

# **ORDINANCE NO. 1060**

## **AN ORDINANCE GRANTING TO SOURCEGAS WATTENBERG LLC, A COLORADO LIMITED LIABILITY COMPANY, A PERMIT AUTHORIZING AND CONSENTING TO THE CONSTRUCTION, INSTALLATION, OPERATION AND MAINTENANCE OF NATURAL GAS PIPELINES AND RELATED EQUIPMENT AND FACILITIES.**

WHEREAS, SourceGas Wattenberg LLC (“SourceGas”), a Colorado limited liability company, currently has a pipeline installed and operating within the City of Fort Morgan (“Fort Morgan”) which serves two industrial customers (“Cargill and Leprino”); and

WHEREAS, SourceGas, Fort Morgan, Cargill and Leprino have been involved in extensive and protracted litigation concerning, among other things, the legality of the installation and operation of the pipeline; and

WHEREAS, SourceGas, Fort Morgan, Cargill and Leprino wish to settle and resolve all litigation without further expenditure of funds; and

WHEREAS, SourceGas, Fort Morgan, Cargill and Leprino have concurrently herewith entered into an Agreement resolving all issues and, as part of that settlement Fort Morgan has agreed to enact this ordinance in order to grant a permit to SourceGas under its police powers; and

WHEREAS, pursuant to Sec. 22-B1 of the Fort Morgan Municipal Code SourceGas must obtain a permit to erect, construct, operate maintain or use any natural gas pipeline within the jurisdictional limits of the City of Fort Morgan; and

WHEREAS, The opinion and mandate issued by the Supreme Court in the Morgan County District Court Case No. 04CV301 requires SourceGas to obtain a permit in compliance with Sec. 22-B1 of the Fort Morgan Municipal Code and the City of Fort Morgan’s home rule police powers established in Article XX of the Colorado Constitution; and

WHEREAS, SourceGas is subject to the jurisdiction of the laws of the City of Fort Morgan as it has constructed a natural gas pipeline and serves two customers located within City limits.

NOW, THEREFORE, Fort Morgan hereby grants, by ordinance duly passed by the City Council, a permit to SourceGas more particularly set forth as follows:

1. The Permit is granted as to the property described in Exhibit A-1 attached hereto and made a part hereof that is found within the jurisdictional limits of the City of Fort Morgan, Morgan County, State of Colorado, herein referred to as the "Permit Area". The Permit Area is more particularly indicated on the map marked as Exhibit "A-2" attached hereto and made a part hereof.

2. Fort Morgan conveys to SourceGas the right of ingress and egress to and from the Permit Area for purposes of, and during all periods of, construction, operation, inspection, installation, renewal, maintenance, reinforcement, repair and removal of SourceGas' natural gas pipelines, equipment, facilities and structures.

3. Fort Morgan recognizes the right of SourceGas to provide natural gas service to Leprino and Cargill as set forth in, and subject to, the Supreme Court's mandate and opinion in Case No. 04CV301.

4. Fort Morgan authorizes SourceGas reasonable access to the roads, streets and rights-of-way within the Permit Area in order to exercise the rights contained in this Permit.

5. SourceGas shall adhere to all applicable natural gas pipeline regulations of the State of Colorado and the City of Fort Morgan. SourceGas shall provide annual reports to the City Manager detailing the condition of the pipeline in the permitted area, as well as all maintenance that was performed on the pipeline including inspections and the findings of the inspections.

6. The rights, conditions and provisions of this Permit shall be personal to SourceGas and shall inure to its benefit only. This Permit is not assignable without prior consent of Fort Morgan. Any successors or assigns must apply for an extension of this permit or for a new permit with the City.

7. This Permit shall be recorded in the public records of Morgan County, State of Colorado by SourceGas, at its expense.

8. Nothing in this Permit prevents Fort Morgan from competing with SourceGas or exercising its rights as established in law.

9. This Permit shall only grant to SourceGas the right to serve natural gas to its current customers, Leprino and Cargill, and their successors and assigns. In the event SourceGas seeks to serve additional customers it must apply for a new permit or franchise as required under the Fort Morgan Municipal Code.

10. This Permit shall be valid in perpetuity consistent with the terms hereunder, provided the annual permit fee is paid and SourceGas is providing service to Leprino and Cargill or their successors or assigns.

11. SourceGas shall pay an annual \$1,000.00 permit fee starting on the date this ordinance goes into effect. The annual permit fee shall be adjusted each year for inflation, based upon the Denver, Boulder and Greeley Consumer Price Index.

12. This Permit shall become valid and effective as of the date this Ordinance goes into full force and effect.

13. Upon the termination of SourceGas' obligation to provide service to Leprino and Cargill, including their successors and assigns, Fort Morgan shall have the first right of refusal to purchase the natural gas line described in this Permit from SourceGas, and any such purchase shall be subject to applicable legal, regulatory (including the Colorado Public Utilities Commission), or municipal authorization or requirements.

14. In the event SourceGas, in the operation and maintenance of the pipeline, fails to comply with any standard, regulation or order of a duly authorized entity with jurisdiction over the pipeline, i.e., the Colorado Public Utility Commission or the United States Department of Transportation, such that a threat or hazard is created to the health, welfare or safety of the citizens of the City, the City may give notice to SourceGas of the obligation to come within compliance. If SourceGas fails to take steps to be in compliance with the referenced standard, regulation or order within 45 days, the City shall have the right to revoke the permit.

**EFFECTIVE DATE.**

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

READ AND PASSED ON FIRST READING AND ORDERED PUBLISHED IN FULL on the 4<sup>th</sup> day of December, 2007.

THE CITY COUNCIL OF THE CITY OF  
FORT MORGAN, COLORADO

[SEAL]

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

ATTEST:

*/s/ Andrea J. Strand*  
City Clerk

PASSED, APPROVED AND ADOPTED ON FINAL READING AND ORDERED PUBLISHED by title only the 18th day of December, 2007.

THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO

[SEAL]

BY: /s/ Jack L. Darnell  
Mayor

ATTEST:

/s/ Andrea J. 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. 1060** 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 4<sup>th</sup> day of December, 2007. Said **Ordinance**, as proposed, was duly read at length at said regular meeting, and thereafter the same was, on the 7<sup>th</sup> day of December, 2007, 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 18th day of December, 2007. 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 J. Strand  
City Clerk