

**Glenwood Springs Office**  
901 Grand Avenue, Suite 201  
Glenwood Springs, Colorado 81601  
Telephone (970) 947-1936  
Facsimile (970) 947-1937

**GARFIELD & HECHT, P.C.**  
ATTORNEYS AT LAW  
Since 1975

[www.garfieldhecht.com](http://www.garfieldhecht.com)

## MEMORANDUM

TO: Delta City Council

FROM: David McConaughy, City Attorney

RE: Kosmo Investments Development Agreement

DATE: February 12, 2021

---

Included on the City Council agenda for February 16, 2020, is a Sewer Service and System Improvement Fee Payment Agreement between the City and Kosmo Investments, LLC (“Kosmo”). Staff recommends approval of this contract by motion of the City Council.

### BACKGROUND

Kosmo has applied to re-subdivide Lot 3 of the Maverik-Delta Boundary Adjustment into three new lots proposed as the Kosmo Minor Subdivision. One of the lots is proposed for a new car wash. The other two lots would be developed at a future time for commercial uses. The subject property is on the North side of Highway 92, just east of the existing Maverik station and O’Reilly Auto Parts.

Several issues arose in connection with the development that relate to the existing sewer line and the City’s plans to replace that line with a new line with greater capacity.

First, Kosmo desires to develop the property and open the car wash before the new sewer line is completed. Because the existing line does not have sufficient capacity, Kosmo proposes a temporary solution that involves a private lift station and a temporary service line to connect the property to an existing sewer main in Ute Street. This is a significant expense for a temporary connection that will eventually be abandoned. To help defray that expense, Kosmo requested that the City agree to defer collection of the System Improvement Fees for the car wash, which amount to \$38,650. The proposed agreement would do just that and require full payment of the System Improvement Fees after the new sewer line is completed and connected to the property, at whatever rate applies at the time (which could be more), although Kosmo has a right to pre-pay the fees to lock in the rates if it wishes. The temporary line would then be abandoned.

Second, Kosmo is required to complete various public improvements as a condition of development of the property, including curb and gutter, a stormwater detention pond, and related improvements. Some of these improvements need to be completed within the construction area of the new sewer line to be built by the City, and it would be silly to require the developer to build

those improvements only to have them be dug up and destroyed by the sewer line construction. To avoid that, the agreement would defer the construction of some developer improvements until after the sewer line installation is complete. The developer would deposit a letter of credit of \$45,000 with the City as security to ensure that the improvements are actually installed when required. The area of deferred improvements is shown on a marked-up copy of the final plat which is attached as Exhibit A to the agreement.

I will be available at the meeting to answer any questions.

## SEWER SERVICE AND SYSTEM IMPROVEMENT FEE PAYMENT AGREEMENT

This Agreement made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Delta, Colorado (the “City”) and Kosmo Investments, LLC, a Colorado limited liability company with an address of P.O. Box 784, Delta CO 81416 (the “Developer”) (the City and Developer may be collectively referred to below as the “Parties” or individually as a “Party”);

### WITNESSETH:

WHEREAS, Developer is the owner of certain real property within the City of Delta described as Lot 3, Maverik-Delta Boundary Adjustment according to the plat thereof recorded with the Clerk and Recorder of Delta County on February 5, 2015 at Reception No. 678355 (the “Property”); and

WHEREAS, Developer has applied to the City for approval of a re-subdivision of the Property into three new lots proposed as the Kosmo Minor Subdivision; and

WHEREAS, Developer proposes to construct and operate a car wash on the proposed Lot 1 of the Kosmo Minor Subdivision (“Lot 1”); and

WHEREAS, Developer has applied for water and sewer service from the City to serve the Property, including a 2-inch water tap to serve the proposed car wash on Lot 1; and

WHEREAS, Developer also anticipates future development of the proposed Lot 2 and Lot 3 of the Kosmo Minor Subdivision (“Lot 2” and “Lot 3,” respectively) to include construction and operation of commercial businesses on these lots as may be determined in the future; and

WHEREAS, Lot 1 and Lot 2 are burdened by an existing 20-foot-wide sewer line easement (the “Old Sewer Main Easement”) containing the current sewer main line to the Property; and

WHEREAS, the current existing sewer main line has inadequate capacity to accommodate all anticipated future uses and the City is in the process of obtaining funding to construct a new sewer main line to be located in the vicinity of the intersection of Main Street and State Highway 92 (the “New Sewer Main”) which, upon completion, will have sufficient capacity to serve all anticipated sewer uses for the Property via gravity flow; and

WHEREAS, as a temporary measure to provide sewer service to the Property, the City and Developer have proposed that the Developer construct, own, and operate a private lift station on the Property, which would be connected by a temporary sewer service line installed in an easement obtained by Developer running between the private lift station and an existing City-owned sewer main line in Ute Street; and

WHEREAS, as of the date of this Agreement, the Delta Municipal Code provides that the Basic System Improvement Fee (“BSIF”) for the right to connect Lot 1 to the City sewer system is \$38,650 based upon the proposed uses for Lot 1; and

WHEREAS, as of the date of this Agreement, the final uses of Lot 2 and Lot 3 are not yet known and therefore the BSIF for the Lot 2 and Lot 3 are also not yet known; and

WHEREAS, Developer anticipates incurring costs relating to the permitting and construction of the proposed temporary private lift station sewer connection line that would not have been incurred but for the City's need to delay permanent connection until completion of the New Sewer Main Line; and

WHEREAS, it is in the mutual interest of the City and the Developer to encourage economic development and to allow the proposed car wash on Lot 1, and other future operations on Lot 2 and/or Lot 3, to commence operations before completion of the New Sewer Main; and

WHEREAS, the City and Developer desire to enter into this agreement to provide for temporary sewer service for the Property subject to the terms set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals. The preceding recitals are incorporated herein by reference as affirmative representations and acknowledgments of the Parties.

2. Temporary Improvements. Developer shall be solely responsible for design and construction of a private lift station to be located on the Property and to serve the sanitary sewer service needs for all uses on the Property including but not limited to Lot 1. The private lift station shall be connected to the existing main line in Ute Street via a new service line running from the lift station to the Ute Street main line via private easement(s) to be obtained by Developer. The service line and all connections shall be constructed according to City standards and specifications as determined by City Staff. Developer shall be responsible to obtain all required permits, licenses, easements and/or approvals for the location of any facilities within the Union Pacific Railroad Property or other private property and shall provide written proof thereof to the City.

3. New Utility Easement. The Parties' engineers have located an additional twenty-foot-wide utility easement across the Property (the "New Utility Easement"). The plat for the Property has been updated to reflect the New Utility Easement and both City and Developer agree that the New Sewer Main may be placed within it.

4. Deferred Improvements. To prevent the destruction of permanent improvements located on the Property when the City constructs the New Sewer Main, the Parties agree that Developer may defer construction of the following improvements (the "Deferred Improvements") as delineated in Exhibit A, until after the New Sewer Main has been completed by the City:

- a. Approximately 270 linear feet of curb & gutter along the northern boundary of the Property;
- b. The stormwater detention pond and all associated infrastructure, as shown in the Civil Construction Plans by Del-Mont Consultants, Inc. dated 2020-

12-18 and approved by the City Engineer on 12/21/2020. This includes but is not limited to:

- i. All excavation and embankment necessary to shape and build the detention pond;
- ii. Construction and installation of the concrete outlet structure and outlet pipe with associated screens and bleed down orifice plate;
- iii. Installation of concrete trickle channel;
- iv. Rip-rap rundown; and
- v. Rip-rap discharge pad.

5. Installation of New Sewer Main. The City agrees to make reasonable, good-faith efforts to obtain funding and to complete the New Sewer Main within four years of the effective date of this Agreement. The City shall replace all improvements to or on the Property disrupted or damaged during installation of New Sewer Main at the City's sole cost.

6. Permanent Connections & Improvements. The City shall provide written notice to Developer when the New Sewer Main is complete and ready for connection to serve the Property. No later than twelve (12) months after the date of such notice, Developer shall complete (1) the new sewer connection(s) to any completed improvements located on the Property, in accordance with all City standards and specifications in effect at the time; and (2) all of the Deferred Improvements.

7. Security for Permanent Connections & Improvements. Developer shall submit to the City a letter of credit (the "LOC") in the amount of \$45,000 from a lender or financial institution reasonably acceptable to the City as security for Developer's obligations for the completion of the Permanent Connections & Improvements. The LOC shall be annually renewed by Developer until the completion of the Permanent Connections & Improvements or the expiration of the four year anniversary of this Agreement, whichever occurs sooner, and Developer shall have no obligation to renew the LOC thereafter. Upon completion of such Permanent Connections & Improvements, the City shall consent to the release and termination of the LOC.

8. Vacation of Old Sewer Main Easement. Upon completion of the permanent new sewer connections as provided above, the City shall abandon and vacate the Old Sewer Main Easement on Lot 1 and Lot 2.

9. BSIF Payment. Developer is responsible to pay to the City the required BSIF as a condition of sewer service for the Property. The City agrees to defer payment of the BSIF for the Property on the following terms. The BSIF for the anticipated needs of Lot 1 as of the date of this Agreement is \$38,650. The BSIF for Lot 2 and Lot 3 shall be determined using the fee schedule in effect at the time payment is tendered to the City in good funds for such BSIF. The BSIF for each lot with an operating business at the time the New Sewer Line is completed by the City shall be due, in full, from Developer when it completes the new connection(s) to the New Sewer Main. If no business is operating on a lot at the time of the City's completion of the New Sewer Line, then no BSIF will be due for that lot (instead, the BSIF for any future use of such lots shall be determined in the ordinary course at the time of development). Developer shall have the right to prepay the amount due in whole or in part without penalty at any time. If the full amount is not

paid when due, then a late fee equal to 5% of the remaining amount due shall apply, and the City shall have the right to treat all amounts as unpaid utility charges and impose a lien upon the Property or any subdivided lot within the Property in addition to exercising any other rights and remedies for breach of contract or other law.

10. Reimbursement of Costs. INTENTIONALLY DELETED.

11. Land Use Approvals. Nothing herein shall be construed as any approval of any subdivision application or other required land use approval with respect to the Property, which approval is not guaranteed and shall be subject to all standards and requirements set forth in the Delta Municipal Code.

12. Voluntary Agreement. This Agreement is the voluntary and contractual agreement of the Developer and the City.

13. Breach by Developer; City's Remedies. In the event of any default or breach by Developer of any term, condition, covenant or obligation under this Agreement, the City shall have all rights and remedies available at law or equity, including but not limited to the right to shutoff water or other utility service to the Property and to seek injunctive relief, damages, or both, and to recover the City's attorney fees and costs.

14. Breach by City; Developer's Remedies. In the event of any default or breach by the City of any term, condition, covenant, or obligation under this Agreement, Developer shall have all rights and remedies available at law or equity, including but not limited to the right to forego payment of BSIF fees and to seek injunctive relief, damages, or both, and to recover Developer's attorney's fees and costs provided, however, nothing herein shall be deemed a waiver of the City's governmental immunity.

15. Assignment. This Agreement may not be assigned by the Developer without the prior written consent of the City, which consent shall not be unreasonably withheld and shall be based upon the financial capability of the proposed assignee to perform the terms of this Agreement. In the event Developer desires to assign its rights and obligations herein, it shall so notify the City in writing together with the proposed assignee's written agreement to be bound by the terms and conditions contained herein.

16. TABOR savings clause. Any monetary or fiscal obligations of the City pursuant to this Agreement shall be subject to annual budgeting and appropriation by the Delta City Council as required by the City Charter and Colorado law.

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

18. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

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

20. Governing Law. The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Delta County, Colorado.

21. Authority. Each person signing this Agreement represents and warrants that he is fully authorized to enter into and execute this Agreement, and to bind the party it represents to the terms and conditions hereof.

22. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall be deemed one and the same instrument.

23. Notice. All notices required under this Agreement shall be in writing and shall be hand-delivered or sent by United States Mail, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective three (3) mail delivery days after deposit in the United States mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

Notice to City: City of Delta  
360 Main Street  
Delta, CO 81416  
Attn: City Manager

Notice to Developer: Kosmo Investments, LLC  
c/o Brian Mason  
P.O. Box 784  
Delta, CO 81416

WHEREFORE, the parties hereto have executed this Agreement as of the date set forth above in the opening paragraph.

CITY OF DELTA, COLORADO

ATTEST:

\_\_\_\_\_  
Mayor

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

DEVELOPER: Kosmo Investments, LLC

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF COLORADO    )  
                                  ) ss.  
COUNTY OF DELTA     )

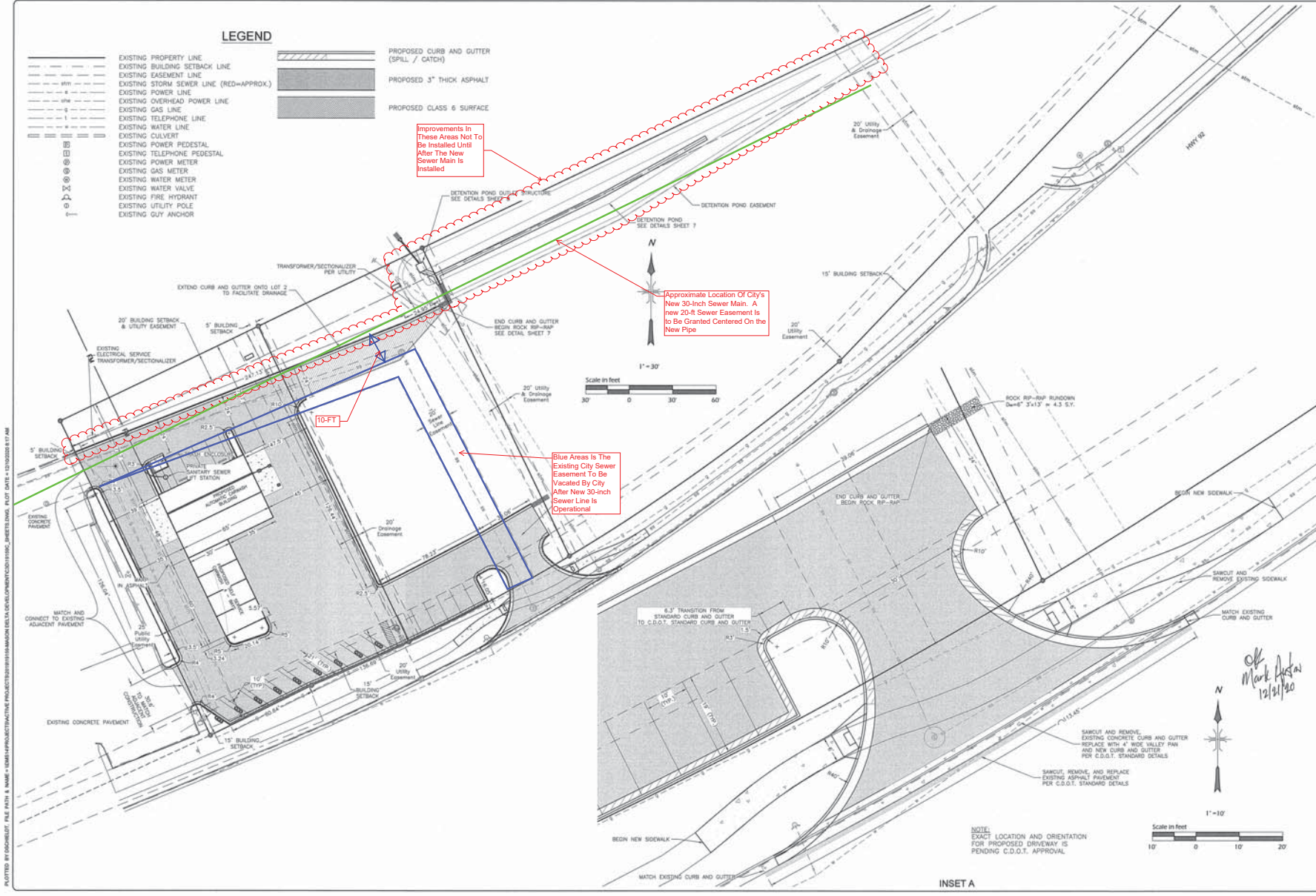
The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by  
\_\_\_\_\_ as \_\_\_\_\_ of Kosmo Investments, LLC.

WITNESS my hand and official seal.

My Commission expires:

\_\_\_\_\_  
Notary Public





PLOTTED BY: DCH/SLT, FILE PATH: \\S:\S\PROJECTS\2019\19030000\DELTA DEVELOPMENT\2019030000\_SHEETS.DWG, PLOT DATE: 12/10/2020 8:57 AM

		DELMONT CONSULTANTS, INC. 100 S. F. ST. SUITE 100 DENVER, CO 80202	DWS 2020-12-08	REVISIONS NO. DATE BY
PROJECT NO. 19159	SHEET NO. 3	CLIENT KOSMO INVESTMENTS, LLC MACH 1 CARWASH DELTA, COLORADO	DATE 2020-12-08	BY

## SEWER SERVICE AND SYSTEM IMPROVEMENT FEE PAYMENT AGREEMENT

This Agreement made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Delta, Colorado (the “City”) and Kosmo Investments, LLC, a Colorado limited liability company with an address of P.O. Box 784, Delta CO 81416 (the “Developer”) (the City and Developer may be collectively referred to below as the “Parties” or individually as a “Party”);

W I T N E S S E T H:

WHEREAS, Developer is the owner of certain real property within the City of Delta described as Lot 3, Maverik-Delta Boundary Adjustment according to the plat thereof recorded with the Clerk and Recorder of Delta County on February 5, 2015 at Reception No. 678355 (the “Property”); and

WHEREAS, Developer has applied to the City for approval of a re-subdivision of the Property into three new lots proposed as the Kosmo Minor Subdivision; and

WHEREAS, Developer proposes to construct and operate a car wash on the proposed Lot 1 of the Kosmo Minor Subdivision (“Lot 1”); and

WHEREAS, Developer has applied for water and sewer service from the City to serve the Property, including a 2-inch water tap to serve the proposed car wash on Lot 1; and

WHEREAS, Developer also anticipates future development of the proposed Lot 2 and Lot 3 of the Kosmo Minor Subdivision (“Lot 2” and “Lot 3,” respectively) to include construction and operation of commercial businesses on these lots as may be determined in the future; and

WHEREAS, Lot 1 and Lot 2 are burdened by an existing 20-foot-wide sewer line easement (the “Old Sewer Main Easement”) containing the current sewer main line to the Property; and

WHEREAS, the current existing sewer main line has inadequate capacity to accommodate all anticipated future uses and the City is in the process of obtaining funding to construct a new sewer main line to be located in the vicinity of the intersection of Main Street and State Highway 92 (the “New Sewer Main”) which, upon completion, will have sufficient capacity to serve all anticipated sewer uses for the Property via gravity flow; and

WHEREAS, as a temporary measure to provide sewer service to the Property, the City and Developer have proposed that the Developer construct, own, and operate a private lift station on the Property, which would be connected by a temporary sewer service line installed in an easement obtained by Developer running between the private lift station and an existing City-owned sewer main line in Ute Street; and

WHEREAS, as of the date of this Agreement, the Delta Municipal Code provides that the Basic System Improvement Fee (“BSIF”) for the right to connect Lot 1 to the City sewer system is \$38,650 based upon the proposed uses for Lot 1; and

WHEREAS, as of the date of this Agreement, the final uses of Lot 2 and Lot 3 are not yet known and therefore the BSIF for the Lot 2 and Lot 3 are also not yet known; and

WHEREAS, Developer anticipates incurring costs relating to the permitting and construction of the proposed temporary private lift station sewer connection line that would not have been incurred but for the City's need to delay permanent connection until completion of the New Sewer Main Line; and

WHEREAS, it is in the mutual interest of the City and the Developer to encourage economic development and to allow the proposed car wash on Lot 1, and other future operations on Lot 2 and/or Lot 3, to commence operations before completion of the New Sewer Main; and

WHEREAS, the City and Developer desire to enter into this agreement to provide for temporary sewer service for the Property subject to the terms set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals. The preceding recitals are incorporated herein by reference as affirmative representations and acknowledgments of the Parties.

2. Temporary Improvements. Developer shall be solely responsible for design and construction of a private lift station to be located on the Property and to serve the sanitary sewer service needs for all uses on the Property including but not limited to Lot 1. The private lift station shall be connected to the existing main line in Ute Street via a new service line running from the lift station to the Ute Street main line via private easement(s) to be obtained by Developer. The service line and all connections shall be constructed according to City standards and specifications as determined by City Staff. Developer shall be responsible to obtain all required permits, licenses, easements and/or approvals for the location of any facilities within the Union Pacific Railroad Property or other private property and shall provide written proof thereof to the City.

3. New Utility Easement. The Parties' engineers have located an additional twenty-foot-wide utility easement across the Property (the "New Utility Easement"). The plat for the Property has been updated to reflect the New Utility Easement and both City and Developer agree that the New Sewer Main may be placed within it.

4. Deferred Improvements. To prevent the destruction of permanent improvements located on the Property when the City constructs the New Sewer Main, the Parties agree that Developer may defer construction of the following improvements (the "Deferred Improvements") as delineated in Exhibit A, until after the New Sewer Main has been completed by the City:

- a. Approximately 270 linear feet of curb & gutter along the northern boundary of the Property;
- b. The stormwater detention pond and all associated infrastructure, as shown in the Civil Construction Plans by Del-Mont Consultants, Inc. dated 2020-

12-18 and approved by the City Engineer on 12/21/2020. This includes but is not limited to:

- i. All excavation and embankment necessary to shape and build the detention pond;
- ii. Construction and installation of the concrete outlet structure and outlet pipe with associated screens and bleed down orifice plate;
- iii. Installation of concrete trickle channel;
- iv. Rip-rap rundown; and
- v. Rip-rap discharge pad.

5. Installation of New Sewer Main. The City agrees to make reasonable, good-faith efforts to obtain funding and to complete the New Sewer Main within four years of the effective date of this Agreement. The City shall replace all improvements to or on the Property disrupted or damaged during installation of New Sewer Main at the City's sole cost.

6. Permanent Connections & Improvements. The City shall provide written notice to Developer when the New Sewer Main is complete and ready for connection to serve the Property. No later than twelve (12) months after the date of such notice, ~~Developer~~the City shall complete (1) the new sewer connection(s) to any completed improvements located on the Property, in accordance with all City standards and specifications in effect at the time; and (2) all of the Deferred Improvements. The City shall select a contractor to perform this work in accordance with the City's procurement policies in effect at the time and in compliance with any applicable public bidding requirements. The City agrees to assign any contractor warranties for such work to Developer to the extent it includes private improvements, but in no event shall the City be directly liable to Developer for any construction defects, delays, or any other claims related to the construction work required by this Paragraph 6, provided that the City complies with this Agreement. Developer shall provide the City or its contractor access to the Property as necessary to complete the work.

7. Security Cost for Permanent Connections & Improvements. Prior to issuance of a building permit for any construction on the Property, Developer shall submit pay the sum of \$40,000 to the City a letter of credit (the "LOC") in the amount of \$45,000 from a lender or financial institution reasonably acceptable to the City as security for full satisfaction of Developer's obligations to pay for the completion of the Permanent Connections & Improvements. The LOC shall be annually renewed by Developer until the completion of the Permanent Connections & Improvements or the expiration of the four year anniversary of bear the risk that actual costs exceed this Agreement, whichever occurs sooner amount, and the Developer shall have no obligation to renew the LOC thereafter. Upon completion of such Permanent Connections & Improvements, the City shall consent not be entitled to the release and termination of the LOC any refund if the actual costs are less.

8. Vacation of Old Sewer Main Easement. Upon completion of the permanent new sewer connections as provided above, the City shall abandon and vacate the Old Sewer Main Easement on Lot 1 and Lot 2.

9. BSIF Payment. Developer is responsible to pay to the City the required BSIF as a condition of sewer service for the Property. The City agrees to defer payment of the BSIF for the Property on the following terms. The BSIF for the anticipated needs of Lot 1 as of the date of this Agreement is \$38,650. The BSIF for Lot 2 and Lot 3 shall be determined using the fee schedule in effect at the time payment is tendered to the City in good funds for such BSIF. The BSIF for each lot with an operating business at the time the New Sewer Line is completed by the City shall be due, in full, from Developer when it completes the new connection(s) to the New Sewer Main. If no business is operating on a lot at the time of the City's completion of the New Sewer Line, then no BSIF will be due for that lot (instead, the BSIF for any future use of such lots shall be determined in the ordinary course at the time of development). Developer shall have the right to prepay the amount due in whole or in part without penalty at any time. If the full amount is not paid when due, then a late fee equal to 5% of the remaining amount due shall apply, and the City shall have the right to treat all amounts as unpaid utility charges and impose a lien upon the Property or any subdivided lot within the Property in addition to exercising any other rights and remedies for breach of contract or other law.

10. Reimbursement of Costs. INTENTIONALLY DELETED.

11. Land Use Approvals. Nothing herein shall be construed as any approval of any subdivision application or other required land use approval with respect to the Property, which approval is not guaranteed and shall be subject to all standards and requirements set forth in the Delta Municipal Code.

12. Voluntary Agreement. This Agreement is the voluntary and contractual agreement of the Developer and the City.

13. Breach by Developer; City's Remedies. In the event of any default or breach by Developer of any term, condition, covenant or obligation under this Agreement, the City shall have all rights and remedies available at law or equity, including but not limited to the right to shutoff water or other utility service to the Property and to seek injunctive relief, damages, or both, and to recover the City's attorney fees and costs.

14. Breach by City; Developer's Remedies. In the event of any default or breach by the City of any term, condition, covenant, or obligation under this Agreement, Developer shall have all rights and remedies available at law or equity, including but not limited to the right to forego payment of BSIF fees and to seek injunctive relief, damages, or both, and to recover Developer's attorney's fees and costs provided, however, nothing herein shall be deemed a waiver of the City's governmental immunity.

15. Assignment. This Agreement may not be assigned by the Developer without the prior written consent of the City, which consent shall not be unreasonably withheld and shall be based upon the financial capability of the proposed assignee to perform the terms of this Agreement. In the event Developer desires to assign its rights and obligations herein, it shall so notify the City in writing together with the proposed assignee's written agreement to be bound by the terms and conditions contained herein.

16. TABOR savings clause. Any monetary or fiscal obligations of the City pursuant to this Agreement shall be subject to annual budgeting and appropriation by the Delta City Council as required by the City Charter and Colorado law.

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

18. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

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

20. Governing Law. The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Delta County, Colorado.

21. Authority. Each person signing this Agreement represents and warrants that he is fully authorized to enter into and execute this Agreement, and to bind the party it represents to the terms and conditions hereof.

22. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall be deemed one and the same instrument.

23. Notice. All notices required under this Agreement shall be in writing and shall be hand-delivered or sent by United States Mail, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective three (3) mail delivery days after deposit in the United States mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

Notice to City: City of Delta  
360 Main Street  
Delta, CO 81416  
Attn: City Manager

Notice to Developer: Kosmo Investments, LLC  
c/o Brian Mason  
P.O. Box 784  
Delta, CO 81416

WHEREFORE, the parties hereto have executed this Agreement as of the date set forth above in the opening paragraph.

CITY OF DELTA, COLORADO

ATTEST:

\_\_\_\_\_  
Mayor

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

DEVELOPER: Kosmo Investments, LLC

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF COLORADO    )  
                                  ) ss.  
COUNTY OF DELTA     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by  
\_\_\_\_\_ as \_\_\_\_\_ of Kosmo Investments, LLC.

WITNESS my hand and official seal.

My Commission expires:

\_\_\_\_\_  
Notary Public