CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Gloria Schmanek

SUBJECT: **Early Council Packet**

DATE: September 11, 2012

Approved

Date 9-11-12

EARLY DISTRIBUTION COUNCIL PACKET FOR SEPTEMBER 25, 2012

Please find attached the Early Distribution Council Packet for the September 25, 2012 Council Meeting.

2.x Ratification of Final Expenditures for 2011-2012.

Recommendation:

(a) Adopt an ordinance ratifying the final 2011-2012 appropriation increases detailed in the staff memorandum.

(b) Adopt the following 2011-2012 Appropriation Ordinance and Funding Sources Resolution amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Central Fund:

(1) Increase the Earned Revenue estimate by $2,803,231;
(2) Increase the Transfer to Council District 1 by $162,736;
(3) Increase the Transfer to Council District 2 by $135,416;
(4) Increase the Transfer to Council District 3 by $135,457;
(5) Increase the Transfer to Council District 4 by $126,867;
(6) Increase the Transfer to Council District 5 by $214,886;
(7) Increase the Transfer to Council District 6 by $247,082;
(8) Increase the Transfer to Council District 7 by $217,600;
(9) Increase the Transfer to Council District 8 by $132,518;
(10) Increase the Transfer to Council District 9 by $122,378;
(11) Increase the Transfer to Council District 10 by $94,405;
(12) Increase the Transfer to City-Wide by $795,172; and
(13) Increase the Transfer to the General Fund – Parks Eligible Maintenance Costs by $418,714.

(c) Adopt the following 2011-2012 Appropriation Ordinance and Funding Sources Resolution amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Maintenance Yards Purposes:

(1) Increase the Earned Revenue estimate by $7,278; and

(2) Increase the Transfer to the General Fund – Parks Eligible Maintenance Costs by $7,278.

(d) Adopt the following 2011-2012 Appropriation Ordinance amendments in the General Fund:

(1) Increase the Workers' Compensation Claim – Fire appropriation by $183,745;

(2) Decrease the Workers' Compensation Claims – Transportation by $85,000;

(3) Decrease the Workers' Compensation Claims – Public Works by $75,000; and

(4) Decrease the Workers' Compensation Claims – Other Departments by $23,745.

CEQA: Not a Project, File No. PP10-067(b), Appropriation Ordinance. (City Manager's Office)

3.x Telecommunications Users Tax Cap Extension.

Recommendation:

(a) Approve an ordinance amending Chapter 4.70 of Title 4 of the San José Municipal Code to: extend the Cap Program for the Telecommunications Users Tax (TUT) through December 31, 2017; and

(b) Direct staff to conduct an outreach program for other business to apply for participation in the program under the same criteria established in 2009 with the threshold for participation in the TUT Cap Program set at approximately $54,000.

CEQA: Not a Project; File No. PP10-068, Municipal Code or Policy. (Finance)

3.x Approval of Citywide Insurance Renewals.

Recommendation: Adopt a resolution authorizing the City Manager to select and purchase certain City property and liability insurance policies for the period October 1, 2012 to October 1, 2013, at a total cost not to exceed $1,600,000 for all policies, with the following insurance carriers:

(a) Lexington Insurance Company, (Boston, MA) - or other insurers that the City is currently in negotiations with - for Property Insurance, including Boiler and Machinery.

(b) National Union Fire Insurance Company (New York, NY) to provide the following coverage:

(1) Airport Owners and Operators Liability including War Risks & Extended Perils Coverage (Primary and Excess).

(2) Police Aircraft Hull & Liability including War Risks & Extended Perils.

(3) St Paul/Travelers Insurance Company, (Hartford, CT) - or other insurers that the City is currently in negotiations with - for Automobile Liability (Airport fleet vehicles including Shuttle Buses, and WPCP fleet vehicles) and Airport Shuttle Bus physical damage.

(4) Indian Harbor Insurance Company, (Stamford, CT) for Secondary Employment Law Enforcement Professional Liability.

CEQA: Not a Project, File No.PP10-066(a), Agreements and Contracts for purchase of insurance. (Finance)

4.x Actions Related to the Workforce Investment Act Fund.

Recommendation: Adopt the following 2012-2013 Appropriation Ordinance and Funding Sources Resolution amendments in the Workforce Investment Act (WIA) Fund:

(a) Increase the estimate for Earned Revenue by $2,025,000; and

(b) Establish an appropriation to the Office of Economic Development for the Solyndra Project in the amount of $2,025,000.

CEQA: Not a Project; File No. PP10-067(b), Appropriation Ordinance. (Economic Development/City Manager's Office)

4.x Ordinance Amending the Sign Code.

Recommendation: Approve an ordinance amending Title 23 (Sign Ordinance) of the San José Municipal Code to:

(a) Amend Chapter 23.02 to:

(1) Revise Section 23.02.290 lightbox, lightbox sign, revise Section 23.02.940 location of attached signs, and add a new Section 23.02.101 to define service station canopy; canopy sign, and revise Section 23.02.1110 signage at gasoline service stations.

(b) Amend Chapter 23.04 to:

(1) Amend Section 23.04.020 to revise regulations for signage at gasoline service stations;

(2) Amend Section 23.04.035 to increase the maximum allowable square footage of programmable electronic signs; and

(3) Amend Section 23.04.120 to revise regulations for signage at gasoline service stations.

(c) Make other nonsubstantive, ministerial, technical, or typographical changes to said Chapters 23.02 and 23.04 of Title 23 of the San José Municipal Code.

CEQA: Negative Declaration, File No. PP11-099, Addendum thereto, PP12-073. (Planning, Building and Code Enforcement)

These items will also be included in the Council Agenda Packet with item numbers.

GLORIA SCHMANEK
Agenda Services Manager

COUNCIL AGENDA: 09-25-12
ITEM:

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Jennifer A. Maguire

SUBJECT: SEE BELOW

DATE: September 7, 2012

Approved

Date 9/10/12

SUBJECT: ADOPTION OF AN ORDINANCE RATIFYING FINAL EXPENDITURES IN VARIOUS APPROPRIATIONS FOR 2011-2012 AND ADOPTION OF THE ASSOCIATED APPROPRIATION ORDINANCE AND FUNDING SOURCES RESOLUTION AMENDMENTS IN 2011-2012

RECOMMENDATION

It is recommended that the City Council:

1. Adopt an ordinance ratifying the final 2011-2012 appropriation increases detailed in this report.

2. Adopt the following 2011-2012 Appropriation Ordinance and Funding Sources Resolution amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Central Fund:

   a. Increase the Earned Revenue estimate by $2,803,231;
   b. Increase the Transfer to Council District 1 by $162,736;
   c. Increase the Transfer to Council District 2 by $135,416;
   d. Increase the Transfer to Council District 3 by $135,457;
   e. Increase the Transfer to Council District 4 by $126,867;
   f. Increase the Transfer to Council District 5 by $214,886;
   g. Increase the Transfer to Council District 6 by $247,082;
   h. Increase the Transfer to Council District 7 by $217,600;
   i. Increase the Transfer to Council District 8 by $132,518;
   j. Increase the Transfer to Council District 9 by $122,378;
   k. Increase the Transfer to Council District 10 by $94,405;
   l. Increase the Transfer to City-Wide by $795,172; and
   m. Increase the Transfer to the General Fund – Parks Eligible Maintenance Costs by $418,714.

3. Adopt the following 2011-2012 Appropriation Ordinance and Funding Sources Resolution amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Maintenance Yards Purposes:

   a. Increase the Earned Revenue estimate by $7,278; and
   b. Increase the Transfer to the General Fund – Parks Eligible Maintenance Costs by $7,278.

4. Adopt the following 2011-2012 Appropriation Ordinance amendments in the General Fund:

   a. Increase the Workers' Compensation Claim – Fire appropriation by $183,745;
   b. Decrease the Workers' Compensation Claims – Transportation by $85,000;
   c. Decrease the Workers' Compensation Claims – Public Works by $75,000; and
   d. Decrease the Workers' Compensation Claims – Other Departments by $23,745.

OUTCOME

The recommended actions account for unanticipated appropriation over-expenditures that occurred at the end of 2011-2012 and allow the final financial accounting for 2011-2012 to be completed.

BACKGROUND

As part of the process of completing the 2011-2012 fiscal year-end audit, final expenditures and encumbrances recorded by the Finance Department have been compared to the budget to determine whether the expenditures were within appropriation levels approved by the City Council. In this report, City Council approval is requested for a small number of appropriation increases necessitated because final 2011-2012 expenditure totals exceeded final modified appropriation levels.

ANALYSIS

As part of the year-end closing process, certain expenses not previously anticipated are recorded and cause appropriations to be exceeded. Under the City's current practice, appropriation increases necessary to fund those expenses require City Council ratification action.

The Administration makes every effort to limit the number of instances where after-the-fact ratification of over-expenditures must occur. As has been the practice in the past, year-end budget adjustments were prepared and brought to City Council by the Budget Office in June 2012 for the 2011-2012 fiscal year. A number of potential overruns were avoided as a result of the actions taken in that document.

The Administration manages approximately 1,800 appropriations allocated to over 100 City funds. In 2011-2012, appropriations were exceeded in three City funds as described in Attachment A. The total amount for the three funds involved is $2,994,254 and includes the following: the Transfer appropriations in the Parks Construction and Conveyance Tax Fund – Parks Purposes Central Fund ($2,803,231); Transfer appropriation in the Parks Construction and Conveyance Tax Fund – Parks Maintenance Yards Fund ($7,278); and the Workers' Compensation Claims - Fire appropriation in the General Fund ($183,745). In each of these three funds, additional revenue or savings from other appropriations are available to offset the exceeded appropriations.

EVALUATION AND FOLLOW-UP

The ratification of exceeded appropriations will be incorporated into the City's Comprehensive Annual Financial Report for 2011-2012.

PUBLIC OUTREACH

☒ **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 item meets Criterion 1 above. Therefore, this memorandum will be posted on the City's Internet website for the September 25, 2012 City Council agenda.

COORDINATION

This memorandum was coordinated with the Finance Department and the Office of the City Attorney.

FISCAL/POLICY ALIGNMENT

The recommended budget actions align with the City's budget policy that dictates that the City will maintain the fiscal integrity of its operating, debt service, and capital improvement budgets.

COST SUMMARY/IMPLICATIONS

As discussed in the memorandum, additional revenue or savings in other appropriations is available to offset the exceeded appropriations for 2011-2012.

CEQA

Not a Project, File No. PP10-067 (b), Appropriation Ordinance.

JENNIFER A. MAGUIRE
Budget Director

For questions, please contact Jim Shannon, City Manager's Budget Office, at (408) 535-4852.

I hereby certify that there was available for appropriation in the following funds in fiscal year 2011-2012 moneys in excess of those heretofore appropriated therefrom, said excess being at least the amounts as set forth below:

Construction Tax and Property Conveyance Tax Fund: Parks Purposes Central Fund	$2,803,231
Construction Tax and Property Conveyance Tax Fund: Parks Maintenance Yards Purposes	$7,278

JENNIFER A. MAGUIRE
Budget Director

ATTACHMENT A

Construction and Conveyance Tax Fund – Parks Purposes Central Fund $2,803,231

As a result of higher than anticipated revenues, a technical adjustment is necessary to account for over-expenditures that occurred in the Transfer appropriations in the Construction and Conveyance Tax Fund – Parks Purposes Central Fund that is allocated for parks and community facilities development. The Construction and Conveyance Tax revenue is received in the Construction and Conveyance Tax Fund – Parks Purposes Central Fund and then distributed to other various Parks-related Construction and Conveyance Tax Funds (i.e City-Wide and Council District Funds) as well as the General Fund based on the City Council-approved distribution formula. Because Construction and Conveyance Tax Fund revenue ended the year above the budgeted level due to an unanticipated revenue spike in June, the transfer appropriations that were used to distribute this revenue to the other funds were also exceeded. The funding allocated for each of the ratification actions is offset by the additional Parks Construction and Conveyance Tax Fund revenue.

Construction and Conveyance Tax Fund – Parks Maintenance Yards Fund $7,278

As a result of higher than anticipated revenues, a technical adjustment is necessary to account for the over-expenditures that occurred in the Transfer appropriation in the Construction and Conveyance Tax Fund – Parks Maintenance Yards Fund. Based on the City Council-approved distribution formula, a total of 15% of the revenue received in the Construction and Conveyance Tax Fund – Parks Maintenance Yards Fund is transferred to the General Fund for park maintenance operating and maintenance costs. Because Construction and Conveyance Tax Fund revenue ended the year above the budgeted level due to an unanticipated revenue spike in June, the transfer appropriation that was used to distribute this revenue to the General Fund was also exceeded. The funding allocated for the ratification action is offset by the additional Construction and Conveyance Tax Fund revenue.

General Fund $183,745

An appropriation adjustment is necessary to account for over-expenditures that occurred in the Workers' Compensation Claims – Fire appropriation in the General Fund. This appropriation accounts for the cost of Workers' Compensation claims in the Fire Department. In June 2012, four awards totaling more than $300,000 were approved and expended in connection with four claims from past years, which led to the unanticipated overage of $183,745.

TOTAL $2,994,254

COUNCIL AGENDA: 09-25-12
ITEM:

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Julia H. Cooper

SUBJECT: **TELECOMMUNICATIONS USERS TAX CAP EXTENSION**

DATE: September 4, 2012

Approved

Date 9/11/12

RECOMMENDATION

Approve an ordinance amending Chapter 4.70 of Title 4 of the San José Municipal Code (SJMC) to (1) extend the Cap Program for the Telecommunications Users Tax (TUT) (commonly referred to as the Telephone Utility Tax) through December 31, 2017; and (2) direct staff to conduct an outreach program for other business to apply for participation in the program under the same criteria established in 2009 with the threshold for participation in the TUT Cap Program ("Cap Program") set at approximately $54,000.

OUTCOME

By amending Chapter 4.70 of the SJMC to extend the TUT Cap Program, service users in the City who qualify for the Cap Program that pay at least $54,000 in TUT annually will not be subject to financial impacts as a result of the implementation of the new TUT which became effective April 1, 2009.

BACKGROUND

On November 4, 2008, San José voters approved Measure K which reduced the TUT rate from 5% to 4.5% (10% reduction) and updated the tax application. The updated tax was broadened to include interstate and international communications services regardless of the type of technology used to provide such services. The current methods of providing this service include landline, wireless, Voice over Internet Protocol (VoIP), private communication services, voice mail, paging and text messaging. Additionally, the tax applies to bundled communication services including services where taxable and nontaxable services are bundled together. The utility companies collect the tax from consumers on a monthly basis and are required to remit the tax to the City. The tax is not applicable to State, County, or City agencies.

The rate reduction and broadened tax application had minimal impact on residential and small to medium sized businesses. Most residential service users likely experienced a reduction in the

amount of TUT paid. However, due to the broadening of the tax base, some large businesses would have experienced a greater impact by paying a larger amount in TUT. In an effort to mitigate the possibility of large businesses paying a disproportionate amount of the tax, Council directed the Administration to initiate discussions with large San José businesses and develop a plan that would mitigate the potential impact.

The input received through outreach and educational efforts with large businesses helped establish a framework and criteria in developing the proposed Cap Program. As a result, Chapter 4.70 of Title 4 of the SJMC was amended to add a new section which applied a cap to the maximum amount of TUT payable by service users that meet certain threshold requirements (Ordinance 28498; February 24, 2009). The threshold requirements for participation in the program included demonstration of at least $50,000 per year in TUT paid in the initial base year (calendar year 2008), increased by 2% per year, and estimated to be approximately $54,000 for 2012.

The June 2012 Mayor's Budget Message directed staff to present the City Council with an amendment to the Telecommunications Users Tax Ordinance to continue the current tax cap.

ANALYSIS

The Cap Program was originally established to reduce TUT costs for the City's largest users of communications while preserving the City's TUT receipts. The Cap Program was offered to any business that exceeded an annual minimum base of $50,000 in TUT (on a calendar year basis for the 2008 base year) prior to the broadening of the tax application. Large businesses consume high volumes of complex telecommunication services such as private lines. With the broadened tax application, these businesses would experience a significant increase in TUT without participation in the Cap Program. The Cap Program does include a tax receipt growth provision which automatically increases the payments by 2% annually.

The recommendation to extend the Cap Program for five years will provide the opportunity to allow other businesses that qualify for the program to apply and for a recertification of the businesses currently participating in the Cap Program. A reexamination of the Cap Program every five years allows for the City to more efficiently manage resources for administration of the Cap Program and to revalidate the original goal of the Cap Program to mitigate the tax burden of larger businesses. Based on analysis conducted in 2009, it was projected that without the Cap Program larger business could have experienced at least a doubling of their then current TUT payments. Staff believes this analysis holds true today. Without the Cap Program, it is estimated that the three businesses currently participating in the Cap Program would be responsible for over 4% of the total TUT collected by the City. In order to mitigate this tax burden and to encourage economic development, staff recommends the extension of the Cap Program.

Cap Program Payment Summary

As shown in the chart below, the current participants in the Cap Program paid a total base tax of $445,166 in TUT in the first year of the program (the amount was prorated from $593,555 due to the effective implementation date). For each subsequent year, the TUT cap base year is automatically increased by 2% and payments are made in advance on, or before, January 31 of the following year. The total due and paid for calendar year 2012 was $629,885. Cap Program payments from all three companies for the period from 2009 through 2012 totaled $2,298,011.

Calendar Year	TUT Cap Payments
2009	$445,166*
2010	605,426
2011	617,534
2012	629,885
Total Paid to Date	$2,298,011

*Payment was prorated based on program effective date of 4/1/09

TUT Revenue Summary

Since the effective date of April 1, 2009, the City's TUT revenues have remained above the base year despite the tax rate reduction. The broadening of the tax base offset the impact of a reduced tax rate. The table below illustrates the actual revenues received for telecommunication services subject to the TUT for 2008-2009 through 2011-2012.

Fiscal Year	TUT Revenue
2008-2009	$29.2 million*
2009-2010	32.5 million
2010-2011	31.5 million
2011-2012	31.3 million
Total	**$124.5 million**

*TUT program implemented 4/1/09

Should the Cap Program sunset on December 31, 2012, the participating businesses would be subject to the broadened tax application and would incur significant TUT liabilities. If the Cap Program is extended, the existing participating businesses would continue to pay a combined total of approximately $630,000 per year in addition to the annual 2% growth rate.

Overall, the Cap Program is a success. Its implementation mitigated the impact of Measure K on the City's business partners and achieved its core purpose of maintaining a cooperative relationship with the City's business partners.

The Finance Department in coordination with the Office of Economic Development will conduct an outreach program to identify additional companies that could be eligible for participation in

the Cap Program based on the same criteria established in 2009 (adjusted for the 2% annual growth in the threshold).

EVALUATION AND FOLLOW-UP

The TUT Cap extension for five years will allow staff to work with the service users in the Cap Program to reevaluate the impacts of the TUT Cap at which time it will make recommendations to Council before December 31, 2017, taking into consideration the financial impact on the taxpayers relative to the City's financial condition.

POLICY ALTERNATIVES

Alternative #1: Discontinue the TUT Cap Program
Pros: Generates additional General Fund revenue
Cons: Disproportionate impact on these businesses relative to the intent of TUT revisions
Reason for not recommending: As stated previously, large businesses consume high volumes of complex telecommunication services such as private lines. With the broadened tax application, these businesses could experience a significant increase in TUT. The City of San José appreciates its relationship with the businesses that have chosen to establish their operations within the City's jurisdiction. The mutual benefits resulting from this relationship justifies the approval of a TUT Cap for businesses and other service users that qualify. In order to mitigate the tax burden and to encourage economic development, staff recommends the extension of the Cap Program.

PUBLIC 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 memorandum will be posted on the City's website for the September 25, 2012 Council agenda.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the Office of Economic Development and the City Manager's Office.

COST SUMMARY/IMPLICATIONS

Based on the consultant's estimate that was developed at the time the TUT Cap Program was implemented, it is anticipated that additional TUT revenue in the amount of $600,000 could be received by the City if the TUT Cap Program extension is removed.

CEQA

Not a Project; File No. PP10-068, Municipal Code or Policy.

/s/
JULIA H. COOPER
Acting Director, Finance Department

For additional information, please contact Wendy Sollazzi, Revenue Management Division Manager at 408-535-7005.

COUNCIL AGENDA: 9-25-12
ITEM:

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Julia H. Cooper

SUBJECT: **APPROVAL OF CITYWIDE INSURANCE RENEWALS**

DATE: September 5, 2012

Approved

Date 9/11/12

RECOMMENDATION

Adopt a resolution authorizing the City Manager to select and purchase certain City property and liability insurance policies for the period October 1, 2012 to October 1, 2013, at a total cost not to exceed $1.6M for all policies, with the following insurance carriers:

1. Lexington Insurance Company, (Boston, MA) - or other insurers that the City is currently in negotiations with - for Property Insurance, including Boiler & Machinery.

2. National Union Fire Insurance Company (New York, NY) to provide the following coverage:

   - Airport Owners and Operators Liability including War Risks & Extended Perils Coverage (Primary and Excess).
   - Police Aircraft Hull & Liability including War Risks & Extended Perils.

3. St Paul/Travelers Insurance Company, (Hartford, CT) - or other insurers that the City is currently in negotiations with - for Automobile Liability (Airport fleet vehicles including Shuttle Buses, and WPCP fleet vehicles) and Airport Shuttle Bus physical damage.

4. Indian Harbor Insurance Company, (Stamford, CT) for Secondary Employment Law Enforcement Professional Liability.

OUTCOME

Approval of these insurance policies will ensure the City maintains appropriate insurance coverage to provide financial protection from catastrophic loss for the City.

EXECUTIVE SUMMARY

The recommended insurance policies will provide the City with protection against loss due to a catastrophic event. Annually, the Finance Department, on behalf of the City, analyzes the City's insurance coverage with their Insurance Broker, Marsh Risk and Insurance Services (Marsh USA). Marsh receives competitive quotes from the insurance market and presents them to the City for consideration. After reviewing the scope of coverage, cost, financial strength to pay claims and resources available to provide services, the Finance Department determines the appropriate insurance coverage and recommends the most advantageous insurance polices. All policies are for a one year term.

BACKGROUND

Every year, the City of San Jose ("City") purchases insurance to protect the City against a catastrophic event, when the frequency of events cannot be predicted, the severity of potential loss could seriously hamper operations, and where the cost of the insurance policy is not prohibitive.

The insurance polices are for a one year term. Annually, the City utilizes its insurance broker, Marsh Risk and Insurance Services to review and analyze the City's insurance and coverage requirements, and obtain competitive insurance quotes.

The insurance policies addressed in this memorandum have an annual renewal date of October 1, 2012. The annual premiums are subject to change during the term due to changes in property schedules, equipments lists, etc.

ANALYSIS

Annually, the Finance Department reviews the City's risk exposures with the City's insurance broker. In June, 2008, Marsh Risk & Insurance Services ("Marsh") was selected through a competitive RFP process as the City' s broker. Marsh's responsibilities include working with Staff to analyze the City's needs, and issuing competitive quotes to obtain the most cost effective insurance coverage.

Major insurance companies were solicited to provide quotes for the aforementioned policies. The quotes were compared and evaluated with respect to scope of coverage, cost, the financial strength to pay claims, and the availability of resources to provide services such as property inspections and loss control. Appendix A reflects the best value coverage, renewal premiums and insurance carriers available. The quoted renewal premiums are subject to market fluctuations prior to October 1, 2012. Additionally, premiums may change based upon the addition or deletion of covered properties during the policy term. Appendix B provides a comparison of insurance premiums by fund and type of insurance. This comparison shows that the aggregate insurance quotes received are 6.6% higher than last year. This incorporates a 1% increase in City

insured property values, a 10% decrease in the number of police officers in the secondary employment program, a 12% decrease in the number of vehicles insured, and no change in the number of enplanements at the Airport. However, this renewal has also been adversely impacted by a $2.5M insured property loss (Kelley House fire) and an internal audit of the management of the Police Secondary Employment program. The audit has thirty recommendations for improvement.

A. Insurance Coverage Recommended

1. All Risk including Boiler & Machinery Property Insurance

Provides coverage for City owned and leased real and personal property (including buildings, contents, business interruption, boiler and machinery, EDP equipment and media, fine arts, loss of rents, expediting expenses, off premises services interruption, unnamed locations, transit, accounts receivable, valuable papers, and other coverage as detailed in the policy forms subject to sub-limits as defined in the policy). This includes property previously owned by the Redevelopment Agency of the City of San José which as a result of the dissolution of the Redevelopment Agency on February 1, 2012 is now owned by the City as Successor Agency to the Redevelopment Agency. The property insurance limit is $1 billion each occurrence with a $100,000 deductible per occurrence. The annual rate for the 10/1/2012 renewal is .0375 per $100 of insured value.

Insurance Carrier: Currently Lexington Insurance Company. Negotiations with other insurance providers are currently in-process.

2. Airport Owners and Operators Liability including War Risks & Extended Perils Coverage

Provides coverage for those sums that the City becomes legally obligated to pay as damage because of bodily injury, property damage and personal injury resulting from airport operations. Additionally, program provides coverage for bodily injury or property damage caused by war and other perils.

Insurance Carrier: National Union Fire Insurance Company

3. Secondary Employment Law Enforcement Professional Liability

Provides coverage for an actual or alleged error or omission, negligent act, neglect or breach of duty by the City's police officers who have been approved to participate in the Secondary Employment program by the City's Secondary Employment Unit (SEU) while conducting law enforcement activities on behalf of an approved third party secondary employer, which result in bodily injury, property damage or personal injury.

Insurance Carrier: Indian Harbor Insurance Company

4. Automobile Liability

Provides coverage for bodily injury, property damage and personal injury for claims arising out of the operation of the Airport and Water Pollution Control Plant auto fleets.

Currently St. Paul / Travelers Insurance Company. Negotiations with other insurance providers are currently in-process.

5. Airport Shuttle Bus –Physical Damage

Provides comprehensive physical damage (i.e. fire, theft, vandalism, malicious mischief) and collision damage subject to a $25,000 deductible.

Currently Insurance Carrier: St. Paul / Travelers Insurance Company. Negotiations with other insurance providers are currently in-process.

6. Police Aircraft Hull and Liability including War Risks & Extended Perils Coverage

Provides coverage for those sums that the City becomes legally obligated to pay as damages because of bodily injury (including passengers), property damage and hull coverage for the Cessna 182 and American Eurocopter EC 120B. Additionally, program provides coverage for bodily injury or property damage caused by war and other perils resulting from aviation operations. Provides coverage for two (2) aircraft, N408DC and N2705 with current hull values of $1,750,000 and $275,000 respectively and limit of liability of $50,000,000. War coverage was included within this policy. Insurers who previously declined to quote this renewal include Starr Aviation, Global Aerospace and Allianz.

Insurance Carrier: National Union Fire Insurance Company

Appendix A provides a detailed table comparing the current insurance program by coverage levels, carrier(s) and premiums to the recommended renewal program. Please note that with respect to Property (including Boiler & Machinery), Automobile Liability (Airport fleet vehicles including Shuttle Buses, and WPCP fleet vehicles) and Airport Shuttle Bus physical damage coverages, final coverage levels, carriers and/or premiums may be modified depending on the outcome of pending negotiations. However, the total cost will not exceed $1.6M for all policies which are the subject of this memorandum, without further authorization from Council.

B. Insurance Coverage Not Recommended

The insurance coverages described below were reviewed and analyzed by staff and were determined to be cost prohibitive. Staff, in consultation with our insurance broker, will continue to review the market on a periodic basis and make the appropriate recommendations to Council should anything change.

1. Terrorism Risk Insurance Act of 2002 (TRIA)

Provides coverage for insured losses resulting from certified acts of terrorism as defined by TRIA. For those participating, coverage is currently provided through a temporary Federal program. TRIA was extended by Congress on December 31, 2005 for an additional two years to expire on December 31, 2007, and has since been further extended and amended.

Under TRIA, there is a $5 million aggregate requirement. Total damages suffered by all insureds from an "Act of Terrorism" as defined by TRIA must be at least $5 million. If the $5 million threshold is met, coverage applies subject to specific policy terms and conditions..

The cost of purchasing TRIA coverage is summarized below:

All Risk and Boiler & Machinery Property Insurance	$ 170,094
Airport Owners and Operators Liability	$ 4,732
Police Aircraft Hull & Liability	$434
Total estimated TRIA Premium	**$ 175,260**

See Appendix A for detailed description on costs associated with TRIA.

2. Excess Workers' Compensation

Excess insurance indemnifies the City for Workers' Compensation Claims. In the spring of 2004, the City's previous insurance broker evaluated the benefits and costs of obtaining Excess Workers' Compensation insurance. The cost of purchasing Worker's Compensation insurance was determined to be prohibitive at that time.

In the last six months, the Risk Management Staff have been working with the insurance broker (Alliant) of the California State Association of Counties Excess Insurance Authority (CSAC-EIA), a large statewide joint powers authority of California public entities, including cities, to evaluate the cost of excess workers' compensation insurance. For a limit of $5M in employer's liability and statutory for workers' compensation, the evaluation yields the following coverage indications:

Self-Insured Retention per Occurrence	Annual Premium
$5M	$416,906
$3M	$768,000
$2M	$1,002,000
$1M	$1,387,000

The City has not had a single workers' compensation claim costing over $2M in the last 20 years. Given the high self-insured retentions and annual premiums, it is staff's opinion that it is not cost effective to purchase excess worker's compensation insurance at this time in light of the City's claim cost history.

3. **Excess Liability**

Liability insurance indemnifies the City for third-party claims alleging Bodily Injury, Property Damage, and Personal Injury arising from City premises, operations and vehicles.

The City has historically been self-insured for its exposures to third-party liability claims, with the exception of the Airport Owners and Operators Liability Insurance program.

The Finance Department working with the insurance broker of CSAC-EIA recently obtained the following coverage indications for excess liability insurance for a coverage **limit of $25M**:

Self-Insured Retention per Occurrence	Annual Premium
$10M	$586,823
$5M	$1,236,823
$3M	$1,546,059
$2M	$1,962,477
$1M	$2,802,274

This insurance would extend to provide coverage for such potentially high damage exposure matters as automobile accidents, as well as police and paramedic actions. However, the City has not experienced any single loss which would be covered by such insurance over $2M in the last 10 years; and the City's finances continue to be constrained, it is not recommended that excess liability insurance be purchased at this time.

In the event the City experiences a catastrophic loss, options exist for payment of claim(s). Options include the issuance of so-called judgment bonds (no greater than 40 year term), as well as court-ordered installment payments (no greater than 10 year period). It should be noted that these options require either a successful validation action for the first option, and court approval is required for the second option.

In the event that Council directs, staff will continue to explore excess workers' compensation and/or liability coverage options with private carriers, although based on discussions with Marsh USA, staff's understanding is that there are very few private companies offering such insurance to California public entities presently, and the City should generally not expect premiums to vary significantly from those of CSAC-EIA without a corresponding reduction in coverage. As a further point of reference, Marsh USA informed staff that the City should expect that present private carrier indications for excess liability coverage would be in excess of those provided in 2010[1], and that based on the City's negative response to private insurers' 2010 indications, there would likely be reluctance to provide refreshed quotes and, if so, only if the City was prepared to invest significant staff resources into a detailed formal application procedure.

4. Earthquake

Provides coverage for damage caused by the peril of earthquake or volcanic action. The coverage is limited to direct damage caused by an earthquake.

Earthquake insurance is another type of coverage that has become cost prohibitive. During last year's marketing efforts, we found that the cost for $5 Million in coverage was in excess of $500,000 annually. The insurance markets that write catastrophic covers (flood, wind, and earthquake) have reduced available capacity along with increasing insurance rates. This pricing level, the minimum deductible of 5% of the values at risk, and the relatively low limits of coverage available, make it uneconomical to purchase coverage citywide.

Appendix B provides a comparison of the allocation of insurance premiums by fund and insurance type between October 2011 renewal and the proposed October 2012 renewal.

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[1] Recap of the 2010 private commercial insurance premium indications included the following[1]:

- $50M limit/$2M SIR $723,418 annual premium
- $50M limit/$5M SIR $542,000 annual premium
- $50M limit/$10M SIR $240,000 annual premium

EVALUATION AND FOLLOW-UP

The City Council will be informed as to the status of these policies as part of the annual renewal process each September or by Supplemental Memorandum if necessary.

PUBLIC 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)**

COORDINATION

This memo has been coordinated with the following departments: Airport, Transportation, Police, Housing, Environmental Services, City Manager's Budget Office, and the City Attorney's Office.

BUDGET REFERENCE

The insurance policies are funded by appropriations in the 2012-2013 Proposed Operating Budget.

In addition to the appropriations listed below, costs associated with insuring remaining Successor Agency assets are estimated to be $10,125 in 2012-2013. The anticipated payment of these costs associated with asset management for the Successor Agency is reflected on line 85 of the Recognized Obligation Payment Schedule 3 for the period of January 2013 through June 2013. However, due to the nature of these costs, they should be reflected as part of the Administrative Budget of the Successor Agency and will be trued-up in subsequent ROPS periods and reconciliations. As a result of the known insufficiency in redevelopment property tax increment to meet all obligations in 2012-2013, the Successor Agency anticipates relying on the City's General Fund support to provide funding for this obligation as part of the reimbursement agreement which will provide a mechanism for reimbursement to the City of all financial support (beginning July 1, 2012) once sufficient funding remains in the priority of obligations.

Fund #	Appn #	Appn. Name	Total Appn.	Amt. for Contract[2]	2012-2013 Proposed Operating Budget Page[1]	Last Budget Action (Date, Ord. No.)
001	2001	Insurance Premiums	$535,000	$521,795	IX-21	06/19/2012, Ord. No. 29102
001	2864	Police Officers Professional Liability	$165,000	$155,125	IX-18	06/19/2012, Ord. No. 29102
001	0502	Non-Personal (Police)	$21,327,755	$36,017	VIII-247	06/19/2012, Ord. No. 29102
523	0802	Non-Personal (Airport)	$34,316,753	$502,763	XI-5	06/19/2012, Ord. No. 29102
536	3405	Insurance Expenses	$130,000	$103,286	XI-28	06/19/2012, Ord. No. 29102
518	4722	Rancho Del Pueblo Debt Services (PRNS)	$455,000	$686	XI-76	06/19/2012, Ord. No. 29102
533	0512	Non-Personal (DOT)	$4,699,933	$46,177	XI-43	06/19/2012, Ord. No. 29102
513	0762	Non-Personal (ESD)	$29,754,290	$146,215	XI-85	06/19/2012, Ord. No. 29102
346	0562	Non-Personal (Housing)	$804,634	$2,163	XI-1	06/19/2012, Ord. No. 29102
Total				**$1,524,352**		

[1] The 2012-2013 Proposed Operating Budget was approved by the City Council on June 19, 2012.

[2] The Amount for Contract is subject to change up until the beginning date of the contract. Therefore, current estimates are lower than the recommended contract amount not to exceed $1.6 million.

CEQA

Not a Project, File No.PP 10-066 (a) Agreements and Contracts for purchase of insurance.

/s/
JULIA H. COOPER
Acting Director of Finance

If you have questions, please contact John Dam, Risk Manager, at 408-975-1438.

Appendix A
Appendix B

APPENDIX A

1.) ALL RISK AND BOILER & MACHINERY PROPERTY INSURANCE

	Current Program 10/1/2011 – 10/1/2012	**Renewal Program 10/1/2012– 10/1/2013**
Carrier	Lexington Insurance Company Boston, MA	Lexington Insurance Company Boston, MA
Total Insurable Values	$ 2,890,588,227	$ 2,915,840,625
Limit of Liability	$1,000,000,000 subject to a $100,000 Deductible Per Occurrence	$1,000,000,000 subject to a $100,000 Deductible Per Occurrence
Boiler & Machinery	Included	Included
Earthquake	Excluded. Relatively low limits available, 5% deductible, high premium – not recommended	Excluded. Relatively low limits available, 5% deductible, high premium – not recommended
Flood	$100,000,000 but not to exceed $25,000,000 in Zone B and $15,000,000 in Zone A. Locations Specified in the insurance policy on file in Risk Management	$100,000,000 but not to exceed $25,000,000 in Zone B and $15,000,000 in Zone A. Locations Specified in the insurance policy on file in Risk Management
Other Sub-limits	Other sub-limits as outlined in the insurance policy on file in Risk Management	Other sub-limits as outlined in the insurance policy on file in Risk Management
Terrorism and Non Certified Act of Terrorism	Excluded	Excluded
Average Rate Per $100 of Values	.0336 (account rate per two-year rate guarantee)	.0375 (two-year rate guarantee not available)
Annual Premium	$ 971,238 Annual Premium $ 31,565 surplus lines taxes, fees (3.25%) **$ 1,017,029 Total Annual**	$ 1,093,440,Annual Premium $ 35,537 surplus lines taxes, fees (3.25%) **$ 1,128,977 Total Annual**
Engineering Services	Included	Included
Multiyear Agreement	2nd year of two year rate guarantee – Refer to policy for terms and conditions.	Not available
Optional TRIA Premium (not recommended for purchase)	$ 146,779 Additional	$ 170,094 Additional

2.) AIRPORT OWNERS AND OPERATORS LIABILITY – ACE USA QUOTE

	Current Program 10/1/2011 – 10/1/2012	**Renewal Program 10/1/2012 – 10/1/2013**
Carrier	National Union Fire Insurance Company, New York, NY	National Union Fire Insurance Company, New York, NY
Coverage and Deductible	Airport Liability - $200,000,000 each occurrence combined single limit for bodily injury and property damage, with a $50,000,000 each occurrence limit for personal injury, war risk liability at $100,000,000 each occurrence and in the annual aggregate and $50,000,000 Excess Automobile and Excess Employers Liability. Deductible: $ 0 each occurrence	Airport Liability - $200,000,000 each occurrence combined single limit for bodily injury and property damage, with a $50,000,000 each occurrence limit for personal injury, war risk liability at $100,000,000 each occurrence and in the annual aggregate and $50,000,000 Excess Automobile and Excess Employers Liability. Deductible: $ 0 each occurrence
Annual Premium	$114,723	$114,723
Current War Risk & Extended Perils, Terrorism	$ 7,170	$ 7,170
Total (Including Taxes/Fees)	**$ 124,560**	**$ 121,893**
Optional TRIA premium (not recommended for purchase)	$ 4,732	$ 4,732

3.) SECONDARY EMPLOYMENT LAW ENFORCEMENT PROFESSIONAL LIABILITY

	Current Program 10/1/2011 – 10/1/2012	**Renewal Program 10/1/2012 – 10/1/2013**
Carrier	Indian Harbor Insurance Company Stamford, CT	Indian Harbor Insurance Company Stamford, CT
Limits of Insurance and Deductibles	$2,000,000 Each Occurrence $2,000,000 Annual Aggregate Subject to a $100,000 Deductible Each Claim	$2,000,000 Each Occurrence $2,000,000 Annual Aggregate Subject to a $100,000 Deductible Each Claim
Average Rate per Officer	$171 (942 officers at policy inception)	$177 (849 officers at policy inception)
Annual Premium	$151,074	$ 150,000
Surplus Lines Taxes and Fees	$ 4,910	$ 4,875
Fees (if any)	$ 250	$ 250
Total Annual Premium	**$ 157,887**	**$ 155,125**

4.) AUTOMOBILE LIABILITY FOR THE AIRPORT FLEET & AIRPORT SHUTTLE BUS FLEET PHYSICAL DAMAGE

	Current Program 10/1/2011 – 10/1/2012	**Renewal Program 10/1/2012 – 10/1/2013**
Carrier	St. Paul/Travelers Hartford, CT	St. Paul/Travelers Hartford, CT
Coverage and Deductibles	**Auto Liability** – Fleet Only $1,000,000 Combined Single Limit (Any Auto) $1,000,000 UM/UIM (Owned Autos) $ 5,000 Medical Payments (Any Auto – No Buses) **Physical Damage** – Buses Only Per Schedule Subject to $25,000 Comp/Coll Deductible $500 Comp/Coll Deductible for Hired Physical Damage	**Auto Liability** – Fleet Only $1,000,000 Combined Single Limit (Any Auto) $1,000,000 UM/UIM (Owned Autos) **Physical Damage** – Buses Only Per Schedule Subject to $10,000 Comp/$25,000 Coll Deductible $500 Comp/Coll Deductible for Hired Physical Damage
Exposure	Number of Units 106	Number of Units 82
Average Rate Per Unit	$641	**$675**
Annual Premium	**$69,131**	**$55,340**

5.) AUTOMOBILE LIABILITY - WATER POLLUTION CONTROL PLANT FLEET

	Current Program 10/1/2011– 10/1/2012	**Renewal Program 10/1/2012– 10/1/2013**
Carrier	St. Paul/Travelers Hartford, CT	St. Paul/Travelers Hartford, CT
Coverage	$1,000,000 Combined Single Limit (Any Auto) $1,000,000 UM/UIM (Owned Autos) $ 5,000 Medical Payments (Any Auto) $ 3,500 Property Damage UM	$1,000,000 Combined Single Limit (Any Auto) $1,000,000 UM/UIM (Owned Autos) $ 5,000 Medical Payments (Any Auto) $ 3,500 Property Damage UM
Exposure	Number of Units 41	Number of Units 43
Average Rate Per Unit	$589	$628
Annual Premium	**$24,605**	**27,000**

6.) POLICE AIRCRAFT HULL AND LIABILITY

	Current Program 10/1/2011– 10/1/2012	**Renewal Program 10/1/2012– 10/1/2013**
Carrier	National Union Fire Insurance Company New York, NY	National Union Fire Insurance Company New York, NY
Coverage	Aircraft Hull and Liability - $50,000,000 each occurrence for liability. Hull coverage: Cessna $250,000 Eurocopter $1,750,000 Deductible: Liability – NIL • Hull/Cessna - $500 per occurrence (in-motion) • Hull/Cessna - $100 per occurrence (not in-motion) • Hull/Eurocopter –$25,000 per occurrence (rotors in-motion) • Hull/Eurocopter - $500 per occurrence (rotors not in-motion)	Aircraft Hull and Liability - $50,000,000 each occurrence for liability. Hull coverage: Cessna $ 275,000 Eurocopter $1,750,000 Deductible: Liability – NIL • Hull/Cessna - $500 per occurrence (in-motion) • Hull/Cessna - $100 per occurrence (not in-motion) • Hull/Eurocopter –$25,000 per occurrence (rotors in-motion) • Hull/Eurocopter - $500 per occurrence (rotors not in-motion)
Annual Premium	$ 34,544	$ 34,539
Surplus Lines Taxes and Fees	N/A	N/A
War Liability & Hull – both aircraft	$ 1,473	$ 1,478
Total	**$ 36,805**	**$36,017**
TRIA (if purchased with War	$ 434	$ 434

APPENDIX B

Insurance Policies with October 1 Renewal Date
Allocation of Insurance Premiums by Fund & Type of Insurance

	FY 2011-12 Premiums 12 Months	FY 2012-13 Premiums 12 Months	Percentage Increase/ Decrease
General Fund - Fund 001			
Property Insurance	$ 471,259	$ 521,795	11%
Police Secondary (1)	$ 157,887	$ 155,125	-2%
Police Air Support (Hull & Liability.)	$ 36,805	$ 36,017	-2%
Subtotal	**$ 665,951**	**$ 712,937**	**7%**
Airport - Fund 523			
Property Insurance	$ 295,812	$ 325,530	10%
Liability Insurance	$ 124,560	$ 121,893	-2%
Auto Liability Insurance	$ 69,131	$ 55,340	-20%
Subtotal	**$ 489,503**	**$ 502,763**	**3%**
ESD - Fund 513			
Property Insurance	$ 101,089	$ 119,215	18%
Auto Insurance	$ 24,605	$ 27,000	10%
Subtotal	**$ 125,694**	**$ 146,215**	**16%**
Convention and Cultural Affairs - Fund 536			
Property Insurance	$ 93,857	$ 103,286	10%
Subtotal	**$ 93,857**	**$ 103,286**	**10%**
Municipal Golf Course - Fund 518			
Property Insurance	$ 623	$ 686	10%
Subtotal	**$ 623**	**$ 686**	**10%**
General Purpose Parking - Fund 533			
Property Insurance	$ 41,962	$ 46,177	10%
Subtotal	**$ 41,962**	**$ 46,177**	**10%**
Successor Agency			
Property Insurance (2)	$ 9,412	$ 10,125	8%
Subtotal	**$ 9,412**	**$ 10,125**	**8%**

Housing				
Property Insurance (3)		$ 3,014	$ 2,163	-28%
	Subtotal	**$ 3,014**	**$ 2,163**	
	TOTAL	**$ 1,430,016**	**$ 1,524,352**	**6.6%**

(1) Each Police Officer participating in the secondary employment program pays $110 toward the premium cost. Renewal premium is based on 872 officers at policy inception.
(2) The City as Successor Agency to the Redevelopment Agency, has assumed operations previously performed by the Redevelopment Agency.
(3) Allocated premium for Housing will be invoiced directly to Housing for payment.

COUNCIL AGENDA: 09/25/12
ITEM:

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Kim Walesh
Jennifer A. Maguire

SUBJECT: **SEE BELOW**

DATE: September 4, 2012

Approved

Date 9/7/12

COUNCIL DISTRICT: Citywide

SUBJECT: ADOPTION OF 2012-2013 APPROPRIATION ORDINANCE AND FUNDING SOURCES RESOLUTION AMENDMENTS FOR THE FEDERAL AND STATE WORKFORCE INVESTMENT ACT FUND FOR THE SOLYNDRA PROJECT

RECOMMENDATION

Adopt the following 2012-2013 Appropriation Ordinance and Funding Sources Resolution amendments in the Workforce Investment Act (WIA) Fund:

a. Increase the estimate for Earned Revenue by $2,025,000; and

b. Establish an appropriation to the Office of Economic Development for the Solyndra Project in the amount of $2,025,000.

OUTCOME

These recommended appropriation actions will recognize and make available the grant award from the State of California's Employment Development Department (EDD) through its 25% additional assistance funding.

The Solyndra project will provide funding to work2future to provide Dislocated Worker services to affected Solyndra workers. Services will include training, support services, and job placement services.

These discretionary grants have played a key role in supplementing work2future's formula funding which has been reduced substantially in recent years. With these additional resources, work2future has been able to meet the diverse needs of the large number of laid-off workers,

while still meeting all of its required Department of Labor Performance outcomes for the last eight years, one of the few workforce investment Boards in the State of California to do so.

BACKGROUND

On August 31, 2011, Solyndra LLC abruptly suspended its operations and laid off approximately 1,100 employees. More than half of the affected employees reside in Santa Clara County. Of the employees residing in Santa Clara County, the majority reside within work2future's Local Workforce Investment Area (LWIA). Solyndra's action also impacted employees at a number of Solyndra's contractors in the area, especially specialized suppliers.

The State EDD Solyndra funding is provided as a regional collaborative reimbursement grant. The grant term is retroactive to December 1, 2011 through March 31, 2013. This grant will be administered by work2future, which will coordinate funding distributions as needed to various participating Local Workforce Investment Boards (WIBs) which include NOVA, Santa Cruz, and San Benito. As administrator of this grant, work2future will direct portions of this grant to these WIBs based on a cost analysis and negotiated Fixed Unit Price agreement that will compensate the partner WIBs for their costs for core and intensive services.

ANALYSIS

By October 2011, work2future had deployed a full array of WIA services to meet the needs of laid-off Solyndra employees using WIA Dislocated Worker formula funding. The Solyndra Project funding will help work2future to offer additional specialized services and resources to existing enrolled Solyndra clients and future clients who may decide to enroll when their unemployment insurance payments run out.

Building on the program delivery model designed for work2future-enrolled Cisco clients, work2future has designed a similar project plan for the laid-off Solyndra clients which includes provision of new resources such as: (1) Burning Glass's Focused Careers, an artificial intelligence (AI) tool that enables targeted, opportunity-specific resumes and job searches; (2) new capacity in work2future's EconoVue geographic information system (GIS) for more detailed employer analyses; (3) collaboration with area colleges to develop a curriculum based on information acquired from the Emerging Green and Information and Communication Technology (ICT) workforce studies; and (4) personal branding consultations for job seekers.

Based on work2future's current understanding of hiring practices within the emerging green technologies industry cluster, work2future will need to take an aggressive approach to assisting laid-off Solyndra clients with their job search and placement activities to be competitive in today's local job market. The highly specialized cohort of Solyndra clients requires a different approach that extends beyond work2future's current Dislocated Worker program. work2future will subscribe to a sophisticated job search/recruiting online service that will better facilitate

successful reemployment efforts and consultation specific to developing curriculum and job readiness services tailored for higher-skilled job seekers in emerging green technologies and high-tech industries.

To maximize resources and for a more efficient delivery of services, work2future will administer the operation of the Solyndra project at the Cisco site located in the Parkmoor Career Center. If the project meets its enrollment goal, a full staffing complement is anticipated to cost approximately $430,000.

The grant award and related spending plan has been submitted, and unanimously approved by the work2future Executive Committee on August 28, 2012. In addition, work2future staff will present the spending plan to the Finance Committee and the Board on September 12, 2012 and September 20, 2012.

EVALUATION AND FOLLOW-UP

The Solyndra Project grant in the amount of $2,025,000 has been evaluated and approved for funding by the State EDD. Ongoing progress reports will be submitted to the State EDD, work2future's Board, and to the City's Community and Economic Development Committee.

PUBLIC OUTREACH

- X **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)**

The recommended action meets Criterion 1 regarding the use of public funding equal to or greater than $1 million. This memorandum will be posted on the City's website for the September 25, 2012 City Council agenda.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office.

FISCAL POLICY ALIGNMENT

The Solyndra Project supports Initiative 7 of the City's Economic Development Strategy, "Prepare Residents to Participate in the Economy through Training, Education, and Career Support."

COST SUMMARY/ IMPLICATIONS

The recommended budget actions in this memorandum will increase the estimate for Earned Revenue and appropriate $2,025,000 for the Solyndra Project. The grant will provide an array of standard and specialized services and resources such as assessments, training services, workshops, and supportive services. work2future has set aside a total of $430,000 for staffing costs for the Cisco Lay-Off and Solyndra Project and related overhead costs.

CEQA

Not a project; File No. PP10-067 (b): Appropriation Ordinance.

/s/
KIM WALESH
Director of Economic Development
Chief Strategist

JENNIFER A. MAGUIRE
Budget Director

I hereby certify that there will be available for appropriation in the Workforce Investment Act Fund in the Fiscal Year 2012-2013 moneys in excess of those heretofore appropriated therefrom at least $2,025,000.

JENNIFER A. MAGUIRE
Budget Director

For questions, please contact Jeff Ruster, work2future's Executive Director, at 408-535-8183.

COUNCIL AGENDA: 09-25-12
ITEM:

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: **SEE BELOW**

DATE: September 5, 2012

Approved

Date 9/7/12

SUBJECT

AN ORDINANCE AMENDING TITLE 23 OF THE SAN JOSE MUNICIPAL CODE (THE SIGN CODE) AS FOLLOWS:

a) TO AMEND CHAPTER 23.02 TO:
1) **REVISE SECTION 23.02.290 LIGHTBOX, LIGHTBOX SIGN, REVISE SECTION 23.02.940 LOCATION OF ATTACHED SIGNS, ADD A NEW SECTION 23.02.101 TO DEFINE SERVICE STATION CANOPY; CANOPY SIGN, AND REVISE SECTION 23.02.1110 SIGNAGE AT GASOLINE SERVICE STATIONS;**

b) TO AMEND CHAPTER 23.04 TO:
1) **AMEND SECTION 23.04.020 TO REVISE REGULATIONS FOR SIGNAGE AT GASOLINE SERVICE STATIONS,**
2) **AMEND SECTION 23.04.035 TO INCREASE THE MAXIMUM ALLOWABLE SQUARE FOOTAGE OF PROGRAMMABLE ELECTRONIC SIGNS,**
3) **AMEND SECTION 23.04.120 TO REVISE REGULATIONS FOR SIGNAGE AT GASOLINE SERVICE STATIONS; AND**

c) TO MAKE OTHER NONSUBSTANTIVE, MINISTERIAL, TECHNICAL, OR TYPOGRAPHICAL CHANGES TO SAID CHAPTERS 23.02 AND 23.04 OF TITLE 23 OF THE SAN JOSE MUNICIPAL CODE.

RECOMMENDATION

Staff recommends that the City Council approve an ordinance amending Title 23 (the Sign Ordinance) of the San José Municipal Code to modify specific provisions pertaining to allowable signage within the Downtown and other Districts of the City for Programmable Electronic Signs for Freeways and gasoline service stations.

OUTCOME

With approval of this ordinance, the City Council would adopt specific sign regulations implementing prior Council direction. These regulations would further the purposes of the City's sign regulations by encouraging attractive signage, facilitating traffic safety, promoting commerce and achieving an aesthetically pleasing environment.

BACKGROUND

Over a series of City Council meetings in 2010, the City Council identified a Preferred Strategy for a comprehensive Sign Code Update. Staff has been working since 2010 to bring forward a series of Sign Code amendments to implement this Strategy.

The most recent set (Phase 3) of amendments was considered by the City Council in June 2012.

As part of the outreach for the Phase 3, staff conducted a community meeting in June prior to the City Council hearing. At that community meeting, a group of community members requested that the City revise the regulations related to gasoline service stations to accommodate larger and additional canopy signage, an item not identified as part of the Preferred Strategy. Staff proceeded in June to bring the Phase 3 amendments to the City Council rather than delay those amendments to research and develop a proposal to address this new request. Staff indicated to the community members that their request could be considered as part of the next set of proposed Sign Code amendments. The proposed ordinance described in this memorandum addresses this community request.

At the June 12, 2012 Council meeting, staff was directed to return with analysis and possible changes that could be made to gasoline service station canopy regulations. The proposed amendment, as discussed in this report, includes Sign Code revisions implementing Council Direction on gasoline service stations, freeway signs, and other non-substantive changes.

ANALYSIS

Per Council direction, staff has reviewed the sections of the Sign Code that address gasoline service stations. Based on this review, staff has identified some changes that should improve the organization and readability of the Sign Code as well as increase the allowable amount of canopy signage. As part of this Sign Code amendment, staff is also proposing changes to the regulations for Freeway Signs to fully address City Council direction previously given on this topic. The proposed Sign Code amendments address the following:

1) Revise regulations related to Service Station Canopy ;
2) Revise the maximum allowable Programmable Electronic Sign for Freeway Signs; and
3) Make other related non-substantive, clerical or technical modifications.

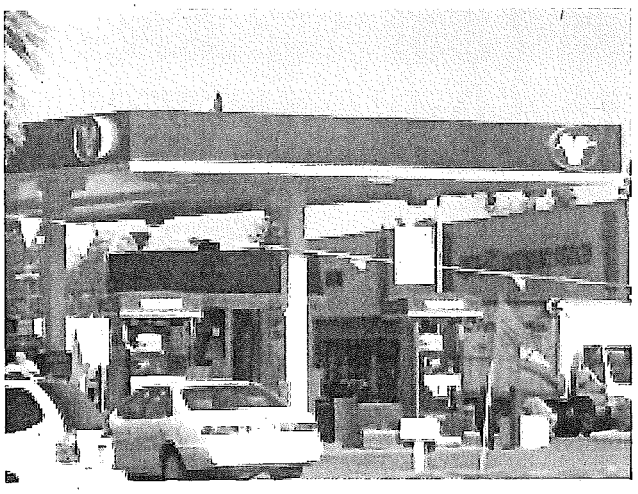
The following analysis addresses how each of these objectives are addressed in the proposed Sign Code amendments by topic area.

1) (Gasoline) Service Station Canopy Signage

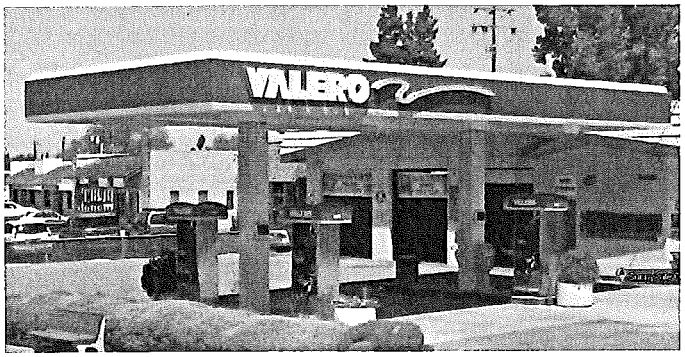
Because gasoline service stations have unique physical configurations, the Sign Ordinance includes specific regulations for gasoline service station canopies that are subject to design approval by the Director of Planning, Building and Code Enforcement. The Sign Ordinance includes signage standards for different areas of the City (e.g., Downtown, Urban Mixed Use, Commercial and Industrial Zoning Districts, Open Space and Residential Zoning Districts, Neighborhood Business Districts, and Airport) as well as provisions applicable Citywide. The current Sign Ordinance allows signage on canopies in the Commercial and Industrial Zoning Districts, and in Neighborhood Business Districts. Within the Commercial and Industrial Zoning Districts, Service Station Canopy Signs are allowed in addition to otherwise allowable signage, but limited to a maximum area of two feet in height by two feet in width and a maximum number of signs of two per canopy with no more than one sign per canopy length. Service Station Canopy Signs are not allowed within the Urban Mixed Use, Airport or Residential Districts.

The proposed amendment would establish more permissive allowances for Service Station Canopy Signs within the Commercial, Industrial and Neighborhood Business Districts, using existing methodology for Attached Signs to calculate their allowed size. The proposed change would allow one of the two allowed Canopy Signs to be as large as one square foot in area for each foot in length of the canopy. These larger Canopy Signs would be limited in length to 40% of the length of the canopy on which the sign is placed. The proposal maintains the remaining parameters related to height, location, and quantity of signage allowed on canopies. The proposal would also allow Canopy Signs to be located closer to the canopy edge by eliminating the requirement for the signs to have three inches clearance from the edges of the canopy. As a result of the proposed regulations, within the Commercial, Industrial and Neighborhood Business Districts, a larger sign could be placed on one of the sides of the canopy, as demonstrated in the following photos.

Typical Canopy Sign as currently permitted by the Sign Code for Commercial, Industrial and Neighborhood Business Districts



Canopy Signage as would be allowed by proposed Sign Code amendment for the Downtown, Commercial, Industrial and Neighborhood Business Districts



Additionally, to reflect the different types of alternative fuel available in the market, the proposed Ordinance replaces the term "Gasoline Service Station" with the more generic term "Service Stations" and makes other clarifying and organizational changes to improve readability of the Sign Code.

2) Freeway Signs: Programmable Electronic Signs (PES)
The current Sign Ordinance allows a maximum of 500 square feet for a Freeway Sign. The Ordinance also allows the programmable electronic sign component of a Freeway sign to be 75% of the allowable signage, limiting the maximum programmable electronic sign area to 240 square feet.

As part of the December 2011 Sign Code Amendments, staff proposed an increase from 400 to 500 square feet for the total allowable free-standing Freeway Signage area at commercial shopping centers where adjacent to freeways. The programmable electronic component of the signs was proposed to be limited to 60% of the total allowable signage to a maximum of 240 square feet. At that hearing, the City Council approved staff's proposal to increase the total allowable sign area and also increased the allowable Programmable Electronic Sign component to be 75% of the total sign area.

Consistent with Council direction to allow a larger Programmable Electronic Sign, the proposed Sign Code change would increase the maximum square footage of the Programmable Electronic Sign from 240 square feet to 375 square feet to match 75% if the allowable signage area of 500 square feet.

3) Other Modifications
The proposed ordinance also includes a small number of non-substantive changes to the Sign Code including the elimination of obsolete terminology and the correction of typographical errors, such as incorrect cross references.

EVALUATION AND FOLLOW-UP

Staff will return to the City Council later this year with additional revisions to the Sign Ordinance consistent with prior direction for the Preferred Sign Code Update Strategy.

PUBLIC OUTREACH/INTEREST

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

☑ **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.

Public outreach for this proposal conforms to the Public Outreach Policy. A notice of the public hearing for this ordinance was emailed to a list of community groups, other organizations, business interests, sign industry representatives, and interested individuals, and was posted on the City's website. A specific outreach web page was also created for this project. The web page includes illustrations of the current and proposed allowable signage. A link to this web site

was sent to interested parties inviting their feedback on the proposal, including the community members who attended the June meeting. Staff has also had phone conversations with community members about this proposal over the summer. Additional feedback received prior to the City Council meeting will be forwarded by supplemental memo.

Prior public outreach for the Sign Code Update included a total of nine community meetings; fifteen focus group/stakeholder meetings; meetings with five Strong Neighborhood Initiative Groups, with representatives of the outdoor advertising industry, and with the Chamber of Commerce; and an Internet Visual Preference Survey of San José residents. This staff report and attachments are available for review on the City's website.

COORDINATION

This report and the proposed ordinance were coordinated with the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

This project is consistent with applicable General Plan Urban Design policies that promote vibrant urban development.

CEQA

Negative Declaration, File No. PP11-099, Addendum thereto, PP12-073

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

For questions please contact Jenny Nusbaum, Senior Planner, at 408-535-7872.