

ORDINANCE NO. 1019

AN ORDINANCE GRANTING CERTAIN ECONOMIC INCENTIVES FOR BUSINESS EXPANSION TO RICHARD NESTOR, INC. BY THE CITY OF FORT MORGAN, COLORADO.

Whereas, Richard Nestor, Inc. (hereinafter “Nestor”) has applied for certain tax and economic incentives for construction of new facilities, at an anticipated cost of \$277,000, on Lots 2 and 3, Block 3, Fort Morgan Industrial Park (hereinafter the “Project”); and,

Whereas, the real property upon which the Project will be located is within an enterprise zone and Nestor, in accordance with the provisions of the Urban and Rural Enterprise Zone Act, C.R.S. § 39-30-101, et seq., referred to hereinafter as 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 Nestor resulting from such expansion; and,

Whereas, Nestor 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. § 39-22-508.2 (3), excluding subparagraph (b); 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 Nestor would be of benefit to 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 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. Nestor shall be entitled to apply for and receive a refund of **sixty percent (60%)** 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 on or before December 31, 2005. Such refund shall be payable by the City Treasurer upon presentation of Receipts by Nestor 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. This refund shall **not apply** to any use tax levied by 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 2006 (taxes payable in 2007) and continuing for Tax Years 2007, 2008, and 2009, Nestor shall be entitled to an annual incentive payment in the form of a refund equal to **sixty percent (60%)** of the increase in assessed value for general property taxes paid to the City upon the improvements and improvement fixtures constructed as the new Nestor facilities. This refund shall be for improvements and improvement fixtures only; 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 2006) provided to the City Treasurer by Nestor, the City shall make an annual incentive payment to Nestor 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 2006 (taxes payable in 2007) and continuing for Tax Years 2007, 2008, and 2009, Nestor shall be entitled to an annual incentive payment in the form of a refund equal to **thirty percent (30%)** 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. 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 2006) provided to the City Treasurer by Nestor, the City shall make an annual incentive payment to Nestor as set forth above, excluding interest and penalty, if any.

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

4. Limitations. The incentive payments provided in Paragraphs 1, 2 and 3 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 **Four-Thousand-One-Hundred-Ninety-Two and 00/100 (\$4,192.00) 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, 2005.

(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 Nestor 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 Nestor of a **Certification of Qualified Enterprise Zone Business** from the Administrator of the Northeast Colorado Enterprise Zone for each tax year in which Nestor 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**, Nestor agrees to be bound by the terms and provisions hereof. This **Ordinance** shall become effective upon its final publication and its acceptance by Nestor through its authorized officer and shall thereupon become a binding agreement between the City and Nestor. This agreement shall not be assignable without the written consent of the non-assigning party.

INTRODUCED, READ AND PASSED UPON FIRST READING this 7th day of June, 2005, 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 L. Darnell
Mayor

ATTEST:

/s/ Nancy J. Lockwood
City Clerk

FINALLY PASSED, ADOPTED AND APPROVED this 21st day of June, 2005 for publication once, by title only, 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 L. Darnell
Mayor

ATTEST:

/s/ Nancy J. Lockwood
City Clerk

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

CERTIFICATE

I, Nancy J. Lockwood, the duly appointed, qualified and acting Clerk of the City of Fort Morgan, Colorado, do hereby certify and attest that the foregoing **Ordinance No. 1019** 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 7th day of June, 2005. Said **Ordinance**, as proposed, was duly read at length at said regular meeting, and thereafter the same was, on the 10th day of June, 2005, 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 21st day of June, 2005. 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/ Nancy J. Lockwood
City Clerk

Approval and Acceptance

The terms and provisions of **Ordinance No. 1019** are hereby accepted and approved this ____ day of _____, 2005.

Richard Nestor, Inc., a Nebraska corporation

By: _____
President