COUNCIL AGENDA: 06-19-12
ITEM: 2.36

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: **REFUND FOR FUSION-IO**

DATE: June 4, 2012

Approved

Date 6/5/12

COUNCIL DISTRICT: 4

RECOMMENDATION

Approve a refund of construction taxes in the amount of $57,285.73 paid under the incorrect tax rate and valuation by The Core Group/Fusion-IO, for a project located at 2880 Junction Avenue, and direction to the Director of Finance to make payment in accordance with the instructions in the refund claim.

OUTCOME

The outcome of these actions will be a reduction to the Commercial-Residential-Mobile Home Park (CRMP) Tax of $43,266.57, Building and Structures Tax in the amount of $14,633.29, Strong Motion Instrumentation Program Assessment (SMIPA) Tax of $155.87 and Building Standard Administration Special Revolving Fund (BSASRF) Tax of $30.00.

BACKGROUND

On February 23, 2012, The Core Group paid $43,266.57 in CRMP tax, $21,633.29 in Building and Structures tax, $58.00 in BSASRF tax, and $302.87 in SMIPA tax, (total of $65,260.73) associated with tenant improvements for a building located at 2880 Junction Avenue (project number 12-006200, "Fusion-IO, Phase 1"). Fusion-IO is a computer hardware and software company that designs and manufactures flash memory technology. Fusion-IO was named the number one promising information technology company by the Wall Street Journal in 2010. Steve Wozniak is the Chief Scientist for the company. The company's move into roughly 80,000 square feet on 2880 Junction Avenue consolidates their operations from three different cities and will house their research and development function. The site has capacity for 320 employees.

The amount of tax owed for the project was calculated at the commercial tax rate for each of these taxes and at a valuation of $1,442,219. On April 16, 2012, the applicant submitted additional information lowering the construction valuation to $700,000 and submitted an

Industrial Use Designation form declaring the use as qualifying. Based on the information provided, staff has determined that the building will be used for research and development, which qualifies the building structure for industrial use based on Municipal Code Chapter 4.46, "Building and Structure Construction Tax," and that a refund is due to the customer. Based on Municipal Code 4.8.320, a refund claim in excess of $50,000 requires City Council approval.

ANALYSIS

San José's CRMP Tax (also called the Construction Excise Tax), Building and Structure Tax, SMIPA Tax, and BSASRF Tax are applicable to all building permits, including both new construction and tenant improvements. The tax rate imposed for commercial purposes is significantly higher than those for industrial purposes. SMIPA, BSASRF and Building and Structures Taxes are calculated as a percentage of valuation, so a reduction in valuation decreases the tax assessed. The CRMP Tax is set at zero percent for industrial uses.

The City of San José bases construction valuation on the International Code Council's Building Valuation Data, which provides the "average" construction costs per square foot and is used to determine permit fees for a jurisdiction. Per the Municipal Code, staff compares this estimate with the applicant's "contract" valuation (actual contract costs), and the higher of the two is used for tax calculations. Staff evaluated additional information provided by The Core Group on April 16, 2012, and determined that the valuation should be lowered to the amount provided by The Core Group ($700,000).

Residential and commercial uses are broadly defined for both taxes based on the provisions of the Zoning Ordinance. Commercial uses are those allowed in the General Commercial Zoning District per the Zoning Ordinance. "Industrial" uses are defined differently in that 12 specific uses are explicitly called out as eligible for the lower tax rate. (Additional uses were approved effective March 16, 2012, but those were not applicable at the time of The Core Group's permit application on February 23, 2012.) Per Municipal Code 4.46, one of the uses qualifying a structure as industrial use is research and development, reducing the Building and Structures tax rate from 1.5% to 1.0%. Per Municipal Code 4.47, building structures designated as industrial are exempt from the CRMP tax, reducing the CRMP tax rate from 3.0% to 0%.

The chart below summarizes the tax rates per City Ordinance for the CRMP, Building and Structures, SMIPA, and BSASRF Taxes.

Tax	% Tax Assessed Commercial Designation	% Tax Assessed Industrial Designation
CRMP	3%	0%
Building & Structures	1.5%	1%
BSASRF	.004%	.004%
SMIPA	.021%	.021%

The next chart summarizes the original amount paid by the Core Group based on the commercial designation and original valuation, as well as the refund being requested for each tax based on the industrial designation and revised valuation approved by the Department. If this refund is approved, Fusion-IO (per the refund claim) will receive a refund of $58,085.73 less City processing expenses of $800.00, for a total refund of $57,285.73. As a result, the City will have received a total of $7,000.00 in the Building and Structures Tax, $0 in CRMP, $28.00 for the BSASRF tax, and $147.00 for the SMIPA (total of $7,175.00).

Tax/Fee	**Core Group Original Payment**	**Core Group Revised Payment Based on Industrial Designation and Revised Valuation**	**Core Group Proposed Refund**
Valuation	$1,442,219	$700,000	
CRMP	$43,266.57	$0.00	$43,266.57
Building & Structures	$21,633.29	$7,000.00	$14,633.29
BSASRF	$58.00	$28.00	$30.00
SMIPA	$302.87	$147.00	$155.87
Refund Processing Fee			($800.00)
Total	**$65,260.73**	**$7,175.00**	**$57,285.73**

As designated in The Core Group's refund claim, the City is instructed to pay the refund to Fusion-IO.

EVALUATION AND FOLLOW-UP

With approval of the recommended action, the refund of construction taxes will be promptly processed. No follow up actions with Council are expected.

POLICY OUTREACH/INTEREST

☐ **Criterion 1: Requires Council action on the use of public funds equal to $1 million or greater.** (Required: Website Posting)

- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This Council action does not meet any of the criteria above; however, it will be posted on the City's website for the June 19, 2012 Council meeting agenda.

COORDINATION

This memorandum has been coordinated with the Finance Department, City Attorney's Office and the City Manager's Budget Office.

COST SUMMARY/IMPLICATIONS

The total refund of $57,285.73 will be made from the CRMP Tax Fund ($43,266.57), Building and Structure Construction Tax Fund ($14,633.29), BSASRF Tax Fund ($30.00), and the SMIPA Tax Fund ($155.87), less City processing expenses of $800.00. The issuance of this refund will not jeopardize the ability of the Building and Structure Construction Tax Fund and the Construction Excise Tax Fund to meet the budgeted revenue estimate.

CEQA

Not a Project, File No. PP10-069, City Organizational and Administrative Activities.

/s/
JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions, please contact Joseph Horwedel at 408-535-7900.