



**JOINT MEETING OF THE MILPITAS HOUSING AUTHORITY  
AND MILPITAS CITY COUNCIL  
AGENDA  
TUESDAY, JUNE 18, 2013**

**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 JOINT MEETING/ROLL CALL by the Mayor (6:00 p.m.)**
- II. ADJOURN TO CLOSED SESSION**
  - 1. CONFERENCE WITH LEGAL COUNSEL**  
Existing Litigation, Per Government Code Section 54956.9  
City of Milpitas v. City of San Jose, Santa Clara County Superior Court case no. 112CV233069
  - 2. CONFERENCE WITH LEGAL COUNSEL**  
Existing Litigation, Per Government Code Section 54956.9  
County of Santa Clara, et al., v. Milpitas Economic Development Corporation, et al., Sacramento County Superior Court case no. 34-2013-80001436, and  
Successor Agency to the Milpitas Redevelopment Agency, et al. v. John Chiang, et al., Sacramento County Superior Court case no. 34-2013-80001508
  - 3. CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING**  
Pursuant to California Government Code Section 54957.6. City Negotiator: Carmen Valdez  
Employee Groups: Milpitas Employees Association (MEA), Milpitas Police Officers Association (MPOA), International Association of Fire Fighters (IAFF), and Milpitas Association of Battalion Chiefs. 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 – May 14, 2013 and June 4, 2013**
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDARS – June and July 2013**
- VIII. PRESENTATIONS**
  - Proclaim *Parks and Recreation Month* for July 2013
  - Present *Recreation Services 2012-13 Community Champion Awards*
  - Recognize Milpitas Winners in the *2013 Santa Clara Valley Science and Engineering Fair*
- IX. PUBLIC FORUM**

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

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- X. ANNOUNCEMENTS**

**XI. ANNOUNCEMENT OF CONFLICT OF INTEREST**

**XII. APPROVAL OF AGENDA**

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

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

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**XIV. REPORTS OF OFFICERS AND COMMISSIONS**

- \* 1. Consider Mayor's Recommendations for Appointments and Re-Appointments to Four Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)
- \* 2. Consider Mayor's Recommendation having an Entry to Fremont's 4<sup>TH</sup> of July Parade and Approve \$200 Allocation from Council Unallocated Community Promotion Budget to City of Fremont's 4<sup>TH</sup> of July Parade Committee (Contact: Mayor Esteves, 408-586-3029)
- 3. Consider Request of Councilmember Montano to Adopt a Resolution Supporting the Santa Clara County Library District Community Facilities District Special Tax Ballot Measure (Contact: Councilmember Montano, 408-586-3023)
- 4. Consider Recommendation from the Community Advisory Commission to Amend Work Plan 2013-14 to Include Tree-Planting Program in Spring 2014 (Staff Contact: Felix Reliford, 408-586-3071)
- \* 5. Approve Amendment to Bylaws for Sister Cities Commission's Meeting Time from 7:00 P.M. to 6:00 P.M. (Staff Contact: Leslie Stobbe, 408-586-3352)

**XV. NEW BUSINESS**

- 6. Receive a Presentation from a Representative of the Santa Clara Valley Water District on Projects in Milpitas (Staff Contact: Jeff Moneda, 408-586-3345)
- \* 7. Accept Pacific Gas & Electric Incentive and Association of Bay Area Governments PLAN Risk Management Grant for the Purchase of New Swimming Pool Covers and Assign the PG&E Incentive Payment to Knorr Systems (Staff Contacts: Jaime Chew, 408-586-3234 and Chris Schroeder, 408-586-3161)

**XVI. ORDINANCE**

- \* 8. Waive the Second Readings and Adopt Nitrogen Gas Ordinances No. 220.2, No. 222.1, and No. 223.2, and Amendments for Air Products and Praxair Franchise License Agreements (Staff Contact: Keyvan Irannejad, 586-3244)

**XVII. RESOLUTIONS**

- \* 9. Adopt a Resolution Authorizing the City Manager to Negotiate and Execute a Tax Sharing Agreement with SGI (Staff Contact: Tom Williams, 408-586-3050)
- \* 10. Adopt a Resolution Authorizing the City Manager to Award and Execute a Construction Contract with O'Grady Paving, Inc. for Street Resurfacing Project 2014, Street Cape and Slurry Seal, Projects No. 3412, No. 4254 and No. 4268 and Authorize Staff to Execute Contract Change Orders (Staff Contact: Steve Chan, 408-586-3324)

- \* 11. **Adopt a Resolution and Approve a Memorandum of Agreement Creating the Santa Clara County Recycling and Waste Reduction Advisory Committee (Staff Contact: Jeff Moneda, 408-586-3345)**
- \* 12. **Approve and Authorize Execution of a Subdivision Improvement Agreement, On-Site Private Utilities Covenant Agreement, Right-of-Way Encroachment Permit Agreement, Final Maps, Public Improvement Plans, Penitencia Creek Trail Improvement Plans, and Temporary Closure of McCandless Drive; and Adopt a Resolution Authorizing Annexing Certain Real Property into Community Facilities District No. 2008-1 for “District 2” by Taylor-Morrison, Private Job No. 2825 (Staff Contact: Keyvan Irannejad, 408-586-3244)**

#### **XVIII. BID AND CONTRACTS**

- \* 13. **Approve Plans and Specifications and Authorize Advertisement for Bid Proposals for Cathodic Protection Improvements, Projects No. 7115, No. 6115 and No. 3706 (Staff Contact: Steve Erickson, 408-586-3301)**
- \* 14. **Approve Amendment No. 2 to Agreement with ACCO Engineered Systems and Authorize the City Manager to Execute the Amendment Extending Term from June 30, 2013 to February 17, 2014 for the Not-To-Exceed Amount of \$21,144 for City Hall HVAC Maintenance and Repair (Staff Contact: Chris Schroeder, 408- 586-3161)**
- \* 15. **Approve and Authorize the City Manager to Execute an Agreement with Quality Assurance Engineering, Inc. for Various Capital Improvement Program Projects (Staff Contact: Steve Erickson, 408-586-3301)**
- \* 16. **Approve Renewal of Excess Workers’ Compensation Insurance Contracted via Brown & Brown of California (Staff Contact: Carmen Valdez, 408-586-3086)**
- \* 17. **Approve Contracts with Eight Vendors for FY 2013-14 Recreation Service Programs (Staff Contact: Dale Flunoy, 408-586-3228)**
- \* 18. **Authorize Extension of Employment of Temporary Building Inspector Position for One Additional Month Ending July 31, 2013 (Staff Contact: Keyvan Irannejad, 408-586-3244)**
- \* 19. **Approve and Authorize the City Manager to Execute Amendment No. 2 to the Agreement with HF&H Consultants for Technical Support Services for Solid Waste Rate Review by Increasing Compensation by \$28,446 (Staff Contact: Jeff Moneda,408-586-3345)**
- \* 20. **Authorize the City Manager to Execute a One Year Extension to Agreement with HMM Engineers to June 30, 2014 for the Dixon Landing Road/I-880 Interchange Right of Way Project (Staff Contact: Chris Schroeder, 408-586-3161)**
- \* 21. **Authorize the City Manager to Execute an Agreement with BAE Urban Economics to Prepare City of Milpitas State-Mandated General Plan Housing Element Update (Staff Contact: Felix Reliford, 408-586-3071)**
- \* 22. **Authorize the City Manager to Execute Amendment No. 2 to the Agreement with Tiburon, Inc. extending for one year Software Support and Maintenance for Police Records Management System for the Annual Not-To-Exceed Amount of \$52,828 (Staff Contact: Chris Schroeder, 408-586-3161)**

#### **XIX. ADJOURNMENT**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING  
TUESDAY, AUGUST 6, 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:

*Public Art Committee (Alliance for the Arts member and General member)  
Community Advisory Commission (alternate)  
Emergency Preparedness 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

### XIV. REPORTS OF OFFICERS AND COMMISSIONS

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

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

Bicycle Pedestrian Advisory Commission

Re-appoint Kristal Caidoy as Alternate No. 2 to a term that will expire in August 2015.

Emergency Preparedness Commission

Re-appoint Betty Reutter as Alternate No. 1 to a term that will expire in June 2015.

Library Advisory Commission

Re-appoint Marie Pham as a regular member to a term that will expire in June 2015.

Re-appoint Nonie McDonald as Alternate No. 2 to a term that will expire in June 2005.

Parks, Recreation, and Cultural Resources Commission:

Appoint Gerome Guerrero (Alternate No. 1) as a regular member to a term that will expire in June 2014.

Appoint Bill Singh (Alternate No. 2) as Alternate No. 1 to a term that will expire in June 2014.

Re-appoint Stephanie Fong as a regular member to a term that will expire in June 2016.

Newly appoint Satish Bansal as Alternate No. 2 to a term that will expire in June 2015.

**Recommendation:** Receive Mayor's recommendations and move to approve appointments and re-appointments to four Milpitas Commissions.

- \* 2. **Consider Mayor's Recommendation having an Entry to Fremont's 4<sup>TH</sup> of July Parade and Approve \$200 Allocation from Council Unallocated Community Promotion Budget to City of Fremont's 4<sup>TH</sup> of July Parade Committee (Contact: Mayor Esteves, 408-586-3029)**

**Background:** Mayor received an inquiry from Fremont's 4<sup>TH</sup> of July Parade Committee representative if City of Milpitas would like to participate in the parade. Each parade participant requires an entrance fee, but is not being required for participating cities; however cities participating in the parade are encouraged to make a donation.

**Fiscal Impact:** Donations could be made from the City Council's Unallocated Community Promotions Budget. The current balance for FY 2012-13 is \$5,862.84. If the \$200 donation request is authorized by City Council, the remaining balance would be \$5,662.84.

**Recommendation:** Move to approve the Mayor's request to participate in Fremont's 4<sup>TH</sup> of July parade and donate \$200 to Fremont's 4<sup>TH</sup> of July Parade Committee.

3. **Consider Request of Councilmember Montano to Adopt a Resolution Supporting the Santa Clara County Library District Community Facilities District Special Tax Ballot Measure (Contact: Councilmember Montano, 408-586-3023)**

**Background:** On August 27, 2013, a Santa Clara County Library District Community Facilities District Special Tax Measure will appear on a mail ballot in the community. This ballot measure continues the same tax rates currently levied by Santa Clara County Library District Joint Powers Authority Communities Facilities District Number 2005-1. The tax provides up-to-date book collections/research materials; children's reading programs; bookmobile services for seniors and the disabled; library hours; qualified librarians and other general library services and materials.

This special tax will have an annual appropriations limit of \$6,200,000, with all money from each community used for its local library and no money appropriated to the state.

A voter-approved taxpayer funding for the Milpitas local library has been in place for the past twenty years and is due to expire. Continuing this funding at existing rates does not increase taxes. It will help the Milpitas Library maintain essential library services that students, seniors and other members of this community rely on, including story times for children and families, summer reading programs, homework help and school curriculum support, literacy assistance, income tax assistance and computer skills tutoring for adults, as well as bookmobile service, up-to-date book collections and research materials, and maintenance of library hours.

Without this funding, the Milpitas Library will be faced with implementing significant cuts to programs and services, including purchasing fewer books, reducing its ability to maintain up-to-date book collections and research materials, reducing or eliminating library programs for children, teens and seniors, and reducing its operating hours.

**Fiscal Impact:** None.

**Recommendation:** Per recommendation of Councilmember Montano, move to adopt a resolution supporting the Santa Clara County Library District Community Facilities District Special Tax Measure A on the August 27, 2013 ballot.

**4. Consider Recommendation from the Community Advisory Commission to Amend Work Plan 2013-14 to Include Tree-Planting Program in Spring 2014 (Staff Contact: Felix Reliford, 408-586-3071)**

**Background:** At its meeting on May 5, 2013, the Community Advisory Commission established a Tree-Planting Subcommittee to consider a work program to plant approximately 500 trees yearly throughout the city. On June 5, 2013, the Subcommittee reported back to the entire CAC with a presentation of the Tree-Planting Program which includes:

- Environmental and educational benefits of the program
- Identifying areas in the City where trees would be planted
- Use of volunteers to assist in tree planting throughout the City
- Aesthetics impacts of the Tree-Planting Program
- Seeking combination of City funding and donations to fund the program
- Planting 500 trees (approximately \$50/per tree) over the next year starting in the spring of 2014
- Requesting a budget of \$40,000 for the Tree-Planting Program.

At the CAC meeting, Commissioners reviewed the Subcommittee presentation and made the following recommendations to the Council regarding its amendment to its Work Plan 2013:

- Request to Council to consider amending the Work Plan 2013-14 to include the Tree-Planting Program with the objective of planting between 100-500 trees yearly.
- Request funding from City Council for Tree-Planting Program.

Included in the Council's agenda packet is a copy of the Subcommittee presentation and background information. A presentation on the proposed Tree-Planting Program will be provided at the meeting.

**Fiscal Impact:** Unknown at this time, based on the Council's consideration to fund the program and any ongoing costs for future tree maintenance.

**Recommendation:** Consider amending the Community Advisory Commission's Work Plan 2013-14 to include Tree-Planting Program, funding allocation, and direct staff accordingly.

- \* 5. **Approve Amendment to Bylaws for Sister Cities Commission’s Meeting Time from 7:00 P.M. to 6:00 P.M. (Staff Contact: Leslie Stobbe, 408-586-3352)**

**Background:** At its May 23, 2013 meeting, the Sister Cities Commission unanimously voted to recommend a change to its regular meeting time. In order to facilitate productive meetings and accommodate schedules, the Commission requests a 6:00 p.m., rather than a 7:00 p.m., start time for its monthly meetings. The Commission would continue to meet on the fourth Thursday of each month.

**Fiscal Impact:** None.

**Recommendation:** Approve a change in Section 6 of the Sister Cities Commission’s By-laws to state, “The Sister Cities Commission shall hold regular meetings on the fourth Thursday of each month at 6:00 p.m.”

## XV. NEW BUSINESS

6. **Receive a Presentation from a Representative of the Santa Clara Valley Water District on Projects in Milpitas (Staff Contact: Jeff Moneda, 408-586-3345)**

**Background:** On March 25, 2013, the Santa Clara Valley Water District met with Mayor Esteves and City staff to provide information on key Water District projects. Mayor Esteves requested that the Water District provide a more in-depth presentation on the projects underway, planned in and around Milpitas.

**Recommendation:** Receive a presentation from a representative of the Santa Clara Valley Water District on projects in Milpitas.

- \* 7. **Accept Pacific Gas & Electric Incentive and Association of Bay Area Governments PLAN Risk Management Grant for the Purchase of New Swimming Pool Covers and Assign the PG&E Incentive Payment to Knorr Systems (Staff Contacts: Jaime Chew, 408-586-3234 and Chris Schroeder, 408-586-3161)**

**Background:** The City of Milpitas’ Recreation Services applied for an incentive from the Pacific Gas and Electric (“PG&E”) Customized Calculated Retrofit Program to pay for swimming pool covers at the Milpitas Sports Center. Pool covers are the most effective way to conserve energy used to heat the pools. As a result of the energy savings that would be realized, PG&E approved the Milpitas Sports Center Pool Cover Project for the maximum incentive of 50% of the total project cost—an incentive amount of \$16,068.73. This is an estimated amount and final savings are subject to an inspection and review of the final installed product. The City assigned the PG&E incentive amount to Knorr Systems, the City’s current provider whose swimming pool covers are deemed to be superior products. The project must be completed by June 30, 2013 or the City would lose the incentive funds.

Recreation Services also applied for a grant from the Association of Bay Area Governments (ABAG) PLAN Risk Management Program to cover the remaining cost of the swimming pool covers. Recreation Services was awarded an ABAG grant in the amount of \$16,068.72. This grant would cover the City’s 50% portion of the Milpitas Sports Center Pool Cover Project.

**Fiscal Impact:** None. The incentive payment and grant will pay for the purchase.

**Recommendations:**

1. Accept PG&E incentive and ABAG grant for the purchase of new swimming pool covers at the Milpitas Sports Center.
2. Assign the PG&E incentive to Knorr Systems in the amount of \$16,068.73.
3. Appropriate the ABAG PLAN Risk Management Program grant in the amount of \$16,068.72 to the Milpitas Recreation Services Division budget.

## XVI. ORDINANCE

- \* 8. **Waive the Second Readings and Adopt Nitrogen Gas Ordinances No. 220.2, No. 222.1, and No. 223.2, and Amendments for Air Products and Praxair Franchise License Agreements (Staff Contact: Keyvan Irannejad, 586-3244)**

**Background:** City Council adopted a Resolution of Intent to amend Ordinances No. 220, No. 222 and No. 223 to reflect new terms of the agreements with Air Products and Praxair for nitrogen gas facilities at its May 7, 2013 meeting. On June 4, the Council held a public hearing regarding this matter and introduced the ordinances. New terms include: a 7% increase in the fee calculation and an annual 7% increase for each year after that, with a 15 year initial term and future renewable 15 year terms as authorized by agreement of the parties. At this meeting, Council is requested to take the final step of adopting the ordinances and approving the agreements with Praxair and Air Products. The new terms were negotiated with the nitrogen gas providers and are consistent with charges imposed by neighboring cities.

**Fiscal Impact:** Increased revenue due to increase in franchise fees.

**Recommendations:**

1. Move to waive the second readings of Ordinances No. 220.2, No. 222.1 and No. 223.2.
2. Adopt the three Ordinances No. 220.2, No. 222.1 and No. 223.2 for amendments and to authorize execution of the agreements with Air Products and Praxair on the effective date of ordinances.
3. Authorize the City Manager to execute the Franchise License Agreements with Air Products and Praxair on the effective date of the ordinances.

## XVII. RESOLUTIONS

- \* 9. **Adopt a Resolution Authorizing the City Manager to Negotiate and Execute a Tax Sharing Agreement with SGI (Staff Contact: Tom Williams, 408-586-3050)**

**Background:** SGI (formerly known as Silicon Graphics Computer Systems) approached the City of Milpitas for a tax sharing agreement in consideration of relocation of its corporate headquarters from Fremont to Milpitas. As part of economic development and Use Tax outreach program, the City of Milpitas has negotiated tax sharing agreements with other companies previously. The site has been vacant for a number of years. Staff believes that SGI's relocation may act as a catalyst to attract other high-tech companies to the neighboring vacant sites.

Proposed terms of the agreement will include the following:

1. Contract term of 5 years.
2. Up to 50% sharing of taxes generated by SGI in Milpitas and allocated to the City of Milpitas:
  - a. Property tax that includes real properties and personal properties
  - b. Use tax from the purchase of equipment
  - c. Transient Occupancy Tax on hotel rooms booked for SGI's employees and guests
3. The actual amount of tax sharing will be based on true up of above revenues and documentation provided by SGI.

Staff requests that the City Council authorize the City Manager to negotiate and execute a Tax Sharing Agreement based on the terms listed above.

**Fiscal Impact:** 50% of potential tax revenues generated by SGI for the first 5 years and 100% thereafter.

**Recommendation:** Adopt a resolution authorizing the City Manager to negotiate and execute a Tax Sharing Agreement with SGI, subject to approval as to form by the City Attorney, for the sharing of up to 50% of Property, Use and Transient Occupancy Taxes generated by SGI in Milpitas and allocated to the City of Milpitas for a period of five years.

- \* 10. **Adopt a Resolution Authorizing the City Manager to Award and Execute a Construction Contract with O’Grady Paving, Inc. for Street Resurfacing Project 2014, Street Cape and Slurry Seal, Projects No. 3412, No. 4254 and No. 4268 and Authorize Staff to Execute Contract Change Orders (Staff Contact: Steve Chan, 408-586-3324)**

**Background:** On May 7, 2013, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals for Street Resurfacing Project 2014, Street Cape and Slurry Seal, Projects No. 3412, No. 4254 and No. 4268. The project consists of placing asphalt rubber cape seal, slurry seal, remove and replace asphalt and new roadway marking treatments on City streets. The Engineer’s Estimate for the base bid project work was \$2,000,000.

The project was advertised and two sealed bid proposals were received on June 3, 2013. Bid proposals were for \$1,649,128 and \$1,658,654, and the lowest responsible base bid was submitted by O’Grady Paving, Inc. in the amount of \$1,649,128. Sufficient funds to award this project will be available on July 1, 2013. Staff recommends that the City Council authorize the City Manager to award and execute a construction contract to the lowest responsible bidder for the project during the month of July when the Council is in recess.

As was approved for the successful completion of recent projects with tight completion schedules, staff requests approval of the use of contingencies in the amount of \$250,000 (15% of the contract award) to apply towards any additional scope of work identified by the City Engineer during construction due to unforeseen circumstances. Unforeseen circumstances are particularly attributed to the City’s poor soil conditions and high groundwater table. Unforeseen circumstances include but are not limited to the following: additional repairs beyond the scope of work identified, additional quantities due to unforeseen conditions encountered during construction, and other miscellaneous items. This allows for the timely completion of this project by addressing the additional scope of work immediately and avoiding remobilization costs by the contractor. This work is necessary in order to minimize potential claims or risk to the City and provide the best final work product. The construction contingency established for this project is \$250,000, and change order authority would not exceed this amount, and would not require additional appropriation.

**Fiscal Impact:** None. Sufficient funds will be available in the FY 2013-14 project budgets on July 1, 2013.

**Recommendations:**

1. Adopt a resolution authorizing the City Manager to award and execute a construction contract with O’Grady Paving, Inc. for Street Resurfacing Project 2014, Street Cape and Slurry Seal, Project No. 3412, No. 4254 and No. 4268, in the amount of \$1,649,128.
2. Authorize staff to execute change orders for the projects provided that the change orders do not exceed the established construction contingency amount of \$250,000 for the project.

- \* 11. **Adopt a Resolution and Approve a Memorandum of Agreement Creating the Santa Clara County Recycling and Waste Reduction Advisory Committee (Staff Contact: Jeff Moneda, 408-586-3345)**

**Background:** Countywide coordination of mandated and discretionary recycling and solid waste planning is provided by the Santa Clara County Recycling and Waste Reduction Commission (RWRC). The RWRC, chartered by the Board of Supervisors, is made up of elected officials representing cities or groups of cities, and the County and the Santa Clara Valley Water District. A Technical Advisory Committee (TAC) advises this Commission. The TAC is made up of staff

from the 15 cities and the County, plus representatives of the solid waste industry, recyclers, San Jose State University and environmental organizations.

Staff support for the RWRC and the TAC is provided by the County Integrated Waste Management Division (IWM), part of the County's Department of Agriculture and Environmental Management. Funding for this work comes from a Solid Waste Planning Fee charged by Santa Clara County on all disposed waste originating in the county.

A study issue arose from a desire to update the decades-old structure governing the TAC and its support from IWM staff. The roles of TAC and the IWM staff broadened as the jurisdictions implemented many new state requirements, including those of the California Integrated Waste Management Act (AB 939).

Throughout 2011, the ad-hoc TAC subcommittee had several meetings. With the assistance of IWM staff, members defined the scope of work and outlined a Memorandum of Agreement (MOA) document that addressed governance and representation issues. On July 16, 2012, an ad-hoc RWRC committee comprised of three Commissioners (past Chair Jamie McLeod, current Chair Jim Griffith and Commissioner Mike Wasserman) reviewed the outline, gave direction on key issues, and selected from among alternatives presented by the TAC subcommittee and IWM staff. With that direction, the subcommittee and IWM staff developed an MOA structure that addressed the issues and was generally acceptable to the participants.

The IWM Division then hired a consultant to expand the structure into the form of an MOA suitable for adoption. The RWRC reviewed and commented on a preliminary draft in December 2012. At its February 2013 meeting, it approved the final document and directed IWM staff to distribute the MOA and a sample resolution to all 16 jurisdictions with a request that they be reviewed by jurisdictional counsel and ultimately moved forward for approval by all 15 cities in the county and the County.

The City of Milpitas regularly attends TAC meetings and participates on the Household Hazardous Wastes and Public Education Subcommittees. City staff is appointed to TAC by the Public Works Director/City Engineer based upon scope of job duties and current assignments. Adoption of this resolution and approval of the MOA will not change the City's participation, voting rights nor benefits received from services provided by the Solid Waste Planning Fee.

**Fiscal Impact:** None. There is no fiscal impact as a result of adoption of this resolution and approval of the MOA.

**Recommendations:** In conjunction with all 15 cities in the county, Council is requested to take two actions that will define roles of Countywide coordination for solid waste planning:

1. Adopt a resolution creating the Santa Clara County Recycling and Waste Reduction Technical Advisory Committee, and;
2. Approve the Memorandum of Agreement creating the Santa Clara County Recycling and Waste Reduction Technical Advisory Committee.

- \* 12. **Approve and Authorize Execution of a Subdivision Improvement Agreement, On-Site Private Utilities Covenant Agreement, Right-of-Way Encroachment Permit Agreement, Final Maps, Public Improvement Plans, Penitencia Creek Trail Improvement Plans, and Temporary Closure of McCandless Drive; and Adopt a Resolution Authorizing Annexing Certain Real Property into Community Facilities District No. 2008-1 for "District 2" by Taylor-Morrison, Private Job No. 2825 (Staff Contact: Keyvan Irannejad, 408-586-3244)**

**Background:** On March 20, 2012, the City Council approved a Vesting Tentative Map, Conditional Use Permit and Site Development Permit for the District 2 residential development project. This project will construct 200 townhomes and is located on McCandless Drive just north of Penitencia Creek.

The developer submitted four final tract maps with required supporting documents and also submitted public and private improvement plans, and creek trail improvement plans for City review. Staff completed reviewing the plans and tract maps and determined those satisfy City requirements for this project.

Public improvements consist of new curb/gutter, asphalt concrete overlay, sidewalk, landscaped raised median, street lights and landscaping and irrigation, and up-sizing existing sewer main along the project frontage, new utility connections, and signal modification at McCandless Drive and Great Mall Parkway. In order to complete the public improvements with the least impact to the public safety, Taylor Morrison and other developers (Integral and DR Horton) working on McCandless Drive are requesting for its temporary closure between July and November 2013. All the surrounding businesses and the Great Mall were notified and a traffic analysis report was prepared by TJKM in support of the closure. Milpitas Police and Fire departments' staff will have emergency access at all times during the temporary closure of McCandless Drive.

The project will also have on-site private streets and utilities, and improvements to the Penitencia Creek trail. The public improvement plans, Penitencia Creek trail improvement plans, final maps, on-site private utilities covenant agreement and right-of-way encroachment agreement are available for review in the Land Development Office.

The developer petitioned the City to annex the project into Community Facilities District 2008-1 (CFD 2008-1). State law and City Resolution No. 7816 (adopted by the City Council on January 6, 2009) authorize the City to complete such annexation upon the property owner's written consent without further public hearing or formal election. Annexation into CFD 2008-1 will subject future property owners to an annual assessment to fund certain City services. The written petition and other required documents are attached to the resolution (included in the Council agenda packet).

**Fiscal Impact:** None.

**Recommendations:**

1. Approve and authorize execution of a Subdivision Improvement Agreement, on-site private utilities covenant agreement, and right-of-way encroachment permit agreement.
2. Approve the four Final Maps (Tracts 10141, 10145, 10148, and 10149) with the recommended street names.
3. Approve Public Improvement Plans 2-1165 and Penitencia Creek Trail Improvement Plans.
4. Approve the temporary closure of McCandless Drive.
5. Adopt a resolution annexing properties known as "District 2" project by Taylor-Morrison, LLC into Community Facility District 2008-1.

**Attachments:**

- Attachment 1: Subdivision Improvement Agreement
- Attachment 2: On-site Private Utilities Covenant Agreement- Cover Page
- Attachment 3: Right-of-way Encroachment Permit Agreement- Cover Page
- Attachment 4: Final Maps (Tracts 10141, 10145, 10148, and 10149)- Cover Page
- Attachment 5: Public Improvement Plans NO. 2-1165- Cover Page
- Attachment 6: Traffic Analysis Report for Temporary Closure of McCandless Drive
- Attachment 7: Penitencia Creek Trail Improvement Plans- Cover Page
- Attachment 8: Resolution Annexing Community Facility District 2008-1 (Annexation No. 3)

**XVIII. BID AND CONTRACTS**

- \* 13. **Approve Plans and Specifications and Authorize Advertisement for Bid Proposals for Cathodic Protection Improvements, Projects No. 7115, No. 6115 and No. 3706 (Staff Contact: Steve Erickson, 408-586-3301)**

**Background:** City of Milpitas Engineering staff completed plans and specifications for Cathodic Protection Improvements, Projects No. 7115, No. 6115, and No. 3706. The project provides for upgrades, repairs and replacements of the City's existing cathodic protection systems which are installed on buried metal pipelines to help protect the pipelines from corrosion and extend its useful life.

The Engineer's Estimate for the project is \$475,000. A copy of the title sheet of the project plans is included in the Council's agenda packet, while the complete set of plans and specifications are available for review in the office of the City Engineer.

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

**Recommendation:** Approve the plans and specifications for Projects No. 7115, No. 6115 and No. 3706, and authorize advertisement for bid proposals.

- \* 14. **Approve Amendment No. 2 to Agreement with ACCO Engineered Systems and Authorize the City Manager to Execute the Amendment Extending Term from June 30, 2013 to February 17, 2014 for the Not-To-Exceed Amount of \$21,144 for City Hall HVAC Maintenance and Repair (Staff Contact: Chris Schroeder, 408- 586-3161)**

**Background:** ACCO Engineered Systems was the lowest responsible bidder for the original installation of the HVAC system when City Hall was built. Due to the customized and proprietary nature of the software used in the Hall Heating, Ventilation, and Air Conditioning (HVAC) control system, on February 17, 2009, Council adopted Resolution No.7838 approving ACCO Engineered Systems maintenance and repair services as a Sole Source purchase pursuant to Municipal Code section I-2-3.09 "Sole Source Procurement" for a period of five years. The current ACCO contract will expire on June 30, 2013, and the Sole Source designation will expire on February 17, 2014. Staff proposes to extend the contract term to February 17, 2014 to coincide with the end of the Sole Source designation and increase the contract amount by \$21,144.

**Fiscal Impact:** None: This is a programmed expense in the FY 2013-14 budget for Facilities Maintenance.

**Recommendation:** Authorize Amendment No. 2 to the agreement with ACCO Engineered Systems and authorize the City Manager to execute the amendment from June 30, 2013 to February 17, 2014 for the not-to-exceed amount of \$21,144, for a total contract value of \$204,854 for City Hall Heating, Ventilation, and Air Conditioning maintenance and repair.

- \* 15. **Approve and Authorize the City Manager to Execute an Agreement with Quality Assurance Engineering, Inc. for Various Capital Improvement Program Projects (Staff Contact: Steve Erickson, 408-586-3301)**

**Background:** Engineering staff issued a Request for Proposals (RFP) for Construction Materials Testing Services for the City's Capital Improvement Program (CIP) in July 2009 and the firm of Quality Assurance Engineering, Inc. dba Consolidated Engineering Laboratories (CEL) was selected to meet the CIP construction workload for construction materials testing and inspection services. CEL successfully completed the authorized work requested and staff recommends entering into a new two-year agreement with CEL for the Construction Materials Testing Services. CEL is a recognized specialist in materials testing with qualifications and experience required for this type of service. Testing of construction materials such as paving asphalt, concrete and steel welding provides quality control and assurance that contractors meet the required specifications.

Materials testing services would be provided on a time and material basis for a not to exceed amount of \$500,000, which is considered reasonable for the project workload expected for the next two years. The current respective project budgets and cost plans are sufficient to fund the services to be provided.

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

**Recommendation:** Approve and authorize the City Manager to execute an agreement with Quality Assurance Engineering, Inc. (dba CEL) in the amount of \$500,000, for various capital improvement program Projects, subject to approval as to form by the City Attorney.

\* 16. **Approve Renewal of Excess Workers' Compensation Insurance Contracted via Brown & Brown of California (Staff Contact: Carmen Valdez, 408-586-3086)**

**Background:** The City carries excess workers' compensation insurance in accordance with state law. Insurance Broker, Brown & Brown of California was able to retain coverage through Safety National Casualty Corporation for fiscal year 2013-14. For fiscal year 2012-13, the cost of the excess workers' compensation was \$113,631. The City's self-insured retention is \$1,000,000 for Safety employees and \$750,000 for Miscellaneous employees. The renewal premium for fiscal year 2013-14 will be the same as last year at \$113,631. This premium quote is based on the City's payroll.

**Fiscal Impact:** None. There are sufficient funds allocated in the Human Resources Departmental 2013-14 budget.

**Recommendation:** Authorize renewal of contract with, and authorize the City Manager to pay Brown & Brown of California the premium rate of \$113,631; and, approve acceptance of Safety National Casualty Corporation to provide for the City's excess workers' compensation insurance for FY 2013-14.

\* 17. **Approve Contracts with Eight Vendors for FY 2013-14 Recreation Service Programs (Staff Contact: Dale Flunoy, 408-586-3228)**

**Background:** Recreation Services staff recommends City Council approve eight individual vendor contracts between the City of Milpitas and Barry Poole, Noteworthy Music, Jensen Performing Arts, Irene Saxs and Music Together, Communication Academy, Mad Science of Bay Area, South Bay Scholars, and Tatsiana Lahunovich. These are the preferred providers for classes and camps offered by Recreation Services. The vendor companies and individual contractors provide personnel, instruction, and supplies for each of their programs and camps.

City Council is requested to approve and authorize a contract for each vendor as follows:

- 1) Mad Science of Bay Area – not to exceed \$22,500.00
- 2) Barry Poole (tennis instruction) – not to exceed \$40,000.00
- 3) Irene Saxe and Music Together – not to exceed \$28,000.00
- 4) Noteworthy Music – not to exceed \$35,000.00
- 5) South Bay Scholars Basketball Camps – not to exceed \$30,000.00
- 6) Jensen Performing Arts – not to exceed \$25,000.00
- 7) Communication Academy – not to exceed \$27,500.00
- 8) Tatsiana Lahunovich (fitness) – not to exceed \$25,000.00

Funds were approved by the City Council during the FY 2013-14 budget hearing and are available in the Recreation Services operating budget for the purchase of these services.

**Fiscal Impact:** None.

**Recommendation:** Approve contracts between the City of Milpitas Recreation Services and the eight vendors for annual classes and camps not to exceed their appropriate dollar amounts for Fiscal Year 2013-14.

- \* 18. **Authorize Extension of Employment of Temporary Building Inspector Position for One Additional Month Ending July 31, 2013 (Staff Contact: Keyvan Irannejad, 408-586-3244)**

**Background:** Developer Lyon Communities requested to extend the employment of a dedicated full time building inspector for one more month for the Lyon Milpitas Apartments project to provide continuous and uninterrupted inspection service for the remaining duration of construction. This service was provided to the developer since December 1, 2011 by the City of Milpitas and proved to be beneficial to both sides. It allows the City to continue to provide a high level of customer service by considerably reducing the number of re-inspections, streamlining and maintaining construction schedule and minimizing the number of construction revisions. Existing workload does not allow staff to provide a dedicated building inspector from current Building staff to the project and necessitating the extension of employment of a temporary inspector for the month of July 2013 for \$11,720. Previously, the developer paid the full cost of inspection services, which included salary for the dedicated building inspector and an administrative fee.

**Fiscal Impact:** None

**Recommendations:**

1. Approve the developer Lyon Communities' request to continue with employment of one dedicated building inspector for an additional month ending July 31, 2013.
2. Approve budget appropriation of \$11,720, less the administrative fee, into the Building and Safety Department's budget.

- \* 19. **Approve and Authorize the City Manager to Execute Amendment No. 2 to the Agreement with HF&H Consultants for Technical Support Services for Solid Waste Rate Review by Increasing Compensation by \$28,446 (Staff Contact: Jeff Moneda, 408-586-3345)**

**Background:** On August 4, 2009, the City entered into an agreement with HF&H Consultants for technical support services for assistance with the financial, regulatory, and technical management of current solid waste services and for long-term planning of future solid waste services. On March 16, 2010, the City entered into Amendment No. 1 for 2010-2011 solid waste services contract negotiations with Republic Services and assistance in developing the City's Solid Waste Master Plan. Staff recommends increasing the agreement in the amount of \$28,446 for continued support anticipated for the duration of the agreement. This will bring the total value of the agreement to \$236,696. Amendment No. 2 is included in the Council agenda packet.

**Fiscal Impact:** None. Sufficient funds are available in the FY 2013-14 Engineering budget.

**Recommendation:** Authorize the City Manager to execute Amendment No. 2 to the consultant services agreement with HF&H Consultants for technical support services for solid waste rate review by increasing compensation in the amount of \$28,446, for a total not-to-exceed amount of \$236,696.

- \* 20. **Authorize the City Manager to Execute a One Year Extension to Agreement with HMM Engineers to June 30, 2014 for the Dixon Landing Road/I-880 Interchange Right of Way Project (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background:** The City entered into a consulting services agreement with HMM Engineers on April 7, 2009 for professional engineering services for Capital Improvement Project No. 4047 Dixon Landing Road/I-880 Interchange Right of Way close out. The contract was extended twice, most recently to June 30, 2013. Staff requests extension of the contract for one additional year to June 30, 2014 to allow more time to coordinate with Caltrans to transfer the land title to the State of California. Extension of the contract will not increase the contract amount.

**Fiscal Impact:** None.

**Recommendation:** Authorize the City Manager to approve Amendment No. 3 to the agreement with HMM Engineers for one year extension from June 30, 2013 to June 30, 2014 for the Dixon Landing Road/I-880 Interchange Right of Way project with no change in contract amount.

- \* 21. **Authorize the City Manager to Execute an Agreement with BAE Urban Economics to Prepare City of Milpitas State-Mandated General Plan Housing Element Update (Staff Contact: Felix Reliford, 408-586-3071)**

**Background:** Pursuant to California Government Code §65580-§65589, each city and county is required to prepare and implement a General Plan Housing Element every eight years toward obtaining the state and regional housing goals. The Housing Element contains the following major subject areas:

- The evaluation of local housing needs and analysis of constraints affecting the ability of the marketplace to meet these needs.
- Identification of community housing goals, objectives and policies.
- An evaluation of the community's performance in achieving the goals established for the past five-year period.
- The description of a new eight-year housing program to meet the identified housing needs and goals.

Milpitas' previous Housing Element was adopted by City Council in June 2010 and was found by State of California, Department of Housing and Community Development (HCD) to be in conformance with the state housing element law. As required by housing element law, a series of community meetings will be held to obtain public input and comments during the preparation process. The proposed Housing Element will be due by December 31, 2014.

Since the adoption of the previous housing element in 2010, several new state laws were adopted, including the following:

- Housing Elements are no longer on five-year cycles to be reviewed and updated. As required by Department of Housing and Community Development (HCD), the new law has established **housing elements on 8 year cycles**. Housing Elements for Bay Area Cities and Counties will be from 2014-2022.
- **Housing Elements are required to address AB 32 (Greenhouse Gases and Emissions)**. However, if cities and counties adopt Climate Action Plans which follow guidelines established by the state Attorney General's office, policies adopted in a Climate Action Plan would address AB 32 regarding potential impacts from future development. At its meeting on May 7, 2013, City Council adopted the Milpitas Climate Action Plan, consistent with state law.
- **Housing Elements and Zoning Ordinances must be amended to address emergency shelters, transitional, supportive housing and single room occupancy units (SROs) without any discretionary approval and must be permitted "by right."** Local governments no longer have the discretion to require a conditional use permit for these types of uses. Such uses can be regulated by development standards but the uses cannot be denied. This state law was enacted to address NIMBYism in opposition to such uses. HCD stated that Housing Elements which are non-compliant will not be certified. City of Milpitas staff and the Housing Element consultant will prepare appropriate Housing Element and Zoning Ordinance amendments to comply with state law.
- **Housing Elements are required to address SB 812 to adopt policies, ordinances and procedures established to allow reasonable accommodations for persons with disabilities.** Currently, the City's State adopted Uniform Building Code (UBC) addresses these issues, but the previous housing element does not. City of Milpitas staff

and the Housing Element consultant will prepare appropriate Housing Element and Zoning Ordinance amendments to comply with state law.

- **Housing Elements are required to address AB 162 amend to the Seismic and Safety Element to update current flooding information.** City of Milpitas staff and the Housing Element consultant will prepare appropriate Seismic and Safety Element and Zoning Ordinance amendments to comply with state law.
- **Streamlining Review Process.** If the previously updated Housing Element 2009-2014 meets certain criteria and the amendments above are adopted prior to submitting to HCD, the new Housing Element could be considered for the streamlining review process for certification. The previous Housing Element already meets several requirements, so City staff along with the Housing Element consultant believe, upon adoption of the amendments above, the Milpitas Housing Element 2014-2022 would meet these requirements for a streamlining review process.

Upon the selection of the Housing Element consultant, staff and consultant will address these amendments and will bring them forward to the Planning Commission and City Council for review and approval.

During the selection process, staff sent ten Requests for Proposals, received five responses and interviewed four planning consulting firms. Staff recommends the consultant firm of BAE Urban Economics to prepare and update the Milpitas General Plan Housing Element for 2014-2022. BAE has over 25 years of local government planning experience and has prepared numerous housing elements throughout the State and Bay Area. BAE prepared Milpitas' previous Housing Element in 2004-2009, for which the state HCD presented the City with its Local Government Leadership Award. The cost of the General Plan Housing Element is \$113,719. There are sufficient funds in the Milpitas Housing Authority to fund the preparation of the state-mandated housing element. A budget appropriation is part of the request and recommendation. Included in the Council agenda packet is the agreement.

**Fiscal Impact:** \$113,719. A budget appropriation from the Milpitas Housing Authority will be required to allocate funding for this project.

**Recommendations:**

1. Approve the budget appropriation request of \$113,719 from the Milpitas Housing Authority to fund the General Plan Housing Element Update.
  2. Authorize the City Manager to execute a consulting services agreement with BAE Urban Economics to prepare the General Plan Housing Element in an amount not to exceed \$113,719.
- \* 22. **Authorize the City Manager to Execute Amendment No. 2 to the Agreement with Tiburon, Inc. extending for one year Software Support and Maintenance for Police Records Management System for the Annual Not-To-Exceed Amount of \$52,828 (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background:** In December 1996, the City entered into an agreement with Tiburon, Inc. to provide a Police Records Management System (PRMS). Tiburon Inc. is the developer of the software, and there is no other source for support and maintenance of this application. Conversion to another Records Management System is not financially feasible at this time. Renewal of the maintenance agreement is therefore necessary to keep the PRMS operating. On January 4, 2011, Council approved the staff recommendation that Tiburon, Inc. be designated a sole source pursuant to Municipal Code Section I-2-3.09 Sole Source Procurement for a five year period. The contract with Tiburon renews annually at an increased rate of 5%, unless terminated.

**Fiscal Impact:** None. The cost of the maintenance agreement in the current fiscal year is \$52,828 which is part of the Information Services Department FY 2013-14 operating budget.

**Recommendation:** Approve Amendment No. 2 to the agreement with Tiburon Inc. for a one year extension of services for software support and maintenance for the Police Records Management System for the period July 1, 2013 to July 1, 2014, for the annual not-to-exceed amount of \$52,828.

**XIX. ADJOURNMENT**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING  
TUESDAY, AUGUST 6, 2013 AT 7:00 P.M.**