



**MILPITAS CITY COUNCIL AND  
MILPITAS HOUSING AUTHORITY AND  
SUCCESSOR AGENCY TO FORMER REDEVELOPMENT AGENCY  
JOINT MEETING AGENDA**

**TUESDAY, FEBRUARY 19, 2013**

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

**SUMMARY OF CONTENTS**

- I. CALL TO ORDER/ROLL CALL by the Mayor (6:00 p.m.)**
- II. ADJOURN TO CLOSED SESSION**
  - 1. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**  
Pursuant to California Government Code §54956.9(b), (c)  
City of Milpitas as Plaintiff or Defendant
  - 2. CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING**  
Pursuant to California Government Code §54957.6, City Negotiator: Tom Williams  
Employee Groups: Milpitas Employees Association (MEA), Milpitas Police Officers Association (MPOA), International Association of Fire Fighters (IAFF)  
Under Negotiation: Wages, Hours, Benefits, and Working Conditions
- 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 – January 15, 2013**
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDARS – February and March 2013**
- VIII. 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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- IX. ANNOUNCEMENTS**
- X. ANNOUNCEMENT OF CONFLICT OF INTEREST**
- XI. APPROVAL OF AGENDA**

**XII. 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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**XIII. JOINT MILPITAS HOUSING AUTHORITY AND CITY COUNCIL MEETING**

**HA1. Call to Order/Roll Call by the Mayor/Chair**

**HA2. Adopt Resolution Approving Amendments to the Affordable Housing Regulatory Agreement Releasing 37 Moderate-Income Housing Units at Coyote Creek Project for In-Lieu Housing Fee (Staff Contact: Felix Reliford, 408-586-3071)**

**HA3. Authority Adjournment**

**XIV. REPORTS OF MAYOR AND COMMISSIONS**

- \* **1. Consider Mayor's Recommendations for Appointments and Reappointments to Three City of Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)**
- \* **2. Approve Parks, Recreation and Cultural Resources Commission 2013 Work Plan (Staff Contact: Jaime Chew, 408-586-3234)**
- \* **3. Approve Youth Advisory Commission Scholarship Program and Application (Staff Contact: Samu Tiimalu, 408-586-3222)**

**XV. NEW BUSINESS**

- \* **4. Accept a Regional Assistance to Firefighters Grant to be Allocated for Fire Department Portable Radios (Staff Contact: Brian Sturdivant, 408-586-2811)**

**XVI. RESOLUTIONS**

- 5. Adopt a Resolution Delegating Public Works Director Authority To Take Emergency Action for Demolition of City-Owned Buildings at 1650-1690 and 1740-1830 McCandless Drive for Health and Safety Reasons (Staff Contact: Felix Reliford, 408-586-3071)**
- \* **6. Adopt a Resolution Approving New Memorandum of Understanding with the Mid-Management and Confidential Employee Bargaining Unit (Staff Contact: Michael Ogaz, 408-586-3040)**
- \* **7. Adopt a Resolution Approving New Memorandum of Understanding with the Milpitas Professional and Technical Employee Bargaining Unit (Staff Contact: Michael Ogaz, 408-586-3040)**
- \* **8. Adopt a Resolution Granting Initial Acceptance of, and Reducing the Performance Bond for Street Resurfacing Project 2013, Project No. 4268 (Staff Contact: Steve Chan, 408-586-3324)**
- \* **9. Adopt a Resolution Granting Initial Acceptance of, and Reducing the Performance Bond for Ayer Reservoir & Pump Station Emergency Repairs, Project No. 7102 (Staff Contact: Steve Erickson, 408-586-3301)**

- \* 10. **Adopt a Resolution Granting Initial Acceptance of, and Reducing the Performance Bond for Wrigley Ford Creek Maintenance Project, Project No. 9002 (Staff Contact: Steve Erickson, 408-586-3301)**
- \* 11. **Adopt a Resolution Authorizing the City Manager to Execute a Contract with Summit Uniforms by Piggybacking on the City of Sunnyvale Contract for the Annual Not-to-Exceed Amount of \$17,000 (Staff Contact: Chris Schroeder, 408-586-3161)**
- \* 12. **Adopt a Resolution Authorizing the City Manager to Execute a Contract for Document Imaging by Piggybacking the City of Dublin Contract with Peelle Technologies for the Annual Not-to-Exceed amount of \$85,000.00 (Staff Contact: Chris Schroeder, 408-586-3161)**

**XVII. BID AND CONTRACTS**

- 13. **Receive a Progress Report on the Alviso Adobe Renovation Project, Phase IV Site Improvements, Approve Additional Spanish/Mexican Displays and Signage, and Authorize the City Manager to Execute an Agreement with Page & Turnbull, Project No. 5055 (Staff Contact: Kathleen Phalen, 408-586-3345)**
- \* 14. **Award the Bid for a 2013 Ford Taurus Police Interceptor to Frontier Ford for the Not-To-Exceed Amount of \$30,357.25 (Staff Contact: Chris Schroeder, 408-586-3161)**
- \* 15. **Approve and Authorize the City Manager to Execute an Agreement with H. T. Harvey & Associates, for Storm Drain System Deficiency Program Project No. 3700 (Staff Contact: Steve Erickson, 408-586-3301)**
- \* 16. **Authorize the City Manager to Execute the Fifth Amendment to the Contract with CSG Consultants, Inc. for an Additional \$120,360 Annually for Fire Department Plan Review and Inspection Services (Staff Contact: Albert Zamora, 408-586-3371)**
- \* 17. **Authorize the City Attorney to Execute Agreement with Renne Sloan for Attorney Services (Staff Contact: Michael Ogaz, 408-586-3040)**
- \* 18. **Authorize the City Manager/Executive Officer to Execute a Stand Still Agreement with the Milpitas Oversight Board (Staff Contact: Michael Ogaz, 408-586-3040)**

**XVIII. ADJOURNMENT**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING  
TUESDAY, MARCH 5, 2013 AT 7:00 P.M.**

**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:

- Arts Commission (alternate member)*
- Public Art Committee (Alliance for the Arts member)*
- Community Advisory Commission (alternates)*
- Economic Development Commission (alternate)*
- Library Advisory Commission (alternate)*

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**

**XIII. JOINT MILPITAS HOUSING AUTHORITY AND CITY COUNCIL MEETING**

**HA2. Adopt Resolution Approving Amendments to the Affordable Housing Regulatory Agreement Releasing 37 Moderate-Income Housing Units at Coyote Creek Project for In-Lieu Housing Fee (Staff Contact: Felix Reliford, 408-586-3071)**

**Background:** The former Milpitas Redevelopment Agency entered into Affordable Housing Regulatory Agreements (August 2009) with Fairview Murphy Road, LLC to provide the following affordable housing units:

- Cerano Apartments: 88 affordable housing units of a total of 374
- Coyote Creek (for sale): 44 affordable housing units of a total of 285. The 44 units would include 7 low-income and 37 moderate-income units.

Since the execution of the Regulatory Agreement (for-sale units), Fairview Murphy Road, LLC has sold the project - Coyote Creek - to Williams Lyons Homes, Inc. Over the past several months, City staff met with representatives of William Lyons Homes to execute the regulatory agreement requirements (dispersement of units, marketing plan, affordability requirements, etc.).

**ISSUES:** Upon completion of Lyons' marketing plan for the market-rate and affordable housing units, the market rate sale price is an average of \$23,000 or five percent (5%) higher than the required affordable list price for sixty-eight percent (68%) of the 37 restricted units. The average market list price for all 37 homes is another two and-a-half percent (2.5%) higher than the required affordable list price. The chart below illustrates the difference between the sale price of the market-rate and affordable housing units:

<b>Product Plan Type</b>	<b># Units</b>	<b>Affordable List Price</b>	<b>Market Rate List Price</b>	<b>Pricing Difference</b>
Row Town - Plan A	7	\$447,900	\$484,990	(\$37,090)
Row Town - Plan B	7	\$489,900	\$504,990	(\$15,090)
Row Town - Plan D	11	\$489,900	\$519,990	(\$30,090)
Motor Court - Plan A	4	\$447,900	\$504,990	(\$57,090)
Motor Court - Plan C	8	\$447,900	\$524,990	(\$77,090)

As indicted in the chart, moderate-income units established by the Regulatory Agreement are priced between \$447,000-\$489,000, while, by comparison, the market-rate units' sale price for the same home is \$484,990-\$524,990. Given the downturn in the housing market the past several years, the disparity between market-rate and moderate-income affordable has narrowed significantly. The narrowing of this disparity has caused the following problems regarding the sale of moderate-income units:

- Homebuyers would be willing to pay the difference between market-rate and moderate-income units for less government restrictions, such as long-term affordability for 45 years and limited equity on resale.
- Historically low interest rates have made it much easier for moderate-income homebuyers to obtain greater credit to purchase market-rate homes without government restrictions.
- Given the downturn of sale prices in the housing market over the past several years, there appears to be no current market at this time for restricted moderate-income affordable housing for-sale units. This fact was demonstrated approximately two years ago when KB Homes could not sale its moderate-income units and the former Milpitas Redevelopment Agency agreed to an in-lieu housing fee (\$37,000/per unit).

Once the housing market corrects itself in the future and market-rate housing prices increase, the market for moderate-income affordable units will return.

### **PROPOSAL FROM WILLIAM LYONS, LLC-IN-LIEU HOUSING FEE**

Because of the concerns and inability to sale the 37 moderate-income units, William Lyons Home, LLC submitted a proposal to City of Milpitas/Housing Authority to pay an in-lieu housing fee for the release of the affordable housing units. The in-lieu housing fee would be in the amount of \$1,480,000 (\$40,000/per unit). Seven low-income units would still be required to be provided and this proposal does not affect the 88 affordable apartment units at Cerano.

The City Council and Housing Authority are recommended to accept the in-lieu housing fee proposal for the following reasons:

- The proposed in-lieu housing fee of approximately \$1.5 million would allow the Housing Authority to leverage its funds and provide financial assistance to a non-profit and/or affordable housing developer which would exceed the 37 affordable housing units being released.
- Since the former Milpitas Redevelopment Agency did not provide any financial assistance to the developer/project, the proposed in-lieu housing fee of approximately \$1.5 million would be a surplus for the Housing Authority.
- Given the current housing market, it is unknown when disparity between market-rate and moderate-income housing prices will be corrected. The 37 moderate-income units could remain vacant for a long period of time which would not benefit the Housing Authority.

If approved by City of Milpitas/Housing Authority, the existing Regulatory Agreement would have to be revised to reflect the 7 low-income affordable units and deletion of the 37 moderate-income units. Included in the Council/Housing Authority agenda packet is a copy of the letter submitted by William Lyon Homes, LLC providing additional information regarding their proposal and resolution approving the release of the affordable unit subject to the payment of the in-lieu housing fee.

**Fiscal Impact:** None. The former Milpitas Redevelopment Agency did not provide any financial assistance to the developer/project. The \$1,480,000 would be a surplus for Milpitas Housing Authority.

**Recommendation:** Adopt a resolution approving amendments to the Regulatory Agreement for the Coyote Creek residential development project, releasing 37 moderate-income housing units for an in-lieu housing fee of \$1,480,000.

## **XIV. REPORTS OF MAYOR AND COMMISSIONS**

- \* 1. **Consider Mayor's Recommendations for Appointments and Reappointments to Three City of Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)**

**Background:** Mayor Esteves recommends the following residents be appointed or reappointed to Milpitas Commissions as follows:

**Community Advisory Commission:**

Newly appoint Van Lan Truong as Alternate No. 3 to a term that will expire in January 2014.

**Senior Advisory Commission:**

Re-appoint Bal Daquigan to a term that will expire in December 2014.

Re-appoint Amanda Santos to a term that will expire in December 2014.

**Telecommunications Commission:**

Re-appoint Debra Whitlock Lax to a term that will expire in January 2015.

**Recommendation:** Receive Mayor's recommendations and move to approve appointments and reappointments to three City of Milpitas Commissions.

- \* 2. **Approve Parks, Recreation and Cultural Resources Commission 2013 Work Plan (Staff Contact: Jaime Chew, 408-586-3234)**

**Background:** On February 4, 2013, the Parks, Recreation and Cultural Resources Commissioners met and approved their 2013 Work Plan. The Commission's 2013 Work Plan identifies the Commission's goals, projects and ongoing tasks. The work plan is submitted to the City Council with a recommendation for approval.

**Fiscal Impact:** None.

**Recommendation:** Approve the Work Plan for the Parks, Recreation and Cultural Resources Commission for 2013.

- \* 3. **Approve Youth Advisory Commission Scholarship Program and Application (Staff Contact: Samu Tiimalu, 408-586-3222)**

**Background:** The Youth Advisory Commission (YAC) would like to create an annual scholarship program for graduating seniors. The purpose of the scholarship program is to encourage students to attend college and provide financial assistance to students who wish to continue their education. Those students who meet the criteria set by the Youth Advisory Commission could be awarded the \$500 scholarship.

The scholarship money would be generated through the various events offered by the YAC (i.e. proceeds from the Milpitas' Got Talent show, donations, etc). Last year's Milpitas' Got Talent event generated \$649 in admissions and donations.

The YAC is seeking approval to offer the scholarship each year to award a deserving graduating senior. In addition, Commissioners would like to present the scholarship at a May/June City Council meeting with the City Council's assistance.

**Fiscal Impact:** None. Scholarship money will be generated through YAC events and donations.

**Recommendation:** Approve the annual Youth Advisory Commission scholarship program and application.

## XV. NEW BUSINESS

- \* 4. **Accept a Regional Assistance to Firefighters Grant to be Allocated for Fire Department Portable Radios (Staff Contact: Brian Sturdivant, 408-586-2811)**

**Background:** In September of 2011, the Sunnyvale Department of Public Safety submitted an Assistance to Firefighters Grant (AFG) application requesting funds for new portable radios for fire departments throughout Santa Clara County. The grant request was approved in January 2012 and the radios were procured by the City of Sunnyvale through a competitive bid process.

This purchase will allow for increased compliance with the overall communications infrastructure and end-user implementation of the interoperability plan formulated by the Bay Area Super Urban Area Security Initiative (SUASI). Requirements identified for the next generation radio system include:

- Replacement of obsolete equipment and compliance with FCC narrow-banding requirements and national standard (Project 25 or P25) for performance and interoperability of public safety radio equipment

- Enhanced channel capacity
- Improved interoperability among County agencies and outside agencies
- Improved coverage in specified areas
- Improved reliability and connectivity

Milpitas Fire will purchase 25 portable radios at a cost of \$1,141.79 per unit (list price \$6,000 each) and radio programming by Motorola at a cost of \$6,051.50 for a total cost of \$34,596.25. The Fire Department is now prepared to purchase the equipment.

**Fiscal Impact:** The 2011 Assistance to Firefighters Grant is an 80/20 grant. 80% of the cost will be covered by FEMA by grant funds and the 20% cost match for the Milpitas radios will be invoiced by the City of Sunnyvale directly to the City of Milpitas. The total cost of this project to the City of Milpitas is \$34,596.25.

**Recommendation:** Accept the regional Assistance to Firefighters Grant toward the cost to purchase portable radios for the Fire Department, and authorize the expenditure of \$34,596.25 (City of Milpitas portion of the cost).

## XVI. RESOLUTIONS

### 5. **Adopt a Resolution Delegating Public Works Director Authority To Take Emergency Action for Demolition of City-Owned Buildings at 1650-1690 and 1740-1830 McCandless Drive for Health and Safety Reasons (Staff Contact: Felix Reliford, 408-586-3071)**

**Background:** Over the past several months, three City buildings on McCandless Drive (designated as the location of a future school site and park) have become a haven for vandalism, graffiti, homeless encampment, burglary, public dumping ground, and other public nuisances. This activity has become detrimental to the health, safety and public welfare of the community and thus requires immediate action by the City. Specific public nuisances include:

- Major dumping and disposal of furniture, garbage, equipment, auto parts, bags from landscaping and gardening, etc.
- Graffiti on various walls along the exterior of the buildings and walls along property lines.
- Breaking into the buildings to steal cooper, plumbing, bathroom faucets, wiring, and other materials that can be sold.
- Homeless encampments with shopping carts, make-shift beds, cans of foods, and a small camp fire. Enclosed service delivery areas at the rear of the buildings have been used for shelter.

Since these incidents were brought to staff's attention, the City Manager has directed police officers to patrol the area more frequently and required routine inspections. However, despite best efforts, these conditions have continued to deteriorate. Additional action is needed in response to health, safety and general public welfare. Staff recommends City Council adopt a resolution delegating the Public Works Director to take emergency action to demolish the three buildings. A presentation including photographs of the site will be provided at the Council meeting. A copy of the draft resolution for adoption and photographs are included in the Council's agenda packet.

**Fiscal Impact:** None.

**Recommendation:** Adopt a resolution by urgent action for the demolition of three City-owned buildings, located at 1650-1690 and 1740-1830 McCandless Drive, based on health and safety reasons.

- \* 6. **Adopt a Resolution Approving New Memorandum of Understanding with the Mid-Management and Confidential Employee Bargaining Unit (Staff Contact: Michael Ogaz, 408-586-3040)**

**Background:** On December 31, 2012, the Memorandum of Understanding (MOU) with the Mid-Management and Confidential employee bargaining unit expired. At the end of last year (2012) continuing into this year (2013), representatives of both management and the employee group have met regarding adoption of a new contract. Due to past significant budget shortcomings, primarily due to the state's elimination of Redevelopment Agency funding, the Mid-Con employee group agreed in the previous MOU to pay 14.8% of PERSable salary toward the employer PERS contribution rate on a pretax basis. With a guardedly improved local economy predicted by the Finance Department, management determined that a 2.5% roll-back of that 14.8% payment by this group would be affordable. This change would be effective the first full pay period following adoption of the accompanying Resolution. No other changes to the MOU were agreed to and therefore the new MOU incorporates all other provisions of the old MOU and will terminate on December 31, 2013.

**Fiscal Impact:** Approximately \$84,000 in additional cost annually.

**Recommendation:** Adopt a resolution approving the Memorandum of Understanding between the United Public Employees of California (UPEC Local 792, AFL-CIO) for the Mid-Management and Confidential bargaining unit for the period January 1 through December 31, 2013.

- \* 7. **Adopt a Resolution Approving New Memorandum of Understanding with the Milpitas Professional and Technical Employee Bargaining Unit (Staff Contact: Michael Ogaz, 408-586-3040)**

**Background:** On December 31, 2012, the Memorandum of Understanding (MOU) with the Milpitas Professional and Technical Group (Protech) employee bargaining unit expired. At the end of last year (2012) continuing into this year (2013), representatives of both management and the employee group have met regarding adoption of a new contract. Due to past significant budget shortcomings, primarily due to the State's elimination of Redevelopment funding, this employee group had agreed in the old MOU to pay 15.4% of PERSable salary toward the employer PERS contribution rate on a pretax basis. With a guardedly improved local economy predicted by the Finance Department, management determined that a 2.5% roll-back of that 15.4% payment by this group would be affordable. This change would be effective the first full pay period following adoption of the accompanying Resolution. No other changes to the MOU were agreed to and therefore the new MOU incorporates all other provisions of the old MOU and terminates on December 31, 2013.

**Fiscal Impact:** Approximately \$120,000 in additional cost annually.

**Recommendation:** Adopt a resolution approving the Memorandum of Understanding between the Milpitas Professional and Technical Group (Protech) and the City of Milpitas for the period of January 1 through December 31, 2013.

- \* 8. **Adopt a Resolution Granting Initial Acceptance of, and Reducing the Performance Bond for Street Resurfacing Project 2013, Project No. 4268 (Staff Contact: Steve Chan, 408-586-3324)**

**Background:** The Council awarded the Street Resurfacing Project 2013 to O'Grady Paving, Inc. on June 19, 2012. The project provides for the repair of base failures, remove and replace failed asphalt concrete pavement, miscellaneous concrete work, placing asphalt rubber cape seal, slurry seal and new roadway marking treatments on City streets. The project was successfully completed on time and within budget. Staff recommends that Council adopt a resolution granting

initial acceptance of the project and authorize the reduction of the contractor's faithful performance bond to \$84,183, which is 10% of the final contract value.

**Fiscal Impact:** None.

**Recommendation:** Adopt a resolution granting initial acceptance of Street Resurfacing Project 2013, Project No. 4268, subject to a one year warranty period and reduction of the faithful performance bond to \$84,183.

- \* **9. Adopt a Resolution Granting Initial Acceptance of, and Reducing the Performance Bond for Ayer Reservoir & Pump Station Emergency Repairs, Project No. 7102 (Staff Contact: Steve Erickson, 408-586-3301)**

**Background:** The Council awarded the Emergency Repairs to Ayer Reservoir & Pump Station Improvements to Anderson Pacific Engineering Construction Inc. on March 1, 2011. The project provided for the replacement of: three Variable Frequency Drive (VFD), install three new 200 horse-power electric motors, and completely rebuilt three shaft driven pumps. The project was successfully completed within budget. Staff recommends that Council adopt a resolution granting initial acceptance of the project and authorize the reduction of the contractor's faithful performance bond to \$50,091, which is 10% of the final contract value.

**Fiscal Impact:** None.

**Recommendation:** Adopt a resolution granting initial acceptance of Ayer Reservoir & Pump Station Emergency Repairs, Project No. 7102, subject to a one year warranty period and reduction of the faithful performance bond to \$50,091.

- \* **10. Adopt a Resolution Granting Initial Acceptance of, and Reducing the Performance Bond for Wrigley Ford Creek Maintenance Project, Project No. 9002 (Staff Contact: Steve Erickson, 408-586-3301)**

**Background:** The Milpitas Economic Development Corporation awarded the Wrigley Ford Creek Maintenance Project to Preston Pipelines, Inc. at its January 17, 2012 meeting. The project provides for Wrigley Ford Creek improvements and maintenance work consisting of clearing of debris, sediments, vegetation and trees and pruning of trees at strategic locations to restore the storm water conveyance of the channel. Work also included creek slope and bank restoration, environmental mitigation work consisting of new planting and irrigation (for plant establishment) along the creek. Phases I and II which included sediment, debris and vegetation removal and restoration planting were successfully completed on time and within budget. Staff recommends that Council adopt a resolution granting initial acceptance of the project and authorize the reduction of the contractor's faithful performance bond to \$30,343.33, which is 10% of the final contract value.

**Fiscal Impact:** None.

**Recommendation:** Adopt a resolution granting initial acceptance of Wrigley Ford Creek Maintenance, Project No. 9002, subject to a one year warranty period and reduction of the faithful performance bond to \$30,343.33.

- \* **11. Adopt a Resolution Authorizing the City Manager to Execute a Contract with Summit Uniforms by Piggybacking on the City of Sunnyvale Contract for the Annual Not-to-Exceed Amount of \$17,000 (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background:** The Police Department regularly purchases uniforms and supplies from Summit Uniforms. The estimated annual purchase costs amounted to \$17,000. Summit Uniform is located in San Jose, making it convenient for fittings and alterations. On August 8, 2011 the City of

Sunnyvale went out with a Invitation for Bid for uniforms and supplies. The contract is worth \$324,000 over a three year period was awarded to Summit Uniforms. Due to the City of Sunnyvale's significant contract amount, the City of Milpitas can take advantage of the economies of scale not otherwise available to the City.

The practice of, and requirements for, utilizing a contract bid by another agency are defined and sanctioned under Municipal Code Section I-2-3.07 "Piggyback Procurement." The current recommendation to piggyback onto the City of Sunnyvale's contract with Summit Uniforms is in full compliance with those requirements. The new contract with Summit Uniforms will be for one year with a one year renewal option remaining.

**Fiscal Impact:** None.

**Recommendation:** Adopt a resolution authorizing the City Manager to execute a separate contract with the vendor Summit Uniforms for Police Department uniforms, selected by the originating agency, the City of Sunnyvale, and incorporate by reference the original solicitation, terms, conditions, and pricing for the annual not-to-exceed amount of \$17,000.

- \* 12. **Adopt a Resolution Authorizing the City Manager to Execute a Contract for Document Imaging by Piggybacking the City of Dublin Contract with Peelle Technologies for the Annual Not-to-Exceed amount of \$85,000.00 (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background:** In 2004 the city staff evaluated document imaging software and hardware from a variety of different companies. Peelle Technologies was determined to have the best price and service. Since then the City has also purchased Peelle's Kofax Ascent Capture software and four Fujitsu scanners to support the internal document imaging work performed by staff. On April 25, 2008 the Peelle was granted a "Sole Source" designation in accordance with Municipal Code Section I-2-3.09 "Sole Source Procurement," that designation is still in effect for one more year. In March of 2009 the City piggybacked the City of Sunnyvale contract with Peelle Technologies. The City of Sunnyvale contract with Peelle Technologies expired in March of 2012. However, the City of Dublin has a current contract with Peelle, which was competitively bid on May 7, 2012, the City of Milpitas can piggyback on the City of Dublin contract and still maintain very similar rates.

The practice of, and requirements for, utilizing a contract bid by another agency are defined and sanctioned under Municipal Code Section I-2-3.07 "Piggyback Procurement." Staff's recommendation to piggyback on the City of Dublin's contract with Peelle Technologies is in full compliance with those requirements. The new contract with Peelle will be for one year with a one year renewal option remaining.

**Fiscal Impact:** None.

**Recommendation:** Adopt a resolution authorizing the City Manager to execute a separate contract with the vendor Peelle Technologies, selected by the originating agency, the City of Dublin, and incorporate by reference the original solicitation, terms, conditions, and pricing for the annual not-to-exceed amount of \$85,000.

## **XVII. BID AND CONTRACTS**

13. **Receive a Progress Report on the Alviso Adobe Renovation Project, Phase IV Site Improvements, Approve Additional Spanish/Mexican Displays and Signage, and Authorize the City Manager to Execute an Agreement with Page & Turnbull, Project No. 5055 (Staff Contact: Kathleen Phalen, 408-586-3345)**

**Background:** In 1996, the City obtained the historic Alviso Adobe property, located at 2087 Alviso Adobe Court off Piedmont Road, to improve for public use. The adobe has a long history of active use. Jose Maria Alviso built the original one-story adobe residence at this site in 1837, at a time when California was a territory of Mexico. The adobe was extensively remodeled by Alviso in 1850 when a second story was added, converting it to the “Monterey Style” with the addition of the wood balconies, French doors, multi paned windows, and hipped shingle roof, which you can still see today. The adobe was later purchased by the Cuciz family in 1922 and the building was restored and remodeled again removing a lean-to kitchen and adding a 1920’s era kitchen to the rear of the adobe.

The City is completing improvements in phases as funding becomes available. The Phase III exterior structural improvements to the adobe building have been completed, and the Phase IV improvements of the grounds into a public park are nearly complete. The new park features an apricot orchard, reconstructed cutting shed, water tower and garage garden, and other landscaping elements to replicate a historic 1920’s farm setting. It also provides pathways, lighting, picnic areas, park benches, and a public restroom. The park opening ceremony will be on March 16, 2013.

The future Phase V of the project calls for renovation of the interior of the Alviso Adobe, including adding displays of historic artifacts and educational information that would speak to the early Spanish/Mexican Rancho era (1830-1860). Unfortunately, funding is not expected to be available in the near term to complete this work, estimated at well over \$1.0 million. Therefore, Councilmember Montano has requested that the City Council consider approving additional historic displays and signage in the park to describe the early Spanish/Mexican Rancho era.

Upon completion of Phase IV, there will be approximately \$300,000 remaining in the project budget. The cost to research, fabricate, and install early Spanish/Mexican displays and signage on the park grounds is estimated at \$150,000. If Council approves this additional work, staff recommends contracting with the historic preservation firm of Page & Turnbull, a sub-consultant for the Phase IV renovation, to provide these services.

A brief presentation on progress to date, project budget, schedule, and other project-related information will be provided at the Council meeting.

**Fiscal Impact:** None. Sufficient funds are available in the project budget for these services.

**Recommendations:**

1. Receive an oral progress report at the meeting, and provide any comments to staff.
2. Approve the request by Councilmember Montano for installation of Spanish/Mexican displays and signs on the park grounds.
3. Approve and authorize the City Manager to execute an agreement with Page & Turnbull, in the not to exceed amount of \$150,000 for Spanish/Mexican era park displays and signage, Project No. 5055, subject to approval as to form by the City Attorney.

- \* 14. **Award the Bid for a 2013 Ford Taurus Police Interceptor to Frontier Ford for the Not-To-Exceed Amount of \$30,357.25 (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background:** The Purchasing Agent worked with Fleet Maintenance and the Police Department to develop a specification for a 2013 Ford Taurus Police Interceptor. The Invitation for Bid was released on January 10, 2013. One bid was received on January 25, 2013 from Frontier Ford for \$30,375.25.

**Fiscal Impact:** None. Sufficient funding is available in the Equipment Replacement Fund for the purchase of this vehicle.

**Recommendation:** Award the bid for a 2013 Ford Taurus police interceptor Frontier Ford for the not-to-exceed amount of \$30,375.25.

- \* 15. **Approve and Authorize the City Manager to Execute an Agreement with H. T. Harvey & Associates, for Storm Drain System Deficiency Program Project No. 3700 (Staff Contact: Steve Erickson, 408-586-3301)**

**Background:** The Storm Drain System Deficiency Program, Project No.3700, is included in the approved Capital Improvement Program. The City has successfully completed the creek improvements along Wrigley Ford Creek which included clearing of debris, sediments, vegetation and trees and pruning of trees to restore the storm water conveyance of the channel creek slope and bank restoration, and environmental mitigation work consisting of new planting and irrigation. As part of project closeout and for compliance with the permits issued by the Regional Water Quality Control Board (RWQCB), U.S. Department of the Army Corps of Engineers (ACOE), and the Department of Fish & Game, the City is required to provide ecological monitoring and reporting for a period of ten years from completion of the improvements. Through the City's consultant selection process, H. T. Harvey & Associates has been selected to provide the ecological monitoring and reporting services for the Wrigley Ford Creek Maintenance Project. A scope and fee for these services was negotiated not to exceed \$97,000, which is considered reasonable for the work.

**Fiscal Impact:** None. There are sufficient funds in the project budget.

**Recommendation:** Approve and Authorize the City Manager to execute an agreement with HT Harvey & Associates in the not to exceed amount of \$97,000, Project No. 3700, subject to approval as to form by the City Attorney.

- \* 16. **Authorize the City Manager to Execute the Fifth Amendment to the Contract with CSG Consultants, Inc. for an Additional \$120,360 Annually for Fire Department Plan Review and Inspection Services (Staff Contact: Albert Zamora, 408-586-3371)**

**Background:** CSG Consultants, Inc. currently provides contract fire plan review and inspection services for the City of Milpitas with an annual amount not-to-exceed \$122,400. Due to the increase demand for both plan review and inspection services with respect to the major development projects approved by the City, this proposed contract amendment will facilitate the additional workload by increasing the annual amount not-to-exceed to \$242,760.

**Fiscal Impact:** None. The additional requested amount will be offset by fire permit fees that are directly paid by the developers.

**Recommendation:** Authorize the City Manager to execute the fifth amendment to the contract with CSG Consultants Inc. for fire inspection and plan review services for an increase of \$120,360 and a total amount-not-to-exceed \$242,760 annually (which includes the original contract amount of \$122,400).

- \* 17. **Authorize City Attorney to Execute Agreement with Renne Sloan for Attorney Services (Staff Contact: Michael Ogaz, 408-586-3040)**

**Background:** This law firm provides general advice to and representation of the City, mainly focusing on personnel related issues. At this time, City Attorney staff is down to one attorney and there is insufficient capacity to handle all matters in this area. This contract for \$50,000 will afford needed coverage while staffing is down and pending the hiring of an Assistant City Attorney. Salary savings from absence of an Assistant City Attorney from December through March will assist in offsetting this cost.

**Fiscal Impact:** None.

**Recommendation:** Authorize the City Attorney to execute the contract for Attorney Services with the law firm of Renne Sloan Holtzman Sakai LLP, in the amount of \$50,000.

- \* 18. **Authorize the City Manager/Executive Officer to Execute a Stand Still Agreement with the Milpitas Oversight Board (Staff Contact: Michael Ogaz, 408-586-3040)**

**Background:** The wind down of the former Redevelopment Agency (RDA) is supervised by the Oversight Board for the City of Milpitas according to State Law. Distribution of former RDA assets is a component of the Oversight Board duties. The State of California has claimed that assets of the Economic Development Corporation should be transferred by the EDC so that those funds can be distributed to the County and other taxing entities. The City and EDC disagree with that view, claiming that the EDC, as a separate non-profit public benefit corporation, is fully entitled to retain its assets because they were legally acquired at the time of transfer in 2011.

In light of the opposing viewpoints, it was suggested by Counsel of the Oversight Board that the City, the EDC and the City as Successor Agency to the former Redevelopment Agency enter into an agreement with the Oversight Board to suspend new EDC expenditures until a decision is made by the courts or other decision maker as to whether the EDC is entitled to keep the assets it now possesses. Alternatively, the Oversight Board has threatened to seek an injunction prohibiting the EDC from depleting its assets.

Staff recommends approval of the Stand Still Agreement as a compromise, avoiding the expense of litigation. Many court decisions, including one that will result from a lawsuit filed by Morgan Hill regarding the validity of its EDC, will provide judicial determinations on the validity of ABX1-26 and AB1484. Those laws include questionable provisions which make transfers to the EDC that were legal at the time they were made, retroactively illegal.

**Fiscal Impact:** None.

**Recommendation:** Authorize the City Manager to execute a Stand Still Agreement on behalf of the City, and that the Board of the Successor Agency to the former Redevelopment Agency move to authorize its Executive Officer to execute the Stand Still Agreement on behalf of the Successor Agency (to the former Milpitas Redevelopment Agency).

## **XVIII. ADJOURNMENT**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING  
TUESDAY, MARCH 5, 2013 AT 7:00 P.M.**

*Draft* **MEETING MINUTES**  
**CITY OF MILPITAS**

**Minutes of:** **Regular Meeting of Milpitas City Council**  
**Date:** **Tuesday, February 5, 2013**  
**Time:** **6:00 PM**  
**Location:** **Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas**

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**ROLL CALL**

Mayor Esteves called the meeting to order at 6:00 PM. City Clerk Lavelle noted the roll.

**PRESENT:** Mayor Esteves, Vice Mayor Polanski, Councilmembers Giordano, Gomez and Montano

**ABSENT:** None

**CLOSED SESSION**

City Council convened in Closed Session to discuss labor negotiations and one litigation matter.

City Council then convened in Open Session at 7:00 PM.

**ANNOUNCEMENT**

City Attorney Mike Ogaz announced that the City Council approved - by unanimous vote - agreement with two employee groups, the Mid-Management and Confidential unit and the Profession and Technical employees, on new Memorandums of Understanding for a one year period (January 1 to December 31, 2013) which would include a 2.5% restoration of the amount employees pay toward the employer portion of PERS. The documents were directed to be brought back for a final vote on the agenda of the next City Council meeting on February 19.

**PLEDGE**

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

**INVOCATION**

Councilmember Giordano offered her own prayer to start the meeting.

**MINUTES**

Motion: to approve meeting minutes of January 15, 2013 City Council meeting, as submitted

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

**SCHEDULE OF MEETINGS**

Motion: to approve Council Calendars/Schedule of Meetings for February 2013, as submitted

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

**PRESENTATIONS**

Mayor Esteves made the following presentations:

He proclaimed both *Dr. Martin Luther King, Jr. Day* on January 21, 2013 and *Black History Month* for the month of February 2013. Both were accepted by resident Demetress Morris.

He presented the *2013 Artist of Year Award* to Patty Jensen of the Jensen School for the Performing Arts. The Mayor also gave certificates of commendation to nominees Joe Santoro and Carla Moss. Arts Commissioners Becky Strauss and Robin Hays assisted the Mayor with the presentation of the awards, as selected the Arts Commissioners.

**PUBLIC FORUM**

Robert Marini, Milpitas resident, had previously asked three questions about sewer rates. He claimed that Milpitas was not an open and transparent city government.

Demetress Morris, Milpitas resident, discussed flag raising for Black History month. City Manager Tom Williams replied that he could discuss that event with her, away from the City Council meeting.

**ANNOUNCEMENTS**

Mayor Esteves noted that many residents in February were celebrating Chinese Lunar New Year, so he wished all a Happy New Year. The 64<sup>th</sup> India Republic Day was also being celebrated.

**ANNOUNCEMENT OF CONFLICT OF INTEREST**

None.

**APPROVAL OF AGENDA**

Motion: to approve the agenda, as submitted

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

**CONSENT CALENDAR**

Motion: to approve the Consent Calendar (items noted with \*asterisk), as amended

Councilmember Giordano requested to put Item No. 3 (regarding Council reimbursements) on consent and to adopt the new policy, as proposed.

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

\* 3. Councilmember Reimbursements

Adopted the new policy (for the City Council Handbook) restricting items permitted for reimbursement to City Councilmembers, as proposed by Vice Mayor Polanski.

\* 5. Odor Report

Received the December 2012 and January 2013 odor reports.

\* 6. Planning Commission

Appointed Demetress Morris as the Alternate Member of Milpitas Planning Commission to a term that would expire in December 2015.

\* 7. Commission Appointments

Approved recommendations made by Mayor Esteves, following.

Community Advisory Commission:

Appointed Eva Ferguson as a regular member to a term to expire in January 2015.  
Appointed Oscar Leon as a regular member to a term to expire in January 2015.  
Appointed Marsha Tran as Alternate No. 1 to a term to expire in January 2015.  
Newly appointed Ray Maglalang as Alternate No. 2 to a term to expire in January 2015.

Economic Development Commission:

Appointed Sumeet Ahuja as a regular member representing Retail to a term to expire in April 2015. Newly appointed B. Michael Howard as a regular member representing Hotels to a term to expire in April 2015.

Library Advisory Commission:

Appointed Marie Pham as a regular member to a term to expire in June 2013.  
Appointed Hellie Matteo as a regular member to a term to expire in June 2013.

Recycling and Source Reduction Advisory Commission:

Appointed Kashmir Gill as a regular member to a term to expire in October 2015.  
Appointed Madan Arora as Alternate No. 1 to a term to expire in October 2013.  
Newly appointed Eddie Inamdar as Alternate No. 2 to a term to expire in October 2014.

Telecommunications Commission:

Reappointed Albert Alcorn as a regular member to a term to expire in January 2015.  
Reappointed Kurt Bohan as a regular member to a term to expire in January 2015.  
Reappointed Ernesto Bautista as Alternate No. 1 to a term to expire in January 2015.

Sister Cities Commission:

Newly appointed Peter Chang as Alternate No. 2 to a term to expire in September 2013.

Veterans Commission:

Newly appointed Ferdinand Luis, Jr. as Alternate No. 2 to a term to expire February 2016.

- \* 9. Investment Report Received the investment report for the quarter ended December 31, 2012.
- \*10. Ben Gross Tribute Approved the planned Ben Gross tribute event on February 23 at the Barbara Lee Senior Center, in an amount not to exceed \$1,500 and directed staff to research a possible park dedication in honor of the 1960s Milpitas African-American Mayor at a City park.
- \*11. Accept Walmart grant Accepted the Walmart Foundation grant in the amount of \$1,000 and increased Recreation Division budget by \$1,000 for the Senior Nutrition Program.
- \*12. Actions Related to Sora Milpitas LLC apartments Adopted Resolution No. 8225 annexing properties known as SORA Milpitas, LLC into Community Facility District 2005-1.  
Approved and authorized execution of a subdivision improvement agreement.  
Approved the final map (Tract 10139) and public improvement plans (2-1163).
- \*13. Resolution – Water meters Adopted Resolution No. 8226 designating National Meter and Automation as the sole source provider for Badger water meters in the City of Milpitas.  
Approved the purchase of assorted Badger water meters from National Meter and Automation for the not-to-exceed amount of \$70,092.76.
- \*14. Temp. Building Inspector Approved the Lyon Apartments developer’s request to continue employment of a temporary dedicated building inspector.  
Approved budget appropriation of \$70,320, less the administrative fee, into the Building and Safety Department’s budget for five months until July 31, 2013.
- \*15. Temp. Building Inspector Approved and authorized Coyote Creek condominium and townhouse developer’s request for the employment of a temporary building inspector.  
Approved a budget appropriation of \$46,880, less the administrative fee, into the Building and Safety Department’s budget for remaining four months of Fiscal Year 2012-13.
- \*16. Agreement with RMC Water and Environment Authorized the City Manager to execute the consultant agreement with RMC Water and Environment, Inc. for utility engineering support.
- \*17. Amend Contract with TerraCare for 2 New Parks Authorized the City Manager to execute amendment No. 1 to the contract with TerraCare Associates to add two new parks (Alviso Adobe and Cerano) to the City of Milpitas Parks Maintenance services contract for the not-to-exceed annual amount of \$89,460.
- \*18. Amend Universal Building Service Contract Approved Amendment No. 4 to Universal Building Services contract for additional janitorial services for the not-to-exceed amount of \$97,948, through June 30, 2013.
- \*19. Concert Band Composer Authorized the City Manager to execute a contract with composer Jason McChristian in an amount not to exceed \$525. Accepted the Milpitas Parks and Recreation Foundation grant in the amount of \$809 and increased the Recreation Division budget in the amount of \$809 for the Milpitas Community Concert Band Program.

**UNFINISHED BUSINESS**

**1. Report on CAFR (Audit Report for FY 2012-13)**

Finance Director Emma Karlen introduced Ms. Amy Meyer from the firm Maze & Associates, who gave an oral report on the final Comprehensive Annual Financial Report for FY 2011-12. An “unqualified” or clean audit report was given and she reported that it was the highest possible outcome. Ms. Meyer said that the Redevelopment Agency was included for the seven months it existed in the last fiscal year, and there were a number of references to the dissolution of the Agency, and to the Successor Agency. The internal control review yielded no internal accounting weaknesses, along with seven recommendations on internal procedures.

Vice Mayor Polanski complimented staff on the comprehensive report and thanked Ms. Meyer for coming back, after the last meeting. Vice Mayor asked about impact on next year’s audit, of the RDA dissolution. An asset review was the big topic for next time.

Mayor Esteves invited speakers from audience.

Robert Marini, resident, wondered if utility rate funds were included in the report. He wanted to know where the overcharge for utility rates was going.

Motion: to accept the City’s Comprehensive Annual Financial Report (CAFR) and other related Annual Audited Reports for the fiscal year ended June 30, 2012

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

At 7:40 PM, Mayor Esteves announced Council would take a break for staff to work on technical difficulties, and then returned to the dais at 7:51 PM.

**2. Commissioners Recognition**

Dale Flunoy, Recreation Services staff, described to City Council what was planned this year for Commissioners Recognition event as a luncheon this year. The budgeted cost was expected to be between \$12 – 17 per person, with a \$5,100 maximum.

Mayor Esteves asked if there was good input for the event. Staff polled the Chairs and Vice Chairs of Commissions, who supported the event with a meal as proposed.

Motion: to approve the 2013 Commissioners’ Recognition event as a catered luncheon to be held on Saturday, April 13, 2013 at the Milpitas Community Center

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

**4. Council Task Force on Fire Dept. Overtime costs**

City Manager Tom Williams addressed the City Council. He reported that the City Council’s Task Force met to review Fire Dept overtime issue and sought to avoid layoff of any firefighters, in partnership with IAFF Local 1699, City management and several community residents. He provided some background statistics about Fire Department staff costs. He thanked Vice Mayor Polanski and Councilmember Gomez for their leadership, with the main issue identified as minimum staffing required, per Fire’s Memorandum of Understanding with the City.

\$249,145 was the average total compensation for one firefighter in Milpitas. Mr. Williams explained a federal government grant to be awarded to Milpitas, from the Department of Homeland Security and FEMA, for a total of \$2.1 million to cover the cost of hiring six firefighters for two years.

Fire Chief Brian Sturdivant explained how minimum staffing worked in the City (15 firefighters always on duty), where he sought more flexibility on staffing, when necessary.

The utility of overtime on a monthly basis would affect the flexibility of staffing, as applied by the Fire Chief.

City Manager Williams then reviewed the four part solution, directed by Task Force, and presented this evening. The IAFF Local's Executive Board agreed to the terms. They included: 1) accept the SAFER grant and hire six firefighters; 2) transfer \$600,000 from reserves to Fire Department, to be recouped over six years; 3) delay any layoffs to March 19 (to allow time for a vote by union members); and, 4) if the IAFF Local 1600 agreed to eliminate minimum staffing provision in the current MOU and the grant was accepted, then layoffs would be rescinded.

Councilmember Gomez expressed that he did not want to be here on this issue. Solutions were needed, so that was what the Task Force did. While not perfect, the solution recommended would allow the City to retain firefighters and hire six more. The proposal allowed for payback to reserves over time. He urged support by his colleagues.

Councilmember Giordano emphasized that the plan was contingent on all four components working together. She thanked Task Force for the good ideas presented.

Vice Mayor Polanski thanked staff, Mr. Gomez, IAFF members and the Fire Chief for coming to this point for a workable solution. No deviation or changes were sought, since it was a complete package necessary in this situation.

Mayor Esteves was proud of City Council for dealing with this issue, which has been going on for a long time. He termed a "propaganda campaign" had led to misinformation, and he did not care for that. The Mayor pointed out that Fire overtime costs in the last five years was \$7.1 million, a cost to taxpayers.

Councilmember Montano referred to the 2010-11 Civil Grand Jury of Santa Clara County that identified an outmoded service delivery model of most current Fire Departments in the country. That report noted that the majority of calls were emergency medical, not fires. Perhaps another model, such as EMT response, could be looked into.

Steve King, IAFF 1699 Local President, thanked the Council for the Task Force efforts and reviewing the overtime issue. He was happy to look at new ways to deal with the issue. His group appreciated Council moving forward with the SAFER grant, and care about safety of this community.

Mayor Esteves asked Mr. King if he had any comments on the recommended proposal. Mr. King replied that it was not yet voted on by the membership and they understood what they needed to do and would seek to make it work.

Mayor said Council really appreciated all our firefighters.

On a motion by Councilmember Giordano, and seconded by Councilmember Gomez, the City Council voted unanimously to reduced speaking time to two minutes per speaker, due to the large crowd in the audience.

Mayor Esteves then invited speakers to the podium.

Debra Higuera, lifetime resident, spoke of daughter whose life was saved when she was seven 7 years old and she would never forget that.

Tim, a resident, noted a comment by Councilmember Gomez about a 28% vacancy rate, however, it was the absentee rate.

Dan Manassau, Milpitas resident, commented on union tactics. He wanted to know why negotiators were not talking about total compensation for firefighters. Compared to New York City, total compensation was less than at the City of Milpitas. Salary and benefits

were too high in this city.

Mr. Lorin, Milpitas resident, said he would prefer to hear about 20 firefighters on duty at all times, not 15, especially if there was a large emergency. He was a SAFE volunteer.

Jonathan Ford, Parkville Ct., asked the audience how many were CPR trained and hands were raised. He stressed that more residents would need to be available in emergency.

Harry Evan, of Jacklin Rd, had twins and was a business owner. He picked this city for its public safety services and he had 19 years in public safety himself.

A woman asked if Councilmembers had ever been in a fire. She was, three years ago, and was so glad that the Milpitas firefighters came to her house, were so kind and helpful. They saved the house.

Mercedes, a resident reported her husband had had a heart attack and the Milpitas firefighters saved his life. She was grateful.

Susan Ryan, was a resident, a business owner, nurse, mother, and grandmother. She described an important time when the firefighters helped her. She thanked MFD.

Lenore Reed, of Grayhouse Drive, said public safety was very important in this city. Consider staffing issue, since that was the cause of the overtime. Milpitas must be covered in emergency.

Robert Marini, resident, complained of increasing population, which caused heavier burden to the fire dept.

Carol Harris, LaCrosse Drive, felt the City needed all the firefighters now employed and probably more. She said to the City Council "get rid of yourselves first" not public safety, police and fire. She complained of layoffs.

Robert Hughes, lived in Newark, said his city no longer had a Fire Department since the County took it over. He did not want to have any firefighters lose their jobs.

A woman resident had a fire at her home, and really appreciated the local firefighters who came to her home quickly. Quick response times were important for safety.

A man, lifetime resident, thanked the Council to let folks speak before they voted. He said to look at the budget as a whole and overtime costs need to work for the City. You cannot put a value on life. He disagreed with Councilmember Montano and that it was terrible to consider only EMTs rather than experienced firefighters, for the residents.

A young man asked the Council to think about how they would react if they were given a notice of layoff.

Esai Lopez, resident, had been on ride-a-longs with the firefighters and all of them were professionals in this city.

A woman resident worried about mother going into a grand mal seizure and needing emergency care. Firefighters had mother's life twice.

Alicia Drummond, resident, said that if the Council laid off firefighters, that would destroy the dreams of young people who want that profession.

Jeffrey Reed, resident, felt citizens needed to unify to come as one and take care of one another. He spoke of his father, who brought the family to Milpitas.

Vice Mayor Polanski thanked all those who spoke and shared their views. She repeated

that public safety was important, as a core service of the City. She encouraged all residents to join a SAFE team and learn CPR and learn how to use an AED. In a major emergency, the firefighters could not reach everyone in the City at same time. The solution proposed is a good one.

Councilmember Gomez stated that public safety was the number one priority. 70% of the City's budget goes to Police and Fire in Milpitas. Recommendations were good, even if they were not perfect to deal with the issue.

Councilmember Giordano wearing a Councilmember hat appreciated the Mayor's comments. They had to address this issue, a "runaway train." She supported the recommendation as a fiscal conservative. Her daughter was a firefighter, and she thought of her during this discussion.

Mayor Esteves thanked all those who spoke and provided input to Council. Personally, he appreciated the response time of Milpitas firefighters, and they helped his mother-in-law when she fell and broke her hip. He appreciated the work of the Task Force as well as working together with residents.

Motion: to manage the issue of Fire Department overtime expense, 1) accept the federal SAFER grant award of \$2.1 million and hire six firefighters; 2) transfer \$600,000 from reserves to the Fire Department, to be recouped over six years; 3) delay any layoffs to March 19, 2013, allowing time for a vote by the union members on this solution; and, 4) if the IAFF Local 1600 agrees to eliminate minimum staffing provision in the current Memorandum of Understanding and the grant is accepted, then layoffs would be rescinded. This motion included to continue the City Council Task Force on Fire Department Budget.

Motion/Second: Vice Mayor Polanski/Councilmember Montano

Motion carried by a vote of: AYES: 5  
NOES: 0

## REPORTS

Two items were approved on consent calendar.

## NEW BUSINESS

Three items were approved on consent calendar.

### 8. Financial Status Report through December 31, 2012

Finance Director Emma Karlen reviewed the current financial status of the city overall, expressing the anticipated budget shortfall when preparing this year's budget, last year. She provided revised projections of General Fund revenues and expenditures for FY 2012-13. She told Council that the distribution of funds that are distributed from the former Redevelopment Agency area were to be directed to capital projects, as previously directed. The City could balance its budget at the end of the Fiscal Year with the use of Equipment Replacement Reserve funds, as authorized by Council at budget adoption.

Ms. Karlen identified key dates this year for planning to adopt the FY 2013-14 budget. The Council budget hearing is scheduled on Tuesday, May 14, 2013. She also offered to provide a budget study session for the Council, if desired, in April.

Vice Mayor Polanski would like to have the budget study session on a separate date from any regular City Council meeting date.

Mayor Esteves inquired, regarding the next Capital Improvement Program, would it address all line items that were previously to be funded by the Redevelopment Agency? Staff replied that the CIP already would have removed the former RDA as a funding source, so yes.

Motion: to accept the oral report from the Finance Director, and schedule a budget study session on separate date from regular City Council meeting dates

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

City Manager Tom Williams publicly thanked Finance Director Karlen for all her hard work, many hours, behind the scenes with the management and the Firefighters IAFF union group, on the solution reached this evening regarding the overtime issue in the Fire Department.

**RESOLUTIONS**

Two Resolutions were adopted on consent calendar.

**CONTRACTS**

Six items were approved on consent calendar.

**ADJOURNMENT**

Mayor Esteves adjourned the meeting at 9:39 PM.

*Meeting minutes respectfully submitted by  
Mary Lavelle, City Clerk*

*Draft* **MEETING MINUTES**  
**CITY OF MILPITAS**

**Minutes of:** **Regular Meeting of Milpitas City Council**  
**Date:** **Tuesday, February 5, 2013**  
**Time:** **6:00 PM**  
**Location:** **Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas**

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**ROLL CALL**

Mayor Esteves called the meeting to order at 6:00 PM. City Clerk Lavelle noted the roll.

**PRESENT:** Mayor Esteves, Vice Mayor Polanski, Councilmembers Giordano, Gomez and Montano

**ABSENT:** None

**CLOSED SESSION**

City Council convened in Closed Session to discuss labor negotiations and one litigation matter.

City Council then convened in Open Session at 7:00 PM.

**ANNOUNCEMENT**

City Attorney Mike Ogaz announced that the City Council approved - by unanimous vote - agreement with two employee groups, the Mid-Management and Confidential unit and the Profession and Technical employees, on new Memorandums of Understanding for a one year period (January 1 to December 31, 2013) which would include a 2.5% restoration of the amount employees pay toward the employer portion of PERS. The documents were directed to be brought back for a final vote on the agenda of the next City Council meeting on February 19.

**PLEDGE**

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

**INVOCATION**

Councilmember Giordano offered her own prayer to start the meeting.

**MINUTES**

Motion: to approve meeting minutes of January 15, 2013 City Council meeting, as submitted

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

**SCHEDULE OF MEETINGS**

Motion: to approve Council Calendars/Schedule of Meetings for February 2013, as submitted

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

**PRESENTATIONS**

Mayor Esteves made the following presentations:

He proclaimed both *Dr. Martin Luther King, Jr. Day* on January 21, 2013 and *Black History Month* for the month of February 2013. Both were accepted by resident Demetress Morris.

He presented the *2013 Artist of Year Award* to Patty Jensen of the Jensen School for the Performing Arts. The Mayor also gave certificates of commendation to nominees Joe Santoro and Carla Moss. Arts Commissioners Becky Strauss and Robin Hays assisted the Mayor with the presentation of the awards, as selected the Arts Commissioners.

**PUBLIC FORUM**

Robert Marini, Milpitas resident, had previously asked three questions about sewer rates. He claimed that Milpitas was not an open and transparent city government.

Demetress Morris, Milpitas resident, discussed flag raising for Black History month. City Manager Tom Williams replied that he could discuss that event with her, away from the City Council meeting.

**ANNOUNCEMENTS**

Mayor Esteves noted that many residents in February were celebrating Chinese Lunar New Year, so he wished all a Happy New Year. The 64<sup>th</sup> India Republic Day was also being celebrated.

**ANNOUNCEMENT OF CONFLICT OF INTEREST**

None.

**APPROVAL OF AGENDA**

Motion: to approve the agenda, as submitted

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

**CONSENT CALENDAR**

Motion: to approve the Consent Calendar (items noted with \*asterisk), as amended

Councilmember Giordano requested to put Item No. 3 (regarding Council reimbursements) on consent and to adopt the new policy, as proposed.

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

\* 3. Councilmember Reimbursements

Adopted the new policy (for the City Council Handbook) restricting items permitted for reimbursement to City Councilmembers, as proposed by Vice Mayor Polanski.

\* 5. Odor Report

Received the December 2012 and January 2013 odor reports.

\* 6. Planning Commission

Appointed Demetress Morris as the Alternate Member of Milpitas Planning Commission to a term that would expire in December 2015.

\* 7. Commission Appointments

Approved recommendations made by Mayor Esteves, following.

Community Advisory Commission:

Appointed Eva Ferguson as a regular member to a term to expire in January 2015.  
Appointed Oscar Leon as a regular member to a term to expire in January 2015.  
Appointed Marsha Tran as Alternate No. 1 to a term to expire in January 2015.  
Newly appointed Ray Maglalang as Alternate No. 2 to a term to expire in January 2015.

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Appointed Sumeet Ahuja as a regular member representing Retail to a term to expire in April 2015. Newly appointed B. Michael Howard as a regular member representing Hotels to a term to expire in April 2015.

Library Advisory Commission:

Appointed Marie Pham as a regular member to a term to expire in June 2013.  
Appointed Hellie Matteo as a regular member to a term to expire in June 2013.

Recycling and Source Reduction Advisory Commission:

Appointed Kashmir Gill as a regular member to a term to expire in October 2015.  
Appointed Madan Arora as Alternate No. 1 to a term to expire in October 2013.  
Newly appointed Eddie Inamdar as Alternate No. 2 to a term to expire in October 2014.

Telecommunications Commission:

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Reappointed Kurt Bohan as a regular member to a term to expire in January 2015.  
Reappointed Ernesto Bautista as Alternate No. 1 to a term to expire in January 2015.

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Newly appointed Peter Chang as Alternate No. 2 to a term to expire in September 2013.

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Newly appointed Ferdinand Luis, Jr. as Alternate No. 2 to a term to expire February 2016.

- \* 9. Investment Report Received the investment report for the quarter ended December 31, 2012.
- \*10. Ben Gross Tribute Approved the planned Ben Gross tribute event on February 23 at the Barbara Lee Senior Center, in an amount not to exceed \$1,500 and directed staff to research a possible park dedication in honor of the 1960s Milpitas African-American Mayor at a City park.
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- \*12. Actions Related to Sora Milpitas LLC apartments Adopted Resolution No. 8225 annexing properties known as SORA Milpitas, LLC into Community Facility District 2005-1.  
Approved and authorized execution of a subdivision improvement agreement.  
Approved the final map (Tract 10139) and public improvement plans (2-1163).
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Approved the purchase of assorted Badger water meters from National Meter and Automation for the not-to-exceed amount of \$70,092.76.
- \*14. Temp. Building Inspector Approved the Lyon Apartments developer’s request to continue employment of a temporary dedicated building inspector.  
Approved budget appropriation of \$70,320, less the administrative fee, into the Building and Safety Department’s budget for five months until July 31, 2013.
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**UNFINISHED BUSINESS**

**1. Report on CAFR (Audit Report for FY 2012-13)**

Finance Director Emma Karlen introduced Ms. Amy Meyer from the firm Maze & Associates, who gave an oral report on the final Comprehensive Annual Financial Report for FY 2011-12. An “unqualified” or clean audit report was given and she reported that it was the highest possible outcome. Ms. Meyer said that the Redevelopment Agency was included for the seven months it existed in the last fiscal year, and there were a number of references to the dissolution of the Agency, and to the Successor Agency. The internal control review yielded no internal accounting weaknesses, along with seven recommendations on internal procedures.

Vice Mayor Polanski complimented staff on the comprehensive report and thanked Ms. Meyer for coming back, after the last meeting. Vice Mayor asked about impact on next year’s audit, of the RDA dissolution. An asset review was the big topic for next time.

Mayor Esteves invited speakers from audience.

Robert Marini, resident, wondered if utility rate funds were included in the report. He wanted to know where the overcharge for utility rates was going.

Motion: to accept the City’s Comprehensive Annual Financial Report (CAFR) and other related Annual Audited Reports for the fiscal year ended June 30, 2012

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

At 7:40 PM, Mayor Esteves announced Council would take a break for staff to work on technical difficulties, and then returned to the dais at 7:51 PM.

**2. Commissioners Recognition**

Dale Flunoy, Recreation Services staff, described to City Council what was planned this year for Commissioners Recognition event as a luncheon this year. The budgeted cost was expected to be between \$12 – 17 per person, with a \$5,100 maximum.

Mayor Esteves asked if there was good input for the event. Staff polled the Chairs and Vice Chairs of Commissions, who supported the event with a meal as proposed.

Motion: to approve the 2013 Commissioners’ Recognition event as a catered luncheon to be held on Saturday, April 13, 2013 at the Milpitas Community Center

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

**4. Council Task Force on Fire Dept. Overtime costs**

City Manager Tom Williams addressed the City Council. He reported that the City Council’s Task Force met to review Fire Dept overtime issue and sought to avoid layoff of any firefighters, in partnership with IAFF Local 1699, City management and several community residents. He provided some background statistics about Fire Department staff costs. He thanked Vice Mayor Polanski and Councilmember Gomez for their leadership, with the main issue identified as minimum staffing required, per Fire’s Memorandum of Understanding with the City.

\$249,145 was the average total compensation for one firefighter in Milpitas. Mr. Williams explained a federal government grant to be awarded to Milpitas, from the Department of Homeland Security and FEMA, for a total of \$2.1 million to cover the cost of hiring six firefighters for two years.

Fire Chief Brian Sturdivant explained how minimum staffing worked in the City (15 firefighters always on duty), where he sought more flexibility on staffing, when necessary.

The utility of overtime on a monthly basis would affect the flexibility of staffing, as applied by the Fire Chief.

City Manager Williams then reviewed the four part solution, directed by Task Force, and presented this evening. The IAFF Local's Executive Board agreed to the terms. They included: 1) accept the SAFER grant and hire six firefighters; 2) transfer \$600,000 from reserves to Fire Department, to be recouped over six years; 3) delay any layoffs to March 19 (to allow time for a vote by union members); and, 4) if the IAFF Local 1600 agreed to eliminate minimum staffing provision in the current MOU and the grant was accepted, then layoffs would be rescinded.

Councilmember Gomez expressed that he did not want to be here on this issue. Solutions were needed, so that was what the Task Force did. While not perfect, the solution recommended would allow the City to retain firefighters and hire six more. The proposal allowed for payback to reserves over time. He urged support by his colleagues.

Councilmember Giordano emphasized that the plan was contingent on all four components working together. She thanked Task Force for the good ideas presented.

Vice Mayor Polanski thanked staff, Mr. Gomez, IAFF members and the Fire Chief for coming to this point for a workable solution. No deviation or changes were sought, since it was a complete package necessary in this situation.

Mayor Esteves was proud of City Council for dealing with this issue, which has been going on for a long time. He termed a "propaganda campaign" had led to misinformation, and he did not care for that. The Mayor pointed out that Fire overtime costs in the last five years was \$7.1 million, a cost to taxpayers.

Councilmember Montano referred to the 2010-11 Civil Grand Jury of Santa Clara County that identified an outmoded service delivery model of most current Fire Departments in the country. That report noted that the majority of calls were emergency medical, not fires. Perhaps another model, such as EMT response, could be looked into.

Steve King, IAFF 1699 Local President, thanked the Council for the Task Force efforts and reviewing the overtime issue. He was happy to look at new ways to deal with the issue. His group appreciated Council moving forward with the SAFER grant, and care about safety of this community.

Mayor Esteves asked Mr. King if he had any comments on the recommended proposal. Mr. King replied that it was not yet voted on by the membership and they understood what they needed to do and would seek to make it work.

Mayor said Council really appreciated all our firefighters.

On a motion by Councilmember Giordano, and seconded by Councilmember Gomez, the City Council voted unanimously to reduced speaking time to two minutes per speaker, due to the large crowd in the audience.

Mayor Esteves then invited speakers to the podium.

Debra Higuera, lifetime resident, spoke of daughter whose life was saved when she was seven 7 years old and she would never forget that.

Tim, a resident, noted a comment by Councilmember Gomez about a 28% vacancy rate, however, it was the absentee rate.

Dan Manassau, Milpitas resident, commented on union tactics. He wanted to know why negotiators were not talking about total compensation for firefighters. Compared to New York City, total compensation was less than at the City of Milpitas. Salary and benefits

were too high in this city.

Mr. Lorin, Milpitas resident, said he would prefer to hear about 20 firefighters on duty at all times, not 15, especially if there was a large emergency. He was a SAFE volunteer.

Jonathan Ford, Parkville Ct., asked the audience how many were CPR trained and hands were raised. He stressed that more residents would need to be available in emergency.

Harry Evan, of Jacklin Rd, had twins and was a business owner. He picked this city for its public safety services and he had 19 years in public safety himself.

A woman asked if Councilmembers had ever been in a fire. She was, three years ago, and was so glad that the Milpitas firefighters came to her house, were so kind and helpful. They saved the house.

Mercedes, a resident reported her husband had had a heart attack and the Milpitas firefighters saved his life. She was grateful.

Susan Ryan, was a resident, a business owner, nurse, mother, and grandmother. She described an important time when the firefighters helped her. She thanked MFD.

Lenore Reed, of Grayhouse Drive, said public safety was very important in this city. Consider staffing issue, since that was the cause of the overtime. Milpitas must be covered in emergency.

Robert Marini, resident, complained of increasing population, which caused heavier burden to the fire dept.

Carol Harris, LaCrosse Drive, felt the City needed all the firefighters now employed and probably more. She said to the City Council "get rid of yourselves first" not public safety, police and fire. She complained of layoffs.

Robert Hughes, lived in Newark, said his city no longer had a Fire Department since the County took it over. He did not want to have any firefighters lose their jobs.

A woman resident had a fire at her home, and really appreciated the local firefighters who came to her home quickly. Quick response times were important for safety.

A man, lifetime resident, thanked the Council to let folks speak before they voted. He said to look at the budget as a whole and overtime costs need to work for the City. You cannot put a value on life. He disagreed with Councilmember Montano and that it was terrible to consider only EMTs rather than experienced firefighters, for the residents.

A young man asked the Council to think about how they would react if they were given a notice of layoff.

Esai Lopez, resident, had been on ride-a-longs with the firefighters and all of them were professionals in this city.

A woman resident worried about mother going into a grand mal seizure and needing emergency care. Firefighters had mother's life twice.

Alicia Drummond, resident, said that if the Council laid off firefighters, that would destroy the dreams of young people who want that profession.

Jeffrey Reed, resident, felt citizens needed to unify to come as one and take care of one another. He spoke of his father, who brought the family to Milpitas.

Vice Mayor Polanski thanked all those who spoke and shared their views. She repeated

that public safety was important, as a core service of the City. She encouraged all residents to join a SAFE team and learn CPR and learn how to use an AED. In a major emergency, the firefighters could not reach everyone in the City at same time. The solution proposed is a good one.

Councilmember Gomez stated that public safety was the number one priority. 70% of the City's budget goes to Police and Fire in Milpitas. Recommendations were good, even if they were not perfect to deal with the issue.

Councilmember Giordano wearing a Councilmember hat appreciated the Mayor's comments. They had to address this issue, a "runaway train." She supported the recommendation as a fiscal conservative. Her daughter was a firefighter, and she thought of her during this discussion.

Mayor Esteves thanked all those who spoke and provided input to Council. Personally, he appreciated the response time of Milpitas firefighters, and they helped his mother-in-law when she fell and broke her hip. He appreciated the work of the Task Force as well as working together with residents.

Motion: to manage the issue of Fire Department overtime expense, 1) accept the federal SAFER grant award of \$2.1 million and hire six firefighters; 2) transfer \$600,000 from reserves to the Fire Department, to be recouped over six years; 3) delay any layoffs to March 19, 2013, allowing time for a vote by the union members on this solution; and, 4) if the IAFF Local 1600 agrees to eliminate minimum staffing provision in the current Memorandum of Understanding and the grant is accepted, then layoffs would be rescinded. This motion included to continue the City Council Task Force on Fire Department Budget.

Motion/Second: Vice Mayor Polanski/Councilmember Montano

Motion carried by a vote of: AYES: 5  
NOES: 0

## REPORTS

Two items were approved on consent calendar.

## NEW BUSINESS

Three items were approved on consent calendar.

### 8. Financial Status Report through December 31, 2012

Finance Director Emma Karlen reviewed the current financial status of the city overall, expressing the anticipated budget shortfall when preparing this year's budget, last year. She provided revised projections of General Fund revenues and expenditures for FY 2012-13. She told Council that the distribution of funds that are distributed from the former Redevelopment Agency area were to be directed to capital projects, as previously directed. The City could balance its budget at the end of the Fiscal Year with the use of Equipment Replacement Reserve funds, as authorized by Council at budget adoption.

Ms. Karlen identified key dates this year for planning to adopt the FY 2013-14 budget. The Council budget hearing is scheduled on Tuesday, May 14, 2013. She also offered to provide a budget study session for the Council, if desired, in April.

Vice Mayor Polanski would like to have the budget study session on a separate date from any regular City Council meeting date.

Mayor Esteves inquired, regarding the next Capital Improvement Program, would it address all line items that were previously to be funded by the Redevelopment Agency? Staff replied that the CIP already would have removed the former RDA as a funding source, so yes.

Motion: to accept the oral report from the Finance Director, and schedule a budget study session on separate date from regular City Council meeting dates

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

City Manager Tom Williams publicly thanked Finance Director Karlen for all her hard work, many hours, behind the scenes with the management and the Firefighters IAFF union group, on the solution reached this evening regarding the overtime issue in the Fire Department.

**RESOLUTIONS**

Two Resolutions were adopted on consent calendar.

**CONTRACTS**

Six items were approved on consent calendar.

**ADJOURNMENT**

Mayor Esteves adjourned the meeting at 9:39 PM.

*Meeting minutes respectfully submitted by  
Mary Lavelle, City Clerk*

*Draft* **MEETING MINUTES**  
**CITY OF MILPITAS**

**Minutes of:** **Regular Meeting of Milpitas City Council**  
**Date:** **Tuesday, February 5, 2013**  
**Time:** **6:00 PM**  
**Location:** **Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas**

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**ROLL CALL**

Mayor Esteves called the meeting to order at 6:00 PM. City Clerk Lavelle noted the roll.

**PRESENT:** Mayor Esteves, Vice Mayor Polanski, Councilmembers Giordano, Gomez and Montano

**ABSENT:** None

**CLOSED SESSION**

City Council convened in Closed Session to discuss labor negotiations and one litigation matter.

City Council then convened in Open Session at 7:00 PM.

**ANNOUNCEMENT**

City Attorney Mike Ogaz announced that the City Council approved - by unanimous vote - agreement with two employee groups, the Mid-Management and Confidential unit and the Profession and Technical employees, on new Memorandums of Understanding for a one year period (January 1 to December 31, 2013) which would include a 2.5% restoration of the amount employees pay toward the employer portion of PERS. The documents were directed to be brought back for a final vote on the agenda of the next City Council meeting on February 19.

**PLEDGE**

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

**INVOCATION**

Councilmember Giordano offered her own prayer to start the meeting.

**MINUTES**

Motion: to approve meeting minutes of January 15, 2013 City Council meeting, as submitted

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

**SCHEDULE OF MEETINGS**

Motion: to approve Council Calendars/Schedule of Meetings for February 2013, as submitted

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

**PRESENTATIONS**

Mayor Esteves made the following presentations:

He proclaimed both *Dr. Martin Luther King, Jr. Day* on January 21, 2013 and *Black History Month* for the month of February 2013. Both were accepted by resident Demetress Morris.

He presented the *2013 Artist of Year Award* to Patty Jensen of the Jensen School for the Performing Arts. The Mayor also gave certificates of commendation to nominees Joe Santoro and Carla Moss. Arts Commissioners Becky Strauss and Robin Hays assisted the Mayor with the presentation of the awards, as selected the Arts Commissioners.

**PUBLIC FORUM**

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**ANNOUNCEMENT OF CONFLICT OF INTEREST**

None.

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Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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Mayor said Council really appreciated all our firefighters.

On a motion by Councilmember Giordano, and seconded by Councilmember Gomez, the City Council voted unanimously to reduced speaking time to two minutes per speaker, due to the large crowd in the audience.

Mayor Esteves then invited speakers to the podium.

Debra Higuera, lifetime resident, spoke of daughter whose life was saved when she was seven 7 years old and she would never forget that.

Tim, a resident, noted a comment by Councilmember Gomez about a 28% vacancy rate, however, it was the absentee rate.

Dan Manassau, Milpitas resident, commented on union tactics. He wanted to know why negotiators were not talking about total compensation for firefighters. Compared to New York City, total compensation was less than at the City of Milpitas. Salary and benefits

were too high in this city.

Mr. Lorin, Milpitas resident, said he would prefer to hear about 20 firefighters on duty at all times, not 15, especially if there was a large emergency. He was a SAFE volunteer.

Jonathan Ford, Parkville Ct., asked the audience how many were CPR trained and hands were raised. He stressed that more residents would need to be available in emergency.

Harry Evan, of Jacklin Rd, had twins and was a business owner. He picked this city for its public safety services and he had 19 years in public safety himself.

A woman asked if Councilmembers had ever been in a fire. She was, three years ago, and was so glad that the Milpitas firefighters came to her house, were so kind and helpful. They saved the house.

Mercedes, a resident reported her husband had had a heart attack and the Milpitas firefighters saved his life. She was grateful.

Susan Ryan, was a resident, a business owner, nurse, mother, and grandmother. She described an important time when the firefighters helped her. She thanked MFD.

Lenore Reed, of Grayhouse Drive, said public safety was very important in this city. Consider staffing issue, since that was the cause of the overtime. Milpitas must be covered in emergency.

Robert Marini, resident, complained of increasing population, which caused heavier burden to the fire dept.

Carol Harris, LaCrosse Drive, felt the City needed all the firefighters now employed and probably more. She said to the City Council "get rid of yourselves first" not public safety, police and fire. She complained of layoffs.

Robert Hughes, lived in Newark, said his city no longer had a Fire Department since the County took it over. He did not want to have any firefighters lose their jobs.

A woman resident had a fire at her home, and really appreciated the local firefighters who came to her home quickly. Quick response times were important for safety.

A man, lifetime resident, thanked the Council to let folks speak before they voted. He said to look at the budget as a whole and overtime costs need to work for the City. You cannot put a value on life. He disagreed with Councilmember Montano and that it was terrible to consider only EMTs rather than experienced firefighters, for the residents.

A young man asked the Council to think about how they would react if they were given a notice of layoff.

Esai Lopez, resident, had been on ride-a-longs with the firefighters and all of them were professionals in this city.

A woman resident worried about mother going into a grand mal seizure and needing emergency care. Firefighters had mother's life twice.

Alicia Drummond, resident, said that if the Council laid off firefighters, that would destroy the dreams of young people who want that profession.

Jeffrey Reed, resident, felt citizens needed to unify to come as one and take care of one another. He spoke of his father, who brought the family to Milpitas.

Vice Mayor Polanski thanked all those who spoke and shared their views. She repeated

that public safety was important, as a core service of the City. She encouraged all residents to join a SAFE team and learn CPR and learn how to use an AED. In a major emergency, the firefighters could not reach everyone in the City at same time. The solution proposed is a good one.

Councilmember Gomez stated that public safety was the number one priority. 70% of the City's budget goes to Police and Fire in Milpitas. Recommendations were good, even if they were not perfect to deal with the issue.

Councilmember Giordano wearing a Councilmember hat appreciated the Mayor's comments. They had to address this issue, a "runaway train." She supported the recommendation as a fiscal conservative. Her daughter was a firefighter, and she thought of her during this discussion.

Mayor Esteves thanked all those who spoke and provided input to Council. Personally, he appreciated the response time of Milpitas firefighters, and they helped his mother-in-law when she fell and broke her hip. He appreciated the work of the Task Force as well as working together with residents.

Motion: to manage the issue of Fire Department overtime expense, 1) accept the federal SAFER grant award of \$2.1 million and hire six firefighters; 2) transfer \$600,000 from reserves to the Fire Department, to be recouped over six years; 3) delay any layoffs to March 19, 2013, allowing time for a vote by the union members on this solution; and, 4) if the IAFF Local 1600 agrees to eliminate minimum staffing provision in the current Memorandum of Understanding and the grant is accepted, then layoffs would be rescinded. This motion included to continue the City Council Task Force on Fire Department Budget.

Motion/Second: Vice Mayor Polanski/Councilmember Montano

Motion carried by a vote of: AYES: 5  
NOES: 0

## REPORTS

Two items were approved on consent calendar.

## NEW BUSINESS

Three items were approved on consent calendar.

### 8. Financial Status Report through December 31, 2012

Finance Director Emma Karlen reviewed the current financial status of the city overall, expressing the anticipated budget shortfall when preparing this year's budget, last year. She provided revised projections of General Fund revenues and expenditures for FY 2012-13. She told Council that the distribution of funds that are distributed from the former Redevelopment Agency area were to be directed to capital projects, as previously directed. The City could balance its budget at the end of the Fiscal Year with the use of Equipment Replacement Reserve funds, as authorized by Council at budget adoption.

Ms. Karlen identified key dates this year for planning to adopt the FY 2013-14 budget. The Council budget hearing is scheduled on Tuesday, May 14, 2013. She also offered to provide a budget study session for the Council, if desired, in April.

Vice Mayor Polanski would like to have the budget study session on a separate date from any regular City Council meeting date.

Mayor Esteves inquired, regarding the next Capital Improvement Program, would it address all line items that were previously to be funded by the Redevelopment Agency? Staff replied that the CIP already would have removed the former RDA as a funding source, so yes.

Motion: to accept the oral report from the Finance Director, and schedule a budget study session on separate date from regular City Council meeting dates

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

City Manager Tom Williams publicly thanked Finance Director Karlen for all her hard work, many hours, behind the scenes with the management and the Firefighters IAFF union group, on the solution reached this evening regarding the overtime issue in the Fire Department.

**RESOLUTIONS**

Two Resolutions were adopted on consent calendar.

**CONTRACTS**

Six items were approved on consent calendar.

**ADJOURNMENT**

Mayor Esteves adjourned the meeting at 9:39 PM.

*Meeting minutes respectfully submitted by  
Mary Lavelle, City Clerk*

*Draft* **MEETING MINUTES**  
**CITY OF MILPITAS**

**Minutes of:** **Regular Meeting of Milpitas City Council**  
**Date:** **Tuesday, February 5, 2013**  
**Time:** **6:00 PM**  
**Location:** **Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas**

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**ROLL CALL**

Mayor Esteves called the meeting to order at 6:00 PM. City Clerk Lavelle noted the roll.

**PRESENT:** Mayor Esteves, Vice Mayor Polanski, Councilmembers Giordano, Gomez and Montano

**ABSENT:** None

**CLOSED SESSION**

City Council convened in Closed Session to discuss labor negotiations and one litigation matter.

City Council then convened in Open Session at 7:00 PM.

**ANNOUNCEMENT**

City Attorney Mike Ogaz announced that the City Council approved - by unanimous vote - agreement with two employee groups, the Mid-Management and Confidential unit and the Profession and Technical employees, on new Memorandums of Understanding for a one year period (January 1 to December 31, 2013) which would include a 2.5% restoration of the amount employees pay toward the employer portion of PERS. The documents were directed to be brought back for a final vote on the agenda of the next City Council meeting on February 19.

**PLEDGE**

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

**INVOCATION**

Councilmember Giordano offered her own prayer to start the meeting.

**MINUTES**

Motion: to approve meeting minutes of January 15, 2013 City Council meeting, as submitted

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

**SCHEDULE OF MEETINGS**

Motion: to approve Council Calendars/Schedule of Meetings for February 2013, as submitted

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

**PRESENTATIONS**

Mayor Esteves made the following presentations:

He proclaimed both *Dr. Martin Luther King, Jr. Day* on January 21, 2013 and *Black History Month* for the month of February 2013. Both were accepted by resident Demetress Morris.

He presented the *2013 Artist of Year Award* to Patty Jensen of the Jensen School for the Performing Arts. The Mayor also gave certificates of commendation to nominees Joe Santoro and Carla Moss. Arts Commissioners Becky Strauss and Robin Hays assisted the Mayor with the presentation of the awards, as selected the Arts Commissioners.

**PUBLIC FORUM**

Robert Marini, Milpitas resident, had previously asked three questions about sewer rates. He claimed that Milpitas was not an open and transparent city government.

Demetress Morris, Milpitas resident, discussed flag raising for Black History month. City Manager Tom Williams replied that he could discuss that event with her, away from the City Council meeting.

**ANNOUNCEMENTS**

Mayor Esteves noted that many residents in February were celebrating Chinese Lunar New Year, so he wished all a Happy New Year. The 64<sup>th</sup> India Republic Day was also being celebrated.

**ANNOUNCEMENT OF CONFLICT OF INTEREST**

None.

**APPROVAL OF AGENDA**

Motion: to approve the agenda, as submitted

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

**CONSENT CALENDAR**

Motion: to approve the Consent Calendar (items noted with \*asterisk), as amended

Councilmember Giordano requested to put Item No. 3 (regarding Council reimbursements) on consent and to adopt the new policy, as proposed.

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

\* 3. Councilmember Reimbursements

Adopted the new policy (for the City Council Handbook) restricting items permitted for reimbursement to City Councilmembers, as proposed by Vice Mayor Polanski.

\* 5. Odor Report

Received the December 2012 and January 2013 odor reports.

\* 6. Planning Commission

Appointed Demetress Morris as the Alternate Member of Milpitas Planning Commission to a term that would expire in December 2015.

\* 7. Commission Appointments

Approved recommendations made by Mayor Esteves, following.

Community Advisory Commission:

Appointed Eva Ferguson as a regular member to a term to expire in January 2015.  
Appointed Oscar Leon as a regular member to a term to expire in January 2015.  
Appointed Marsha Tran as Alternate No. 1 to a term to expire in January 2015.  
Newly appointed Ray Maglalang as Alternate No. 2 to a term to expire in January 2015.

Economic Development Commission:

Appointed Sumeet Ahuja as a regular member representing Retail to a term to expire in April 2015. Newly appointed B. Michael Howard as a regular member representing Hotels to a term to expire in April 2015.

Library Advisory Commission:

Appointed Marie Pham as a regular member to a term to expire in June 2013.  
Appointed Hellie Matteo as a regular member to a term to expire in June 2013.

Recycling and Source Reduction Advisory Commission:

Appointed Kashmir Gill as a regular member to a term to expire in October 2015.  
Appointed Madan Arora as Alternate No. 1 to a term to expire in October 2013.  
Newly appointed Eddie Inamdar as Alternate No. 2 to a term to expire in October 2014.

Telecommunications Commission:

Reappointed Albert Alcorn as a regular member to a term to expire in January 2015.  
Reappointed Kurt Bohan as a regular member to a term to expire in January 2015.  
Reappointed Ernesto Bautista as Alternate No. 1 to a term to expire in January 2015.

Sister Cities Commission:

Newly appointed Peter Chang as Alternate No. 2 to a term to expire in September 2013.

Veterans Commission:

Newly appointed Ferdinand Luis, Jr. as Alternate No. 2 to a term to expire February 2016.

- \* 9. Investment Report Received the investment report for the quarter ended December 31, 2012.
- \*10. Ben Gross Tribute Approved the planned Ben Gross tribute event on February 23 at the Barbara Lee Senior Center, in an amount not to exceed \$1,500 and directed staff to research a possible park dedication in honor of the 1960s Milpitas African-American Mayor at a City park.
- \*11. Accept Walmart grant Accepted the Walmart Foundation grant in the amount of \$1,000 and increased Recreation Division budget by \$1,000 for the Senior Nutrition Program.
- \*12. Actions Related to Sora Milpitas LLC apartments Adopted Resolution No. 8225 annexing properties known as SORA Milpitas, LLC into Community Facility District 2005-1.  
Approved and authorized execution of a subdivision improvement agreement.  
Approved the final map (Tract 10139) and public improvement plans (2-1163).
- \*13. Resolution – Water meters Adopted Resolution No. 8226 designating National Meter and Automation as the sole source provider for Badger water meters in the City of Milpitas.  
Approved the purchase of assorted Badger water meters from National Meter and Automation for the not-to-exceed amount of \$70,092.76.
- \*14. Temp. Building Inspector Approved the Lyon Apartments developer’s request to continue employment of a temporary dedicated building inspector.  
Approved budget appropriation of \$70,320, less the administrative fee, into the Building and Safety Department’s budget for five months until July 31, 2013.
- \*15. Temp. Building Inspector Approved and authorized Coyote Creek condominium and townhouse developer’s request for the employment of a temporary building inspector.  
Approved a budget appropriation of \$46,880, less the administrative fee, into the Building and Safety Department’s budget for remaining four months of Fiscal Year 2012-13.
- \*16. Agreement with RMC Water and Environment Authorized the City Manager to execute the consultant agreement with RMC Water and Environment, Inc. for utility engineering support.
- \*17. Amend Contract with TerraCare for 2 New Parks Authorized the City Manager to execute amendment No. 1 to the contract with TerraCare Associates to add two new parks (Alviso Adobe and Cerano) to the City of Milpitas Parks Maintenance services contract for the not-to-exceed annual amount of \$89,460.
- \*18. Amend Universal Building Service Contract Approved Amendment No. 4 to Universal Building Services contract for additional janitorial services for the not-to-exceed amount of \$97,948, through June 30, 2013.
- \*19. Concert Band Composer Authorized the City Manager to execute a contract with composer Jason McChristian in an amount not to exceed \$525. Accepted the Milpitas Parks and Recreation Foundation grant in the amount of \$809 and increased the Recreation Division budget in the amount of \$809 for the Milpitas Community Concert Band Program.

**UNFINISHED BUSINESS**

**1. Report on CAFR (Audit Report for FY 2012-13)**

Finance Director Emma Karlen introduced Ms. Amy Meyer from the firm Maze & Associates, who gave an oral report on the final Comprehensive Annual Financial Report for FY 2011-12. An “unqualified” or clean audit report was given and she reported that it was the highest possible outcome. Ms. Meyer said that the Redevelopment Agency was included for the seven months it existed in the last fiscal year, and there were a number of references to the dissolution of the Agency, and to the Successor Agency. The internal control review yielded no internal accounting weaknesses, along with seven recommendations on internal procedures.

Vice Mayor Polanski complimented staff on the comprehensive report and thanked Ms. Meyer for coming back, after the last meeting. Vice Mayor asked about impact on next year’s audit, of the RDA dissolution. An asset review was the big topic for next time.

Mayor Esteves invited speakers from audience.

Robert Marini, resident, wondered if utility rate funds were included in the report. He wanted to know where the overcharge for utility rates was going.

Motion: to accept the City’s Comprehensive Annual Financial Report (CAFR) and other related Annual Audited Reports for the fiscal year ended June 30, 2012

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

At 7:40 PM, Mayor Esteves announced Council would take a break for staff to work on technical difficulties, and then returned to the dais at 7:51 PM.

**2. Commissioners Recognition**

Dale Flunoy, Recreation Services staff, described to City Council what was planned this year for Commissioners Recognition event as a luncheon this year. The budgeted cost was expected to be between \$12 – 17 per person, with a \$5,100 maximum.

Mayor Esteves asked if there was good input for the event. Staff polled the Chairs and Vice Chairs of Commissions, who supported the event with a meal as proposed.

Motion: to approve the 2013 Commissioners’ Recognition event as a catered luncheon to be held on Saturday, April 13, 2013 at the Milpitas Community Center

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

**4. Council Task Force on Fire Dept. Overtime costs**

City Manager Tom Williams addressed the City Council. He reported that the City Council’s Task Force met to review Fire Dept overtime issue and sought to avoid layoff of any firefighters, in partnership with IAFF Local 1699, City management and several community residents. He provided some background statistics about Fire Department staff costs. He thanked Vice Mayor Polanski and Councilmember Gomez for their leadership, with the main issue identified as minimum staffing required, per Fire’s Memorandum of Understanding with the City.

\$249,145 was the average total compensation for one firefighter in Milpitas. Mr. Williams explained a federal government grant to be awarded to Milpitas, from the Department of Homeland Security and FEMA, for a total of \$2.1 million to cover the cost of hiring six firefighters for two years.

Fire Chief Brian Sturdivant explained how minimum staffing worked in the City (15 firefighters always on duty), where he sought more flexibility on staffing, when necessary.

The utility of overtime on a monthly basis would affect the flexibility of staffing, as applied by the Fire Chief.

City Manager Williams then reviewed the four part solution, directed by Task Force, and presented this evening. The IAFF Local's Executive Board agreed to the terms. They included: 1) accept the SAFER grant and hire six firefighters; 2) transfer \$600,000 from reserves to Fire Department, to be recouped over six years; 3) delay any layoffs to March 19 (to allow time for a vote by union members); and, 4) if the IAFF Local 1600 agreed to eliminate minimum staffing provision in the current MOU and the grant was accepted, then layoffs would be rescinded.

Councilmember Gomez expressed that he did not want to be here on this issue. Solutions were needed, so that was what the Task Force did. While not perfect, the solution recommended would allow the City to retain firefighters and hire six more. The proposal allowed for payback to reserves over time. He urged support by his colleagues.

Councilmember Giordano emphasized that the plan was contingent on all four components working together. She thanked Task Force for the good ideas presented.

Vice Mayor Polanski thanked staff, Mr. Gomez, IAFF members and the Fire Chief for coming to this point for a workable solution. No deviation or changes were sought, since it was a complete package necessary in this situation.

Mayor Esteves was proud of City Council for dealing with this issue, which has been going on for a long time. He termed a "propaganda campaign" had led to misinformation, and he did not care for that. The Mayor pointed out that Fire overtime costs in the last five years was \$7.1 million, a cost to taxpayers.

Councilmember Montano referred to the 2010-11 Civil Grand Jury of Santa Clara County that identified an outmoded service delivery model of most current Fire Departments in the country. That report noted that the majority of calls were emergency medical, not fires. Perhaps another model, such as EMT response, could be looked into.

Steve King, IAFF 1699 Local President, thanked the Council for the Task Force efforts and reviewing the overtime issue. He was happy to look at new ways to deal with the issue. His group appreciated Council moving forward with the SAFER grant, and care about safety of this community.

Mayor Esteves asked Mr. King if he had any comments on the recommended proposal. Mr. King replied that it was not yet voted on by the membership and they understood what they needed to do and would seek to make it work.

Mayor said Council really appreciated all our firefighters.

On a motion by Councilmember Giordano, and seconded by Councilmember Gomez, the City Council voted unanimously to reduced speaking time to two minutes per speaker, due to the large crowd in the audience.

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Councilmember Gomez stated that public safety was the number one priority. 70% of the City's budget goes to Police and Fire in Milpitas. Recommendations were good, even if they were not perfect to deal with the issue.

Councilmember Giordano wearing a Councilmember hat appreciated the Mayor's comments. They had to address this issue, a "runaway train." She supported the recommendation as a fiscal conservative. Her daughter was a firefighter, and she thought of her during this discussion.

Mayor Esteves thanked all those who spoke and provided input to Council. Personally, he appreciated the response time of Milpitas firefighters, and they helped his mother-in-law when she fell and broke her hip. He appreciated the work of the Task Force as well as working together with residents.

Motion: to manage the issue of Fire Department overtime expense, 1) accept the federal SAFER grant award of \$2.1 million and hire six firefighters; 2) transfer \$600,000 from reserves to the Fire Department, to be recouped over six years; 3) delay any layoffs to March 19, 2013, allowing time for a vote by the union members on this solution; and, 4) if the IAFF Local 1600 agrees to eliminate minimum staffing provision in the current Memorandum of Understanding and the grant is accepted, then layoffs would be rescinded. This motion included to continue the City Council Task Force on Fire Department Budget.

Motion/Second: Vice Mayor Polanski/Councilmember Montano

Motion carried by a vote of: AYES: 5  
NOES: 0

## REPORTS

Two items were approved on consent calendar.

## NEW BUSINESS

Three items were approved on consent calendar.

### 8. Financial Status Report through December 31, 2012

Finance Director Emma Karlen reviewed the current financial status of the city overall, expressing the anticipated budget shortfall when preparing this year's budget, last year. She provided revised projections of General Fund revenues and expenditures for FY 2012-13. She told Council that the distribution of funds that are distributed from the former Redevelopment Agency area were to be directed to capital projects, as previously directed. The City could balance its budget at the end of the Fiscal Year with the use of Equipment Replacement Reserve funds, as authorized by Council at budget adoption.

Ms. Karlen identified key dates this year for planning to adopt the FY 2013-14 budget. The Council budget hearing is scheduled on Tuesday, May 14, 2013. She also offered to provide a budget study session for the Council, if desired, in April.

Vice Mayor Polanski would like to have the budget study session on a separate date from any regular City Council meeting date.

Mayor Esteves inquired, regarding the next Capital Improvement Program, would it address all line items that were previously to be funded by the Redevelopment Agency? Staff replied that the CIP already would have removed the former RDA as a funding source, so yes.

Motion: to accept the oral report from the Finance Director, and schedule a budget study session on separate date from regular City Council meeting dates

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

City Manager Tom Williams publicly thanked Finance Director Karlen for all her hard work, many hours, behind the scenes with the management and the Firefighters IAFF union group, on the solution reached this evening regarding the overtime issue in the Fire Department.

**RESOLUTIONS**

Two Resolutions were adopted on consent calendar.

**CONTRACTS**

Six items were approved on consent calendar.

**ADJOURNMENT**

Mayor Esteves adjourned the meeting at 9:39 PM.

*Meeting minutes respectfully submitted by  
Mary Lavelle, City Clerk*

*Draft* **MEETING MINUTES**  
**CITY OF MILPITAS**

**Minutes of:** **Regular Meeting of Milpitas City Council**  
**Date:** **Tuesday, February 5, 2013**  
**Time:** **6:00 PM**  
**Location:** **Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas**

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**ROLL CALL**

Mayor Esteves called the meeting to order at 6:00 PM. City Clerk Lavelle noted the roll.

**PRESENT:** Mayor Esteves, Vice Mayor Polanski, Councilmembers Giordano, Gomez and Montano

**ABSENT:** None

**CLOSED SESSION**

City Council convened in Closed Session to discuss labor negotiations and one litigation matter.

City Council then convened in Open Session at 7:00 PM.

**ANNOUNCEMENT**

City Attorney Mike Ogaz announced that the City Council approved - by unanimous vote - agreement with two employee groups, the Mid-Management and Confidential unit and the Profession and Technical employees, on new Memorandums of Understanding for a one year period (January 1 to December 31, 2013) which would include a 2.5% restoration of the amount employees pay toward the employer portion of PERS. The documents were directed to be brought back for a final vote on the agenda of the next City Council meeting on February 19.

**PLEDGE**

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

**INVOCATION**

Councilmember Giordano offered her own prayer to start the meeting.

**MINUTES**

Motion: to approve meeting minutes of January 15, 2013 City Council meeting, as submitted

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

**SCHEDULE OF MEETINGS**

Motion: to approve Council Calendars/Schedule of Meetings for February 2013, as submitted

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

**PRESENTATIONS**

Mayor Esteves made the following presentations:

He proclaimed both *Dr. Martin Luther King, Jr. Day* on January 21, 2013 and *Black History Month* for the month of February 2013. Both were accepted by resident Demetress Morris.

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Demetress Morris, Milpitas resident, discussed flag raising for Black History month. City Manager Tom Williams replied that he could discuss that event with her, away from the City Council meeting.

**ANNOUNCEMENTS**

Mayor Esteves noted that many residents in February were celebrating Chinese Lunar New Year, so he wished all a Happy New Year. The 64<sup>th</sup> India Republic Day was also being celebrated.

**ANNOUNCEMENT OF CONFLICT OF INTEREST**

None.

**APPROVAL OF AGENDA**

Motion: to approve the agenda, as submitted

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

**CONSENT CALENDAR**

Motion: to approve the Consent Calendar (items noted with \*asterisk), as amended

Councilmember Giordano requested to put Item No. 3 (regarding Council reimbursements) on consent and to adopt the new policy, as proposed.

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

\* 3. Councilmember Reimbursements

Adopted the new policy (for the City Council Handbook) restricting items permitted for reimbursement to City Councilmembers, as proposed by Vice Mayor Polanski.

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Appointed Demetress Morris as the Alternate Member of Milpitas Planning Commission to a term that would expire in December 2015.

\* 7. Commission Appointments

Approved recommendations made by Mayor Esteves, following.

Community Advisory Commission:

Appointed Eva Ferguson as a regular member to a term to expire in January 2015.  
Appointed Oscar Leon as a regular member to a term to expire in January 2015.  
Appointed Marsha Tran as Alternate No. 1 to a term to expire in January 2015.  
Newly appointed Ray Maglalang as Alternate No. 2 to a term to expire in January 2015.

Economic Development Commission:

Appointed Sumeet Ahuja as a regular member representing Retail to a term to expire in April 2015. Newly appointed B. Michael Howard as a regular member representing Hotels to a term to expire in April 2015.

Library Advisory Commission:

Appointed Marie Pham as a regular member to a term to expire in June 2013.  
Appointed Hellie Matteo as a regular member to a term to expire in June 2013.

Recycling and Source Reduction Advisory Commission:

Appointed Kashmir Gill as a regular member to a term to expire in October 2015.  
Appointed Madan Arora as Alternate No. 1 to a term to expire in October 2013.  
Newly appointed Eddie Inamdar as Alternate No. 2 to a term to expire in October 2014.

Telecommunications Commission:

Reappointed Albert Alcorn as a regular member to a term to expire in January 2015.  
Reappointed Kurt Bohan as a regular member to a term to expire in January 2015.  
Reappointed Ernesto Bautista as Alternate No. 1 to a term to expire in January 2015.

Sister Cities Commission:

Newly appointed Peter Chang as Alternate No. 2 to a term to expire in September 2013.

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Newly appointed Ferdinand Luis, Jr. as Alternate No. 2 to a term to expire February 2016.

- \* 9. Investment Report Received the investment report for the quarter ended December 31, 2012.
- \*10. Ben Gross Tribute Approved the planned Ben Gross tribute event on February 23 at the Barbara Lee Senior Center, in an amount not to exceed \$1,500 and directed staff to research a possible park dedication in honor of the 1960s Milpitas African-American Mayor at a City park.
- \*11. Accept Walmart grant Accepted the Walmart Foundation grant in the amount of \$1,000 and increased Recreation Division budget by \$1,000 for the Senior Nutrition Program.
- \*12. Actions Related to Sora Milpitas LLC apartments Adopted Resolution No. 8225 annexing properties known as SORA Milpitas, LLC into Community Facility District 2005-1.  
Approved and authorized execution of a subdivision improvement agreement.  
Approved the final map (Tract 10139) and public improvement plans (2-1163).
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Approved the purchase of assorted Badger water meters from National Meter and Automation for the not-to-exceed amount of \$70,092.76.
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Approved budget appropriation of \$70,320, less the administrative fee, into the Building and Safety Department’s budget for five months until July 31, 2013.
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**UNFINISHED BUSINESS**

**1. Report on CAFR (Audit Report for FY 2012-13)**

Finance Director Emma Karlen introduced Ms. Amy Meyer from the firm Maze & Associates, who gave an oral report on the final Comprehensive Annual Financial Report for FY 2011-12. An “unqualified” or clean audit report was given and she reported that it was the highest possible outcome. Ms. Meyer said that the Redevelopment Agency was included for the seven months it existed in the last fiscal year, and there were a number of references to the dissolution of the Agency, and to the Successor Agency. The internal control review yielded no internal accounting weaknesses, along with seven recommendations on internal procedures.

Vice Mayor Polanski complimented staff on the comprehensive report and thanked Ms. Meyer for coming back, after the last meeting. Vice Mayor asked about impact on next year’s audit, of the RDA dissolution. An asset review was the big topic for next time.

Mayor Esteves invited speakers from audience.

Robert Marini, resident, wondered if utility rate funds were included in the report. He wanted to know where the overcharge for utility rates was going.

Motion: to accept the City’s Comprehensive Annual Financial Report (CAFR) and other related Annual Audited Reports for the fiscal year ended June 30, 2012

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

At 7:40 PM, Mayor Esteves announced Council would take a break for staff to work on technical difficulties, and then returned to the dais at 7:51 PM.

**2. Commissioners Recognition**

Dale Flunoy, Recreation Services staff, described to City Council what was planned this year for Commissioners Recognition event as a luncheon this year. The budgeted cost was expected to be between \$12 – 17 per person, with a \$5,100 maximum.

Mayor Esteves asked if there was good input for the event. Staff polled the Chairs and Vice Chairs of Commissions, who supported the event with a meal as proposed.

Motion: to approve the 2013 Commissioners’ Recognition event as a catered luncheon to be held on Saturday, April 13, 2013 at the Milpitas Community Center

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

**4. Council Task Force on Fire Dept. Overtime costs**

City Manager Tom Williams addressed the City Council. He reported that the City Council’s Task Force met to review Fire Dept overtime issue and sought to avoid layoff of any firefighters, in partnership with IAFF Local 1699, City management and several community residents. He provided some background statistics about Fire Department staff costs. He thanked Vice Mayor Polanski and Councilmember Gomez for their leadership, with the main issue identified as minimum staffing required, per Fire’s Memorandum of Understanding with the City.

\$249,145 was the average total compensation for one firefighter in Milpitas. Mr. Williams explained a federal government grant to be awarded to Milpitas, from the Department of Homeland Security and FEMA, for a total of \$2.1 million to cover the cost of hiring six firefighters for two years.

Fire Chief Brian Sturdivant explained how minimum staffing worked in the City (15 firefighters always on duty), where he sought more flexibility on staffing, when necessary.

The utility of overtime on a monthly basis would affect the flexibility of staffing, as applied by the Fire Chief.

City Manager Williams then reviewed the four part solution, directed by Task Force, and presented this evening. The IAFF Local's Executive Board agreed to the terms. They included: 1) accept the SAFER grant and hire six firefighters; 2) transfer \$600,000 from reserves to Fire Department, to be recouped over six years; 3) delay any layoffs to March 19 (to allow time for a vote by union members); and, 4) if the IAFF Local 1600 agreed to eliminate minimum staffing provision in the current MOU and the grant was accepted, then layoffs would be rescinded.

Councilmember Gomez expressed that he did not want to be here on this issue. Solutions were needed, so that was what the Task Force did. While not perfect, the solution recommended would allow the City to retain firefighters and hire six more. The proposal allowed for payback to reserves over time. He urged support by his colleagues.

Councilmember Giordano emphasized that the plan was contingent on all four components working together. She thanked Task Force for the good ideas presented.

Vice Mayor Polanski thanked staff, Mr. Gomez, IAFF members and the Fire Chief for coming to this point for a workable solution. No deviation or changes were sought, since it was a complete package necessary in this situation.

Mayor Esteves was proud of City Council for dealing with this issue, which has been going on for a long time. He termed a "propaganda campaign" had led to misinformation, and he did not care for that. The Mayor pointed out that Fire overtime costs in the last five years was \$7.1 million, a cost to taxpayers.

Councilmember Montano referred to the 2010-11 Civil Grand Jury of Santa Clara County that identified an outmoded service delivery model of most current Fire Departments in the country. That report noted that the majority of calls were emergency medical, not fires. Perhaps another model, such as EMT response, could be looked into.

Steve King, IAFF 1699 Local President, thanked the Council for the Task Force efforts and reviewing the overtime issue. He was happy to look at new ways to deal with the issue. His group appreciated Council moving forward with the SAFER grant, and care about safety of this community.

Mayor Esteves asked Mr. King if he had any comments on the recommended proposal. Mr. King replied that it was not yet voted on by the membership and they understood what they needed to do and would seek to make it work.

Mayor said Council really appreciated all our firefighters.

On a motion by Councilmember Giordano, and seconded by Councilmember Gomez, the City Council voted unanimously to reduced speaking time to two minutes per speaker, due to the large crowd in the audience.

Mayor Esteves then invited speakers to the podium.

Debra Higuera, lifetime resident, spoke of daughter whose life was saved when she was seven 7 years old and she would never forget that.

Tim, a resident, noted a comment by Councilmember Gomez about a 28% vacancy rate, however, it was the absentee rate.

Dan Manassau, Milpitas resident, commented on union tactics. He wanted to know why negotiators were not talking about total compensation for firefighters. Compared to New York City, total compensation was less than at the City of Milpitas. Salary and benefits

were too high in this city.

Mr. Lorin, Milpitas resident, said he would prefer to hear about 20 firefighters on duty at all times, not 15, especially if there was a large emergency. He was a SAFE volunteer.

Jonathan Ford, Parkville Ct., asked the audience how many were CPR trained and hands were raised. He stressed that more residents would need to be available in emergency.

Harry Evan, of Jacklin Rd, had twins and was a business owner. He picked this city for its public safety services and he had 19 years in public safety himself.

A woman asked if Councilmembers had ever been in a fire. She was, three years ago, and was so glad that the Milpitas firefighters came to her house, were so kind and helpful. They saved the house.

Mercedes, a resident reported her husband had had a heart attack and the Milpitas firefighters saved his life. She was grateful.

Susan Ryan, was a resident, a business owner, nurse, mother, and grandmother. She described an important time when the firefighters helped her. She thanked MFD.

Lenore Reed, of Grayhouse Drive, said public safety was very important in this city. Consider staffing issue, since that was the cause of the overtime. Milpitas must be covered in emergency.

Robert Marini, resident, complained of increasing population, which caused heavier burden to the fire dept.

Carol Harris, LaCrosse Drive, felt the City needed all the firefighters now employed and probably more. She said to the City Council "get rid of yourselves first" not public safety, police and fire. She complained of layoffs.

Robert Hughes, lived in Newark, said his city no longer had a Fire Department since the County took it over. He did not want to have any firefighters lose their jobs.

A woman resident had a fire at her home, and really appreciated the local firefighters who came to her home quickly. Quick response times were important for safety.

A man, lifetime resident, thanked the Council to let folks speak before they voted. He said to look at the budget as a whole and overtime costs need to work for the City. You cannot put a value on life. He disagreed with Councilmember Montano and that it was terrible to consider only EMTs rather than experienced firefighters, for the residents.

A young man asked the Council to think about how they would react if they were given a notice of layoff.

Esai Lopez, resident, had been on ride-a-longs with the firefighters and all of them were professionals in this city.

A woman resident worried about mother going into a grand mal seizure and needing emergency care. Firefighters had mother's life twice.

Alicia Drummond, resident, said that if the Council laid off firefighters, that would destroy the dreams of young people who want that profession.

Jeffrey Reed, resident, felt citizens needed to unify to come as one and take care of one another. He spoke of his father, who brought the family to Milpitas.

Vice Mayor Polanski thanked all those who spoke and shared their views. She repeated

that public safety was important, as a core service of the City. She encouraged all residents to join a SAFE team and learn CPR and learn how to use an AED. In a major emergency, the firefighters could not reach everyone in the City at same time. The solution proposed is a good one.

Councilmember Gomez stated that public safety was the number one priority. 70% of the City's budget goes to Police and Fire in Milpitas. Recommendations were good, even if they were not perfect to deal with the issue.

Councilmember Giordano wearing a Councilmember hat appreciated the Mayor's comments. They had to address this issue, a "runaway train." She supported the recommendation as a fiscal conservative. Her daughter was a firefighter, and she thought of her during this discussion.

Mayor Esteves thanked all those who spoke and provided input to Council. Personally, he appreciated the response time of Milpitas firefighters, and they helped his mother-in-law when she fell and broke her hip. He appreciated the work of the Task Force as well as working together with residents.

Motion: to manage the issue of Fire Department overtime expense, 1) accept the federal SAFER grant award of \$2.1 million and hire six firefighters; 2) transfer \$600,000 from reserves to the Fire Department, to be recouped over six years; 3) delay any layoffs to March 19, 2013, allowing time for a vote by the union members on this solution; and, 4) if the IAFF Local 1600 agrees to eliminate minimum staffing provision in the current Memorandum of Understanding and the grant is accepted, then layoffs would be rescinded. This motion included to continue the City Council Task Force on Fire Department Budget.

Motion/Second: Vice Mayor Polanski/Councilmember Montano

Motion carried by a vote of: AYES: 5  
NOES: 0

## REPORTS

Two items were approved on consent calendar.

## NEW BUSINESS

Three items were approved on consent calendar.

### 8. Financial Status Report through December 31, 2012

Finance Director Emma Karlen reviewed the current financial status of the city overall, expressing the anticipated budget shortfall when preparing this year's budget, last year. She provided revised projections of General Fund revenues and expenditures for FY 2012-13. She told Council that the distribution of funds that are distributed from the former Redevelopment Agency area were to be directed to capital projects, as previously directed. The City could balance its budget at the end of the Fiscal Year with the use of Equipment Replacement Reserve funds, as authorized by Council at budget adoption.

Ms. Karlen identified key dates this year for planning to adopt the FY 2013-14 budget. The Council budget hearing is scheduled on Tuesday, May 14, 2013. She also offered to provide a budget study session for the Council, if desired, in April.

Vice Mayor Polanski would like to have the budget study session on a separate date from any regular City Council meeting date.

Mayor Esteves inquired, regarding the next Capital Improvement Program, would it address all line items that were previously to be funded by the Redevelopment Agency? Staff replied that the CIP already would have removed the former RDA as a funding source, so yes.

Motion: to accept the oral report from the Finance Director, and schedule a budget study session on separate date from regular City Council meeting dates

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

City Manager Tom Williams publicly thanked Finance Director Karlen for all her hard work, many hours, behind the scenes with the management and the Firefighters IAFF union group, on the solution reached this evening regarding the overtime issue in the Fire Department.

**RESOLUTIONS**

Two Resolutions were adopted on consent calendar.

**CONTRACTS**

Six items were approved on consent calendar.

**ADJOURNMENT**

Mayor Esteves adjourned the meeting at 9:39 PM.

*Meeting minutes respectfully submitted by  
Mary Lavelle, City Clerk*

*Draft* **MEETING MINUTES**  
**CITY OF MILPITAS**

**Minutes of:** **Regular Meeting of Milpitas City Council**  
**Date:** **Tuesday, February 5, 2013**  
**Time:** **6:00 PM**  
**Location:** **Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas**

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**ROLL CALL**

Mayor Esteves called the meeting to order at 6:00 PM. City Clerk Lavelle noted the roll.

**PRESENT:** Mayor Esteves, Vice Mayor Polanski, Councilmembers Giordano, Gomez and Montano

**ABSENT:** None

**CLOSED SESSION**

City Council convened in Closed Session to discuss labor negotiations and one litigation matter.

City Council then convened in Open Session at 7:00 PM.

**ANNOUNCEMENT**

City Attorney Mike Ogaz announced that the City Council approved - by unanimous vote - agreement with two employee groups, the Mid-Management and Confidential unit and the Profession and Technical employees, on new Memorandums of Understanding for a one year period (January 1 to December 31, 2013) which would include a 2.5% restoration of the amount employees pay toward the employer portion of PERS. The documents were directed to be brought back for a final vote on the agenda of the next City Council meeting on February 19.

**PLEDGE**

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

**INVOCATION**

Councilmember Giordano offered her own prayer to start the meeting.

**MINUTES**

Motion: to approve meeting minutes of January 15, 2013 City Council meeting, as submitted

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

**SCHEDULE OF MEETINGS**

Motion: to approve Council Calendars/Schedule of Meetings for February 2013, as submitted

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

**PRESENTATIONS**

Mayor Esteves made the following presentations:

He proclaimed both *Dr. Martin Luther King, Jr. Day* on January 21, 2013 and *Black History Month* for the month of February 2013. Both were accepted by resident Demetress Morris.

He presented the *2013 Artist of Year Award* to Patty Jensen of the Jensen School for the Performing Arts. The Mayor also gave certificates of commendation to nominees Joe Santoro and Carla Moss. Arts Commissioners Becky Strauss and Robin Hays assisted the Mayor with the presentation of the awards, as selected the Arts Commissioners.

**PUBLIC FORUM**

Robert Marini, Milpitas resident, had previously asked three questions about sewer rates. He claimed that Milpitas was not an open and transparent city government.

Demetress Morris, Milpitas resident, discussed flag raising for Black History month. City Manager Tom Williams replied that he could discuss that event with her, away from the City Council meeting.

**ANNOUNCEMENTS**

Mayor Esteves noted that many residents in February were celebrating Chinese Lunar New Year, so he wished all a Happy New Year. The 64<sup>th</sup> India Republic Day was also being celebrated.

**ANNOUNCEMENT OF CONFLICT OF INTEREST**

None.

**APPROVAL OF AGENDA**

Motion: to approve the agenda, as submitted

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

**CONSENT CALENDAR**

Motion: to approve the Consent Calendar (items noted with \*asterisk), as amended

Councilmember Giordano requested to put Item No. 3 (regarding Council reimbursements) on consent and to adopt the new policy, as proposed.

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

\* 3. Councilmember Reimbursements

Adopted the new policy (for the City Council Handbook) restricting items permitted for reimbursement to City Councilmembers, as proposed by Vice Mayor Polanski.

\* 5. Odor Report

Received the December 2012 and January 2013 odor reports.

\* 6. Planning Commission

Appointed Demetress Morris as the Alternate Member of Milpitas Planning Commission to a term that would expire in December 2015.

\* 7. Commission Appointments

Approved recommendations made by Mayor Esteves, following.

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Lenore Reed, of Grayhouse Drive, said public safety was very important in this city. Consider staffing issue, since that was the cause of the overtime. Milpitas must be covered in emergency.

Robert Marini, resident, complained of increasing population, which caused heavier burden to the fire dept.

Carol Harris, LaCrosse Drive, felt the City needed all the firefighters now employed and probably more. She said to the City Council "get rid of yourselves first" not public safety, police and fire. She complained of layoffs.

Robert Hughes, lived in Newark, said his city no longer had a Fire Department since the County took it over. He did not want to have any firefighters lose their jobs.

A woman resident had a fire at her home, and really appreciated the local firefighters who came to her home quickly. Quick response times were important for safety.

A man, lifetime resident, thanked the Council to let folks speak before they voted. He said to look at the budget as a whole and overtime costs need to work for the City. You cannot put a value on life. He disagreed with Councilmember Montano and that it was terrible to consider only EMTs rather than experienced firefighters, for the residents.

A young man asked the Council to think about how they would react if they were given a notice of layoff.

Esai Lopez, resident, had been on ride-a-longs with the firefighters and all of them were professionals in this city.

A woman resident worried about mother going into a grand mal seizure and needing emergency care. Firefighters had mother's life twice.

Alicia Drummond, resident, said that if the Council laid off firefighters, that would destroy the dreams of young people who want that profession.

Jeffrey Reed, resident, felt citizens needed to unify to come as one and take care of one another. He spoke of his father, who brought the family to Milpitas.

Vice Mayor Polanski thanked all those who spoke and shared their views. She repeated

that public safety was important, as a core service of the City. She encouraged all residents to join a SAFE team and learn CPR and learn how to use an AED. In a major emergency, the firefighters could not reach everyone in the City at same time. The solution proposed is a good one.

Councilmember Gomez stated that public safety was the number one priority. 70% of the City's budget goes to Police and Fire in Milpitas. Recommendations were good, even if they were not perfect to deal with the issue.

Councilmember Giordano wearing a Councilmember hat appreciated the Mayor's comments. They had to address this issue, a "runaway train." She supported the recommendation as a fiscal conservative. Her daughter was a firefighter, and she thought of her during this discussion.

Mayor Esteves thanked all those who spoke and provided input to Council. Personally, he appreciated the response time of Milpitas firefighters, and they helped his mother-in-law when she fell and broke her hip. He appreciated the work of the Task Force as well as working together with residents.

Motion: to manage the issue of Fire Department overtime expense, 1) accept the federal SAFER grant award of \$2.1 million and hire six firefighters; 2) transfer \$600,000 from reserves to the Fire Department, to be recouped over six years; 3) delay any layoffs to March 19, 2013, allowing time for a vote by the union members on this solution; and, 4) if the IAFF Local 1600 agrees to eliminate minimum staffing provision in the current Memorandum of Understanding and the grant is accepted, then layoffs would be rescinded. This motion included to continue the City Council Task Force on Fire Department Budget.

Motion/Second: Vice Mayor Polanski/Councilmember Montano

Motion carried by a vote of: AYES: 5  
NOES: 0

## REPORTS

Two items were approved on consent calendar.

## NEW BUSINESS

Three items were approved on consent calendar.

### 8. Financial Status Report through December 31, 2012

Finance Director Emma Karlen reviewed the current financial status of the city overall, expressing the anticipated budget shortfall when preparing this year's budget, last year. She provided revised projections of General Fund revenues and expenditures for FY 2012-13. She told Council that the distribution of funds that are distributed from the former Redevelopment Agency area were to be directed to capital projects, as previously directed. The City could balance its budget at the end of the Fiscal Year with the use of Equipment Replacement Reserve funds, as authorized by Council at budget adoption.

Ms. Karlen identified key dates this year for planning to adopt the FY 2013-14 budget. The Council budget hearing is scheduled on Tuesday, May 14, 2013. She also offered to provide a budget study session for the Council, if desired, in April.

Vice Mayor Polanski would like to have the budget study session on a separate date from any regular City Council meeting date.

Mayor Esteves inquired, regarding the next Capital Improvement Program, would it address all line items that were previously to be funded by the Redevelopment Agency? Staff replied that the CIP already would have removed the former RDA as a funding source, so yes.

Motion: to accept the oral report from the Finance Director, and schedule a budget study session on separate date from regular City Council meeting dates

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

City Manager Tom Williams publicly thanked Finance Director Karlen for all her hard work, many hours, behind the scenes with the management and the Firefighters IAFF union group, on the solution reached this evening regarding the overtime issue in the Fire Department.

**RESOLUTIONS**

Two Resolutions were adopted on consent calendar.

**CONTRACTS**

Six items were approved on consent calendar.

**ADJOURNMENT**

Mayor Esteves adjourned the meeting at 9:39 PM.

*Meeting minutes respectfully submitted by  
Mary Lavelle, City Clerk*

*Draft* **MEETING MINUTES**  
**CITY OF MILPITAS**

**Minutes of:** **Regular Meeting of Milpitas City Council**  
**Date:** **Tuesday, February 5, 2013**  
**Time:** **6:00 PM**  
**Location:** **Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas**

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**ROLL CALL**

Mayor Esteves called the meeting to order at 6:00 PM. City Clerk Lavelle noted the roll.

**PRESENT:** Mayor Esteves, Vice Mayor Polanski, Councilmembers Giordano, Gomez and Montano

**ABSENT:** None

**CLOSED SESSION**

City Council convened in Closed Session to discuss labor negotiations and one litigation matter.

City Council then convened in Open Session at 7:00 PM.

**ANNOUNCEMENT**

City Attorney Mike Ogaz announced that the City Council approved - by unanimous vote - agreement with two employee groups, the Mid-Management and Confidential unit and the Profession and Technical employees, on new Memorandums of Understanding for a one year period (January 1 to December 31, 2013) which would include a 2.5% restoration of the amount employees pay toward the employer portion of PERS. The documents were directed to be brought back for a final vote on the agenda of the next City Council meeting on February 19.

**PLEDGE**

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

**INVOCATION**

Councilmember Giordano offered her own prayer to start the meeting.

**MINUTES**

Motion: to approve meeting minutes of January 15, 2013 City Council meeting, as submitted

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

**SCHEDULE OF MEETINGS**

Motion: to approve Council Calendars/Schedule of Meetings for February 2013, as submitted

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

**PRESENTATIONS**

Mayor Esteves made the following presentations:

He proclaimed both *Dr. Martin Luther King, Jr. Day* on January 21, 2013 and *Black History Month* for the month of February 2013. Both were accepted by resident Demetress Morris.

He presented the *2013 Artist of Year Award* to Patty Jensen of the Jensen School for the Performing Arts. The Mayor also gave certificates of commendation to nominees Joe Santoro and Carla Moss. Arts Commissioners Becky Strauss and Robin Hays assisted the Mayor with the presentation of the awards, as selected the Arts Commissioners.

**PUBLIC FORUM**

Robert Marini, Milpitas resident, had previously asked three questions about sewer rates. He claimed that Milpitas was not an open and transparent city government.

Demetress Morris, Milpitas resident, discussed flag raising for Black History month. City Manager Tom Williams replied that he could discuss that event with her, away from the City Council meeting.

**ANNOUNCEMENTS**

Mayor Esteves noted that many residents in February were celebrating Chinese Lunar New Year, so he wished all a Happy New Year. The 64<sup>th</sup> India Republic Day was also being celebrated.

**ANNOUNCEMENT OF CONFLICT OF INTEREST**

None.

**APPROVAL OF AGENDA**

Motion: to approve the agenda, as submitted

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

**CONSENT CALENDAR**

Motion: to approve the Consent Calendar (items noted with \*asterisk), as amended

Councilmember Giordano requested to put Item No. 3 (regarding Council reimbursements) on consent and to adopt the new policy, as proposed.

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

\* 3. Councilmember Reimbursements

Adopted the new policy (for the City Council Handbook) restricting items permitted for reimbursement to City Councilmembers, as proposed by Vice Mayor Polanski.

\* 5. Odor Report

Received the December 2012 and January 2013 odor reports.

\* 6. Planning Commission

Appointed Demetress Morris as the Alternate Member of Milpitas Planning Commission to a term that would expire in December 2015.

\* 7. Commission Appointments

Approved recommendations made by Mayor Esteves, following.

Community Advisory Commission:

Appointed Eva Ferguson as a regular member to a term to expire in January 2015.  
Appointed Oscar Leon as a regular member to a term to expire in January 2015.  
Appointed Marsha Tran as Alternate No. 1 to a term to expire in January 2015.  
Newly appointed Ray Maglalang as Alternate No. 2 to a term to expire in January 2015.

Economic Development Commission:

Appointed Sumeet Ahuja as a regular member representing Retail to a term to expire in April 2015. Newly appointed B. Michael Howard as a regular member representing Hotels to a term to expire in April 2015.

Library Advisory Commission:

Appointed Marie Pham as a regular member to a term to expire in June 2013.  
Appointed Hellie Matteo as a regular member to a term to expire in June 2013.

Recycling and Source Reduction Advisory Commission:

Appointed Kashmir Gill as a regular member to a term to expire in October 2015.  
Appointed Madan Arora as Alternate No. 1 to a term to expire in October 2013.  
Newly appointed Eddie Inamdar as Alternate No. 2 to a term to expire in October 2014.

Telecommunications Commission:

Reappointed Albert Alcorn as a regular member to a term to expire in January 2015.  
Reappointed Kurt Bohan as a regular member to a term to expire in January 2015.  
Reappointed Ernesto Bautista as Alternate No. 1 to a term to expire in January 2015.

Sister Cities Commission:

Newly appointed Peter Chang as Alternate No. 2 to a term to expire in September 2013.

Veterans Commission:

Newly appointed Ferdinand Luis, Jr. as Alternate No. 2 to a term to expire February 2016.

- \* 9. Investment Report                   Received the investment report for the quarter ended December 31, 2012.
- \*10. Ben Gross Tribute                 Approved the planned Ben Gross tribute event on February 23 at the Barbara Lee Senior Center, in an amount not to exceed \$1,500 and directed staff to research a possible park dedication in honor of the 1960s Milpitas African-American Mayor at a City park.
- \*11. Accept Walmart grant             Accepted the Walmart Foundation grant in the amount of \$1,000 and increased Recreation Division budget by \$1,000 for the Senior Nutrition Program.
- \*12. Actions Related to Sora Milpitas LLC apartments             Adopted Resolution No. 8225 annexing properties known as SORA Milpitas, LLC into Community Facility District 2005-1.  
Approved and authorized execution of a subdivision improvement agreement.  
Approved the final map (Tract 10139) and public improvement plans (2-1163).
- \*13. Resolution – Water meters       Adopted Resolution No. 8226 designating National Meter and Automation as the sole source provider for Badger water meters in the City of Milpitas.  
Approved the purchase of assorted Badger water meters from National Meter and Automation for the not-to-exceed amount of \$70,092.76.
- \*14. Temp. Building Inspector        Approved the Lyon Apartments developer’s request to continue employment of a temporary dedicated building inspector.  
Approved budget appropriation of \$70,320, less the administrative fee, into the Building and Safety Department’s budget for five months until July 31, 2013.
- \*15. Temp. Building Inspector        Approved and authorized Coyote Creek condominium and townhouse developer’s request for the employment of a temporary building inspector.  
Approved a budget appropriation of \$46,880, less the administrative fee, into the Building and Safety Department’s budget for remaining four months of Fiscal Year 2012-13.
- \*16. Agreement with RMC Water and Environment             Authorized the City Manager to execute the consultant agreement with RMC Water and Environment, Inc. for utility engineering support.
- \*17. Amend Contract with TerraCare for 2 New Parks             Authorized the City Manager to execute amendment No. 1 to the contract with TerraCare Associates to add two new parks (Alviso Adobe and Cerano) to the City of Milpitas Parks Maintenance services contract for the not-to-exceed annual amount of \$89,460.
- \*18. Amend Universal Building Service Contract             Approved Amendment No. 4 to Universal Building Services contract for additional janitorial services for the not-to-exceed amount of \$97,948, through June 30, 2013.
- \*19. Concert Band Composer           Authorized the City Manager to execute a contract with composer Jason McChristian in an amount not to exceed \$525. Accepted the Milpitas Parks and Recreation Foundation grant in the amount of \$809 and increased the Recreation Division budget in the amount of \$809 for the Milpitas Community Concert Band Program.

**UNFINISHED BUSINESS**

**1. Report on CAFR (Audit Report for FY 2012-13)**

Finance Director Emma Karlen introduced Ms. Amy Meyer from the firm Maze & Associates, who gave an oral report on the final Comprehensive Annual Financial Report for FY 2011-12. An “unqualified” or clean audit report was given and she reported that it was the highest possible outcome. Ms. Meyer said that the Redevelopment Agency was included for the seven months it existed in the last fiscal year, and there were a number of references to the dissolution of the Agency, and to the Successor Agency. The internal control review yielded no internal accounting weaknesses, along with seven recommendations on internal procedures.

Vice Mayor Polanski complimented staff on the comprehensive report and thanked Ms. Meyer for coming back, after the last meeting. Vice Mayor asked about impact on next year’s audit, of the RDA dissolution. An asset review was the big topic for next time.

Mayor Esteves invited speakers from audience.

Robert Marini, resident, wondered if utility rate funds were included in the report. He wanted to know where the overcharge for utility rates was going.

Motion: to accept the City’s Comprehensive Annual Financial Report (CAFR) and other related Annual Audited Reports for the fiscal year ended June 30, 2012

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

At 7:40 PM, Mayor Esteves announced Council would take a break for staff to work on technical difficulties, and then returned to the dais at 7:51 PM.

**2. Commissioners Recognition**

Dale Flunoy, Recreation Services staff, described to City Council what was planned this year for Commissioners Recognition event as a luncheon this year. The budgeted cost was expected to be between \$12 – 17 per person, with a \$5,100 maximum.

Mayor Esteves asked if there was good input for the event. Staff polled the Chairs and Vice Chairs of Commissions, who supported the event with a meal as proposed.

Motion: to approve the 2013 Commissioners’ Recognition event as a catered luncheon to be held on Saturday, April 13, 2013 at the Milpitas Community Center

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

**4. Council Task Force on Fire Dept. Overtime costs**

City Manager Tom Williams addressed the City Council. He reported that the City Council’s Task Force met to review Fire Dept overtime issue and sought to avoid layoff of any firefighters, in partnership with IAFF Local 1699, City management and several community residents. He provided some background statistics about Fire Department staff costs. He thanked Vice Mayor Polanski and Councilmember Gomez for their leadership, with the main issue identified as minimum staffing required, per Fire’s Memorandum of Understanding with the City.

\$249,145 was the average total compensation for one firefighter in Milpitas. Mr. Williams explained a federal government grant to be awarded to Milpitas, from the Department of Homeland Security and FEMA, for a total of \$2.1 million to cover the cost of hiring six firefighters for two years.

Fire Chief Brian Sturdivant explained how minimum staffing worked in the City (15 firefighters always on duty), where he sought more flexibility on staffing, when necessary.

The utility of overtime on a monthly basis would affect the flexibility of staffing, as applied by the Fire Chief.

City Manager Williams then reviewed the four part solution, directed by Task Force, and presented this evening. The IAFF Local's Executive Board agreed to the terms. They included: 1) accept the SAFER grant and hire six firefighters; 2) transfer \$600,000 from reserves to Fire Department, to be recouped over six years; 3) delay any layoffs to March 19 (to allow time for a vote by union members); and, 4) if the IAFF Local 1600 agreed to eliminate minimum staffing provision in the current MOU and the grant was accepted, then layoffs would be rescinded.

Councilmember Gomez expressed that he did not want to be here on this issue. Solutions were needed, so that was what the Task Force did. While not perfect, the solution recommended would allow the City to retain firefighters and hire six more. The proposal allowed for payback to reserves over time. He urged support by his colleagues.

Councilmember Giordano emphasized that the plan was contingent on all four components working together. She thanked Task Force for the good ideas presented.

Vice Mayor Polanski thanked staff, Mr. Gomez, IAFF members and the Fire Chief for coming to this point for a workable solution. No deviation or changes were sought, since it was a complete package necessary in this situation.

Mayor Esteves was proud of City Council for dealing with this issue, which has been going on for a long time. He termed a "propaganda campaign" had led to misinformation, and he did not care for that. The Mayor pointed out that Fire overtime costs in the last five years was \$7.1 million, a cost to taxpayers.

Councilmember Montano referred to the 2010-11 Civil Grand Jury of Santa Clara County that identified an outmoded service delivery model of most current Fire Departments in the country. That report noted that the majority of calls were emergency medical, not fires. Perhaps another model, such as EMT response, could be looked into.

Steve King, IAFF 1699 Local President, thanked the Council for the Task Force efforts and reviewing the overtime issue. He was happy to look at new ways to deal with the issue. His group appreciated Council moving forward with the SAFER grant, and care about safety of this community.

Mayor Esteves asked Mr. King if he had any comments on the recommended proposal. Mr. King replied that it was not yet voted on by the membership and they understood what they needed to do and would seek to make it work.

Mayor said Council really appreciated all our firefighters.

On a motion by Councilmember Giordano, and seconded by Councilmember Gomez, the City Council voted unanimously to reduced speaking time to two minutes per speaker, due to the large crowd in the audience.

Mayor Esteves then invited speakers to the podium.

Debra Higuera, lifetime resident, spoke of daughter whose life was saved when she was seven 7 years old and she would never forget that.

Tim, a resident, noted a comment by Councilmember Gomez about a 28% vacancy rate, however, it was the absentee rate.

Dan Manassau, Milpitas resident, commented on union tactics. He wanted to know why negotiators were not talking about total compensation for firefighters. Compared to New York City, total compensation was less than at the City of Milpitas. Salary and benefits

were too high in this city.

Mr. Lorin, Milpitas resident, said he would prefer to hear about 20 firefighters on duty at all times, not 15, especially if there was a large emergency. He was a SAFE volunteer.

Jonathan Ford, Parkville Ct., asked the audience how many were CPR trained and hands were raised. He stressed that more residents would need to be available in emergency.

Harry Evan, of Jacklin Rd, had twins and was a business owner. He picked this city for its public safety services and he had 19 years in public safety himself.

A woman asked if Councilmembers had ever been in a fire. She was, three years ago, and was so glad that the Milpitas firefighters came to her house, were so kind and helpful. They saved the house.

Mercedes, a resident reported her husband had had a heart attack and the Milpitas firefighters saved his life. She was grateful.

Susan Ryan, was a resident, a business owner, nurse, mother, and grandmother. She described an important time when the firefighters helped her. She thanked MFD.

Lenore Reed, of Grayhouse Drive, said public safety was very important in this city. Consider staffing issue, since that was the cause of the overtime. Milpitas must be covered in emergency.

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A woman resident had a fire at her home, and really appreciated the local firefighters who came to her home quickly. Quick response times were important for safety.

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Esai Lopez, resident, had been on ride-a-longs with the firefighters and all of them were professionals in this city.

A woman resident worried about mother going into a grand mal seizure and needing emergency care. Firefighters had mother's life twice.

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that public safety was important, as a core service of the City. She encouraged all residents to join a SAFE team and learn CPR and learn how to use an AED. In a major emergency, the firefighters could not reach everyone in the City at same time. The solution proposed is a good one.

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Councilmember Giordano wearing a Councilmember hat appreciated the Mayor's comments. They had to address this issue, a "runaway train." She supported the recommendation as a fiscal conservative. Her daughter was a firefighter, and she thought of her during this discussion.

Mayor Esteves thanked all those who spoke and provided input to Council. Personally, he appreciated the response time of Milpitas firefighters, and they helped his mother-in-law when she fell and broke her hip. He appreciated the work of the Task Force as well as working together with residents.

Motion: to manage the issue of Fire Department overtime expense, 1) accept the federal SAFER grant award of \$2.1 million and hire six firefighters; 2) transfer \$600,000 from reserves to the Fire Department, to be recouped over six years; 3) delay any layoffs to March 19, 2013, allowing time for a vote by the union members on this solution; and, 4) if the IAFF Local 1600 agrees to eliminate minimum staffing provision in the current Memorandum of Understanding and the grant is accepted, then layoffs would be rescinded. This motion included to continue the City Council Task Force on Fire Department Budget.

Motion/Second: Vice Mayor Polanski/Councilmember Montano

Motion carried by a vote of: AYES: 5  
NOES: 0

## REPORTS

Two items were approved on consent calendar.

## NEW BUSINESS

Three items were approved on consent calendar.

### 8. Financial Status Report through December 31, 2012

Finance Director Emma Karlen reviewed the current financial status of the city overall, expressing the anticipated budget shortfall when preparing this year's budget, last year. She provided revised projections of General Fund revenues and expenditures for FY 2012-13. She told Council that the distribution of funds that are distributed from the former Redevelopment Agency area were to be directed to capital projects, as previously directed. The City could balance its budget at the end of the Fiscal Year with the use of Equipment Replacement Reserve funds, as authorized by Council at budget adoption.

Ms. Karlen identified key dates this year for planning to adopt the FY 2013-14 budget. The Council budget hearing is scheduled on Tuesday, May 14, 2013. She also offered to provide a budget study session for the Council, if desired, in April.

Vice Mayor Polanski would like to have the budget study session on a separate date from any regular City Council meeting date.

Mayor Esteves inquired, regarding the next Capital Improvement Program, would it address all line items that were previously to be funded by the Redevelopment Agency? Staff replied that the CIP already would have removed the former RDA as a funding source, so yes.

Motion: to accept the oral report from the Finance Director, and schedule a budget study session on separate date from regular City Council meeting dates

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

City Manager Tom Williams publicly thanked Finance Director Karlen for all her hard work, many hours, behind the scenes with the management and the Firefighters IAFF union group, on the solution reached this evening regarding the overtime issue in the Fire Department.

**RESOLUTIONS**

Two Resolutions were adopted on consent calendar.

**CONTRACTS**

Six items were approved on consent calendar.

**ADJOURNMENT**

Mayor Esteves adjourned the meeting at 9:39 PM.

*Meeting minutes respectfully submitted by  
Mary Lavelle, City Clerk*

*Draft* **MEETING MINUTES**  
**CITY OF MILPITAS**

**Minutes of:** **Regular Meeting of Milpitas City Council**  
**Date:** **Tuesday, February 5, 2013**  
**Time:** **6:00 PM**  
**Location:** **Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas**

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**ROLL CALL**

Mayor Esteves called the meeting to order at 6:00 PM. City Clerk Lavelle noted the roll.

**PRESENT:** Mayor Esteves, Vice Mayor Polanski, Councilmembers Giordano, Gomez and Montano

**ABSENT:** None

**CLOSED SESSION**

City Council convened in Closed Session to discuss labor negotiations and one litigation matter.

City Council then convened in Open Session at 7:00 PM.

**ANNOUNCEMENT**

City Attorney Mike Ogaz announced that the City Council approved - by unanimous vote - agreement with two employee groups, the Mid-Management and Confidential unit and the Profession and Technical employees, on new Memorandums of Understanding for a one year period (January 1 to December 31, 2013) which would include a 2.5% restoration of the amount employees pay toward the employer portion of PERS. The documents were directed to be brought back for a final vote on the agenda of the next City Council meeting on February 19.

**PLEDGE**

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

**INVOCATION**

Councilmember Giordano offered her own prayer to start the meeting.

**MINUTES**

Motion: to approve meeting minutes of January 15, 2013 City Council meeting, as submitted

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

**SCHEDULE OF MEETINGS**

Motion: to approve Council Calendars/Schedule of Meetings for February 2013, as submitted

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

**PRESENTATIONS**

Mayor Esteves made the following presentations:

He proclaimed both *Dr. Martin Luther King, Jr. Day* on January 21, 2013 and *Black History Month* for the month of February 2013. Both were accepted by resident Demetress Morris.

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**ANNOUNCEMENTS**

Mayor Esteves noted that many residents in February were celebrating Chinese Lunar New Year, so he wished all a Happy New Year. The 64<sup>th</sup> India Republic Day was also being celebrated.

**ANNOUNCEMENT OF CONFLICT OF INTEREST**

None.

**APPROVAL OF AGENDA**

Motion: to approve the agenda, as submitted

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

**CONSENT CALENDAR**

Motion: to approve the Consent Calendar (items noted with \*asterisk), as amended

Councilmember Giordano requested to put Item No. 3 (regarding Council reimbursements) on consent and to adopt the new policy, as proposed.

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

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Reappointed Kurt Bohan as a regular member to a term to expire in January 2015.  
Reappointed Ernesto Bautista as Alternate No. 1 to a term to expire in January 2015.

Sister Cities Commission:

Newly appointed Peter Chang as Alternate No. 2 to a term to expire in September 2013.

Veterans Commission:

Newly appointed Ferdinand Luis, Jr. as Alternate No. 2 to a term to expire February 2016.

- \* 9. Investment Report Received the investment report for the quarter ended December 31, 2012.
- \*10. Ben Gross Tribute Approved the planned Ben Gross tribute event on February 23 at the Barbara Lee Senior Center, in an amount not to exceed \$1,500 and directed staff to research a possible park dedication in honor of the 1960s Milpitas African-American Mayor at a City park.
- \*11. Accept Walmart grant Accepted the Walmart Foundation grant in the amount of \$1,000 and increased Recreation Division budget by \$1,000 for the Senior Nutrition Program.
- \*12. Actions Related to Sora Milpitas LLC apartments Adopted Resolution No. 8225 annexing properties known as SORA Milpitas, LLC into Community Facility District 2005-1.  
Approved and authorized execution of a subdivision improvement agreement.  
Approved the final map (Tract 10139) and public improvement plans (2-1163).
- \*13. Resolution – Water meters Adopted Resolution No. 8226 designating National Meter and Automation as the sole source provider for Badger water meters in the City of Milpitas.  
Approved the purchase of assorted Badger water meters from National Meter and Automation for the not-to-exceed amount of \$70,092.76.
- \*14. Temp. Building Inspector Approved the Lyon Apartments developer’s request to continue employment of a temporary dedicated building inspector.  
Approved budget appropriation of \$70,320, less the administrative fee, into the Building and Safety Department’s budget for five months until July 31, 2013.
- \*15. Temp. Building Inspector Approved and authorized Coyote Creek condominium and townhouse developer’s request for the employment of a temporary building inspector.  
Approved a budget appropriation of \$46,880, less the administrative fee, into the Building and Safety Department’s budget for remaining four months of Fiscal Year 2012-13.
- \*16. Agreement with RMC Water and Environment Authorized the City Manager to execute the consultant agreement with RMC Water and Environment, Inc. for utility engineering support.
- \*17. Amend Contract with TerraCare for 2 New Parks Authorized the City Manager to execute amendment No. 1 to the contract with TerraCare Associates to add two new parks (Alviso Adobe and Cerano) to the City of Milpitas Parks Maintenance services contract for the not-to-exceed annual amount of \$89,460.
- \*18. Amend Universal Building Service Contract Approved Amendment No. 4 to Universal Building Services contract for additional janitorial services for the not-to-exceed amount of \$97,948, through June 30, 2013.
- \*19. Concert Band Composer Authorized the City Manager to execute a contract with composer Jason McChristian in an amount not to exceed \$525. Accepted the Milpitas Parks and Recreation Foundation grant in the amount of \$809 and increased the Recreation Division budget in the amount of \$809 for the Milpitas Community Concert Band Program.

**UNFINISHED BUSINESS**

**1. Report on CAFR (Audit Report for FY 2012-13)**

Finance Director Emma Karlen introduced Ms. Amy Meyer from the firm Maze & Associates, who gave an oral report on the final Comprehensive Annual Financial Report for FY 2011-12. An “unqualified” or clean audit report was given and she reported that it was the highest possible outcome. Ms. Meyer said that the Redevelopment Agency was included for the seven months it existed in the last fiscal year, and there were a number of references to the dissolution of the Agency, and to the Successor Agency. The internal control review yielded no internal accounting weaknesses, along with seven recommendations on internal procedures.

Vice Mayor Polanski complimented staff on the comprehensive report and thanked Ms. Meyer for coming back, after the last meeting. Vice Mayor asked about impact on next year’s audit, of the RDA dissolution. An asset review was the big topic for next time.

Mayor Esteves invited speakers from audience.

Robert Marini, resident, wondered if utility rate funds were included in the report. He wanted to know where the overcharge for utility rates was going.

Motion: to accept the City’s Comprehensive Annual Financial Report (CAFR) and other related Annual Audited Reports for the fiscal year ended June 30, 2012

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

At 7:40 PM, Mayor Esteves announced Council would take a break for staff to work on technical difficulties, and then returned to the dais at 7:51 PM.

**2. Commissioners Recognition**

Dale Flunoy, Recreation Services staff, described to City Council what was planned this year for Commissioners Recognition event as a luncheon this year. The budgeted cost was expected to be between \$12 – 17 per person, with a \$5,100 maximum.

Mayor Esteves asked if there was good input for the event. Staff polled the Chairs and Vice Chairs of Commissions, who supported the event with a meal as proposed.

Motion: to approve the 2013 Commissioners’ Recognition event as a catered luncheon to be held on Saturday, April 13, 2013 at the Milpitas Community Center

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

**4. Council Task Force on Fire Dept. Overtime costs**

City Manager Tom Williams addressed the City Council. He reported that the City Council’s Task Force met to review Fire Dept overtime issue and sought to avoid layoff of any firefighters, in partnership with IAFF Local 1699, City management and several community residents. He provided some background statistics about Fire Department staff costs. He thanked Vice Mayor Polanski and Councilmember Gomez for their leadership, with the main issue identified as minimum staffing required, per Fire’s Memorandum of Understanding with the City.

\$249,145 was the average total compensation for one firefighter in Milpitas. Mr. Williams explained a federal government grant to be awarded to Milpitas, from the Department of Homeland Security and FEMA, for a total of \$2.1 million to cover the cost of hiring six firefighters for two years.

Fire Chief Brian Sturdivant explained how minimum staffing worked in the City (15 firefighters always on duty), where he sought more flexibility on staffing, when necessary.

The utility of overtime on a monthly basis would affect the flexibility of staffing, as applied by the Fire Chief.

City Manager Williams then reviewed the four part solution, directed by Task Force, and presented this evening. The IAFF Local's Executive Board agreed to the terms. They included: 1) accept the SAFER grant and hire six firefighters; 2) transfer \$600,000 from reserves to Fire Department, to be recouped over six years; 3) delay any layoffs to March 19 (to allow time for a vote by union members); and, 4) if the IAFF Local 1600 agreed to eliminate minimum staffing provision in the current MOU and the grant was accepted, then layoffs would be rescinded.

Councilmember Gomez expressed that he did not want to be here on this issue. Solutions were needed, so that was what the Task Force did. While not perfect, the solution recommended would allow the City to retain firefighters and hire six more. The proposal allowed for payback to reserves over time. He urged support by his colleagues.

Councilmember Giordano emphasized that the plan was contingent on all four components working together. She thanked Task Force for the good ideas presented.

Vice Mayor Polanski thanked staff, Mr. Gomez, IAFF members and the Fire Chief for coming to this point for a workable solution. No deviation or changes were sought, since it was a complete package necessary in this situation.

Mayor Esteves was proud of City Council for dealing with this issue, which has been going on for a long time. He termed a "propaganda campaign" had led to misinformation, and he did not care for that. The Mayor pointed out that Fire overtime costs in the last five years was \$7.1 million, a cost to taxpayers.

Councilmember Montano referred to the 2010-11 Civil Grand Jury of Santa Clara County that identified an outmoded service delivery model of most current Fire Departments in the country. That report noted that the majority of calls were emergency medical, not fires. Perhaps another model, such as EMT response, could be looked into.

Steve King, IAFF 1699 Local President, thanked the Council for the Task Force efforts and reviewing the overtime issue. He was happy to look at new ways to deal with the issue. His group appreciated Council moving forward with the SAFER grant, and care about safety of this community.

Mayor Esteves asked Mr. King if he had any comments on the recommended proposal. Mr. King replied that it was not yet voted on by the membership and they understood what they needed to do and would seek to make it work.

Mayor said Council really appreciated all our firefighters.

On a motion by Councilmember Giordano, and seconded by Councilmember Gomez, the City Council voted unanimously to reduced speaking time to two minutes per speaker, due to the large crowd in the audience.

Mayor Esteves then invited speakers to the podium.

Debra Higuera, lifetime resident, spoke of daughter whose life was saved when she was seven 7 years old and she would never forget that.

Tim, a resident, noted a comment by Councilmember Gomez about a 28% vacancy rate, however, it was the absentee rate.

Dan Manassau, Milpitas resident, commented on union tactics. He wanted to know why negotiators were not talking about total compensation for firefighters. Compared to New York City, total compensation was less than at the City of Milpitas. Salary and benefits

were too high in this city.

Mr. Lorin, Milpitas resident, said he would prefer to hear about 20 firefighters on duty at all times, not 15, especially if there was a large emergency. He was a SAFE volunteer.

Jonathan Ford, Parkville Ct., asked the audience how many were CPR trained and hands were raised. He stressed that more residents would need to be available in emergency.

Harry Evan, of Jacklin Rd, had twins and was a business owner. He picked this city for its public safety services and he had 19 years in public safety himself.

A woman asked if Councilmembers had ever been in a fire. She was, three years ago, and was so glad that the Milpitas firefighters came to her house, were so kind and helpful. They saved the house.

Mercedes, a resident reported her husband had had a heart attack and the Milpitas firefighters saved his life. She was grateful.

Susan Ryan, was a resident, a business owner, nurse, mother, and grandmother. She described an important time when the firefighters helped her. She thanked MFD.

Lenore Reed, of Grayhouse Drive, said public safety was very important in this city. Consider staffing issue, since that was the cause of the overtime. Milpitas must be covered in emergency.

Robert Marini, resident, complained of increasing population, which caused heavier burden to the fire dept.

Carol Harris, LaCrosse Drive, felt the City needed all the firefighters now employed and probably more. She said to the City Council "get rid of yourselves first" not public safety, police and fire. She complained of layoffs.

Robert Hughes, lived in Newark, said his city no longer had a Fire Department since the County took it over. He did not want to have any firefighters lose their jobs.

A woman resident had a fire at her home, and really appreciated the local firefighters who came to her home quickly. Quick response times were important for safety.

A man, lifetime resident, thanked the Council to let folks speak before they voted. He said to look at the budget as a whole and overtime costs need to work for the City. You cannot put a value on life. He disagreed with Councilmember Montano and that it was terrible to consider only EMTs rather than experienced firefighters, for the residents.

A young man asked the Council to think about how they would react if they were given a notice of layoff.

Esai Lopez, resident, had been on ride-a-longs with the firefighters and all of them were professionals in this city.

A woman resident worried about mother going into a grand mal seizure and needing emergency care. Firefighters had mother's life twice.

Alicia Drummond, resident, said that if the Council laid off firefighters, that would destroy the dreams of young people who want that profession.

Jeffrey Reed, resident, felt citizens needed to unify to come as one and take care of one another. He spoke of his father, who brought the family to Milpitas.

Vice Mayor Polanski thanked all those who spoke and shared their views. She repeated

that public safety was important, as a core service of the City. She encouraged all residents to join a SAFE team and learn CPR and learn how to use an AED. In a major emergency, the firefighters could not reach everyone in the City at same time. The solution proposed is a good one.

Councilmember Gomez stated that public safety was the number one priority. 70% of the City's budget goes to Police and Fire in Milpitas. Recommendations were good, even if they were not perfect to deal with the issue.

Councilmember Giordano wearing a Councilmember hat appreciated the Mayor's comments. They had to address this issue, a "runaway train." She supported the recommendation as a fiscal conservative. Her daughter was a firefighter, and she thought of her during this discussion.

Mayor Esteves thanked all those who spoke and provided input to Council. Personally, he appreciated the response time of Milpitas firefighters, and they helped his mother-in-law when she fell and broke her hip. He appreciated the work of the Task Force as well as working together with residents.

Motion: to manage the issue of Fire Department overtime expense, 1) accept the federal SAFER grant award of \$2.1 million and hire six firefighters; 2) transfer \$600,000 from reserves to the Fire Department, to be recouped over six years; 3) delay any layoffs to March 19, 2013, allowing time for a vote by the union members on this solution; and, 4) if the IAFF Local 1600 agrees to eliminate minimum staffing provision in the current Memorandum of Understanding and the grant is accepted, then layoffs would be rescinded. This motion included to continue the City Council Task Force on Fire Department Budget.

Motion/Second: Vice Mayor Polanski/Councilmember Montano

Motion carried by a vote of: AYES: 5  
NOES: 0

## REPORTS

Two items were approved on consent calendar.

## NEW BUSINESS

Three items were approved on consent calendar.

### 8. Financial Status Report through December 31, 2012

Finance Director Emma Karlen reviewed the current financial status of the city overall, expressing the anticipated budget shortfall when preparing this year's budget, last year. She provided revised projections of General Fund revenues and expenditures for FY 2012-13. She told Council that the distribution of funds that are distributed from the former Redevelopment Agency area were to be directed to capital projects, as previously directed. The City could balance its budget at the end of the Fiscal Year with the use of Equipment Replacement Reserve funds, as authorized by Council at budget adoption.

Ms. Karlen identified key dates this year for planning to adopt the FY 2013-14 budget. The Council budget hearing is scheduled on Tuesday, May 14, 2013. She also offered to provide a budget study session for the Council, if desired, in April.

Vice Mayor Polanski would like to have the budget study session on a separate date from any regular City Council meeting date.

Mayor Esteves inquired, regarding the next Capital Improvement Program, would it address all line items that were previously to be funded by the Redevelopment Agency? Staff replied that the CIP already would have removed the former RDA as a funding source, so yes.

Motion: to accept the oral report from the Finance Director, and schedule a budget study session on separate date from regular City Council meeting dates

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

City Manager Tom Williams publicly thanked Finance Director Karlen for all her hard work, many hours, behind the scenes with the management and the Firefighters IAFF union group, on the solution reached this evening regarding the overtime issue in the Fire Department.

**RESOLUTIONS**

Two Resolutions were adopted on consent calendar.

**CONTRACTS**

Six items were approved on consent calendar.

**ADJOURNMENT**

Mayor Esteves adjourned the meeting at 9:39 PM.

*Meeting minutes respectfully submitted by  
Mary Lavelle, City Clerk*

January 2013						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
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27	28	29	30	31		

March 2013						
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17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

# Council Calendar

## February 2013

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					<b>1</b>	<b>2</b>
<b>3</b>	<b>4</b> <b>7:00 PM</b> -Parks, Recreation & Cultural Resources Comm (AP)	<b>5</b> <b>6:00 PM</b> -Closed Session <b>7:00 PM</b> -City Council	<b>6</b> <b>7:30 AM</b> -VTA Northeast Group (JE) <b>5:30 PM</b> -Veterans Commission (DG) <b>7:00 PM</b> -Community Advisory Comm. (AG)	<b>7</b>	<b>8</b>	<b>9</b>
<b>10</b>	<b>11</b> <b>6:00 PM</b> -Economic Development Commission (CM)	<b>12</b> <b>City Holiday</b>  Lincoln's Birthday	<b>13</b> <b>7:00 PM</b> -Planning Commission	<b>14</b> <b>4:00 PM</b> -VTA Policy Advis Comm (AG) <b>4:30 PM</b> -Treatment Plant Advisory Committee (JE) (San Jose) <b>7:00 PM</b> -Youth Advisory Comm. (DG) <b>7:00 PM</b> -Cities Association of Santa Clara County (JE)	<b>15</b>	<b>16</b>
<b>17</b>	<b>18</b> <b>City Holiday</b>  PRESIDENTS DAY	<b>19</b> <b>6:00 PM</b> -Closed Session <b>7:00 PM</b> -City Council	<b>20</b>	<b>21</b> <b>9:30 AM</b> -Coyote Flood Protection and Watershed Advisory Comm (CM)	<b>22</b>	<b>23</b> <b>12:00 PM</b> Tribute Celebration for Ben Gross (Senior Center)
<b>24</b>	<b>25</b> <b>4:00 PM</b> -Oversight Board (AG) <b>7:00 PM</b> -Telecommunications Commission (AP)	<b>26</b> <b>1:30 PM</b> -Senior Advisory Commission (JE)	<b>27</b> <b>7:00 PM</b> -Planning Commission	<b>28</b> <b>7:00 AM</b> -Milpitas Chamber of Commerce Board (DG) <b>12:00 PM</b> -Terrace Gardens Board of Directors (DG) <b>1:30 PM</b> -County Library Joint Powers Authority Board (CM) <b>7:00 PM</b> -Sister Cities Comm (CM)		

February 2013						
S	M	T	W	T	F	S
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April 2013						
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21	22	23	24	25	26	27
28	29	30				

# Council Calendar

## March 2013

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					<b>1</b>	<b>2</b>
<b>3</b>	<b>4</b> <b>7:00 PM</b> -Parks, Recreation & Cultural Resources Commission (AP)	<b>5</b> <b>6:00 PM</b> -Closed Session <b>7:00 PM</b> -City Council	<b>6</b> <b>7:30 AM</b> -VTA Northeast Group (JE) <b>7:00 PM</b> -Community Advisory Comm. (AG)	<b>7</b> <b>5:30 PM</b> -VTA Board of Directors (JE)	<b>8</b>	<b>9</b>
<b>10</b>	<b>11</b> <b>6:00 PM</b> -Economic Development Commission (CM) <b>7:00 PM</b> -Bicycle Pedestrian Adv. Comm. (AG) (Sports Center)	<b>12</b>	<b>13</b> <b>7:00 PM</b> -Planning Commission	<b>14</b> <b>4:00 PM</b> -VTA Policy Advisory Committee (AG) <b>4:30 PM</b> -Treatment Plant Advisory Committee (JE) (San Jose) <b>7:00 PM</b> -Cities Assoc of SCC (JE) <b>7:00 PM</b> -Youth Advisory Comm. (DG)	<b>15</b>	<b>16</b>
<b>17</b>	<b>18</b> <b>7:00 PM</b> -Telecommunications Commission (AP) <b>7:00 PM</b> -Library Advisory Commission (CM)	<b>19</b> <b>6:00 PM</b> -Closed Session <b>7:00 PM</b> -City Council	<b>20</b>	<b>21</b> <b>9:30 AM</b> -Coyote Flood Protection and Watershed Advisory Comm (CM) <b>4:00 PM</b> -SVRT Program Working Committee (JE) <b>7:00 PM</b> -Bay Area Water Supply Conserv. Agency (AG) (Foster City) <b>7:00 PM</b> -Emergency Prep. Commission (AP)	<b>22</b>	<b>23</b>
<b>24</b>	<b>25</b> <b>6:00 PM</b> -Arts Commission (DG) <b>7:00 PM</b> -Public Art Committee (DG)	<b>26</b>	<b>27</b> <b>7:00 PM</b> -Planning Commission	<b>28</b> <b>7:00 AM</b> -Milpitas Chamber of Commerce Board (DG) <b>12:00 PM</b> -Terrace Gardens Board of Directors (DG) <b>7:00 PM</b> -Sister Cities Commission (CM)	<b>29</b>	<b>30</b>

**RESOLUTION NO. HA\_\_**

**A RESOLUTION OF THE HOUSING AUTHORITY OF THE CITY OF MILPITAS  
AUTHORIZING AND DIRECTING STAFF TO RELEASE THE RESALE RESTRICTIONS ON  
THIRTY SEVEN AFFORDABLE HOUSING UNITS**

**WHEREAS**, California Redevelopment Law authorized the Milpitas Redevelopment Agency (“Agency”) to set aside at least twenty percent (20%) of all tax increment revenue generated from the project area for the purpose of increasing, improving and preserving the community’s supply of low and moderate-income housing; and

**WHEREAS**, California Redevelopment Law required that fifteen percent (15%) of the housing units within the redevelopment project area shall be affordable to low and moderate-income households. Nine percent (9%) of the units are to be affordable to low and moderate-income households, and six percent (6%) are to be very low-income households; and

**WHEREAS**, the Housing Element of the General Plan for the City has been certified by the Department of Housing and Community Development and identifies a Regional Housing Needs Allocation of 2,487 dwelling units for the City, of which 1,551 dwelling units are needed for very low, low, and moderate-income households; and

**WHEREAS**, the Housing Authority endeavors to comply with the affordable housing regulations governing the former Redevelopment Agency in the provision of affordable housing within Milpitas; and

**WHEREAS**, the existing housing market conditions over the past several years have made it extremely difficult for moderate income units to compete with market rate units because the difference in cost is minimal. There is currently no market for moderate-income restricted units since buyers are currently purchasing unrestricted market-rate units; and

**WHEREAS**, the Affordable Housing Regulatory Agreement governing the Coyote Creek Project requires, among other things, the development and sale of 37 moderate income level affordable units and the owner and developer of these units, William Lyons Homes, LLC, has contacted the Housing Authority and proposed the elimination of the affordability restrictions on these affordable units in exchange for \$1,480,000 to be deposited into the Affordable Housing Fund.

**NOW, THEREFORE** the Board of the Housing Authority of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The Milpitas Housing Authority Board has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The Executive Officer (City Manager) for the Housing Authority for the City of Milpitas is authorized to execute an amendment to the Affordable Housing Regulatory Agreement

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//

releasing the 37 moderate income affordable units from affordability restrictions upon deposit of the sum of \$1,480,000 by the developer into the Affordable Housing Fund.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, Authority Secretary

\_\_\_\_\_  
Jose S. Esteves, Chair

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, Authority Counsel



**William Lyon Homes, Inc.**

February 6, 2013

*Sent Via Hand Delivery*

Mr. Felix Reliford  
Principal Housing Planner  
City of Milpitas  
455 E. Calaveras Blvd.,  
Milpitas, Ca 95035-5411

**RECEIVED**

**FEB 06 2013**

**HNP DIVISION**

Subject: Coyote Creek- Affordable Housing Agreement

Dear Felix,

The Affordable Housing Agreement (the Agreement) recorded against the property as Document 20006558 on October 6, 2008, requires forty-four (44) homes be restricted to lower income households with seven (7) units designated low-income and thirty-seven (37) designated moderate income. Please consider this letter our formal request to amend the Agreement to build and sell seven (7) low-income, two-bedroom units, and pay an in-lieu affordable housing fee of \$1,480,000.00 exchange for releasing the 37 moderate income units.

To provide some background, the Agreement was negotiated and approved before it was clear we would experience the worst decline in housing prices in U.S. history. After years of falling home prices, the disparity between market rate and affordable housing has narrowed significantly.

Attached you will find a copy of our most recent price release for the Row Towns and Motor Courts at Coyote Creek. As shown in the following table, the price of a moderate income home, as defined in the Agreement, and established by the City of Milpitas, is between \$447,900 and \$489,900. By comparison, the market rate sale price for the same home is between \$484,990 and \$524,990. The market rate list price is an average of \$23,000 or five percent (5%) higher than the required affordable list price for sixty-eight percent (68%) of the 37 restricted moderate income homes. The average market list price for all 37 homes is another two-and-a-half percent (2.5%) higher than the required affordable list price.

<b>Product Plan Type</b>	<b># Units</b>	<b>Affordable List Price</b>	<b>Market Rate List Price</b>	<b>Pricing Difference</b>
Row Town - Plan A	7	\$447,900	\$484,990	(\$37,090)
Row Town - Plan B	7	\$489,900	\$504,990	(\$15,090)
Row Town - Plan D	11	\$489,900	\$519,990	(\$30,090)
Motor Court - Plan A	4	\$447,900	\$504,990	(\$57,090)
Motor Court - Plan C	8	\$447,900	\$524,990	(\$77,090)

Mr. Felix Reliford  
Principal Housing Planner  
Coyote Creek- Affordable Housing Agreement  
February 6, 2013  
Page 2

Over the past five years, there has been a paradigm shift in the housing market where the gap between market rate and affordable pricing is no longer insurmountable for moderate income households to enter the free housing market. The combination of pricing parity and historically low interest rates has made it much easier for moderate income households to purchase a market rate home without restrictions. Conversely, the resale restrictions, limited upside equity and other governmental restrictions tied to the Agreement have all but eliminated qualified, eligible homebuyers for the moderate income units. Consequently, there is no market for restricted moderate income units, and a standing inventory of restricted moderate income homes can be expected as a result of this equality if the Agreement is not amended.

In response to the future challenges of selling the restricted moderate income units, and given precedent has been established by the City of Milpitas for amending affordable housing agreements to alleviate this issue, we respectfully request an amendment to our Agreement as follows:

1. Provide a total of seven (7) low income, two-bedroom units as illustrated on the attached map;
2. Pay an in-lieu affordable housing fee of \$1,480,000.00, which is equal to \$40,000/unit in exchange for releasing the 37 moderate income units.

It is our hope that you will accept this request, and initiate the process of bringing it before the City Council with a recommendation of approval at the third meeting in February. Should you have any questions or require additional information, please contact me at your earliest convenience.

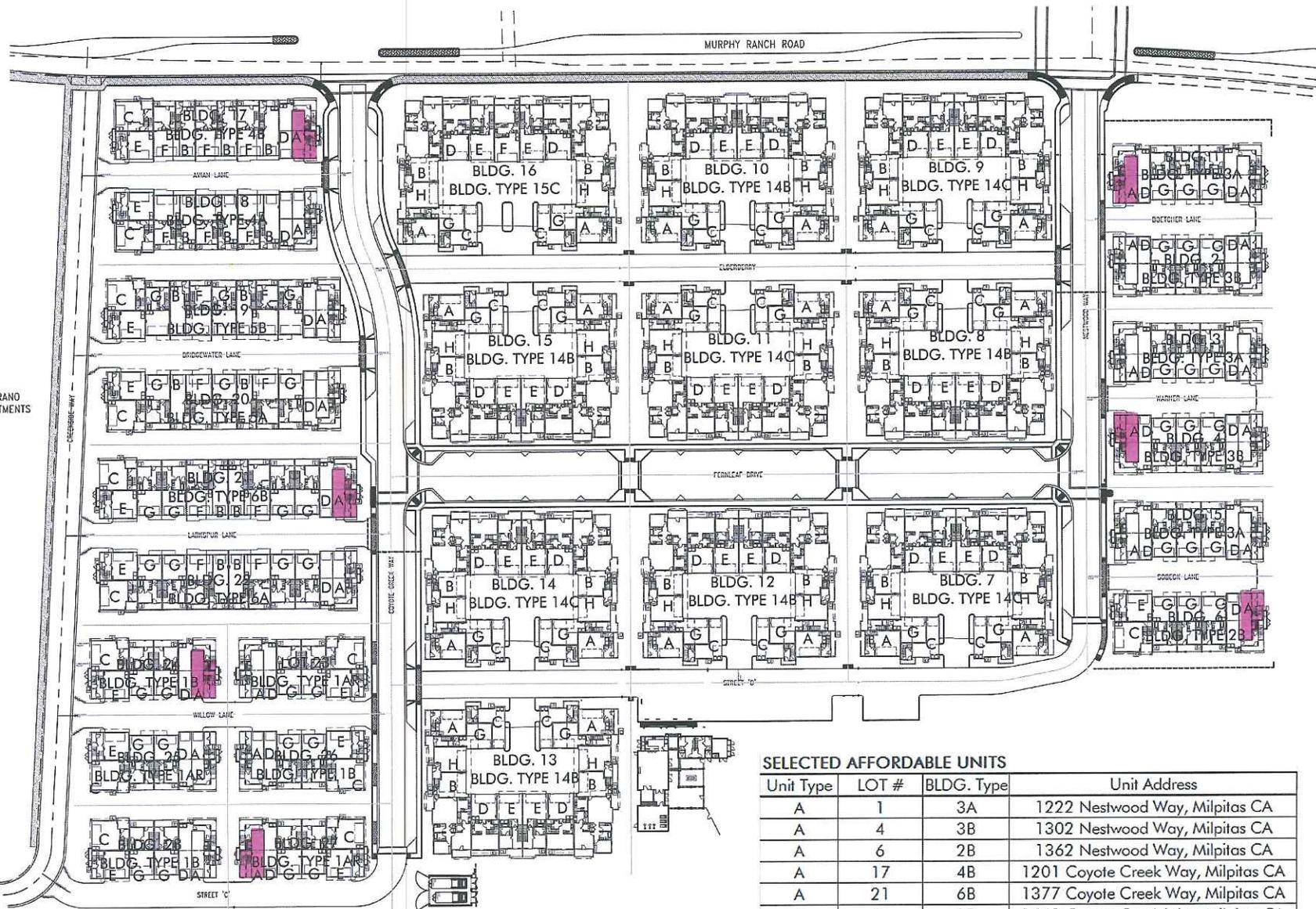
Sincerely,

William Lyon Homes



Eric T. Keller  
Project Manager

cc: Carl Morabito William Lyon Homes Vice President  
Michael Zarola Resmark Communities Vice President-Owner



**Coyote Creek  
 Row/Townhomes  
 for William Lyon Homes**

**SITE LEGEND**

 Affordable Housing  
 Regulatory Agreement  
 Selected Restrictive Units



**SELECTED AFFORDABLE UNITS**

Unit Type	LOT #	BLDG. Type	Unit Address
A	1	3A	1222 Nestwood Way, Milpitas CA
A	4	3B	1302 Nestwood Way, Milpitas CA
A	6	2B	1362 Nestwood Way, Milpitas CA
A	17	4B	1201 Coyote Creek Way, Milpitas CA
A	21	6B	1377 Coyote Creek Way, Milpitas CA
A	24	1B	1449 Coyote Creek Way, Milpitas CA
A	27	1A	1561 Coyote Creek Way, Milpitas CA

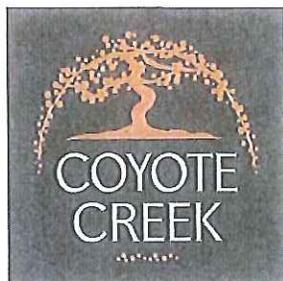
REVISIONS		
Δ	DESCRIPTION	DATE BY
	REVISED PER CLIENT	(02/06/2013)

Reference  
 Site Plan

Scale: 1" = 40' PRINTED 02-06-13

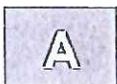
JOB NO. 366,020 SHEET

DRAWN xxx  
 CHECK xxx **A 0.5**  
 DATE xxx/xx/xx



## The Rows

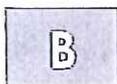
Residence  
Approx. 1,198 sq. ft.



Three-Story • 2 Bedrooms • 2.5 Bathrooms • 2-Car Tandem Garage

**Priced From \$489,990**

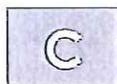
Residence  
Approx. 1,370 sq. ft.



Three-Story • 3 Bedrooms • 3 Bathrooms • 2-Car Tandem Garage

**Not Available**

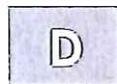
Residence  
Approx. 1,464 sq. ft.



Three-Story • 3 Bedrooms • 2.5 Bathrooms • 2-Car Garage

**Not Available**

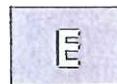
Residence  
Approx. 1,462 sq. ft.



Three-Story • 3 Bedrooms • 2.5 Bathrooms • 2-Car Tandem Garage

**Priced From \$524,990**

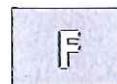
Residence  
Approx. 1,530 sq. ft.



Three-Story • 3 Bedrooms • 2.5 Bathrooms • 2-Car Garage

**Not Available**

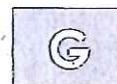
Residence  
Approx. 1,668 sq. ft.



Three-Story • 3 Bedrooms + Bonus • 3.5 Bathrooms • 2-Car Garage • Optional Full Bathroom at Powder

**Not Available**

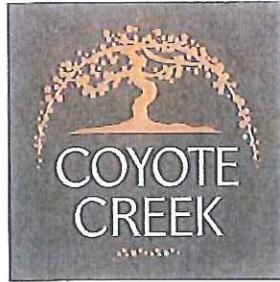
Residence  
Approx. 1,788 sq. ft.



Three-Story • 3 Bedrooms + Den • 3.5 Bathrooms • 2-Car Garage

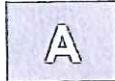
**Priced From \$604,990**

*In our continuing policy of research and improvement, William Lyon Homes reserves the right to change product, design specifications, materials, prices and terms without prior notice. Product type is subject to availability. Optional features may be included at additional cost subject to construction cut-off dates. All square footage is approximate. All maps, plans, landscaping and elevation renderings are artist conceptions and are not to scale. Architectural elements such as window placement and porches may vary according to exterior elevation of the home. Some of these variances may also cause minor variations in square footage. See your sales representative for details. Adam Turner, DRE License #01341669 and Trinh Tran, DRE License #01346891. 12/22/2012.*



## The Courts

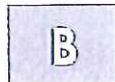
Residence  
Approx. 1,218 sq. ft.



Three-Story • 2 Bedrooms • 2.5 Bathrooms • 2-Car Garage

**Priced From \$504,990**

Residence  
Approx. 1,316 sq. ft.



Single-Story • 2 Bedrooms • 2 Bathrooms • 2-Car Garage

**Priced From \$524,990**

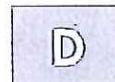
Residence  
Approx. 1,363 sq. ft.



Three-Story • 2 Bedrooms • 2.5 Bathrooms • 2-Car Tandem Garage

**Priced From \$524,990**

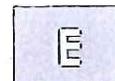
Residence  
Approx. 1,454 sq. ft.



Two-Story • 3 Bedrooms • 2.5 Bathrooms • 2-Car Garage

**Priced From \$554,990**

Residence  
Approx. 1,686 sq. ft.



Three-Story • 4 Bedrooms • 3.5 Bathrooms • 2-Car Garage

**Priced From \$609,990**

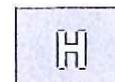
Residence  
Approx. 1,951 sq. ft.



Three-Story • 3 Bedrooms • 2 Bathrooms • 2-Car Garage

**Priced From \$654,990**

Residence  
Approx. 1,972 sq. ft.



Three-Story • 3 Bedrooms + Den • 2.5 Bathrooms • 2-Car Garage

**Priced From \$664,990**

*In our continuing policy of research and improvement, William Lyon Homes reserves the right to change product, design specifications, materials, prices and terms without prior notice. Product type is subject to availability. Optional features may be included at additional cost subject to construction cut-off dates. All square footage is approximate. All maps, plans, landscaping and elevation renderings are artist conceptions and are not to scale. Architectural elements such as window placement and porches may vary according to exterior elevation of the home. Some of these variances may also cause minor variations in square footage. See your sales representative for details. Adam Turner, DRE License #01341669 and Trinh Tran, DRE License #01346891. 12/22/2012.*

CITY OF MILPITAS

\*1

City Clerk's Office COMMISSION/COMMITTEE APPLICATION

Library  
Community Advisory Commission

JAN 31 2013

PROVIDE COMPLETE INFORMATION (in black ink)

RECEIVED

Mr.

(Mrs./Ms./Miss)

Name: VAN LAN T. TRUONG  
First Middle Last

Address: 1327 CROLEO STREET MILPITAS, CA 95035  
Number Street (apt. # if needed) City & Zip Code

Telephone Number(s) e-mail address

Present Employer: Community Health Partnership / (Contract work) Business Telephone: 408, 556, 6605

Business Address: 100 N. Winchester Blvd. Ste 200 Santa Clara CA 95050 Occupation: Health Education / Patient Navigator

Education: If Youth Advisory Commission applicant, indicate your grade/school:

College, Professional, Vocational, or other schools attended	Major Subject	Date	Degree
University of Massachusetts, Amherst	Economic / Business	6/1982	B.A. Economic

List community organizations to which you belong or have belonged (additional information may be attached). If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).

Date	Name of Organization or Branch of Military	Officer / Member
1986-Pres	National Congress of Vietnamese American	Pres of Board until 2012
1987-2011	Vietnamese American Women's League of Massachusetts Women's League	Pres/Founder until 2011

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):

I have been a community activist/advocate/organizer for the past many years. My qualifications + experience cover a broad area: Real Estate, Banking, economic development, housing, health care, education, public relations, marketing, etc. I am passionate about the community & serving people. I would be an asset for this Commission.

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

Signature: Van Lam Truong Date: Jan. 30, 2013

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant.

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

Fax (586-3030), e-mail (mlavelle@ci.milpitas.ca.gov), mail or drop off your completed application to:  
City Clerk, 455 E. Calaveras Blvd., Milpitas, CA 95035

**City of Milpitas  
Parks, Recreation and Cultural Resources Commission  
2013 Work Plan**

Founded July 1, 1992. The Parks, Recreation, and Cultural Resources Commission (PRCRC) advises the City Council regarding the operation and maintenance of recreation, leisure services, and historic preservation activities. The Commission also advises the City Council on the acquisition, planning, and development of new and existing parks and facilities. The PRCRC earned the prestigious award as the state's "Outstanding Commission" for 2008-2009 by the California Association of Parks & Recreation Commissioners & Board Members (CAPRCBM). The Commission consists of seven members and two alternates. Members are appointed to three-year terms and alternates are appointed to two-year terms.

**Goals**

1. Park Historical Marker Project
2. Park Donation Policy
3. Recycling Collaboration Effort
4. Sports Center Master Plan
5. Main Street Park (continued update)
6. Alviso Adobe Park (final update)
7. Soccer Field Acquisition/McCandless Project

**Ongoing Tasks**

1. Receive updates on the Park Master Plan
2. Continue PRCRC liaison reports
3. Receive CIP status updates
4. Inform commissioners of Legislative updates
5. Visit parks, facilities and historic sites on annual PRCRC tour.
6. Review Community Garden usage and conditions
7. Review the Brown Act with PRCRC Commissioners



## **YOUTH ADVISORY COMMISSION COMMUNITY SERVICE SCHOLARSHIP APPLICATION**

**Scholarship Application and Questionnaire Due: April 1<sup>st</sup>, 2013**

The City of Milpitas Youth Advisory Commission has established a scholarship program for graduating seniors looking for assistance to continue their education. The \$500 monetary scholarship will be awarded to one (1) high school senior. The Youth Advisory Commission will be selecting the recipient according to the following criteria:

- Must be a high school senior and a resident of Milpitas.
- Must demonstrate a history of community service beyond any school requirements.
- Must demonstrate exemplary leadership and be a role model in his/her community.
- Must complete the scholarship questionnaire, consisting of three short essay questions.
- Must possess a minimum 2.5 accumulative, weighted G.P.A. Transcript is required.
- Must be attending college by fall 2013.
- A letter of recommendation, including contact information, from a teacher, counselor, or organization leader.
- Applications must be received no later than April 1, 2013 at 5:00 p.m.

*Please Print or Type*

\_\_\_\_\_

*Last*

*First*

*MI*

\_\_\_\_\_

*Street, City & Zip*

\_\_\_\_\_

*Phone*

\_\_\_\_\_

*Cell Phone*

\_\_\_\_\_

*Email*

\_\_\_\_\_

*Graduating High School*

\_\_\_\_\_

*City*

\_\_\_\_\_

*College or University you plan on attending*

\_\_\_\_\_

*G.P.A (accumulative, weighted)*

**Please Note:** Please attached transcript. G.P.A and transcripts will be kept confidential.



**YOUTH ADVISORY COMMISSION COMMUNITY SERVICE  
SCHOLARSHIP QUESTIONNAIRE**  
*(Attach to application)*

Please type your responses to the following short essay questions on a separate piece of paper.  
300 word limit per question:

1. Explain the importance of community service.
2. How have you been involved in community service? More specifically, what role have you played in leading, designing, and/or implementing a community service project?
3. What have you learned about yourself through community service?

All applications and questionnaires are to be submitted by April 1, 2013 to:

Samu Tiumalu  
Youth & Teen Coordinator  
1325 East Calaveras Blvd.  
E-mail: [stiumalu@ci.milpitas.ca.gov](mailto:stiumalu@ci.milpitas.ca.gov)  
Questions: 408-586-3222

I, the undersigned do hereby agree to allow the individual named herein to participate in the Youth Advisory Commission Community Service Scholarship program. I certify that all statements made in this application are true and correct to the best of my knowledge, and I agree and understand that if I am to receive this scholarship, any false statements may result in my disqualification.

\_\_\_\_\_  
*Signature of Applicant*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Signature of Parent/Legal Guardian (if under 18)*

\_\_\_\_\_  
*Date*

**RESOLUTION NO. \_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS  
DELEGATING TO THE PUBLIC WORKS DIRECTOR THE AUTHORITY TO TAKE  
EMERGENCY ACTION AND TO ALLOW EMERGENCY CONTRACTS TO BE  
EXECUTED WITHOUT GIVING NOTICE SOLICITING COMPETITIVE BIDS**

**WHEREAS**, in the event of an emergency which results in damage to City public facilities requiring immediate remedial action, it could be very detrimental to public health, safety and welfare if the remedial action were to be delayed by the issuance of a formal notice for bids for contracts; and

**WHEREAS**, pursuant to Sections 20168 and 22050 of the Public Contract Code, a general law city may undertake immediate action to repair or replace public facilities and to procure the necessary equipment, services and supplies for those purposes, without giving notices soliciting competitive bids for contracts, in the case of actual emergencies; and

**WHEREAS**, pursuant to Section 22050 of the Public Contract Code, the City Council of a general law city, by a four-fifths vote, may delegate by resolution the authority to order such emergency action to the agency's administrative officer or other nonelected official in order to safeguard public health, safety and welfare.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. Pursuant to Public Contract Code Sections 20168 and 22050(b)(1), the authority to order emergency remedial action and to execute emergency contracts without giving notice soliciting competitive bids is delegated to the Director of Public Works by a four-fifths vote of this City Council.
3. If the Director of Public Works, pursuant to the authorization set forth herein, orders any emergency action, he or she shall report to the City Council the reasons justifying why the emergency did not permit any delay that would have been caused by a competitive solicitation for bids and why the action was necessary to respond to the emergency. Furthermore, the City Council shall review the action at every regularly scheduled meeting thereafter until the action is terminated.
4. At each review, the City Council shall determine, by a four-fifths vote, whether there is a need to continue the action, unless the Public Works Director terminates the action prior to the City Council reviewing the emergency action and making a determination pursuant to this Resolution and Section 22050 of the Public Contract Code.

5. When the City Council reviews the emergency action pursuant to this Resolution, it shall terminate the action at the earliest possible date that conditions warrant so that the remainder of the action may be completed by giving notice for bids for contracts.
  
6. The City Council does find, based upon the administrative report and testimony and materials presented at the City Council meeting of February 19, 2013, that a current emergency does exist and that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health and property in that the current buildings at 1650-1690 and 1740-1830 McCandless Drive are unsecured, prone to break-ins and illegal uncontrolled use and have been subject to vandalism, graffiti, homeless encampments, burglary, public dumping and other public nuisances constituting a hazard to human safety, and are subject to damage or risk of fire to buildings and improvements on the site and to nearby properties. Based on advice of staff, the City Council finds that contracting for the immediate demolition of the building structures at the site is the most expeditious means of addressing the emergency and authorizes the Director of Public Works to take all necessary action resulting in such demolition.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

(requires 4/5 vote)

ATTEST

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

















YOU CAN PAINT  
OVER THIS. ?  
BUT NOT THE...







\* MANOS  
\* ORDEN  
\* MIA

MAGO?



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EMERG

EMERGENCY



**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS  
ADOPTING THE MEMORANDUM OF UNDERSTANDING WITH THE  
MILPITAS MID-MANAGEMENT AND CONFIDENTIAL UNIT FOR THE PERIOD OF  
JANUARY 1, 2013 THROUGH DECEMBER 31, 2013**

**WHEREAS**, the City of Milpitas (“City”) and the Mid-Management and Confidential Unit (“Midcon”) have considered entering into a Memorandum of Understanding with the effective dates of January 1, 2013 through December 31, 2013 (“MOU”).

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The MOU between Midcon and the City is hereby adopted to be effective from January 1, 2013 through and including December 31, 2013.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_ 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN THE**

**CITY OF MILPITAS**

**AND**

**UNITED PUBLIC EMPLOYEES OF CALIFORNIA  
UPEC LOCAL 792, AFL-CIO**

**(MID-MANAGEMENT AND CONFIDENTIAL UNIT)**

**January 1, 2013 through December 31, 2013**

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MILPITAS,  
THE MID-MANAGEMENT AND CONFIDENTIAL UNIT,  
REPRESENTED BY UPEC LOCAL 792, AFL-CIO**

**January 1, 2013 through December 31, 2013  
PREAMBLE**

This Memorandum of Understanding (MOU) shall be effective from 12:01 a.m., on January 1, 2013 through December 31, 2013.

- I Except as to the effective dates or as changed below in paragraphs II and III, all terms and conditions contained in that certain Memorandum of Understanding between United Public Employees of California (UPEC Local 792, AFL-CIO) (mid-management and confidential unit) and the City of Milpitas with effective dates of January 1, 2012—December 31, 2012, adopted by City Council Resolution No. 8157 on February 7, 2012, (“Prior MOU”) are incorporated herein by reference and adopted as a part of this MOU as if fully set forth herein.
- II Section 21.03 of the Prior MOU shall be replaced by the following paragraph:
- Effective the first full pay period following Council adoption of this MOU, in addition to paying the applicable employee PERS contribution rate to the Miscellaneous Plan, employees will pay 12.3% of PERSable salary toward the employer PERS contribution rate on a pre-tax basis.
- III Changes mandated as a result of modifications to California State Law, in particular those imposed by the California Public Employees Pension Reform Act of 2013.

UNION REPRESENTATIVES:

CITY REPRESENTATIVES:

\_\_\_\_\_  
Steve Allen  
Advocate-Organizer, UPEC Local 792

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Leslie Stobbe

\_\_\_\_\_  
Carmen Valdez, HR Director

\_\_\_\_\_  
Felix Reliford

\_\_\_\_\_  
Emma Karlen, Finance Director

\_\_\_\_\_  
Chris Darker, Business Manager  
UPEC Local 792

**RESOLUTION NO. \_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS  
ADOPTING THE MEMORANDUM OF UNDERSTANDING WITH THE MILPITAS  
PROFESSIONAL AND TECHNICAL GROUP FOR THE PERIOD  
OF JANURARY 1, 2013 THROUGH DECEMBER 31, 2013**

**WHEREAS**, the City of Milpitas (“City”) and the Milpitas Professional and Technical Group (“Protech”) have considered entering into a Memorandum of Understanding with the effective dates of January 1, 2013 through December 31, 2013 (“MOU”).

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The MOU between Protech and the City is hereby adopted to be effective from January 1, 2013 through and including December 31, 2013.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

**MILPITAS PROFESSIONAL AND TECHNICAL GROUP  
(PROTECH)**

**AN AFFILIATE OF  
LIUNA/UPEC LOCAL 792, AFL-CIO**

**MEMORANDUM  
OF  
UNDERSTANDING**

**January 1, 2013 through December 31, 2013**

**CITY OF MILPITAS AND  
MILPITAS PROFESSIONAL AND TECHNICAL GROUP (ProTech)  
AN AFFILIATE OF LIUNA/UPEC LOCAL 792, AFL-CIO  
COMPREHENSIVE MEMORANDUM OF UNDERSTANDING ON SALARIES,  
FRINGE BENEFITS AND WORKING CONDITIONS  
January 1, 2013 through December 31, 2013**

The authorized representatives of the City Council of the City of Milpitas, hereafter referred to as the “City” and the authorized representatives of the Milpitas Professional and Technical Group, hereafter referred to as the “Union,” do jointly accept and agree to all the terms and conditions of employment set forth in this Comprehensive Memorandum of Understanding (MOU), pursuant to Section 15.13 of the Personnel Rules and Regulations of the City of Milpitas (as amended).

The term of this MOU shall be for one year commencing at 12:01 a.m. on January 1, 2013, and terminating at midnight on December 31, 2013.

- I Except as to the effective dates and as changed below in paragraphs II and III, all terms and conditions contained in that certain Memorandum of Understanding between Protech and the City of Milpitas with effective dates of July 1, 2011—December 31, 2012, adopted by City Council Resolution No. 8098 on June 7, 2011, (“Prior MOU”) are incorporated herein by reference and adopted as a part of this MOU as if fully set forth herein.
- II The fourth paragraph of Section 22.01 of the Prior MOU shall be replaced by the following paragraph:
- Effective the first full pay period following Council adoption of this MOU, in addition to paying the applicable employee PERS contribution rate to the Miscellaneous Plan, employees will pay 12.9% of PERSable salary toward the employer contribution rate on a pre-tax basis.
- III Changes mandated as a result of modifications to California State Law, in particular those imposed by the California Public Employees Pension Reform Act of 2013.

PROTECH ASSOCIATION  
REPRESENTATIVES

CITY REPRESENTATIVES

\_\_\_\_\_  
Steve Allen, UPEC Local 792

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Nick Wolf

\_\_\_\_\_  
Carmen Valdez, HR Director

\_\_\_\_\_  
Emma Karlen, Finance Director

Recording Requested by and  
When Recorded Mail to:

**\*8**

City of Milpitas  
455 East Calaveras Boulevard  
Milpitas, CA 95035  
Attention: Office of the City Clerk

Record without fee under  
Section 6103 - Government Code  
State of California

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**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING INITIAL  
ACCEPTANCE AND REDUCING PERFORMANCE BOND OF THE 2013 STREET RESURFACING,  
PROJECT NO. 4268**

**WHEREAS**, the City of Milpitas has heretofore entered into a contract with O’Grady Paving, Inc., for the subject project, and the City Engineer of the City of Milpitas has recommended acceptance of said improvement as completed in accordance with plans, specifications and approved change orders and correction lists, and in accordance with the final inspection of said City Engineer.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City of Milpitas does hereby accept said improvement as completed on this 19th day of February, 2013, and does hereby authorize and direct the City Engineer of the City of Milpitas to file a Notice of Completion in accordance with the provisions of Section 3093 of the Civil Code of the State of California, and does hereby authorize and direct the City Engineer to file a Certificate of Completion in accordance with the provisions of Section 4005 of the Government Code of the State of California, if said work was by day’s labor or force account. The penal sum of the faithful performance bond securing said improvement may be reduced to the sum of \$84,183 upon request of principal and surety, with said penal sum as reduced to apply from the date of completion and acceptance of said improvements and to extend for the balance of the term of said bond, provided that said term shall not be less than one year.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

Recording Requested by and  
When Recorded Mail to:

City of Milpitas  
455 East Calaveras Boulevard  
Milpitas, CA 95035  
Attention: City Clerk

Record without fee under  
Section 6103 - Government Code  
State of California

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CITY OF MILPITAS

NOTICE OF COMPLETION  
(Civil Code Section 3093)

NOTICE IS HEREBY GIVEN:

1. On or about February 19, 2013, the City of Milpitas, a municipal corporation of the State of California, whose address is City Hall, 455 East Calaveras Boulevard, Milpitas, California, 95035 (as owner) entered into a contract for work of: **2013 Street Resurfacing Project.**
2. A description of the site of which the City is owner for said work of improvement is: **various City streets** in the City of Milpitas, Santa Clara County, California, more particularly described on the plans.
3. The nature and interest or estate of the City as owner of said site is: **City of Milpitas.**
4. The name and address of the original contractor is: **O’Grady Paving, Inc., 2513 Wyandotte Street, Mountain View, CA 94043.**
5. A general statement of the kind of work done or materials furnished to the City is as follows: **Remove and replace failed asphalt pavement, placing asphalt rubber chip seal and slurry seal.**
6. The name of the sureties upon the bond of the contractor for said work of improvement is: **Travelers Casualty and Surety Company of America, 100 California St, Suite 300, San Francisco, CA 94111; bond # 105788372.**
7. Said work of improvement was accepted by the Milpitas City Council as completed on February 19, 2013.

\*\*\*\*\*

I, the undersigned, declare that I am the **City Engineer** of the City of Milpitas and am authorized to execute the foregoing Notice of Completion and this Verification thereof. I have read the foregoing Notice of Completion. I declare under penalty of perjury that the foregoing Notice of Completion is true and correct. Executed on February 19, 2013 at Milpitas, California.

\_\_\_\_\_  
Kathleen Phalen, Acting PW Director/City Engineer  
City of Milpitas

---

NOTE: RECORD WITHIN 10 DAYS OF ACCEPTANCE WITH COUNTY RECORDER OF SANTA CLARA COUNTY

Recording Requested by and  
When Recorded Mail to:

**\*9**

City of Milpitas  
455 East Calaveras Boulevard  
Milpitas, CA 95035  
Attention: Office of the City Clerk

Record without fee under  
Section 6103 - Government Code  
State of California

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**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING INITIAL  
ACCEPTANCE AND REDUCING PERFORMANCE BOND OF AYER RESERVOIR & PUMP STATION  
EMERGENCY REPAIRS, PROJECT NO. 7102**

**WHEREAS**, the City of Milpitas has heretofore entered into a contract with Anderson Pacific Engineering Construction Inc. for the subject project, and the City Engineer of the City of Milpitas has recommended acceptance of said improvement as completed in accordance with plans, specifications and approved change orders and correction lists, and in accordance with the final inspection of said City Engineer.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City of Milpitas does hereby accept said improvement as completed on this 19<sup>th</sup> day of February, 2013, and does hereby authorize and direct the City Engineer of the City of Milpitas to file a Notice of Completion in accordance with the provisions of Section 3093 of the Civil Code of the State of California, and does hereby authorize and direct the City Engineer to file a Certificate of Completion in accordance with the provisions of Section 4005 of the Government Code of the State of California, if said work was by day's labor or force account. The penal sum of the faithful performance bond securing said improvement may be reduced to the sum of \$50,091 upon request of principal and surety, with said penal sum as reduced to apply from the date of completion and acceptance of said improvements and to extend for the balance of the term of said bond, provided that said term shall not be less than one year.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

Recording Requested by and  
When Recorded Mail to:

City of Milpitas  
455 East Calaveras Boulevard  
Milpitas, CA 95035  
Attention: City Clerk

Record without fee under  
Section 6103 - Government Code  
State of California

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CITY OF MILPITAS

NOTICE OF COMPLETION  
(Civil Code Section 3093)

NOTICE IS HEREBY GIVEN:

1. On or about March 1, 2011, the City of Milpitas, a municipal corporation of the State of California, whose address is City Hall, 455 East Calaveras Boulevard, Milpitas, California, 95035 (as owner) entered into a contract for work of: **Ayer Reservoir & Pump Station Emergency Repairs.**
2. A description of the site of which the City is owner for said work of improvement is: **Ayer Pump Station, 1429 E. Calaveras Blvd.** in the City of Milpitas, Santa Clara County, California, more particularly described on the plans.
3. The nature and interest or estate of the City as owner of said site is: **City of Milpitas.**
4. The name and address of the original contractor is: **Anderson Pacific Engineering Construction Inc., 1390 Norman Ave. Santa Clara, CA 95054.**
5. A general statement of the kind of work done or materials furnished to the City is as follows: **Replacement of three Variable Frequency Drive (VFD), install three new 200 horse-power electric motors, and completely rebuilt three shaft driven pumps.**
6. The name of the sureties upon the bond of the contractor for said work of improvement is: **Safeco Insurance Company of America and General Insurance Company of America, 1001 4<sup>th</sup> Ave. Seattle, WA 98154; bond # 10947.**
7. Said work of improvement was accepted by the Milpitas City Council as completed on **February 19, 2013.**

\*\*\*\*\*

I, the undersigned, declare that I am the **City Engineer** of the City of Milpitas and am authorized to execute the foregoing Notice of Completion and this Verification thereof. I have read the foregoing Notice of Completion. I declare under penalty of perjury that the foregoing Notice of Completion is true and correct. Executed on \_\_\_\_\_, 2013 at Milpitas, California.

\_\_\_\_\_  
Kathleen Phalen, Acting PW Director/City Engineer  
City of Milpitas

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NOTE: RECORD WITHIN 10 DAYS OF ACCEPTANCE WITH COUNTY RECORDER OF SANTA CLARA COUNTY

Recording Requested by and  
When Recorded Mail to:

**\*10**

City of Milpitas  
455 East Calaveras Boulevard  
Milpitas, CA 95035  
Attention: Office of the City Clerk

Record without fee under  
Section 6103 - Government Code  
State of California

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**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING INITIAL  
ACCEPTANCE AND REDUCING PERFORMANCE BOND OF WRIGLEY FORD CREEK MAINTENANCE  
PROJECT NO. 9002**

**WHEREAS**, the Milpitas Economic Development Corporation has heretofore entered into a contract with Preston Pipelines, Inc., for the subject project and in furtherance of duly authorized Corporation purposes, and the City Engineer of the City of Milpitas has recommended acceptance of said improvement as completed in accordance with plans, specifications and approved change orders and correction lists, and in accordance with the final inspection of said City Engineer.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City of Milpitas does hereby accept said improvement as completed on this 19th day of February, 2013, and does hereby authorize and direct the City Engineer of the City of Milpitas to file a Notice of Completion in accordance with the provisions of Section 3093 of the Civil Code of the State of California, and does hereby authorize and direct the City Engineer to file a Certificate of Completion in accordance with the provisions of Section 4005 of the Government Code of the State of California, if said work was by day's labor or force account. The penal sum of the faithful performance bond securing said improvement may be reduced to the sum of \$30,343 upon request of principal and surety, with said penal sum as reduced to apply from the date of completion and acceptance of said improvements and to extend for the balance of the term of said bond, provided that said term shall not be less than one year.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2013, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

Recording Requested by and  
When Recorded Mail to:

City of Milpitas  
455 East Calaveras Boulevard  
Milpitas, CA 95035  
Attention: City Clerk

Record without fee under  
Section 6103 - Government Code  
State of California

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CITY OF MILPITAS

NOTICE OF COMPLETION  
(Civil Code Section 3093)

NOTICE IS HEREBY GIVEN:

1. On or about January 19, 2012, the Milpitas Economic Development Corporation, a nonprofit corporation of the State of California, entered into a contract for work of: **Wrigley Ford Creeks Maintenance Project 9002**, with the intent of having it accepted by the City of Milpitas upon completion.
2. A description of the site of which the City of Milpitas is owner for said work of improvement is: **Wrigley Ford Creek** in the City of Milpitas, Santa Clara County, California, more particularly described on the plans.
3. The nature and interest or estate of the City as owner of said site is: **City of Milpitas**.
4. The name and address of the original contractor is: **Preston Pipelines, Inc., 133 Bothelo Ave., Milpitas, CA 95035**.
5. A general statement of the kind of work done or materials furnished to the City is as follows: **Sediment and vegetation removal and restoration planting along the creek channel**.
6. The name of the sureties upon the bond of the contractor for said work of improvement is: **Safeco Insurance Company of America, 1340 Treat Blvd., Walnut Creek, CA 94597; bond # 070013357**.
7. Said work of improvement was accepted by the Milpitas City Council as completed on February 19, 2013.

\*\*\*\*\*

I, the undersigned, declare that I am the **City Engineer** of the City of Milpitas and am authorized to execute the foregoing Notice of Completion and this Verification thereof. I have read the foregoing Notice of Completion. I declare under penalty of perjury that the foregoing Notice of Completion is true and correct.

Executed on \_\_\_\_\_, 2013, at Milpitas, California.

\_\_\_\_\_  
Kathleen Phalen, Acting PW Director/City Engineer  
City of Milpitas

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NOTE: RECORD WITHIN 10 DAYS OF ACCEPTANCE WITH COUNTY RECORDER OF SANTA CLARA COUNTY

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE PURCHASE OF POLICE UNIFORMS AND SUPPLIES BY PIGGYBACKING THE CITY OF SUNNYVALE’S CONTRACT WITH SUMMIT UNIFORMS**

**WHEREAS**, Section I-2-3.07 of the Milpitas Municipal Code authorizes the City Council to enter into contracts without competitive bid when the Purchasing Agent determines that a piggyback purchase is in the City’s best interest; and

**WHEREAS**, the City of Sunnyvale’s solicitation that resulted in the contract with Summit Uniforms was obtained and reviewed for compliance with the City’s Purchasing Ordinance by the Purchasing Agent; and

**WHEREAS**, there are no local suppliers or contractors who could provide the same range of uniforms and police supplies at competitive rates; and

**WHEREAS**, the City’s specifications for uniforms and police supplies are essentially the same as those listed in Sunnyvale’s solicitation; and

**WHEREAS**, the price for Summit Uniforms police uniforms and supplies under the Sunnyvale contract is estimated to be lower than if the City made the purchase pursuant to the City’s Purchasing Ordinance; and

**WHEREAS**, the price the City will pay for uniforms and police supplies from Summit Uniforms will be the same price as in the Sunnyvale contract.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The proposed contract conforms to the piggyback provisions and is otherwise compatible with the provisions of the City’s Purchasing Ordinance and the City Manager is authorized to execute a separate contract with Summit Uniforms for police uniforms and supplies, which references the solicitation by the City of Sunnyvale, and incorporates by reference the terms, conditions and prices in the Sunnyvale contract, for a not-to-exceed amount of \$17,000.00 for a one-year period with an additional one-year option period.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney



**PIGGYBACK AGREEMENT**

This AGREEMENT is entered into this 20<sup>th</sup> day of February, 2013, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and **Summit Uniforms**, (hereafter referred to as "CONTRACTOR").

**RECITALS**

WHEREAS, CONTRACTOR and the City of Sunnyvale originally entered into an agreement for police uniforms and supplies, on August 1, 2011; and

WHEREAS, the parties aforementioned desire to open the use of their agreement to other municipalities; and

WHEREAS the practice of "Piggyback" procurement is specifically authorized by the City Municipal Code Sec. I-2-3.07 "Piggyback Procurement";

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the CITY agrees to enter into a separate agreement with CONTRACTOR and hereby incorporates by reference the solicitation, terms, conditions, and pricing of the original aforementioned agreement.

1. The total annual amount of the contract shall not exceed \$17,000.00.
2. The purchase order will be pro-rated for the remaining months of the 12/13 fiscal year. A new purchase order will be issued on or about June 30 for each successive additional year.

This agreement is executed as of the date written above.

APPROVED BY:

CITY OF MILPITAS

Summit Uniforms

\_\_\_\_\_  
Thomas C. Williams, City Manager

\_\_\_\_\_  
Signature of Authorized Representative

Approved As To Form

\_\_\_\_\_  
Title of Authorized Representative

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

Approved As To Content

\_\_\_\_\_  
Sandy Holliday, City Project Manager

ATTESTED BY:

\_\_\_\_\_  
City Clerk

Business Tax Compliance No. \_\_\_\_\_

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE PURCHASE OF DOCUMENT IMAGING SERVICES BY PIGGYBACKING THE CITY OF DUBLIN'S CONTRACT WITH PELLE TECHNOLOGIES**

**WHEREAS**, Section I-2-3.07 of the Milpitas Municipal Code authorizes the City Council to enter into contracts without competitive bid when the Purchasing Agent determines that a piggyback purchase is in the City's best interest; and

**WHEREAS**, the City of Dublin's solicitation that resulted in the contract with Peelle Technologies was obtained and reviewed for compliance with the City's Purchasing Ordinance by the Purchasing Agent; and

**WHEREAS**, there are no local suppliers or contractors who could provide the same range of document imaging services at competitive rates; and

**WHEREAS**, the City's specifications for document imaging services are essentially the same as those listed in Dublin's solicitation; and

**WHEREAS**, the price for Peelle Technology document imaging services under the Dublin contract is estimated to be lower than if the City made the purchase pursuant to the City's Purchasing Ordinance; and

**WHEREAS**, the price the City will pay for the document imaging services from Peelle Technology will be the same price as in the Dublin contract.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The award of the contract to Peelle Technologies complies with the Municipal Code and the City Manager is authorized to execute a separate contract with Peelle Technology for document imaging services, which references the solicitation by the City of Dublin, and incorporates, by reference the terms, conditions and prices in the Dublin contract, for an annual not-to-exceed amount of \$85,000.00.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_ 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney



**PIGGYBACK AGREEMENT**

This AGREEMENT is entered into this 20<sup>th</sup> day of February, 2013, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and **Peelle Technologies**, (hereafter referred to as "CONTRACTOR").

**RECITALS**

WHEREAS, CONTRACTOR and the City of Dublin originally entered into an agreement for police uniforms and supplies, on November 6, 2012; and

WHEREAS, the parties aforementioned desire to open the use of their agreement to other municipalities; and

WHEREAS the practice of "Piggyback" procurement is specifically authorized by the City Municipal Code Sec. I-2-3.07 "Piggyback Procurement";

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the CITY agrees to enter into a separate agreement with CONTRACTOR and hereby incorporates by reference the solicitation, terms, conditions, and pricing of the original aforementioned agreement.

1. The total annual amount of the contract shall not exceed \$85,000.00.
2. The purchase order will be pro-rated for the remaining months of the 12/13 fiscal year. A new purchase order will be issued on or about June 30 for each successive additional year.

This agreement is executed as of the date written above.

APPROVED BY:

CITY OF MILPITAS

PEELLE TECHNOLOGIES

\_\_\_\_\_  
Thomas C. Williams, City Manager

\_\_\_\_\_  
Signature of Authorized Representative

Approved As To Form

\_\_\_\_\_  
Title of Authorized Representative

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

Approved As To Content

\_\_\_\_\_  
Keyvan Irranejad, City Project Manager

ATTESTED BY:

\_\_\_\_\_  
City Clerk

Business Tax Compliance No. \_\_\_\_\_

**CONSULTING SERVICES AGREEMENT BETWEEN  
THE CITY OF MILPITAS AND  
H.T. HARVEY & ASSOCIATES**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas referred to herein as the ("City"), and H. T. Harvey & Associates ("Consultant") as of February 19, 2012.

**AGREEMENT**

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on February 19, 2023, the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the professional standards normally observed by a practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial manner and shall conform to the professional standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 **Professional Skill.** It is mutually agreed by the parties that City is relying upon the professional skill of the consultant as a specialist in the work, and Consultant represents to the City that its work shall conform to the normal professional standards of the profession. Acceptance of the Consultant's work by the City does not operate as a release of Consultant's representations. It is intended that Consultant's work shall conform to normal standards of accuracy, completeness and coordination.
- 1.4 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit A shall name any specific personnel who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment

of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

- 1.5 Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to complete Consultant's obligations hereunder.

**Section 2. COMPENSATION.** City hereby agrees to pay Consultant a guaranteed maximum price not to exceed \$97,000.00 for all services to be performed including reimbursable costs and contingency incurred under this Agreement. Consultant shall not proceed with any work to be billed toward the contingency without written approval by the City. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 2.1 Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:

- Serial identification of bills;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours,

which shall include an estimate of the time necessary to complete the work described in Exhibit A;

- The Consultant's signature.

**2.2 Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the City to pay Consultant. Ten (10) percent shall be retained by the City from each Agreement billing until the completion of the Agreement unless authorized differently by City. In the event that an invoice is not acceptable to the City, said invoice shall be returned to Consultant within thirty (30) days of the City's receipt of the invoice with a detailed explanation of the deficiency. City's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

**2.3 Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work.

**2.4 Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on Exhibit B.

**2.5 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.

**2.6 Reimbursable Expenses.** Reimbursable expenses are shown on Exhibit B, and shall not exceed nine hundred forty one dollars (\$941.00). Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.

**2.7 Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily

completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.

- 2.8 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the City.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

If the performance of the work specified in Exhibit A requires destructive testing or other work within the City's public right-of-way, Consultant, or Consultant's subconsultant, shall obtain an encroachment permit from the City.

**Section 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

- 4.1 **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-

insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

#### **4.2 Commercial General and Automobile Liability Insurance.**

**4.2.1 General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

**4.2.2 Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

**4.2.3 Additional requirements.** Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on

behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.

- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

**4.3 Professional Liability Insurance.** If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000) covering the licensed professionals' errors and omissions.

- 4.3.1** Any deductible or self-insured retention shall not exceed \$150,000 per claim.
- 4.3.2** An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
- 4.3.3** The policy must contain a cross liability clause.
- 4.3.4** The following provisions shall apply if the professional liability coverages are written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

#### **4.4 Requirements for All Policies.**

- 4.4.1 **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.
- 4.4.2 **Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.
- 4.4.3 **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- 4.4.4 **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers,

employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

**4.4.5 Notice of Reduction in Coverage.** In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

**4.5 Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

**4.6 Waiver.** The Risk Manager of the City has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

**Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the

injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

## **Section 6. STATUS OF CONSULTANT.**

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

## **Section 7. LEGAL REQUIREMENTS.**

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement.

## **Section 8. TERMINATION AND MODIFICATION.**

- 8.1 **Termination.** City may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension

shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

- 8.3 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.
- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:
- 8.6.1** Immediate cancellation of the Agreement;
  - 8.6.2** Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and
  - 8.6.3** Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

**Section 9. KEEPING AND STATUS OF RECORDS.**

- 9.1 Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon

demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.

- 9.2 Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

**Section 10 MISCELLANEOUS PROVISIONS.**

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

- 10.4 No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant were an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

- 10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

**10.9 Contract Administration.** This Agreement shall be administered by City Engineer who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.

**10.10 Notices.** Any written notice to Consultant shall be sent to:

Karen Verpeet, M.L.A  
H. T. Harvey & Associates  
983 University Ave., Building D  
Los Gatos, CA 95032

Any written notice to City shall be sent to:  
Kathleen Phalen, Acting City Engineer  
455 East Calaveras Boulevard  
Milpitas, California 95035

**10.11 Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

**10.12 Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

**10.13 Exhibits.** All exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

CONSULTANT

\_\_\_\_\_  
Thomas C Williams, City Manager

ATTEST:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Taxpayer Identification Number

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Kathleen Phalen, Acting Public Works Director/City Engineer

APPROVED:

\_\_\_\_\_  
Emma Karlen, Finance Director/Risk Manager



## Memorandum

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Proposal #6895

30 January 2013 (Revised 5 February 2013)

**To:** Julie Waldron  
Assistant Engineer, City of Milpitas

**From:** Karen Verpeet, M.L.A.  
Project Manager

**CC:** Dan Stephens, Max Busnardo (H. T. Harvey & Associates)

**Subject:** Wrigley-Ford Creek Maintenance Project – Long-Term Monitoring Proposal

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Thank you for the opportunity to provide a proposal to assist the City of Milpitas (City) with long-term monitoring and maintenance inspections for the Wrigley-Ford Creek Maintenance Project. Our scope of work is in accordance with requirements of the following project documents:

- *Wrigley, Ford, and Wrigley-Ford Creeks Maintenance Project—Biotic Study* (H. T. Harvey & Associates 2010. Prepared for Schaaf & Wheeler. Project Number 3159-01). This Biotic Study was incorporated into the City's Initial Study/Mitigated Negative Declaration.
- *Wrigley, Ford, and Wrigley-Ford Creeks Maintenance Project—Mitigation and Monitoring Plan* (H. T. Harvey & Associates 2010. Prepared for Schaaf & Wheeler. Project Number 3159-01).
- *Construction Documents—Revegetation/Irrigation Drawings and Specifications* (Schaaf & Wheeler and H. T. Harvey & Associates 2011. Project Number 3159-01).

### Task 1: Long-term Monitoring and Reporting

H. T. Harvey & Associates will conduct long-term monitoring of the wetland mitigation area in Years 1-3, and 5; long-term monitoring of the riparian mitigation area in Years 1- 6, 8, and 10; and maintenance monitoring in both areas in Years 1 through 3 (i.e., plant establishment period) as outlined in the Project's MMP and regulatory agency permits. Our monitoring work will include the collection and analysis of

quantitative vegetation data in accordance with the MMP's methods and schedule. Table 1 provides the monitoring schedule per the MMP.

**Table 1. Monitoring and Reporting Timeline**

Task	Year									
	1	2	3	4	5	6	7	8	9	10
<b>Riparian Habitat Monitoring</b>										
Plant Survival	X	X	X	X	X	-		-		-
Percent Cover	X	X	X	X	-	X		X		X
Tree Height	-	-	X	X	-	X		X		X
Mitigation Surface Area	-	-	X	-	-	-		-		X
Health & Vigor	X	X	X	X	-	X		X		X
Photo-documentation	X	X	X	X	-	X		X		X
<b>Wetland Habitat Monitoring</b>										
Percent Cover	X	X	X		X					
Wetland Delineation	-	-	X		-					
Photo-documentation	X	X	X		X					
<b>Reporting</b>										
Annual Report	X	X	X	X	X	X	-	X	-	X

The services proposed will be required by the following permits to determine if the Project's quantitative habitat mitigation performance and success criteria are met:

- Regional Water Quality Control Board (RWQCB) permit.
- U.S. Army Corps of Engineers (USACE) permit.
- California Department of Fish and Game (CDFG) permit.

Data collection will take place between July and October of each monitoring year. Monitoring will include the following tasks.

**Riparian Habitat Monitoring**

- **Plant Survival for Riparian Trees and Shrubs.** We will quantify plant survival by species by making field counts of all riparian trees and shrubs installed.
- **Average Percent Cover of Riparian Trees and Shrubs.** We will estimate the average percent cover of native riparian tree and shrub species (by species and for all species combined) using the line-intercept method employed along fixed permanent transects. Percent cover will be determined separately for the willow and oak riparian plant associations. We will compare the average percent cover between monitoring years to determine if there is a positive increasing trend in percent native woody vegetation cover over time in accordance with the Project's success criteria.

- **Height of Riparian Trees.** Beginning in Year-3, we will estimate average tree height by species in the riparian mitigation area. A subset of individuals of each tree species installed in the riparian mitigation area will be randomly selected and measured for tree height using a measuring tape, telescopic pole, or clinometer. We will then calculate the average tree height by species for comparison to the tree height success criteria described in the MMP.
- **Riparian Mitigation Surface Area.** In Year-3, we will estimate the surface area of riparian habitat canopy to determine if at least 0.87 ac of riparian habitat has been restored. The purpose of measuring the surface area in Year-3 (long before the 10-year monitoring period has ended) is to determine early on in the monitoring period if the surface area criteria is likely to be met.
- **Plant Health and Vigor of Riparian Trees and Shrubs.** We will qualitatively assess the overall riparian tree and shrub health and vigor by considering such health factors as leaf color, bud development, new growth, herbivory, drought stress, fungal/insect infestation, and physical damage. Plant health and vigor will be measured using a numerical and qualitative scale. Health and vigor for each tree and shrub species will be ascertained by averaging the numerical values for each species using the categories specified in the MMP. Plant health and vigor will be assessed for a representative subset of trees and shrubs located along the permanent transects.
- **Photo-documentation.** We will take annual photographs of the riparian mitigation areas at the end of the growing season from fixed photo-documentation points. The locations for photo-documentation will be established during construction monitoring. Photographs will also be taken to record any event that may significantly affect the success of the mitigation, such as flood, fire, or general vandalism.

## **Wetland Habitat Monitoring**

- **Average Percent Cover of Wetland Mitigation Area.** We will monitor the percent herbaceous vegetation cover and species composition of the wetland mitigation area. Percent cover by wetland plants will be quantified throughout the mitigation area using the quadrat method. Individual samples will be taken from stratified, random locations using a one m<sup>2</sup> quadrat. The percent cover of each species occurring within each quadrat will be visually estimated to the nearest percent.
- **Wetland Delineation.** In Year-3, H. T. Harvey & Associates will conduct a formal delineation of new USACE jurisdictional areas to determine if the wetland mitigation acreage requirement (0.21 acres) is met. Results of the wetland delineation will be included in the Year-3 annual monitoring report.

- **Photo-documentation.** We will take annual photographs of the wetland mitigation areas at the end of the growing season from fixed photo-documentation points consistent with the methods described above for Riparian Habitat Monitoring.

## Reporting

H. T. Harvey & Associates will analyze the vegetation data collected during the monitoring described above and generate an annual monitoring report summarizing the mitigation Project, evaluating the site's overall performance, and providing maintenance/management recommendations. Our recommendations will identify impediments, if any, to attainment of the MMP's quantitative success criteria and will propose cost-effective solutions to site problems, as appropriate. Maps showing monitoring areas will also be included. Field data sheets will be available for review by the upon request.

Reports will be prepared in the following format:

1. Executive Summary
2. Introduction
3. Methods
4. Results
5. Discussion
6. Management Recommendations
7. Literature Cited
8. Appendices

A draft report will be submitted to the City by 1 December of each monitoring year. After the incorporation of one (1) round of written comments, the final monitoring report will be submitted to the City (1 hard copy and 1 PDF version) and the resource agencies by 31 December. Agencies to receive copies of the report include the CDFG, USACE, and RWQCB.

The Year-5 report will serve as the Final Report submittal for the wetland mitigation area. This task includes up to four (4) hours of communications with City and USACE, CDFG, and/or RWQCB staff to facilitate regulatory agency sign-off on the wetland mitigation component of the Project.

In addition, at the final year of the riparian mitigation monitoring period (assumed to be Year-10), a final monitoring report will be prepared to establish whether the riparian mitigation site has achieved the final success criteria. We assume that the Project will achieve its final success criteria and the Year-10 report will serve as the Final Report for the State and Federal regulatory agencies. This task includes up to four (4) hours of communications with City and USACE, CDFG, and/or RWQCB staff to facilitate regulatory agency sign off on the wetland mitigation component of the Project.

Products

- Draft and Final Annual Monitoring Reports.

**Task 2: Maintenance Monitoring during Plant Establishment Period (Years 1-3)**

- **Riparian Mitigation Areas.** H. T. Harvey & Associates will attend quarterly inspections with the maintenance contractor to increase the likelihood that success criteria for the riparian mitigation site will be met. Site maintenance monitoring will assess the need for plant replacement, weed control, mulch, and irrigation maintenance.
- **Wetland Mitigation Area.** H. T. Harvey & Associates will attend one (1) yearly inspection with the maintenance contractor to increase the likelihood that success criteria for the wetland mitigation site will be met. This inspection will be scheduled to co-occur with 1 of the above riparian site inspections. We will assess the need for and locations of invasive plant control.

Products

- Brief site inspection memos with any maintenance recommendations.

**GENERAL ASSUMPTIONS**

- Monitoring activities described in Task 1 Long-Term Monitoring and Reporting will be conducted concurrently with one of the quarterly construction monitoring inspections described in Task 2 Maintenance Monitoring during Plant Establishment Period.
- We assume that the final success criteria will be met at the end of the final monitoring period and that the regulatory agencies will not require additional assessments or monitoring beyond that specified in the Project's MMP.

**Fee Estimate**

Our fee estimate is attached. The fee estimate provides the cost for Tasks 1 and 2, by monitoring year. It also includes a contingency, which shall not be used without written authorization from the City. We will invoice our work on a monthly basis, not-to-exceed the total estimated budget.



EXHIBIT C  
INSURANCE DOCUMENTS



**AMENDMENT NO. 5 TO AGREEMENT FOR  
CONSULTATION AND OTHER SERVICES**

**\*16**

This Amendment is entered into this 19<sup>th</sup> day of February 2013, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and **CSG CONSULTANTS, INC.**, (hereafter referred to as "CONSULTANT").

**RECITALS**

WHEREAS, on December 1, 2009 the City Council authorized the City Manager to enter into a contract with Consultant and on July 1, 2009 the parties entered into an Agreement for professional consulting for **Fire Plan Review & Inspection Services**,; and

WHEREAS, the parties desire to amend the Agreement to increase the amount of compensation; and

WHEREAS, on February 19, 2013 the City Council approved increasing the amount of compensation to Consultant; and

WHEREAS, Section 8.2 "Extension" requires that all amendments to the Agreement be in writing.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree to amend the Agreement as follows:

1. Section 2. entitled "COMPENSATION" shall be amended to read:

"City hereby agrees to pay Consultant a guaranteed maximum price not to exceed \$242,760 (which includes the original contract amount of \$122,400) for all services to be performed and reimbursable costs incurred under this Agreement."

2. All other provisions of the Agreement shall remain in full force and effect.

This Amendment is executed as of the date written above.

APPROVED BY:

CITY OF MILPITAS

CSG CONSULTANTS, Inc.

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Thomas C. Williams, City Manager

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-----  
Michael J. Ogaz, City Attorney as to Form

-----  
Albert Zamora, Fire Marshal as to Content

ATTESTED BY:

-----  
Mary Lavelle, City Clerk



February 8, 2013

CHARLES SAKAI  
CELL: (415) 299-0856  
CSAKAI@PUBLICLAWGROUP.COM

**VIA ELECTRONIC MAIL**

**CONFIDENTIAL**  
**ATTORNEY/CLIENT PRIVILEGE**

Michael Ogaz  
City Attorney  
City of Milpitas  
455 E. Calaveras Blvd.  
Milpitas, CA 95035  
mogaz@ci.milpitas.ca.gov

**Re: Retention of Services**

Dear Michael -

This letter sets forth proposed terms for retention of my firm to provide advice and, as needed, representation in connection with labor relations and employment matters.

The Firm will bill the City of Milpitas for professional services at our standard hourly billing rates in effect at the time services are rendered. For 2013, our partner rates are \$285 to \$400.<sup>1</sup> Our associate rates depend on the associate's years of labor and employment experience out of law school and the rates are \$215 to \$285. Non-attorney Human Resources and Labor Relations Consultants rates range from \$160 to \$225. Paralegals are billed at \$105 to \$135 per hour. Billing is done in 1/10s of an hour increments. This agreement has a cap of \$50,000 and the parties understand that once the monetary cap is reached, additional work will not be allowed unless the City extends the agreement.

In addition, the Firm charges separately for certain costs incurred in the representation, as well as for any disbursements to third parties made on a client's behalf. Such costs and disbursements include, for example, the following: travel (at the IRS rate in effect at the time the travel occurs), computer-assisted research, transcription, overnight delivery and messenger services. For major disbursements to third parties, invoices may be sent directly to you for payment. The Firm also bills for time spent traveling on a client's behalf at our normal hourly rates.

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<sup>1</sup> These rates are reviewed and may be modified every year, generally in January.



Michael Ogaz  
February 8, 2013  
Page 2

We will bill you on a monthly basis for serviced performed and costs incurred. Payment is due within 30 days of the date an invoice is rendered. Past due amounts will be shown on the invoice.

You may terminate our services at any time, subject to any applicable requirements for withdrawal of counsel imposed by a tribunal. The Firm reserves the right to withdraw from the representation for failure of the client to make timely payment of fees, costs, and disbursements in accordance with the fee arrangement described in this letter, or for any other reason permitted by the applicable Rules of Professional Conduct.

Please let me know if you have any questions or comments regarding this letter or any other matter. If the terms are agreeable, please sign below and return the original of this letter to me.

Sincerely,

Charles Sakai

CDS/lr

THE CITY OF MILPITAS AGREES TO THE TERMS SET FORM ABOVE.

\_\_\_\_\_  
Michael Ogaz  
City Attorney

Dated: \_\_\_\_\_, 2013

**AGREEMENT BETWEEN THE CITY OF MILPITAS,  
THE SUCCESSOR AGENCY TO THE CITY OF MILPITAS  
AND THE MILPITAS ECONOMIC DEVELOPMENT CORPORATION  
REGARDING PRESERVATION OF ASSETS PER OVERSIGHT BOARD REQUEST**

This Agreement is entered into this \_\_\_ day of \_\_\_, 2013, by and between the Milpitas Economic Development Corporation, a non-profit public benefit corporation (the “MEDC”), the City of Milpitas (the “City”), and the Successor Agency to the Milpitas Redevelopment Agency (the “Successor Agency”) at the request of its Oversight Board.

Recitals

- A. The California Legislature in 2011 enacted ABx1 26 and in 2012 enacted AB 1484 (collectively AB x1 26 and AB 1484 are referred to herein as the “Dissolution Act”) which required the dissolution of all redevelopment agencies as of February 1, 2012, and set forth certain procedures governing the dissolution process.
- B. The Dissolution Act required the establishment of successor agencies to the former redevelopment agencies, as well as the establishment of oversight boards to oversee and monitor certain actions of the successor agencies. Pursuant to the Dissolution Act, the City of Milpitas is the designated successor agency (“Successor Agency”) to the former Milpitas Redevelopment Agency (the “Agency”). The Successor Agency is a separate legal entity from the City.
- C. The MEDC was created on March 7, 2011, by the City pursuant to the California Nonprofit Public Benefit Corporation Law.
- D. The State Controller’s Asset Transfer Review found that the Agency transferred to the MEDC approximately Fifty Million, One hundred Sixty-one Thousand, Seven Hundred Sixty-three Dollars (\$50,161,763) in assets (“Working Capital”), as identified in Exhibit A, and incorporated herein by reference.
- E. The State Controller’s Asset Transfer Review found that the Agency also transferred, by resolution, certain capital assets and properties held for resale (“Real Property”) to the City, valued at approximately Ninety-six, Nine Hundred Forty-six Thousand, Eight Hundred Thirty-seven Dollars (\$96,946,837), as identified in Exhibit A, and incorporated herein by reference.
- F. The Successor Agency has been notified by the State Controller that it believes the asset transfers made by the Agency to MEDC and to the City were invalid and that the assets should be returned to the Successor Agency. Neither the MEDC, nor the City, have complied with the State Controller’s order to return these assets. The MEDC contends that it is a separate legal entity formed in accordance with state law, and that the transfer of assets to it was completed in accordance with law and that the notice sent by the State Controller is incorrect as a matter of law.
- G. Pursuant to the Dissolution Act, the Oversight Board to Milpitas Successor Agency (the “Oversight Board”) has certain monitoring and oversight functions over the activities of the

Successor Agency. In response to the State Controller's Asset Transfer review, and in order to protect the fiduciary interests of the affected taxing entities and the holders of enforceable obligations, the Oversight Board requested the Successor Agency enter into this Agreement to preserve assets transferred by the Agency to MEDC and the City, in accordance with the terms and conditions set forth herein.

H. The Successor Agency, the MEDC, the City, and the Oversight Board desire to enter into this Agreement as an expression of their intent to work together cooperatively and in good faith.

#### Agreements

Section 1. Incorporation of Recitals. All of the recitals above are true and correct and are hereby incorporated into this Agreement.

Section 2. MEDC Obligations. By signing this Agreement, the MEDC attests that it has disclosed and provided copies of all existing MEDC contracts, including all contracts for services, as listed in Exhibit B. The MEDC will work cooperatively with the Oversight Board to provide the documents sought through its Public Records Act request.

Section 3. Tolling Provision. Any statute of limitations applicable to the transfer or expenditure of assets held by the MEDC shall be tolled and extended through the term of this Agreement to allow the Oversight Board, or the taxing entities it represents, to pursue all potential remedies upon the termination of this Agreement.

Section 4. Preservation of Assets.

(a) MEDC agrees that it shall: (i) not transfer, encumber, sell or convey any of the Real Property conveyed to it by the Agency or purchased with Working Capital, including personal property, fixtures and appurtenances; (ii) not transfer any Working Capital or interest on Working Capital to the City or any other party except as authorized under subsection (v) below; (iii) refrain from incurring any new financial obligations, including but not limited to new contracts or amendments to existing contracts for the transfer, encumbrance, or conveyance of Real Property, or contracts for services, including administrative services by City staff or other staff; (iv) refrain from exercising any option under any contract for the purchase of property; (v) satisfy only its outstanding obligations on contracts listed in Exhibit B, including the "Assignment and Assumption of Purchase and Sale Agreement" between the MEDC and the Agency, dated March 7, 2011, for the Mission West Properties ("Mission West Agreement").

(b) The City agrees that it shall: (i) not transfer, encumber, sell or convey any of the Real Property or Working Capital conveyed to it by the Agency, as listed on Exhibit A, including personal property, fixtures, and appurtenances; (ii) reimburse the Successor Agency, from its general fund, for any MEDC payments on the contracts listed in Exhibit B if a final, unappealed administrative or judicial determination holds that the transfer of assets to MEDC and/or the City was invalid or the obligation should not have been paid from MEDC funds, except for the "Assignment and Assumption of Purchase and Sale Agreement" between the MEDC and the Agency, dated March 7, 2011, for the Mission West Properties ("Mission West Agreement"). This provision shall survive the termination of this Agreement.

(c) In consideration of the commitments made by the City and MEDC, the Oversight Board shall not, during the term of this Agreement, intervene, delay, direct the Successor Agency to bring, or otherwise participate in, a court action seeking an injunction against further spending by the MEDC.

Section 5. Activity and Expenditure Reports. MEDC and the City agree to provide to the Oversight Board monthly written “Activity and Expenditure Reports” reflecting all of MEDC’s and the City’s activities and expenditures related to the transferred assets since the closing date of the previous report.

Section 6. Termination. The Parties agree that this agreement may be terminated by any Party upon 30 days written notice to the following persons:

NOTICE TO CITY OR SUCCESSOR AGENCY:  
Tom Williams, City Manager, City of Milpitas  
Executive Director, Successor Agency to the City of Milpitas RDA  
455 E. Calaveras Blvd.  
Milpitas, CA 95035

NOTICE TO THE OVERSIGHT BOARD:  
Milpitas Oversight Board Clerk, c/o County of Santa Clara  
Office of the County Executive  
Attn: Administrative Services Manager  
70 West Hedding Street, 11<sup>th</sup> Floor  
San Jose, CA 95110

NOTICE TO Milpitas Economic Development Corporation  
[name], President  
Economic Development Corporation  
455 E. Calaveras Blvd.  
Milpitas, CA 95035

Section 7. Return of Assets. In the event there is a final, unappealed administrative determination or judgment by a court of competent jurisdiction that determines that the transfer of assets to MEDC and/or the City was invalid, and/or is subject to the “clawback” provisions of the Dissolution Act, the MEDC must return such assets to the Successor Agency in accord with such judgment or determination. This provision shall survive the termination of this Agreement.

Section 8. Term of Agreement. This Agreement shall take effect upon the date upon which the approval of the Agreement by the Oversight Board by resolution is deemed effective, pursuant to the provisions of Health and Safety Code section 34179(h), and shall terminate upon the earlier of either the return of all Real Property and Working Capital by the City and the MEDC to the Successor Agency, or upon such time as there is a final judgment by a court of competent jurisdiction, unless terminated earlier pursuant to Section 6, above.

**Deleted:** (d) The Successor Agency shall set aside \$130,000 for the payment of legal and administrative expenses, and shall prioritize such payments, consistent with the resolutions previously adopted by the Oversight Board. The Successor Agency shall pay these expenses under protest, and if there is a change in the Department of Finance’s position or a contrary judicial or administrative determination, this item will be revisited to allow for the reimbursement of the Successor Agency. ¶

Section 9. No Admission. Nothing in this Agreement shall be construed as an admission, acknowledgment, or waiver by any party or the Oversight Board in any proceeding. The Oversight Board does not admit that the transfer of assets to the MEDC or the City, or that any City or MEDC expenditure of those assets, including the contracts listed in Exhibit B, are valid, and reserves all rights to contest the foregoing in the future. The City and MEDC reserve all claims to the validity of those contracts. This provision shall survive the termination of this Agreement.

Section 10. Authorization. The parties acknowledge that each, upon approval of its respective governing board and the Department of Finance, is authorized to enter into this Agreement.

Section 11. Consent and Acknowledgment of Oversight Board. The Oversight Board, by Resolution No. \_\_\_\_\_ (the "Oversight Board Resolution") has reviewed and agrees with the terms of this Agreement, and has approved the execution of the Agreement by the Successor Agency. A true and correct copy of the Oversight Board Resolution is attached hereto as Exhibit C and incorporated herein by reference.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**MILPITAS ECONOMIC DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
Name  
Title:

Deleted: ¶  
¶

**CITY OF MILPITAS**

By: \_\_\_\_\_  
Name  
Title:

Deleted: ¶

**SUCCESSOR AGENCY TO MILPITAS REDEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Name:  
Title:

Deleted: ¶  
¶

**As Requested and Approved by:**

**OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO MILPITAS REDEVELOPMENT AGENCY**

Deleted: ¶

By: \_\_\_\_\_  
Name:  
Title: Oversight Board Chairperson

Deleted: ¶

**EXHIBIT A**

**List of EDC Contracts and Acquisition of Land**

**[Insert Attachment 2 provided by City Attorney 12/11/12]**

**Exhibit B**

**List of Transferred Assets**

**Exhibit C**  
**Oversight Board Resolution**