

March 18, 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 7:00 p.m.

The Pledge of Allegiance was given.

Roll Call: Present: Honorable Mayor Jack L. Darnell
Councilmember Sharol Lyn Deal
Councilmember Terry McAlister
Councilmember James A. Powers
Councilmember Terri P. Schafer
Councilmember Ron Shaver
Councilmember Alberta M. Simmons

The meeting was also attended by Acting City Manager Keith Kuretich, City Attorney Jeffrey Wells, Police Lieutenant Darin Sagel, City Treasurer Pixie Jones, Utility Director Gary Dreesen, Community Services Director Don Shedd, Director of Human Resources & Risk Management Jody Prentice and City Clerk Andrea Strand.

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF FORT MORGAN AND MORGAN COUNTY REGARDING THE VIDEO ARRAIGNMENT SYSTEM

Court Administrator Tadolini updated Council on the Video Arraignment System. She explained that the video allows for prisoners to be arraigned without leaving the Morgan County Detention Center. The system is fully operational and working well. Her request was to approve the Video Arraignment Agreement for the time period of March 1, 2008, until August 30, 2008. The time period was agreed upon between the parties and will be reviewed prior to August 30, 2008.

Councilmember Simmons offered the following Resolution and moved for its adoption. Her motion was seconded by Councilmember McAlister; said Resolution being in words, letters and figures as follows, to wit:

RESOLUTION NO. 08 03 02

AUTHORIZING THE MAYOR
TO EXECUTE THE INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF FORT MORGAN AND MORGAN COUNTY
REGARDING THE VIDEO ARRAIGNMENT SYSTEM (VAS)

WHEREAS, the County has implemented a Video Arraignment System ("VAS") to be used by the County Jail and District/County Courts; and,

WHEREAS, the City currently houses inmates in the County Jail and must transport them from the County Jail to the City's Municipal Court for appearances; and,

WHEREAS, the use of the VAS will provide a secure medium for appearances of inmates housed in the County Jail and appearing in the Fort Morgan Municipal Court; and,

WHEREAS, the City has purchased equipment and constructed a connection to the County's VAS; and

WHEREAS, the City and the County have agreed to the terms as set forth in the Video Arraignment Agreement attached hereto and incorporated herein by this reference.

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

SEC. 1: The Mayor is hereby authorized to execute the VIDEO ARRAIGNMENT AGREEMENT, in the form attached hereto and incorporated herein by this reference.

INTRODUCED, PASSED, APPROVED AND ADOPTED this 18th day of March, 2008, the vote upon roll call being as follows:

Ayes: Mayor Darnell; Councilmembers Deal, McAlister, Powers, Schafer, Shaver and Simmons

Nays: None.

Absent /Abstain: None.

THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO

[SEAL]

BY: /s/ Jack L. Darnell, Mayor

ATTEST:

/s/ Andrea Strand, City Clerk

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

I, Andrea Strand, 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 19th day of March, 2008.

/s/ Andrea Strand, City Clerk

RESOLUTION AUTHORIZING THE MAYOR AND THE CITY ATTORNEY TO EXECUTE THE SETTLEMENT AGREEMENT REGARDING DAIRY FARMERS OF AMERICA

Attorney Wells explained the violation that occurred which was caused by the valve becoming stuck during the cold weather which caused Dairy Farmers of America to exceed their waste limits. Because the reason for the violation was now understood and accepted, the show cause hearing will be vacated and a Settlement Agreement has been drawn up. Dairy Farmers will pay the \$7,500 still owed to the City and corrective action requirements are included in the Settlement Agreement.

Director Dreessen explained that the wastewater plant has not been compromised by this violation. He also stated that Staff is looking at reviewing the permit issued to Dairy Farmers of America and they are also looking at hiring a former EPA employee who would serve as a consultant. The City has a responsibility to both enforce the permit and work with Dairy Farmers of America.

Councilmember Shaver offered a Resolution to authorize the Mayor and City Attorney to sign the Settlement Agreement regarding Dairy Farmers of America. His motion was seconded by Councilmember Schafer; said Resolution being in words, letters and figures as follows, to wit:

RESOLUTION NO. 08 03 03

RESOLUTION AUTHORIZING THE MAYOR AND THE CITY ATTORNEY
TO EXECUTE THE SETTLEMENT AGREEMENT REGARDING
DAIRY FARMERS OF AMERICA

Whereas, Section 13-24 of the *Fort Morgan Municipal Code* (1994) authorizes the City of Fort Morgan to issue and regulate wastewater discharge/sanitary sewer permits; and,

Whereas, Section 13-39 of the *Fort Morgan Municipal Code* (1994) sets forth the General and Specific Discharge Prohibitions; and,

Whereas, Section 13-54 of the *Fort Morgan Municipal Code* (1994) authorizes the City to take certain action, including suspending the wastewater treatment service when such suspension is necessary, in the opinion of the City, in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons, to the environment, causes interference to the POTW or causes the City to violate any condition of its NPDES permit; and,

Whereas, on February 8, 2008, the City issued a Notice of Violation ("Notice") to Dairy Farmers of America for their most recent violations which occurred on December 10, 2007 on their Wastewater Discharge Permit for Major Contributors, Permit No. 061506; and,

Whereas, in an effort to resolve this matter without the need for a Show Cause Hearing, and to obtain further compliance legal counsel for DFA and the City Attorney have worked together to settle all matters through the attached Settlement Agreement.

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

1. The City of Fort Morgan, Colorado hereby authorizes Mayor Darnell and City Attorney Jeffrey A. Wells to sign the Settlement Agreement attached hereto and incorporated herein by this reference.

2. That the Show Cause Hearing be permanently vacated in this matter upon the execution of the Settlement Agreement.

PASSED, APPROVED AND ADOPTED this 18TH day of March, 2008; the vote upon roll call being as follows:

Ayes: Mayor Darnell; Councilmembers Deal, McAlister, Powers, Schafer, Shaver and Simmons

Nays: None.

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

[SEAL]

BY: /s/ Jack L. Darnell, Mayor

ATTEST:

/s/ Andrea Strand, City Clerk

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

I, Andrea Strand, 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 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 19th day of March, 2008.

/s/ Andrea Strand, City Clerk

RESOLUTION AUTHORIZING THE CITY ATTORNEY TO FILE A QUIET TITLE ACTION FOR A THIRTY (30) FOOT PIECE OF PROPERTY

City Attorney Wells described an area of land located near Barlow Road. He requested that Council authorize the City Attorney to file a quiet title action with regards to that strip of land, which is approximately thirty (30) feet wide and two-hundred-and fifty (250) feet long, and lies in vacant title. As City Attorney, he would represent the City in said action which would be filed in Morgan County District Court.

Councilmember McAlister offered the following Resolution, to be redrafted adding the legal description, and moved for its adoption. His motion was seconded by Councilmember Schafer; said resolution being in words, letters and figures as follows, to-wit:

RESOLUTION 08 03 04

AUTHORIZING THE CITY ATTORNEY TO
FILE A QUIET TITLE ACTION FOR A THIRTY (30) FOOT PIECE OF PROPERTY

WHEREAS, Sec. 2(B), Article I, of the *Charter* provides that “[T]he City shall have power to sue and defend and plead and be impleaded in all courts and places and in all matters and proceedings”; and,

WHEREAS, Council has been informed by Staff that a strip of land approximately thirty (30) feet wide and two-hundred and fifty (250) feet long lies in vacant title near Barlow Road; and,

WHEREAS, this strip of land lying in vacant title is currently used for ingress and egress to a dedicated right-of-way and utility easement for access to City property located to the west of said strip of land; and

WHEREAS, the Council has found that the filing of a Quiet Title Action with regards to a strip of land approximately thirty (30) feet wide and two-hundred and fifty (250) feet long is in the best interest of the citizens of the City of Fort Morgan and more particularly described as follows:

A PARCEL OF LAND IN THE SOUTHEAST ¼ OF SECTION 32, TOWNSHIP 4 NORTH, RANGE 57 WEST OF THE 6TH PRINCIPAL MERIDIAN, MORGAN COUNTY, COLORADO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 32 AND CONSIDERING THE EAST LINE OF THE SOUTHEAST ¼ OF SAID SECTION 32 TO BEAR NORTH 00°14’17” EAST WITH ALL BEARINGS HEREIN RELATIVE THERETO;

THENCE NORTH 00°14’17” EAST ALONG SAID EAST LINE A DISTANCE OF 1236.80 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 89° 52’54” WEST, 252.08 FEET;

THENCE NORTH 00°13’29” EAST, 30.00 FEET TO A POINT ON THE SOUTHWEST CORNER OF A PARCEL OF LAND FILED UNDER RECEPTION NUMBER 747173, MORGAN COUNTY;

THENCE NORTH 89°52’58” EAST ALONG THE SOUTH LINE OF SAID PARCEL FILED UNDER RECEPTION NUMBER 747143, 252.08 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL, ALSO BEING ON THE EAST LINE OF THE SOUTHEAST ¼ OF SAID SECTION 32;

THENCE SOUTH 00°14’17” WEST ALONG SAID EAST LINE, 30.00 FEET TO THE POINT OF BEGINNING;

THE ABOVE DESCRIBED PARCEL CONTAINS 0.174 ACRES, MORE OR LESS AND IS SUBJECT TO RECORDED EASEMENTS AND RIGHTS-OF-WAY.

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

SEC. 1: The Council hereby authorizes the City Attorney to file a Quiet Title Action with regards to the strip of land approximately thirty (30) feet wide and two-hundred-and fifty (250) feet long which lies in vacant title near Barlow Road and represent the City in said action in the Morgan County District Court.

INTRODUCED, PASSED, APPROVED AND ADOPTED this 18TH day of March, 2008, the vote upon roll call being as follows:

Ayes: Mayor Darnell; Councilmembers Deal, McAlister, Powers, Schafer, Shaver and Simmons

Nays: None.

Absent /Abstain: None.

THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO

[SEAL]

BY: /s/ Jack L. Darnell, Mayor

ATTEST:

/s/ Andrea Strand, City Clerk

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

I, Andrea Strand, 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 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 19th day of March, 2008.

/s/ Andrea Strand, City Clerk

RESOLUTION AUTHORIZING THE APPOINTMENT OF ROBERT WEIMER AS REPRESENTATIVE AND DOUG LINTON AS ALTERNATE TO THE MEMBERS' COUNCIL OF THE NEBRASKA MUNICIPAL POWER POOL

Acting City Manager Kuretich explained that the City of Fort Morgan is a member of the Nebraska Municipal Power Pool Members' Council, and that he would like Council to appoint Bob Weimer and Doug Linton as our representatives to that Council.

Councilmember Shaver offered the following Resolution and moved for its adoption. His motion was seconded by Councilmember Powers; said resolution being in words, letters and figures as follows, to-wit:

Member Resolutions for Appointments

Resolution No. 08 03 05

Representative and/or Alternate Representative to NMPP Members' Council

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Fort Morgan State of Colorado, that:

1. Such City be and hereby is a member of the Nebraska Municipal Power Pool.
2. The City Council of the City of Fort Morgan, State of Colorado, does hereby appoint Robert Weimer as the representative of the City of Fort Morgan, State of Colorado, to the Members' Council of the Nebraska Municipal Power Pool.
3. The City Council of the City of Fort Morgan, State of Colorado, does hereby appoint Douglas Linton as the alternate representative of the City of Fort Morgan, State of Colorado, to the Members' Council of the Nebraska Municipal Power Pool.

This is to certify that the appointments set out above were approved by the City Council of the City of Fort Morgan, State of Colorado, at their meeting on March 18, 2008.

/s/ Andrea Strand, City Clerk

(Seal)

CITY MANAGER POSITION

Director Prentice provided information to Council explaining the revisions to the job description for the City Manager. She further explained the three areas requiring Council action at this time:

- A. Authorize the job description and pay range. After explanation and discussion, Councilmember Shaver offered the following Resolution and moved for its adoption. His motion was seconded by Councilmember Simmons; said Resolution being in words, letters and figures as follows, to-wit:

RESOLUTION

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT MORGAN, COLORADO, to accept the revised job description and pay range (Level 33 – Low \$88,656 to High \$122,712) for the City Manager position.

PASSED, APPROVED AND ADOPTED this 18th day of March, 2008, the vote upon roll call being as follows: Ayes: Mayor Darnell; Councilmembers Deal, Powers, Schafer, Shaver and Simmons. Nays: Councilmember McAlister.

B. Approve the recruitment schedule. After explanation and discussion, Councilmember Simmons offered the following Resolution and moved for its adoption. Her motion was seconded by Councilmember Schafer; said Resolution being in words, letters and figures as follows, to-wit:

RESOLUTION

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT MORGAN, COLORADO, to accept the recruitment schedule for the City Manager position.

City Manager
Recruitment Schedule
Revised DRAFT 3/12/08

Preliminary work:	Job description revised, ideal candidate profile defined.
March 24	Begin advertising position on or before this date. Applications collected and reviewed as they come in by the Search Committee.
May 14	Posting closes
May 19-21	Preliminary selection of applicants (Search Committee)
May 22-23	Notification of selected applicants for phone screening
May 27-30	Phone screening of selected applicants (Search Committee) Search Committee makes decision on which applicants to present to Council.
June 3	Present names of selected applicants for formal interviews to Council (executive session). Council approves finalists
June 4-6	Invite applicants for formal interviews. After applicants have accepted invitation, release names of finalists.
June 9-25	Travel arrangements; information packets to finalists; background investigations, possible personality/job suitability questionnaires, etc. completed
June 26	Applicants arrive in Fort Morgan

- June 27 Applicant information sessions/tours; assessment center testing
- June 28 Formal interviews conducted by Council, community and staff
Council makes decision on top candidate(s) in executive session
- June 30-July 11 Conduct reference checks on finalist(s)
Possible "home town" visit(s), etc.
Present conditional job offer to top candidate
Pre-employment drug test/physical, etc.
- July 15 Council decision on formal job offer

On Site Selection Process:

Finalists

(revised DRAFT 3/12/08)

- Thursday, June 26, 2008 – Out-of-town finalists arrive
- Friday June 27, 2008
 - 9:00 am – 9:15 am: Welcome by the Mayor
 - 9:15 am – 9:30 am: Review of process and activities (HR)
 - 9:30 am – 9:45 am: Question/Answer session from applicants
 - 10:00 am – 11:00 am: Informational Presentations
 - Schools, Housing, Chamber of Commerce, Recreation
 - 11:30 a.m. – 12:30 p.m. Applicant & spouses lunch with City Council
 - 1:00 - 5:00 Tour of Fort Morgan
 - 7:00 – 9:00 - Assessment Centers (if desired)
- Saturday June 28: Formal Interviews
 - 8:00 a.m. – 1:00 p.m. (estimate)
 - Community Interview Panel
 - Staff Panel (note: could be combined with community panel)
 - City Council
 - 1:00 – 2:00: Lunch for interview panels
 - 2:15 Council meet in Executive Session to discuss candidates

PASSED, APPROVED AND ADOPTED this 18th day of March, 2008, the vote upon roll call being as follows: Ayes: Mayor Darnell; Councilmembers Deal, Powers, Schafer, Shaver and Simmons. Nays: none.

- C. Appoint two members of Council to the search committee. After discussion of this topic, it was decided that Councilmembers Shaver and Simmons will be the two members of Council to sit on the City Manager search committee.

PUBLIC COMMENT

Charles Bragg, who resides at 518 Prospect Street, shared his concerns of the proposed salary for the City Manager position.

SECOND AND FINAL READING OF ORDINANCE NO. 1065 ENTITLED, "AN ORDINANCE ESTABLISHING THE CITY'S POLICY FOR DAMAGES CAUSED BY SANITARY SEWER BACKUPS IN PRIVATE RESIDENCES WITHIN THE CITY OF FORT MORGAN" AND REQUEST TO PUBLISH BY TITLE ONLY AND REPRINT IN FULL ANY SECTION, SUBSECTION OR PARAGRAPH OF THE ORDINANCE WHICH WAS AMENDED FOLLOWING THE INITIAL PUBLICATION

Attorney Wells explained that the Ordinance presented today was the final version of the Ordinance.

Councilmember Powers offered the following Resolution and moved for its adoption. His motion was seconded by Councilmember Schafer; said Resolution and Ordinance being in words, letters and figures as follows, to-wit:

RESOLUTION

WHEREAS, a an Ordinance entitled above was duly and legally presented to the City Council of Fort Morgan, Colorado, at a meeting held on the 18th day of March, 2008, and was duly read at length at the time; and

WHEREAS, the City Council at said meeting, by Resolution, ordered the publication of said Ordinance to be made in *The Fort Morgan Times*, a daily newspaper of general circulation, published and printed in the City of Fort Morgan, Colorado, not less than ten days before further consideration; and

WHEREAS, said Ordinance was again read to the Council and was designated ORDINANCE NO. 1065; being in words, letters and figures as follows, to-wit:

ORDINANCE NO. 1065

AN ORDINANCE ESTABLISHING THE CITY'S POLICY
FOR DAMAGES CAUSED BY SANITARY SEWER BACKUPS IN PRIVATE RESIDENCES
WITHIN THE CITY OF FORT MORGAN

WHEREAS, pursuant to Article IV, Sec. 4, the Council shall have the power to "[P]rovide for the construction, maintenance, operation, and disposition of public improvements, public works, public utilities, public services, and public buildings..."; and,

WHEREAS, City Council finds that it is in the best interest of the citizens and the operation of the Wastewater Collection and Distribution Department to provide a Good Faith Payment under limited circumstances; and,

WHEREAS, City Council has directed the Office of the City Attorney to draft an ordinance adopting a policy regarding sanitary sewer backups within the City of Fort Morgan,

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF FORT MORGAN, that the City's policy for damages caused by sanitary sewer backups in private residences within the City of Fort Morgan is hereby adopted as follows:

1. GENERAL POLICY

1.1 This ordinance provides guidelines for the review of claims related to sanitary sewer backup damage to private property. This policy is not intended to be construed or interpreted as a waiver, express or implied, of any immunity, rights, benefits, protection, or other provisions of the City's governmental immunity as provided under the Colorado Governmental Immunity Act ("CGIA"). For definition purposes, "sewer(s)" refers to sanitary sewers and not to storm drains. For purposes of this policy, a city sewer line is defined as the full outside diameter of a main sanitary sewer, excluding external connections (e.g. [Y's] and [T's] and sewer laterals).

1.2 The Wastewater Collection and Distribution Department will promptly investigate any reported or suspected sewer backup damage to private property as a result of obstruction in a publicly owned sewer system, and will submit a written report to the City Manager together with all available information on the circumstances and extent of known damages involved in the incident(s). A videotape or photographs will also be made of the damage and be made a part of the report submitted to the City Manager.

1.3 Any claim for damages must be made with the City by filing a Notice of Claim (attached) for that purpose within fifteen (15) days after the date of occurrence. The forms shall include the claimant's name, address, date of occurrence, description, and the amount of damages claimed. Photocopies of invoices and receipts associated with the claim must be attached. All claims will be forwarded to the City's insurance carrier for review. This provision does not alter notice requirements under the Colorado Governmental Immunity Act (CGIA).

1.4 All claimants who provided notice to the City's Risk Management Department that they were damaged as the result of a sewer backup prior to January 1, 2008, shall be eligible for a good Faith Payment under this ordinance for damages which occurred after September 1, 2007.

1.5 All claims will be subject to the limits set forth in Section 2 and exclusions set forth in Section 3 and according to the conditions as set forth in Section 4.

2. LIMITS

2.1 All claims for property damage and / or physical injury that occur as a result of a sanitary sewer backup will be referred to the City's insurance carrier for review. The insurance carrier will not consider payment of a property damage and /or physical injury claim resulting from conditions outside the City's control (such as an Act of God). The City will provide its insurance carrier with the appropriate documentation related to the claimant's claim. After reviewing all available information, the City's insurance carrier, at its sole discretion, will determine whether the City is liable for the property damage and/ or physical injury. If the insurance carrier

determines the City is liable for the claimant's property damage and /or physical injury, the insurance carrier will pay the claim accordingly.

2.2 If the City's insurance carrier determines that the City is not liable for the claimant's property damage and/or physical injury, the City Manager will have the discretion to authorize a "Good Faith Payment" to be made to the claimant. Each individual claim will be evaluated on its own merits. The City Manager has the authority to authorize Good Faith Payments up to \$500. Should a claimant request a reimbursement greater than \$500, the City Manager may recommend an additional good faith payment up to \$3,000. The additional good faith payment includes the initial \$500 payment. Any good faith payment greater than \$500 must be approved by City Council.

2.3 Good Faith Payments shall not exceed \$3,000 for any single claim. The first \$500.00 does not require a dollar for dollar match by the claimant. This amount is intended to assist a claimant with any insurance deductible for cleanup of the property. A claimant is not required to have insurance coverage to receive this Good Faith Payment. The remaining \$2,500.00 available under this code provision is subject to a dollar for dollar match by the claimant for cleanup costs.

2.4 Claimants or agents will be required to submit all supporting documentation including receipts and/or invoices indicating costs incurred for cleaning and/or sanitizing the affected property. The determination of whether the claimant's documentation is sufficient to support a claim will be subject to the discretion of the City Manager. The City will reimburse the claimant with matching funds for the costs, not to exceed \$3,000. These costs specifically do not include repair or reconstruction costs.

2.5 The City will provide each claimant a backflow prevention valve for installation at the cost of the claimant.

2.6 The number of Good Faith Payments allowed to any claimant or his/her family shall be limited to one payment every five (5) years.

2.7 Payment of all claims Five-Hundred (\$500.00) or less are subject to the discretion of the City Manager and his/her decision shall be final.

3. EXCLUSIONS

This policy shall not apply to:

3.1 Losses caused by the failure of sewer lines owned by the claimant or agent, or other private persons.

3.2 Sewage damages caused by negligence or failure to properly maintain the claimant's utility system.

3.3 Sewage damages caused by the failure of the claimant or agent to take steps necessary to prohibit further damage to the property once an incident has occurred or the claimant or agent has been put on notice of another problem unrelated to the initial incident.

4. CONDITIONS

4.1 If any insurance is available to the claimant or agent covering a loss claimed hereunder, that coverage will be considered primary coverage. Any coverage provided under the terms and provisions of this policy shall be secondary and in excess of the claimant's or agent's primary coverage. Such secondary coverage will not contribute to any primary coverage. In the event that the claimant's insurance carrier does not cover such loss, a letter from the carrier denying the loss claimed hereunder is required to be eligible for any Good Faith Payment.

4.2 A Notice of Claim must be filed with the City Manager within fifteen (15) days from the date of occurrence or in exercise of reasonable diligence should have been discovered. These forms will be reviewed in accordance with Section 2. If the City's insurance carrier denies the claim, the carrier will notify the claimant or agent directly. If the City denies the claim, the claimant or agent will be contacted directly by the Human Resources and Risk Management Department.

4.3 The claimant or agent will be notified of the insurance carrier's or City's position relative to their claim within 90 days after receipt of the Notice of Claim, or as required by the Colorado Governmental Immunity Act.

4.4 The claimant must allow the City's insurance carrier and/or City personnel to inspect and examine the alleged property damage before any claim will be processed or paid.

4.5 All claimants must sign a Release, either in the form as required by the City's insurance carrier or provided by the City, before any payment is made to the claimant. The release will absolve the City or its carrier from any and all liability arising from the claim and release the City and its carrier from any future claims related to the incident.

4.6 The City or its insured shall have the right at their sole discretion to seek subrogation against any person or organization liable for the property damage described in a claim. Claimant shall assist and cooperate with the City or its insured in any action or proceeding to obtain subrogation.

4.7 No payment shall be made to any claimant or agent until the City finds that the claimant or agent has cleared all obstructions, natural or constructed, that impede the City's access to its easements whether recorded or by prescription.

5. DEFINITIONS

5.1 Claimant or Agent: Claimant is the individual(s) filing a claim against the City of Fort Morgan seeking reimbursement for paid or obligated payment due to property damage caused by the operation of the City's Utility System. Agent shall be construed to mean a tenant or landlord of the claimant.

5.2 Ultimate Net Loss: This term refers to the sum paid in settlement of a claim for which the City agrees to pay after making deductions for all other recoveries, salvages, deductibles, and insurances. "Ultimate Net Loss" does not include: (a) costs and expenses incurred by an insurer on behalf of the claimant or agent; (b) office costs or salaries and expenses of employees of the claimant or agent; or (c) retainer fees of counsel retained by claimant or agent.

5.3 Property Damage: This term means the loss of or direct damage to or clean up costs related to destruction of tangible property.

- 5.4 Actual Cash Value (ACV): Generally defined as replacement cost less depreciation.
- 5.5 City Utility System: The full outside diameter of a main sanitary sewer, excluding external connections (e.g. [Y's] and [T's] and sewer laterals.
- 5.6 Claimant or Agent Utility System: The Water and Sanitary Sewer System located in or on the property of the claimant or agent.
- 5.7 Occurrence: An event which causes property damage to the property of the claimant or agent as the result of the operations of the City's Sanitary System.
- 5.8 Obstruction: Natural or artificial objects which impede or prohibit the City's ability to access its property interests or easements which are either recorded or by prescription.

6. GENERAL CLAIMANT RESPONSIBILITIES

- 6.1 Claimant must provide reasonable proof of ownership and the value of the damaged personal and real property.
- 6.2 The claimant must comply with all conditions contained within section 4 of this policy that outlines notification and documentation responsibilities.

7. PAYMENT OF NON-ECONOMIC DAMAGES – NO ADMISSION OF LIABILITY

- 7.1 The City will not pay non-economic damages as compensation for an occurrence under this policy.
- 7.2 Any payment made hereunder is a "Good Faith" gesture and is not intended and shall not be construed as an admission of liability or waiver of any defense on immunity.

8. ACQUISITION OF EXPRESS EASEMENTS

- 8.1 The City Manager shall have the authority to negotiate the purchase of additional easements where the City requires additional access. All easement purchases as provided herein shall be approved by Council.

INTRODUCED, READ AND PASSED UPON FIRST READING this 4th day of March, 2008, for publication once in a newspaper of the City of Fort Morgan, Colorado, at least ten days before its final passage.

[SEAL]

ATTEST:

/s/ Andrea J. Strand
City Clerk

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

BY: /s/ Jack L. Darnell
Mayor

FINALLY PASSED, ADOPTED AND APPROVED this 18th day of March, 2008, for publication by title only, once in the newspaper of the City of Fort Morgan, Colorado, within five days of the final passage, to take effect five days after final publication.

[SEAL]

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

BY: /s/ Jack L. Darnell
Mayor

/s/ Andrea Strand
City Clerk

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

CERTIFICATE

I, Andrea Strand, the duly appointed, qualified and acting Clerk of the City of Fort Morgan, Colorado, do hereby certify and attest that the foregoing Ordinance No. 1065 was, as a proposed Ordinance duly and legally presented to the City Council of the City of Fort Morgan, Colorado, at a Regular Meeting on the 4th day of March, 2008. Said Ordinance, as proposed, was duly read at length at said regular meeting, and thereafter the same was, on the 7th day of March, 2008, published in the *Fort Morgan Times*, a daily newspaper of general circulation published and printed in the City of Fort Morgan, Morgan County, Colorado. Said proposed Ordinance was again taken up and read a second time, duly and legally passed, approved and adopted at a Regular Meeting of the City Council held on the 18th day of March, 2008. Within five (5) days after its final passage, said Ordinance was published in the *Fort Morgan Times*, a daily newspaper of general circulation published and printed in the City of Fort Morgan, Morgan County, Colorado.

/s/ Andrea Strand
City Clerk

PASSED, APPROVED AND ADOPTED this 18th day of March, 2008, the vote upon roll call being as follows: Ayes: Mayor Darnell; Councilmembers Deal, McAlister, Powers, Schafer, Shaver and Simmons. Nays: none.

APPROVE THE BIDS PRESENTED AT THE MARCH 11 WORK SESSION FOR THE GOLF COURSE EQUIPMENT

Director Shedd requested Council's approval to accept four separate equipment bids for the Golf Course. The four bids presented were:

- A. The bid from L.L. Johnson of Denver, Colorado, for a Tri-Plex Greens mower in the amount of \$31,131.

Councilmember Simmons offered a Resolution to approve the bid as presented and moved for its adoption. Her motion was seconded by Councilmember Shaver; said Resolution being in words, letters and figures as follows, to-wit:

RESOLUTION

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT MORGAN, COLORADO, to accept the bid for a Tri-Plex Greens mower from L.L. Johnson of Denver, Colorado, in the amount of \$31,131.

PASSED, APPROVED AND ADOPTED this 18th day of March, 2008, the vote upon roll call being as follows: Ayes: Mayor Darnell; Councilmembers Deal, Powers, Shaver and Simmons. Nays: Councilmembers McAlister and Schafer.

B. The bid from Colorado Golf & Turf of Littleton, Colorado, for a greens roller in the amount of \$10,998.

Councilmember Powers offered a Resolution to approve the bid as presented and moved for its adoption. His motion was seconded by Councilmember Shaver; said Resolution being in words, letters and figures as follows, to-wit:

RESOLUTION

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT MORGAN, COLORADO, to accept the bid for a greens roller from Colorado Golf & Turf of Littleton, Colorado, in the amount of \$10,998.

PASSED, APPROVED AND ADOPTED this 18th day of March, 2008, the vote upon roll call being as follows: Ayes: Mayor Darnell; Councilmembers Deal, McAlister, Powers, Schafer, Shaver and Simmons. Nays: none.

C. The bid from L.L. Johnson of Denver, Colorado, for an acid injection system in the amount of \$13,138.

Councilmember Simmons offered a Resolution to approve the bid as presented and moved for its adoption. Her motion was seconded by Councilmember Shaver; said Resolution being in words, letters and figures as follows, to-wit:

RESOLUTION

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT MORGAN, COLORADO, to accept the bid for an acid injection system from L.L. Johnson of Denver, Colorado, in the amount of \$13,138.

PASSED, APPROVED AND ADOPTED this 18th day of March, 2008, the vote upon roll call being as follows: Ayes: Mayor Darnell; Councilmembers Deal, McAlister, Powers, Schafer, Shaver and Simmons. Nays: none.

D. A bid from Colorado Golf & Turf of Littleton, Colorado, for a topdressor in the amount of \$12,505.

Councilmember Shaver offered a Resolution to approve the bid as presented and moved for its adoption. His motion was seconded by Councilmember Powers; said Resolution being in words, letters and figures as follows, to-wit:

RESOLUTION

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT MORGAN, COLORADO, to accept the bid for a topdresser from Colorado Golf & Turf of Littleton, Colorado, in the amount of \$12,505.

PASSED, APPROVED AND ADOPTED this 18th day of March, 2008, the vote upon roll call being as follows: Ayes: Mayor Darnell; Councilmembers Deal, McAlister, Powers, Schafer, Shaver and Simmons. Nays: none.

MODIFICATION TO CONSENT AGENDA

Acting City Manager Kuretich discussed his reasons to request that Item 10.H. be pulled from the Consent Agenda. Councilmember Simmons asked that Item 10.H. (Approve the bid submitted by Hydra-Stop, Ten Point Sales & Marketing, LLC of Lakewood, Colorado, for a 4" Tapping & Hydra-Stopping Unit in the amount of \$31,025 and the approval to purchase band-aids not to exceed the total of \$50,000 for the Water Distribution/Wastewater Collection Department) be removed from the Consent Agenda.

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 Powers; said Consent Agenda being in words, letters and figures as follows, to wit:

- A. Approve the minutes from the February 26, 2008, special meeting.
- B. Approve the minutes from the March 4, 2008, regular meeting.
- C. Approve the disbursements and payroll for February 2008.
- D. Approve the bid submitted by American Pride Coop of Henderson, Colorado, for bulk fertilizer spreads for the Parks Department in the amount of \$12,985.12.
- E. Approve the bid submitted by Heritage Ford of Denver, Colorado, for a three-quarter ton pickup with a snowplow attachment for the Community Services Department in the amount of \$22,454.
- F. Approve the bid submitted by Colorado Mosquito Control of Brighton, Colorado, for Mosquito Control Services for the Parks Department in the amount of \$39,950.
- G. Approve the bid submitted by Colorado Machinery of Frederick, Colorado, for a portable air compressor for the Electric Department in the amount of \$12,705.
- I. Second and final reading of Ordinance No. 1064 entitled "AN ORDINANCE AMENDING ORDINANCE NO. 1056 ENTITLED 'AN ORDINANCE GRANTING CERTAIN ECONOMIC INCENTIVES FOR BUSINESS EXPANSION TO DELTA OIL FIELD TANK COMPANY, LLC BY THE CITY OF FORT MORGAN, COLORADO,'" and request to publish by title only and reprint in full any section, subsection, or paragraph of the ordinance which was amended following the initial publication.

ORDINANCE NO. 1064

AN ORDINANCE AMENDING ORDINANCE NO. 1056 ENTITLED
“AN ORDINANCE GRANTING CERTAIN ECONOMIC INCENTIVES
FOR BUSINESS EXPANSION TO DELTA OIL FIELD TANK COMPANY, LLC
BY THE CITY OF FORT MORGAN, COLORADO.

Whereas, on September 5, 2007, Gary Harms, President and CEO for Delta on submitted an Economic Development Incentive Application pursuant to the City’s Economic Incentive Policy, therein requesting among others, a waiver of the Building Permit Fee in the amount of \$42,410.00; and,

Whereas, on November 6, 2007, Ordinance No. 1056, granted to Delta Oil Field Tank Company, LLC (hereinafter “Delta”) certain tax and economic incentives for construction of a manufacturing facility, at an anticipated cost of \$9,000,000.00 dollars, at 2550 East Bijou Avenue in the City of Fort Morgan, Colorado (hereinafter the “Project”); and,

Whereas, the inclusion of the Building Permit Fee in the amount of \$42,410.00 was omitted under Ordinance No. 1056; and,

Whereas, the Council finds that the amendment as proposed is necessary as this Project benefits the City by providing new employment opportunities; and,

Whereas, the Council finds that the general welfare of the residents of the City would be promoted by amending the tax incentive payments with the inclusion of the Building Permit Fee, as hereinafter set forth.

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

1. Refund of Sales Taxes levied by the City. Delta shall be entitled to apply for and receive a refund of one hundred percent (100%) of all sales taxes levied by and paid to the City of Fort Morgan for the purchase of equipment, machinery, machine tools, or supplies used in the construction of or incorporated into the improvements constructed as the Project in the Northeast Colorado Enterprise Zone. Such refund shall be payable by the City Treasurer upon presentation of Receipts by Delta upon completion of the Project for all such sales taxes paid and verification by the City Treasurer that such sales taxes have, in fact, been levied and paid to the City.

Statutory Reference: C.R.S. § 39-30-107.5 (2)

2. Refund of General Property Taxes. Commencing with Tax Year 2007 (taxes payable in 2008) and continuing for Tax Years 2008, 2009, and 2010, Delta shall be entitled to an annual incentive payment in the form of a refund equal to one-hundred percent (100%) of the increase in assessed value for general property taxes paid to the City upon the improvements and improvement fixtures constructed as manufacturing facility. This refund shall be for improvements and improvement fixtures only (specifically excluding any improvements not replaced as part of this Project, including, but not limited to, Aboveground Storage Tanks (AST) or Underground Storage Tanks (UST)); the Land upon which the improvements and improvement fixtures are located and that portion of general property taxes attributable to Land shall *not* be included in the refund. Within thirty (30) days after receipt of proof of payment of

the current year's taxes (starting with Tax Year 2007) provided to the City Treasurer by Delta, the City shall make an annual incentive payment to Delta as set forth above, excluding interest and penalty, if any.

Statutory Reference: C.R.S. § 39-30-107.5 (1)

3. Refund of Personal Property Taxes. Commencing with Tax Year 2007 (taxes payable in 2008) and continuing for Tax Years 2008, 2009, and 2010, Delta shall be entitled to an annual incentive payment in the form of a refund equal to fifty percent (50%) of the amount of taxes levied by the City upon the increase in assessed value of taxable personal property located at or within this new business facility and used in connection with the operation of such new business facility, reduced by depreciation of ten (10%) percent from the base amount for each succeeding Tax Year. The term of this agreement as to personal property taxes shall not exceed four (4) tax years. Within thirty (30) days after receipt of proof of payment of the current year's personal property taxes (starting with Tax Year 2007) provided to the City Treasurer by Delta, the City shall make an annual incentive payment to Delta as set forth above, excluding interest and penalty, if any.

Statutory Reference: C.R.S. § 31-15-903

4. Permit Fees. City shall waive all building permit fees otherwise payable to the City for the construction of the Delta facilities, except any actual expenses incurred by the City by the City for plan reviews or inspections that may be required, which expenses shall be paid by Delta.

5. Limitations. The incentive payments provided in Paragraphs 1, 2, 3, and 4 above shall be subject to the following limitations:

(a) The total of all sales tax refunds and annual tax incentive payments due hereunder shall not exceed Forty-Six Thousand-One-Hundred-Twenty-Three and 00/100 (\$46,123.00) Dollars.

(b) The annual tax incentive payments shall apply only to the construction and equipping of that portion of the Project which is completed, used and/or occupied by December 31, 2007.

(c) The annual incentive payments shall be made only if all taxes and assessments levied and assessed by the City during each and every year that a payment is made are paid on time and in full.

(d) Payments shall not be made if a Court of competent jurisdiction declares any material section of the Act or this Ordinance or any Resolution setting policy for incentive payments to be invalid, unconstitutional, or violative of any statute.

(e) Payments shall only be made to the extent revenues are available and appropriated in each of the tax years specified above. The Council has no obligation to appropriate funds to make the annual incentive payments.

(f) Payments shall only be made if Delta qualifies for a credit or refund on taxes in accordance with the requirements of C.R.S. §39-30-105, and the Project must qualify as a "new business facility" in an enterprise zone as defined by C.R.S. §39-22-508.2. These qualifications must be demonstrated annually to the City's satisfaction by submission by Delta of a Certification of Qualified Enterprise Zone Business from the Administrator of the Northeast Colorado Enterprise Zone for each tax year in which Delta requests an incentive payment.

(g) Payments shall only be made if the City of Fort Morgan, Colorado continues to be in a designated enterprise zone.

5. Binding Effect. By its acceptance and approval of this Ordinance, Delta agrees to be bound by the terms and provisions hereof. This Ordinance shall become effective upon its final publication and its acceptance by Delta through its authorized officer and shall thereupon become a binding agreement between the City and Delta. This agreement shall not be assignable without the written consent of the non-assigning party.

INTRODUCED, READ AND PASSED UPON FIRST READING this 4th day of March, 2008, for publication once in a newspaper of the City of Fort Morgan, Colorado, at least ten days before its final passage.

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

BY: /s/ Jack L. Darnell
Mayor

ATTEST:

/s/ Andrea J. Strand
City Clerk

FINALLY PASSED, ADOPTED AND APPROVED this 18th day of March, 2008 for publication by title only, once in the newspaper of the City of Fort Morgan, Colorado, within five days of the final passage, to take effect five days after final publication.

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

BY: /s/ Jack L. Darnell
Mayor

[SEAL]

ATTEST:

/s/ Andrea J. Strand
City Clerk

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

CERTIFICATE

I, Andrea Strand, the duly appointed, qualified and acting Clerk of the City of Fort Morgan, Colorado, do hereby certify and attest that the foregoing Ordinance No. 1064 was, as a proposed Ordinance duly and legally presented to the City Council of the City of Fort Morgan, Colorado, at a Regular Meeting on the 4th day of March, 2008. Said Ordinance, as proposed, was duly read at length at said regular meeting, and thereafter the same was, on the 7th day of March, 2008, published in the *Fort Morgan Times*, a daily newspaper of general circulation published and printed in the City of Fort Morgan, Morgan County, Colorado. Said proposed

Ordinance was again taken up and read a second time, duly and legally passed, approved and adopted at a Regular Meeting of the City Council held on the 18th day of March, 2008. Within five (5) days after its final passage, said Ordinance was published in the *Fort Morgan Times*, a daily newspaper of general circulation published and printed in the City of Fort Morgan, Morgan County, Colorado.

/s/ Andrea J. Strand
City Clerk

Approval and Acceptance

The terms and provisions of Ordinance No. _____ are hereby accepted and approved this _____ day of _____, 2008.

Delta Oil Field Tank Company, a Limited Liability Company

By: _____
Gary W. Harms, Jr., President / CEO

- J. Second and final reading of Ordinance No.1066 entitled, "AN ORDINANCE TO APPLY AND CONTRACT FOR BENEFICIAL USE OF WATER ON BEHALF OF THE CITY OF FORT MORGAN, 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 BY NORTHERN COLORADO WATER CONSERVANCY DISTRICT," and request to publish by title only.

ORDINANCE NO. 1066

AN ORDINANCE TO APPLY AND CONTRACT FOR BENEFICIAL USE OF WATER ON BEHALF OF THE CITY OF FORT MORGAN, 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 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, 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 COUNCIL OF THE CITY OF FORT MORGAN, COLORADO:

Section 1: That the City of Fort Morgan has determined to apply for a contract providing for the beneficial use of Eighty (80) acre-feet of water from 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, the governing body of a Colorado municipal corporation acting in its governmental capacity or as governing body of a water activity enterprise (circle capacity in which governing body is acting), 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 Eighty (80) 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 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, 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 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, CO 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. Section 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 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 Section 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 acquisition of this annually renewable perpetual right of use water contract for the 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 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 charter of the Applicant.

INTRODUCED, READ AND PASSED UPON FIRST READING this 4th day of March, 2008, for publication once in a newspaper of the City of Fort Morgan, Colorado, at least ten days before its final passage.

[SEAL]

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

BY: /s/ Jack L. Darnell
Mayor

ATTEST:

/s/ Andrea J. Strand
City Clerk

FINALLY PASSED, ADOPTED AND APPROVED this 18th day of March, 2008 for publication by title only, once in the newspaper of the City of Fort Morgan, Colorado, within five days of the final passage, to take effect five days after final publication.

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

[SEAL]

BY: /s/ Jack L. Darnell
Mayor

ATTEST:

/s/ Andrea J. Strand
City Clerk

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

CERTIFICATE

I, Andrea Strand, the duly appointed, qualified and acting Clerk of the City of Fort Morgan, Colorado, do hereby certify and attest that the foregoing Ordinance No. 1066 was, as a proposed Ordinance duly and legally presented to the City Council of the City of Fort Morgan, Colorado, at a Regular Meeting on the 4th day of March, 2008. Said Ordinance, as proposed, was duly read at length at said regular meeting, and thereafter the same was, on the 7th day of March, 2008, published in the *Fort Morgan Times*, a daily newspaper of general circulation published and printed in the City of Fort Morgan, Morgan County, Colorado. Said proposed Ordinance was again taken up and read a second time, duly and legally passed, approved and adopted at a Regular Meeting of the City Council held on the 18th day of March, 2008. Within five (5) days after its final passage, said Ordinance was published in the *Fort Morgan Times*, a daily newspaper of general circulation published and printed in the City of Fort Morgan, Morgan County, Colorado.

/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 Eighty (80) acre-feet of water is hereby made to the City of Fort Morgan, 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 _____
President

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:

Secretary

- K. Authorize the Mayor to sign the application on behalf of the City of Fort Morgan for Renewal of the 3.2 Beer Liquor License and Corporate Change of Officers for the Fort Morgan Municipal Golf Course located at 17586 Country Road T-5, Fort Morgan.
- L. Approve the appointment of Betty Baker to the Board of Commissioners of the Housing Authority for a five-year term.
- M. Approve the change in title from Golf Course Maintenance Supervisor to Golf Course Superintendent on the Position Classification Schedule and Pay Schedule of the City.
- N. Approve the Amendment to the Golf Course Advisory Committee Bylaws Article II, Section 2.
- O. Adopt the 2008 City Council Goals and Objectives.

2008 CITY COUNCIL
GOALS AND OBJECTIVES
(Listed Alphabetically)

- Acoma Street Extension
- Airport Expansion
- Annexation and Purchase of Property
- Beautification of Exit 80
- City Policies – Review and Improve
- Economic Development/Marketing of the City
- Golf Course Irrigation System
- Main Street Improvements
 - Streets
 - Storm drainage
 - Sidewalks
 - Traffic lights
- Northern Integrated Supply Project (NISP) – Water Project
 - Education of the project
 - Funding

Riverview Avenue Development
 Safety Training Center – Burlington Property

- Satellite Fire/Police Stations
- Safety Training

Technology Improvements
 Train – Quiet Zone Study
 Utility Easement Access

P. Approve the application for renewal from Seven Eleven Store No. 15431 for a 3.2 beer license located at 603 West Platte Avenue, with a clear police investigation report.

All matters listed under Item 10, Consent Agenda, are considered to be 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 18th day of March, 2008, the vote upon roll call being as follows: Ayes: Mayor Darnell; Councilmembers Deal, McAlister, Powers, Schafer, Shaver and Simmons.

DISCUSSION OF THE BID SUBMITTED BY HYDRA-STOP, TEN POINT SALES & MARKETING, LLC, FOR A 4” TAPPING & HYDRA-STOPPING UNIT FOR THE WATER DISTRIBUTION/WASTEWATER COLLECTION DEPARTMENT

Acting City Manager Kuretich asked Director Dreessen to provide additional information to Council on the bid submitted by Hydra-Stop, Ten Point Sales & Marketing of Lakewood, Colorado, regarding the additions made to the original bid request. Director Dreessen presented clarification to Council that when he presented the bid to Council the prior week, there were items that were not included that are required to complete the unit. The new memo provided to Council includes those items, which are:

Hydra-Stop unit (Council approved purchase)	\$31,025.00
Foster hydraulic power unit	\$ 8,830.38
Flatbed for Ford F350 Pickup to mount Hydra-Stop	\$ 2,005.00
Repair bands (band aids)	\$ 7,116.00
Shipping & handling and miscellaneous tools	\$ 1,023.62

The total cost is \$50,000; the budgeted amount.

Councilmember Simmons moved to approve the bid submitted by Hydra-Stop, Ten Point Sales & Marketing in the total amount of \$50,000. Her motion was seconded by Councilmember Schafer; the vote upon roll call being as follows: Ayes: Mayor Darnell; Councilmembers Deal, McAlister, Powers, Schafer, Shaver and Simmons. Nays: none.

PUBLIC COMMENT / AUDIENCE PARTICIPATION

None.

REPORTS

Acting City Manager Kuretich reported that he has been attending many meetings with various organizations. He listed several ongoing community projects in his written report to Council.

Utilities Director Dreessen reported that he has contacted four water brokers to find the best CB-T water price for purchases. He is still working on the ethanol plant to see if it can be kept going. At the Wastewater plant, a replacement for Mitch Church has been hired; Mitch moved to the Water Distribution/Wastewater Collection Department. At the Water Treatment plant, Director Dreessen finally got a response from the state engineer for our area regarding the wells. Now they can move forward to do the required testing so the wells can be used in emergencies. Also at the Water Treatment plant, the Fire Dept. came out to look at the chlorine and discuss what they can do in an emergency regarding chlorine. They also gave a tour to Morgan Quality Water personnel. At the Water Distribution/Wastewater Collection Department, they finished the installation of a fire hydrant at Delta Oil. They ordered a new and better water meter for Cargill Meat Solutions; and Cargill is aware of this coming change.

The Spring Clean Up by the Sanitation Department is going on now through March 30th.

Just today, the Collection and Distribution Department used the jet/vac truck and removed a large quantity of paper towels. It happened to be at the beginning of a sewer lateral, so it is fairly isolated and a camera will be going in shortly.

Lt. Sagel reviewed the calls responded to and other work completed during the period of February 28th to March 12th. During the week of March 1st and 6th, were three incidents of vandalism to two residences and one elementary school. On March 6th, Green Acres School was burglarized and had gang-related graffiti spray painted on the interior walls. He noted that an officer made a presentation to Columbine School students on bullying. Police Department personnel took advantage of a few no-tuition training courses.

Community Services Director Shedd updated Council that he and Acting City Manager Kuretich are working on the Golf Course Superintendent position for the interim and long-term. There are current citizen openings on the Golf Course Advisory Committee and the Tree, Parks and Recreation Board. This is a busy time for most of the Community Services departments. A new brochure will be distributed next week through the local newspaper and several other facilities throughout the City. The book drops at the Library have been moved from the West side of the building to the East side of the building. At the Recreation Department, there are many educational sessions taking place. The bid request for the Integrated Library System will close on Thursday; they will be presented at next week's work session.

Mayor Darnell noted that there is also a citizen opening on the Planning & Zoning Commission.

City Attorney Wells stated that they were able to get a favorable resolution with the Wiggins Fire Department considering the boundaries of the various nearby fire districts. Fortunately, Wiggins compromised and they will begin to bring citizens into the fire districts. *The Fort Morgan Times* did a good piece in the newspaper on this subject.

Attorney Wells also reported that the settlement and severance agreement with the former City Manager has been finalized. The City has stipulated to a press release which reads:

“On March 4, 2008, the Fort Morgan City Council voted and adopted an agreement between the City and Mr. Nagy, the former City Manager. The position of both the City and Mr. Nagy on this issue is that both parties agreed that the employment situation was not working out for either party. The City has decided to go in a different direction with regard to the City Manager position, and Mr. Nagy has decided to pursue other professional opportunities. At this time, there is a consensus between Mr. Nagy and the City that it is in the best interest of all concerned to move forward with the decision of the parties.”

Attorney Wells provided an update on the litigation matter involving *The Fort Morgan Times*. The City has offered another option to compromise, but it was rejected. All of the City's attempts to compromise with the newspaper have failed. They have taken a position that they would like the City to pay all attorney fees associated with this action filed and for the individual members of Council to provide their rating number from the former City Manager's draft evaluations that averaged to a 2.8 rating and to sign a sworn affidavit that it is true and correct. The compromise that the City made was related to various areas of the litigation in relation to the law. Our original petition was filed on the basis that because the documents requested had been disposed of, that they did not have standing to bring an action against the City. We knew that in the future there would likely be a dispute, and the former City Manager had provided a memo to City Council stating that he would request all future reviews be held in open session. There was an editorial column in *The Times* in late November by Mr. Holland that stated that in the future, should any employee conduct a personnel review in open session, the newspaper would require the City to produce the documents related to the review. Based upon these facts, we filed our declaratory action; because of the knowledge that there would be future city manager reviews in open session; and because *The Times* would require that documents be produced regarding those reviews. At this point, our petition lacks the sufficient facts to go forward because we need to know the rights of the City when the future takes place. But with the absence of that same employee in the City Manager position, we will be dismissing our petition. Meanwhile, *The Fort Morgan Times* filed a Counterclaim which takes the position that they should have been given the documents that supported the final evaluation and that the City was put on notice that they were going to request these documents. We dispute that position. The Counterclaim basically asks the court to determine first whether or not the records being requested in the December 28, 2007, request by the FM Times were legally disposed of, which falls on the facts of whether or not adequate notice was provided to the City with regard to the preservation of those records. Then, once they get past that hurdle, if the court agrees with them, they are requesting that City Council be required to rewrite their evaluations of Mr. Nagy so that the court can then make a determination on whether or not those documents constitute work product or are covered by the deliberative process privilege – which are the exact same things we were asking the court to do because we knew that future evaluations would be held in open session.

There are several facts that have led Attorney Wells to believe that the Counterclaim does not have merit. First, no notice was provided to the City that the newspaper intended to request the individual evaluations prepared by City Council regarding Mr. Nagy's evaluation in December. All of those were draft documents; and, as stated under our retention policy that was adopted in 1999, all draft documents are destroyed because they were no longer needed. Those documents were legally disposed of. The performance review was signed on December 19th, and those draft documents were disposed of shortly thereafter. Mr. Nagy signed a sworn affidavit that on or about December 27th or 28th, he was in touch with Mr. Holland of *The Times*

and he told Mr. Holland that the draft evaluations were not in existence. *The Times* was on notice at or about the same time that they gave us their open records request that these documents or records had been disposed of. Yet, after 28th, and after the City took its position on the declaratory judgment action, there were several news articles in the newspaper stating that the City had somehow illegally destroyed these records; insinuating that the newspaper did not have any knowledge that these records were no longer in existence. It also states that in their Counterclaim.

The trial in this matter has been set from September 15th to September 17th – a three-day trial. Written discovery will commence on April 7th; then depositions will be taken. We will continue to work with *The Fort Morgan Times* to see if we can come to a compromise that will work for both parties. Attorney Wells will distribute a memo soon to Council that will discuss the ins and outs of what's likely to happen. He would like to better the relationship with *The Times* and work toward a compromise on this issue, but based on the approach *The Times* has taken, it does not look like that will happen at this time.

BIDS, MEETINGS AND ANNOUNCEMENTS

Clerk Strand announced open bid requests for electric underground materials for the Electric Department and for the integrated computer system for the Library. She also announced upcoming meetings for the City.

Mayor Darnell adjourned the March 18, 2008, regular meeting at 8:25 p.m.

Mayor

City Clerk