

October 7, 2008

The City Council of the City of Fort Morgan, Colorado, met this day in the Council Chambers of City Hall. The Honorable Mayor Jack L. Darnell called the regular meeting to order at 5:30 p.m.

The Pledge of Allegiance was given.

Roll Call: Present:

Councilmember Sharol Lyn Deal
Councilmember Terry McAlister
Councilmember James A. Powers
Councilmember Terri P. Schafer
Councilmember Ron Shaver
Councilmember Alberta M. Simmons

Excused Absence: Honorable Mayor Jack L. Darnell

The meeting was also attended by City Manager Pat Merrill, City Attorney Jeffrey Wells, Police Chief Keith Kuretich, City Treasurer Pixie Jones, Utility Directors Gary Dreessen and Bob Weimer, Community Services Director Don Shedd, Director of Human Resources & Risk Management Jody Prentice and City Clerk Andrea Strand.

PRESENTATION OF REQUESTS FOR THIRD PARTY CONTRIBUTIONS

Treasurer Jones stated that as part of the budget process for the upcoming year, individual groups would be introduced to provide Council with information to support their request for City contributions to their organizations in 2009. Those present were:

Fort Morgan Area Chamber of Commerce – Trish Moreno and Jeff Morford requested \$6,000.

Morgan County Economic Development Corporation – Kari Linker, Executive Director, requested \$18,000.

United Way of Morgan County – Betsy Porter requested \$1,500.

Youth 4-H Livestock Sale – requested \$1,000.

Fall Harvest Car Show – Gerri South requested \$6,000.

Northeastern Colorado Association of Local Governments – Larry Worth requested \$10,000.

Fort Morgan Chapter National Society Daughters of the American Revolution – Virginia Rutts requested \$750-\$1,000.

Sexual Assault Response Advocates – Paula Bragg requested a commitment of \$5,000, if a house is purchased for the agency; or \$2,500, if not.

Platte Valley Festival Band – Dr. Jarrold Schaefer and Ben Hamilton requested \$500.

Treasurer Jones stated that she had added \$1,100 as “other requested items” for the 2009 budget. Mayor Pro Tem McAlister thanked all of the presenters and stated Council would take action on these on October 14, 2008.

SCHEDULE A PUBLIC HEARING FOR NOVEMBER 18, 2008, UPON THE PETITION FOR ANNEXATION BY MATT UNDERWOOD

Mayor Pro Tem McAlister reported that the City Clerk had received and filed the Annexation Petition submitted by the City of Fort Morgan and Matt Underwood.

Attorney Wells reported on the requirements of the annexation according to Title 31, Article 12, C.R.S., as amended. He stated that the Petition for Annexation requirements had been met and asked for consideration from Council to adopt the Resolution and Notice.

Mayor Pro Tem McAlister stated that the City Council must set a date for a public hearing to receive public comment on the Council's determination that the Petition and the proposed annexation is in substantial compliance with the statutory requirements set forth in C.R.S. 31-12-104, C.R.S. 31-12-105 and C.R.S 31-12-107.

Councilmember Schafer offered a motion to adopt the proposed Resolution which sets the hearing on the Underwood Annexation for November 18, 2008, at 7:00 p.m. to be held at City Hall, and directs the City Clerk to provide Notice of the hearing to the public as set forth under the Colorado Statutes. Her motion was seconded by Councilmember Powers, said Resolution being in words, letters and figures as follows, to-wit:

RESOLUTION

Whereas, the City Council has received from the City Clerk the Petition for Annexation as filed by Matt Underwood and the City of Fort Morgan; and,

Whereas, the City Council finds that said Petition for Annexation is in substantial compliance with C.R.S. § 31-12-107 (1), specifically including a finding that the Petitioners are the owners of 100% of the territory included in the area proposed to be annexed.

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

THAT the City Council finds the Petition for Annexation to be in substantial compliance with C.R.S. § 31-12-107 (1) and hereby schedules a Public Hearing on the Petition for Annexation as required by C.R.S. § 31-12-108, said Public Hearing to be held as follows:

DATE: November 18, 2008
TIME: 7:00 P.M.
PLACE: Council Chambers
100 Main Street
Fort Morgan, Colorado

The purpose of such Public Hearing is to determine if the proposed annexation complies with C.R.S. §§ 31-12-104 and 31-12-105.

FURTHER, the City Clerk is directed to give notice as required by C.R.S. § 31-12-108 (2) by publication of a copy of this Resolution or the Petition for Annexation as filed (exclusive of signatures), together with a Notice that, on the date, time, and place set forth above, the City Council of the City of Fort Morgan, Colorado, shall hold a Hearing upon the Petition for Annexation for the purpose of determining and finding whether the area proposed to be annexed meets the applicable requirements of C.R.S. §§ 31-12-104 and 31-12-105 and is considered eligible for annexation. Said Notice shall be published once a week for four (4) successive weeks in *The Fort Morgan Times*.

The first publication of such Notice shall be at least thirty (30) days prior to the date of the Public Hearing. The Proof of Publication of the Notice and Resolution or Petition shall be returned when the publication is completed, and the certificate of the Owner, Editor or Manager of the newspaper in which said Notice is published shall be proof thereof, and a Public Hearing shall then be held as provided in said Notice.

FURTHER, a copy of the published Notice, together with a copy of the Petition for Annexation as filed, shall also be sent by registered mail by the City Clerk to the Board of County Commissioners for Morgan County, to the Morgan County Attorney, to the Morgan County Land Use Department, to the local School District and to any special district having territory within the area to be annexed, at least twenty-five (25) days prior to the date fixed for such Public Hearing.

FURTHER, that the Petition for Annexation, including the zoning of the subject property, is hereby referred to the Planning Commission for its review and recommendations, including compliance with the Annexation Plan of the City.

PASSED AND ADOPTED this 7th day of October, 2008.

The vote by roll call being: Ayes: Mayor ProTem McAlister; Councilmembers Deal, Powers, Schafer, Shaver and Simmons.

/s/ Jack L. Darnell, Mayor

[SEAL]

ATTEST:

/s/ Andrea Strand, City Clerk

CONSENT AGENDA

Clerk Strand presented the Consent Agenda for Council consideration. Councilmember Simmons offered a Resolution to approve the Consent Agenda as presented and moved for its adoption. Her motion was seconded by Councilmember Schafer; said Consent Agenda being in words, letters and figures as follows, to wit:

- A. Approve the minutes from the September 16, 2008, regular meeting.
- B. Approve the minutes from the September 23, 2008, special meeting.
- C. Approve the reading of a Proclamation for Utilities Week.

- D. Second and final reading of Ordinance No. 1074 entitled, "An Ordinance to Apply and Contract for Beneficial Use of Water on Behalf of the City of Fort Morgan, Colorado, a Municipal Corporation, and Prescribing the Terms for Application for an Allocation of the Right to Use Colorado-Big Thompson Project Water to said City of Fort Morgan, Colorado, by Northern Colorado Water Conservancy District," and request to publish by title only.

ORDINANCE NO. 1074

AN ORDINANCE TO APPLY AND CONTRACT FOR BENEFICIAL USE OF WATER ON BEHALF OF THE CITY OF FORT MORGAN, COLORADO, A MUNICIPAL CORPORATION, AND PRESCRIBING THE TERMS FOR APPLICATION FOR AN ALLOCATION OF THE RIGHT TO USE COLORADO-BIG THOMPSON PROJECT WATER TO SAID CITY OF FORT MORGAN, COLORADO, BY NORTHERN COLORADO WATER CONSERVANCY DISTRICT.

WHEREAS, under the Water Conservancy Act of Colorado, Title 37, Article 45, Colorado Revised Statutes of 1973, it is necessary that the City Council of the City of Fort Morgan, Colorado, a Colorado municipal corporation (hereinafter called "Applicant"), in order to obtain the perpetual right to use Colorado-Big Thompson Project water on an annually renewable basis under C.R.S. §37-45-131 within the boundaries of the Northern Colorado Water Conservancy District, by contract for the beneficial use of water from Northern Colorado Water Conservancy District, shall by ordinance authorize and direct the Mayor and the City Clerk to apply to the Board of Directors of said District for such water contract.

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

Section 1: That the City of Fort Morgan, Colorado has determined to apply for a contract providing for the beneficial use of Twenty (20) acre-feet of water from the Northern Colorado Water Conservancy District within the boundaries of the Northern Colorado Water Conservancy District.

Section 2: That the Mayor and the City Clerk be and are hereby authorized and directed to apply to the Board of Directors of said Northern Colorado Water Conservancy District for a contract providing to the Applicant the beneficial use of water upon terms prescribed by said Board in the manner and form as in this section provided, to-wit:

**APPLICATION TO
NORTHERN COLORADO WATER CONSERVANCY DISTRICT
FOR ANNUALLY RENEWABLE
PERPETUAL WATER CONTRACT FOR RIGHT TO USE
COLORADO-BIG THOMPSON PROJECT WATER
UNDER C.R.S. § 37-45-131**

Applicant: City of Fort Morgan, Colorado, a Colorado municipal corporation. The governing body of a Colorado municipal corporation acting in its governmental capacity, hereby applies to Northern Colorado Water Conservancy District, a political subdivision of the State of Colorado, organized and existing by virtue of Title 37, Article 45, Colorado Revised Statutes, 1973, for a

contract for the right to beneficially use Colorado-Big Thompson Project water under the following terms and conditions:

1. The quantity of water herein requested by Applicant for annual application to beneficial use is Twenty (20) acre-feet to be used so long as the Applicant fully complies with all of the terms, conditions, and obligations hereinafter set forth.
2. It is understood and agreed by the Applicant that any water provided for use under this contract by the Board of Directors of said District shall be primarily for domestic, irrigation, or industrial use within or through facilities or upon lands owned or served by said Applicant, provided however, that all lands, facilities, and serviced areas which receive benefit from the use of water (whether water service is provided by direct delivery, by exchange, or otherwise) shall be situated within the boundaries of the Northern Colorado Water Conservancy District.
3. Applicant agrees that an acre-foot of water as referred to herein is defined as being one-three-hundred-ten-thousandth (1/310,000) of the quantity of water annually declared by the Board of Directors of the District to be available for delivery from the water supplies of the District. Applicant agrees that such water shall be delivered from the works of the District at such existing District delivery point or points as may be specified by the Applicant and that the water delivery obligation of the District shall terminate upon release of water from said works. Further, the Applicant agrees that on November 1 of each year, any water undelivered from the annual quantity made available to the Applicant shall revert to the water supplies of the District.
4. Applicant agrees to pay annually in advance for the amount of water herein provided for use under this contract by the Board of Directors of said District at a price per acre-foot to be fixed annually by said Board; and, further, agrees that the initial annual payment shall be made, in full, within fifteen (15) days after the date of notice from the District that the initial payment is due hereunder. Said notice will advise the Applicant, among other things, of the water year to which the initial payment shall apply and the price per acre-foot which is applicable to that year. Annual payments for each water year thereafter shall be made in advance by the Applicant on or before each October 1, thirty-one (31) days prior to the start of the water year, at the rate per acre-foot established by the Board for municipal water use in that water year. For the purpose of this water contract, the water year is defined to be from November 1 to October 31 of the following year.

If an annual payment, as herein provided, is not made by the due date, written notice thereof, by certified mail, will be given by said District to the Applicant at the following address: P.O. Box 100, Fort Morgan, Colorado 80701.

Water deliveries shall be suspended as of November 1 of the new water year until payment of the delinquency is made. If payment is not made within ninety (90) days after the date of mailing of said written notice, Applicant shall have no further right, title, or interest under this contract; and the right of use of water, as herein made, shall be disposed of at the discretion of the Board of Directors of said District in accordance with the applicable provisions of C.R.S. §§ 37-45-132 and 7-42-104. Any proceeds from any sale of the right of use to another allottee shall be paid to Applicant over and above the District's actual expense in terminating and disposing of the contract right of use.

5. This right of use shall be perpetual on an annually renewable basis. If the annual payment is made as provided in this application, the right of use shall be automatically renewed for another water year without any further action of the District; if the annual payment is not timely made, as provided above, the right of use shall terminate.
6. Applicant agrees that the water allocation shall be beneficially used for the purposes and in the manner specified herein, and that this right of use is made for the exclusive benefit of the Applicant and shall not inure to the benefit of any successors or assigns of said Applicant without prior specific approval of the Board of Directors of said District.
7. Applicant agrees to be bound by the provisions of the Water Conservancy Act of Colorado; by C.R.S. § 37-45-131; by the Rules and Regulations and policies of the Board of Directors of said District; and by the Repayment Contract of July 5, 1938, between said District and the United States and all amendments thereof and supplements thereto.
8. Applicant agrees, as a condition of this contract, to enter into an "Operating Agreement" with said District if and when the Board of said District finds and determines that such an agreement is required by reason of additional or special services requested by the Applicant and provided by the District. Said agreement may contain, but not be limited to, provision for water delivery at times or by means not provided within the terms of standard contracts of the District; additional annual monetary consideration for extension of District delivery services and for additional administration, operation and maintenance costs; or for other costs to the District which may arise through provision of services to the Applicant.

Section 3: In the opinion of the City Council of the City of Fort Morgan, Colorado, acquisition of this annually renewable perpetual right of use water contract for Colorado-Big Thompson Project water from Northern Colorado Water Conservancy District and the right to the beneficial use of water thereunder by said City of Fort Morgan, Colorado is necessary; that the continued acquisition and use of this water supply is essential for the well-being of the community and for the preservation of the public peace, health, and safety; and that the adequate protection of the health of the inhabitants of the community requires an immediate increase in Applicant's water supply. It is, therefore, declared that an emergency exists; that this **Ordinance** shall take effect as an emergency measure and that it shall be published in the manner and shall take effect as provided by the statutes of the State of Colorado or the *Charter* of the Applicant.

READ, PASSED ON FIRST READING AND ORDERED PUBLISHED the 16th day of September, 2008.

THE CITY COUNCIL OF THE CITY
OF FORT MORGAN, COLORADO

[SEAL]

BY: /s/ Jack L. Darnell
Mayor

ATTEST:

/s/ Andrea J. Strand
City Clerk

PASSED, APPROVED AND ADOPTED ON FINAL READING AND ORDERED PUBLISHED BY TITLE ONLY on the 7th day of October, 2008.

THE CITY COUNCIL OF THE CITY
OF FORT MORGAN, COLORADO

[SEAL]

BY: /s/ Jack L. Darnell
Mayor

ATTEST:

/s/ Andrea J. Strand
City Clerk

ORDER ON APPLICATION

Application having been made by or on behalf of all parties interested in this allocation of the right to use Colorado-Big Thompson Project water and after a Hearing by the Board, it is hereby ORDERED that the above application be granted and an allotment contract for Twenty (20) acre-feet of water is hereby made to the City of Fort Morgan, Colorado, a Colorado municipal corporation, for the beneficial uses set forth in said application upon the terms, conditions, and manner of payment as therein specified.

NORTHERN COLORADO WATER
CONSERVANCY DISTRICT

By: _____

I hereby certify that the above Order was entered by the Directors of Northern Colorado Water Conservancy District on the _____ day of _____ A.D., 2008.

ATTEST:

Acting Secretary

- E. Accept the bid from Johnson, Holscher & Co. to conduct the City of Fort Morgan's annual audit in the amount of \$15,575 for 2008, \$15,825 for 2009 and \$16,825 for 2010; with a contingency that we may pay for additional services for a single audit report or for the completion of a Comprehensive Annual Financial Report.

All matters listed under Item 5, Consent Agenda, are considered routine business by the Council and will be enacted with a single motion and a single vote by roll call. There will be no separate discussion of these items. If discussion is deemed necessary, that item should be removed from the Consent Agenda and considered separately.

PASSED, APPROVED AND ADOPTED this 7th day of October, 2008, the vote upon roll call being as follows: Ayes: Mayor Pro Tem McAlister; Councilmembers Deal, Powers, Schafer, Shaver and Simmons. Nays: none.

READING OF THE PROCLAMATION FOR UTILITIES WEEK

Mayor Pro Tem McAlister read the Proclamation for Utilities Week:

PROCLAMATION

IN APPRECIATION OF CITY OF FORT MORGAN UTILITIES

WHEREAS, We, the Citizens of Fort Morgan, place high value on local control over utility services and therefore have chosen to operate community-owned, locally controlled, not-for-profit utilities and, as consumers and owners of our utilities, have a direct say in utility operations and policies; and

WHEREAS, City of Fort Morgan utilities provide our homes, businesses, social services and local government agencies with reliable, efficient, and cost-effective electric, gas, water and wastewater services employing sound business practices designed to ensure the best possible service at not-for-profit rates; and

WHEREAS, City of Fort Morgan utilities are valuable community assets that contribute substantially to the well-being of local citizens through energy efficiency, customer service, environmental protection, economic development, and safety awareness; and

WHEREAS, the City of Fort Morgan is a dependable and trustworthy institution whose local utility operation provides many consumer protections and continues to make our community a better place in which to work and live;

NOW THEREFORE BE IT RESOLVED: that the City of Fort Morgan will continue to work to bring the lowest-cost, safe, and reliable utilities to community homes and businesses just as it has since 1906, the year when the electric utility was first created, to serve all of the citizens of Fort Morgan; and

BE IT FURTHER RESOLVED: that the week of October 5-11, be designated Utilities Week in order to honor City of Fort Morgan utilities for its contributions to the community and to make the consumer-owners, policy makers, and employees more aware of its contributions to their well-being;

THEREFORE, I, Jack Darnell, Mayor of the City of Fort Morgan, do hereby proclaim the week of October 5 - 11, 2008, as

CITY OF FORT MORGAN UTILITIES WEEK

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the City of Fort Morgan, Colorado, to be affixed this 25th day of September, 2008.

/s/ Jack L. Darnell
Mayor

ATTEST:

/s/ Andrea J. Strand
City Clerk

PUBLIC COMMENT / AUDIENCE PARTICIPATION

None.

REPORTS

The following Directors provided written reports to Council:

City Manager Merrill
Police Chief Kuretich
Utility Director Dreessen
Utility Director Weimer
Community Service Director Shedd
Community Development Director Merrill
Human Resources and Risk Management Director Prentice
Treasurer Jones
Municipal Court
Fort Morgan Volunteer Fire Department

BIDS, MEETINGS AND ANNOUNCEMENTS

Clerk Strand announced upcoming bids and announcements.

Mayor McAlister adjourned the October 7, 2008, regular meeting at 6:57 p.m. A work session then took place at the Fort Morgan Police Department at 901 East Beaver Avenue.

Mayor

City Clerk