 Adjustments to Rates and Charges: In the event revenue collected through the applicable rates and charges in a Fiscal Year is not sufficient to cover actual costs and actual costs include costs applicable to service during the term of this Agreement, the MEAN Board of Directors may at its discretion assess a charge to Participant to recover Participant's share of such undercollection, and Participant will pay such charge regardless of whether it is assessed during or after the term of this Agreement. Similarly, in the event revenue collected through the applicable rates and charges in a Fiscal Year exceeds actual costs for such Fiscal Year and actual costs included costs applicable to service during the term of this Agreement, the MEAN Board of Directors may at its discretion issue a credit to Participant equal to Participant's share of such overcollection, regardless of whether the credit is issued during or after the term of this Agreement. MEAN will invoice and/or remit payment to Participant, as applicable, for amounts due under this Section 4.08. The provisions of this Section 4.08 shall survive expiration or termination of this Agreement.

4.09 Prior Period Adjustments and Resettlements: Back charges and credits assessed by a third party relating to or arising out of transmission service or market resettlements shall be paid as follows regardless of whether such amounts are assessed during or after the term of this Agreement: (i) MEAN will accumulate such charges and credits and periodically invoice and/or remit payment to the Participant for the net accumulated total during the eighteen (18) month period after expiration or termination of this Agreement; (ii) Participant will pay or reimburse MEAN for any such accumulated net charges invoiced; and (iii) Participant will receive any such accumulated net credits remitted. After the initial eighteen (18) month period after expiration or termination of this Agreement, MEAN will monitor such charges and credits and may invoice and/or remit payment to the Participant for the net accumulated total if the amount is deemed material in MEAN's sole discretion. This Section 4.09 shall include without limitation prior period adjustments and resettlements by an Authority, but shall not apply to charges and credits associated with congestion hedging activity which are addressed in Section 5.10. In addition, MEAN will charge the Administrative Fee for this pass-through function. The provisions of this Section 4.09 shall survive expiration or termination of this Agreement.

SECTION V

Service Characteristics; Point of Delivery; Transmission; Point of Measurement; Facilities; Interruption of Service

- 5.01 MEAN, at all times, will exercise reasonable care and diligence in scheduling its energy so as to furnish the Participant, as nearly as practicable, a continuous supply of electric power and energy. The electric power and energy supplied hereunder shall be delivered at the Point of Delivery. The Participant agrees that any anticipated material changes in, or additions to, its total connected load, other than changes or additions resulting from normal load growth, shall be reported to MEAN in writing sufficiently in advance of any such changes to enable MEAN to accommodate such changes.
- 5.02 The Participant and MEAN acknowledge and agree that MEAN will use reasonable efforts to procure, if necessary, and to utilize, network integration transmission service or other firm transmission service as may be available from the Transmission Provider, from which transmission service is required to deliver power and energy from MEAN's generation resources or suppliers. The Participant acknowledges that transfers of functional control by the Transmission Provider of its transmission facilities to another RTO, ISO, market operator or other third party, or any corresponding change in configuration for delivery of electric power and energy for Participant, are outside the control of MEAN.
- 5.03 In the event MEAN agrees to utilize Participant's service agreement for network integration transmission service, if any, with the Transmission Provider in lieu of MEAN procuring or utilizing network integration transmission service in MEAN's name, Participant shall designate MEAN as its transmission agent on the Transmission Provider's system for delivery of firm power and energy from MEAN and Transmission Provider. Participant shall also designate WAPA resources and this Agreement as network resources on the Transmission Provider's system. For purposes of clarity, Participant will notify Transmission Provider in writing that a copy of all transmission notifications shall be sent to MEAN, along with the original copy to Participant for its records. Participant will consult MEAN and obtain MEAN's consent prior to modifying its service agreement for network integration transmission service with Transmission Provider, including without limitation any changes to the designated network resources, network loads, delivery points, points of receipt, or voltages.
- 5.04 Participant's Network Service Delivery Point: The Parties further agree that if Participant desires to modify its service agreement for network integration transmission service with the Transmission

Provider to specify a new delivery point for network service to Participant, MEAN and Participant will coordinate efforts to determine the impact of the new or multiple delivery points. Any and all costs associated with the new delivery point(s), including but not limited to transmission facilities charges, transmission interconnection charges and charges for ancillary services, shall be borne by Participant.

- 5.05 In no event shall the Point of Delivery be interpreted to require the use of a specific transmission, subtransmission or distribution service path. Participant acknowledges and agrees that MEAN does not own or operate the transmission subtransmission or distribution service systems used to serve the Participant, and therefore, Participant will hold MEAN harmless from and will reimburse MEAN for all costs incurred by MEAN in connection with transmission service to the Participant due to changes in the Point of Delivery, Transmission Provider, or the transmission, subtransmission or distribution service.
- 5.06 If the Participant requires any service across an intervening system to deliver power and energy from the Point of Delivery to the Participant's system, such service and the charges therefor, shall be the responsibility of Participant. MEAN may agree to procure such service for the Participant. MEAN will pass through to Participant, and Participant will reimburse MEAN for, all costs of such service, in addition to any other transmission charges payable by the Participant to MEAN under this Agreement.
- 5.07 The Point of Measurement, which is the point(s) where electric power and energy are metered for the purpose of billing, shall be as set forth in Exhibit D. Metered quantities may be adjusted for losses to the Point of Delivery.
- 5.08 The Participant is responsible for all costs associated with transmission, subtransmission and distribution for delivery of firm power and energy to Participant, including without limitation impact studies or transmission facilities necessary for the procurement or for maintaining the Network Integration Transmission Service Agreement. In addition, MEAN may pass through to Participant, or may adjust billings to Participant to account for, any applicable losses related to delivery of firm power and energy to Participant under this Agreement. MEAN will not be responsible for facility upgrade costs. The provisions of this Section 5.08 shall survive expiration or termination of this Agreement.
- 5.09 Participant is responsible to pay for ancillary service schedules for scheduling, system control and dispatch service, reactive supply and voltage control, and regulation frequency response service, FERC assessment charge and other schedules that may be charged under the applicable Rules. MEAN in its sole discretion may from time to time elect to rate-base all or a portion of any such charges.
- 5.10 MEAN in its sole discretion will determine the appropriate methodology for congestion hedging related to service to Participant, including without limitation auction revenue rights, transmission congestion rights and financial transmission rights. MEAN will receive and retain all charges and credits associated with such congestion hedging activity.
- 5.11 Participant's Lines and Equipment: Participant agrees to install the necessary equipment at each Point of Delivery based on requirements of the Transmission Provider or any intervening carrier agency, including without limitation the following:
- i. such protective equipment at any Point of Delivery as the Transmission Provider or intervening carrier agency in its discretion may deem necessary,

- ii. such equipment as the Transmission Provider or intervening carrier agency in its discretion may deem necessary to address power factor or voltage regulation, and
- iii. such equipment as the Transmission Provider or intervening carrier agency in its discretion may deem necessary to reasonably limit fluctuations and disturbances determined by MEAN, the Transmission Provider, or intervening carrier agency to be objectionable. Power shall be used in such a manner as will not cause objectionable voltage fluctuations or other electric disturbances on the interconnected transmission system. The Participant shall notify MEAN immediately of any defect, trouble or accident which may, in any way, affect the delivery of power by MEAN to the Participant.

Any third party charges, fines or penalties assessed to MEAN relating to requirements of the Transmission Provider or any intervening carrier agency as described in this Section 5.11 will be passed through to Participant.

- 5.12 All lines, substations and other electrical facilities (except metering equipment installed by MEAN) located on the Participant's side of the Point of Delivery shall be furnished, installed and maintained by the Participant.
- 5.13 Interruption of Service: In events that could precede the declaration of an emergency on the system of Transmission Provider, intervening carrier agency or balancing authority, the Participant agrees to institute the same system of scheduling, limiting or curtailing service to its customers as requested by the balancing authority.

SECTION VI RTO/ISO

- 6.01 The Parties agree to work together in good faith to make necessary or desired changes to the terms and conditions of this Agreement to honor the intent of this Agreement in the event the Transmission Provider transfers functional control of its transmission system to an RTO, ISO, or market operator or otherwise transfers functional control to another entity.

SECTION VII Metering and Telemetry

- 7.01 Participant shall provide or cause to be provided telemetry data access to MEAN, or access to MEAN to access the data recorder (or successor recorders which must be compatible with the then-current MEAN equipment) located at the Point of Measurement, for scheduling and billing purposes. Any and all costs associated with replacing and maintaining the data recorders in order to stay compatible with MEAN's system shall be borne by the Participant.
- 7.02 The Participant and applicable Transmission Provider will determine the appropriate revenue metering equipment. MEAN has installed or will install a data recorder from which to schedule the load and/or generation or has arranged alternate methods to collect and record metering data for Participant to ensure accurate billing or to schedule the load and generation. Any costs of MEAN equipment, maintenance and communication with MEAN's telemetry will be borne by MEAN. Any cost charged by the applicable Transmission Provider as part of its transmission services, including metering and communication costs, will be paid for by the Participant.

- 7.03 The Participant shall permit the use of its available housing and other facilities for MEAN's metering equipment, and MEAN shall grant to the Participant space, if available, for check metering installations.
- 7.04 Right of Access: MEAN, the Transmission Provider and any intervening carrier agency shall have access to the Participant's premises at all reasonable times for the purpose of reading meters and for installing, testing, repairing, renewing, exchanging or removing any or all equipment installed by MEAN or third parties.
- 7.05 Participant's Responsibility for MEAN's Property: All meters and other facilities furnished by MEAN and installed on the Participant's property shall be and remain MEAN's property, and the right to remove, replace or repair such meters and other facilities is expressly reserved to MEAN. The Participant shall exercise due care to protect MEAN's property located on the Participant's premises, and MEAN shall exercise due care to protect the Participant's property located on MEAN's premises.

SECTION VIII
Commitment of Capacity

- 8.01 If Participant owns generating facilities receiving or approved to receive capacity compensation from MEAN as of April 1, 2024, Participant hereby, by free and willful action of its responsible authorities, contractually commits to MEAN the energy output of all such existing generating facilities, subject to Section 8.03. This Section 8.01 shall not apply to the following generating facilities: (i) Participant's owned generating facilities which were subject to a separate marketing agreement between MEAN and Participant as of April 1, 2024 under which MEAN markets such generating facilities on behalf of Participant, or (ii) Participant's owned generating facilities which were subject to a separate supplemental agreement between MEAN and Participant as of April 1, 2024 under which certain facilities are committed to MEAN or are utilized to reduce Participant's purchases of electricity from MEAN.
- 8.02 For any existing or new generating facilities of Participant not qualifying under Section 8.01, Participant hereby grants MEAN an Option to enter a capacity compensation arrangement with Participant subject to the terms of this Agreement. MEAN has the right, but not the obligation, to exercise the Option at MEAN's sole discretion within one hundred twenty (120) days of the occurrence of (i) or (ii) below or within one hundred fifty (150) days of (iii) below (each a "Condition" and collectively the "Conditions"), which Conditions and exercises may arise from time to time during the Term of this Agreement: (i) upon execution of this Agreement, (ii) upon Participant's acquisition of the facility(ies), and (iii) upon MEAN's receipt of Participant's offer under Section 8.04 or upon actual or constructive notice to MEAN of Participant's offer to sell the capacity or energy to a third party or acceptance of an offer from a third party to purchase such capacity or energy. The failure of MEAN to exercise the Option within one hundred twenty (120) days of the occurrence of (i) or (ii) above or within one hundred fifty (150) days of (iii) above, or if MEAN actually exercises the Option with regard to any of the Conditions, will not preclude or foreclose the ability of MEAN to exercise the Option at a later date in response to any future occurrence of any of the Conditions, consistent with the timelines set forth in this Section 8.02. The Option shall not expire until this Agreement is terminated.

With regard to (i) above, Participant shall, at least thirty (30) days prior to execution of this Agreement, notify MEAN in writing in accordance with Section 17.07, of the existence of any and all existing Participant generating facilities not committed to MEAN and of the opportunity to exercise the Option.

With regard to (ii) above, Participant shall, at least thirty (30) days prior to Participant's acquisition, notify MEAN in writing in accordance with Section 17.07, of the opportunity to exercise the Option.

Failure of Participant to properly and timely notify MEAN as set forth above will result in MEAN's right to exercise the Option within a period of one hundred fifty (150) days after the Executive Director of MEAN receives actual notice of the occurrence of the Condition.

- i. Upon the occurrence of any of the Conditions, the following shall occur: The Option may be exercised at the sole discretion of MEAN upon approval by the MEAN Board of Directors. A decision to exercise the Option by the MEAN Board of Directors shall give the terms of the Option immediate effect.
- ii. The terms of the Option, applicable immediately when the Option is exercised, are as follows:
 - a. MEAN shall notify Participant of the decision to exercise the Option in writing, in accordance with Section 17.07, within ten (10) days of the vote to exercise the Option by the MEAN Board of Directors.
 - b. Participant hereby, by free and willful action of its responsible authorities, contractually commits to MEAN the energy output of all such generating facilities for which MEAN exercises the Option, in exchange for a capacity compensation payment, subject to Section 8.03.

The capacity compensation payment shall be paid to Participant at the rate established by, and as may be modified from time to time by, the MEAN Board of Directors. In determining the amount of Participant's capacity compensation payment, MEAN shall classify Participant's facilities based on size, fuel type, and any other characteristics that may be established by the MEAN Board of Directors from time to time. The MEAN Board of Directors shall create and maintain standardized facility classifications, and all Participants with the same classification shall be paid the same capacity compensation amount as other Participants with the same classification.

This Section 8.02 shall not apply to the following generating facilities: (i) Participant's owned generating facilities which were subject to a separate marketing agreement between MEAN and Participant as of April 1, 2024 under which MEAN markets such generating facilities on behalf of Participant, (ii) Participant's owned generating facilities which were subject to a separate supplemental agreement between MEAN and Participant as of April 1, 2024 under which certain facilities are committed to MEAN or are utilized to reduce Participant's purchases of electricity from MEAN, or (iii) generating facilities approved by the MEAN Board of Directors to reduce Participant's purchases of electricity from MEAN.

- 8.03 The rules and regulations for determining accredited capacity shall be those rules established by the MEAN Board of Directors. Compensation for generating facilities committed to MEAN will be paid at the rate established by, and as may be modified from time to time by, the MEAN Board of Directors.
- 8.04 Participant shall not offer to sell to a third party or accept an offer for a third party to purchase, the capacity or energy from Participant's electric generating facilities, without first offering MEAN the

right to purchase rights to the capacity and associated energy. This offer will serve as a Condition under Section 8.02.

- 8.05 **Limitation on Private Business Use:** It is the intent of the Parties to preserve the tax-exempt status of any outstanding and future financing (including bonds, notes, or otherwise) used by Participant for or in relation to the generating units committed to MEAN under this Section VIII, including any improvements thereto, or which may be secured in any way by such generating units or any revenues generated therefrom (all of which shall be collectively referred to herein as the "Participant Financings"). Notwithstanding any other terms in this Agreement, MEAN represents and agrees that it has not entered into, nor will it enter into, any contract or other agreement that would jeopardize the tax exempt status of the Participant Financings (whether currently outstanding or thereafter to be issued), and it will not take any action, or fail to take any required action, that would jeopardize the tax exempt status of those bonds (whether currently outstanding or thereafter to be issued). Notwithstanding any other terms in this Agreement (including but not limited to Section XIII (regarding limitation of liability) of this Agreement), if MEAN markets, transfers or sells any capacity or energy from such generating units committed to MEAN to a third party and the use, transfer, or sale of the capacity and/or energy creates or constitutes "private business use" under the Internal Revenue Code or regulations promulgated thereunder in an amount that would affect the eligibility of interest on the Participant Financings (whether then outstanding or thereafter to be issued) for Federal tax-exempt status, MEAN agrees to indemnify and hold harmless Participant from and against any and all losses, costs, liabilities, damages and expenses (including without limitation attorneys' fees and expenses and the marginal costs of the Participant Financings being declared taxable) of any kind incurred or suffered by Participant, as a result of or in connection with any use, transfer, sale, or resale of the capacity and/or energy.

SECTION IX
Right of Way

- 9.01 The Participant hereby grants the right, privilege and easement of a right of way to construct, operate and maintain, together with rights of ingress and egress, electric lines and facilities for delivery of electric power and energy hereunder over and across land owned by the Participant or land over which it may grant such permission.

SECTION X
Covenants of the Participant

- 10.01 Covenant as to Rates: Participant covenants and agrees that it will fix rates and charges for the services of its municipal electric utility system, and revise the same from time to time, and collect and account for the revenues therefrom, so that such rates and charges will produce revenues and receipts which will at all times be sufficient to enable Participant to pay the amounts payable by it hereunder when and as the same become due, to carry out its other obligations hereunder and to pay all other amounts which are payable from or a charge upon the revenue derived from the operation of its municipal electric utility system as and when the same become due.
- 10.02 The Participant agrees that it shall at all times operate or cause to be operated its municipal electric utility properly and in an efficient and economical manner, consistent with good business and Prudent Utility Practice.

- 10.03 Any payments for electric power and energy provided under this Agreement shall be payable as operating expenses of the Participant's electric system. The Participant shall not after the date of execution and delivery of this Agreement execute or adopt any instrument securing bonds, notes or other indebtedness payable from and secured by a lien on the revenues derived from the ownership or operation of its electric system unless such instrument recognizes the status of the payments referred to in the preceding sentence. This Section 10.03 shall not apply to any instrument securing bonds, notes or other evidences of indebtedness outstanding on the date of this Agreement except instruments executed or adopted during the term of the Original Agreement.
- 10.04 The Participant agrees to advise MEAN at least once each year of its estimated power supply requirements for the next fifteen (15) years.

SECTION XI
Collateral

- 11.01 MEAN may require security to ensure its risks associated with this Agreement are mitigated. If from time to time MEAN has reasonable grounds for insecurity regarding the performance of any obligation under this Agreement by the Participant, MEAN may demand Adequate Assurance of Performance. Participant hereby grants to MEAN a continuing first priority security interest in, lien on, and right of setoff against all Adequate Assurance of Performance in the form of a cash deposit made by Participant pursuant to this Section. Such cash deposit will be held in a segregated interest-bearing account, controlled by MEAN with interest accruing to Participant. Upon the return by MEAN to Participant of such Adequate Assurance of Performance, the security interest and lien granted hereunder on that Adequate Assurance of Performance shall be released automatically and, to the extent possible, without any further action by either party.
- 11.02 In addition to the Adequate Assurance of Performance requirements above, Participant agrees to provide additional security as may be required by an Authority from time to time for MEAN to perform services under this Agreement. MEAN will pass through the costs of such credit requirements to Participant, and Participant agrees to promptly pay MEAN for such costs incurred. The provisions above regarding security interests and rights of setoff shall apply to such additional credit.

SECTION XII
Default by Participant; Default by Other Purchasers

- 12.01 The provisions of Section XII shall apply in lieu of the provisions of the General Terms and Conditions of Service addressing Remedies Upon Breach (currently Section 12.03).
- 12.02 Default by Participant.
- i. MEAN and the Participant hereby agree that any default by the Participant with respect to the payment of any billing because of any dispute shall be handled accordingly to the provisions of Article 13 of Chapter 70 of the Nebraska Revised Statutes and the provisions of the General Terms and Conditions of Service applicable to payment disputes (currently Section 8.02) to the extent that such provisions of the General Terms and Conditions of Service supplement or are not inconsistent with Article 13.
 - ii. If the Participant fails to comply with any of the terms, conditions and covenants of this Agreement (other than a failure to make a payment for which provision is made in subsection

i of this Section or an Event of Default as defined in Section 12.04) and such failure continues for a period of fifteen (15) days, MEAN shall give notice to the Participant. If such failure is not cured within thirty (30) days from the date of the mailing of such notice, it shall constitute a default on the part of the Participant. MEAN shall give copies of each of the foregoing notices to the other Purchasers. In the event of such a default by the Participant, MEAN shall have all of the rights and remedies provided at law or in equity, including mandamus, injunction and action for specific performance, as may be necessary or appropriate to enforce against the Participant any of such terms, conditions and covenants with which the Participant has failed to comply.

12.03 Default by Other Purchaser: The Participant understands that default by any other Purchasers in making payments to MEAN could occur. In the event of such a default the Participant agrees that MEAN may be forced to revise the Schedule of Rates and Charges in accordance with the procedure outlined in Section 4.02.i. hereof, in order to maintain revenues sufficient to pay the Project Costs. MEAN shall commence legal action immediately against any such defaulting Purchaser; recoveries resulting from judgments rendered against any such defaulting Purchaser shall be distributed among other Purchasers from MEAN in proportion to the amounts paid to MEAN for purposes of covering deficits caused by the defaulting Purchaser. The Participant agrees that it will not have any direct cause of action against any such defaulting Purchasers; all defaults arising under any contract with MEAN shall impose an obligation upon MEAN to use its best efforts to recover against any such defaulting Purchasers.

12.04 In addition, the following events shall constitute an event of default (Event of Default) hereunder: Participant is unable to pay its debts as they fall due; Participant fails to perform any obligation to MEAN with respect to any collateral relating to this Agreement; or Participant fails to give Adequate Assurance of Performance within fourteen (14) business days of a written request by MEAN. In the event of an Event of Default under this Agreement, MEAN is entitled to a funding of the letter of credit or use of the cash deposit and shall have the right, at its sole election, to immediately withhold and/or suspend services, deliveries or payments upon written notice, to net payments due by MEAN against amounts outstanding from Participant, and/or to terminate this Agreement in the manner provided below, in addition to any and all other remedies available hereunder or at law or in equity. If an Event of Default has occurred and is continuing, the non-defaulting party shall have the right, by written notice to the defaulting party, to designate a day, no earlier than the day such notice is given and no later than 15 days after such notice is given, as an early termination date for this Agreement and all services and deliveries hereunder, provided, however, that Participant will remain responsible for the amount equal to its Share multiplied by the Unfunded Resource Obligations. Participant acknowledges and agrees that in the event of a suspension or termination of services as permitted by this Section, MEAN shall not be responsible for any penalties or charges incurred by the Participant arising out of or in connection with the suspension or termination of services including without limitation market charges such as imbalance/Real Time charges, fees and charges for transmission, ancillary services, applicable Authority fees and charges, taxes, and any applicable surcharges.

SECTION XIII

Limitation of Liability; Consequential Damages

13.01 Participant has evaluated the benefits and risks associated with this Agreement. Participant acknowledges that of the amount paid by Participant under this Agreement (i) a substantial portion is paid by MEAN to third parties (examples include without limitation pass-through costs and costs associated with capacity and energy), and (ii) a very minor portion is retained by MEAN for its services

under this Agreement. Subject to the specific limitation of liability in Section 13.02 for services provided under Section 2.06, MEAN's total liability to Participant for any loss or damage arising out of or in connection with the performance of services or any other cause, whether based on contract, tort or any other legal theory, excluding loss or damage caused by MEAN's gross negligence or MEAN's willful and wanton misconduct, shall not exceed the higher of the amount of a covered insurance claim that is accepted and ultimately paid out by the insurance carrier for Participant's damages, net of defense costs, or the portion of the amount paid by Participant in the twelve (12) months preceding the claim that is for MEAN's administrative and general operating expenses, as set forth in the applicable MEAN budget(s), which amount is intended to be a reasonable approximation of the amount paid by Participant to MEAN for services under this Agreement (excluding pass-through costs and costs associated with capacity and energy, including without limitation fees and charges for transmission, ancillary services, auction revenue rights, transmission congestion rights, financial transmission rights, applicable Transmission Provider, intervening carrier agency and Authority fees and charges, taxes, any applicable surcharges or penalties, capital projects, and debt service). The provisions of this Section 13.01 shall survive expiration or termination of this Agreement.

- 13.02 Notwithstanding any other provision of this Agreement, MEAN's total liability to Participant for any loss or damage arising out of or in connection with the performance of services under Section 2.06, whether based on contract, tort or any other legal theory, excluding loss or damage caused by MEAN's gross negligence or MEAN's willful and wanton misconduct, shall not exceed the cost for MEAN to provide such services to Participant under Section 2.06 in the twelve (12) months preceding the claim, based on MEAN's then-current hourly rate for services. The provisions of this Section 13.02 shall survive expiration or termination of this Agreement.
- 13.03 IN NO EVENT SHALL MEAN BE LIABLE UNDER ANY PROVISION OF THIS AGREEMENT FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST PROFITS, LOST REVENUE, OR CLAIMS OF PARTICIPANT FOR SUCH DAMAGES, EVEN IF MEAN IS EXPRESSLY INFORMED OF THE SAME. THE PROVISIONS OF THIS SECTION 13.03 SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

SECTION XIV
Use of Power and Energy

- 14.01 Participant shall not sell at wholesale any of the electric energy and power delivered to it hereunder to any purchaser from the Participant for resale by that purchaser, unless such resale is specifically approved in writing by MEAN. The Participant agrees that it will not use or permit to be used any power purchased from MEAN in any manner or for any purpose which would adversely affect the tax exempt or tax advantaged status of interest on any bonds for federal income tax purposes; this prohibition shall include contracts between the Participant and certain nonexempt persons or corporate bodies for the sale of power and energy. The Participant agrees to provide such information as MEAN may request from time to time to confirm the Participant's compliance with the provisions of this Section.
- 14.02 Participant covenants and agrees that it will use the power and energy delivered to it under this Agreement to provide electric service to retail electric customers located within its established electric service area under generally applicable and uniformly applied rate schedules or tariffs. Any other resale of the power and energy delivered to the Participant under this Agreement shall require the prior written approval of MEAN.

SECTION XV
Force Majeure

15.01 MEAN shall not be considered to be in default with respect to any obligation hereunder if prevented from fulfilling such obligation by reason of uncontrollable forces, nor shall a cause of action for damages against MEAN accrue to the Participant, or any of its inhabitants, and the Participant shall save MEAN harmless from any and all such claims. The term “uncontrollable forces” shall be deemed, for the purposes hereof, to mean storm, flood, lightning, earthquake, fire, explosion, civil disturbance, labor disturbance, sabotage, terrorism, cyberattack, civil disturbance, war or the consequences thereof, insurrection, riot, acts of God or the public enemy, pandemic, national or regional emergency, breakage or accident to machinery or equipment, failure of or threat of failure of facilities, material shortage, restraint by court or public authority, directive, curtailment, order, regulation, restriction or other act or omission by an Authority, or other causes or acts beyond the control of MEAN. In the event MEAN is unable to fulfill any obligation by reason of uncontrollable forces MEAN will exercise due diligence to remove such disability with reasonable dispatch, but such obligation shall not require the settlement of a labor dispute except in the sole discretion of MEAN.

SECTION XVI
General Terms and Conditions of Service

16.01 Except as otherwise provided in this Agreement, the General Terms and Conditions of Service, attached hereto, are made part of this Agreement the same as if they had been expressly set forth herein.

SECTION XVII
Miscellaneous

17.01 It is mutually agreed and understood that the obligations imposed by the provisions of this Agreement are only such as are consistent with applicable state and federal law. The parties further agree that if any provision of this Agreement becomes in its performance inconsistent with state or federal law or is declared invalid, the Parties will in good faith negotiate to modify the agreement accordingly.

17.02 Independent Contractor: MEAN shall perform the services under this Agreement as an independent contractor and shall not be treated as an employee of Participant for federal, state or local tax purposes, workers’ compensation purposes, or any other purpose. Nothing contained in this Agreement shall be deemed to create or constitute an employer-employee relationship, a partnership or joint venture between the Parties.

17.03 No Third-Party Beneficiaries: The Parties do not intend to confer and this Agreement shall not be construed to confer any rights or benefits to any person, firm, group, corporation or entity other than the Parties.

17.04 No Legal Services: MEAN’s services under this Agreement shall not constitute the rendering of legal advice, or the providing of legal services, to the Participant.

17.05 Compliance with Rules, Policies and Procedures: The Parties understand and agree that this Agreement and the services and obligations hereunder are subject to all applicable Rules, and the terms and conditions stated herein are subject to modifications resulting from changes in any such Rules. In addition, Participant agrees to comply with Policies and Procedures.

17.06 Reports; Accuracy of Data: The Participant will furnish MEAN such information as is necessary for making any computation required for the purpose of this Agreement and the Participant and MEAN will cooperate in exchanging such additional information as may be reasonably necessary for their respective operations. MEAN shall be entitled to use and rely upon all information, data, and other appropriate and necessary documentation (collectively referred to as “Data”) provided by or on behalf of the Participant, as accurate without independent verification in the completion of the services provided hereunder. The accuracy of any Data submitted by MEAN for regulatory and/or compliance purposes is dependent upon the accuracy, completeness, and timeliness of the Data which is provided to MEAN by or on behalf of Participant. It is understood that if MEAN does not obtain all required and accurate Data timely, the reliability and accuracy of the Data submitted by MEAN for regulatory or compliance purposes on behalf of the Participant may be adversely affected. Accordingly, Participant agrees to bear total responsibility for any and all charges, fines and penalties resulting from omissions, technical inaccuracies, missing Data or Data not provided timely by Participant to MEAN.

17.07 Notices: All notices required or permitted to be given with respect to this Agreement shall be given by (a) mailing the same postage prepaid or (b) given by courier, to Participant as described in the General Terms and Conditions of Service, and to MEAN at the address as set forth below. Either party may change its address for the purpose of notice hereunder by giving the other party no less than five (5) days prior written notice of such new address in accordance with the preceding provisions.

To MEAN: Municipal Energy Agency of Nebraska
 ATTN: Executive Director
 8377 Glynoaks Drive
 Lincoln, Nebraska 68516
 Telephone: (402) 474-4759

17.08 Waivers: No delay by MEAN or Participant in enforcing any of its rights hereunder will be deemed a waiver of such rights nor will any waiver at any time by MEAN or Participant of its rights with respect to a default under this Agreement be deemed a waiver with respect to any subsequent default or matter.

17.09 Assignment: Notwithstanding the Assignment provision in the General Terms and Conditions: This Agreement may be assigned by either party hereto only after receipt of written approval by the other party.

- i. The Participant may assign any of its rights under this Agreement to another entity, if permitted by applicable law, but no such assignment shall relieve the Participant of its obligations under this Agreement so long as any Bonds are outstanding and, in any event, the Participant shall not assign such rights if, in the opinion of counsel of recognized standing in the field of law relating to municipal bonds selected by MEAN, such assignment would adversely affect the exemption from federal income taxation of the interest on the Bonds.
- ii. This Agreement shall be binding upon, and inure to the benefit of, any successor to MEAN. MEAN may assign any or all of its rights hereunder or pledge any or all of the revenues payable to it under this Agreement, pursuant to a Bond Resolution and such assignee may enforce the provisions of this Agreement as if it were named as party hereto.

- 17.10 Severability: The parties hereto agree that if any of the provisions of this Agreement shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, such illegality or invalidity shall not affect any other provision hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein, and the rights and obligations of the parties shall be construed and enforced accordingly.
- 17.11 Amendments: This Agreement may be amended only by a written instrument signed by duly authorized representatives of each of the parties.
- 17.12 Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.
- 17.13 The delivery of this Agreement by electronic mail or other means of electronic transmission with an electronic signature in PDF or other mutually acceptable digital format by an authorized representative of each party shall be deemed an original for execution and enforcement of this Agreement.
- 17.14 This Agreement, the General Terms and Conditions of Service, and the Policies and Procedures issued by MEAN from time to time constitute the complete agreement of the parties relating to the matter specified in this Agreement and supersede all prior representations or agreements, whether oral or written, with respect to such matters. No modification of this Agreement shall be binding upon either party unless agreed to in writing and signed by both parties.

SECTION XVIII
Representations and Warranties

- 18.01 Section XVIII applies only if Participant is a political subdivision of the State of Colorado.
- 18.02 Participant has established by ordinance a Utility Enterprise (Enterprise) having all the authority to act and operate in all respects as an Enterprise under Colorado law, Colorado Constitution Article X, Section 20 (commonly known as the Taxpayer's Bill of Rights or "TABOR"). The parties agree that, if the Enterprise loses its enterprise status as a result of the Enterprise receiving ten (10) percent or more of its annual revenue in grants from all Colorado state and local governments combined, that will not constitute a breach of this Agreement. However, the loss of enterprise status, for any reason, does not permit or allow the Enterprise or the Participant to fail to pay any amounts owed under this Agreement or excuse performance under any other term. In addition, if the Enterprise loses its Enterprise status, for any reason, the Participant and the Enterprise are required to regain Enterprise status in the next fiscal year. MEAN recognizes that if a court of competent jurisdiction issues a final non-appealable decision that determines that (a) the Participant has lost its status as an "Enterprise" within the meaning of TABOR, and (b) the payments required to be made by the Participant under this Agreement must be subject to annual appropriation in order to comply with TABOR, then the Participant's payment obligations hereunder will be contingent upon the annual appropriation of funds sufficient to pay all amounts due hereunder. In the event of a decision described in the preceding sentence, the Participant's budget staff shall take all actions required in accordance with law to (i) include an item for expenditure in the final annual budget (or an amendment thereto) that is submitted to the Participant's governing body for approval that is sufficient to pay all amounts due under this Agreement and (ii) complete all procedural steps up to a formal appropriation.

- 18.03 Participant and Enterprise represent and warrant that this Agreement has been executed in compliance with or is otherwise not subject to TABOR.
- 18.04 Participant shall provide an opinion of Participant's legal counsel that this Agreement has been duly authorized, executed and delivered by Participant and/or Enterprise and that all financial obligations undertaken or assumed by the Participant and/or Enterprise in connection herewith are valid and enforceable against the Participant and/or Enterprise in accordance with the terms of this Agreement.

[SIGNATURE PAGE FOLLOWING]

IN WITNESS WHEREOF, the Participant and MEAN have caused this Service Schedule M, Amended and Restated Total Power Requirements Power Purchase Agreement to be executed by these duly authorized officers, the day and year shown below.

MUNICIPAL ENERGY AGENCY OF NEBRASKA

PARTICIPANT: CITY OF DELTA, COLORADO

By: _____

By: _____

Printed
Name: _____

Printed
Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTEST:

By _____
City Clerk

(SEAL)

SSMAmendedAndRestated20231116

Service Schedule M
Amended and Restated Total Power Requirements Power Purchase Agreement

Exhibit A

DEFINITIONS

"Act" means the Municipal Cooperative Financing Act of Nebraska and all acts supplemental thereto or amendatory thereof.

"Adequate Assurance of Performance" means sufficient security in the form, amount, for a term, and from an issuer, all as reasonably acceptable to MEAN, including, but not limited to a cash deposit, an irrevocable standby letter of credit, or a prepayment.

"Administrative Fee" shall have the meaning set forth in Section 4.03.i.

"Agency Resource Obligations" means an amount determined by MEAN to be the estimated portion of the following that remains outstanding as of the end of the then-current term: (i) an estimate of any and all costs and expenses paid or incurred or to be paid or incurred by MEAN associated with or resulting from the termination, retirement from service and decommissioning of, Related Projects; (ii) any and all notes, bonds or other evidences of indebtedness issued by MEAN or by the Public Power Generation Agency or its successor, outstanding as of April 1, 2024 and associated with one or more Related Project; and (iii) an estimate of any and all notes, bonds or other evidences of indebtedness issued to refund the notes, bonds or other evidences of indebtedness described in (ii).

"Agreement" means the Amended and Restated Total Power Requirements Power Purchase Agreement executed by and between MEAN and the Participant.

"AMPP" means the Asset Management Policies and Procedures approved by the MEAN Board of Directors, as such may be modified, supplemented, renamed or superseded from time to time by the MEAN Board of Directors, including any successor documents or policies adopted by the MEAN Board of Directors.

"Authority" means any governmental entity or regulatory body having or asserting jurisdiction, market operators, and entities owning and/or operating the interconnected transmission system applicable to service to Participant and any intervening system. Authority shall include without limitation FERC, NERC, RTO, ISO, market operators, regional reliability entities, the transmission providers, intervening carrier agencies, and balancing authorities.

"Bond Resolution" means the resolution or indenture or agreement pursuant to which Bonds are issued.

"Bonds" means any notes, bonds or other evidences of indebtedness issued by MEAN, or in the event that MEAN enters into a specific contractual arrangement for a specific Project, the unconditional payment obligations associated with such arrangements.

"Condition" shall have the meaning set forth in Section 8.02.

"Contract Purchaser" means an entity which has elected pursuant to Section 3.01(c) of its original Service Schedule M agreement not to participate in a Project proposed pursuant to such Section 3.01(c) and which

has not executed an amended and restated Service Schedule M agreement effectively eliminating the entity's election of Contract Purchaser status.

"Data" shall have the meaning set forth in Section 17.06.

"Effective Date" means June 1, 2024.

"Event of Default" shall have the meaning set forth in Section 12.04.

"Extension Date" shall have the meaning set forth in Section III.

"FERC" means the Federal Energy Regulatory Commission or any successor federal agency having comparable regulatory authority and responsibilities over electric utilities.

"Fiscal Year" means MEAN's fiscal year, which shall initially be April 1 through March 31 and which may be changed from time to time as determined by the MEAN Board of Directors.

"General Terms and Conditions of Service" means the MEAN General Terms and Conditions of Service dated effective January 23, 2020 approved by the MEAN Board of Directors.

"Governmental Imposition" means changes in or additions to costs or expenses caused by any environmental or other regulation, or any sales tax, property tax, energy use tax, energy carbon tax, surcharge or other governmental or regulatory fees or penalties (including without limitation emissions allowances, renewable portfolio standards, charges, fines or expenses), any ISO, RTO, imbalance market or integrated market fees or costs, or penalties, or any Authority fees or penalties, which are imposed, adopted, implemented or enforced after the execution of this Agreement or which occur as a result of a change after the execution of this Agreement in the interpretation or enforcement by the governmental or regulatory body of an existing governmental imposition, and any changes to expenditures for MEAN's owned, purchased or leased power supply resources caused by or resulting from any change in law, rule or regulation.

"ISO" means an independent system operator approved by FERC.

"Late Transition Period" shall have the meaning set forth in Section 3.04.i.

"NERC" means the North American Electric Reliability Corporation or any successor organization authorized to ensure the reliability of the bulk power system for North America.

"Notice Window" shall have the meaning set forth in Section 3.03.

"Option" means the right of MEAN to elect to require Participant to commit certain capacity to MEAN as set forth in Section 8.02.

"Original Agreement" means the predecessor Service Schedule M, Total Power Requirements Power Purchase Agreement executed by and between MEAN and Participant, if any.

"Point of Delivery" shall have the meaning set forth in Exhibit D.

"Point of Measurement" shall have the meaning set forth in Exhibit D.

"Policies and Procedures" means policies and procedures established or modified from time to time by the MEAN Board of Directors, including without limitation the AMPP, Renewable Distributed Generation Policy, the MEAN Financial and Administrative Policies and Guidelines, and the MEAN Operational Policies and Guidelines, as such may be modified, supplemented, renamed or superseded from time to time by the MEAN Board of Directors, including any successor documents or policies adopted by the MEAN Board of Directors.

"Project" means any "power project", as defined by the Act, (i) which is designed to provide a power supply resource to MEAN which has an expected usable life in excess of fifteen (15) years or access to a power supply resource to MEAN for a period of fifteen (15) years, or (ii) which is designated by the Board of Directors of MEAN to be a "Project" for purposes of this Agreement.

"Project Costs" means all costs and expenses paid or incurred or to be paid or incurred by MEAN resulting from the ownership, operation, maintenance, termination, retirement from service and decommissioning of, and repair, renewals, replacements, additions, improvements, betterments and modifications to Projects, or otherwise relating to the acquisition and sale of electric power and energy and transmission services and performance by MEAN of its obligations under this Agreement, agreements with other Purchasers or relating to any other activity authorized by the Board of Directors of MEAN, including, without limitation, the following items of cost:

- (1) payments of principal, of premium, if any, and interest on all Bonds issued by MEAN or amounts required under any Bond Resolution to be paid or deposited into a debt service fund or account established for the purpose of making such payments and payments which MEAN is required to make into any debt service reserve fund or account under the terms of any Bond Resolution or other contract with holders of Bonds;
- (2) amounts required under any Bond Resolution to be paid or deposited into any fund or account established by such Bond Resolution (other than funds and accounts referred to in clause (1) above), including any amounts required to be paid or deposited by reason of the transfer of moneys from such funds or accounts to the funds or accounts referred to in clause (1) above;
- (3) amounts which MEAN may be required to pay for the prevention or correction of any loss or damage or for renewals, replacements, repairs, additions, improvements, betterments and modifications which are necessary to keep any Project and other property owned by MEAN in good operating condition or to prevent a loss of revenues therefrom;
- (4) costs of operating and maintaining the Projects and of producing and delivering electric power and energy therefrom (including fuel costs, administrative and general expenses and working capital, for fuel or otherwise, and taxes or payments in lieu thereof) not included in the costs specified in the other items of this definition and costs of power supply planning and implementation associated with meeting MEAN's power supply obligations;
- (5) the cost of any electric power and energy purchased for resale by MEAN and the cost of transmission service for delivery of electric power and energy;
- (6) all costs incurred or associated with the salvage, discontinuance, decommissioning and disposition of sale of any Project;

(7) all costs and expenses relating to injury and damage claims required to be paid by MEAN;

(8) costs of fire and casualty insurance policy premiums relating to the Project and any other property owned by MEAN; and

(9) additional amounts which must be realized by MEAN in order to meet the requirement of any rate covenant with respect to coverage of principal of and interest on Bonds contained in any Bond Resolution or contract with holders of Bonds or which MEAN deems advisable in the marketing of its Bonds.

"Prudent Utility Practice" means at a particular time any of the practices, methods and acts, which, in the exercise of reasonable judgment in the light of the facts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto) known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Utility Practice is not intended to be limited to the optimum practice, method or act, to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts. In evaluating whether any manner conforms to Prudent Utility Practice, the parties shall take into account (i) the nature of the parties hereto under the laws of the State of Nebraska and the statutory duties and responsibilities thereof, (ii) the applicable provisions of applicable Policies and Procedures, if any, and (iii) in the case of any facility jointly owned, the applicable ownership agreement among the owners of the facility.

"Purchaser" means any entity, public or private, which enters into a contract with MEAN for the purchase of electric power and energy.

"PURPA" means the Public Utilities Regulatory Policies Act of 1978, as amended, and FERC's implementing regulations.

"Related Bonds" means any Bonds, including Bonds issued to refund such Bonds, issued to provide funds for the Related Projects.

"Related Project" and "Related Projects" shall mean the projects set forth in Exhibit C.

"Renewable Distributed Generation Policy" means the Renewable Distributed Generation Policy approved by the MEAN Board of Directors, as such may be modified, supplemented, renamed or superseded from time to time by the MEAN Board of Directors, including any successor documents or policies adopted by the MEAN Board of Directors

"Requirements Purchaser" means a Purchaser that is purchasing its load requirements, including load growth, from MEAN, in excess of Participant's WAPA Allocation, pursuant to a Service Schedule M, Total Power Requirements Power Purchase Agreement or any successor thereto; Requirements Purchaser excludes a Contract Purchaser.

"RTO" means a regional transmission organization approved by FERC.

"Rules" means laws, ordinances, orders, rules, regulations, tariffs, business practices and protocols of any Authority.

"Share" shall have the meaning set forth in Section 3.03.

"Termination Date" means the effective date of termination of this Agreement.

"Total Requirements Service" means service to a Requirements Purchaser.

"Transmission Provider" shall have the meaning set forth in Section 2.02.

"Unfunded Resource Obligations" shall have the meaning set forth in Section 3.03.

"WAPA" means the Western Area Power Administration, its successors and their assigns.

"WAPA Allocation" shall have the meaning set forth in Section 2.01.

Service Schedule M
Amended and Restated Total Power Requirements Power Purchase Agreement

Exhibit C

RELATED PROJECTS

Dated: June 1, 2024

Not to exceed 1.70% of the output of Laramie River Station (approximately 28 MW) through Lincoln Electric System

Not to exceed 10 MW of Whelan Energy Center Unit 1 (formerly Hastings Energy Center #1)

6.92% joint ownership interest in Walter Scott, Jr. Energy Center Unit 4 (approximately 56 MW)

Participation Agreement, dated September 1, 2005, with the Public Power Generation Agency (PPGA) for 36.36% entitlement share (approximately 80 MW) in Whelan Energy Center Unit 2 (WEC 2) until such time as any evidences of indebtedness issued by PPGA with respect to WEC 2 are no longer outstanding.

23.5% undivided ownership interest in Wygen I (approximately 20 MW)

Amended and Restated Supplemental Agreement for Partial Assignment of Ownership Interest in Walter Scott, Jr. Energy Center Unit 4 (formerly known as Council Bluffs Energy Center Unit 4), dated March 4, 2014, with the Waverly Light & Power, a municipal utility of the City of Waverly, Iowa, for the partial assignment to MEAN of Waverly's interest currently equal to 0.4% (approximately 3 MW) of the energy generating capability and energy associated therewith, of Walter Scott, Jr. Energy Center Unit 4, until termination of Waverly's Service Schedule M Agreement with MEAN

Power Sales Agreement Regarding Louisa Generating Station, dated December 4, 2012, with the Waverly Light & Power, a municipal utility of the City of Waverly, Iowa, for the partial assignment to MEAN of Waverly's interest currently equal to 1.1% (approximately 7 MW) of the energy generating capability and energy associated therewith, of the Louisa Generating Station, until termination of Waverly's Service Schedule M Agreement with MEAN

Service Schedule M
Amended and Restated Total Power Requirements Power Purchase Agreement

Exhibit D

POINT OF DELIVERY AND POINT OF MEASUREMENT

Dated: June 1, 2024

Point of Delivery: The Point of Delivery shall be the point(s) at the outlet of the interconnected transmission system where electric power and energy are delivered by or on the account of MEAN to the Participant or to an intervening carrier agency for delivery to the Participant, which point(s) are as determined by the applicable Transmission Provider. Unless otherwise specified, the Point of Delivery refers to the point(s) at which the applicable Transmission Provider's transmission facilities interconnect with the Participant's distribution or transmission facilities or intervening carrier agency, if any. Notwithstanding the foregoing, to the extent the energy generated by behind the meter generation interconnected with a Participant's distribution system and leased to or purchased by MEAN is used by MEAN to serve such Participant, the energy may be delivered at the generator's point of interconnection with the Participant or alternate point at which MEAN acquires the energy as agreed in writing between MEAN and the Participant or Participant's customer.

Point of Measurement: The Point of Measurement shall be the point(s) as determined by the applicable Transmission Provider for measuring the Participant's load, and any alternate point(s) for measuring the Participant's load due to emergencies or other temporary conditions.

NDLM Proclamation 2024

Whereas, this April 2024 is the 21st National Donate Life Month with a goal to raise awareness about organ, eye, and tissue donation, encourage Americans to register as donors, and honor those that have saved and healed lives through the gift of donation; and

Whereas, Colorado has been one of the leaders in the nation with a donor registry of 66.21% of driver license/ID card applicants signing up to be organ and tissue donors—a decision that reflects deep commitment to one another and confirms that there is good inside all of us; and

Whereas, One donor can save up to 8 lives through organ donation, and save and heal more than 75 lives through tissue donation; and Whereas, A record 307 heroic organ donors provided 918 lifesaving transplants in 2023, which is a 10.6% increase from the prior year; and Donor Alliance recovered tissue for transplant from 1,703 heroic tissue donors saving and healing with nearly 144,000 tissue grafts; and

Whereas, Registering gives hope back to the more than 1,300 people waiting for a lifesaving organ transplant in Colorado and Wyoming, while compassionately celebrating donors and their families for the gift of life; and Whereas, the Chris Klug Foundation, a national nonprofit that promotes organ, eye, and tissue donation awareness, reached a record-breaking 1,035,237 individuals nationwide in 2023 with their lifesaving message; and

Whereas, Organ, eye, and tissue donation would not be possible without our community coming together for one united purpose. By saying “Yes” to be an organ, eye, and tissue donor, you're not just checking a box—you're saving and healing lives.

Now, therefore, I, Kevin Carlson the Mayor of the City of Delta, State of Colorado do hereby proclaim the month of April, 2024 as National Donate Life Month.

CITY OF DELTA

BY: _____

Mayor

ATTEST:

City Clerk



CITY WIDE MONTHLY REPORT APRIL 2024

CITY MANAGER

Makerspace and Coworking @ Delta Library Innovation Workspace - Both spaces are open and operational! The first classes have been scheduled, “Marketing Research Work Shop” on April 9th and “Demystifying Entrepreneurship” on April 26 and 27th. More details about these exciting classes can be found on the Innovation Workspace website at the following link. <https://www.deltainnovationworkspace.org/events>. To keep up-to-date on memberships and the exciting things happening at the Delta Library Innovation Workspace, please follow us on Facebook at <https://www.facebook.com/profile.php?id=61554873947484>.

Delta Cleaners - the U.S. Environmental Protection Agency (EPA) is evaluating the clean-up project at the Delta Cleaners site. They may be able to help cover the cost of the required environmental clean-up. EPA is highly optimistic they will be able to help. Staff will continue to work on this effort.

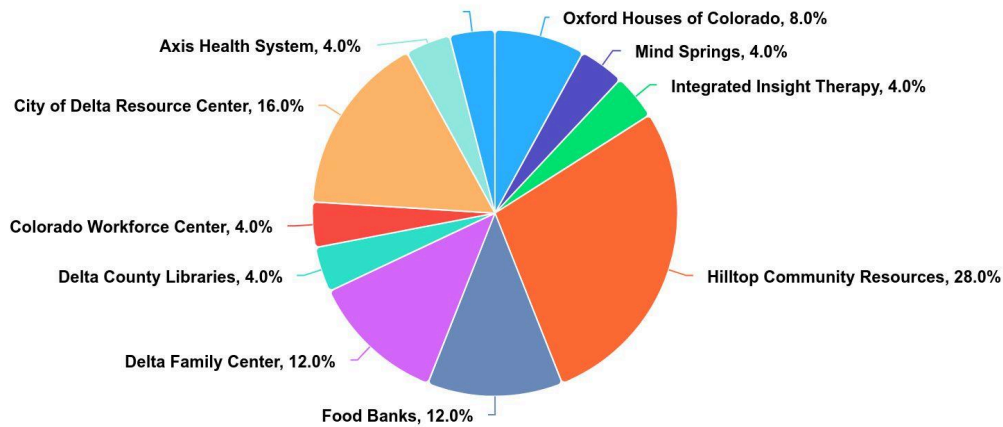
Better Supervisor Training - The Senior Leadership team has been participating in a Better Supervisor Class since January. This training teaches management best practices as they relate to personality types. This training will conclude in April and has been beneficial to each department.

Colorado Women Leading Government (CWLG) - On March 7, 2024, several members of staff celebrated International Women’s Day by attending the CWLG Luncheon at the Ute Indian Museum in Montrose.

Joint Law Enforcement Meeting - On March 12, 2024, the City hosted a joint law enforcement meeting with the City Council, County Commissioners, Sheriff’s Office, Delta PD Command Staff, County Court, Municipal Court, Public Defenders, District Attorney, Pretrial Services, and other City and County staff. The goal of this meeting was to open a conversation about the challenges facing these groups. The next step will be to form a smaller working group that will be tasked with evaluating solutions to some of the issues identified by the larger group.

Crisis Prevention Unit - CPU will turn 1 at the end of April 2024! During the next month, the team will be diving into data that we have collected over the past year to help begin measuring impact. Before we do a deep dive, the following are summary statistics at a glance. As of March 29, 2024 CPU has worked with 143 unique individuals, most of these individuals have worked with CPU multiple times at varying levels. The pie chart below details the volume of referrals the CPU has made to area resources. This indicates that we are referring the largest percentage of participants to Hilltop Community Resources. The second largest percentage of participants are referred to the City of Delta Resource Center which means CPU works with these participants directly.

Connections by Resource



Communications Team - The Communications Team continues to meet routinely to strategize the communication needs of the organization. The team is currently evaluating options for improving internal communication. The team is weighing the costs and benefits of different options and intends to implement new strategies in April.

Transformational Affordable Housing Grant (TAHG)- We received our signed and executed grant agreement for our TAHG grant in late March. This grant will fund the Delta Shelter Project. Having gone through the appropriate procurement process previously, staff has been working with the selected design-build firm on a contract. The contract will be brought forward to the City Council in April 2024.

ADMINISTRATION TEAM

Human Resources

- We are currently at an employee count of 105 FT and 162 PT.
- We have had 5 new hires and 1 Termination for March as of 03/25/2024. We are starting to bring back our seasonal employees for the Golf Course and Sports.
- We are recruiting for PT LifeGuards, Building Official, Public Works MSW1, Police Officer, Golf Turf Laborer, Rec Front Desk, PT Custodial and a Seasonal Gardner.
- The **Employee Council** is still working on communication within the City. The Communications Committee is going to help with getting the information covered in this meeting out to all employees.
- The **Safety Committee** is working on the Training schedules for the year. The committee is also working on City Equipment Policy to ensure the proper use and care of all City assets. This policy was presented to all Departments and Sr Leadership for input and approval.

City Clerk

- Completed four records requests.
- Completed review of two new liquor license applications, one transfer and two renewals.
- Completed two burial permits for the cemetery.
- Sold one cemetery lot.
- Continue working with CMCA on training for Clerk's throughout the State and the Annual Conference. The City of Delta will be hosting an Athenian Dialogue (ask me about it) in June.
- Submitted to CML the first Clerk's Corner for the CML newsletter. More to come.
- Worked with CML to have a Clerk session at CML.
- Implemented the new RFP process.
- Reviewing the City's social media policy. Have submitted the policy to the attorney for review.
- Scheduled the CIRSA audit and survey for May 7, 2024.

Municipal Court

- Received the following new cases:
 - 1 Animal Control citation
 - 11 various municipal violation citations
 - 45 traffic citations

GIS, Arts and Cultural/Communication, Fort Uncompahgre GIS

The GIS department is developing new online communications, data collection and reporting solutions for a number of city departments, including public works, WWTP, Parks, Bill Heddles Recreation Center, ComDev, and Delta PD. New projects include, Lead and Copper service line data collection online tools (<https://arcg.is/154bWD>), Fema Flood Analysis, and an online recreation map ([City Parks, Trails, and Recreation \(arcgis.com\)](http://City Parks, Trails, and Recreation (arcgis.com))). GIS maintenance, backup and QA/QC was conducted as well as some error correction and updates.

Continued some IT support with iPads, workstations and the makerspace. Collaborated with CivicPlus to implement the rollover of the City's website to a more modern and improved platform. GIS is working with the communications team to implement feature updates needed to meet ADA compliance requirements.

Events and Marketing

Events continue to gear up for the Second Annual Cinco de Mayo Celebration on Friday May 3rd, downtown from 6 to midnight. There will be two folkloric dance groups, two mariachi bands, loads of food vendors, and five local businesses participating in the festival permit. The Cleland Park Music Series announced its lineup this year on March 12th (<https://fb.me/e/7svcJIRSK>) and the Robidoux Pickin Festival lineup will be announced April 1st. Planning for the 250 US/150 CO event ([Home | History Colorado](#)) has begun in conjunction with a number of partners throughout the state.

Continue to work with the Innovation Workspace and staff on marketing and tech support. Addition to our current avenues for marketing and advertising, this month we have explored Television as well as other effective methods of digital media for some of the City's external communication needs. The Communications team is also preparing to implement a number of internal communications platforms.

We received bids for some of the light masonry work that needs to be done on the wall where the *Fruit Growers Labels* mural is painted. Surficial restoration work should start there within the next couple of months and Seth Webber (*The Sugar Beet Legacy*, *Rotary*, and *Art* murals) will complete the artistic restoration before the end of fall 2024.

Fort Uncompahgre

The Fort is gearing up for spring school field trips, as well as quite a few activities hosted by local non-profits including the Nature Connection, Valley Food Producers, and Jhova Films/Colorado Mesa University. The Visitor Center

is currently open Tuesday and Thursdays from 11am to 5:30pm. Thursdays are still Interpretive Tour Days with our tour guide, Jennie Day. The staff is working on programming for the summer and fall.

The Fort underwent some much needed repair and maintenance this past month. Roofs in the interpretive area were resodded with 4 fresh inches of dirt.. The trees were trimmed and a fresh coat of new gravel (recycled from the parks) was laid in the event and interpretive spaces. The Visitor Center also underwent cleaning and reorganization thanks to Teresa Beier and looks amazing.

Fleet & Facilities;

- There have been quite a few large repairs being done which have put staff behind.
- Techs have been busy trying to keep up with vehicle & equipment maintenance due to some of the larger repairs taking longer.
- Some of the new budgeted equipment has started to come in. The new Parks department sprayer and Public Works equipment trailer have been delivered.
- Street sweeper is still down. Sent to Grand Junction for engine and hydraulic system repair. Engine parts have been ordered for the street sweeper.
- One of the newer dump trucks has been having electrical problems. This unit was sent to the dealer in Grand Junction for troubleshooting and repair. The shop does not have the proper equipment and software to diagnose complex electrical problems on newer trucks. ML&P Digger /Derrick truck has transmission problems along with pto electrical problems and has been taken to a shop in Grand Junction that repairs heavy duty trucks drive train problems. The shop does not have the tools, space and staff to handle the large and time consuming repairs.
- For the month March Fleet completed 26 work orders for repair and maintenance

Facilities;

- Maintenance and repairs on the City facilities are still ongoing.
- Work on the Library coworking /maker space is progressing.
- For the Month of March Facilities has completed 15 repair work orders.

WELLNESS PLACE TEAM

Recreation

Fitness:

- Meet your personal trainers and nutrition coaches Wednesday April 10th from Noon-1pm and 6-7pm. This is an opportunity to hear what they each have to offer to help you in achieve your next fitness goal.
- Ballet classes are full and going extremely well, look for a summer camp for all you dancers.

- TRX classes are still a steady hit, come join the fun!
- “Move it or Lose it” on Tuesday and Thursday mornings in the gym has really picked up and we are excited to see this lower impact class grow.
- A couple of the fitness team members spent an afternoon with the Employees of the Vision school during their Wellness Fair sharing what great fitness opportunities we have to offer.

Youth:

- Staff continues to work on getting the Community Garden up and growing! You should see in the next couple of weeks benches, gazebos, green house and hands in the dirt.
- Staff received a \$5000 grant from the FOYN (Friends of Youth and Nature) to help continue the work on the garden. Yay, thank you FOYN.
- Be sure to reserve Saturday June 1st for Outdoor Heritage & Safety Day. Begin the day with our annual fishing derby, fishing poles to be provided by CPW and move into hands-on fun from 10am-1pm, such as bb gun shoot, archery, paddleboarding, climbing wall and a whole lot more! T-shirts, hats, lots of great prizes, and lunch for everyone. Come on down to Confluence Park and bring your appetite for outdoor fun!
- Staff are working with other area youth organizations to provide a summer calendar of camps and activities, available accessible to families by the beginning of May.
- Staff are looking into the community needs for youth and teens and would love your feedback. Look for a meeting soon to hear your thoughts.

Aquatics:

- Last week we started the last session of swim lessons for the Spring. We have had about 90% enrollment this Winter/Spring. This last public session has 24 students enrolled which is added to the 35 continuing Vision Charter Academy students swimming this Spring. All totalled we have had 126 swimmers enrolled in swimming lessons this Spring. Our Summer lesson program information will be coming out next week and enrollment will begin May 1st.
- Staffing continues to be a challenge both for lifeguards and instructors for all programs.
- We are filling up for the end of the school year groups!
- Here in the near future staff will be working on an RFP for the Wellness Pool Boiler that is in the budget to be replaced with a high efficiency boiler.

Facilities

- Staff continue to work on updates to the conference space including the extension of the patio space in their rental options.
- The Recreation Center will be closed on Sunday March 31st for Easter.
- Young Life’s Taste of Spring event coming April 6th, please be aware the gymnasium will be closed during this event.

- We would like to thank all Veterans for their service and offer them to purchase their Recreation Center pass at 20% off all types of memberships, with proof of service. Please give us a call for more information.

Maintenance

- On Friday staff met with a company for a Level 1 Energy Audit to see if there is an opportunity to save money on our energy bills as well as to compare to other facilities similar to ours. We are looking forward to sharing those results and hope to find some savings.
- Staff completed our mandatory Rec Center carpet replacement walk through today and bids are due April 1st, and looking for this project to be completed in late August, early September.
- Staff is working with the Public Works department to schedule the BHRC parking lot lines to be re-painted.

Parks, Open Space, Trails-

- Daily trash and restroom cleaning
- First round of weed spraying throughout parks and trails
- 8 tree removals from heavy winds
- 2 tree removals on main street causing heaved sidewalk
- Built 360 feet of split rail Cottonwood ballfield
- Re-graveled parking lot Cottonwood
- Painted all sports fields
- Put up outfield fence CCF
- Potted Cannas and Dahlias
- Prepped all beds and pots for planting
- Mustang tree service removed 8 large cottonwoods at cemetery
- Removed all pea gravel from playgrounds and replaced with over 700 cubic yards of playground mulch
- Closed swinging bridge
- Cleaned fort and put dirt on the roofs of the cabins hauled pea gravel in
- Burned and cleaned ditch at Cottonwood
- Move Tee pads on 3 holes at Tamarak
- Met with the American Legion to invite to first community meeting for Veterans park
- Installed 8 new keep dogs on leash and pet pickup signs around Confluence
- Charged up Mountain view bathrooms and concession stand
- Opened tennis court restroom for the season

Community Engagement

ADULT SPORTS

- Pickleball continues to be active in the rec center gymnasium and on the outdoor tennis courts on nice days. 32 pickleball players participated in a Lucky Dink round robin tournament on March 23.
- Play continues in the Spring Adult Volleyball League with 17 teams. The season will continue into the third week of April and end with a single elimination tournament.
- April Fool's Softball Tournament registration is going on now until March 30th. We already have 18 teams signed up and can only take 24.
- Registrations are open for Mud Volleyball and Grass volleyball that will happen during the Balloon Festival.

YOUTH SPORTS

- Youth Soccer season kicks off this week. We created the league schedule that includes teams from neighboring communities. Over 80 home games will be played on our fields at Cottonwood Park over the next six weeks.
- We are continuing with open registration for Girls Softball ages 7-14, T-Ball ages 4-6, and Machine Pitch Baseball ages 7-8.
- The Youth Tennis Clinic is halfway through their program dates and we have 19 participants.
- Plans and preparations are underway for our first Disc Golf Clinic. We are partnering with local professionals who will be volunteering their time and expertise to provide youth with a basic introduction to the sport. The clinic is scheduled for May 11th.

EVENTS

- Plans and preparations continue for the 4th of July Western Sky Balloon Festival. We are finalizing the festival layout for entertainment, vendors, activities, and so forth. We are also looking to bolster the number of food vendors at the event.

PARK RENTALS

- There were nine park rentals in March. Park Rentals for the Spring and Summer are steadily picking up with all Saturdays in May, June, and July having at least one pavilion rented.

LEISURE

- March was MADNESS! College hoops, basketball pools and parties added to the fun.
- Senior billiards continued to grow in popularity with both Singles/Doubles filling up for the Spring sessions. (12 each league) Winter singles champion was crowned - Frank Linza

- The Amazing Glaze Pottery/Wine trip to Montrose brought out the artist side of (16) patrons. It was simply amazing in what they created.
- The weather broke and snow/wind stayed away for the Colorado Monument hike, Independence Monument/Wedding canyon. Scenery was fantastic but hikers only saw 5 bighorn sheep (Last year 30 sheep and babies). They then hydrated at Two Rivers Winery on the return. (17 hikers).
- NO FOOLIN, the new Spring/Summer calendar comes out March 27th.

GOLF

Maintenance-

- Irrigating the course as needed in between storms. The system wintered well with minimal issues thus far.
- Completed work area in the corner of our shop for non-equipment related maintenance staff repairs and tool storage (cabinets, workbench, etc.)
- Built tractor mounted weed burner and began burning much of the native grass areas and dead brush.
- Began construction of railroad tie vaults around 2 of the PRVS
- Excavated a few small areas for light concrete work to improve efficiency and storage in the maintenance yard
- Began mowing Greens, Tees, Collars, and Approaches.
- Removed winter pin locations and resumed in-season cup rotation schedule
- Completed Positive Employee training
- Started 2 seasonal laborers. Still looking for more.
- Off to a great start to the season!

PW & UTILITIES TEAM

Public Works & Engineering

- Replaced Bridges at 1600 Rd and on 1550 Rd crossing the Hartland Canal
- Driveway cut and tree removal for 4th St Hillside project
- Asphalt patches on Hastings and on 3rd St.
- Sprayed Pre-emergent herbicide in troubled areas
- Graded Clearview Rd

- Rodding, jetting and cleaning of troubled areas
- Repainted Main St.
- Graded WasteWater Treatment Plant Road
- Refuse Service picked up 385 Tons hauled to landfill

Electric & Broadband

- MLP Crew responded to multiple power outages on March 3rd Due to high winds. Staff worked from 10:30 pm on the 2nd till 6:30 am on the 3rd to remedy many issues. Most issues were trash and debris blowing across the overhead lines.
- Opened Bids on the Window abatement at the plant, plan to bring the bids to council on April 16th
- Also opened bids for the North Delta microgrid feasibility project. We plan to bring that for Council's decision on the 16th as well.
- Staff has been working on hardening up critical metering locations due to the amount of vandalism to meters.
- Installed 4 new electric services, including a new lot on 16th street where we set larger facilities for future development
- Updated old meters to the new AMI due to meter age and inability to read.

Wastewater Treatment

- Secured some additional funding from DOLA to offset some budget shortfall for the Digester Improvements Project. (Thanks Meganne and Elyse for your help!!)
- Conducting soils and compost sampling prior to applying biosolids to the Ag. field.
- Submitted annual stormwater and biosolids reports to CDPHE.
- Power outage a couple of weeks ago caused a single phase event which caused a vent motor and digester mixer motor to fail.
- Engineering and Design completed for the Digester Improvements project. Negotiating a GMP with Aslan construction and JVA engineers that all parties can agree on. Finalizing grant and loan awards and disbursement of funds for the project.

CITY FORWARD TEAM

Community Development

- Continue to provide support to the Grant Agreement from the U.S. Department of Transportation Federal Highways division to kick off the RAISE-funded Main Street revitalization project. Met with FHWA to discuss comments that need to be addressed for agency review.
- Attended Better Supervisors Training with the leadership team.

- The City was notified we were awarded a grant from DOLA for Local Planning Capacity. This grant will allow the City to explore and adopt land used codes to expedite affordable housing review processes and support acquisition of new software to allow modern, efficient review and approval of development applications.
- Participated in a Town Hall neighborhood meeting to discuss conceptual plans for the attainable housing project on 7th Street in conjunction with One Delta County and Uncompahgre Development.
- Business Incubator and Makerspace positions for the EDA grant are filled and work is beginning to take shape on entrepreneur programming and makerspace programming.
- Continue providing building inspection services to Paonia under the agreement executed with the City.
- Participated in discussions with All Points Transit to identify transit parking options for the APT Delta fleet. APT is currently losing their current parking arrangement on short notice and needs an interim solution to parking. After discussion, the City agreed to allow use of the public parking lot between 4th and 5th Streets along Meeker St. We will develop an MOU with APT for this arrangement.
- All Points Transit will be hosting its Brews and Bites event at The Grove on Friday May 17th.

- Building department stats
 - 9 building permits issued, of those permits 3 were single-family dwelling
 - 44 total permits issued
 - 73 inspections completed
 - 10 inspections completed for the Town of Paonia
- Building project updates
 - The Grove - final inspections complete, CO issued
 - Armory - elevator shaft construction and interior rough inspections
 - Grace Community Church Expansion - preparing for final inspections
 - Les Schwab - framing complete, in process of rough inspections
 - Java Hut - Waiting for applicant to final site plan and improvements agreement
 - Planning and Subdivisions
 - 7 Boundary Adjustments in progress
 - 2 Boundary Adjustments on hold
 - 8 Subdivisions in progress, 0 Subdivision on hold, 0 Minor Subdivision on hold
 - 1 Rezone application in progress; 1 Rezone application on hold

POLICE DEPARTMENT

Police Operations:

- Worked with Meganne on another Safer Streets Grant for the Armory fencing
- Commander Lang and Officer Music instructed the TCR cadets for 1 week on patrol driving
- Worked with TCR through advisory board for academy updates
- See stats below

Animal Control / Code Enforcement:

- Working with CPU and police to address numerous code violations throughout Delta.
- Took numerous animals running at large calls.
- Addressed several code violations

Community Policing:

- Chief Fedler attended the 20th annual JROTC ball at the Delta High School
Attended a meeting with the council, Delta County Commissioners, County Judge, DA, Public defenders, CPU to discuss crime in Delta.
- Coordinated officers for social media pictures to highlight organ donation registration
- Arranged Police Department tour for Community Options
- Officers attended Tri-County Health Network's driving academy for limited english proficiency residents, and presented on importance of obtaining a driver's license
- Hosted a Business Action Committee meeting at Fuel for area business owners/landlords to address crime prevention strategies/solutions
- Attended two sessions of Tri-County Health Network's Breaking Bread @ Delta Library
- Attended Delta Montrose Opioid Response Group luncheon with officers
- Part of Cinco de Mayo planning committee with role on business and non-profit outreach for event engagement
- Co-hosted business meeting for downtown core planning for Cinco de Mayo
- Working with Paragon Behavioral Health Care to connect police department with crisis response services
- Attended driver's education classes at DHS where officers gave hands-on lessons in impaired driving utilizing fatal vision goggles
- DPD participated in DMS Box Car Derby

- Weekly attendance at Western Colorado Migrant Rural Coalition virtual meetings
- Attended virtual Suicide Prevention Summit hosted by Tri-County Health Network
- Monthly workgroup meeting with Delta County public information officers
- Coordinating June PTSD Awareness Month for Delta County Public Safety Partners
- Planning for Bike Rodeo on May 18th
- Planning for National Police Week events: May13-May18
- Social Media campaign to "know your alerts"

Other Events:

- Construction is still on schedule and moving forward for the Community Safety Center.
- Council is invited to attend a walk-through April 19th from 12:00 – 4:00 pm

Emergency Management:

- Attended FEMA sponsored Disaster Response tabletop exercise in Montrose

Delta Police Department Calls for Service:

Total CAD Calls	1205
Total Arrests	33
Total Criminal Summons	26
Total Traffic Stops	116
Total Traffic Citations	40

ABANDONED VEHICLE 4	AGENCY ASSISTANCE 3	Animal Control 6
ASSAULT 4	BURGLARY 3	Certified VIN
Inspection 1	CITIZEN ASSIST 10	CIVIL PROBLEM 4
Code Enforcement 3	CRIMINAL MISCHIEF 13	Death Investigation 2
Disturbance 4	DOMESTIC 9	DRUG VIOLATION 7
Fire 5	FRAUD 3	HARASSMENT 4
Information Report 11	Juvenile Problem 3	K-9 7
M-1 HOLD/CONTACT 1	Medical Emergency 2	PORNOGRAPHY 1
Private Property Accident 1	ROBBERY 1	SEX OFFENSE 1
Animals Taken to Shelter 3	RUNAWAY JUVENILE 1	SHOPLIFTING 11
SUICIDAL SUBJECT 1	LOST OR FOUND PROPERTY 5	
VIOLATION OF RESTR/PROT ORDER 3		

City Attorney Comments

City Manager Comments

Councilmember Comments

