

DATE: September 20, 2011
STAFF: Darin Atteberry

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

17

SUBJECT

Resolution 2011-086 Authorizing the Initiation of Exclusion Proceedings of Annexed Properties Within the Territory of the Poudre Valley Fire Protection District and the Territory of the Windsor-Severance Fire Protection District.

EXECUTIVE SUMMARY

This Resolution authorizes the City Attorney to file a petition in Larimer County District Court to exclude properties annexed into the City in 2010 from the Poudre Valley Fire Protection District and the Windsor-Severance Fire Protection District in accordance with state law and to allow for the provision of fire protection services to such properties by the Poudre Fire Authority.

BACKGROUND / DISCUSSION

State law (CRS § 32-1-502 et seq) requires that Council adopt a resolution agreeing to provide fire protection service to areas newly annexed into the City that were previously served by a fire protection district.

In 2010, the City annexed property in the McMurry Natural Area annexation that was within the territory of the Poudre Valley Fire Protection District. In 2010, the City also annexed property in the Fossil Creek 392 annexation that was within the Windsor-Severance Fire Protection District. The relevant legal descriptions are described in Exhibit "A" attached to the Resolution.

Prior to annexation, residents within the properties described on Exhibit "A" have paid ad valorem property taxes to the Poudre Valley Fire Protection District or the Windsor-Severance Fire Protection District for fire protection services. Subsequent to annexation, the annexed properties are subject to ad valorem property taxes to the City of Fort Collins for City services, including fire protection. From the date of such annexations, the City has provided municipal services to said properties, including police and fire services.

This Resolution sets forth the City's agreement to continue to provide fire protection services to the previously annexed properties and allows the City Attorney to begin the process for an order of exclusion.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

RESOLUTION 2011-086
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE INITIATION OF EXCLUSION PROCEEDINGS
OF ANNEXED PROPERTIES WITHIN THE TERRITORY
OF THE POUFRE VALLEY FIRE PROTECTION DISTRICT AND THE
TERRITORY OF THE WINDSOR-SEVERANCE FIRE PROTECTION DISTRICT

WHEREAS, in 2010, the City completed the McMurry Natural Area annexation and the Fossil Creek 392 annexation; and

WHEREAS, the property annexed in the McMurry Natural Area annexation was within the Poudre Valley Fire Protection District, and the property annexed in the Fossil Creek 392 annexation was within the Windsor-Severance Fire Protection District; and

WHEREAS, C.R.S. Section 32-1-502 requires an order of exclusion from the district court to remove annexed properties from special district territories; and

WHEREAS, under the provisions of C.R.S. Section 32-1-502(2)(a), any order excluding property from the boundaries of a special district requires the governing body of the annexing municipality to agree, by resolution, to provide the services previously provided by the special district to the area described in the petition for exclusion from and after the effective date of the exclusion order; and

WHEREAS, from the date of such annexations, the City has provided municipal services to said properties, including police and fire services; and

WHEREAS, the residents within the properties described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Annexed Properties") have paid ad valorem property taxes to the Poudre Valley Fire Protection District or the Windsor-Severance Fire Protection District for fire protection services prior to annexation and, subsequent to annexation, will instead pay ad valorem property taxes to the City for City services, including fire protection; and

WHEREAS, it is the desire and intent of the City Council to reflect by this Resolution its willingness to provide fire protection services to the annexed properties within the McMurry Natural Area annexation and to exclude all such properties from the Poudre Valley Fire Protection District; and, to do the same for the properties within the Fossil Creek 392 annexation and to exclude those properties from the Windsor-Severance Fire Protection District; and

WHEREAS, the City Council wishes to properly exclude the Annexed Properties from the fire districts in accordance with law and to allow for the provision of fire protection services to such properties by the Poudre Fire Authority.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby agrees that the properties within the McMurry Natural Area annexation should be excluded from the Poudre Valley Fire Protection District.

Section 2. That the City Council hereby agrees that the properties within the Fossil Creek 392 annexation should be excluded from the Windsor-Severance Fire Protection District.

Section 3. That the City Council hereby authorizes the City Attorney to file a petition in the Larimer County District Court pursuant to CRS Section 32-1-502 for an order to exclude the Annexed Properties as described above, the boundaries of which are described on Exhibit "A".

Section 4. That the City Council hereby agrees to provide fire protection service, through the Poudre Fire Authority, to the Annexed Properties.

Section 5. That the City Council hereby finds that a plan for the disposition of assets of either the Poudre Valley Fire Protection District or the Windsor-Severance Fire Protection District is not necessary.

Section 6. That the City Manager is authorized to enter into agreements with the fire protection districts for the continuation of services for the Annexed Properties, which agreements shall be substantially in the form of Exhibit "B" attached hereto, subject to such modifications as the City Manger may, in consultation with the City Attorney, deem necessary to protect the interests of the City.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 20th day of September A.D. 2011.

Mayor

ATTEST:

Chief Deputy City Clerk

EXHIBIT A

FOSSIL CREEK 392

A TRACT OF LAND SITUATE IN THE COUNTY OF LARIMER, STATE OF COLORADO, TO WIT:

NW 1/4 OF SECTION 22, TOWNSHIP 6 NORTH, RANGE 68 WEST OF THE 6TH P.M., LARIMER COUNTY, COLORADO. CONSIDERING THE NORTH LINE OF SAID SECTION 22 AS BEARING N 89° 40' 32" E AND WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO. COMMENCING AT THE NW CORNER OF SAID SECTION 22, THENCE N 89° 40' 32" E, 60.01' TO THE TRUE POINT OF BEGINNING.

THENCE CONTINUING ON THE NORTH LINE OF SAID SECTION 22, SAID LINE ALSO BEING THE CENTERLINE OF A COUNTY ROAD N 89° 40'32" E, 1214.38 FEET; THENCE LEAVING SAID SECTION LINE S 00° 19' 28" E, 33.41 FEET TO THE WESTERLY RIGHT OF WAY LINE OF INTERSTATE 25, THENCE CONTINUING ALONG SAID RIGHT OF WAY LINE ON THE FOLLOWING COURSES:

S 81° 21' 28" E, 303.80 FEET;
N 89° 33' 02" E, 450.02 FEET;
S 31° 12' 58" E, 553.67 FEET;
S 18° 25' 02" E, 70.21 FEET;

THENCE LEAVING SAID RIGHT OF WAY LINE S 89° 34' 58"W, 2279.35 FEET; THENCE NO 00° 28' 50"E, 625.37 FEET TO THE POINT OF BEGINNING. THUS DESCRIBED TRACT CONTAINS 28.974 ACRES AND IS SUBJECT TO A 30 FOOT RIGHT OF WAY ALONG THE NORTH SIDE FOR COUNTY ROAD AND ANY EASEMENTS OR RIGHTS OF WAY AS NOW OF RECORD.

MCMURRY NATURAL AREA ANNEXATION

A tract of land located in the south half of Section 2, Township 7 North, Range 69 West of the Sixth Principal Meridian, Larimer County, Colorado, being more particularly described as follows;

Considering the west line of the Southwest Quarter of the said Section 2 as bearing South 00 degrees 39 minutes 49 seconds West between a 2.5" Aluminum Cap monument PLS 4502 at the West Quarter corner of Section 2 and a 3" Aluminum Cap monument PLS 20123 at the Southwest corner of Section 2, based upon GPS observation and the City of Fort Collins coordinate base, and with all bearings contained herein relative thereto;

Commencing at the said West Quarter corner of Section 2;

THENCE along the west line of the said Southwest quarter of Section 2, South 00 degrees 39 minutes 49 seconds West for a distance of 120.00 feet to the south line of that certain tract of land described in a Warranty Deed recorded September 17, 2004 at Reception No. 20040091973 records of the Clerk and Recorder of the said Larimer County;

THENCE along the said south line, South 89 degrees 19 minutes 41 seconds East for a distance of 30.00 feet to the east right of way of North Shields Street, and to the TRUE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE continuing along the said south line, South 89 degrees 19 minutes 41 seconds East for a distance of 420.00 feet to the east line of the said tract described at Reception No. 20040091973;

THENCE along the said east line, North 00 degrees 39 minutes 49 seconds East for a distance of 120.00 feet to the north line of the said southwest quarter of Section 2;

THENCE along the said north line, South 89 degrees 19 minutes 41 seconds East for a distance of 1466.41 feet to the easterly line of that certain tract of land described in a Warranty Deed recorded February 1, 1962 in Book 1163 at Page 552 records of the said Clerk and Recorder;

THENCE along the said easterly line the following ten (10) courses and distances, (1) South 10 degrees 00 minutes 19 seconds West for a distance of 241.70 feet;

(2) South 34 degrees 02 minutes 41 seconds East for a distance of 148.78 feet;

(3) South 60 degrees 23 minutes 41 seconds East for a distance of 232.97 feet;

(4) South 89 degrees 19 minutes 41 seconds East for a distance of 473.50 feet to the east line of the said Southwest Quarter of Section 2;

(5) along the said east line, South 00 degrees 26 minutes 45 seconds West for a distance of 94.30 feet;

(6) leaving the said east line, South 89 degrees 21 minutes 26 seconds East for a distance of 104.40 feet;

(7) South 09 degrees 31 minutes 41 seconds East for a distance of 81.68 feet;
(8) South 27 degrees 03 minutes 41 seconds East for a distance of 267.53 feet;
(9) South 33 degrees 13 minutes 19 seconds West for a distance of 239.84 feet;
(10) South 47 degrees 36 minutes 19 seconds West for a distance of 153.11 feet to the said east line of the Southwest Quarter of Section 2;
THENCE along the said east line, South 00 degrees 26 minutes 45 seconds West for a distance of 102.25 feet to the southwesterly line of that certain tract of land described in a Warranty Deed recorded August 12, 1980 in Book 2061 at Page 621 records of the said Clerk and Recorder;
THENCE along the said southwesterly line, North 23 degrees 10 minutes 38 seconds West for a distance of 100.58 feet to the southerly line of that certain tract of land described in a Warranty Deed recorded November 8, 1979 in Book 2003 at Page 881 records of the said Clerk and Recorder;
THENCE along the said southerly line, North 52 degrees 53 minutes 59 seconds West for a distance of 134.49 feet to the southerly line of that certain tract of land described in a Warranty Deed recorded February 1, 1962 in Book 1163 at Page 554 records of the said Clerk and Recorder;
THENCE along the said southerly line as described in Book 1163 at Page 554, North 63 degrees 07 minutes 41 seconds West for a distance of 69.90 feet;
THENCE continuing along the said southerly line, North 68 degrees 57 minutes 41 seconds West for a distance of 46.95 feet returning to the said southerly line as described in Book 2003 at Page 881;
THENCE along the said southerly line as described in Book 2003 at Page 881 the following three (3) courses and distances, (1) South 84 degrees 50 minutes 25 seconds West for a distance of 185.62 feet;
(2) South 69 degrees 17 minutes 06 seconds West for a distance of 192.35 feet;
(3) North 76 degrees 55 minutes 09 seconds West for a distance of 6.29 feet returning to the said southerly line as described in Book 1163 at Page 554;
THENCE along the said southerly line as described in Book 1163 at Page 554, South 66 degrees 19 minutes 19 seconds West for a distance of 18.58 feet;
THENCE continuing along the said southerly line, North 65 degrees 13 minutes 41 seconds West for a distance of 54.88 feet returning to the said southerly line as described in Book 2003 at Page 881;
THENCE along the said southerly line as described in Book 2003 at Page 881 the following four (4) courses and distances, (1) North 76 degrees 55 minutes 09 seconds West for a distance of 98.15 feet;
(2) North 66 degrees 50 minutes 19 seconds West for a distance of 201.58 feet;
(3) North 83 degrees 44 minutes 02 seconds West for a distance of 208.68 feet;
(4) South 89 degrees 14 minutes 21 seconds West for a distance of 139.43 feet to the southerly line of certain tract of land described in a Warranty Deed recorded July 27, 1979 in Book 1973 at Page 059 records of the said Clerk and Recorder;
THENCE along the said southerly line as described in Book 1973 at Page 059 the following eight (8) courses and distances, (1) South 88 degrees 48 minutes 10 seconds West for a distance of 13.42 feet;

(2) South 84 degrees 05 minutes 19 seconds West for a distance of 126.74 feet;
(3) North 82 degrees 54 minutes 13 seconds West for a distance of 192.08 feet;
(4) North 62 degrees 04 minutes 03 seconds West for a distance of 187.02 feet;
(5) North 44 degrees 23 minutes 40 seconds West for a distance of 222.05 feet;
(6) North 38 degrees 01 minutes 50 seconds West for a distance of 330.57 feet;
(7) North 59 degrees 23 minutes 10 seconds West for a distance of 111.76 feet;
(8) North 70 degrees 32 minutes 16 seconds West for a distance of 352.40 feet to
the said east right of way of North Shields Street;
THENCE along the said east right of way, North 00 degrees 39 minutes 49
seconds East for a distance of 236.41 feet to the point of beginning.

The above described tract contains 48.793 acres more or less.

**MEMORANDUM OF AGREEMENT FOR
CONTINUATION OF SERVICE
(_____ FIRE PROTECTION DISTRICT/CITY OF FORT COLLINS)**

THIS AGREEMENT, is made and entered into this _____ day of ____, 2011, by and among the CITY OF FORT COLLINS, COLORADO, a municipal home-rule corporation (hereinafter "City"), and the _____ FIRE PROTECTION DISTRICT, a special statutory district within the State of Colorado (hereinafter "District");

WHEREAS, the City has recently filed pursuant to Section 32-1-502(1)(a), C.R.S., a Petition with the District Court in and for Larimer County, Colorado for an Order excluding certain properties from the territory of the District, which properties are shown on Exhibit "A" hereto attached, the contents of which are incorporated by reference herein; and

WHEREAS, said Petition is premised upon the prior annexation and inclusion of said properties within the municipal boundaries of the City; and

WHEREAS, it is the mutual desire of the City and the District to set forth their understanding and agreement with regard to the continuation of fire protection services to said properties, as well as remaining properties within the boundaries of the District and Poudre Fire Authority, as defined below;

NOW, THEREFORE, in consideration of the mutual covenants, conditions and obligations herein contained, the parties agree:

1. From and after the effective date of any Order of Exclusion issued by the District Court in response to the City's Petition, filed pursuant to Section 32-1-502(1)(a), which effective date is anticipated to be January 1, 2012, the City will continue to assume full and complete responsibility for fire protection services to the properties shown on Exhibit "A" hereto attached, the contents of which are incorporated by this reference. Such fire protection services shall be provided by Poudre Fire Authority ("PFA") pursuant to that certain intergovernmental agreement effective November 3, 1987, by and among the City and the District.

2. From and after the effective date of the Exclusion Order entered by the District Court in and for Larimer County, Colorado, the District shall have no further liability or responsibility with regard to the provision of fire protection services for such properties or any improvements thereon, other than the obligations existing under the aforementioned intergovernmental agreement creating PFA for the provision of regional fire and rescue services.

3. From and after the effective date of any Exclusion Order entered by the District Court in and for Larimer County, Colorado, the District agrees that the properties shown on Exhibit "A" shall be free from taxation by the District, other than mill levies assessed for purposes of paying outstanding bonded indebtedness and interest thereon, owed by the District effective immediately prior to the effective date of such Exclusion Order. Exclusion of the

requested property from the District and entry of an Exclusion Order by the District Court shall not affect any claim the District may have or the District's ability to make such claim for taxes which were certified by the District prior to the effective date of the Exclusion Order.

4. The District will retain ownership of all equipment and facilities now owned by the District, including such facilities as may be located within the municipal boundaries of the City of Fort Collins, if any.

5. The District will, through its agreement with PFA, continue to provide fire protection services to those properties located within the boundaries of the District, as modified by the exclusion of territory pursuant to the anticipated Exclusion Order requested from the District Court.

6. In the event that any bonded indebtedness exists as of the effective date of the anticipated Exclusion Order, the Board of Directors of the District shall continue to assess a proportional mill levy against the properties identified on Exhibit "A" hereto attached, together with other properties within the boundaries of the District, sufficient to repay the principal and accrued interest on any such bonded indebtedness in accordance with the terms and provisions of the instruments pursuant to which said obligations have been created and incurred.

7. Nothing within this Agreement shall modify or terminate any obligations of the City or the District with respect to existing obligations under the intergovernmental agreement forming the PFA, including any future amendments or modifications thereto as the parties may hereafter agree.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

ATTEST:

CITY OF FORT COLLINS, COLORADO,
a municipal home-rule corporation

City Clerk

Darin Atteberry, City Manager

Approved as to form:

Assistant City Attorney

_____ FIRE PROTECTION
DISTRICT,
a special statutory district within the State of
Colorado

By: _____
Chairman, Board of Directors

Approved as to form:

By: _____
Attorney for Respondent
_____ Fire Protection District