

ORDINANCE NO. 1080

AN ORDINANCE GRANTING CERTAIN ECONOMIC INCENTIVES FOR BUSINESS RELOCATION AND EXPANSION TO EHRLICH TOYOTA EAST BY THE CITY OF FORT MORGAN, COLORADO.

Whereas, Ehrlich Toyota East (hereinafter "Ehrlich") has applied for certain tax and economic incentives for construction of an automobile dealership and vehicle service/repair garage, at an anticipated cost of \$ 2,500,000.00, upon Lot 1 of the Minor Subdivision Plat of the "Ehrlich Minor Subdivision" (hereinafter the "Project") in the City of Fort Morgan, Colorado (hereinafter "City"); and,

Whereas, the real property upon which the Project will be located is within an enterprise zone and Ehrlich, in accordance with the provisions of the Urban and Rural Enterprise Zone Act, C.R.S. § 39-30-101, et seq., (hereinafter the "Act"), has requested the Council of the City of Fort Morgan, Colorado, to provide certain tax and economic incentives upon or for the benefit of the taxable property of Ehrlich Toyota East resulting from such relocation and expansion; and,

Whereas, Ehrlich represents that it will qualify for a credit or refund on taxes in accordance with the requirements of C.R.S. § 39-30-105, and has presented certification from the Zone Administrator of the Northeast Colorado Enterprise Zone that the Project would constitute a "new business facility" in an enterprise zone as defined by C.R.S. § 39-30-105(7)(e); and,

Whereas, the Council finds that among the purposes of the Act is the encouragement, development and expansion of opportunities for employment in the private sector; to provide incentives for private enterprise to expand and for new businesses to locate in economically depressed areas; to provide more job opportunities for residents of such areas; and to establish tax incentives and other assistance for such private enterprises; and,

Whereas, the Council finds that the Project proposed by Ehrlich would be of benefit to the City by providing new employment opportunities and rehabilitating blighted property; and,

Whereas, the Council finds that the general welfare of the residents of the City would be promoted by granting or approving the tax incentive payments, as hereinafter set forth.

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

1. Refund of Sales Taxes levied by the City. Ehrlich shall be entitled to apply for and receive a refund of up to **Seventeen Thousand Five Hundred (\$17,500.00) Dollars** of all sales taxes levied by and paid to the City of Fort Morgan for the local purchase of equipment, machinery, machine tools, or supplies used in the construction of or incorporated into the improvements of the Project in the Northeast Colorado Enterprise Zone. Such refund shall be payable by the City Treasurer upon presentation of Receipts by Ehrlich upon completion of the Project for all such sales taxes paid and verification by the City Treasurer that such sales taxes have, in fact, been levied and paid to the City. Said refund will also be subject to certification by Ehrlich, through a legal opinion from its attorney's, that its business arrangement conforms to Colorado law.

Statutory Reference: C.R.S. § 39-30-107.5 (2)

2. Refund of General Property Taxes. Commencing with Tax Year 2010 (taxes payable in 2011) and continuing for Tax Years 2011 through 2025, Ehrlich shall be entitled to an annual incentive payment in the form of a refund equal to **eighty percent**

(80%) of the increase in assessed value for general property taxes paid to the City upon the improvements and improvement fixtures constructed as the automobile dealership and vehicle maintenance garage. This refund shall be for improvements and improvement fixtures and the Land upon which the improvements and improvement fixtures are located and that portion of general property taxes attributable to Land. Within sixty (60) days after receipt of proof of payment of the current year's taxes (starting with Tax Year 2009) provided to the City Treasurer by Ehrlich, the City shall make an annual incentive payment to Ehrlich as set forth above, excluding interest and penalty, if any. The term of this agreement as to real property taxes shall not exceed fourteen (14) tax years.

Statutory Reference. C.R.S. § 39-30-107.5

3. Refund of Personal Property Taxes. Commencing with Tax Year 2010 (taxes payable in 2011) and continuing through Tax Year 2020, Ehrlich shall be entitled to an annual incentive payment in the form of a refund equal to **fifty percent (50%)** of the amount of taxes levied by the City upon the increase in assessed value of taxable personal property located at or within this new business facility and used in connection with the operation of such new business facility, reduced by depreciation of ten (10%) percent from the base amount for each succeeding Tax Year. The term of this agreement as to personal property taxes shall not exceed ten (10) tax years. Within sixty (60) days after receipt of proof of payment of the current year's personal property taxes (starting with Tax Year 2010) provided to the City Treasurer by Ehrlich, the City shall make an annual incentive payment to Ehrlich as set forth above, excluding interest and penalty, if any.

Statutory Reference: C.R.S. § 31-15-903

4. Other Tax and Fee Incentives. The City will provide an electric infrastructure credit up to **Ten Thousand (\$10,000.00) Dollars**, for the installation of electrical service to the meter, including any required transformer. The City will provide a gas infrastructure credit of up to **One Thousand (\$1,000.00) Dollars**, for the installation of a gas tap and line to Ehrlich from the City's gas main.

5. Limitations. The incentive payments provided in Paragraphs 1, 2, 3 and 4 above shall be subject to the following limitations:

(a) In the aggregate the total of all sales tax refunds, annual tax incentive payments and other incentives due hereunder shall not exceed **One-Hundred-Twelve-Thousand-Seven-Hundred-Thirty-Six (\$112,736.00) Dollars**.

(b) The annual tax incentive payments shall apply only to the construction and equipping of that portion of the Project, which is completed, used and/or occupied by December 31, 2009.

(c) The annual incentive payments shall be made only if all taxes and assessments levied and assessed by the City during each and every year that a payment is made are paid on time and in full.

(d) Payments shall not be made if a Court of competent jurisdiction declares any material section of the Act or this **Ordinance** or any Resolution setting policy for incentive payments to be invalid, unconstitutional, or in violation of any statute.

(e) Payments shall only be made to the extent revenues are available and appropriated in each of the tax years specified above. The Council has no obligation to appropriate funds to make the annual incentive payments.

(f) Payment of any incentives stated above shall only be made if Ehrlich qualifies for a credit or refund on taxes in accordance with the requirements of C.R.S. § 39-30-105, and the Project must qualify as a "new business facility" in an enterprise zone as defined by C.R.S. § 39-30-105(7)(e). These qualifications must be demonstrated annually to the City's satisfaction through submission of a **Certification of Qualified Enterprise Zone Business** from the Administrator

of the Northeast Colorado Enterprise Zone for each tax year in which Ehrlich requests an incentive payment.

(g) Payments shall only be made if the City continues to be in a designated enterprise zone.

(h) Payments shall only be made if Ehrlich presents a request for payment annually and provides the necessary documentation and information as required by the City Manager and as set forth herein.

(i) The incentives authorized herein shall only apply to the property contained in Lot 1 of the Minor Subdivision Plat of the "Ehrlich Minor Subdivision".

6. **Binding Effect.** By its acceptance and approval of this Ordinance, Ehrlich agrees to be bound by the terms and provisions hereof. This Ordinance shall become effective upon its final publication and its acceptance by Ehrlich through its authorized officer and shall thereupon become a binding agreement between the City and Ehrlich. This agreement shall not be assignable without the written consent of the non-assigning party.

INTRODUCED, READ AND PASSED UPON FIRST READING this 21st day of April, 2009, for publication once in a newspaper of the City of Fort Morgan, Colorado, at least ten days before its final passage.

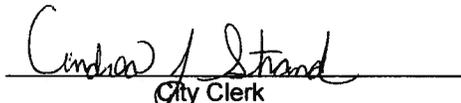
[SEAL]

THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO

ATTEST:

BY:


Mayor


City Clerk

FINALLY PASSED, ADOPTED AND APPROVED this 5th day of May, 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.

[SEAL]

THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO

ATTEST:

BY:

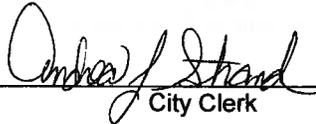

Mayor


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. 1080** 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 April, 2009. Said **Ordinance**, as proposed, was duly read at length at said regular meeting, and thereafter the same was, on the 24th day of April, 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 5th day of May, 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

Approval and Acceptance

The terms and provisions of **Ordinance No. 1080** are hereby accepted and approved this 19th day of MM 2009.

Ehrlich Toyota East, a Colorado corporation

By: 

Scott Ehrlich, President