

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF MONTROSE AND CITY OF DELTA
REGARDING SHARED SERVICES**

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is dated _____, 2014, between the City of Montrose, (the "Montrose") a Colorado home rule municipal corporation, whose address is 433 South First Street, P.O. Box 790, Montrose, Colorado 81402, and the City of Delta, (the "Delta") a Colorado home rule municipal corporation, whose address is 340 Main St., Delta, Colorado 81416; the above-named entities may sometimes be collectively referred to herein as the "Parties" and individually as a "Party." The effective date of this Agreement shall be June 1, 2014 (the "Effective Date").

WHEREAS, it is the directive of the governing bodies of the Parties to provide the best services at the lowest possible cost; and

WHEREAS, the Parties have the power to enter into this Agreement per § 29-1-203, C.R.S. and their respective home rule Charters; and

WHEREAS, the Parties shall implement shared services as specified in this Agreement whereby Montrose agencies shall support Delta in exchange for payment; and

NOW THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the Parties hereto agree as follows:

PART I: SPECIFIC TERMS.

1. INFORMATION SERVICES

- a) The Montrose Information Services Department shall provide technical support to Delta staff to assure the smooth operation of Delta information technology systems in accordance with the standards set forth in Exhibit "A" which is attached hereto and incorporated herein.
- b) Delta shall bear all expense related to Delta's information technology systems.

PART II: TERM. The initial term of this Agreement shall commence on the Effective Date and shall continue in effect through May 31, 2015. Thereafter, this Agreement shall automatically renew each year on the anniversary of the Effective Date, for an additional one (1) year term, unless otherwise terminated in accordance with the provisions of Part XIII of this Agreement.

PART III: PAYMENT. Delta shall provide a payment in cash or its equivalent as set forth in Schedule A. Delta shall pay Montrose at a minimum the Total Annual Estimated Cost as shown in Schedule A, Table 1. In the event that the actual labor hours for a specific deliverable indicated in Schedule A, Table 1 exceed those shown, the actual hours at the associated rate indicated on Schedule A, Table 1 will be billed by Montrose and paid by Delta.

PART IV: COMMUNICATIONS. The Parties shall designate authorized representatives and all communications related to the performance of duties defined in this Agreement shall be conducted solely between the representatives so designated. Additionally, the key Montrose staff involved in providing the shared services described in this Agreement shall report as needed to Delta's City Manager.

PART V: ASSIGNMENTS.

- a) *No Assignments.* Neither Party may assign any of its rights, duties or obligations arising under this Agreement without the prior written consent of the other Party.
- b) *Ramifications of Purported Assignment.* Any purported assignment of the rights, duties or obligations of either Party without the express written consent of the other Party shall be void.

PART VI: CHOICE OF LAW. The laws of the State of Colorado (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its interpretation, construction, performance and enforcement.

PART VII: INDEMNIFICATION (DELTA TO MONTROSE). Delta, to extent allowed under Colorado Constitution Article X, Section 20, and any other law, shall indemnify and defend Montrose at all times as of the Effective Date of this Agreement against:

- a) any liability, loss, damages (including punitive damages), claim, settlement payment, cost and expense, interest, award, judgment, diminution in value, fine, fee, and penalty or other charge, other than any Litigation Expenses (as defined in subsection (b)), arising out of or relating to the activities of Delta set forth herein; and
- b) any court filing fee, court cost, arbitration fee or cost, witness fee, and each other fee and cost of investigating and defending or asserting any claim for indemnification under this Agreement, including, without limitation, in each case, attorneys' fees, other professionals' fees, and disbursements (collectively, "Litigation Expenses").

PART VIII: INDEMNIFICATION (MONTROSE TO DELTA). Montrose, to the extent allowed under Colorado Constitution Article X, Section 20, and any other law, shall indemnify and defend Delta at all times as of the Effective Date of this Agreement against:

- a) any liability, loss, damages (including punitive damages), claim, settlement payment, cost and expense, interest, award, judgment, diminution in value, fine, fee, and penalty or other charge, other than any Litigation Expenses (as defined in subsection (b)), arising out of or relating to the activities of Montrose set forth herein; and

- b) any court filing fee, court cost, arbitration fee or cost, witness fee, and each other fee and cost of investigating and defending or asserting any claim for indemnification under this Agreement, including, without limitation, in each case, attorneys' fees, other professionals' fees, and disbursements (collectively, "Litigation Expenses").

PART IX: NOTICES.

- a) *Requirement of a Writing. Permitted Methods of Delivery.* Each Party giving or making any notice, request, demand or other communication (each, a "Notice") pursuant to this Agreement shall give the Notice in writing and use one of the following methods of delivery, each of which for purposes of this Agreement is a writing: personal delivery, Registered or Certified Mail (in each case, return receipt requested and postage prepaid), nationally recognized overnight courier, (with all fees prepaid), facsimile or e-mail.
- b) *Addressees and Addresses.* Any Party giving a Notice shall address the Notice to the appropriate person at the receiving Party (the "Addressee") at the address listed on the first page of this Agreement or to another Addressee or another address as designated by a Party in a Notice pursuant to this section.
- c) *Effectiveness of a Notice.* Except as provided elsewhere in this Agreement, a Notice is effective only if the Party giving the Notice has complied with subsections a) and b) and if the Addressee has received the Notice.

PART X: AMENDMENTS. The Parties may amend this Agreement only by a written agreement of the Parties that identifies itself as an amendment to this Agreement.

PART XI: MERGER. This Agreement constitutes the final agreement between the Parties. It is the complete and exclusive expression of the Parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the Parties on the matters are contained in this Agreement. The provisions of this Agreement may not be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, neither Party has relied upon any statement, representation, warranty or agreement of the other Party except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement other than those expressly stated in this Agreement.

PART XII: SEVERABILITY. If any provision of this Agreement is held invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to fulfill as closely as possible the original intents and purposes of this Agreement.

PART XIII: TERMINATION. During initial one year term either Party may terminate this Agreement with advance written notice to the other Party delivered no later than one hundred

and eighty (180) days prior to the next renewal date. In the event this written notice is given, the Agreement shall terminate at the end of the initial one year term with no automatic renewal. In subsequent terms, either Party may terminate this Agreement with ninety (90) days advance written notice to the other Party.

PART XIV: ESCALATOR. All costs set forth in Schedule A shall be subject to escalation or de-escalation based on actual increases or decreases in costs incurred by Montrose. Written documentation of said increases shall be provided by the Montrose to Delta as these increases occur.

PART XV: OPEN RECORDS ACT AND STANDARD OF CARE. The Parties are subject to and bound by the Colorado Open Records Act, § 24-72-101 *et seq.* C.R.S. Any and all documents prepared pursuant to this Agreement may be subject to production and/or reproduction pursuant to those statutes. The Parties shall cooperate and take such reasonable steps as may be necessary to ensure that the provisions of the Open Records Act, including any requirements of confidentiality and non-disclosure, are followed to the greatest extent practicable during the performance of this Agreement.

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

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

PART XVIII: CODE OF ETHICS. The Parties are subject to and bound by the Colorado Code of Ethics, § 24-18-101 *et seq.* C.R.S. as amended from time to time or otherwise available. The Parties shall cooperate and take such reasonable steps as may be necessary to ensure that the provisions of the Colorado Code of Ethics, including any requirements of confidentiality, are followed to the greatest extent practicable during the performance of this Agreement.

APPROVED this _____ day of _____, 2014.

CITY OF MONTROSE

ATTEST:

William E. Bell, City Manager

Lisa DelPiccolo, City Clerk

CITY OF DELTA

ATTEST:

Justin Clifton, City Manager

Jolene Nelson, City Clerk

Exhibit A

INFORMATION TECHNOLOGY SYSTEMS SPECIFICATIONS.

THE CITY SHALL MAINTAIN DELTA INFORMATION TECHNOLOGY SYSTEMS IN ACCORDANCE WITH THE FOLLOWING SPECIFICATIONS:

I. Information Technology Systems Support

- A. The City shall provide to Delta a support phone number and/or website for the initiation of Information Technology systems support.
- B. The City shall prioritize the support request based on severity of the issue and the current calls already in the work queue.
- C. During business hours, the City shall provide an acknowledgment of the support request within four hours. Delta shall allow the City to remotely connect to Delta computers in order to properly respond to the support request.
- D. Any support request requiring work in excess of four hours will be communicated prior to completing the request.
- E. Routine maintenance tasks and security updates of supported equipment and software shall be initiated and completed by City according to manufacturer recommendations.

Schedule A

Payment Schedule and Schedule of Costs

City shall provide an invoice to and receive payment from Delta on a quarterly basis for services performed. The total estimated annual cost of the Agreement includes costs from Tables 1 of Schedule A.

Hours shall be tracked in each shared service and communicated to Delta on a quarterly basis (or more frequently as requested) with the budget reports to communicate hours available in each area.

Delta understands Montrose will be appropriating capacity proportionate to the Estimated Labor Hours in each of the Deliverable categories represented in Table 1, in support of this Agreement. If requests for services in the Network/Server Support or Network Design categories of Table 1 are expected to be exceeded by ten percent (10%) or more, both Parties must agree in writing.

Table 1 - Information Technology Services Labor Cost Schedule

| Deliverable | Estimated Labor Hours | Rate | Estimated Labor Total | Total Annual Estimated Cost |
|--|------------------------------|-------------|------------------------------|------------------------------------|
| Computer Support | 442 | \$ 33.75 | \$ 14,917 | \$ 14,917.50 |
| Computer Support - Overtime | | \$ 50.63 | \$ | \$ |
| Network/Server Support | 52 | \$ 39.50 | \$ 2,054 | \$ 2,054.00 |
| Network Design | 26 | \$ 52.75 | \$ 1,371 | \$ 1,371.50 |
| Table 1 - Total Annual Estimated Cost | | | | \$ 18,343.00 |

Table 2 - Information Technology Services Other Deliverables Cost Schedule

| Deliverable | |
|---------------------------------|--|
| Mileage | Based on current IRS Standard Mileage Rate (.56 cents per mile – 2014) |
| Equipment or Software Purchases | If Delta requests Montrose to make purchases of equipment or software, Delta will be billed for actual costs plus 3% |

Table 2 – Other deliverable costs