



**MILPITAS CITY COUNCIL AGENDA
TUESDAY, SEPTEMBER 17, 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 LABOR NEGOTIATORS - COLLECTIVE BARGAINING**
Pursuant to California Government Code Section 54957.6. City Negotiator: Tom Williams
Employee Groups: Milpitas Police Officers Association (MPOA), and International Association of Fire Fighters (IAFF). Under Negotiation: Wages, Hours, Benefits, and Working Conditions
- III. CLOSED SESSION ANNOUNCEMENTS:** Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote or abstention of each member present
- IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- V. INVOCATION (Councilmember Montano)**
- VI. APPROVAL OF COUNCIL MEETING MINUTES – September 3, 2013**
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDARS – September and October 2013**
- VIII. 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.

- IX. ANNOUNCEMENTS**
- X. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**
- XI. APPROVAL OF AGENDA**
- XII. 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.

XIII. PUBLIC HEARING

- 1. Hold a Public Hearing and Adopt the FY 2012-13 Community Development Block Grant (CDBG) Consolidated Annual Performance Evaluation Report (CAPER) (Staff Contacts: Felix Reliford, 408-586-3071 and Gloria Anaya, 408-586-3075)**

XIV. UNFINISHED BUSINESS

- * 2. Receive a Progress Report on the Alviso Adobe Additional Spanish/Mexican Displays and Signage, Project No. 5055 (Staff Contact: Jeff Moneda, 408-586-3345)**

XV. REPORT OF MAYOR

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

XVI. ORDINANCE

- * 4. Waive the Second Reading and Adopt Ordinance No. 198.4 Increasing the Maximum Payout to \$500 per Bingo Game (Staff Contact: Michael Ogaz, 408-586-3040)**

XVII. RESOLUTIONS

- * 5. Adopt Three Resolutions: to Approve a Subdivision Improvement Agreement, Final Tract Maps, and Public Improvement Plans; Authorize Annexation of Certain Real Property into Community Facilities District No. 2008-1 for "Montague Village Townhomes and Amalfi Apartments;" and, Approve Intention to Establish Community Facilities District No. 2013-1 for Milpitas Transit Area Piper/Montague Subdistrict (Staff Contact: Ebby Sohrabi, 408-586-3335)**
- * 6. Adopt a Resolution Granting Initial Acceptance of and Authorizing Reduction in Penal Sum of Permittee Improvement Security for GAWFCO Enterprises for Redevelopment of 76 Gas Station at 190 W. Calaveras Boulevard, Project No. 2555 (Staff Contact: Ebby Sohrabi, 408-586-3335)**
- * 7. Adopt a Resolution to Revise Resolution No. 5981, Reject All Bids for Request For Proposal No. 2048 (City Wide Janitorial Service) and Approve Amendment No. 6 to the Contract with Universal Building Service for a Three Month Extension in the Amount of \$73,461 (Staff Contact: Chris Schroeder, 408-586-3161)**
- * 8. Adopt a Resolution Authorizing the City Manager to Award and Execute a Construction Contract with Michael Dovgan doing business as A Plus Painting for the 2013 Soundwall Renovation, Project No. 4267, and Authorize Staff to Negotiate and Execute Contract Change Orders (Staff Contact: Steve Erickson, 408-586-3301)**
- * 9. Adopt a Resolution to Approve Amendment No. 8 to the Agreement with ThyssenKrupp Elevator for Platinum Maintenance for the Annual Not-To-Exceed Amount of \$26,668.72 and Authorize City Manager to Exercise Annual Renewal (Staff Contact: Chris Schroeder, 408-586-3161)**

XVIII. CONTRACTS

- * 10. **Approve Amendment No. 1 to Agreement with Dr. Howard Michaels to Provide Medical Director Services to the Milpitas Fire Department for an Additional \$9,000 (Staff Contact: Chris Schroeder, 408-586-3161)**
- * 11. **Approve Agreement with Burke, Williams & Sorensen, LLP for Outside Labor Negotiator Services (Staff Contact: Michael Ogaz, 408-586-3040)**

XIX. ADJOURNMENT

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:

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

XIII. PUBLIC HEARING

- 1. Hold a Public Hearing and Adopt the FY 2012-13 Community Development Block Grant (CDBG) Consolidated Annual Performance Evaluation Report (CAPER) (Staff Contacts: Felix Reliford, 408-586-3071 and Gloria Anaya, 408-586-3075)**

Background: The Consolidated Annual Performance Evaluation Report (CAPER) describes the City's one-year CDBG Programs and Activities undertaken during the past CDBG program year, 2012-13. The CAPER also evaluates the City's overall progress in carrying out those priority projects that were identified in the approved Five-Year Consolidated Plan and One-Year Action Plan.

On August 16, 2012, staff received a letter from the federal Department of Housing and Urban Development (HUD) approving the Five Year Consolidated Plan (2012-2017) which identifies the goals, objectives, policies and financial resources regarding CDBG funding over the next five years.

The CAPER identifies the following major accomplishments (2012-13):

- Use of CDBG funds to replace 148 resident kitchen stoves and replacement of commercial kitchen refrigerator/freezer kitchen appliances, oven and ranges at Terrace Gardens Senior Housing.
- Use of CDBG funds to investigate 63 cases involving housing discrimination and tenant-landlord mediation.
- Provided safety, energy efficiency, accessibility and mobility repairs and improvements to 20 homeowners.
- Provided monthly and weekly supplemental food stock to 1,031+ very low-income households and homeless individuals.
- Assisted 47 seniors with free legal aid services.
- Provided funding for 36 families to participate in Milpitas Family Literacy Program.
- Provided funding for shelter, hot meals, and supportive services for 41 unduplicated Milpitas adult men, women and children for 975 personal shelter days.
- Provided funding for 40 domestic violence victims and their families.
- Provided funding for recreational services, programs and activities for 64 seniors and youths.
- Provided funding for renovation and improvements (including American with Disabilities Act "ADA" compliance) for Augustine and Pinewood Parks.
- Funded 17 different public service agencies and housing providers with CDBG funds to assist more than 6,251 Milpitas residents.

Availability of the CAPER was advertised for public review and comments for 15 days (August 30 - September 16, 2013). Copies of the CAPER were sent to all Service and Housing Providers that received CDBG funds from the City, and to other interested parties. Copies were also made available at City Hall and the Public Library. At the time of this report, no public comments were received by City staff.

Fiscal Impact: None.

Attachment: Draft CAPER 2012-13

Recommendations:

1. Open the public hearing to receive comments, then move to close the public hearing.
2. Adopt the FY 2012-13 Consolidated Annual Performance Evaluation Report.

XIV. UNFINISHED BUSINESS

- * 2. **Receive a Progress Report on the Alviso Adobe Additional Spanish/Mexican Displays and Signage, Project No. 5055 (Staff Contact: Jeff Moneda, 408-586-3345)**

Background: At the February 19, 2013 City Council meeting, the historic preservation firm, Page & Turnbull, was awarded an agreement to research, fabricate, and install Spanish/Mexican Era signage and displays at the Alviso Adobe Park. As part of the same action, Council authorized a total budget of \$150,000 for this work. Staff has been working with the consultant to create alternative concepts and locations for displays, while still maintaining the historic setting of the Park and Alviso Adobe building. The consultant provided four concepts for the Spanish/Mexican displays, which were presented to the Parks, Recreation and Cultural Resources Commission (PRCRC) on September 9, 2013. The established budget for this work will only allow for two of the four options to be installed.

At the PRCRC meeting, staff recommended alternatives one and four as the preferred options. The Commission reviewed all four alternatives and approved options one and four for recommendation to the City Council to proceed with these alternatives and to proceed with fabrication and installation.

Fiscal Impact: None. Sufficient funds are available in the project budget.

Recommendation: Approve the Parks, Recreation and Cultural Resources Commission recommendation for the two preferred options for installation of Spanish/Mexican displays and signs at the Alviso Adobe Park.

XV. REPORT OF MAYOR

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

Background: Mayor Esteves recommends the following appointments and re-appointments:

Bicycle Pedestrian Advisory Commission:

Re-appoint Jose Leon as a regular member to a term that will expire in August 2016.

Library Advisory Commission:

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

Sister Cities Commission:

Re-appoint Roselda Mateo as a regular member to a term that will expire in September 2016.

Re-appoint Peter Chang as Alternate No. 2 to a term that will expire in September 2015.

Youth Advisory Commission (YAC):

Re-appoint Sabina King as a regular member to a term that will expire in September 2014.

Re-appoint Sahil Sandhu as a regular member to a term that will expire in September 2014.

Newly appoint Riane Abaya as Alternate No. 2 to a term that will expire in September 2014.

Newly appoint Jacqueline Ajero as Alternate No. 3 to a term that will expire in September 2014.

Newly appoint Clare Sern as Alternate No. 4 to a term that will expire in September 2014.

Copies of Commission applications for YAC are included in the Council agenda packet.

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

XVI. ORDINANCE

- * 4. **Waive the Second Reading and Adopt Ordinance No. 198.4 Increasing the Maximum Payout to \$500 per Bingo Game (Staff Contact: Michael Ogaz, 408-586-3040)**

Background: This Ordinance was introduced at the September 3, 2013 City Council meeting without any changes. If adopted, it will increase bingo games maximum prize amount.

Fiscal Impact: None.

Recommendation: Move to waive the second reading and adopt Ordinance No. 198.4 increasing maximum payout from \$250 to \$500 per Bingo game, as authorized under California Penal Code Section 326.5.

XVII. RESOLUTIONS

- * 5. **Adopt Three Resolutions: to Approve a Subdivision Improvement Agreement, Final Tract Maps, and Public Improvement Plans; Authorize Annexation of Certain Real Property into Community Facilities District No. 2008-1 for “Montague Village Townhomes and Amalfi Apartments;” and, Approve Intention to Establish Community Facilities District No. 2013-1 for Milpitas Transit Area Piper/Montague Subdistrict (Staff Contact: Ebby Sohrabi, 408-586-3335)**

Background: Milpitas Station, LLC (“Milpitas Station”), Southside Industrial Park (“Barry Swenson”), and SCS Development Corporation (“Citation”) are property owners in the Transit Area Piper/Montague Subdistrict (“Subdistrict”). The Subdistrict is located close to the Great Mall and the future BART station and bounded by Piper Drive, Montague Expressway and Milpitas Boulevard. The three property owners intend to construct approximately 1400 residential units within the Subdistrict. The City Council adopted Resolution No. 7786 on October 21, 2008 and Resolution No. 7830 on February 17, 2009 approving tentative maps for the construction of apartments, condominium and townhomes by Citation and Milpitas Station. Both tentative maps were subsequently amended with Council approval in 2010 and 2011.

At its August 18, 2009 meeting, the City Council also approved a Cost Sharing and Reimbursement Agreement between the City and Milpitas Station, Barry Swenson, and Citation for the Subdistrict. The Piper Montague Subdistrict is one of the few areas within the Transit Area that requires a substantial investment in new public infrastructure to redevelop the properties. The proposed public infrastructure will mainly serve development in the Subdistrict; consequently, the costs for the improvement were not included in the overall Transit Area infrastructure program funded by the Transit Area Impact Fee.

The Cost Sharing and Reimbursement Agreement sets forth the method of cost sharing for the public infrastructure between the three property owners. The proposed public infrastructure includes new public streets, utilities, sidewalks, lighting, landscaping, and storm and sewer facilities totaling approximately \$6.5 million. Citation is the first developer ready to move forward with its final map and construction of its project and most of the public infrastructure. Under the Cost Sharing and Reimbursement Agreement, the City agreed to assist in implementing the cost sharing program by providing a Transit Area Impact fee credit to the owner who constructs the Subdistrict public infrastructure that exceeds their agreed upon fair share contribution. The credit would later be reimbursed by the remaining owners of the Subdistrict to the City when they move forward with building permits for their respective developments. If however, the remaining owners do not develop their properties or insufficient units of housing were developed so that the City is unable to fully recover the fee credit within seven (7) years after the initial completion date of the public infrastructure, the City may levy assessments or collect Mello-Roo special taxes from the owners based on their share of the

undeveloped housing units. As part of this report, staff requests the City Council to adopt a Resolution of Intention to Establish Community Facilities District No. 2013-1 for Milpitas Transit Area Piper/Montague Subdistrict and to set a public hearing for November 5, 2013 at 7:00 p.m. at City Hall for questions and voting on the formation of the CFD.

On November 1, 2011, the City Council approved an amendment to the Vesting Tentative Map, Conditional Use Permit, and Site Development Permit (Resolution No. 8132) for the Citation Residential Project at 1200 Piper Drive. This project will construct 94 townhomes and 638 apartments, totaling 732 dwelling units, off-site improvements, and a 2.74 acre public park. The public improvements as identified in Improvement Plans 2-1172 and 2-1164 are consistent with requirements and obligations of the Cost Sharing and Reimbursement Agreement.

Citation submitted two final tract maps with required supporting documents and also submitted public and private improvement plans for City review. Milpitas Station (the adjacent property owner) has offered for dedication new public streets and easements under separate instruments. The City will accept the offers of dedication upon the completion of the improvements. Citation will construct Milpitas Station's off-site improvements per the Cost Sharing and Reimbursement Agreement. Staff has completed reviewing the plans and tract maps and determined they satisfy City requirements for this project.

On September 10, 2012, the Parks, Recreation and Cultural Resources Commission approved conceptual design and construction of a 2.74 acre public park with a neighborhood building. Tract #10060 (Citation project) includes offer of dedication for 1.22 acres for the public park, and the Milpitas Station has offered for dedication the remaining 1.52 acres under a separate instrument. The public park plans are currently under design, to be completed by Citation prior to issuance of the 280th building permit for the Citation project. The City will accept the offers of dedication upon the completion of the public park.

Citation has also petitioned the City to annex the project into Community Facilities District No. 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 No. 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. Adopt a Resolution to approve the Subdivision Improvement Agreement between the City of Milpitas and SCS Development Corporation for Final Tract Maps No. 10060 and No. 10061 (Montague Village Townhomes and Amalfi Apartments projects), approve Final Tract Maps No. Tracts 10060 and No. 10061 with the recommended street names, and approve Public Improvement Plans 2-1172 and 2-1164 for construction of public improvements as part of Final Tract Maps No. 10060 and No. 10061.
 2. Adopt a Resolution annexing real properties located within Final Tract Maps No. 10060 and No. 10061 into Community Facility District 2008-1 (Annexation No. 4).
 3. Adopt a Resolution of Intention to Establish Community Facilities District No. 2013-1 for the Milpitas Transit Area Piper/Montague Subdistrict and set a public hearing on November 5, 2013.
- * 6. **Adopt a Resolution Granting Initial Acceptance of and Authorizing Reduction in Penal Sum of Permittee Improvement Security for GAWFCO Enterprises for Redevelopment of 76 Gas Station at 190 W. Calaveras Boulevard, Project No. 2555 (Staff Contact: Ebby Sohrabi, 408-586-3335)**

Background: The City Council approved the redevelopment of the 76 Gas Station located at 190 W. Calaveras Boulevard on August 7, 2012. The property was redeveloped by GAWFCO Enterprises, Inc., a California corporation. The improvement agreement approved by Council required the construction of public improvements as set forth in Improvement Plan No. 2-1148. Public improvements related to the subject project consist of: utility connections to City facilities (potable water, sanitary sewer and storm drain), removal and reconstruction of sidewalk, tree wells, ADA ramps, and damaged curb and gutter on both W. Calaveras Boulevard and Serra Way frontages. These public improvements are valued at approximately \$125,000 and have been completed by the developer in accordance with approved improvement plans. The work is, therefore, now ready for initial acceptance in accordance with the improvement agreement and staff recommends the City Council adopt a resolution granting initial acceptance of the project and authorize reduction of the contractor's performance bond to \$12,500.00, which is 10% of the final contract value.

Fiscal Impact: None. All costs associated with this project will be paid for by the developer.

Recommendation: Adopt a resolution granting initial acceptance of the 76 Gas Station located at 190 W. Calaveras Boulevard, Project No. 2555, subject to a one-year warranty period and reduction of the faithful performance bond to \$12,500.

- * 7. **Adopt a Resolution to Revise Resolution No. 5981, Reject All Bids for Request For Proposal No. 2048 (City Wide Janitorial Service) and Approve Amendment No. 6 to the Contract with Universal Building Service for a Three Month Extension in the Amount of \$73,461 (Staff Contact: Chris Schroeder, 408-586-3161)**

Background: On August 27, 2013, staff issued a Request for Proposal ("RFP") No. 2048 for Citywide janitorial services and received only one proposal from Universal Building Services, the current service provider. The proposed one year contract price is \$683,412, which is 42% more than the current annualized contract price of \$480,035.04 per year, and is much greater than the amount budgeted by Public Works for this service. Staff believes that the increased cost is primarily driven by the City's requirement for the payment of prevailing wages for contracted janitorial and custodial services. In 1991, the City adopted Resolution No. 5981 containing a provision requiring the payment of prevailing wages for contracted maintenance of City owned buildings structures, and ground facilities where the contract amount exceeds \$1,000. That particular prevailing wage provision includes janitorial and custodial services, even though State law explicitly exempts janitorial and custodial services from the payment of prevailing wages.

Staff believes that the City may obtain a better proposal if the prevailing wage requirement is removed from the RFP. Therefore, staff recommends that the last sentence of Section I, 1.C. of Resolution No. 5981 "Janitorial and custodial service is specifically included." be revised to state that janitorial and custodial services are specifically excluded in accordance with State law. A draft of the proposed resolution and Resolution No. 5981 are provided as part of this agenda item. Staff also requests that Council reject the proposal from Universal Building Services, and approve Amendment No. 6 to the contract with Universal Building Services for an approximate three month extension from September 22, 2013 to December 31, 2013 in the amount of \$73,461 for a total contract amount of \$245,017.52. The contract extension will allow staff time to re-issue the RFP without the prevailing wage requirement.

Fiscal Impact: None. Funds for the contract amendment with UBS are available in the Public Works operating budget.

Recommendation: Adopt a resolution to:

1. Eliminate the requirement to pay prevailing wages for contracted janitorial and custodial services. This will revise terms in Resolution No. 5981.
2. Reject all bids received for Request For Proposals No. 2048 for Citywide Janitorial Service.

3. Approve Amendment No. 6 to the current contract with Universal Building Service to extend it from September 22, 2013 to December 31, 2013 in the amount of \$73,461, for a total contract amount of \$245,017.52 for janitorial and custodial services.
- * **8. Adopt a Resolution Authorizing the City Manager to Award and Execute a Construction Contract with Michael Dovgan doing business as A Plus Painting for the 2013 Soundwall Renovation, Project No. 4267, and Authorize Staff to Negotiate and Execute Contract Change Orders (Staff Contact: Steve Erickson, 408-586-3301)**

Background: On August 6, 2013, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals for the 2013 Soundwall Renovation Project. The project provides for 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 of the wall, and applying an elastomeric paint to help prevent decay. The Engineer's Estimate for the base bid project work was \$120,000.

The project was advertised and six sealed bid proposals were received on August 26, 2013. Bid proposals ranged from \$81,720 to \$216,710, and the lowest responsible base bid was submitted by Michael Dovgan doing business as A Plus Painting a sole proprietorship, in the amount of \$81,720. Sufficient funds to award this project are available in the project budget. 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.

As was approved for the successful completion of recent projects with tight completion schedules, staff requests the use of contingencies in the amount of \$12,000 (approximately 15% of the contract award) to apply toward any additional scope of work identified by the City Engineer during construction due to unforeseen circumstances. 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 for the best final work product. The construction contingency established for this project is \$12,000. Staff recommends the City Council authorize the Director of Public Works to negotiate and execute change order(s) within the contingency amount of \$12,000 without any further Council approval or appropriation.

Fiscal Impact: None. Sufficient funds are available in the project budget.

Recommendations:

1. Adopt a Resolution authorizing the City Manager to award and execute a construction contract with Michael Dovgan doing business as A Plus Painting for 2013 Soundwall Renovation, Project No. 4267 in the amount of \$81,720.
 2. Authorize the Director of Public Works to execute change order(s) for the 2013 Soundwall Renovation, Project No. 4267 in the cumulative contingency amount not to exceed \$12,000 for the project.
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- * **9. Adopt a Resolution to Approve Amendment No. 8 to the Agreement with ThyssenKrupp Elevator for Platinum Maintenance for the Annual Not-To-Exceed Amount of \$26,668.72 and Authorize City Manager to Exercise Annual Renewal (Staff Contact: Chris Schroeder, 408-586-3161)**

Background: The City previously entered into a Platinum Maintenance Agreement with ThyssenKrupp Elevator Corporation on July 1, 2005 to maintain the elevators in the City Hall, Police, and Public Works buildings. The technology to maintain the elevators is proprietary and

in September of 2011, the City Council approved a sole source designation pursuant to Milpitas Municipal Code Section I-2-3.09 for a five-year period. The contract entered into on July 1, 2005 allows for annual price adjustments based on the percentage change in the average rate paid to elevator examiners. Proposed Amendment No. 8 is for the period of July 1, 2013 to June 30, 2014 in the amount of \$26,668.72, which includes a contingency of \$5,000 for unanticipated repairs. Staff requests authority for the City Manager to renew the Platinum Maintenance Agreement on an annual basis for the next three years with an annual increase of no more than 3.5% per year, without further Council action, except for the appropriation of funds.

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

Recommendation: Adopt a resolution to:

1. Approve Amendment No. 8 to the agreement with ThyssenKrupp Elevator Corporation for the Platinum Maintenance Elevator Service in the amount of \$26,668.72 and for a retroactive period from July 1, 2013 to June 30, 2014; and
2. Authorize the City Manager to extend the term of the agreement on an annual basis for the next three years with an annual increase of no more than 3.5% per year, without further City Council action except for the appropriation of funds.

XVIII. CONTRACTS

- * **10. Approve Amendment No. 1 to Agreement with Dr. Howard Michaels to Provide Medical Director Services to the Milpitas Fire Department for an Additional \$9,000 (Staff Contact: Chris Schroeder, 408-586-3161)**

Background: As a provider of first responder Advanced Life Support (Paramedic) Services, the Milpitas Fire Department is required (by Santa Clara County EMS Agency) to maintain a Medical Director (Physician) to provide medical oversight for documentation, quality assurance and improvement, public access defibrillation, controlled drugs administration, medical device purchases, dispatch center, and infectious disease control policy and consultation. The City previously entered into an agreement with Dr. Howard Michaels to provide these required services for a term from March 10, 2011 to September 30, 2013 in the amount of \$1,500 per month. However, newly submitted requirements by the County, which Dr. Michaels does not offer, require staff to solicit for a new Medical Director. Staff requests a six month extension of Dr. Michaels' current contract at \$1,500 per month, making the total contract amount \$54,000. Six months will allow staff enough time to put together a comprehensive "Scope of Work" and solicit another Medical Director for Milpitas Fire Department.

Fiscal Impact: None. Funds for this service are available in the Fire Department operating budget.

Recommendation: Approve Amendment No. 1 to the agreement with Dr. Howard Michaels to extend the term of his current agreement with the City from October 1, 2013 to March 30, 2014 in the amount not to exceed \$9,000, for a total contract amount of \$54,000, for services at the Milpitas Fire Department.

- * **11. Approve Agreement with Burke, Williams & Sorensen, LLP for Outside Labor Negotiator Services (Staff Contact: Michael Ogaz, 408-586-3040)**

Background: For purposes of representing the City during labor negotiations, the law firm of Burke Williams and Sorensen is recommended. The City has received excellent service from this firm in other areas (Burke represented the City in its victory in the Walmart case) and the firm has extensive experience in the field of labor negotiations.

Fiscal Impact: Budget transfer of \$50,000 from the contingency reserve fund to the Office of the City Attorney budget to cover contract amount.

Recommendation: Approve a consultant agreement with the law firm of Burke, Williams & Sorensen LLP for labor negotiation services in the amount of \$50,000.

XIX. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, OCTOBER 1, 2013 AT 7:00 P.M.**