



**MILPITAS CITY COUNCIL AGENDA
TUESDAY, AUGUST 6, 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/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 LEGAL COUNSEL**
Existing Litigation, Per Government Code Section 54956.9
International Association of Fire Fighters (IAFF) v. City of Milpitas, Santa Clara County Superior Court case no. 1-13-CV-248192
 - 4. 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 Gomez)**
- VI. APPROVAL OF COUNCIL MEETING MINUTES – June 18, 2013**
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDAR – August 2013**
- VIII. PRESENTATIONS**
 - Commendation to the Leonie Family for Heroic Acts
 - Proclamation Promoting Volunteerism in the Community and Milpitas Cares organization
 - Recognition of Milpitas Resident Lou Horyza for participation in Fremont's 4th of July Parade

IX. PUBLIC FORUM

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.

X. ANNOUNCEMENTS

XI. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

XII. APPROVAL OF AGENDA

XIII. CONSENT CALENDAR (Items with asterisks*)

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.

XIV. PUBLIC HEARINGS

- 1. Hold Public Hearing to Consider Request to Hold a Flag Ceremony at City Hall Rotunda for India Independence Day Celebration on August 16, 2013 (Staff Contact: Mary Lavelle, 408-586-3001)**
- 2. Hold Public Hearing to Adopt Resolution Confirming Weed Abatement Assessments to be Entered on Tax Assessment Bills (Staff Contact: Albert Zamora, 408-586-3371)**

XV. UNFINISHED BUSINESS

- * 3. Receive the June and July 2013 Odor Control Reports (Staff Contact: Jeff Moneda, 408-586-3345)**

XVI. REPORTS OF MAYOR AND COMMISSIONS

- * 4. Consider Mayor's Recommendations for Appointments and Re-Appointments to Five Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)**
- 5. Hear Request of Councilmember Gomez for a Report on PG&E Responsiveness to Businesses (Contact: Councilmember Gomez, 408-586-3031)**
- * 6. Consider Amendment to Economic Development Commission By-Laws Approving Economic Development Aspects as it Relates to Sister Cities Commission Relationships (Staff Contacts: Felix Reliford, 408-586-3071 and Leslie Stobbe, 408-586-3352)**
- * 7. Approve Amendment to By-Laws for Library Advisory Commission Regarding Meetings and Officers (Staff Contact: Sheldon Ah Sing, 408-586-3278)**

XVII. NEW BUSINESS

- 8. Consider Request from Milpitas Chamber of Commerce to Co-Sponsor or Approve Waiver of City Fees for International BBQ and Festival Event in September (Staff Contact: Cindy Hom, 408-586-3284)**

- 9. **Approve Implementation of the City's Mobile Application (Staff Contact: Mike Luu, 408-586-2706)**
- * 10. **Consider Request from BAPS Non-profit for a \$500 Donation for Walkathon Event (Staff Contact: Mary Lavelle, 408-586-3001)**
- * 11. **Approve Receipt of Grant from the California Department of Resources Recycling and Recovery Beverage Container Program in the Amount of \$18,177 (Staff Contact: Jeff Moneda, 408-586-3345)**
- * 12. **Receive City of Milpitas Investment Portfolio Status Report for the Quarter Ended June 30, 2013 (Staff Contact: Emma Karlen, 408-586-3145)**

XVIII. RESOLUTIONS

- * 13. **Adopt a Resolution Granting Initial Acceptance of, and Reducing the Performance Bond for Alviso Adobe Renovation Phase IV, Project No. 5055 (Staff Contact: Steve Erickson, 408-586-3301)**
- * 14. **Adopt a Resolution Granting Initial Acceptance of, Reducing Performance Bond for, and Accepting Park Improvements for Fairfield (Cerano), Project No. 3170 (Staff Contact: Ebby Sohrabi, 408-586-3335)**
- * 15. **Adopt a Resolution Granting Final Acceptance of and Release Subdivision Improvement Bond for MIL Aspen Family Apartments, Project No. PJ3199 (Staff Contact: Ebby Sohrabi, 408-586-3335)**
- * 16. **Adopt a Resolution Granting Final Acceptance of the Department of Energy Grant Program, Project No. 5094 (Staff Contact: Steve Erickson, 408-586-3301)**
- * 17. **Adopt a Resolution Approving the Letter of Agreement Between the City of Milpitas and the Association of Milpitas Battalion Chiefs (AMBC) (Staff Contact: Carmen Valdez, 408-586-3086)**
- * 18. **Adopt a Resolution Authorizing the Filing of an Application for Funding Assigned to Metropolitan Transportation Commission, Committing Any Necessary Matching Funds, and Stating the Assurance to Complete the 2014 Street Resurfacing Project, CIP No. 3412 (Staff Contact: Steve Chan, 408-586-3324)**
- * 19. **Adopt a Resolution Authorizing the City Manager to Execute Amendment No. 2 to the Master Agreement with the County of Santa Clara for the Senior Nutrition Program and Agreements with Compass Group USA, Inc. and New Orient Restaurant for Meal Services (Staff Contact: Stephanie Douglas, 408-586-3226)**
- * 20. **Adopt a Resolution Seeking Investigation of Sexual Slavery Allegations During World War II and Adopt a Resolution Recognizing Korean War Armistice Day (Staff Contact: Michael Ogaz, 408-586-3040)**

XIX. BID AND CONTRACTS

- * 21. **Approve the Plans and Specifications and Authorize the Advertisement for Bid Proposals for Soundwall Renovations 2013, Project No. 4267 (Staff Contact: Steve Erickson, 408-586-3301)**

- * 22. **Approve Agreement Between the County of Santa Clara and the City of Milpitas for the Distribution of 2010 Homeland Security Grant Funds (Staff Contact: Sean Simonson, 408-586- 2810)**
- * 23. **Approve and Authorize the City Manager to Execute Amendment No. 3 to the Agreement with CDM Smith, Inc. for Solid Waste Program Support by Increasing Compensation by \$16,780 (Staff Contact: Jeff Moneda, 408-586-3345)**
- * 24. **Authorize the Fire Chief to Execute an Agreement with the Center for Public Safety Excellence to Prepare an Integrated All Hazards Community Risk Assessment and Standards of Response Coverage Document (Staff Contact: Brian Sturdivant, 408-586-2811)**
- * 25. **Approve a Contract with Renne Sloan Holtzman Sakai Law Firm for Litigation Services (Staff Contact: Michael Ogaz, 408-586-3040)**

XX. DEMAND

- * 26. **Authorize Payment to Cayenta for Annual Software Support and Maintenance Services Agreement for the Financial and Utility Billing System for the Not-To-Exceed Amount of \$132,194.65 (Staff Contact: Chris Schroeder, 408-586-3161)**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, AUGUST 20, 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 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 / 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 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, 3rd 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 (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 or at Milpitas City Hall. Contact the City Clerk's office at 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 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. PUBLIC HEARINGS

1. **Hold Public Hearing to Consider Request to Hold a Flag Ceremony at City Hall Rotunda for India Independence Day Celebration on August 16, 2013 (Staff Contact: Mary Lavelle, 408-586-3001)**

Background: The Federation of Indo Americans of Northern California filed two applications with the City Clerk: (1) to rent Milpitas City Hall lobby rotunda from 5 – 8 PM on Friday, August 16, 2013 and (2) a request to hold a ground level flag ceremony on that date. Milpitas Municipal Code I-600-2.40 requires “all ground level ceremonies must be approved by the City Council . . . and . . . a public hearing will be held regarding each ground level ceremony application prior to its approval or denial by the City Council.”

Mr. Sumeet Ahuja and Mr. Dharminder Dewan from Federation of Indo Americans of Northern California submitted proper forms with information and application fee in July. The group would like to hold an outdoor flag ceremony with speeches, at the back patio of City Hall, followed by a reception inside the City Hall lobby. 100 people are anticipated to attend.

The City Council must hold a public hearing for any comments, and then following the hearing, Council shall determine if it will approve the request.

Fiscal Impact: Fees will be appropriately collected for rental cost and staff time for the event.

Attachments: Applications and Flag Policy

Recommendations:

1. Hold a public hearing and move to close it following comments.
 2. Consider request and approve a flag ceremony by Federation of Indo Americans at City Hall rotunda on Friday, August 16, 2013 from 6 to 8 PM.
2. **Hold Public Hearing to Adopt Resolution Confirming Weed Abatement Assessments to be Entered on Tax Assessment Bills (Staff Contact: Albert Zamora, 408-586-3371)**

Background: On January 15, 2013, the City Council adopted Resolution No. 8212 declaring noxious or dangerous weeds growing upon certain described property to be a public nuisance that must be abated by the removal of the weeds. If the public nuisance was not removed from the properties by the owner, the City contracted with the County Department of Agriculture and Environmental Management to remove the weeds and abate the nuisance. In accordance with Title V, Chapter 202, Weed Abatement, of the Milpitas Municipal Code, the County Department of Agriculture and Environmental Management filed with the City Clerk a report and assessment list on weeds abated within the City as nuisances. The report and notice of the public hearing was posted at City Hall pursuant to Milpitas Municipal Code section V-202-9.00.

Milpitas Municipal Code provides that the City Council “shall hear the report together with any objections of the property owner liable to be assessed and make such modifications on the proposed assessment as it deems necessary.”

After Council adopts the resolution, it will be recorded and charges thereon become a lien on the land involved to be collected in the same manner as property taxes. A copy of the assessment list and the proposed resolution confirming the weed abatement report are included in the Council’s agenda packet.

Attachments:

1. 2013 Weed Abatement Program Assessment Report – City of Milpitas
2. Resolution

Recommendations:

1. Open the public hearing, and move to close it, after hearing any testimony.
2. Adopt City of Milpitas resolution confirming assessments for weed abatement for 2013.

XV. UNFINISHED BUSINESS

- * **3. Receive the June and July 2013 Odor Control Reports (Staff Contact: Jeff Moneda, 408-586-3345)**

Background: From May 20 through July 21, 2013, the Bay Area Air Quality Management District (BAAQMD) received forty-two odor complaints originating in Milpitas. Twenty-six complaints identified a garbage-related odor, two identified a sewage-related odor, thirteen did not identify an odor source and one identified multiple sources. As of the last Council update, the City's odor reporting website has received eighty-five reported complaints.

Fiscal Impact: None.

Recommendation: Receive the June and July odor reports.

XVI. REPORTS OF MAYOR AND COMMISSIONS

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

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

Emergency Preparedness Commission:

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

Move Betty Jo Reutter from Alternate No. 1 to a regular member to a term that will expire in June 2016.

Newly appoint Nasir Lalani as Alternate No. 1 to a term that will expire in June 2015.

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

Library Advisory Commission:

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

Parks, Recreation, and Cultural Resources Commission:

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

Recycling and Source Reduction Advisory Commission:

Move Madan Arora from Alternate No. 1 to a regular member to a term that will expire in October 2013.

Move Eddie Inamdar from Alternate No. 2 to Alternate No. 1 to a term that will expire in October 2013.

Newly appoint Conrad Chua as Alternate No. 2 a term that will expire in October 2014.

Senior Advisory Commission:

Move Patrick Yung from Alternate No. 2 to Alternate No. 1 to a term that will expire in December 2013.

Newly appoint Jae Wi as Alternate No. 2 to a term that will expire in December 2014.

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

5. Hear Request from Councilmember Gomez for a Report on PG&E Responsiveness to Businesses (Contact: Councilmember Gomez, 408-586-3031)

Background: Councilmember Gomez would like to discuss PG&E's responsiveness to businesses in the City of Milpitas. He is seeking a report from City staff, with a tracking and record keeping of requests made by local businesses to PG&E and the length of time it takes the utility company to respond to those needs.

Recommendation: Hear request from Councilmember Gomez, and direct staff accordingly.

* **6. Consider Amendment to Economic Development Commission By-Laws Approving Economic Development Aspects as it Relates to Sister Cities Commission Relationships (Staff Contacts: Felix Reliford, 408-586-3071 and Leslie Stobbe, 408-586-3352)**

Background: At meetings held on April 25 and May 23, the Sister Cities Commission (SCC) considered including economic development aspects in sister city relationships. At the April meeting, SCC invited Economic Development Commission (EDC) Chair Don Peoples to visit and discuss possible coordination between the two Commissions.

During discussion, the SCC sought to engage the EDC to consider organizing the business interests and contacts that would facilitate discussions of economic development opportunities in Milpitas. The SCC decided that it did not have the expertise needed to facilitate business related aspects of sister city relationships. Upon review of its by-laws, and since the SCC has established focus areas and criteria for sister city relationships that include economic interests, this Commission decided a change to the Purpose statement of its By-laws was not necessary.

On May 13, SCC Chair Dennis Grilli then visited the EDC to review the possibility of the EDC taking the lead responsibility to facilitate economic development aspects of sister city relationships. At its meeting in June, the EDC voted to recommend to the City Council amending its by-laws to include economic development aspects as it relates to sister city relationships. The EDC did express interest in the economic development opportunities to be gained from sister city relationships. This commission decided that an addition to its By-laws is necessary for it to proceed with forward planning to support research and coordination for sister city relationships with business interests in Milpitas.

The Council is advised that questions regarding International Business Laws, Internal Revenue Service, US State Department, etc. may require additional expertise as it relates to foreign countries conducting businesses in the United States.

EDC Chair Don Peoples and SCC Vice-Chair Karen Serpa will be at the City Council meeting to further address any questions by City Council regarding this proposed amendment. Included in the Council's agenda packet are copies of the EDC and SCC By-Laws and a letter from both Chairpersons regarding this matter.

Fiscal Impact: Unknown at this time, based on the extent of the economic development aspects, amount of staff time and city resources required.

Recommendation: Approve request to amend the Economic Development Commission By-Laws to include economic development aspects as it relates to Sister Cities Commission.

* **7. Approve Amendment to By-Laws for Library Advisory Commission Regarding Meetings and Officers (Staff Contact: Sheldon Ah Sing, 408-586-3278)**

Background: At its May 20, 2013 meeting, the Library Advisory Commission unanimously voted to recommend a change to its regular meetings to eliminate the July meeting and to change the term duration for elected officers. A Chair and Vice Chair will be selected at the first meeting of the calendar year from the appointed members for a term of one year. A Chair or Vice Chair shall only serve two consecutive terms until a lapse period of one term has been completed before the Commissioner can be elected to the same position.

Fiscal Impact: None.

Recommendation: Approve changes to Sections 5 (Officers) and 6 (Meetings) of the Library Advisory Commission's By Laws.

XVII. NEW BUSINESS

8. Consider Request from Milpitas Chamber of Commerce to Co-Sponsor or Approve Waiver of City Fees for International BBQ and Festival Event in September (Staff Contact: Cindy Hom, 408-586-3284)

Background: The Milpitas Chamber of Commerce requested a waiver of City fees and staff overtime cost related to the International BBQ and Festival special event, which includes traffic control, event security staffing, mobile stage rental, permits, and inspections. The proposed event is scheduled for September 28 - 29, 2013 between the hours of 10:00 AM and 6:00 PM on South Milpitas Boulevard between Los Coches Street and Turquoise Dive. The fee request letter, event description, and layout are provided in Attachment A (in Council agenda packet).

The City Council adopted a fee waiver/reduction policy which established requirements and a \$1,500 maximum limit. The fee waivers/reductions only apply to services provided by the City during its regular course of business such as rental fees for the City's facilities or equipment, building permit fees, or fire permit fees. The policy prohibits the waiver of any staff overtime costs required due to an event.

The City was also recently approached by the Chamber to co-sponsor this event. As a co-sponsor, the City may contribute the total contribution request of the Chamber which would include assistance with implementation of the traffic handling, event security, and waiver of permits and inspection fees as itemized in Attachment B (in Council agenda packet) without overtime for a total amount of \$12,450. Staff is of the opinion that co-sponsoring the event with the Chamber of Commerce will increase recognition of the City, as a desirable destination to visit and conduct business.

The City Council has the option to: 1) authorize the City Clerk to execute the Fee Waiver request for the maximum amount of \$1,500; or 2) allow the City to participate as a "co-sponsor" of the event in an amount of \$12,450.

Fiscal Impact: \$1,500 or \$12,450

Recommendation: Either approve Option 1 to waive City fees in an amount not to exceed \$1,500; or approve Option 2 to co-sponsor the Chamber of Commerce's International BBQ and Festival in September and waive fees in the amount as specified by the City Council.

9. Approve Implementation of the City's Mobile Application (Staff Contact: Mike Luu, 408-586-2706)

Background: Under the direction of the City Manager's office, City Information Services staff has developed a mobile application system. This app provides residents new ways – on their own mobile devices - to receive City of Milpitas news, event information and staff directory. It

will further engage residents by providing an efficient way to report concerns. Staff recommends that Council authorize the implementation of the mobile application.

Telecommunications Commissioners and staff will present a power point and demonstration of the new mobile application at the Council meeting.

Fiscal Impact: None. The application was developed in-house, using the existing infrastructure.

Recommendation: Receive report and approve the implementation of the new City of Milpitas mobile application.

* **10. Consider Request from BAPS Non-profit for a \$500 Donation for Walkathon Event (Staff Contact: Mary Lavelle, 408-586-3001)**

Background: The City Clerk received a “Donation or Fee Waiver/Reduction Request Application Form” from BAPS Charities, a Hindu organization with a location in Milpitas. BAPS held a fundraising walkathon on July 20, 2013 to support Milpitas Unified School District and American Heart Association. The group is seeking funds for support from the City of Milpitas, and it does meet requirements of the City’s approved policy.

Fiscal Impact: \$20,000 was approved and included in the FY 2013-14 City budget for City Council’s Unallocated Community Promotions. If the current donation request is approved, then \$19,500 would be remaining balance.

Recommendation: Consider the request from BAPS Charities and move to approve a \$500 donation to its recent walkathon.

* **11. Approve Receipt of Grant from the California Department of Resources Recycling and Recovery Beverage Container Program in the Amount of \$18,177 (Staff Contact: Jeff Moneda, 408-586-3345)**

Background: The City of Milpitas received \$18,177 from the California Department of Resources Recycling and Recovery (CalRecycle) Beverage Container Recycling Program. Staff applied for this funding, as authorized by Council Resolutions No. 7094 and No. 7351, to support public outreach about recycling.

Staff recommends that Council authorize receipt of this funding into the Fiscal Year 2013-14 operating budget. The total award will fund educational and promotional services and supplies.

Fiscal Impact: None. Funding is available in the Engineering operating budget for Fiscal Year 2013-14.

Recommendation: Approve receipt of the CalRecycle Grant in the amount of \$18,177.

* **12. Receive City of Milpitas Investment Portfolio Status Report for the Quarter Ended June 30, 2013 (Staff Contact: Emma Karlen, 408-586-3145)**

Background: In compliance with the State of California Government Code and the City’s Investment policy, the City of Milpitas Investment Report for the quarter ended June 30, 2013, is submitted for Council review and acceptance.

The Portfolio Summary Report (included in the Council’s packet) provides a summary of the City’s investments by type. It lists the par value, market value, book value, percentage of portfolio, term, days to maturity and the equivalent yields for each type of investment. The

Portfolio Details Report provides the same information for each individual investment in the City's portfolio as of June 30, 2013.

As of June 30, 2013, the principal cost and market value of the City's investment portfolio was \$185,850,904 and \$185,579,832 respectively. When market interest rates increase after an investment is purchased, the market value of that investment decreases. Conversely, when market interest rates decline after an investment is purchased, the market value of that investment increases. If the investments are not sold prior to the maturity date, there is no market risk. Therefore, in accordance with the City's investment policy, all investments are held until maturity to ensure the return of all invested principal.

The City's effective rate of return for the period ended June 30, 2013 was 0.59%. The comparative benchmarks for the same period were 0.24% for LAIF (Local Agency Investment Fund) and 0.26% for the 12-month average yield of the 2 year Treasury Note. The weighted average maturity of the portfolio was 515 days.

The investment portfolio is in compliance with the City's investment policy. A combination of securities maturing, new revenues, and tax receipts will adequately cover the anticipated cash flow needs for the next six months. Cash flow requirements are continually monitored and are considered paramount in the selection of maturity dates of securities.

The market values of the securities were provided by BNY Mellon, the safekeeping bank of the City's securities. All the securities owned by the City are held in the trust department of BNY Mellon under the terms of a custody agreement.

Three charts are included with the agenda packet that show investment by maturity levels, comparison of the City's portfolio yields to other benchmark yields as well as a trend of the type of securities in the City's portfolio, weighted average maturity and average yield.

Fiscal Impact: None.

Recommendation: Receive the investment report for the quarter ended June 30, 2013.

XVIII. RESOLUTIONS

- * **13. Adopt a Resolution Granting Initial Acceptance of, and Reducing the Performance Bond for Alviso Adobe Renovation Phase IV, Project No. 5055 (Staff Contact: Steve Erickson, 408-586-3301)**

Background: The City Council awarded the Alviso Adobe Renovation Phase IV "Site Improvements" project to AJF/BHM A Joint Venture, on January 3, 2012. This project phase constructed the historic public park improvements to replicate an early 1900's Orchard/ Mexican Rancho. The work included reconstructing the existing historic water tower, garage, and cutting shed, constructing a new public restroom and parking facilities, landscaping and park amenities including picnic areas, and completed structural improvements to the first floor of the Alviso Adobe. 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 \$256,793.11, which is 10% of the final contract value.

Fiscal Impact: None.

Recommendation: Adopt a resolution granting initial acceptance of Alviso Adobe Renovation Phase IV, Project No. 5055, subject to a one year warranty period, and reduction of the faithful performance bond to \$256,793.11.

- * 14. **Adopt a Resolution Granting Initial Acceptance of, Reducing Performance Bond for, and Accepting Park Improvements for Fairfield (Cerano), Project No. 3170 (Staff Contact: Ebby Sohrabi, 408-586-3335)**

Background: The City Council approved the subdivision improvement agreement on August 18, 2009 and an amendment to the subdivision improvement agreement on May 17, 2011 for the Cerano Project located at 501 Murphy Ranch Road. The amended agreement is for the construction of public improvements related to the project consisting of: utility connections to City facilities (potable water, recycled water, sanitary sewer and storm drain), Bellew Pump Station improvements-conversion of diesel engines to electric motors and diesel generator, construction of Cerano Park with tennis courts, basketball court, restroom, playground equipment, access to Coyote Creek levee trail, and traffic signal improvements at Tasman and McCarthy intersection-installation of new 5 section heads to facilitate southbound right turns, and installation of landscaped median at Murphy Ranch Road. These public improvements, valued at approximately \$4,400,000.00, have been completed by the developer in accordance with approved improvement plans. In addition, the offer of fee title for Cerano Park by the developer can now be accepted by resolution with the completion of the park improvements in accordance with Government Code Section 7050.

The developer has also provided the necessary supporting documents for reimbursement of the agreed park improvements. Staff reviewed and agreed with the independent auditor's report to reimburse the developer in the amount of \$361,776. Fairfield, the original developer, constructed the park improvements valued at \$2,154,660. Fairfield's park in lieu fee obligation is \$1,792,884. The difference (\$361,776) is the reimbursement amount, which is being paid from park in lieu fee obligation of the subsequent developer for the second phase of the original development (William Lyon Homes). There is sufficient money in the park in lieu fee fund for the budget appropriation to reimburse Fairfield.

Staff recommends the City Council grant initial acceptance of the improvements, reduce the performance bond to \$440,000.00, which is 10% of the contract amount, and accept fee title to the park site.

Fiscal Impact: A budget appropriation in the amount \$361,776 is required for the reimbursement from the Park In Lieu Fee. The reimbursement amount was previously collected from the adjacent William Lyons development.

Recommendations:

1. Adopt a resolution granting initial acceptance of the Fairfield (Cerano) Project No. 3170, subject to a one-year warranty period and reduction of the faithful performance security to \$440,000.
 2. Accept fee title to Cerano Park in accordance with CA Government Code Section 7050.
 3. Authorize budget appropriation in the amount of \$361,776 from the park funds for the reimbursement to the developer for park improvements.
- * 15. **Adopt a Resolution Granting Final Acceptance of and Release Subdivision Improvement Bond for MIL Aspen Family Apartments, Project No. PJ3199 (Staff Contact: Ebby Sohrabi, 408-586-3335)**

Background: On March 16, 2010, the City Council adopted Resolution No. 7969 approving the initial acceptance of public improvements valued at approximately \$1,500,000 for MIL Aspen Family Apartments, constructed by MIL Aspen Associates (developer). The developer completed the corrective work on defects, damages, or imperfections for the one-year warranty, and therefore is ready for the final acceptance.

Fiscal Impact: None.

Recommendation: Adopt a resolution granting final acceptance of and releasing subdivision improvement bond for MIL Aspen Family Apartments Project No. PJ 3199.

* 16. **Adopt a Resolution Granting Final Acceptance of the Department of Energy Grant Program, Project No. 5094 (Staff Contact: Steve Erickson, 408-586-3301)**

Background: This project was initially accepted on June 19, 2013, and has passed the one-year warranty period. A final inspection of the installed public improvements has been made and the work was found to be satisfactory. The project provided for the replacement of nine existing parking lot lights at the Milpitas Sports Center parking lot with new LED lights.

Staff recommends the Council grant final project acceptance of the Department of Energy Grant Program, Project No. 5094, and release the contractor's bond.

Fiscal Impact: None.

Recommendation: Adopt a resolution granting final acceptance of Department of Energy Grant Program, Project No. 5094 and releasing the contractor's bond.

* 17. **Adopt a Resolution Approving the Letter of Agreement Between the City of Milpitas and the Association of Milpitas Battalion Chiefs (AMBC) (Staff Contact: Carmen Valdez, 408-586-3086)**

Background: The Milpitas Battalion Chiefs petitioned the Municipal Employee Relations Officer (City Manager) to be recognized as an established representation unit in December 2012. The City Manager did confirm recognition of the AMBC in May 2013. The parties have not yet completed the meet and confer negotiations over the terms of an initial Memorandum of Understanding (MOU), but wish to enter into an interim agreement regarding AMBC compensation to be in effect for a limited duration.

City representatives and AMBC representatives met and conferred in good faith to negotiate an agreement regarding the coverage of additional duty chief work periods. During staffing deficiencies in the rank of Battalion Chief, additional hours worked past the fifty-six (56) hour workweek schedule will be compensated at the straight hourly rate for the applicable Battalion Chief compensation level. AMBC members will continue their current status as "exempt" employees.

Agreement was reached with effective dates of March 28, 2013 – October 8, 2013 or at such an earlier time as it is replaced by an approved MOU between the City of Milpitas and AMBC. A copy of the recommended letter of agreement is included in the City Council agenda packet.

Fiscal Impact: None. Sufficient funds have been budgeted in the Fire Department FY 2013-14 operating budget.

Recommendation: Adopt a resolution approving the Letter of Agreement between the City of Milpitas and the Association of Milpitas Battalion Chiefs.

* 18. **Adopt a Resolution Authorizing the Filing of an Application for Funding Assigned to Metropolitan Transportation Commission, Committing Any Necessary Matching Funds, and Stating the Assurance to Complete the 2014 Street Resurfacing Project, CIP No. 3412 (Staff Contact: Steve Chan, 408-586-3324)**

Background: The City of Milpitas applied to the Metropolitan Transportation Commission (MTC) for \$1,652,000 in Surface Transportation Program (STP) funding assigned to MTC for programming discretion. The funding will contribute to the 2014 Street Resurfacing Project, CIP No. 3412. The required minimum City local match to receive the funding is \$215,000. As part

of the grant application process, MTC requires the City Council to adopt a resolution authorizing the filing of the application, committing the necessary matching funds and any additional funds to complete the project, authorizing the City Manager to execute related grant documents, and making other assurances as required by the grant program.

The project scope includes installation of two inch asphalt concrete overlay, construction of curb ramps and sidewalk, and installation of signing and striping on Arizona Street, Washington Drive, Dixon Road, Escuela Parkway, and other city streets, totaling approximately 2.6 miles. The project is categorically exempt under Section 15301 (Existing Facilities) of the CEQA Guidelines for restoration or rehabilitation of existing public streets. Construction is scheduled for the summer of 2014.

Fiscal Impact: None. The local match of \$215,000 to receive grant funding is available from local funding programmed in Street Resurfacing Project 2014, CIP No. 3412.

Recommendation: Adopt a Resolution authorizing filing an application for funding assigned to MTC in the amount of \$1,652,000, committing necessary matching funds of \$215,000, stating the assurance to complete the 2014 Road Rehabilitation Project, CIP No. 3412, in compliance with the grant program, and authorizing the City Manager to negotiate and execute all grant-related documents.

- * **19. Adopt a Resolution Authorizing the City Manager to Execute Amendment No. 2 to the Master Agreement with the County of Santa Clara for the Senior Nutrition Program and Agreements with Compass Group USA, Inc. and New Orient Restaurant for Meal Services (Staff Contact: Stephanie Douglas, 408-586-3226)**

Background: The City of Milpitas has contracted with the County of Santa Clara to help implement the Senior Nutrition Program since March 1978. This program serves eligible seniors, sixty years and older, 249 days per year, an average of 96 meals per day, for a total of 23,904 meals per year. The total budget for FY 2013-14 Nutrition Program is \$168,955. The parties entered into a Master Agreement on July 1, 2011 and the agreement is amended on an annual basis each year to reflect the approved budget for each fiscal year. Under the proposed Amendment No. 2 for FY 2013-14, the City of Milpitas and the County of Santa Clara would equally share costs of the program, which would amount to a burden of \$84,478 each (after reimbursements), as outlined in the County's Master Agreement and proposed Amendment No. 2. The City would initially pay all costs and the County would reimburse the City its 50% cost share after the receipt of invoices and other documentation.

Compass Group USA, Inc., doing business as Bateman, has been catering the Senior Center Nutrition Program since July 1, 1998. The County of Santa Clara issued a Request for Proposal dated February 1, 2013 for the County-wide Senior Nutrition Program and awarded the contract to Bateman. Staff is proposing to contract directly with Bateman without going through its own competitive process, pursuant to Milpitas Municipal Code Section I-3-3.08 (Cooperative Purchases), which authorizes direct contracts when another public agency in the State has gone through a competitive process as restricted as the City's process. Bateman will provide hot meals in addition to salads and sandwiches five days a week at the Senior Center. In FY 2013-14, Bateman will provide 15,966 meals for \$4.69 each, which will not exceed the approved budget amount of \$74,976 for FY 2013-14. The contract with Bateman will be for one year with a retroactive effective date of July 1, 2013 and annual City options to extend until the expiration date of July 31, 2018. Staff is also requesting authority to exercise the annual option based on the approved annual budget from the County and subject to appropriation of the City Council for the Senior Nutrition Program.

The City of Milpitas has also contracted with Frank Szeto, an individual doing business as New Orient Restaurant since July 1, 2004 for Asian style meals twice a week for seniors. Staff will need to go through a competitive process for the Asian style meals for the Senior Nutrition

Program. In the interim, staff recommends approval of a short term six months agreement retroactively from July 1, 2013 to December 31, 2013. During the first half of FY 2013-14, New Orient will provide 3,969 meals at \$4.73 per meal, and will not exceed the approved budget amount of \$18,774 for FY 2013-14 services. Staff will return to Council for approval of the long term agreement for Asian style meals when the competitive process is complete.

Fiscal Impact: None. Sufficient funds have been budgeted in the Recreation Services Department FY 2013-14 operating budget.

Recommendations:

1. Authorize the City Manager to execute Amendment No. 2 to the Master Senior Nutrition Program Agreement with the County of Santa Clara retroactively effective from July 1, 2013 to June 30, 2014 in the amount of \$168,955.
2. Authorize the City Manager to execute an agreement for the Senior Nutrition Program with Compass Group USA dba Bateman retroactively from July 1, 2013 to July 31, 2014 with four one-year options in the initial amount of \$74,976 and authorize the City Manager to exercise annual option(s) based on the approved annual budget from Santa Clara County and subject to annual appropriation of the City Council for the Senior Nutrition Program.
3. Authorize the City Manager to execute an agreement for the Senior Nutrition Program with Frank Szeto, an individual, dba New Orient Restaurant retroactively from July 1, 2013 to December 31, 2013 in the amount of \$18,774.

- * **20. Adopt a Resolution Seeking Investigation of Sexual Slavery Allegations During World War II and Adopt a Resolution Recognizing Korean War Armistice Day (Staff Contact: Michael Ogaz, 408-586-3040)**

Background: At the request of Mayor Esteves, Council is asked to consider adoption of two Resolutions.

The first Resolution, noting facts alleged in a Resolution adopted by the Board of Supervisors of the City and County of San Francisco, seeks an investigation by U.S. officials of allegations of the Japanese government having operated a system of sexual slavery in occupied countries during World War II and statements about that made by the Mayor of Osaka, Japan. According to the San Francisco Resolution, confirmed by outside news reporting agencies, the Osaka Mayor made statements condoning the system utilizing women from occupied countries as “comfort women” during the Pacific War. The Resolution asks President Obama and the Congress to investigate the matter and seek acknowledgment and reparation from the Japanese government to victims if found true.

The second Resolution notes the contributions of Bay Area residents, including those living in what is now the City of Milpitas, to the Korean War effort and supports the California Legislature’s actions toward establishing July 27, 2013 as Korean War Armistice Day.

Fiscal Impact: None.

Recommendations:

1. Adopt a Resolution requesting investigation by U.S. officials of claims of sexual slavery in World War II.
2. Adopt a Resolution recognizing July 27, 2013 as Korean War Armistice Day.

XIX. BID AND CONTRACTS

- * **21. Approve Plans and Specifications and Authorize Advertisement for Bid Proposals for Soundwall Renovations 2013, Project No. 4267 (Staff Contact: Steve Erickson, 408-586-3301)**

Background: Plans and specifications are completed for Soundwall Renovations 2013, Project No.4267. The project provides for the repair and painting of City-owned soundwalls located along the easterly side of Milpitas Boulevard, from Escuela Parkway to Tramway Drive. Repairs include: the removal of loose and fractured concrete; cleaning exposed rebar and patching; and applying an elastomeric paint to help prevent decay. The Engineer's Estimate for the project is \$120,000. A copy of the title sheet of the project plans is included in the Council's agenda packet, and 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 budget for these services.

Recommendation: Approve the plans and specifications for Soundwall Renovations 2013 Project No. 4267, and authorize advertisement for bid proposals.

- * 22. **Approve Agreement Between the County of Santa Clara and the City of Milpitas for the Distribution of 2010 Homeland Security Grant Funds (Staff Contact: Sean Simonson, 408-586- 2810)**

Background: The 2010 Homeland Security Grant funds are offered to address identified planning, organization, equipment, training, and exercise needs for acts of terrorism and other catastrophic events. A portion of these funds are allocated from the County of Santa Clara to the City of Milpitas to implement Homeland Security initiatives under the HSGP 2010 guidelines. Due to a clerical transition at the Santa Clara County Office of Emergency Services, this agreement was overlooked and the County now requests signatures to finalize the grant.

Fiscal Impact: Entering into this Agreement augmented training costs for Milpitas Public Safety staff. These funds in the amount of \$9,242.00 were spent for training in Rescue Systems and Confined Space Rescue.

Recommendation: Enter into this agreement with the County of Santa Clara to finalize the grant process for 2010 Homeland Security Grant funds that were used by the City.

- * 23. **Approve and Authorize the City Manager to Execute Amendment No. 3 to the Agreement with CDM Smith, Inc. for Solid Waste Program Support by Increasing Compensation by \$16,780 (Staff Contact: Jeff Moneda, 408-586-3345)**

Background: The City entered into a five-year contract with Camp, Dresser & McKee, Inc. on August 3, 2009 to review Republic Service's (Republic) annual reimbursement request to the City for extraordinary regulatory costs not included in the base rate of its contract with the City. Subtitle D of the Federal Resource Conservation and Recovery Act, enacted after the contract base rate was established, requires landfill operators to monitor landfill safety, provide proper capture and treatment of wastewater leachate, and monitor wildlife control and facility design. The agreement was previously amended twice to increase the compensation for review of 2009 and 2010 regulatory costs for the Newby Island landfill. Staff requires the consultant's technical expertise review to verify the accuracy of the 2011 and 2012 claims. The evaluation process includes a review of Republic's documentation, project meetings with City and Republic staff, and a report of findings. The validated extraordinary expenses will be incorporated into a future rate increase. Camp, Dresser & McKee, Inc. changed its corporate name in December 2011 to CDM Smith, Inc. Staff negotiated an agreement amendment with CDM Smith, Inc. in an amount not to exceed \$16,780, which is consistent with previous Subtitle D review work.

Fiscal Impact: None. Funds are available in the FY 2013-14 Engineering budget.

Recommendation: Approve and authorize the City Manager to execute Amendment No. 3 to the consultant services agreement with CDM Smith Inc. (formerly Camp, Dresser & McKee) for

solid waste program support by increasing compensation in the amount of \$16,780, for a total not-to-exceed amount of \$55,400.

- * 24. **Authorize the Fire Chief to Execute an Agreement with the Center for Public Safety Excellence to Prepare an Integrated All Hazards Community Risk Assessment and Standards of Response Coverage Document (Staff Contact: Brian Sturdivant, 408-586-2811)**

Background: The need for a comprehensive review and analysis of service and performance of the Fire Department is driven in part by the recent brown-out of a Milpitas fire apparatus and reduction in force (layoffs) which took place April 29, 2013, and May 6, 2013, respectively. These cost saving measures were recommendations from staff to the City Council, which were approved. In light of these unprecedented cost saving steps, a proposal from the Center for Public Safety Excellence (CPSE) Technical Advisors Program (TAP) was solicited by the Fire Chief. This proposal would allow Milpitas Fire Department to complete a Standards of Response Coverage (SOC) document which evaluates community risk and provides a hazard assessment. This initiative was listed as a goal during the fiscal year 2013-14 budget process. Also, current fire department performance and service level objectives to the community will be analyzed and measured. Determinants of goals, benchmarks and performance measures for enhanced future fire performance will be identified as well. Developments of an SOC document, along with the community risk assessment, are foundational processes for fire department accreditation through the Commission on Fire Accreditation International (CFAI) and Center for Public Safety Excellence.

Fire Department accreditation is a comprehensive self-assessment and evaluation model that enables organizations to examine past, current and future service levels and internal performance, and compare them to industry best/smart practices. This process leads to improved service delivery by helping fire departments to 1) determine community risk and safety needs, 2) evaluate the performance of the department, and, 3) establish a method for achieving continuous organizational improvement. Accreditation is a long sought after goal and a desired expectation of the modern fire service. The CFAI accreditation process provides a well-defined, internationally-recognized benchmark system to measure the quality of fire and emergency services.

The CPSE/TAP has assisted local public safety agencies streamline processes, increase efficiencies and improve the services provided to their communities through three primary programs. These programs include: (1) working with fire and emergency services agencies to instill continuous improvement in their delivery of services to the community, leading to accreditation, (2) recognizing individual fire officers reflecting career accomplishments including: higher education, professional certifications, contributions to the fire profession and other factors, and (3) providing emergency services agencies with on-site facilitation in the development of their SOC/Risk Assessment draft document, their self-assessment draft document and their strategic plan, all required components for accreditation.

Fiscal Impact: None. The cost of the CPSE/TAP agreement is \$29,900. This funding is available within the fire department operating budget for FY 2013-14.

Recommendation: Authorize the Fire Chief to execute an agreement with the Center for Public Safety Excellence for technical support services and development of the Milpitas community risk assessment and Milpitas Fire Department Standards of Coverage document. Three (3) CPSE technical advisors will provide facilitation services over a 6-9 months timeframe for a fee not to exceed \$29,900.

- * 25. **Approve a Contract with Renne Sloan Holtzman Sakai Law Firm for Litigation Services (Staff Contact: Michael Ogaz, 408-586-3040)**

Background: On June 24, 2013, the City was served with a Petition for Writ of Mandate filed in the Superior Court by International Association of Firefighters Local 1699 claiming reimbursement for 7% salary reductions the employee group had agreed to in a side letter. The IAFF claims the side letter expired in December of 2012 and that deductions should have ended at year end. The City took the view that the side letter was in effect continuously until replaced by a new Memorandum of Understanding which the parties are currently negotiating, and has deducted the 7% (through the current date) from firefighters' pay.

Currently, the City Attorney's office, staffed with only two attorneys, cannot litigate this matter and simultaneously maintain current workload. Therefore, it is necessary to have the suit handled by outside counsel. Renne Sloan has advised the City for several years on personnel matters and is best positioned to handle the City's defense. That law firm has proposed a budget of \$70,000 to handle the case but is hopeful the cost will be significantly less. The City Attorney advises Council to approve a \$70,000 contract to be appropriated from the contingency reserve fund.

Fiscal Impact: A \$70,000 impact to the contingency reserve fund for Fiscal Year 2013-14.

Recommendation: Approve the contract with the law firm of Renne Sloan Holtzman Sakai, LLP, in the not-to-exceed amount of \$70,000 and an appropriation from the contingency reserve fund in that amount to fund the contract.

XX. DEMAND

- * 26. **Authorize Payment to Cayenta for Annual Software Support and Maintenance Services Agreement for the Financial and Utility Billing System for the Not-To-Exceed Amount of \$132,194.65 (Staff Contact: Chris Schroeder, 408-586-3161)**

Background: In 1997, the City of Milpitas entered into an agreement with Cayenta to provide a financial and utility billing system for the City of Milpitas. Cayenta is the developer of the software and there is no other source for support and maintenance of this application. In 2011, the City Council designated Cayenta as the sole source provider for Cayenta software support and maintenance, per Milpitas Municipal Code Section I-2-3.09 - Sole Source Procurement.

Fiscal Impact: None. Funds for this purchase are available from the Information Services' and the Finance Department's Fiscal Year 2013-14 operating budgets.

Recommendation: Authorize payment to Cayenta for software support and maintenance for the financial and utility billing system in the not-to-exceed amount of \$132,194.65 for FY 2013-14.

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, AUGUST 20, 2013 AT 7:00 P.M.**