

March 4, 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, Fire Chief Brad Parker, Police Lieutenant Darin Sagel, City Treasurer Pixie Jones, Utility Directors Gary Dreessen and Bob Weimer, Community Development Director Pat Merrill, Community Services Director Don Shedd and City Clerk Andrea Strand.

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT TO LEASE REAL ESTATE BETWEEN THE CITY OF FORT MORGAN AND BRIAN KEMBEL

Attorney Wells informed Council that he had reviewed the previous issues concerning a well on the property and it had been included in the Lease Agreement. Director Shedd stated that Mr. Kembel was present to answer any questions.

Councilmember McAlister 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 NO. 08-03-01

AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT TO LEASE REAL ESTATE BETWEEN THE CITY OF FORT MORGAN AND BRIAN KEMBEL

WHEREAS, the City previously acquired the certain real property consisting of 310.43 acres, more commonly known as the Twamore Farms Trust Property; and

WHEREAS, pursuant to Paragraph 5(A) of the Deed of Conservation Easement, dated December 15, 2006, all agricultural uses shall be conducted using stewardship; and,

WHEREAS, the execution of the Contract to Lease Real Estate by and between the City of Fort Morgan and Mr. Kembel will ensure the preservation, management and maintenance of the agricultural uses of this property as required by the Deed of Conservation Easement.

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 CONTRACT TO LEASE REAL ESTATE, in the form attached hereto and incorporated herein by this reference.

INTRODUCED, PASSED, APPROVED AND ADOPTED this 4th 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 4th day of March, 2008.

/s/ Andrea Strand, City Clerk

BOB STOCK MUSIC CONCERT AND FESTIVAL COMMUNITY EVENT ON JULY 5, 2008

Acting City Manager Kuretich stated that City Staff had identified that Council has not approved any similar events where the sale or use of alcohol in a City park is allowed. The issues with the sale and consumption of alcohol in a public place or City park are prohibited by City ordinance and the Rules and Regulations for Parks and Open Space. He provided information from neighboring jurisdictions that have similar events in their city parks or city property. They provide for an exception in their ordinance allowing alcohol in these areas if guidelines are followed and the Chief of Police grants a permit. He felt that due to timeliness and a first-time request before Council, City Staff believes it would not be possible to consider an amendment to the current ordinance before this year's event and they felt it should be reviewed by the Tree, Parks and Recreation Advisory Board.

City Attorney Wells added that it would be possible to lease or rent the City Park to the applicant. This would allow the request to move forward until further consideration of what is required to permit the sale and use of alcohol in City parks and public spaces. He also recommended the request be reviewed by the Tree, Parks and Recreation Advisory Board.

In summary, Acting City Manager recommended that a lease or rental agreement could be arranged for this year's event to regulate the alcohol request and further consideration should require a possible amendment to the current ordinance and review by the Tree, Parks and Recreation Advisory Board. He would also recommend staffing requirements for adequate security, state-licensed, bonded personnel or police officers during the duration of the event. In addition to the recommended security, City Staff would be required to be present during the event for responsibility of the enforcement of the policies, rules, regulations, terms and conditions governing the use of the City park. A Special Event Permit would be required by a nonprofit organization that indicates what type of alcohol would be served. A notice posted on the property and public hearing would follow the permit application.

Wayne Johnson, who resides at 16041 Highway 34 and manages KFTM radio station, provided security information to Council and stated the music stage would not be by the beer garden. He added that he felt the addition of alcohol would enhance the atmosphere to the event.

Public Comment:

Councilmember Powers stated he did receive calls on this issue and all but one felt the City should not allow alcohol in the parks. Mayor Darnell received six calls; four were for the change to allow alcohol in the parks and two were against. Dennis Hall, who resides at 512 Maple in Fort Morgan, said he had attended several events where alcohol was present and one was almost tragic. He felt the consumption of alcohol should be limited by tickets and the hockey rink should be surrounded by a fence. Charles Bragg, who resides at 518 Prospect in Fort

Morgan, stated he would like to maintain the integrity of the ordinance and felt that we should not circumvent the ordinance.

Councilmember Simmons offered a motion to approve the In-Kind services provided by the City for the "BOB Stock" Music Concert and Festival to be held in Riverside Park on July 5, 2008. Her motion was seconded by Councilmember McAlister and duly carried.

Councilmember Powers offered a motion that the request for the beer garden for the "BOB Stock" Music Concert and Festival be denied. His motion was seconded by Councilmember Simmons and discussion followed. The vote by roll call was: Ayes: Councilmembers Powers, Shaver and Simmons. Nays: Mayor Darnell; Councilmembers Deal, McAlister and Schafer. The motion did not carry.

Councilmember Powers commented that he is not opposed to the event, he felt it was a great opportunity for the citizens to enjoy the Park; but he was against the alcohol issue.

Councilmember Schafer offered a motion to direct the City Attorney to draft a policy for a lease to be used by nonprofit organizations in conjunction with a large event for "BOB Stock." Her motion was seconded by Councilmember McAlister. The vote by roll call was: Ayes: Mayor Darnell; Councilmembers Deal, McAlister, Schafer and Simmons. Nays: Councilmembers Powers and Shaver.

Public Comment:

Pattie Rousselle, who resides at 16220 Road 19, stated that she grew up in Fort Morgan and she received many calls in support of this event. She stated that many other cities offer this type of event. Councilmember Schafer agreed that the City is missing out on revenue because other cities do allow alcohol at events in their parks. Dennis Hall would like to see this type of event limited to Riverside Park. Charles Bragg added he felt this was a dangerous precedence for the community. Fred Grantham, a City resident, encouraged Council to provide the organizers of the event an opportunity to try make it successful.

LETTER CONCERNING THE NORTHERN INTEGRATED SUPPLY PROJECT

Director Dreessen stated that a Letter to the Editor was printed in *The Fort Morgan Times* which contained information concerning the Northern Integrated Supply Project. He stated that he and Councilmember Powers would like to print a Letter to the Editor to provide additional information on the project to the public. They are presenting the letter to the Water Committee for their review before submitting it to the newspaper. He asked Council and City Staff to review and comment on the content of the letter.

Councilmember Simmons offered a motion to approve the letter. Her motion was seconded by Councilmember Shaver and duly carried.

FIRST READING OF ORDINANCE 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'"

Attorney Wells noted for Council consideration on first reading, an ordinance which would provide certain economic incentives to Delta Oil Field Tank Company, LLC. This ordinance would correct items that had been omitted by an oversight in Ordinance No.1056 adopted by Council on November 6, 2007; said Ordinance being in words, letters and figures as follows, to-wit:

ORDINANCE NO. _____

**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.

6. 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.

[SEAL]

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

BY: /s/ Jack L. Darnell
Mayor

ATTEST:

/s/ Andrea J. Strand
City Clerk

Councilmember Schafer offered the following Resolution 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 that the foregoing Ordinance entitled above; and the same is hereby ordered published in the City of Fort Morgan, Colorado, not less than ten days before further consideration; and that said Ordinance again be presented to this Council at the expiration of said period of publication for final action thereof.

PASSED, APPROVED AND ADOPTED this 4th 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.

FIRST READING OF AN ORDINANCE ENTITLED, “AN ORDINANCE ESTABLISHING THE CITY’S POLICY FOR DAMAGES CAUSED BY SANITARY SEWER BACKUPS IN PRIVATE RESIDENCES WITHIN THE CITY OF FORT MORGAN”

Attorney Wells informed Council that Acting City Manager Kuretich had facilitated a City Staff meeting to discuss this policy. The Staff felt that the ordinance presented tonight did not address the problem of access to the easements, but does allow the citizens compensation or a good faith payment in the event there is a sewer backup. Staff was also concerned as to the fiscal impact on the City. He then asked Council to consider the following changes to the ordinance as presented:

- Limit the number of good faith payments to one payment every five years.
- Make all payments subject to the discretion of the City Manager, with no appeal rights.
- Provide that no payment shall be made until the City finds that the homeowner has cleared all obstructions from the City’s easements.
- Provide authority to the City Manager to negotiate the purchase of additional easement space in areas where the space is necessary and to submit the information to Council for approval.
- Provide that this policy be retroactive to September 1, 2007.
- Make it clear that no payment shall be made unless the City Manager approves the documentation provided by the homeowner.

Councilmember Schafer stated that she felt Council initiated this as a way to offer a good faith payment for the inconvenience of a sewer backup. It was not intended to address the easement access issue. She felt that these were two separate issues. Councilmember Deal suggested that people should get insurance coverage for sewer backups if they have had problems. Director Dreessen added that his Department has been directed to clean problem sewer areas every year.

Said Ordinance being in words, letters and figures as follows, to-wit:

ORDINANCE NO. _____

**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 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 discretions 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 additional is necessary for the City's 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.

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

BY: /s/ Jack L. Darnell
Mayor

ATTEST:

/s/ Andrea J. Strand
City Clerk

Councilmember Powers 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 that the foregoing Ordinance entitled above; and the same is hereby ordered published in the City of Fort Morgan, Colorado, not less than ten days before further consideration; and that said Ordinance again be presented to this Council at the expiration of said period of publication for final action thereof.

PASSED, APPROVED AND ADOPTED this 4th 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.

FIRST READING OF AN ORDINANCE 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"

Director Dreessen informed Council that the Ordinance presented was necessary to comply with requirements from Northern Colorado Water Conservancy District; said Ordinance being in words, letters and figures as follows, to-wit:

ORDINANCE NO. _____

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

ATTEST:

BY: /s/ Jack L. Darnell
Mayor

/s/ Andrea J. Strand
City Clerk

Councilmember Powers offered the following Resolution 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 that the foregoing Ordinance entitled above; and the same is hereby ordered published in the City of Fort Morgan, Colorado, not less than ten days before further consideration; and that said Ordinance again be presented to this Council at the expiration of said period of publication for final action thereof.

PASSED, APPROVED AND ADOPTED this 4th 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 CITY ATTORNEY TO BE THE SPOKESPERSON FOR THE CITY CONCERNING FORMER CITY MANAGER MICHAEL NAGY

Mayor Darnell stated he felt that Council and the City should have one spokesman for issues concerning former City Manager Michael Nagy. Attorney Wells added that he would direct any employment issues to Director Jody Prentice.

Councilmember Simmons offered a motion to authorize City Attorney Jeffrey Wells as the City's spokesman for all issues concerning Michael Nagy. Her motion was seconded by Councilmember Schafer and duly carried.

DISCUSSION AND/OR ACTION ON TWO PROPOSED RELEASE AGREEMENTS RELATED TO FORMER CITY MANAGER MICHAEL NAGY

Attorney Wells stated that he has provided Council with two different agreements which he and Mr. Nagy's attorney have approved. An Exhibit attached is the resignation letter Mr. Nagy is proposing, if that agreement is accepted. Discussion continued concerning the resignation agreement, termination agreement and a press release.

Councilmember Powers offered a motion to accept the resignation agreement as presented. His motion was seconded by Councilmember Shaver and duly carried.

AGENDA FOR THE CITY COUNCIL RETREAT ON MARCH 8TH

Acting City Manager Kuretich presented the Agenda for the upcoming retreat. No one requested changes.

DATE: Saturday, March 8, 2008

TIME: 8:30 a.m.

PLACE: Fort Morgan Police Department
Training Room
901 East Beaver Avenue
Fort Morgan, CO

Councilmembers will meet with City staff in a retreat to discuss operational issues and priorities for 2008.

8:15 – 8:30 a.m. Continental Breakfast
Welcome and Introduction

- 8:30 – 9:00 a.m. Consideration of City Manager Position Profile and Timeline for Recruitment and Facilitated Q & A – Keith Kuretich
- 9:00 – 9:15 a.m. Financial Report and Facilitated Q & A – Pixie Jones
- 9:15 – 9:45 a.m. Downtown Improvements Presentation (PowerPoint) and facilitated Q&A – Pat Merrill
- 9:45 – 10:00 a.m. Break
- 10:00 – 10:45 a.m. Determine Short-Term and Long-Range Council Goals and Objectives
- 10:45 – 11:15 a.m. Annexation Procedures and Facilitated Q&A – Jeff Wells, Pat Merrill
- 11:15 a.m. –
12:15 p.m. City Council and Staff Visioning the Future
(e.g., Airport, NISP, Platte Avenue Lateral, Water Purchase, Water Audit, Water Rate, COWARN, City Farm House, Circle Drive, Sanitary Sewer Backup Policy, Easement Issues, Golf Course, and Museum)
- 12:15 p.m. –
12:45 p.m. Lunch [Training Room]
Public Process/City Relations with the Community and Facilitated Q&A – Keith Kuretich
- 12:45 – 1:00 p.m. Discuss a Council/Staff Retreat for April 29, 2008
Summary and Wrap Up
- Adjourn

All times are approximate. The public is welcome to attend this meeting.

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:

CONSENT AGENDA

- A. Approve the minutes from the special meeting of February 12, 2008.
- B. Approve the minutes from the regular meeting of February 19, 2008.
- C. Second and final reading of Ordinance No. 1063 and request to publish by title only.

ORDINANCE NO. 1063

AN ORDINANCE ADOPTING THE WATER CONSERVATION PLAN OF THE CITY OF FORT MORGAN AND AUTHORIZING THE DIRECTOR OF UTILITIES TO MAKE MINOR MODIFICATIONS TO THE PLAN NECESSARY FOR THE IMPLEMENTATION OF NEW MEASURES, REGULATIONS, AND MODIFICATIONS FROM EXISTING CONDITIONS THAT AFFECT THE USE OF WATER

WHEREAS, previously in June 1996, the City of Fort Morgan adopted a Water Conservation Plan; and,

WHEREAS, pursuant to the “Water Conservation Act of 2004”, C.R.S. § 37-60-126, it has become necessary to update the City’s Water Conservation Plan as previously adopted to reflect changes since the adoption of the original plan;

WHEREAS, Article IV, Sec. 4, provides, “for the construction, maintenance, operation, and disposition of public improvements, public works, public utilities, public services, and public buildings...”; and,

WHEREAS, the intention of this plan is to provide flexibility to allow for changes in the future; and,

WHEREAS, the Director of Utilities shall oversee the administration of the plan and from time to time need to make minor modifications to this plan due to the implementation of new measures, regulations and modifications to existing conditions that affect the use of water.

BE IT ORDAINED BY THE COUNCIL OF FORT MORGAN:

SECTION 1: The Council of the City of Fort Morgan hereby adopts the Water Conservation Plan incorporated herein by this reference.

SECTION 2: The Director of Utilities shall be given the authority to make minor modifications to the plan necessary for the implementation of new measures, regulations and modifications to existing conditions that affect the use of water.

EFFECTIVE DATE.

This Ordinance shall be in full force and effect five (5) days after publication.

READ AND PASSED ON FIRST READING AND ORDERED PUBLISHED IN FULL on the 19th day of February, 2008.

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

[SEAL]

BY: /s/ Jack L. Darnell
Mayor

/s/ Andrea J. Strand
City Clerk

PASSED, APPROVED AND ADOPTED ON FINAL READING AND ORDERED PUBLISHED by title only the 4th day of March, 2008.

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

[SEAL]

BY: /s/ Jack L. Darnell
Mayor

/s/ Andrea Strand
City Clerk

All matters listed under Item 12, 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 4th 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.

PUBLIC COMMENT / AUDIENCE PARTICIPATION

Dennis Hall, who resides at 512 Maple Street in Fort Morgan, stated that during the City's spring clean up would be a good time for homeowners to start cleaning up access for easements.

Larry Carr, who resides at 308 South Sherman Street in Fort Morgan, addressed Council and was concerned about the issue of the City and recent reports in *The Fort Morgan Times* concerning Michael Nagy. He felt that many employees did not have the same opinion as was reported in the newspaper. He felt Mr. Nagy did not communicate with staff and felt during the budget process items were cut without consideration of staff. As a citizen, he felt the Council should consider a local person for the replacement of the City Manager. He felt the newspaper was unfairly demeaning to Council.

REPORTS

Acting City Manager Kuretich reported meeting with various staff on pending projects and that he received a letter of resignation from Jonathan Rhodes, Golf Course Maintenance Supervisor.

Director Weimer reported that the Electric Department received an award for 100 years of service and provided a plaque that was presented to the Department.

Director Dreessen thanked *The Fort Morgan Times* for providing information to the public on paper towels being flushed and causing damages.

Lieutenant Sagel reported on activities for the Police Department. He also provided information on residential burglaries that had occurred.

Director Merrill reported that he has received 13 bids for the Airport consultant and also provided information on various other activities.

City Attorney Wells provided Council with an update on the lawsuit with *The Fort Morgan Times*. He stated that the City Clerk had placed a call to Mr. Holland concerning some of the factual statements made in recent stories. He also reminded citizens that they have the right to request information from the City.

Councilmember Powers stated that he and the Mayor had attended a legislative workshop with the Colorado Municipal League. He also mentioned the Mayor of Northglenn is the new President for the National League of Cities.

BIDS, MEETINGS AND ANNOUNCEMENTS

Clerk Strand announced various bids, meetings and announcements.

ADJOURN

Mayor Darnell adjourned the March 4, 2008, regular meeting at 9:23 p.m.

Mayor

City Clerk