

# ORDINANCE NO. 1004

## **AN ORDINANCE GRANTING CERTAIN ECONOMIC INCENTIVES FOR BUSINESS EXPANSION TO NORTHEAST COLORADO CELLULAR, INC., DBA VIAERO WIRELESS, BY THE CITY OF FORT MORGAN, COLORADO.**

**Whereas**, Northeast Colorado Cellular, Inc., dba Viaero Wireless, (hereinafter “Viaero”) has applied for certain tax incentives for the Global Systems for Mobile Communications (GSM) digital technology upgrade it has undertaken at an anticipated cost of \$11,086,236, at 1224 W. Platte Avenue in the City of Fort Morgan, Colorado (hereinafter the “upgrade”); and,

**Whereas**, the real property upon which the upgrade will be located is within an enterprise zone and Viaero, 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 Northeast Colorado Cellular, Inc. installed in such upgrade; and,

**Whereas**, Viaero 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 this upgrade 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 upgrade proposed by Viaero would be of benefit to the City by providing new employment opportunities in the form of seventy-five (75) new employees over the next four years as a result of capital investments exceeding \$11,000,000; 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.** Viaero shall be entitled to apply for and receive a refund of **one-hundred percent (100%)** of all sales taxes levied by the City of Fort

Morgan and paid on equipment installed and purchased from Nokia or any other equipment vendor, including sales tax already paid in 2003 and 2004 in the amount of \$191,880.00, and including all sales taxes hereinafter 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 GSM digital technology upgrade in the City. Any sales taxes paid to the State of Colorado are not includible in this refund. The total amount of Sales Tax Refund is estimated at \$240,000.00, but shall be based on the actual Sales Tax paid and documented to the City. Such refund shall be payable by the City Treasurer upon presentation of Receipts by Viaero 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. Furthermore, there shall be no refund of sales tax collected from customers of Viaero for services provided. Sales Tax refunds shall be made in the years 2004, 2005, 2006 and 2007.

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

**2. Refund of Property Taxes.** Commencing with Tax Year 2004, for taxes payable in 2005 in excess of \$10,324.00, and continuing for Tax Years 2005, 2006 and 2007, payable in 2006, 2007 and 2008, Viaero shall be entitled to an annual incentive payment in the form of a refund equal to **one-hundred percent (100%)** of that portion of the taxes actually paid each year in excess of \$10,324.00 for property taxes paid to the City upon the improvements and improvement fixtures and personal property of Viaero in the City of Fort Morgan. This refund shall be for improvements, improvement fixtures and personal property only. Within thirty (30) days after receipt of proof of payment of the current year's taxes (starting with Tax Year 2004) provided to the City Treasurer by Viaero, the City shall make an annual incentive payment to Viaero as set forth above, excluding interest and penalty, if any.

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

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

(a) The annual tax incentive payments shall apply only to the construction and equipping of that portion of the upgrade, which is completed, used and/or occupied by December 31, 2007.

(b) 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.

(c) 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.

(d) 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.

(e) Payments shall only be made if Viaero 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 Viaero of a **Certification of Qualified Enterprise Zone Business** from the Administrator of the Northeast Colorado Enterprise Zone for each tax year in which Viaero requests an incentive payment.

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

**4. Utilities.** Viaero agrees to continue to utilize City electric and gas utilities for the full term of this incentive agreement for 100% of its demand.

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

INTRODUCED, READ AND PASSED UPON FIRST READING this 5<sup>th</sup> day of October, 2004, 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/ Nancy J. Lockwood  
City Clerk

FINALLY PASSED, ADOPTED AND APPROVED this 19th day of October, 2004 for publication once in the newspaper of the City of Fort Morgan, Colorado, by title only, 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. 1004** 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 5<sup>th</sup> day of October, 2004. Said **Ordinance**, as proposed, was duly read at length at said regular meeting, and thereafter the same was, on the 8<sup>th</sup> day of October, 2004, 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 19<sup>th</sup> day of October, 2004. 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. 1004** are hereby accepted and approved the 26th day of October, 2004.

Northeast Colorado Cellular, Inc.

By: /s/ Larry R. Aisenbrey  
Larry R. Aisenbrey, Vice- President