

RECORD OF ORDINANCES

Ordinance No. 18-10

Passed _____, 20____

AN ORDINANCE AMENDING ORDINANCE NO. 60-09 TO (A) CLARIFY THE TERMS OF CERTAIN ECONOMIC DEVELOPMENT INCENTIVES HERETOFORE PROVIDED TO DELTA ENERGY HOLDINGS, LLC, (B) AUTHORIZE THE EXECUTION OF AMENDMENTS TO THE RELATED REAL ESTATE PURCHASE CONTRACT AND ECONOMIC DEVELOPMENT AND TAX INCREMENT FINANCING AGREEMENT AND (C) MODIFY THE REAL PROPERTY SUBJECT TO THE TAX INCREMENT FINANCING PROVISIONS OF ORDINANCE NO. 60-09.

WHEREAS, consistent with its Economic Development Strategy (the “*Strategy*”) approved by Dublin City Council Resolution No. 07-94 adopted on June 20, 1994, and the updated strategy approved by Dublin City Council Resolution No. 30-04 adopted on July 6, 2004, the City desires to encourage commercial office development and provide for the creation of employment opportunities within the City; and

WHEREAS, the City currently owns a certain parcel of real property located within the City known as parcel 273-010591-00 located at the southwest corner of Emerald Parkway and Perimeter Drive (hereinafter referred to as the “*Property*”); and

WHEREAS, Delta Energy Holding, LLC (the “*Company*”) has completed an examination of its workforce needs, and induced by and in reliance on economic development incentives provided for in Ordinance No. 60-09, the Company is desirous of constructing a new corporate headquarters in the City and relocating its workforce and operations to the City; and

WHEREAS, this City Council previously passed Ordinance No. 60-09 authorizing the provision of certain incentives for the purposes of encouraging the location of the Company within the City and authorized the City Manager to execute certain Agreements, including a Real Estate Purchase Contract and an Economic Development and Tax Increment Financing Agreement; and

WHEREAS, the Company desires to amend certain of the terms and conditions of those Agreements to provide for a reduction in the amount of real property to be purchased by the Company (such real property being referred to herein as the “*Property*” and a depiction of such Property is attached hereto as Exhibit A-1) and a reduction in the corresponding amount of real property to be subject to the TIF Statutes as described in Ordinance No. 60-09; and

WHEREAS, this City Council has determined to authorize such amendments and to provide for the execution and delivery of an Extension and Amendment of Real Estate Purchase Contract and an Amendment of Economic Development and Tax Increment Financing Agreement, all to provide for the sale and development of the Property; and

WHEREAS, this City Council has determined that the City shall comply with all requirements identified in Ordinance No. 60-09 Sections 1 through 12 and authorize the necessary amendments thereto to insure the Company’s desired changes are reflected and all other requirements are met in accordance with the law;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Dublin, State of Ohio, _____ of the elected members concurring, that:

Section 1. The Extension and Amendment of Real Estate Purchase Contract and the Amendment of Economic Development and Tax Increment Financing Agreement by and between the City and the Company, in the form presently on file with the Clerk of Council, providing for, among other things, the sale and conveyance of the Property, the payment of Service Payments by the owners of any portion of the Property and the provision of certain economic development incentives to the Company, is hereby approved and authorized with

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changes therein not inconsistent with this Ordinance and not substantially adverse to this City and which shall be approved by the City Manager. The City Manager, for and in the name of this City, is hereby authorized to execute the Extension and Amendment of Real Estate Purchase Contract and Amendment of Economic Development and Tax Increment Financing Agreement provided further that the approval of changes thereto by that official, and their character as not being substantially adverse to the City, shall be evidenced conclusively by the execution thereof. This Council further authorizes the City Manager, for and in the name of the City, to execute any amendments to the Extension and Amendment of Real Estate Purchase Contract and Amendment of Economic Development and Tax Increment Financing Agreement, which amendments are not inconsistent with this Ordinance and not substantially adverse to this City.

Section 2. The depiction of the property originally attached as Exhibit A to Ordinance No. 60-09 is hereby deleted and shall be replaced with the depiction of the Property attached hereto as Exhibit A-1.

Section 3. All capitalized terms used herein without definition shall have the same meaning and effect as those terms may be given pursuant to Ordinance No. 60-09 unless the same are expanded, limited or otherwise defined herein. All of the terms and conditions of Ordinance No. 60-09 shall remain in full force and effect except as expressly modified herein. In the event of a conflict between the terms and conditions of this Ordinance and the terms and conditions of Ordinance No. 60-09, the terms and conditions of this Ordinance shall control

Section 4. This Council further hereby authorizes and directs the City Manager, the Director of Law, the Director of Finance, the Clerk of Council, or other appropriate officers of the City to prepare and sign all agreements and instruments and to take any other actions as may be appropriate to implement this Ordinance.

Section 5. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in open meetings of this Council or committees, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law including Section 121.22 of the Revised Code.

Section 6. This Ordinance shall be in full force and effect on the earliest date permitted by law.

Signed:

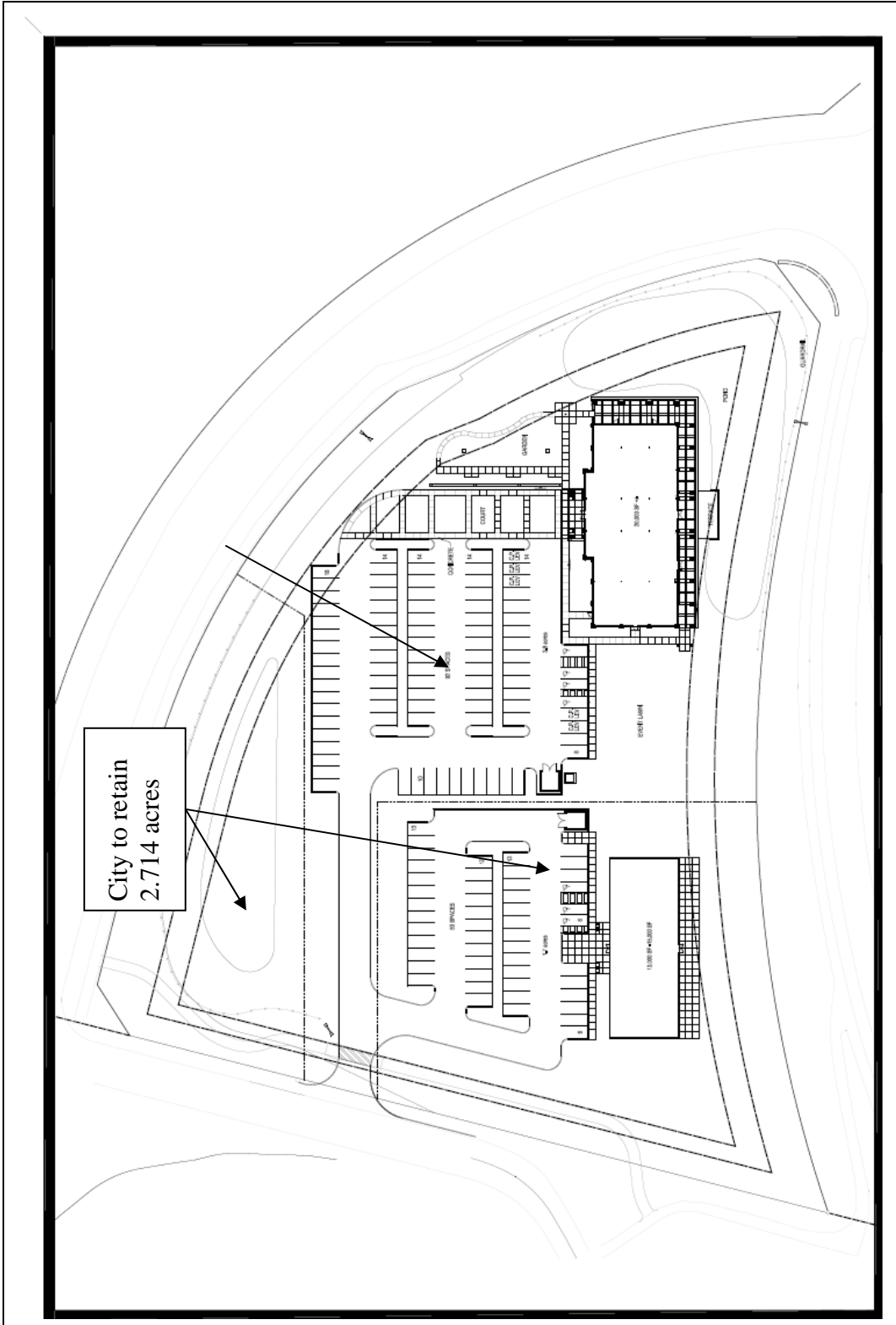
Mayor - Presiding Officer

Attest:

Clerk of Council

Passed: _____, 2010

Effective: _____, 2010





CITY OF DUBLIN.

Office of the City Manager
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Memo

To: All Members Dublin City Council
From: Terry Foegler, City Manager *TF/Sj*
Date: April 22, 2010
Initiated By: Dana L. McDaniel, Deputy City Manager/Director of Economic Development
Re: Ordinance 18-10, Delta Energy

Summary

In November 2009, City Council approved Ordinance 60-09 authorizing the City Manager to enter into a Real Estate Purchase Agreement, Economic Development Agreement and Tax Increment Financing Agreement relative to the Delta Energy, LLC (“Delta”) project. As Council may recall, Delta intends to construct a new headquarters facility on the City owned property located at the southwest corner of Emerald Parkway and Perimeter Drive. The construction of a new corporate headquarters facility demonstrates Delta’s long-term commitment to Dublin. Delta is expected to locate its operations and workforce in Dublin starting with 75 employees and expanding to at least 100 employees by 2015.

Delta Energy and the City executed the necessary contract documents in accordance with Ordinance 60-09. As is standard with commercial real estate purchase agreements, several contingencies are included in the Real Estate Purchase Agreement. Delta and the City have been working diligently through those contingencies and the project remains feasible. However, Delta desires to seek a modification to the project.

Delta is requesting to modify their original plan. **Delta still intends to locate its corporate headquarters operations and workforce in accordance with the previous Economic Development Agreement.** Delta still desires to construct a 20,000 square foot facility with the potential for a two story 8,000 square foot expansion. However, Delta desires to purchase approximately 2.9 acres (subject to final survey) instead of 4.44 acres and split the lot as depicted in Exhibit A-1 to Ordinance 18-10. Staff is advancing Ordinance 18-10 to Council in order to make Council aware of this desired change and to seek authorization to amend the Agreements authorized by Ordinance 60-09. Amendments to the Real Estate Purchase Agreement, Economic Development Agreement and Tax Increment Finance Agreement are necessary and are summarized in the following:

REAL ESTATE PURCHASE CONTRACT

- The acreage of the property is being reduced from 4.442 acres to approximately 2.9 acres)
- The purchase price will remain the same at \$225,000 per acre (subject to confirmation of the actual acreage by survey)
- Delta’s remaining contingencies are being clarified as well as the time they have to satisfy them (60 days)
- The contract includes an obligation to enter into a Declaration of Covenants and Easements, which will establish the framework for the interconnected development of the site now that it has been

divided into two commercially developable tracts. The Declaration addresses matters such as the following:

- Access easements to Delta over the property retained by the City
- Easement to the City for public infrastructure
- Cross access easements for access to the residual property
- Easements to Delta for use of the retention/detention pond on the property retained by the City *(including construction obligations and a mechanism for the sharing of the costs to repair and maintain same by the property owner's benefitting from the use thereof)*
- Future utility and signage easements to the owners of each developable tract
- The relocation of easements to the extent they interfere with the development of any tract

-The contract includes an obligation to enter into a Right of First Refusal and Option Agreement for the benefit of Delta. The Right of First Refusal and Option Agreement addresses matters such as the following:

- Delta has a period of 3 years within which it may exercise an option to purchase the property retained by the City
- The purchase price will remain the same at \$225,000 per acre
- Delta will be required to commence development of the property within one year after the purchase and complete same within two years
- If the City receives a bona fide offer to purchase the property within Delta's option period that it desires to accept, it must present same to Delta. Delta has 10 days to make a decision as to whether or not it will buy the property on the terms set forth in such offer. If it does not elect to proceed with the purchase, then its Right of First Refusal and Option expire. If Delta elects to purchase the property, then it must close within 30 days.

ECONOMIC DEVELOPMENT AND TAX INCREMENT FINANCING AGREEMENT:

-The acreage of the property is being reduced from 4.442 acres to approximately 2.9 acres

Splitting the site, as proposed, would now allow for a second building. Planning staff applied the surrounding Future Land Use designation of 'Standard Office, which cites a maximum density of $\pm 12,500$ square feet per acre. On ± 5.0 acres, this results in a maximum of 62,500 square feet of office. However, this number is extremely aggressive, and assumes an extremely efficient layout that is not very realistic given the site factors of an oddly shaped parcel such as the one under consideration [i.e. right-of-way on three (all) sides, and the City's objective to minimize views of parking and maximize views of architecture and green space]. Therefore, it is staff's opinion that the site can yield up to $\pm 52,000$ square feet of office, for a density of just over 10,000 square feet/acre. The additional office space on the residual land could yield up to 17,000 square feet. This would create additional opportunity for more jobs in the future.

Recommendation

Staff recommends Council approves Ordinance 18-10 in an effort to attract Delta Energy, its operations and workforce and allow the opportunity for additional square footage to be developed on the site with the potential to attract additional jobs. Staff further recommends the Ordinance be passed as an emergency at the second reading/public hearing on May 10th, waiving the 30-day waiting period. Please address any questions you may have to Dana McDaniel.