

November 2, 2010

The City Council of the City of Fort Morgan, Colorado, met this day in the Council Chambers of City Hall. The Honorable Mayor Terry L. McAlister called the regular meeting to order at 5:00 p.m.

The Pledge of Allegiance was given.

Roll Call: Present: Honorable Mayor Terry L. McAlister  
Councilmember Scott Bryan  
Councilmember Sharol Lyn Deal  
Councilmember Debra J. Forstedt  
Councilmember Brent M. Nation  
Councilmember Ronald Shaver  
Councilmember Jim Powers

The meeting was also attended by City Manager Pat Merrill, City Attorney Jeffrey Wells, and Treasurer Terri Schafer.

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## **EXECUTIVE SESSION**

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Councilmember Forstedt offered a motion to go into an Executive Session for a conference with for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under C.R.S. Section 24-6-402(4)(e); Purchase Property. Her motion was seconded by Councilmember Deal and duly carried.

Mayor McAlister announced, "The time is 7:00 p.m., and the Executive Session has concluded and Council returned to the open meeting." The participants in the Executive Session were Mayor McAlister; Councilmembers Bryan, Deal, Forstedt, Nation, Powers and Shaver. Staff also in the meeting was City Manager Merrill and City Attorney Wells.

"For the record, if any person who participated in the Executive Session believes that any substantial discussion of any matters not included in the motion to go into Executive Session occurred during the Executive Session, or that any improper action occurred during the Executive Session in violation of the Open Meetings Law, I would ask that you state your concerns for the record. Hearing none, the Executive Session is concluded and I will ask Councilmember Forstedt to report on the Executive Session."

Councilmember Forstedt stated City Council met in Executive Session to instruct the City Manager to negotiate within the parameters discussed in the Executive Session. Councilmember Forstedt offered a motion to instruct the City Manager to negotiate within the parameters set by Council in the Executive Session . His motion was seconded by Councilmember Powers and duly carried.

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## **EXECUTIVE SESSION**

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Councilmember Forstedt offered a motion to go into an Executive Session for a conference for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under C.R.S. Section 24-6-402(4)(e); Water Base Rates. His motion was seconded by Councilmember Forstedt and duly carried.

Mayor McAlister announced, "The time is 7:00 p.m., and the Executive Session has concluded and Council returned to the open meeting." The participants in the Executive Session were Mayor McAlister; Councilmembers Bryan, Deal, Forstedt, Nation, Powers and Shaver. Staff also in the meeting was Attorney Wells, City Manager Merrill and Treasurer Schafer.

"For the record, if any person who participated in the Executive Session believes that any substantial discussion of any matters not included in the motion to go into Executive Session occurred during the Executive Session, or that any improper action occurred during the Executive Session in violation of the Open Meetings Law, I would ask that you state your concerns for the record. Hearing none, the Executive Session is concluded and I will ask Councilmember Forstedt to report on the Executive Session."

Councilmember Forstedt stated City Council met in Executive Session to instruct the City Attorney to negotiate the terms of the contract with City Judge Crispin. Councilmember Powers offered a motion to instruct the City Attorney negotiate within the parameters set by Council. His motion was seconded by Councilmember Shaver and duly carried.

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## **EXECUTIVE SESSION**

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Councilmember Powers offered a motion to go into an Executive Session for a conference with the City Attorney for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under C.R.S. Section 24-6-402(4)(e); Judge Crespin's Contract. His motion was seconded by Councilmember Forstedt and duly carried.

Mayor McAlister announced, "The time is 7:00 p.m., and the Executive Session has concluded and Council returned to the open meeting." The participants in the Executive Session were Mayor McAlister; Councilmembers Bryan, Deal, Forstedt, Nation, Powers and Shaver.

"For the record, if any person who participated in the Executive Session believes that any substantial discussion of any matters not included in the motion to go into Executive Session occurred during the Executive Session, or that any improper action occurred during the Executive Session in violation of the Open Meetings Law, I would ask that you state your concerns for the record. Hearing none, the Executive Session is concluded and I will ask Councilmember Forstedt to report on the Executive Session."

Councilmember Forstedt stated City Council met in Executive Session to instruct the Mayor to negotiate the terms of the contract with City Judge Crispin. Councilmember Powers offered a motion to instruct the Mayor to negotiate the terms of Municipal Judge Crespin's contract as

discussed in the Executive Session. His motion was seconded by Councilmember Shaver and duly carried.

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**PRESENTATION OF AN ORDINANCE TO COMBINE AND COMPLETE BUSINESS DEVELOPMENT PAYMENTS TO BUSINESSES OWNED BY GARY HARMS**

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Manager Merrill stated the City will pay Delta a total of \$23,000 which represents what the City would be required to pay the businesses under the previous Ordinances. The compensation would include a lump sum payment of \$15,000 and a credit of \$8,000 that would be transferred to the City water fund on behalf of Delta. The water credit would pay for a new unit of water that companies are required to provide to the City because of an increase in their water consumption.

Councilmember Powers offered a Resolution to adopt an Ordinance on First Reading on completing payments of business incentives provided to Delta Oil Field and Pro Tech Enterprises which were granted by Ordinances 1010, 1056 and 1064. His motion seconded by Councilmember Forstedt passes unanimously.

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**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE CONSOLIDATING AND COMPLETING PAYMENT OF BUSINESS INCENTIVES PROVIDED TO DELTA OIL FIELD INC. AND PRO-TECH ENTERPRISES WHICH WERE GRANTED UNDER ORDINANCE NOS. 1011, 1056 AND 1064**

**WHEREAS**, the City of Fort Morgan has granted business development incentives to Delta Oilfield Tank Company LLC (“Delta”) and Pro-Tech Enterprises LLC (“Pro-Tech”); and,

**WHEREAS**, those incentives were approved in Ordinance Nos. 1011, 1056 and 1064; and,

**WHEREAS**, the current incentives require substantial administrative tracking which costs both the taxpayers and the business additional money to manage and administer; and

**WHEREAS**, the parties to the original Ordinances and Agreements now wish to consolidate and finalize any outstanding incentive payments with one final payment to absolve the City’s responsibility for business development payments to both Delta and Pro-Tech over time; and,

**WHEREAS**, Delta’s annual water consumption has exceeded its annual limit in past years, and under the City’s water development policy Delta is now required to purchase a Colorado Big Thompson (“C-BT”) water unit and transfer said unit to the City; and,

**WHEREAS**, it is the intent of the parties to this agreement that any costs necessary to offset the cost of the C-BT unit shall be taken from any outstanding economic incentive payments stated in this agreement.

**NOW, THEREFORE, LET IT BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO AND APPROVED BY THE PARTIES TO THIS AGREEMENT THAT:**

**SECTION 1.** All economic incentive payments that the City is required to pay under Ordinance Nos. 1011, 1056 and 1064 are hereby consolidated into a single payment of Twenty-three Thousand Dollars (\$23,000.00).

**SECTION 2.** The City shall credit eight thousand dollars (\$8,000.00) from the payment required herein to pay for the C-BT unit that Delta current owes the City. The City shall provide a check in the amount of Fifteen Thousand Dollars (\$15,000.00) made payable to both Delta and Pro-Tech within ten days after the final adoption of this Ordinance.

**SECTION 3.** Any and all payments due under Ordinance Nos. 1011, 1056 and 1064 are hereby satisfied by payment under Section 2 of this Ordinance. The City shall not be responsible to Delta or Pro-Tech for any further payments under these ordinances, nor shall Delta or Pro-Tech be eligible to receive any other payment under these or any other ordinances providing incentive payments that may exist prior to the passage of this ordinance.

**SECTION 4.** The Eight Thousand Dollars (\$8,000.00) shall be transferred from the general fund to the water works enterprise to pay for the C-BT unit.

READ, PASSED ON FIRST READING AND ORDERED PUBLISHED the \_\_\_\_ day of September, 2010.

THE CITY COUNCIL OF THE CITY  
OF FORT MORGAN, COLORADO

ATTEST:

\_\_\_\_\_  
Mayor Terry McAlister

\_\_\_\_\_  
Deputy City Clerk

PASSED, APPROVED AND ADOPTED ON FINAL READING AND ORDERED PUBLISHED the \_\_\_\_ day of \_\_\_\_\_, 2010.

THE CITY COUNCIL OF THE CITY  
OF FORT MORGAN, COLORADO

ATTEST:

\_\_\_\_\_  
Mayor Terry McAlister

\_\_\_\_\_  
Deputy City Clerk

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

**CERTIFICATE**

I, \_\_\_\_\_, the duly appointed, qualified and acting Deputy City Clerk of the City of Fort Morgan, Colorado, do hereby certify and attest that the foregoing **ORDINANCE NO. \_\_\_\_\_** 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 September, 2010. Said Ordinance, as proposed, was duly read at length at said regular meeting, and thereafter the same was, on the \_\_\_\_\_ day of \_\_\_\_\_, 2010, 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 \_\_\_\_\_, 2010. 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.

\_\_\_\_\_  
Deputy City Clerk

**Acceptance by Delta and Pro-Tech**

The undersigned individual hereby affirms and represents that he is authorized for Delta and Pro-Tech to accept this agreement for satisfaction of any economic incentives owed by the City of Fort Morgan on behalf of Delta and Pro-Tech.

\_\_\_\_\_  
Gary W. Harms Jr.

\_\_\_\_\_  
Notary Public

**FIRST READING OF AN ORDINANCE COMBINING CITY DEPARTMENTS**

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Manager Merrill reported to Council that by consolidating the Library and Museum and the Parks, Cemetery and Golf Course it would save the City money. They would become a division that would continue to work under Director of Community Services Patti Evans. This would also save money as the departments would share equipment and staff.

Councilmember Forstedt offered a motion to approve on First Reading the Ordinance Consolidating City Departments. Her motion was seconded by Councilmember Bryan and passes unanimously.

**ORDINANCE NO. \_\_\_\_\_**  
**AN ORDINANCE CONSOLIDATING CITY DEPARTMENTS**

**WHEREAS**, the City of Fort Morgan has undertaken a review of the various needs of the departments within the City organization; and

**WHEREAS**, the City Manager has recommended the consolidation of various departments in order to balance the 2011 budget; and

**WHEREAS**, the City Council has passed a motion directing the City Manager to make proposed budget modifications for the 2011 budget year that include consolidation of the Library and Museum Departments and the Parks, Cemetery and Golf Departments; and

**WHEREAS**, the consolidation of these departments are in the best interests of furtherance of the City's goals and objectives; and

**WHEREAS**, the City Charter, at Article V, Section 4(g) establishes the procedure for the consolidation and/or creation of departments with the recommendation of such consolidation and/or creation from the City Manager and final approval by ordinance from the City Council;

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

**SECTION 1.** The Departments of Library and Museum are hereby consolidated for the purpose of furthering the goals and objectives of the City Council to wit: the balancing of the 2011 budget and efficient operations of the City;

**SECTION 2.** The Departments of Parks, Cemetery and Golf are hereby consolidated for the purpose of furthering the goals and objectives of the City Council to wit: the balancing of the 2011 budget and efficient operations of the City.

**SECTION 3.** The names of the departments may be modified at the discretion of the City Manager.

READ, PASSED ON FIRST READING AND ORDERED PUBLISHED the \_\_\_\_\_ day of October, 2010.

THE CITY COUNCIL OF THE CITY  
OF FORT MORGAN, COLORADO

ATTEST:

\_\_\_\_\_  
Mayor Terry McAlister

\_\_\_\_\_  
Deputy City Clerk

PASSED, APPROVED AND ADOPTED ON FINAL READING AND ORDERED PUBLISHED the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

THE CITY COUNCIL OF THE CITY  
OF FORT MORGAN, COLORADO

ATTEST:

\_\_\_\_\_  
Mayor Terry McAlister

\_\_\_\_\_  
Deputy City Clerk

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

**CERTIFICATE**

I, \_\_\_\_\_, the duly appointed, qualified and acting Deputy City Clerk of the City of Fort Morgan, Colorado, do hereby certify and attest that the foregoing **ORDINANCE NO. \_\_\_\_\_** 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 September, 2010. Said Ordinance, as proposed, was duly read at length at said regular meeting, and thereafter the same was, on the \_\_\_\_\_ day of \_\_\_\_\_, 2010, 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 \_\_\_\_\_, 2010. 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.

\_\_\_\_\_  
Deputy City Clerk

**FIRST READING OF AN ORDINANCE ADOPTING THE MUNICIPAL CODE ORGANIZATIONAL UPDATE**

Attorney Wells suggested that Council not take any action on this item as there was a miscommunication with the Fort Morgan Times on the date that the Ordinance should have been published. The required legal notice of the Public Hearing for final approval of the Ordinance on November 16 was not published last Saturday. The second reading will be scheduled for December 7, 2010. Councilmember Powers had concerns on whether the delay would have any implications for the city budget. Attorney Wells assured him that it would not.

**MEMORANDUM OF UNDERSTANDING WITH MORGAN COMMUNITY COLLEGE REGARDING FIRE PROTECTION**

Fire Chief Parker addressed the Council stating that MCC is located on 20 acres in the City of Fort Morgan. MCC has adopted the fire and Life Safety codes for the campus and the fire department would be able to provide fire protection and other life safety services. The fire department will also conduct plan review for all fire alarm and fire sprinkler related construction projects on MCC campus.

Councilmember Shaver offered a Resolution to adopt and to authorize the Mayor to sign the Memorandum of Understanding with Morgan Community College regarding fire protection. His motion seconded by Councilmember Powers and passes unanimously.

### **MEMORANDUM OF UNDERSTANDING**

This MEMORANDUM OF UNDERSTANDING ("MOU") is made this 2nd day of November, 2010, by and between MORGAN COMMUNITY COLLEGE ("MCC"), and the CITY OF FORT MORGAN VOLUNTEER FIRE DEPARTMENT, COLORADO ("Fire Department").

#### **RECITALS:**

**WHEREAS**, Morgan Community College is a State of Colorado Higher Education Agency located on 20 acres in the City of Fort Morgan; and

**WHEREAS**, MCC's design and construction projects abide by the latest codes adopted by the State of Colorado, office of the State Architect (OSA): and

**WHEREAS**, MCC desires to cooperate and coordinate its provision of fire protection and other fire and life safety services with the Fire Department.

#### **TERMS OF THE UNDERSTANDING**

**NOW, THEREFORE**, in consideration of the above Recitals and the promises and terms hereinafter set fourth, the parties understand and agree that:

1. Compliance with State Codes. The Fire Department has adopted and enforces the following fire codes and/or regulations:

International Fire code, 2003 edition, NFPA Code, 2007 edition

2. Fire and Life Safety. MCC and the Fire Department acknowledge that MCC has adopted the Fire and Life Safety Codes for the campus and that the Fire Department will be providing fire protection and other life safety services to the MCC campus. It is the desire of MCC and the Fire Department to coordinate these independent activities so that there is a compatibility of MCC plans with the Fire Department's provision of fire and life safety services.

3. Plan Review and Inspections. MCC and the Fire Department acknowledge that the Fire Department has the right to conduct annual fire inspections of MCC buildings. MCC and Fire Department agree that the Fire Department will conduct plan review for all fire alarm and fire sprinkler related construction projects on MCC campus. Further, MCC and the Fire Department acknowledge that the Fire Department will conduct final acceptance walk through for any new or material renovation projects for MCC buildings that impact fire and life safety codes.

IN WITNESS WHEREOF, the parties have set their hands on the date and year first above written.

STATE OF COLORADO  
Department of Higher Education  
Acting by and through  
MORGAN COMMUNITY COLLEGE

By: \_\_\_\_\_  
President, Morgan Community College

CITY OF FORT MORGAN  
VOLUNTEER FIRE DEPARTMENT

By: \_\_\_\_\_  
Mayor, Terry McAlister

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**RESOLUTION APPROVING BRESNAN/CABLEVISION TRANSFER OF CONTROL OF CABLE FRANCHISE**

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Attorney Wells explained to Council that this item was put on the Agenda at the last minute in an effort to help Bresnan meet there deadline requirements. This is a requirement that Bresnan has to meet in order to make the transfer of the franchise with Cablevision. The only modification that Attorney Wells will make is the date on page 3 which reads expires December 31, 2015; it should read December 31, 2011. He also stated that he recommends Council approve the Resolution.

Councilmember Forstedt offered a Resolution to approve the Bresnan/Cablevision transfer of control of Cable Franchisee, with the modification of the expiration date being December 31<sup>st</sup>, 2011. Her motion seconded by Councilmember Nation and passes unanimously.

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**RESOLUTION  
APPROVING BRESNAN / CABLEVISION TRANSFER OF CONTROL  
OF CABLE FRANCHISEE**

**RESOLUTION NO. \_\_\_\_\_  
SERIES 2010**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FORT MORGAN,  
COLORADO, CONSENTING TO THE TRANSFER OF CONTROL OF THE  
CITY'S/TOWN'S/COUNTY'S CABLE SYSTEM FRANCHISEE TO BBHI  
HOLDINGS, LLC

WHEREAS, on February 6, 2001, the City of Fort Morgan, Colorado (the “City”) granted to TCI Cablevision of Colorado, Inc., a franchise to own and operate a cable system in the City, and entered into a Franchise Agreement (the “Franchise”), as set forth in Ordinance 908 (the “Ordinance”); and

WHEREAS, on or about January 2003, the City adopted a Resolution approving the transfer of that Franchise to Bresnan Communications, LLC (“Franchisee”); and

WHEREAS, Franchisee is a subsidiary of, and controlled by Bresnan Broadband Holdings, LLC (“Bresnan Cable”); and

WHEREAS, Section 15.2 of the Franchise requires the City’s consent to any transfer of ownership or control thereof; and

WHEREAS, Bresnan Cable and CSC Holdings, LLC (“CSC”), and certain of their respective affiliates, including BBHI Holdings LLC (“Holdings”) have entered into an Agreement and Plan of Merger, dated as of June 13, 2010 (the “Merger Agreement”), to consummate a merger, whereby Bresnan Cable will become a direct wholly-owned subsidiary of Holdings and an indirect wholly owned subsidiary of Cablevision Systems Corp. (“Cablevision”) and Franchisee will become an indirect wholly-owned subsidiary of Cablevision; and

WHEREAS, this merger will effect a change of control of Franchisee; and

WHEREAS, the result will be that CSC Holdings, LLC, a wholly-owned subsidiary of Cablevision, will own Franchisee and all the assets currently held by Franchisee, including the cable system serving the City; and

WHEREAS, pursuant to Section 15.2 of the Franchise, and 47 U.S.C. Sec. 537, as amended, Bresnan Cable and Cablevision have requested that the City approve of the transfer of control of the Franchisee from Bresnan Cable to Cablevision (the “Transaction”); and

WHEREAS, the Transaction will not result in a change in Franchisee, but will result in a change in the control of Franchisee, and CSC will be engaged in activities that affect the management and operation of the cable system; and

WHEREAS, on or about July 2, 2010, Cablevision and Bresnan Cable filed an FCC Form 394 with the City and requested that the City approve the Transaction (the “Transfer Application”); and

WHEREAS, the City maintains that the Transfer Application did not contain information sufficient for City to complete its review of the Transaction and the City timely notified the applicants that the Transfer Application was incomplete; and

WHEREAS, the City requested access to information regarding the Transaction that the City maintains was necessary for the City to conduct its review of the Transaction that had been redacted from the Transfer Application; and

WHEREAS, the City obtained access to review some of these redacted materials on August 18, 2010; and

WHEREAS, the City has reviewed the Final Report of Front Range Consulting, Inc. on the Merger Agreement, and has received additional information and advice regarding the Merger Agreement from the City's outside counsel as well as City staff; and

WHEREAS, CSC and Bresnan Cable have represented to the City that Franchisee is, and will continue to be post-closing, financially, legally and technically qualified to maintain and operate the cable system; and

WHEREAS, CSC and Franchisee have represented to the City that post-closing, the breadth and variety of video programming services and the broad categories of programming available on the cable system will remain at least substantially equivalent to that available before the Transaction; and

WHEREAS, Franchisee has agreed to comply with the Franchise, as it may be amended, and applicable law from and after the completion of the Transaction; and

WHEREAS, Franchisee and CSC agree that Franchisee will continue to be responsible for the obligations and liabilities of, and continue to have responsibility for all acts and omissions, known and unknown under, the Franchise and the City Code, for all purposes, unless waived, in whole or part, by the City; and

WHEREAS, the City has investigated both the status of the Franchise, the Franchisee's compliance therewith, and the technical, legal and financial ability of CSC to control Franchisee's compliance with the Franchise; and

WHEREAS, all parties reserve all their respective rights under federal law with respect to any renewal of the Franchise, and agree that the approval of the Transaction does not constitute a waiver of any potential claim by the City that Franchisee is not in compliance with its obligations under the Franchise; and

WHEREAS, based upon the City's investigation, and representations made to the City by Bresnan Cable, Franchisee and CSC, upon which the City is relying, the City is prepared to approve the Transaction, pursuant to the conditions described herein.

NOW THEREFORE, be it resolved by the City Council of the City of Fort Morgan, Colorado, as follows:

1. The City hereby consents to and approves the transfer of control of the Franchisee from Bresnan Cable to Cablevision.

2. The City confirms that the Franchise is currently in full force and effect and expires on December 31, 2015.

3. This Resolution approving the transfer of control of Franchisee is based in part upon the following representations and acknowledgments made by Franchisee, Bresnan Cable and CSC to the City which have been relied upon by the City:

- (a) That the Merger Agreement, and all of the attachments to that document, provided to the City and its financial consultant with FCC Form 394 and subsequently during the transfer review process (except for those materials which have been redacted, and are identified by title or topic in the Merger Agreement and its attachments) constitutes the entire agreement regarding the Transaction.
- (b) That Franchisee will maintain staffing levels necessary to meet all applicable local and/or federal codes and regulations, and all federal regulations regarding technical standards of cable systems.
- (c) That Franchisee remains obligated to comply with all terms, conditions and obligations of the existing franchise agreement and any other existing contractual agreement between the Franchisee and the City for the terms of such agreements.
- (d) That from and after the consummation of the Transaction, CSC and Bresnan Cable will not take any action inconsistent with the obligations contained in the Franchise after the effective date hereof, provided however that nothing herein shall be construed as a guarantee by BBHI Holdings LLC, BBHI Acquisition LLC, CSC Holdings, LLC or Cablevision of Franchisee's obligations set forth in the Franchise. Franchisee shall fully comply with all of the terms and conditions set forth in the Franchise.
- (e) That Bresnan Cable, CSC and Franchisee shall ensure that Franchisee continues to make its records pertaining to the Franchise, including financial records, available to the City as required by Section 7 of the Franchise, while such Franchise remains in effect.
- (f) That no future intra-corporate transfers, mergers, or other changes of ownership or control, affecting Franchisee, will change the obligations or liability of Franchisee to the City with respect to any of the terms, conditions and obligations of the Franchise, unless prior approval is granted by the City in writing.

- (g) That Franchisee will comply with all applicable laws regarding rates for cable services within the Franchise area.
- (h) That consummation of the Transaction will not cause an increase in cable rates, and CSC and Bresnan Cable are not planning to increase rates based upon the amount paid in connection with the Change of Control of the system. However, nothing in this paragraph shall be construed as a waiver of Franchisee's notice obligations under the Franchise or other applicable or of the City's or the Companies' rights under applicable rate regulation law.
- (i) That in the event of any failure to comply with the terms, conditions, representations and/or acknowledgments contained in this Resolution, or any material misrepresentations concerning the same, the City may enforce any damages or penalty provisions pursuant to the Franchise and exercise any other remedy available to it by law.

4. By passage of this Resolution, the City makes no representations concerning whether any violations or non-compliance issues exist with respect to the Franchise. Nothing in this Resolution shall be construed by the Franchisee, Bresnan Cable, or CSC as precluding the City from addressing any prior acts of noncompliance by Franchisee, pursuant to the terms of the Franchise.

5. The Franchisee shall provide to the City reasonable advanced written notice of an expected change to the programming lineup on the cable system and/or any price increases for cable services directly resulting from negotiations of a retransmission consent agreement, to the extent such change is within Franchisee's control. Nothing in this section shall be construed to mean that the Franchisee is obligated to disclose its contractual position with a broadcaster to the City or take any action that will adversely affect the its position in retransmission consent negotiations.

6. Franchisee shall continue its program of placing underground all of its cable wiring that is not legally attached to poles consistent with the Franchise and City Code, provided that such City Code is applied and enforced in a nondiscriminatory manner on all users of the public rights-of-way. Franchisee shall complete the undergrounding of all non-aerial cable wiring that is identified in writing by the City within forty-five (45) days after such notice, subject to the cooperation of the owners of the affected poles and other affected attachers and pursuant to standard make-ready procedures, and provided further that in the event of unanticipated weather conditions, Franchisee and the City shall agree to a reasonable extension of time, not to exceed ninety (90) days.

7. With respect to the City-owned poles with Franchisee's facilities attached, where the City has made written request that such facilities be relocated to newer poles so that the City can remove its aging facilities, Franchisee shall complete the removal and relocation of all such facilities within forty-five (45) days of the effective date of this Resolution, provided Franchisee has the cooperation of the City in reaching a pole attachment agreement and the

cooperation of the City and other attachers on said poles in installation and consistent with standard make-ready procedures.

8. This Resolution is conditioned upon approval of the Transaction in substantially the same form as described in the Merger Agreement, and related documents delivered to the City and its financial consultant with Bresnan Cable's and Cablevision's Form 394 filing, and in documents delivered in response to the City's requests for supplemental information. Should the Transaction require a new filing with federal government agencies for approval of the Transaction, this Resolution shall be voidable, at the sole option of the City.

9. Within thirty (30) days following the adoption of this Resolution, Franchisee, Bresnan Cable and CSC shall give written notice to the City, in the format that follows the signature block of this Resolution, that each unconditionally agrees with and shall be bound by all terms contained in this Resolution.

10. Within thirty (30) days following the closing of the Merger Agreement, Franchisee shall file with the City a written representation that the conditions referenced in Paragraph 8 have been met.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Fort Morgan, Colorado on this 2<sup>nd</sup> day of November, 2010.

CITY OF FORT MORGAN

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

**UNCONDITIONAL ACCEPTANCE OF RESOLUTION NO. \_\_\_\_\_**

The Honorable Mayor and City Council of the City of Fort Morgan:

Re: Resolution No. \_\_\_\_\_, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO, CONSENTING TO THE TRANSFER OF CONTROL OF THE CITY'S CABLE SYSTEM FRANCHISEE TO BBHI HOLDINGS, LLC

The undersigned, Bresnan Communications, LLC, Bresnan Broadband Holdings, LLC and CSC Holdings, LLC, acting by and through the undersigned authorized agent, hereby accepts Resolution No. \_\_\_\_\_, passed and adopted by the City pursuant to which the undersigned unconditionally agree that upon and after the closing of the Transaction, each entity will comply with and abide by all the provisions, terms and conditions of the Resolution applicable to it, and that Bresnan Communications, LLC will comply with and abide by all the provisions, terms and conditions of the Franchise, subject to applicable federal, state and local law.

BRESNAN COMMUNICATIONS, LLC

\_\_\_\_\_  
By:  
Title:

BRESNAN BROADBAND HOLDINGS, LLC

\_\_\_\_\_  
By:  
Title:

CSC HOLDINGS, LLC

\_\_\_\_\_  
By:  
Title:

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**CONSENT AGENDA**

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Treasurer Schafer presented the Consent Agenda for Council consideration.

Councilmember Nation offered a Resolution to approve the Consent Agenda with the correction made and moved for its adoption. His motion seconded by Councilmember Shaver; said Consent Agenda being in words, letters and figures as follows, to wit:

- A. Approve the Hotel and Restaurant Liquor License for Cabels Café Inc., dba as Cables Pub

- and Grill, located at 431 Main Street with a clear police investigation report.
- B. Approve the minutes from the October 5, 2010 Regular Meeting.
  - C. Approve the minutes from the October 1, 2010 Regular Meeting.
  - D. Second and Final Reading of an Ordinance creating the Department of Marketing and Economic Development.

All items listed under Item 6 Consent Agenda, are considered 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 2<sup>nd</sup> day of November, 2010, the vote upon roll call being as follows: Ayes: Mayor McAlister, Councilmembers Deal, Shaver, Nation, Forstedt, Bryan and Powers.  
Nays: none.

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#### **PUBLIC COMMENT / AUDIENCE PARTICIPATION**

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None.

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#### **REPORTS**

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The following Directors provided written reports to Council:

City Manager Merrill

Police Chief Kuretich

Water Resources/Wastewater Treatment Director Dreessen.

Municipal Engineer Curtis

Community Development Director Callahan

Community Service Director Evans

Marketing Director Wilkins

Fort Morgan Volunteer Fire Department Chief Parker

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#### **BIDS, MEETINGS AND ANNOUNCEMENTS**

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Treasurer Schafer announced open bids and upcoming meetings.

Mayor McAlister adjourned the November 2, 2010, regular meeting at 7:25 p.m.

/s/ Terry L. McAlister  
Mayor

/s/ Yolanda L. Eurich  
Deputy City Clerk