

August 4, 2009

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 Debra J. Forstedt
Councilmember James A. Powers
Councilmember Ron Shaver
Councilmember Alberta M. Simmons

Excused Absence: Councilmember Terry McAlister

The meeting was also attended by City Manager Pat Merrill, City Attorney Jeffrey Wells, Police Chief Keith Kuretich, Director of Water Resources/Wastewater Treatment Gary Dreessen, Municipal Engineer Brad Curtis, Community Services Director Don Shedd, Community Development Director David Callahan, Treasurer Terri Schafer and City Clerk Andrea Strand.

Mayor Darnell presented Municipal Judge Charles Hobbs and his wife, Janet, a picture of Judge Hobbs. He also presented him with \$150 in Chamber bucks in appreciation of his service to the City. Judge Hobbs was recently appointed by Governor Ritter to fill a position as a District Court Judge. Judge Hobbs thanked the Council for the opportunity to be of service to the City.

SECOND AND FINAL READING OF ORDINANCE NO. 1085 ENTITLED, "AN ORDINANCE SUBMITTING TO A VOTE OF THE REGISTERED ELECTORS OF THE CITY OF FORT MORGAN, THE PROPOSED AMENDMENTS TO CHAPTER 20 AND CHAPTER 3 OF THE CODE OF THE CITY OF FORT MORGAN," AND REQUEST TO PUBLISH BY TITLE ONLY

Attorney Wells presented for Council consideration on second and final reading, Ordinance No. 1085 entitled, "AN ORDINANCE SUBMITTING TO A VOTE OF THE REGISTERED ELECTORS OF THE CITY OF FORT MORGAN, THE PROPOSED AMENDMENTS TO CHAPTER 20 AND CHAPTER 3 OF THE CODE OF THE CITY OF FORT MORGAN." He clarified that this Ordinance only allowed for alcohol in Riverside Park under specific and limited circumstances by special permit issued by the City and the Colorado Department of Revenue. The open container law in our City would still be enforced. He requested that the Ordinance be published by title only since there were no changes since the first reading.

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

RESOLUTION

WHEREAS, an Ordinance entitled above was duly and legally presented to the City Council of Fort Morgan, Colorado, at a meeting held on the 4th day of August, 2009, 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. 1085, being in words, letters and figures as follows, to-wit:

ORDINANCE NO. 1085

**AN ORDINANCE SUBMITTING TO A VOTE
OF THE REGISTERED ELECTORS OF THE CITY OF FORT MORGAN,
THE PROPOSED AMENDMENTS TO CHAPTER 20 AND CHAPTER 3 OF
THE *CODE OF THE CITY OF FORT MORGAN*.**

WHEREAS, the citizens of Fort Morgan have indicated the desire to allow the sale and consumption of alcoholic beverages in Riverside Park during special events; and,

WHEREAS, currently no alcoholic beverages can be sold or consumed in any city park; and,

WHEREAS, 12-48-105 and 12-48-107, C.R.S. provides municipalities with the authority to grant or deny a liquor license provided that the same standards for approval and denial applicable to the state licensing are used; and,

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

Section 1: That the following proposed changes to Chapter 20 and Chapter 3 of the *Code* of the City of Fort Morgan be submitted to the registered electors of the City as "Proposed *Code* Amendments No. 1" at the regular municipal election to be held on Tuesday, November 3, 2009:

Chapter 20

Sec. 20-29. CONSUMPTION AND Open containers of alcoholic beverages; penalty.

(a) Except as permitted by Section 12-47-411(3.5), C.R.S. AND THIS SECTION (e), it shall be unlawful for any person to possess or carry any open container of any fermented malt beverage, malt, vinous or spirituous liquor in any public park or on any public street, sidewalk, alley or other public way in the City or in any vehicle or conveyance thereon or on the grounds of any public school in the City.

(b) Any person found guilty of violating this Section shall be punished for each violation by a fine of not less than fifty dollars (\$50.00) and not more than one thousand dollars (\$1,000.00).

(c) It shall be an affirmative defense to a charge under this Section that the person charged was in possession of one (1) opened, but resealed container of not more than seven hundred fifty (750) milliliters of partially consumed vinous liquor which was lawfully removed from the licensed premises of a hotel and restaurant licensee pursuant to Section 12-47-411 (3.5), C.R.S. or Subsection (d) below.

(d) A hotel and restaurant licensee who permits a customer to remove a partially consumed bottle of vinous liquor from the licensed premises shall reseal the bottle with the original cork or other commercially manufactured stopper, and shall package the resealed bottle in another sealable container (bag or box).

e) IT SHALL BE LAWFUL FOR A PERSON TO POSSESS OR CARRY AND CONSUME A FERMENTED MALT BEVERAGE, MALT, VINOUS OR SPIRITUOUS LIQUOR IN A LICENSED AREA OF RIVERSIDE PARK SO LONG AS THE PERSON:

- (1) IS ATTENDING A SPECIAL EVENT;
- (2) HAS PURCHASED THE FERMENTED MALT BEVERAGE, MALT, VINOUS OR SPIRITUOUS LIQUOR FROM A VENDER WHO HAS OBTAINED A SPECIAL EVENT PERMIT UNDER TITLE 12, ARTICLE 48, C.R.S. AND A LIMITED PERMIT UNDER SECTION 3-2; AND,
- (3) AT ALL TIMES, POSSESS OR CARRIES AND CONSUMES THE BEVERAGE ONLY WITHIN THE LICENSED AREA OF RIVERSIDE PARK.

Chapter 3

Sec. 3-2. Sale or consumption in public or unlicensed premises.

(a) Except for the sale of medicinal liquors as hereinafter provided in Article II of this Chapter AND ALCOHOLIC BEVERAGES SOLD PURSUANT TO SUBDIVISION (b) OF THIS SECTION, it shall be unlawful for any person to sell, give away or consume any beverage having any alcoholic content whatever upon any street, avenue, alley, park or other public place within the City or at, in or upon the premises of any place of public resort within the City not licensed by the City and State to sell fermented malt beverages, malt, vinous or spirituous liquors.

(b) A LIMITED PERMIT FOR THE LAWFUL SALE OF ALCOHOL IN A DESIGNATED AREA OF RIVERSIDE PARK MAY BE GRANTED TO AN ORGANIZATION, AS DEFINED BY 12-48-102, C.R.S., THAT OBTAINS AND PROVIDES DOCUMENTATION OF THE FOLLOWING TO THE CITY CLERK:

- (1) A SPECIAL USE PERMIT UNDER TITLE 12, ARTICLE 48, C.R.S.;
- (2) DOCUMENTATION CONTAINING THE FOLLOWING INFORMATION:
 - (I) A DESCRIPTION OF THE EVENT;
 - (II) THE DATE AND TIME OF THE EVENT OR SERIES OF EVENTS;
 - (III) THE TIME THE SALE OF ALCOHOL WILL BEGIN AND END; AND
 - (IV) A DESCRIPTION OR IDENTIFICATION OF THE ALCOHOLIC BEVERAGE TO BE SOLD AND THE CONTAINERS IN WHICH IT WILL BE SUPPLIED; AND

(3) A SECURITY PLAN DEVELOPED WITH AND APPROVED BY THE FORT MORGAN POLICE DEPARTMENT THAT SETS FORTH THE PROCEDURE OR PLAN THE PERMIT HOLDER SHALL FOLLOW TO ADDRESS ISSUES INCLUDING BUT NOT LIMITED TO PUBLIC SAFETY AND ENFORCEMENT OF I.D. CHECKS.

(c) THE CITY CLERK SHALL ISSUE A LIMITED PERMIT FOR THE SALE OF ALCOHOL TO ANY ORGANIZATION THAT COMPLIES WITH SUBSECTION (b).

(d) (1) FOR PURPOSES OF THIS SECTION ONLY, A "LIMITED PERMIT" SHALL BE VALID FOR ONE SPECIAL EVENT AS DEFINED IN TITLE 12, ARTICLE 48, C.R.S. AND SHALL ON ITS FACE INDICATE THE EFFECTIVE DATE(S) AND THE NAME OF THE ORGANIZATION AUTHORIZED UNDER THE PERMIT FOR THE SALE OF ALCOHOL.

(2) A LIMITED PERMIT UNDER THIS SECTION MAY BE VALID FOR MORE THAN ONE (1) TWENTY-FOUR (24) HOUR DAY PROVIDED THAT THE SPECIAL EVENT IS AN EVENT THAT IS HELD ON MORE THAN ONE (1) TWENTY-FOUR (24) HOUR DAY. IF THE SPECIAL EVENT IS HELD ON MULTIPLE OCCASIONS OR IS A SERIES OF EVENTS, A LIMITED PERMIT MUST BE OBTAINED FOR EACH OCCASION OR INDIVIDUAL EVENT WITHIN THE SERIES PROVIDED THAT EACH OCCASION OR EVENT IS HELD NO LESS THAN TWO (2) DAYS APART, EXCLUDING FROM CALCULATION THE DAYS ON WHICH THE FIRST OR PERVIOUS OCCASION OR EVENT AND THE SUBSEQUENT OCCASION OR EVENT ARE HELD.

Section 2. That the following ballot language is hereby adopted for submitting Proposed Amendment to *Fort Morgan Municipal Code* to the voters at said election:

PROPOSED AMENDMENT TO FORT MORGAN MUNICIPAL CODE REGARDING ALCOHOL AT SPECIAL EVENTS AT RIVERSIDE PARK	
Shall Sec. 20-29 and Sec. 3-2 of the <i>Fort Morgan Municipal Code</i> (1994) be amended so that commencing on the fifth day after certification of the election alcohol will be permitted to be possessed and consumed in Riverside Park in designated areas as prescribed in a special event permit granted to a nonprofit organization for the sale of alcohol and whereas said permit must be obtained through application and approval by the local liquor licensing authority or City Council?	YES _____ NO _____

INTRODUCED AND PASSED UPON FIRST READING this 21st day of July, 2009, 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

[SEAL]

BY: /s/ Jack Darnell, Mayor

ATTESTED:

/s/ Andrea Strand, City Clerk

FINALLY PASSED, ADOPTED AND APPROVED this 4th day of August, 2009, for publication 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 Darnell, Mayor

ATTESTED:

/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. 1085 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 21st day of July, 2009. Said Ordinance, as proposed, was duly read at length at said regular meeting, and thereafter the same was, on the 24th day of July, 2009, 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 4th day of August, 2009. 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 4th day of August, 2009, the vote upon roll call being as follows: Ayes: Mayor Darnell; Councilmembers Deal, Forstedt and Shaver. Nays: Councilmembers Powers and Simmons. Absent: Councilmember McAlister.

FIRST READING OF AN ORDINANCE ENTITLED, "AN ORDINANCE TO AUTHORIZE THE CHANGE OF NAME FOR THE PERMIT CONVEYED TO SOURCEGAS WATTENBERG LLC, AS GRANTED UNDER ORDINANCE 1060"

Attorney Wells introduced for Council consideration on first reading, an Ordinance entitled, "AN ORDINANCE TO AUTHORIZE THE CHANGE OF NAME FOR THE PERMIT CONVEYED TO SOURCEGAS WATTENBERG LLC, AS GRANTED UNDER ORDINANCE 1060." Said Ordinance being in words, letters and figures as follows, to-wit:

ORDINANCE NO.

**AN ORDINANCE TO AUTHORIZE THE CHANGE OF NAME
FOR THE PERMIT CONVEYED TO SOURCEGAS WATTENBERG LLC,
AS GRANTED UNDER ORDINANCE 1060**

WHEREAS, on December 18, 2007, the Fort Morgan City Council passed Ordinance No. 1060, granting to SourceGas Wattenberg, LLC a permit authorizing and consenting to the construction, installation, operation and maintenance of a natural gas pipeline and related equipment and facilities within the City of Fort Morgan, pursuant to Sec. 22-B1 of the *Code of the City of Fort Morgan*; and,

WHEREAS, following a merger of all rights, privileges, powers, and obligations of both SourceGas Wattenberg and SourceGas Distribution LLC, SourceGas Distribution, LLC will hold the sole membership interest in both companies with SourceGas Distribution, LLC as the surviving entity; and,

WHEREAS, this merger does not contemplate a change in corporate control, management, or the operation of the pipeline; and,

WHEREAS, this name change will not affect any obligation to the City of Fort Morgan pursuant to Ordinance 1060.

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

Section 1. The City Council of the City of Fort Morgan hereby permits the name change resulting from the merger of SourceGas Wattenberg LLC and SourceGas Distribution LLC. Further, that such name change is hereby approved conditioned upon the written confirmation that all obligations and duties lawfully imposed on SourceGas Distribution LLC and more specifically SourceGas Wattenberg LLC, as permitted by Ordinance 1060 be satisfied.

Section 2. In addition to the previous requirements as provided under Ordinance 1060, SourceGas Distribution, LLC is required to notify the City of Fort Morgan in the event it undertakes any repairs or services within the City that may affect the function of the City's Gas Department.

Section 3. That this Ordinance shall take effect from and after its passage.

INTRODUCED, READ AND PASSED UPON FIRST READING this 4th day of August, 2009, 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 Darnell
Mayor

ATTEST:

/s/ Andrea Strand, City Clerk

FINALLY PASSED, ADOPTED AND APPROVED this ____ day of _____ 2009, for publication 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: _____
Mayor

ATTEST:

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 August, 2009, the vote upon roll call being as follows: Ayes: Mayor Darnell; Councilmembers Deal, Forstedt, Powers, Shaver and Simmons. Nays: None. Absent: Councilmember McAlister.

PRESENTATION OF A PROPOSED AGREEMENT FOR HIGH SPEED CONNECTIVITY FOR COMMERCIAL CUSTOMERS

Manager Merrill explained that this project began in 2002 and 2003 and, at the present time, City staff was trying to consider all options to provide service to the Fort Morgan School District and Morgan County under the conditions in the original agreement.

Attorney Wells explained that after reviewing the statutes, his interpretation was that the citizens needed to vote on this at the upcoming election in November. Manager Merrill stated he had contacted the businesses and explained the situation.

Toby Gertge, Northeast Colorado Health Department, stated that his agency was not supporting any one vendor, but they are a partner in government. They have a vested interest in this project and they serve six counties.

Ken Sager, Kentec Communications, was concerned with the delay in the project. He had been speaking with the City for several months and would like to negotiate an access to the right of way and pursue a franchise agreement. Director Albrandt explained the difference between the MNT and the backbone of the infrastructure.

Brian Amack, Fort Morgan School District, stated that their agency had a somewhat different opinion of the ownership and that he was at the meeting when the City approved the \$300,000 from the electric fund. The beanpole money brought in a good portion of money to provide this. Six agencies made up the agreement. Equipment was paid out of the beanpole fund. Sixty-

Eight percent (68%) of the network is for the City of Fort Morgan's and the rest is for the members are the beanpole project. The School District needs four strands (two pair) to ensure they have an investment in the network and they need access into the City's data closet. Manager Merrill read a portion from a memo from Alderman Don Clutter, dated October 3, 2002, which stated that if the City chose to provide the infrastructure, it does not mean that we would be an internet service provider. The City could sell bandwidth to internet service providers who would transmit to residences and businesses. If requested by an individual business to purchase bandwidth, the City could sell bandwidth to such business. Attorney Wells stated that the spirit of cooperation had been there throughout the history of the project. Details had been lost with the changing of staff. Everyone is still on the same level and we intend to proceed, but we need to make sure the needs of Morgan County and the School District are met.

Clint Rodman, Bresnan Communications, stated they had purchased this system from ComCast and they have made a substantial investment. They do offer high speed internet service and do provide fiber between the businesses. They are a privately funded company and costs have to be considered. They are interested in reaching out to businesses throughout the process. Councilmember Powers asked if he felt it was the right decision. Mr. Rodman could not comment on the new project.

John Young, Microtech-Tel, stated that their company does not provide fiber, but they provide the service. In his opinion, a lot of businesses need to use the fiber and they have no intention of running fiber throughout the City.

Attorney Wells again explained why the item should be presented on the ballot.

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

- A. Approve the minutes from the July 7, 2009, regular Council meeting.
- B. Approve the minutes from the July 21, 2009, regular Council meeting.
- C. Authorize the Mayor to sign a Resolution and an Intergovernmental Agreement Calling for a General Municipal Election to be Held in Conjunction with the November 3, 2009, Morgan County Coordinated Election.

RESOLUTION No. 09 08 01

A RESOLUTION CALLING FOR A GENERAL MUNICIPAL ELECTION TO BE HELD IN CONJUNCTION WITH THE NOVEMBER 3, 2009 MORGAN COUNTY COORDINATED ELECTION.

WHEREAS, Sec. 9B-120 of the *Fort Morgan Municipal Code* (1994) authorizes the City Council to determine, by resolution, that any municipal election shall be conducted as part of a coordinated election, from time to time, in accordance with the requirements of and utilizing the procedures contained in the Colorado Uniform Election Code of 1992, and in accordance with an agreement for that purpose between the City and the coordinated election official; and,

WHEREAS, the Council may wish to consider placing ballot measures before the voters in November to be held on November 3, 2009, in conjunction with the Morgan County Coordinated Election; and,

WHEREAS, the general municipal election to be held on November 3, 2009, will be held on the same day as at least one other political subdivision with boundaries that overlap boundaries of the municipal precincts or which contain the same or some of the same electors, and the eligible electors are all registered electors.

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

SECTION 1: The general municipal election is hereby called for Tuesday, November 3, 2009, which shall be held in conjunction with the Morgan County Coordinated Election.

SECTION 2: The provisions of the Uniform Election Code of 1992 as amended are hereby adopted with respect to the conduct of said election in lieu of the provisions of the Municipal Election Code 1956.

SECTION 3: The City Clerk is hereby directed to certify the ballot content for the municipal election to the Morgan County Clerk not later than September 4, 2009.

SECTION 4: The Mayor is hereby authorized to enter into an intergovernmental agreement with Morgan County for conduct of the election, pursuant to Section 1-7-116(2) of the Colorado Revised Statutes.

INTRODUCED, PASSED, APPROVED AND ADOPTED this 4th day of August, 2009, the vote upon roll call being as follows:

Ayes: Mayor Darnell; Councilmembers Deal, Forstedt, Powers, Shaver and Simmons.

Nays: None.

Absent / Abstain: Councilmember McAlister.

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

[SEAL]

BY: /s/ Jack Darnell
Mayor

ATTEST:

/s/ Andrea Strand
City Clerk

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

CERTIFICATE

I, ANDREA J. STRAND, City Clerk for the City of Fort Morgan, Colorado, do hereby certify and attest that the foregoing Resolution is a true, perfect and complete copy of the Resolution adopted by the Council of Fort Morgan, Colorado, 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 have affixed the seal of the City of Fort Morgan this 4th day of August, 2009.

/s/ Andrea J. Strand, City Clerk

- D. Authorize the Mayor to sign a Resolution and an Intergovernmental Agreement between the City of Fort Morgan and the City of Brush for a Mixing Zone Study for Respective Wastewater Treatment Facilities.

RESOLUTION No. 09 08 02

**AUTHORIZING THE MAYOR TO EXECUTE THE
INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITIES OF FORT MORGAN AND BRUSH, COLORADO
FOR A COMBINED MIXING ZONE STUDY CONTRACT
TO BE COMPLETED BY REGULATORY MANAGEMENT INC. (RMI)
OF THE RESPECTIVE WASTEWATER TREATMENT FACILITIES**

WHEREAS, intergovernmental agreements to provide functions or services including the sharing of costs of such services or functions, by political subdivisions of the State of Colorado are specifically authorized by C.R.S. §29-1-203; and,

WHEREAS, the Parties hereto are each authorized to lawfully provide, establish, maintain and operate wastewater treatment facilities; and,

WHEREAS, the respective CDPS Permits of the cities require the completion of a mixing zone study in conformance with the *Water Quality Control Division Colorado Mixing Zone Implementation Guidance*; and,

WHEREAS, RMI has agreed to complete two separate and distinct mixing zone studies for both Fort Morgan and Brush by combining the two into a single contract in an effort to minimize the cost to both cities; and,

WHEREAS, the Parties agree to share the cost of the mixing zone study as referenced in the Intergovernmental Agreement. Further, both municipalities agree to the terms and conditions as set forth in the proposal submitted by RMI (copies of both documents are attached hereto and incorporated herein by this reference) and that the execution of both documents are in the best interest of the municipality and will promote economic savings for both communities.

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

SECTION 1: The Mayor is hereby authorized to execute the Proposal to Provide Professional Services-Combined Mixing Study as provided by James T. Egan, of RMI.

SECTION 2: The Mayor is hereby authorized to execute the intergovernmental Agreement between the Cities of Fort Morgan and Brush, Colorado for a Combined Mixing Zone Study Contract to be Completed by Regulatory Management Inc. (RMI) of the Respective Wastewater Treatment Facilities.

INTRODUCED, PASSED, APPROVED AND ADOPTED this 4th day of August, 2009, the vote upon roll call being as follows:

Ayes: Mayor Darnell; Councilmembers Deal, Forstedt, Powers, Shaver and Simmons.

Nays: None.

Absent / Abstain: Councilmember McAlister.

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

[SEAL]

By: /s/ Mayor Jack Darnell

ATTEST:

/s/ Andrea Strand, City Clerk

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

ss.

CERTIFICATE

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 6th day of August, 2009.

/s/ Andrea Strand, City Clerk

- E. Resolution Authorizing the Mayor to Execute the Grant Documents with the Colorado Department of Transportation Concerning the Rainbow Bridge Enhancement Project.

RESOLUTION No. 09 08 03

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE THE GRANT DOCUMENTS WITH THE COLORADO DEPARTMENT OF TRANSPORTATION CONCERNING THE RAINBOW BRIDGE ENHANCEMENT PROJECT.

WHEREAS, certain federal funds have been and will be, in the future, allocated for highway projects requested by local agencies and eligible under the Surface Transportation

Program that has been proposed by the State and approved by the Federal Highway Administration (“the Program”); and,

WHEREAS, pursuant to C.R.S. § 43-1-223, and applicable portions of the federal law, the State is responsible for the general administration and supervision of performance of projects in the Program, including the administration of federal funds for a program project performed by a local agency under a contract with the State; and,

WHEREAS, the City of Fort Morgan has requested that this local highway project be funded as part of the Program; and,

WHEREAS, Federal-aid funds have been made available for the Project, which shall consist of design and construction of a pull-out area at Rainbow Bridge in the City of Fort Morgan (“the Project”); and,

WHEREAS, there is a matching ration for this federal-aid project that the City of Fort Morgan will be required to pay. Funds for the matching ration have been budgeted for the Project. It is understood that such ratio applies only to such costs as are eligible for federal participation, and it being further understood that all non-participating costs shall be borne by the City at one-hundred (100%)percent; and,

WHEREAS, additional money from the Federal Stimulus Act will cover 100% of a portion of the Project; and,

WHEREAS, the State has presented to the City of Fort Morgan for execution in connection with and to carry out the Project a Contract for the Project; and,

WHEREAS, the City of Fort Morgan, by and through its City Council is willing to enter into and execute the Contract.

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

1. The Contract for the Project concerning the Rainbow Bridge Enhancement Project shall be and is hereby approved.
2. The Mayor shall be and is hereby authorized to enter into and execute the Contract for the City of Fort Morgan, Colorado.

Sufficient monies shall be and are hereby budgeted and appropriated for completion of the Project.

INTRODUCED, PASSED, APPROVED AND ADOPTED this 4th day of August, 2009, the vote upon roll call being as follows:

Ayes: Mayor Darnell; Councilmembers Deal, Forstedt, Powers, Shaver and Simmons.

Nays: None.

Absent / Abstain: Councilmember McAlister.

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

[SEAL]

BY: /s/ Jack 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 for the City of Fort Morgan, Colorado, do hereby certify and attest that the foregoing Resolution is a true, perfect and complete copy of the Resolution adopted by the Council of Fort Morgan, Colorado, 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 have affixed the seal of the City of Fort Morgan this 6th day of August, 2009.

/s/ Andrea Strand, City Clerk

F. Schedule a Public Hearing for August 18, 2009, concerning an application for a Minor Subdivision by Gene Doty.

All matters listed under Item 6, 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 August, 2009, the vote upon roll call being as follows: Ayes: Mayor Darnell; Councilmembers Deal, Forstedt, Powers, Shaver and Simmons. Nays: none. Absent: Councilmember McAlister.

AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT FOR THE CONSTRUCTION OF THE SECURITY GATES AND FENCING AT THE WATER AND WASTEWATER TREATMENT PLANTS

Attorney Wells stated that in the future, when a Capital item is presented to Council for approval of a bid, the contract will be included so that Council can approve it at the same time.

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. 09 08 04

**AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT
FOR THE CONSTRUCTION OF THE SECURITY GATES AND FENCING AT THE
WATER AND WASTEWATER TREATMENT PLANTS**

WHEREAS, City Council of the City of Fort Morgan, Colorado, is authorized by Art. IV, Sec. 4(D)(1) of the *Charter of the City of Fort Morgan, Colorado (2008)* to provide for “the construction, maintenance, operation, and disposition of public improvements, public works, public utilities, public services...”; and,

WHEREAS, City Staff has recommended that the City Council place out for bid the construction of security gates and fences for the Water and Wastewater Treatment Plants; and,

WHEREAS, an Invitation to Bid has been prepared by the Water and Wastewater Departments for the construction and installation of security gates and fencing at the respective plants; and,

WHEREAS, the bid for the construction and installation of the security gates and fences at the Water and Wastewater Treatment Plants had been previously approved by the Council of the City of Fort Morgan; and,

WHEREAS, \$43,398.00 has been set aside for this project; and

WHEREAS, Art. III, Sec. 4(a) of the *Charter of the City of Fort Morgan, Colorado (2008)* requires that “[A]ll contracts involving in the aggregate an expenditure of ten thousand or more, shall be authorized only by resolution.”

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

Section 1. The successful bidder has been established, the City Council hereby authorizes the Mayor to sign a contract and all other documents necessary to engage the successful bidder to commence and complete this project.

INTRODUCED, PASSED, APPROVED AND ADOPTED this 4th day of August, 2009, the vote upon roll call being as follows:

Ayes: Mayor Darnell; Councilmembers Deal, Forstedt, Powers, Shaver and Simmons.

Nays: None.

Absent / Abstain: Councilmember McAlister.

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

[SEAL]

BY: /s/ Jack 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 6th day of August, 2009.

/s/ Andrea Strand, City Clerk

FIRST READING OF AN ORDINANCE ENTITLED, “AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO, SUBMITTING A BALLOT QUESTION TO THE ELECTORS OF THE CITY RELATING TO PROVIDING AND/OR FACILITATING OF SERVICES THROUGH THE FIBER NETWORK ENTERPRISE”

Attorney Wells presented an Ordinance upon direction from Council to provide this by August 4th. The Ordinance is for their consideration and review. He stated that he reviewed the statutes and had assumed all of the legal review had been previously done on this issue. In 2005, C.R.S. Section, 29-27-101, outlined and prohibited local government from getting in the business of franchise, cable television service, and provided that local government shall not by contract lease private rights, design or construct cable services or advance services. An exception can be made for government, if a ballot is passed at an election stating the government can provide this service. He added that no one has challenged this. Attorney Wells informed Council that there were several options to consider:

1. Council could direct staff to look at other cities providing this service and determine how they developed rates for private vendors;
2. Direct staff to put together a rate study for providers to work under; and
3. Council can pass first reading of this ordinance tonight to help it get placed on the November ballot.

There was further discussion. **Council asked to have the first reading of this Ordinance on the agenda for the Council meeting on August 11, making it a Special Meeting.**

Mayor Darnell confirmed that if this issue goes to a vote of the public, it will not stop the agreement between Morgan County and the School District.

The Ordinance presented read as follows:

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF FORT MORGAN, COLORADO, SUBMITTING A
BALLOT QUESTION TO THE ELECTORS OF THE CITY RELATING TO PROVIDING
AND/OR FACILITATING OF SERVICES THROUGH THE FIBER NETWORK ENTERPRISE.**

WHEREAS, the City of Fort Morgan City Council finds that it is in the best interests of the City to provide and/or facilitate high speed internet, cable television and telecommunication services through its dark or unused fiber; and,

WHEREAS, the Council has determined that by offering and/or facilitating these services, the City could fully realize the potential of the infrastructure previously installed to provide and/or facilitate these advanced services; and,

WHEREAS, C.R.S. § 29-27-201(2), requires that prior to the City expanding the City's current services, a question must be referred to the electors of the City of Fort Morgan; and,

WHEREAS, to become effective under this statute, a ballot question must be approved by a majority vote of the qualified electors voting in the election; and,

WHEREAS, pursuant to Article VIII, Sec. 21 of the *Charter* provides that the City Council can refer an Ordinance to the qualified electors of the City of Fort Morgan.

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

Section 1: Pursuant to the *Charter of the City of Fort Morgan (2008)*, and the Constitution of the State of Colorado, the City proposes to provide directly or indirectly cable, telecommunications and advanced services within the City of Fort Morgan. This proposal shall hereby be submitted to the electors of the City, shall become effective if, and only if, it is approved by the majority of the voters at the general election to be held November 3, 2009.

Section 2. That the following ballot language is hereby adopted for submitting to citizens of Fort Morgan a request for authority to provide and/or facilitate services through the Fiber Network Enterprise.

PROPOSED BALLOT QUESTION REGARDING THE ESTABLISHMENT OF A FIBER NETWORK ENTERPRISE	
Shall the City of Fort Morgan, Colorado be authorized to directly, indirectly, by contract or through the sale or purchase in resale or wholesale form, through a sale or leaseback arrangement provide cable television, telecommunications and advanced services to subscribers within the corporate limits of the City and in unincorporated Morgan County?	YES _____ NO _____

Section 3. It is the intent of this ordinance to comply with the requirements set forth in C.R.S. § 29-27-101 et seq., and any specific definitions of terms set forth in that statute shall apply to those terms in this ordinance.

INTRODUCED AND PASSED UPON FIRST READING this ____ day of _____, 2009, 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

[SEAL]

BY: _____
Jack Darnell, Mayor

ATTESTED:

Andrea Strand, City Clerk

FINALLY PASSED, ADOPTED AND APPROVED this ____ day of _____, 2009, for publication 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: _____
Jack Darnell, Mayor

ATTESTED:

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** 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 ____ day of _____, 2009. Said **Ordinance**, as proposed, was duly read at length at said regular meeting, and thereafter the same was, on the ____ day of _____, 2009, 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 ____ day of _____, 2009.

_____, 2009. 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.

City Clerk

PUBLIC COMMENT / AUDIENCE PARTICIPATION

Dennis Hall, who resides at 512 Maple Street, stated his concern over the flooding that has occurred for many years at Burlington Avenue, south of the railroad tracks. He encouraged the Council to place this as a priority in the next budget. City Manager Merrill stated that staff has become aware of the areas of deficiencies and will correct the worse areas. The five-year Capital Improvement Plan will help achieve these goals.

He also spoke of a co-worker whose daughter had been hit by a car in front of their house; a similar event happened to a five-year-old. His concern was that school would be starting soon and many children would be walking to school. Chief Kuretich stated he was aware of one of the accidents and asked that anyone with information to call the Police Department immediately so that they can investigate.

REPORTS

The following Directors provided written reports to Council:

City Manager Merrill
Police Chief Kuretich
Water Resources/Wastewater Treatment Director Dreessen
Municipal Engineer Curtis
Human Resources and Risk Management Director Prentice
Community Services Director Shedd
Community Development Director Callahan
City Clerk Strand
Municipal Court Administrator Tadolini

BIDS, MEETINGS AND ANNOUNCEMENTS

Clerk Strand announced bids and upcoming meetings. She also encouraged citizens to consider obtaining a petition/packet of information to run for Mayor or Councilmember for the City. These packets may be picked up beginning today and the petition must be returned to the City Clerk's Office by 5:00 p.m. on August 24, 2009.

Mayor Darnell stated that a date would need to be scheduled to interview applicants for Municipal Judge. It was decided that interviews for the final candidates for the Municipal Judge position for the City would be on Thursday, August 27, beginning at 8:30 a.m., at City Hall.

Mayor Darnell announced that a Budget Retreat would be held on Saturday, September 12, at Acapulco Bay, beginning at 8:30 a.m. This would be for Council, City Treasurer and Appointed Officials. He stated that City Manager Merrill may direct other staff to attend.

Mayor Darnell adjourned the August 4, 2009, regular meeting at 8:30 p.m.

Mayor

City Clerk