

# ORDINANCE NO. 1064

## AN ORDINANCE AMENDING ORDINANCE NO. 1056 ENTITLED “AN ORDINANCE GRANTING CERTAIN ECONOMIC INCENTIVES FOR BUSINESS EXPANSION TO DELTA OIL FIELD TANK COMPANY, LLC BY THE CITY OF FORT MORGAN, COLORADO.

**Whereas**, on September 5, 2007, Gary Harms, President and CEO for Delta on submitted an Economic Development Incentive Application pursuant to the City’s Economic Incentive Policy, therein requesting among others, a waiver of the Building Permit Fee in the amount of \$42,410.00; and,

**Whereas**, on November 6, 2007, Ordinance No. 1056, granted to Delta Oil Field Tank Company, LLC (hereinafter “Delta”) certain tax and economic incentives for construction of a manufacturing facility, at an anticipated cost of \$9,000,000.00 dollars, at 2550 East Bijou Avenue in the City of Fort Morgan, Colorado (hereinafter the “Project”); and,

**Whereas**, the inclusion of the Building Permit Fee in the amount of \$42,410.00 was omitted under Ordinance No. 1056; and,

**Whereas**, the Council finds that the amendment as proposed is necessary as this Project benefits the City by providing new employment opportunities; and,

**Whereas**, the Council finds that the general welfare of the residents of the City would be promoted by amending the tax incentive payments with the inclusion of the Building Permit Fee, 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.** Delta shall be entitled to apply for and receive a refund of **one hundred percent (100%)** of all sales taxes levied by and paid to the City of Fort Morgan for the purchase of equipment, machinery, machine tools, or supplies used in the construction of or incorporated into the improvements constructed as the Project in the Northeast Colorado Enterprise Zone. Such refund shall be payable by the City Treasurer upon presentation of Receipts by Delta 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.

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

**2. Refund of General Property Taxes.** Commencing with Tax Year 2007 (taxes payable in 2008) and continuing for Tax Years 2008, 2009, and 2010, Delta shall be

entitled to an annual incentive payment in the form of a refund equal to **one-hundred percent (100%)** of the increase in assessed value for general property taxes paid to the City upon the improvements and improvement fixtures constructed as manufacturing facility. This refund shall be for improvements and improvement fixtures only (specifically excluding any improvements not replaced as part of this Project, including, but not limited to, Aboveground Storage Tanks (AST) or Underground Storage Tanks (UST)); the Land upon which the improvements and improvement fixtures are located and that portion of general property taxes attributable to Land shall *not* be included in the refund. Within thirty (30) days after receipt of proof of payment of the current year's taxes (starting with Tax Year 2007) provided to the City Treasurer by Delta, the City shall make an annual incentive payment to Delta as set forth above, excluding interest and penalty, if any.

Statutory Reference: C.R.S. § 39-30-107.5 (1)

**3. Refund of Personal Property Taxes.** Commencing with Tax Year 2007 (taxes payable in 2008) and continuing for Tax Years 2008, 2009, and 2010, Delta 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 four (4) tax years. Within thirty (30) days after receipt of proof of payment of the current year's personal property taxes (starting with Tax Year 2007) provided to the City Treasurer by Delta, the City shall make an annual incentive payment to Delta as set forth above, excluding interest and penalty, if any.

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

**4. Permit Fees.** City shall waive all building permit fees otherwise payable to the City for the construction of the Delta facilities, except any actual expenses incurred by the City by the City for plan reviews or inspections that may be required, which expenses shall be paid by Delta.

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

(a) The total of all sales tax refunds and annual tax incentive payments due hereunder shall not exceed **Forty-Six Thousand-One-Hundred-Twenty-Three and 00/100 (\$46,123.00) 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, 2007.

(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 violative 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) Payments shall only be made if Delta 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. §39-22-508.2. These qualifications must be demonstrated annually to the City’s satisfaction by submission by Delta of a **Certification of Qualified Enterprise Zone Business** from the Administrator of the Northeast Colorado Enterprise Zone for each tax year in which Delta requests an incentive payment.

(g) Payments shall only be made if the City of Fort Morgan, Colorado continues to be in a designated enterprise zone.

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

INTRODUCED, READ AND PASSED UPON FIRST READING this 4<sup>th</sup> day of March, 2008, 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 L. Darnell  
Mayor

ATTEST:

*/s/ Andrea Strand*  
City Clerk

FINALLY PASSED, ADOPTED AND APPROVED this 18<sup>th</sup> day of March, 2008 for publication by title only, 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

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

ATTEST:

*/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. 1064** 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 March, 2008. 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 March, 2008, 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 18<sup>th</sup> day of March, 2008. 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

## Approval and Acceptance

The terms and provisions of **Ordinance No. 1064** are hereby accepted and approved this 2nd day of April, 2008.

Delta Oil Field Tank Company, a Limited Liability Company

By: */s/ Gary W. Harms*  
Gary W. Harms, Jr., President / CEO