

RESOLUTION NO. 2012-02-01

AUTHORIZING THE MAYOR TO EXECUTE THE FIRST INTERIM AGREEMENT BETWEEN THE SOUTHERN WATER SUPPLY PROJECT WATER ACTIVITY ENTERPRISE AND THE CITY OF FORT MORGAN FOR PARTICIPATION IN THE FORT MORGAN HYDROPOWER PROJECT.

WHEREAS, the City of Fort Morgan, Colorado has requested that the Southern Water Supply Project Water Activity Enterprise ("Enterprise") undertake a feasibility study of a hydroelectric power generation facility at the Morgan Flow Control Structure on the Southern Water Supply Project located near Wiggins, Colorado ("Project"); and,

WHEREAS, the Enterprise has experience in such matters and is willing to undertake the feasibility study; and,

WHEREAS, the overall study costs will be paid by and divided among the City of Fort Morgan and Morgan County Quality Water District; and,

WHEREAS, the parties have set forth the terms of their agreement in the **FIRST INTERIM AGREEMENT BETWEEN THE SOUTHERN WATER SUPPLY PROJECT WATER ACTIVITY ENTERPRISE AND THE CITY OF FORT MORGAN FOR PARTICIPATION IN THE FORT MORGAN HYDROPOWER PROJECT** (a copy of which is attached hereto and incorporated herein by this reference).

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

SECTION 1: The City Council hereby authorizes the Mayor to execute the **FIRST INTERIM AGREEMENT BETWEEN THE SOUTHERN WATER SUPPLY PROJECT WATER ACTIVITY ENTERPRISE AND THE CITY OF FORT MORGAN FOR PARTICIPATION IN THE FORT MORGAN HYDROPOWER PROJECT.**

INTRODUCED, PASSED, APPROVED AND ADOPTED this 7th day of February 2012, the vote upon roll call being as follows:

Ayes: Mayor McAlister, Councilmembers Bryan, Forstedt, Nation, Northrup, Segura, Shaver.

Nays: None.

Absent /Abstain: None.

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

[SEAL]

BY: 
Terry McAlister, Mayor

ATTEST:


John Brennan, City Clerk

STATE OF COLORADO)
COUNTY OF MORGAN) ss.
CITY OF FORT MORGAN)

CERTIFICATE

I, John Brennan, City Clerk of the City of Fort Morgan, Colorado, do hereby certify that the above and foregoing **Resolution** is a true, perfect and complete copy of the **Resolution** adopted by the City Council and is identical to the original thereof appearing in the official records of the City of Fort Morgan, Colorado, and that the same has not been, since its adoption, in any respect, rescinded or amended.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the City of Fort Morgan this 7th day of February, 2012.


John Brennan, City Clerk

**FIRST INTERIM AGREEMENT BETWEEN THE
SOUTHERN WATER SUPPLY PROJECT
WATER ACTIVITY ENTERPRISE,
AND
THE CITY OF FORT MORGAN
FOR PARTICIPATION IN THE
FORT MORGAN HYDROPOWER PROJECT**

This First Interim Agreement is made and entered into as of ~~January~~ *February 10*, 2012, by and between the Southern Water Supply Project Water Activity Enterprise (the "Enterprise"), whose address is 220 Water Avenue, Berthoud, Colorado 80513, a government-owned business within the meaning of Article X, Section 20(2)(d), of the Colorado Constitution, organized pursuant to Colorado Revised Statutes Sections 37-45.1-101 et seq., and owned by the Northern Colorado Water Conservancy District, and the City of Fort Morgan, whose address is P.O. Box 100, Fort Morgan, Colorado 80701-0100 ("City").

Recitals

- A. City has requested that the Enterprise undertake a feasibility study ("Study") of a hydroelectric power generation facility at the Morgan Flow Control Structure on the Southern Water Supply Project located near Wiggins, Colorado ("Project").
- B. The Enterprise has experience in such matters and is willing to undertake the Study.
- C. Overall Study costs will be paid by and divided among the City of Fort Morgan and the Morgan County Quality Water District.

Agreement

1. The Enterprise agrees to undertake and complete the Study for the City under and pursuant to the terms and conditions of this Agreement.
2. The Participants agree to participate in and fund the Study under and pursuant to the terms and conditions of this Agreement. Participation in the Study in no way obligates the City to subsequent phases of the Project or to continued involvement in the Project in any manner.
3. The Enterprise estimates that the Study will cost \$30,000. This estimated cost will not be increased or exceeded without the prior written approval of the City. However, if the Study cannot be completed within this estimated cost, the Enterprise is not obligated to complete the Study for the benefit of the City unless sufficient additional funds as determined by the Enterprise are provided.

4. Funds that are not expended on the Study will be rebated back to the City pro rata based on the relative contribution of funds for the Study.

5. Upon execution of this Agreement the City shall pay the Enterprise \$27,190 as its share of the estimated cost of the Study.

6. It is recognized that the City will receive a portion of the funding from the Colorado Water Resources and Power Development Authority ("Authority"). The Enterprise shall provide the City with copies of all Consultant invoices to allow for Authority reimbursement.

Participant	Capacity (cfs)	Participation Percentage	Cost
Morgan Co. Quality Water	1.5	9.375%	\$2,810
City of Fort Morgan	14.5	90.625%	\$27,190
Total	16.0	100.000%	\$30,000

7. The Enterprise agrees to diligently pursue the Study in good faith to the extent that funds therefore are provided under this Agreement. By entering into this Agreement and accepting payments, the Enterprise does not obligate itself to, nor does the Enterprise warrant, that it will proceed with the Project beyond the Study or that it will construct or operate the Project.

8. In the event of termination of this Agreement or of the Study, The Enterprise shall have no further obligations to the City and City shall not be entitled to any return of funds paid to the Enterprise for the Study, unless payments exceed the Enterprise's costs, in which case a pro rata refund will be made. In the event of such termination, the City shall be entitled to receive copies of all work products developed by the Enterprise or its consultants on behalf of the City, and Enterprise shall convey to the City, as a tenant in common, a pro rata interest in such work products.

9. The Enterprise shall have the right to subcontract some or all of the work under this Agreement to persons or entities with suitable qualifications for the work as determined by the Enterprise.

10. This Agreement is the entire agreement between the Enterprise and the City regarding participation in the Study and shall be modified by the parties only by a duly executed written instrument approved by the City and the Board of Directors of the Enterprise.

THE SOUTHERN WATER SUPPLY PROJECT
WATER ACTIVITY ENTERPRISE

Name: Don Carlson
Title: Asst. For Mon

CITY OF FORT MORGAN

Name: Levy L. McWhirter
Title: MAYOR