



**JOINT MEETING OF THE MILPITAS CITY COUNCIL  
AND SUCCESSOR AGENCY TO THE MILPITAS REDEVELOPMENT AGENCY  
TUESDAY, NOVEMBER 20, 2012**

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**455 EAST CALAVERAS BLVD, MILPITAS, CA  
6:30 P.M. (CLOSED SESSION) • 7:00 P.M. (PUBLIC BUSINESS)**

**SUMMARY OF CONTENTS**

- I. CALL TO ORDER/ROLL CALL by the Mayor (6:30 p.m.)**
- II. ADJOURN TO CLOSED SESSION**
  - 1. CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING**  
Pursuant to California Government Code §54957.6, City Negotiator: Carmen Valdez  
Employee Groups: Milpitas Employees Association (MEA), Mid-Management/Confidential (UPEC), Milpitas Professional and Technical Group (ProTech), Milpitas Police Officers Association (MPOA), International Association of Fire Fighters (IAFF)  
Under Negotiation: Wages, Hours, Benefits, and Working Conditions
  - 2. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**  
Pursuant to California Government Code §54956.9(b), (c)  
City of Milpitas as Plaintiff or Defendant
- III. CLOSED SESSION ANNOUNCEMENTS:** Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote or abstention of each member present
- IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- V. INVOCATION (Councilmember Giordano)**
- VI. APPROVAL OF COUNCIL MEETING MINUTES – November 6, 2012**
- VII. SCHEDULE OF MEETING – COUNCIL CALENDARS for November and December 2012**
- VIII. PRESENTATION – *Commendation to Anupama Mandan for providing knit caps at the Veterans Day Ceremony***
- IX. PUBLIC FORUM**

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Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to three minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

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- X. ANNOUNCEMENTS**
- XI. ANNOUNCEMENT OF CONFLICT OF INTEREST**
- XII. APPROVAL OF AGENDA**

**XIII. CONSENT CALENDAR (Items with asterisks\*)**

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Consent calendar items are considered to be routine and will be considered for adoption by one motion. There will be no separate discussion of these items unless a member of the City Council, member of the audience, or staff requests the Council to remove an item from or be added to the consent calendar. Any person desiring to speak on any item on the consent calendar should ask to have that item removed from the consent calendar. If removed, this item will be discussed in the order in which it appears on the agenda.

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**XIV. REPORT OF SUBCOMMITTEE**

**Finance Subcommittee:**

- 1. Consider Request for Refund of Fees Paid by Mr. Antoine Snelgro related to Adult Sports Team (Staff Contact: Carmen Valdez, 408-586-3086)**
- 2. Consider Allocation from Council Unallocated Community Promotion Budget for Postage and Printing Expenses for the Milpitas Firefighters Toy Drive (Staff Contact: Tom Williams, 408-586-3050)**
- 3. Consider Approval of Fee Waiver for Milpitas Executive Lions Club for “Make A Difference Day” held on October 27, 2012 (Staff Contact: Carmen Valdez, 408-586-3086)**

**XV. NEW BUSINESS**

- 4. Receive Report from Santa Clara County Cities Association (Staff Contact: Tom Williams, 408-586-3050)**

**XVI. RESOLUTION**

- \* 5. Adopt a Resolution to Participate in Bay Area Water Supply and Conservation Agency’s Bond Issuance to Prepay Capital Debt Owed to San Francisco (Staff Contact: Kathleen Phalen, 408-586-3345)**

**XVII. CONTRACTS**

- \* 6. Approve Amendment No. 3 to the Agreement with East Bay Construction for Parks & Streetscape Maintenance Service for the Not-To Exceed Annual Amount of \$75,588.00 (Staff Contact: Chris Schroeder, 408-586-3161)**
- \* 7. Approve a Revised Acquisition and Reimbursement Agreement for Public Facilities for Sewer Lines 11A and 11B within the Transit Area Specific Plan (Staff Contact: Steven McHarris, 408-586-3273)**
- \* 8. Authorize Guarantee Extension and Contract with Goldfarb & Lipman, LLP (Staff Contact: Michael Ogaz, 408-586-3040)**

**XVIII. DEMAND**

- \* 9. Receive Report of Emergency Repairs of Public Infrastructure (Staff Contact: Kathleen Phalen, 408-586-3345)**

**XIX. ACTIONS OF CITY AND SUCCESSOR AGENCY**

- \* 10. Authorize Conveyance of Real Property on Alder Drive to Successor Agency and Termination of Economic Development Corporation’s Option to Purchase the Property (Staff Contact: Michael Ogaz, 408-586-3040)**

**XX. ADJOURNMENT**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING  
TUESDAY, DECEMBER 4, 2012 AT 7:00 P.M.**

**NOTE: This City Council meeting will be followed immediately by a meeting of the Milpitas Economic Development Corporation in the Council Chambers.**

**KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE**

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review.

For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035  
e-mail: [mogaz@ci.milpitas.ca.gov](mailto:mogaz@ci.milpitas.ca.gov) / Fax: 408-586-3056 / Phone: 408-586-3040

*The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I Chapter 310 and is available online at the City's website [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov) by selecting the Milpitas Municipal Code link.*

Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 3<sup>rd</sup> floor 455 E. Calaveras Blvd., Milpitas and on the City website.

All City Council agendas and related materials can be viewed online here:  
[www.ci.milpitas.ca.gov/government/council/agenda\\_minutes.asp](http://www.ci.milpitas.ca.gov/government/council/agenda_minutes.asp) (select meeting date)

**APPLY TO BECOME A CITY COMMISSIONER!**

Current vacancies exist on the:  
*Public Art Committee (Alliance for the Arts member)*  
*Community Advisory Commission*  
*Economic Development Commission (hotel representative & retail representative)*  
*Sister Cities Commission*

Commission application forms are available online at [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov) or at Milpitas City Hall. Contact the City Clerk's office (408-586-3003) for more information.

*If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, call the City Clerk at (408) 586-3001 or send an e-mail to [mlavelle@ci.milpitas.ca.gov](mailto:mlavelle@ci.milpitas.ca.gov) prior to the meeting. You may request a larger font agenda or arrange for mobility assistance. For hearing assistance, headsets are available in the Council Chambers for all meetings.*

## AGENDA REPORTS

### XIV. REPORT OF SUBCOMMITTEE

#### Finance Subcommittee:

1. **Consider Request for Refund of Fees Paid by Mr. Antoine Snelgro related to Adult Sports Team (Staff Contact: Carmen Valdez, 408-586-3086)**

**Background:** Milpitas resident Mr. Antoine Snelgro participated in the 2012 Spring Adult Sports Basketball League. He is requesting a refund of \$70 for the non-resident fees paid to participate in the league.

**Fiscal Impact:** Loss of \$70.

**Recommendations:** Hear report from staff of outcome of the November 15 Finance Subcommittee of Mr. Snelgro's request for a \$70 refund. Move to adopt recommendation of the Subcommittee.

2. **Consider Allocation from Council Unallocated Community Promotion Budget for Postage and Printing Expenses for the Milpitas Firefighters Toy Drive (Staff Contact: Tom Williams, 408-586-3050)**

**Background:** At the City Council meeting of November 6, 2012, two representatives from International Association of Firefighters (IAFF) Local 1699 requested financial assistance from the City of Milpitas for their annual Milpitas Firefighters Toy Drive. This request was presented during the public comment period with direction from City Council to place on this agenda for consideration and action. IAFF Local 1699 requests the City of Milpitas to provide printing and postage costs for the Toy Drive benefiting local Milpitas children. The cost estimated for this request is approximately \$2,000 and there are sufficient funds in the City Council unallocated community promotion budget to participate.

**Fiscal Impact:** \$2,000 from the Council's unallocated community promotion budget.

**Recommendations:** Hear report from staff of outcome of the November 15 Finance Subcommittee of Milpitas Firefighters' request for City paid postage and printing costs for its annual Toy Drive program, approximately \$2,000. Move to adopt recommendation of the Subcommittee.

3. **Consider Approval of Fee Waiver for Milpitas Executive Lions Club for "Make A Difference Day" held on October 27, 2012 (Staff Contact: Carmen Valdez, 408-586-3086)**

**Background:** The Milpitas Executive Lions Club hosted a community service event called "Make A Difference Day" on October 27, 2012. The Club is requesting a waiver of the Fire Assembly Permit fee in the amount of \$460.77.

**Fiscal Impact:** Loss of \$460.77.

**Recommendations:** Hear report from staff of outcome of the November 15 Finance Subcommittee of Milpitas Executive Lions Club's request for a waiver of fees in the amount of \$460.77 for event previously held at a City park. Move to adopt recommendation of the Subcommittee.

**XV. NEW BUSINESS**

**4. Receive Report from Santa Clara County Cities Association (Staff Contact: Tom Williams, 408-586-3050)**

**Background:** Santa Clara County Cities Association staff will present a brief overview of the Cities Association's background, organization, and priorities.

**Fiscal Impact:** None.

**Recommendation:** Receive an oral presentation from Santa Clara County Cities Association.

**XVI. RESOLUTION**

**\* 5. Adopt a Resolution to Participate in Bay Area Water Supply and Conservation Agency's Bond Issuance to Prepay Capital Debt Owed to San Francisco (Staff Contact: Kathleen Phalen, 408-586-3345)**

**Background:** The City of Milpitas contracts with the City and County of San Francisco to purchase wholesale water pursuant to a Water Supply Agreement (WSA) dated July 2009. The City is also a member of the Bay Area Water Supply and Conservation Agency (BAWSCA), which represents the interests of the Wholesale Customers consisting of the 26 cities, water districts, and private utilities that purchase wholesale water from San Francisco. The WSA provides that the Wholesale Customers, acting through BAWSCA, may prepay capital debt due to San Francisco for existing regional assets. BAWSCA has evaluated the legal and financial aspects of prepaying this capital debt and finds it to be feasible and beneficial for BAWSCA to make this prepayment on behalf of the Wholesale Customers by issuing revenue bonds. The Finance Subcommittee approved this item on October 18, 2012.

As of December 30, 2012, the Wholesale Customers will owe San Francisco \$367 million for capital improvements constructed prior to the WSA. This debt was incurred because the prior water agreement allowed San Francisco to collect a return-on-investment over the life of its regional water system capital improvements, many of which will remain in service decades past the term of the prior agreement. With the 2009 WSA, these investments were valued and their debt amortized for payment by the Wholesale Customers over the 25-year term of the WSA at an interest rate of 5.13%. The cost to pay off this debt is incorporated into the wholesale water rate for water purchases paid monthly to San Francisco by the Wholesale Customers.

BAWSCA estimates that prepayment of the \$367 million debt could save the Wholesale Customers \$20 million to \$34 million (present value) over the bond term of 21.5 years. Since Milpitas purchases about 4.3% of the regional supply, its share of this savings would be about \$860,000 to \$1,460,000 (present value), depending on the bond interest rate. This equates to an annual savings estimate for the City of about \$40,000 to \$68,000 (present value). San Francisco would collect a surcharge for the bond payment as a component of the wholesale rates and would remit these funds to BAWSCA.

Each wholesale customer desiring to participate is asked to adopt a Participant Resolution to document its election to participate in the prepayment and to direct its staff to assist BAWSCA in completing the issuance of bonds. BAWSCA asks that all participating agencies complete this action by December 23, 2012. BAWSCA plans to issue the bonds in January 2013.

**Fiscal Impact:** None. Based on the current bond structure and the current market conditions, the bond transaction is expected to generate between \$20 million and \$34 million in present value savings for all participants, or approximately 6% to 9% of the outstanding capital recovery amount of \$367 million, as of December 30, 2012. For the City of Milpitas, the present value savings estimate is \$860,000 to \$1,460,000 over the 21.5 year term of the bonds. These savings

will be passed through to the Wholesale Customers, including the City of Milpitas, in the wholesale water rate.

**Recommendation:** Adopt the Participant Resolution to document that the City elects to participate in the prepayment and directs city staff to assist BAWSCA in completing the issuance of bonds.

## XVII. CONTRACTS

- \* **6. Approve Amendment No. 3 to the Agreement with East Bay Construction for Parks & Streetscape Maintenance Service for the Not-To Exceed Annual Amount of \$75,588.00 (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background:** On September 20, 2011, the City entered into an agreement with East Bay Construction for landscape maintenance services for the street and median landscape along Abel Street from approximately Junipero Street south to Curtis Avenue. The agreement also included limited landscape maintenance services for the Park Metro East, Central, and West, O'Toole Elms, Tom Evatt, and John McDermott Parks. The total annual cost for these services was \$137,944.00.

The City would like to expand park maintenance services to include maintenance tasks that were previously performed by City Park maintenance staff. It is proposed that East Bay Construction provide for the daily opening, cleaning, and stocking of restrooms at the Park Metro East, and John McDermott Parks, and the weekly cleaning and maintenance of the basketball and tennis courts at Tom Evatt Park. New services would include the required weekly cleaning, inspections, and adjustments to the playgrounds, play structures, and drinking fountains at the Park Metro Central, and West, O'Toole Elms, Tom Evatt, and John McDermott Parks. The annual cost for East Bay to provide these services is not to exceed \$75,588.00, so the total annual value of the contract will increase to \$213,532.00. The parks are in the City's Community Facilities District (CFD) which provides the funding for the maintenance of the improvements within the district. There are sufficient funds in the CFD to cover the maintenance services proposed by this amendment.

**Fiscal Impact:** None. Sufficient funds are available in the Community Facilities District (CFD) to fund the work under this amendment.

**Recommendation:** Approve Amendment No. 3 to the agreement with East Bay Construction expanding the scope of maintenance services, subject to approval as to form by the City Attorney.

- \* **7. Approve a Revised Acquisition and Reimbursement Agreement for Public Facilities for Sewer Lines 11A and 11B within the Transit Area Specific Plan (Staff Contact: Steven McHarris, 408-586-3273)**

**Background:** Chapter 4 of Title VIII of the Milpitas Municipal Code (Fees for New Development) establishes the procedures for the collection of developer impact fees and funds for the construction of public infrastructure necessitated by new development. These provisions further authorize the City to enter into reimbursement agreements to give credits to defray a developer's costs in "oversizing" facilities (i.e., constructing facilities of supplemental size, length or capacity over that caused by a particular development when such construction is necessary to ensure efficient and timely construction of the facilities network).

D.R. Horton Bay, Inc., the developer of the Harmony project located at 1615 McCandless Street in the Transit Area, is requesting a Transit Area Impact Fee and capital sewer connection fee credit for its construction of portions of facilities known as the Sewer Line 11A and 11B projects beyond its proportionate share of such facilities.

The proposed acquisition and reimbursement agreement memorializes the grant of such fee credits and direct reimbursement payments. Under the agreement, D.R. Horton Bay, Inc. would be entitled to a total not to exceed reimbursement and in lieu credit of up to \$2,546,576.15 in actual construction and design costs, subject to the approval of the City Engineer. Of this amount, \$1,378,053.24 would come in the form of developer impact fee credits from the Transit Area Specific Plan Impact Fee Fund. A \$254,117.76 deduction from otherwise owed Transit Area Specific Plan fees would be granted for D.R. Horton Bay, Inc.'s in lieu construction of the sewer facilities. The remaining not to exceed \$914,405.15 amount would come in the form of a direct reimbursement payment from the Sewer Fund, which has already allocated \$5,000,000 for this project and other sewer projects.

A revised cost estimate has increased the cost of constructing sewer lines 11A and 11B from \$2,546,576.15 to \$2,961,624, which prompted D.R. Horton and City staff to revise the original Acquisition and Reimbursement Agreement. The revised Agreement requires the City to use good faith and diligent effort to update the Financing Plan and TASP Fee, whereby, D.R. Horton Bay, Inc. would be entitled to a total not to exceed reimbursement and in lieu credit of up to \$2,961,624.20 in actual construction and design costs, subject to the approval of the City Engineer. Of this amount, \$1,793,101.20 would come in the form of developer impact fee credits from the Transit Area Specific Plan Impact Fee Fund. The remaining fee credit and reimbursement payment will not change.

**Fiscal Impact:** None. The Transit Area Specific Plan Impact Fee Fund and Sewer Capital Improvement Project No. 6117 have sufficient funds.

**Recommendations:**

1. Approve the Revised Acquisition and Reimbursement Agreement for Public Facilities pursuant to Sewer Lines 11A and 11B within the Transit Area Specific Plan.
  2. Approve the payment of up to \$914,405.15 from Sewer Capital Improvement, Project No. 6117, in direct payment to the developer.
- \* 8. **Authorize Guarantee Extension and Contract with Goldfarb & Lipman, LLP (Staff Contact: Michael Ogaz, 408-586-3040)**

**Background:** In order to accomplish tasks associated with the wind down of the Redevelopment Agency, the law firm of Goldfarb & Lipman has been associated to assist in compliance with the complex process created by State legislation known as AB 1484 and also to provide litigation support, should that become necessary or advisable. Currently, the Council has guaranteed an Economic Development Corporation contract and staff now seeks an additional guarantee of \$50,000 and concurrent authority in that same amount for City and Successor Agency legal work by Goldfarb & Lipman.

**Fiscal Impact:** None. There are sufficient funds in the General Fund Contingency Reserve budget to cover the \$50,000.

**Recommendation:** Approve a concurrent guarantee and contract with Goldfarb & Lipman, LLP, in the total combined amount of \$50,000 in a form acceptable to the City Attorney and authorize the City Attorney to execute the contract for legal services.

## **XVIII. DEMAND**

- \* 9. **Receive Report of Emergency Repairs of Public Infrastructure (Staff Contact: Kathleen Phalen, 408-586-3345)**

**Background:** Pursuant to state public contracting law and Council Resolution No. 7779, the Director of Public Works must report all emergency public works repairs to the City Council. The Director authorized four emergency repairs described as follows.

Corporation Yard Emergency Generator Fuel Line: As required by Senate Bill 989, staff had Balch Petroleum test and inspect the generator underground diesel fuel line secondary containment system. Balch's testing identified two locations requiring repair. The Director approved Balch's proposal of \$6,950 to complete the work as an emergency repair to ensure the containment system would be promptly brought into regulatory compliance and to alleviate the risk of a potential diesel fuel spill.

Jurgens Pump Station Emergency Generator: As required by Senate Bill 989, staff had Balch Petroleum test and inspect the generator diesel fuel line secondary containment system. Balch's inspection identified a plumbing modification required to bring the system into compliance. The Director approved the Balch's proposal of \$5,901.85 to complete the work as an emergency repair to ensure the system would be promptly brought into regulatory compliance and to alleviate the risk of a potential diesel fuel spill.

Jurgens Pump Station Jockey Pump: Staff called Koffler Repair to evaluate the failure of the small electrical jockey pump at the Jurgens Pump Station. Koffler was unable to evaluate the pump on site, and so removed it to their shop where they determined that it requires cleaning and new parts at a cost of \$17,392. The Director approved this work because this small pump is needed during the wet season to reduce wear and tear caused by frequent on-off cycling of the large diesel engine pumps that could lead to failure. Reassembling the jockey pump and shipping it to other repair firms to obtain comparison quotes would cause unacceptable delay as well as additional cost.

Heath Street Water Main Break: The six-inch water main on Heath Street at Elm Avenue failed. Due to the water main's location beneath a street tree, the utility crew needed assistance and additional equipment to complete the excavation. Preston Pipeline provided labor and equipment at a cost of \$6,031 to excavate, repair the pipe, and backfill the excavation.

Fiscal Impact: None. There are sufficient funds in the operating budget for these repairs.

Recommendation: Receive this report of emergency repair work.

## **XIX. ACTIONS OF CITY AND SUCCESSOR AGENCY**

### **\* 10. Authorize Conveyance of Real Property on Alder Drive to Successor Agency and Termination of Economic Development Corporation's Option to Purchase the Property (Staff Contact: Michael Ogaz, 408-586-3040)**

Background: Various properties formerly owned by the now-dissolved Milpitas Redevelopment Agency were deeded to the City and the Milpitas Economic Development Corporation to preserve their intended purpose of fostering economic development, elimination of blight and provision of affordable housing within the Milpitas community. This property located at the corner of Alder Drive and Barber Lane (Alder Site) does not have a specific project associated with it and thus should be made the subject of a long-range property management plan consistent with State legislation known as AB 1484. Such a plan would allow, subject to approval by the Milpitas Oversight Board and the State Department of Finance, for a long-term project of economic benefit to Milpitas at such time as market conditions are favorable for such a project. However, in order to make this property the subject of a long-term property management plan, it needs to be transferred from the City to the Successor Agency. Staff seeks City Council's authorization for conveyance of the property to the Successor Agency and the Successor Agency Board's acceptance of said conveyance.

When the Alder site was transferred to the City from the Redevelopment Agency in March of 2011, the City and the Economic Development Corporation ("EDC") entered into a Memorandum of Option granting the EDC the option to purchase the property for a period of 20

years subject to the terms of an Option to Purchase Agreement which was authorized by Council but not fully executed. The Memorandum of Option was recorded with the County Recorder's Office. In order to now transfer clear title of the Alder Site to the Successor Agency, the EDC's option right to purchase the property should be terminated and an appropriate memorandum terminating the option right should be executed and recorded with the Santa Clara County Recorder's Office.

**Fiscal Impact:** None. No consideration was paid when the City received the property and none will be received when this transfer is made.

**Recommendations:** Staff recommends the following:

1. City Council authorize staff to take all steps necessary to convey all title and interest of the City in the Alder Site property (APN 086-02-086) to the Milpitas Successor Agency to the Milpitas Redevelopment Agency.
2. Board of Directors of the Successor Agency accept such conveyance of the Alder Site property from the City to the Successor Agency.
3. City Council authorize staff to take all steps necessary including execution of an appropriate memorandum terminating the Economic Development Corporation's option right to purchase the Alder Site property and to record such memorandum with the Santa Clara County Recorder's Office.
4. Board of Directors of the Successor Agency approve termination of the Economic Development Corporation's option right to purchase the Alder Site property.

## **XX. ADJOURNMENT**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING  
TUESDAY, DECEMBER 4, 2012 AT 7:00 P.M.**

**NOTE: This City Council meeting will be followed immediately by a meeting of the Milpitas Economic Development Corporation in the Council Chambers.**