

ORDINANCE NO. 1038

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

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

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

Section 1: That the City of Fort Morgan, Colorado has determined to apply for a contract providing for the beneficial use of Thirty-Six (36) acre-feet of water from the Northern Colorado Water Conservancy District within the boundaries of the Northern Colorado Water Conservancy District.

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

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

Applicant: City of Fort Morgan, Colorado, a Colorado municipal corporation. The governing body of a Colorado municipal corporation acting in its governmental capacity, hereby applies to Northern Colorado Water Conservancy District, a political subdivision of the State of Colorado, organized and existing by virtue of Title 37, Article 45, Colorado Revised Statutes, 1973, for a contract for the right to beneficially use Colorado-Big Thompson Project water under the following terms and conditions:

1. The quantity of water herein requested by Applicant for annual application to beneficial use is Thirty-Six (36) acre-feet to be used so long as the Applicant fully complies with all of the terms, conditions, and obligations hereinafter set forth.
2. It is understood and agreed by the Applicant that any water provided for use under this contract by the Board of Directors of said District shall be primarily for domestic, irrigation, or industrial use within or through facilities or upon lands owned or served by said Applicant, provided however, that all lands, facilities, and serviced areas which receive benefit from the use of water (whether water service is provided by direct delivery, by exchange, or otherwise) shall be situated within the boundaries of the Northern Colorado Water Conservancy District.
3. Applicant agrees that an acre-foot of water as referred to herein is defined as being one-three-hundred-ten-thousandth ($1/310,000$) of the quantity of water annually declared by the Board of Directors of the District to be available for delivery from the water supplies of the District. Applicant agrees that such water shall be delivered from the works of the District at such existing District delivery point or points as may be specified by the Applicant and that the water delivery obligation of the District shall terminate upon release of water from said works. Further, the Applicant agrees that on November 1 of each year, any water undelivered from the annual quantity made available to the Applicant shall revert to the water supplies of the District.
4. Applicant agrees to pay annually in advance for the amount of water herein provided for use under this contract by the Board of Directors of said District at a price per acre-foot to be fixed annually by said Board; and, further, agrees that the initial annual payment shall be made, in full, within fifteen (15) days after the date of notice from the District that the initial payment is due hereunder. Said notice will advise the Applicant, among other things, of the water year to which the initial payment shall apply and the price per acre-foot which is applicable to that year. Annual payments for each water year thereafter shall be made in advance by the Applicant on or before each October 1, thirty-one (31) days prior to the start of the water year, at the rate per acre-foot established by the Board for municipal water use in that water year. For the purpose of this water contract, the water year is defined to be from November 1 to October 31 of the following year. If an annual payment, as herein provided, is not made by the due date, written notice thereof, by certified mail, will be given by said District to the Applicant at the following address: P.O. Box 100, Fort Morgan, Colorado 80701.
Water deliveries shall be suspended as of November 1 of the new water year until payment of the delinquency is made. If payment is not made within ninety (90) days after the date of mailing of said written notice, Applicant shall have no further right, title, or interest under this contract; and the right of use of water, as herein made, shall be disposed of at the discretion of the Board of Directors of said District in accordance with the applicable provisions of C.R.S. §§ 37-45-132 and 7-42-104. Any proceeds from any sale of the right of use to another allottee shall be paid to Applicant over and above the District's actual expense in terminating and disposing of the contract right of use.

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

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

READ, PASSED ON FIRST READING AND ORDERED PUBLISHED this 19th day of December, 2006.

THE CITY COUNCIL OF THE CITY
OF FORT MORGAN, COLORADO

[SEAL]

BY: */s/ Jack L. Darnell*
Mayor

ATTEST:

/s/ Nancy J. Lockwood
City Clerk

PASSED, APPROVED AND ADOPTED ON FINAL READING AND ORDERED
PUBLISHED BY TITLE ONLY on this 2nd day of January, 2007.

THE CITY COUNCIL OF THE CITY
OF FORT MORGAN, COLORADO

[SEAL]

ATTEST:

BY: */s/ Jack L. Darnell*
Mayor

Nancy J. Lockwood
City Clerk

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

CERTIFICATE

I, Nancy Lockwood, the duly appointed, qualified and acting Clerk of the City of Fort Morgan, Colorado, do hereby certify and attest that the foregoing **Ordinance No. 1038** 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 19th day of December, 2006. Said **Ordinance**, as proposed, was duly read at length at said regular meeting, and thereafter the same was, on the 22nd day of December 2006 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 2nd day of January, 2007. Within five (5) days after its final passage, said **Ordinance** was published by title only in the *Fort Morgan Times*, a daily newspaper of general circulation published and printed in the City of Fort Morgan, Morgan County, Colorado.

/s/ Nancy J. Lockwood
City Clerk