

AGENDA ITEM SUMMARY

October 3, 2017

City Council

STAFF

SeonAh Kendall, Economic Health Manager
John Duval, Legal

SUBJECT

First Reading of Ordinance No. 131, 2017, Appropriating Prior Year Reserves in the General Fund to Reimburse Avago Wireless Technologies (USA) Manufacturing, LLC for Use Taxes and Business Property Taxes as Provided in Business Investment Agreements.

EXECUTIVE SUMMARY

The purpose of this item is to appropriate \$397,716 of prior year reserves from the General Fund for a rebate to Avago Technologies Wireless (U.S.A.) Mfg., LLC. ("Avago") for use tax and business personal property tax rebates under two business investment agreements. The agreements provide business investment assistance to Avago for the expansion and retrofit of Avago's Building 4 for a wafer fabrication facility in 2012 and for a FBAR clean room facility in 2013. These two projects were required to create an additional 227 primary jobs in the City, and net 617 full time equivalents.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

Agreement Summary

On July 19, 2011, City Council adopted Resolution 2011-066, approving a Business Investment Agreement, which the City and Avago entered into on July 25, 2012 (2012 Agreement). The 2012 Agreement provides business investment assistance to Avago for the expansion and retrofit of its Building 4 for a new wafer fabrication facility. On October 16, 2012, City Council adopted Resolution 2012-096, approving a second Business Investment Agreement with Avago, which the City and Avago entered into on June 5, 2013 (2013 Agreement). The 2013 Agreement provides business investment assistance to Avago for the expansion and retrofit of its Building 4 - for a new FBAR clean room facility. The 2012 and 2013 Agreements provide that Avago is eligible for the following rebates:

2012 Agreement (wafer fabrication facility)

- Use tax on new "Eligible Manufacturing Equipment" (up to 100%) for the period beginning August 1, 2011 and ending December 31, 2013, subject to a limit on the total use tax rebate amount of \$1,725,000. A total of \$1,089,734 in use tax rebates was paid to Avago in 2013 and 2014 under the 2012 Agreement. Avago is not eligible for any additional use tax rebates under the 2012 Agreement, so **no** use tax rebate is now being requested under the 2012 Agreement.
- Business Personal Property Tax Rebates (up to 50%) for a ten-year period for the Eligible Manufacturing Equipment purchased for the period beginning August 1, 2011 and ending December 31, 2013. Each annual payment is limited to \$81,700, or 50% of City business personal property taxes

actually paid for the Eligible Manufacturing Equipment so purchased for the wafer fabrication facility project, whichever is lower. For 2017, Avago is eligible for a business personal property tax rebate of \$26,663 under the 2012 Agreement.

2013 Agreement (FBAR clean room facility)

- Use tax on new Eligible Manufacturing Equipment (up to 100%) for the period beginning October 26, 2012, and ending December 31, 2014, subject to a limit on the total use tax rebate amount of \$3,882,200. For 2017, Avago is eligible for a use tax rebate of \$324,629 under the 2013 Agreement.
- Business Personal Property Tax Rebate (up to 50%) for a ten-year period for the Eligible Manufacturing Equipment purchased for the period beginning October 26, 2012, and ending December 31, 2014. A limit on each annual payment is \$100,907, or 50% of City business personal property taxes actually paid for the Eligible Manufacturing Equipment so purchased for the FBAR clean room facility, whichever is lower. For 2017, Avago is eligible for a business personal property rebate of \$47,501 under the 2013 Agreement.

Employment Level Requirements

The 2012 and 2013 Agreements provide business investment assistance to Avago for the expansion and retrofit of Avago's Building 4 for a wafer fabrication facility in 2012 and for a FBAR clean room facility in 2013. The two rebate categories were offered with the stipulation that Avago's employment levels must be maintained at no fewer than the number of employees within its Fort Collins facility as Avago employed as of June 5, 2013 (437 employees). The two expansions netted 617 new full time equivalent (FTE) employees, new hires, net of replacements and attrition. As of December 31, 2016, Avago had a total of 1,364 FTEs.

Rebate schedule as agreed upon with Avago

Staff has developed a rebate schedule with Avago which is consistent with the 2012 and 2013 Agreements whereby two rebate applications will be processed each year.

CITY FINANCIAL IMPACTS

The total rebate amount is \$397,716 of prior year reserves from the General Fund.

ORDINANCE NO. 131, 2017
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING PRIOR YEAR RESERVES IN THE GENERAL FUND
TO REIMBURSE AVAGO WIRELESS TECHNOLOGIES (U.S.A.)
MANUFACTURING, LLC FOR USE TAXES AND BUSINESS PERSONAL PROPERTY
TAXES AS PROVIDED IN BUSINESS INVESTMENT AGREEMENTS

WHEREAS, the City of Fort Collins (“City”) and Avago Wireless Technologies (U.S.A.) Manufacturing, LLC (“Avago”) have previously entered into that certain “Business Investment Agreement For Economic Development Related to Avago Technologies Building 4 Retrofit” dated July 25, 2012 (the “2012 Agreement”) and that certain “Business Investment Agreement for Economic Development Related to Avago Technologies Building 4 Retrofit for New FBAR Clean Room Facility” dated June 5, 2013 (the “2013 Agreement”); and

WHEREAS, the 2012 Agreement and 2013 Agreement shall be hereinafter be referred to jointly as the “Agreements”; and

WHEREAS, the 2012 Agreement was approved by City Council on July 19, 2011, in Resolution No. 066, 2011, and the 2013 Agreement was approved by City Council on October 16, 2012, in Resolution No. 096, 2012; and

WHEREAS, the 2012 Agreement provides certain business investment assistance to Avago for the retrofit of its Building 4 for a new wafer fabrication facility and the 2013 Agreement provides similar assistance to Avago for the retrofit of its Building 4 for a new FBAR clean room facility; and

WHEREAS, the Agreements provide that Avago is eligible for reimbursement from the City for the following paid by it to the City, subject to certain limitations: (1) Use Tax on new Eligible Equipment, and (2) Business Personal Property Tax on Eligible Manufacturing Equipment; and

WHEREAS, under the Agreements, Avago can apply for reimbursement biannually for both rebates; and

WHEREAS, all funds reimbursed must be appropriated by Council as part of the rebate process; and

WHEREAS, staff is requesting an appropriation of \$397,716 from prior year reserves in the General Fund to reimburse Avago in accordance with the Agreements; and

WHEREAS, Article V, Section 9 of the City Charter permits the City Council to appropriate by ordinance at any time during the fiscal year such funds for expenditure as may be available from reserves accumulated in prior years, notwithstanding that such reserves were not previously appropriated; and

WHEREAS, City staff have determined that the appropriations as described herein are available and previously unappropriated in the General Fund.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That there is hereby appropriated for expenditure from prior year reserves in the General Fund the sum of THREE HUNDRED NINETY-SEVEN THOUSAND SEVEN HUNDRED SIXTEEN DOLLARS (\$397,716) to reimburse Avago for Use Tax and Business Personal Property Tax as required by the Agreements.

Introduced, considered favorably on first reading, and ordered published this 3rd day of October, A.D. 2017, and to be presented for final passage on the 17th day of October, A.D. 2017.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 17th day of October, A.D. 2017.

Mayor

ATTEST:

City Clerk