



**JOINT MEETING OF THE MILPITAS CITY COUNCIL
AND MILPITAS HOUSING AUTHORITY
AGENDA
TUESDAY, OCTOBER 1, 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 CA 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 CA 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 (Mayor Esteves)**
- VI. APPROVAL OF COUNCIL MEETING MINUTES – September 17, 2013**
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDAR – October 2013**
- VIII. PRESENTATIONS**
 - Santa Clara County District Attorney Jeff Rosen
 - Proclaim *Fire Prevention Week - October 6-12, 2013*
- 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. UNFINISHED BUSINESS

- * 1. **Receive the September 2013 Odor Control Report (Staff Contact: Jeff Moneda, 408-586-3345)**

XV. REPORTS OF OFFICERS AND COMMISSIONS

- * 2. **Consider Mayor's Recommendations of Appointments and Re-Appointments to Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)**
- 3. **Approve 60th Anniversary Celebration Plan, \$50,000 Budget Appropriation to Implement the Plan, and the Logo Design for Year-Round Use Citywide (Contacts: Vice Mayor Polanski, 408-586-3024 and Councilmember Montano, 408-586-3023)**
- * 4. **Approve Parks & Recreation Donation Application by the Green Thumb Garden Club (Staff Contact: Jaime Chew, 408-586-3234)**
- * 5. **Approve Plaque Dedication for Henry Mattos in the Milpitas Veterans Plaza (Staff Contact: Carmen Valdez, 408-586-3086)**

XVI. NEW BUSINESS

- 6. **Receive Report and Approve Updated Milpitas Emergency Operation Plan (Staff Contact: Sean Simonson, 408-586-2810)**

XVII. RESOLUTIONS

- * 7. **Adopt a Resolution Granting Final Acceptance of the Escuela Parkway Pedestrian and Bicycle Enhancement Project No. 4259, Federal Aid Project No. RPSTPLE 009 (Staff Contact: Steve Erickson, 408-586- 3301)**
- * 8. **Adopt a Resolution Rejecting All Bids for Request For Proposal No. 2048 for City Wide Janitorial Service, Approve Amendment No. 7 to the Agreement with Universal Building Service for a 90 Day Extension in the Amount of \$121,848.36, and Direct Staff to Study the Appropriate Rates for Janitorial and Custodial Services for Council Consideration (Staff Contact: Chris Schroeder, 408-586-3161)**
- * 9. **Adopt a Resolution Annexing Certain Real Property into Community Facilities District No. 2005-1; Authorize Execution of a Subdivision Improvement Agreement for DR Horton Bay; and, Approve Final Map and Improvement Plans for 31 S. Milpitas Blvd. for Orchid, Project No. 2812 (Staff Contact: Ebby Sohrabi, 408-586-3335)**

XVIII. AGREEMENTS

- * 10. **Authorize City Manager to Execute an Agreement with CSG Consultants, Inc. for Fire Department Plan Review and Inspection Services (Staff Contact: Albert Zamora, 408-586-3371)**

- * 11. **Authorize the City Manager to Execute Amendment No. 2 to the Agreement with Prolific Holdings, Inc. for Annual Clothing Purchase for Public Works Department in the Annual Not-To-Exceed Amount of \$13,000 (Staff Contact: Chris Schroeder, 408-586-3161)**
- * 12. **Approve Amendment No. 8 to the Agreement with the Law Firm of Hopkins & Carley for Legal Services (Staff Contact: Michael Ogaz, 408-586-3041)**

XIX. DEMAND

- * 13. **Receive Report of Emergency Repair of Daniel Court and Hillview Drive Water Mains, Approve a Budget Appropriation from the Water Fund and Authorize Staff to Pay Emergency Repair Work Invoices Not to Exceed \$83,106.21 (Staff Contact: Jeff Moneda, 408-586-3345)**

XX. JOINT MILPITAS HOUSING AUTHORITY AND CITY COUNCIL MEETING

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

HA2. Approval of Agenda/Consent Calendar

HA3. Review and Update on South Main Senior Lifestyles Project Located at 1504-1620 South Main Street (Staff Contact: Felix Reliford, 408-586-3071)

HA4. Authority Adjournment

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULE COUNCIL MEETING
TUESDAY, OCTOBER 15, 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:
Community Advisory Commission (alternate)
Emergency Preparedness Commission
Public Art Committee (Alliance for the Arts member)

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. UNFINISHED BUSINESS

- * 1. **Receive the September 2013 Odor Control Report (Staff Contact: Jeff Moneda, 408-586-3345)**

Background: From August 19 through September 15, 2013, the Bay Area Air Quality Management District (BAAQMD) received fourteen odor complaints originating in Milpitas. Eight complaints identified a garbage-related odor, two identified a sewage-related odor and four did not identify an odor source. As of the last Council update, the City's odor reporting website has received nineteen reported complaints.

Fiscal Impact: None.

Recommendation: Receive the September odor report.

XV. REPORTS OF OFFICERS AND COMMISSIONS

- * 2. **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:

Sister Cities Commission:

Re-appoint Dana Arbaugh as a regular member to a term that will expire in September 2016.
Re-appoint Karen Serpa as a regular member to a term that will expire in September 2016.

Youth Advisory Commission (YAC):

Appoint Raveena Chahal as a regular member to a term that will expire in September 2014.
Appoint Riane Abaya as a regular member to a term that will expire in September 2014.
Appoint Jacqueline Ajero to Alternate No. 1 to a term that will expire in September 2014.
Appoint Clare Sern to Alternate No. 2 to a term that will expire in September 2014.
Newly appoint Jonathan Mendoza as Alternate No. 3 to a term that will expire in September 2014.
Newly appoint Crystal Tran 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.

- 3. **Approve 60th Anniversary Celebration Plan, \$50,000 Budget Appropriation to Implement the Plan, and the Logo Design for Year-Round Use Citywide (Contacts: Vice Mayor Polanski, 408-586-3024 and Councilmember Montano, 408-586-3023)**

Background: The City of Milpitas will celebrate its 60th anniversary of incorporation next year, starting off with two days' events scheduled on January 25 and 26, 2014. Earlier this year, on April 16, 2013, the City Council established a Council Subcommittee to provide guidance on planning and implementing the 60th celebration, and report back to the Council with a draft plan and proposed budget. The Subcommittee grew to be comprised of 17 members including City Commissioners and representatives from community groups who provided input and ideas to Subcommittee Chair Vice Mayor Polanski and Councilmember Montano, planning for City-wide year-long events.

60th Anniversary Event Plan Overview

Over the course of three meetings, the Subcommittee developed an Event Plan for the calendar year 2014, kicking off with an “Invitation Only” Gala Party on Saturday, January 25, 2014 and a Family Day celebration for the community on Sunday, January 26, 2014. The Subcommittee proposes that the 60th Anniversary theme be incorporated into existing City events such as Memorial Day, Veterans Day, 4th of July celebration and the Annual Tree Lighting Event along with activities throughout the year, using the City’s 60th logo and partnering with sponsoring local organizations. Additional events such as Tree Plantings and Art Show will be added.

Invitation Only Gala Event, Saturday, January 25, 2014

The Anniversary kick-off is an invitation-only (Commissioners, dignitaries, etc.) Gala event scheduled on Saturday, January 25, 2014 from 6:00-10:00 pm. The event would be progressive beginning in the Barbara Lee Senior Center with entertainment from Milpitas success story and Broadway performer Quarter (Daniel) Simmons and hors d’oeuvres and no-host bar staged throughout the facility. After the entertainment concludes, attendees would be asked to join City Council in front of City Hall for the unveiling of the new Minute Man bronze statue, followed by dessert and a champagne toast inside the City Hall lobby rotunda.

Family Day Celebration for Community, Sunday, January 26, 2014

City Commissions, various City departments, sponsor booths, and local entertainment would make up this family-fun event. Each participating City Commission, City department, and sponsor would host an interactive booth for participants to enjoy a fun activity. The Milpitas Community Concert Band, the Milpitas High School Jazz Band, Jensen School of Performing Arts and Milpitas High Glee Club would entertain. The first tree will be planted on this day as part of the Community Advisory Commission’s Tree-Planting Program.

2014 Annual Events and Activities

The Subcommittee unanimously recommends the following events to incorporate the 60th Anniversary program:

- Community Advisory Commission Tree-Planting (60 trees to be planted for the 60th Anniversary year)
- MUSD 60th Anniversary Essay Contest (new)
- Memorial Day
- 4th of July Fireworks Celebration
- Art Show (new) (Golden Hills Art Association and Milpitas Camera Club)
- Veterans Day
- Annual Tree Lighting Event
- Festival of Trees (Parks & Recreation Foundation)

Logo Design

The 60th Anniversary Planning Subcommittee created a logo design in lieu of a City-wide design contest, due to the short timeframe from implementation to selecting a winner. The Subcommittee unanimously recommends the City Council approve the logo and direct that it be used as appropriate on all City literature and paraphernalia during calendar year 2014. The logo design is included in the Council’s agenda packet.

Fiscal Impact: The total estimated proposed budget for all events listed is \$50,000. A budget appropriation of \$50,000 is necessary from contingency reserve funds to the City Council budget, to be offset by sponsorship efforts toward this event.

Recommendations:

1. Approve the 60th Anniversary Plan as proposed by the 60th Anniversary Planning Subcommittee.
2. Approve a budget appropriation of \$50,000 from Contingency Reserve Fund to City Council budget.
3. Approve the logo design and direct the City Manager to implement use of the logo as appropriate on all City-published materials, literature and paraphernalia during calendar year 2014.

* 4. **Approve Parks & Recreation Donation Application by the Green Thumb Garden Club (Staff Contact: Jaime Chew, 408-586-3234)**

Background: Staff received the Parks, Recreation, and Cultural Resources Commission (PRCRC) donation form from Mary Ann Udoutch, on behalf of the Green Thumb Garden Club, requesting to donate a bench to the Alviso Adobe Park in honor of Mabel Mattos. At the September 9, 2013 Commission meeting, the PRCRC Donation Form was reviewed and recommended to City Council for final approval. As part of PRCRC's recommendation, Commissioners highlight that Mabel Mattos:

1. Was a resident of Milpitas since 1934, and a valuable member of her church, the Green Thumb Garden Club, and the Milpitas Historical Society.
2. Was known as the "Town Historian" and along with Robert Burrill, helped put together a historical book about Milpitas.
3. Was a solid participant in all aspects of the Milpitas community via clubs and city government.

Fiscal Impact: None. The Green Thumb Garden Club will purchase both the bench and dedication plaque, and cover installation costs.

Recommendation: Upon recommendation of the Parks, Recreation and Cultural Resources Commission, consider and approve the Parks & Recreation donation of a bench in honor of Mabel Mattos at Alviso Adobe Park by the Green Thumb Garden Club.

* 5. **Approve Plaque Dedication for Henry Mattos in the Milpitas Veterans Plaza (Staff Contact: Carmen Valdez, 408-586-3086)**

Background: The Milpitas Veterans Commission received donations in the name of longtime resident and veteran Henry Mattos after his passing on February 12, 2013. At the July 3, 2013 Veterans Commission meeting, Commissioners voted to place a plaque in Mr. Mattos' honor at the Veterans Plaza behind City Hall. Several of Mr. Mattos' accomplishments as a resident and veteran were:

1. Milpitas resident for 20 years and Milpitas Historical Society member.
2. Served in the Army 30th Division - 120th Old Hickory South Carolina. His Division was sent to England and served the Second Wave in Normandy.
3. Received a Purple Heart for his service.

The plaque would be unveiled at the Veterans Day ceremony on November 11, 2013 as part of the event program.

Fiscal Impact: None. The Veterans Commission has sufficient funds in its account.

Recommendation: Upon the recommendation of the Milpitas Veterans Commission, approve a dedication plaque in memory of resident veteran Henry Mattos to be installed at the Milpitas Veterans Plaza.

XVI. NEW BUSINESS

6. **Receive Report and Approve Updated Milpitas Emergency Operation Plan (Staff Contact: Sean Simonson, 408-586-2810)**

Background: Staff from the Milpitas Office of Emergency Services will provide a brief presentation on the updated City of Milpitas Emergency Operation Plan.

Fiscal Impact: None.

Recommendation: To accept the staff report and approve the Milpitas Emergency Operation Plan, as presented by Milpitas Office of Emergency Services at the City Council meeting.

XVII. RESOLUTIONS

- * 7. **Adopt a Resolution Granting Final Acceptance of the Escuela Parkway Pedestrian and Bicycle Enhancement Project No. 4259, Federal Aid Project No. RPSTPLE 009 (Staff Contact: Steve Erickson, 408-586-3301)**

Background: The Escuela Parkway Pedestrian and Bicycle Enhancement project was initially accepted on October 2, 2012 and has passed the one-year warranty period. A final inspection of the installed public improvements was made and the work was found to be satisfactory. The project widened an existing sidewalk along the east side of Escuela Parkway, between Russell Lane and Washington Drive, and installed a bus turnout on the west side of Escuela Parkway in front of Milpitas High School. Installation of street trees and irrigation systems were also included.

Staff recommends the Council grant final project acceptance of the Escuela Parkway Pedestrian and Bicycle Enhancement Project, Project No. 4259, Federal Aid Project No. RPSTPLE (009) and release the contractor's bond.

Fiscal Impact: None.

Recommendation: Adopt a resolution granting final acceptance of the Escuela Parkway Pedestrian and Bicycle Enhancement Project No. 4259, Federal Aid Project No. RPSTPLE (009) and releasing the contractor's bond.

- * 8. **Adopt a Resolution Rejecting All Bids for Request for Proposal No. 2048 for City Wide Janitorial Service, Approve Amendment No. 7 to the Agreement with Universal Building Service for a 90 Day Extension in the Amount of \$121,848.36, and Direct Staff to Study the Appropriate Rates for Janitorial and Custodial Services for Council Consideration (Staff Contact: Chris Schroeder, 408-586-3161)**

Background: On August 27, 2013, staff issued a Request for Proposal ("RFP") No. 2048 for City-wide 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 higher than the amount budgeted in the Public Works Department for this service. Staff would like to further study issues surrounding the cost increase in order to make a recommendation to the Council for any changes required to the City's purchasing requirements and achieve more reasonable bids. Staff suggests that 90 days would provide sufficient time to study the issue and make a new recommendation to Council. As such, staff requests that the City Council adopt a resolution to reject all bids to the Request for Proposal for City Wide Janitorial Services and approve Amendment No. 7 to the agreement with Universal Building Service. It would also direct staff to return with a recommendation for Council consideration.

Fiscal Impact: None. Funds for Amendment No. 7 with UBS are available in the Public Works operating budget.

Recommendations: Adopt a resolution to:

1. Reject all bids received in response to the Request for Proposals No. 2048 for Citywide Janitorial Service.
2. Approve Amendment No. 7 to the agreement with Universal Building Service extending it from October 4, 2013 to January 3, 2014 in the amount of \$121,848.36 for janitorial and custodial services at the City of Milpitas.

3. Direct staff to study the appropriate terms for an RFP for contracted janitorial and custodial services and return to the City Council with recommendations for Council review and consideration.
- * **9. Adopt a Resolution Annexing Certain Real Property into Community Facilities District No. 2005-1; Authorize Execution of a Subdivision Improvement Agreement for DR Horton Bay; and, Approve Final Map and Improvement Plans for 31 S. Milpitas Blvd. for Orchid, Project No. 2812 (Staff Contact: Ebby Sohrabi, 408-586-3335)**

Background: On January 15, 2013, the City Council approved the Major Tentative Map (MT12-0003), Site Development Permit (SD12-0005), Conditional Use Permit (UP12-0020), and Environmental Impact Assessment (EA12-0004) for the construction of 80 new single family homes on 11.3 acres located at 31 S. Milpitas Blvd. The development has on-site private utilities (potable water, sanitary sewer, storm drain, etc.). The public improvements are valued at approximately \$370,000, consisting of a public trail and maintenance road along Wrigley Creek, a public pedestrian connection to the existing pathway north of Calaveras Blvd., and frontage improvements along Topaz Street and Los Coches Street (City utility connections, sidewalk, paving, landscaping, etc.).

DR Horton Bay, Inc. (owner of Tract 10192) is required to annex the property into Community Facilities District 2005-1 (CFD 2005-1) as a condition of the tentative map approved by the Council on January 15, 2013. Resolution No. 7521, adopted on May 17, 2005 forming CFD 2005-1, authorized the City to annex properties in to CFD 2005-1, which would then be assessed only for eligible public services, without further public hearing or formal election upon receipt of written consent from the owners. DR Horton Bay, Inc. has given consent and approval that this property be annexed to CFD 2005-1. DR Horton Bay, Inc. agreed that such consent and approval constitutes election to annex into CFD 2005-1 and approval of the authorization for the levy of the special tax on the subject properties.

The developer submitted the final map and public improvement plans, and executed the subdivision improvement agreement for the project. Public improvement plans and final map are available for review in the office of the City Engineer. Staff reviewed the documents, finding that those satisfy the City's requirements for this development project.

Fiscal Impact: None.

Recommendations:

1. Adopt a resolution annexing real properties located within Final Tract Map No. 10192 into Community Facility District 2005-1.
2. Approve and authorize the execution of a Subdivision Improvement Agreement between the City of Milpitas and DR Horton Bay, Inc. for public improvements associated with the Final Tract Map No. 10192 for Orchid.
3. Approve Final Tract Map No. 10192 for Orchid and Public Improvement Plans 2-1180 (construction documents for the associated public improvements).

XVIII. AGREEMENTS

- * **10. Authorize City Manager to Execute an Agreement with CSG Consultants, Inc. for Fire Department Plan Review and Inspection Services (Staff Contact: Albert Zamora, 408-586-3371)**

Background: On May 14, 2013, the City Council approved the City's Final Budget for Fiscal Year 2013-14, which included \$163,200 for plan review and inspection services within the Fire Prevention Division. The proposed agreement with CSG is necessary, due to multiple development projects approved by the City and increased demand for fire inspection and plan review services.

Fiscal Impact: None. Contractual services were approved as part of the FY 2013-14 Adopted Budget and sufficient funding is available in the Fire Department operating budget.

Recommendation: Authorize the City Manager to execute a consulting services agreement with CSG Consultants, Inc. for fire inspection and plan review services for a total amount-not-to-exceed \$163,200 annually.

- * 11. **Authorize the City Manager to Execute Amendment No. 2 to the Agreement with Prolific Holdings, Inc. for Annual Clothing Purchase for Public Works Department in the Annual Not-To-Exceed Amount of \$13,000 (Staff Contact: Chris Schroeder, 408-586-3161)**

Background: On August 18, 2009 the City went out to bid for annual clothing requirements for Milpitas Employees Association (MEA) employees. These garments are required to be worn on a daily basis by maintenance workers, per current Memorandum of Understanding with the MEA group. The winning bidder was Prolific Holdings, Inc. which was awarded a one-year contract with three, one-year options to renew. The current contract will expire on October 7, 2013 so City staff requests that it be extended one year to October 7, 2014 and that the City add \$13,000 to the contract to cover the clothing costs for the additional one year period.

Fiscal Impact: None. The expenditure is a programmed expense in the Public Works and Finance operating budget for FY 2013-14.

Recommendation: Authorize the City Manager to execute Amendment No. 2 to the agreement with Prolific Holdings, Inc. for a one year extension for annual clothing purchase for Public Works Department staff for the annual amount not to exceed \$13,000.

- * 12. **Approve Amendment No. 8 to the Agreement with the Law Firm of Hopkins & Carley for Legal Services (Staff Contact: Michael Ogaz, 408-586-3041)**

Background: The City has contracted with law firm Hopkins & Carley since 2008 for legal services, primarily focused in the personnel area. Services under the contract include the law firm's representation of the City in defense of a lawsuit served in December 2012 brought by individuals claiming age discrimination in hiring by the City. The litigation is continuing and due to extensive discovery having taken place, the contract funding now requires replenishing. The City anticipates that it will prevail in this suit, but nonetheless estimates that it will incur further expenses defending the City in the amount of \$50,000.

Fiscal Impact: None. There are sufficient funds in the City Attorney's budget.

Recommendation: Approve Amendment No. 8 to the agreement with the law firm of Hopkins & Carley for legal services, increasing the funding not to exceed \$50,000.

XIX. DEMAND

- * 13. **Receive Report of Emergency Repair of the Daniel Court and Hillview Drive Water Mains, Approve a Budget Appropriation from the Water Fund and Authorize Staff to Pay Emergency Repair Work Invoices Not to Exceed \$83,106.21 (Staff Contact: Jeff Moneda, 408-586-3345)**

Background: Per Resolution No. 7779 and Public Contracts Code Section 22050, the Director of Public Works must report all emergency public works repairs he ordered to the City Council.

On August 19, 2013, the Public Works Director directed Preston Pipelines to expedite a repair to a damaged four-inch water main on Daniel Court. In addition, on September 3, 2013, Preston Pipelines expedited a repair of a twelve-inch water main on Hillview Drive. The Director of Public Works authorized Preston Pipelines to conduct the repairs immediately rather than soliciting competitive bids from various contractors to restore water service to its customers.

Scope of the work included the repair of both water mains and restoration of existing improvements, which included concrete improvements, asphalt concrete pavement, and miscellaneous other repairs.

These projects are categorically exempt under Section 15301 (Existing Facilities) of the CEQA Guidelines for restoration or rehabilitation of deteriorated or damaged structures.

Fiscal Impact: An appropriation from the Water Fund in the amount of \$83,106.21 is needed because there are not sufficient funds in Public Works operating budget for this emergency work.

Recommendations:

1. Receive this report from the Public Works Director of emergency public works repairs to water mains on Daniel Court and on Hillview Drive.
2. Approve a budget appropriation of \$83,106.21 from the Water Fund to Public Works operating budget.
3. Authorize staff to pay emergency repair work invoices to Preston Pipelines in an amount of \$83,106.21.

XX. JOINT MILPITAS HOUSING AUTHORITY AND CITY COUNCIL MEETING

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

HA2. Approval of Agenda

HA3. Review and Update on South Main Senior Lifestyles Project Located at 1504-1620 South Main Street (Staff Contact: Felix Reliford, 408-586-3071)

Background: At its meeting on August 18, 2009, the Milpitas Redevelopment Agency (RDA) authorized the Director/City Manager to execute a Disposition and Development Agreement (DDA) with South Main Senior Lifestyles, LLC (SMSL) for approval of a two-phase residential development consisting of 387 residential units. Phase 1 of the project would consist of 180 rental housing units for seniors (62 years of age and older) providing congregate care and assisted living services, of which 63 units would be affordable to lower income seniors. The 63 affordable units would consist of 36 units for very low-income and 27 units for low-income households. Phase 2 of the project would consist of 207 multi-family units with no age or income restrictions.

The DDA also included provisions for the RDA to assume the existing purchase and sale agreement between Callahan Property Company Inc. and Baystone, and to purchase the 5.94 acre site for the Phase 1 and 2 projects for \$12.4 million. The \$12.4 million from the RDA was to be recouped upon the sale of the property to South Main Senior Lifestyles in two phases.

South Main Senior Lifestyle would have purchased 1.94 acres (Phase 1) from the RDA for \$5 million within two years of the RDA purchasing the entire site. The RDA would have provided SMSL financial assistance towards the development and operation of the affordable units in the form of a \$7.7 million grant or long term loan. SMSL would then purchase the remaining site area (Phase 2) from the RDA within six years of the RDA purchase of the entire site.

On October 18, 2011, the Council/RDA approved the first amendment to the original DDA which granted a two-year (24 months) extension for the performance of the terms and provisions of the agreement. Based on the extension, the DDA would expire on November 23, 2013.

After the RDA was dissolved in February of 2012, because the subject property is a housing asset of the former RDA, title to the parcel was transferred from the former RDA to the City of Milpitas Housing Authority (HA). The DDA also needs to be assigned from the former RDA to the HA.

Since the original DDA approval in 2009, SMSL has invested significant time and money to move the project forward. Existing structures on the site have been demolished, the environmental contamination has been remediated and a certificate of No Further Action obtained from Santa Clara County, and rough grading of the site was completed. The original project design submitted in 2009 has been redesigned and resubmitted a number of times and comments received from the City Building Inspection, Fire, Engineering and Planning Divisions. Upon the dissolution of the State's redevelopment agencies, SMSL worked with the City to establish that the site is a housing asset of the former RDA and to transfer title of the site to the HA as Housing Successor to the former RDA. SMSL then obtained an agreement from Old Republic Title to issue title insurance in the name of the HA, a prerequisite to obtaining financing for the construction of the project. SMSL has submitted an application to FHA for construction and permanent debt for Phase 1 and third party reports are currently underway.

Representatives of the SMSL project met with City staff on numerous occasions and stated that several events have occurred requiring SMSL to revise the project and seek corresponding amendments to the original DDA. These events and the attendant revisions to the project and DDA are discussed below.

Proposed New Senior Full Service Retirement Community

Dissolution of the former RDA and the great recession's chilling impacts on financial and real estate markets have combined to undermine the financial feasibility of the Phase 1 and 2 projects as envisioned and structured in the original DDA. In response, SMSL has proposed a new development concept for the 5.94 acre site: a full service retirement community that provides a continuum of care for its residents allowing them to age gracefully from active independent living through congregate care and assisted living. This will be a new product type for the City of Milpitas and will complement and diversify high density residential development currently underway and planned in the Milpitas Transit Area.

The retirement community will consist of 389 units of rental housing for seniors 62 years of age and older. The community will be developed in two phases as shown on the Site Plan. As contemplated in the original DDA, Phase 1 will be a congregate care/assisted living community, but has been redesigned to (1) allow residents who need assisted living services as they age to remain in their units rather than move to another unit in the building; and (2) make all of the units accessible to the physically handicapped. To complement Phase 1, Phase 2 will provide amenity-enhanced rental housing for active, independent seniors. Together, the two phases of the project will provide an integrated, vibrant, full service, activity and amenity enriched continuum of care retirement community.

Forty-eight of the units in the retirement community will be restricted to occupancy by very low income households (households whose income does not exceed 50% of the area median), representing an increase of 12 very low income units over the number provided under the original DDA. These units will be spread across Phases 1 and 2, rather than concentrated in the Phase 1 project as provided in the original DDA. 27 low income units (for households whose income does not exceed 80% of the area median) provided under the original DDA have been eliminated because they are not marketable.

The HA's obligation pursuant to the original DDA to provide a \$7.7 million grant/loan to the Phase 1 project to support the development and operation of the affordable units will be eliminated. Instead, the HA will convey the 5.94 acre site (valued at \$12.4 million) to SMSL at no cost. This will result in a net increase in the amount of the HA financial assistance of \$4.7 million. As set forth in the state law Section 33433 Report (in Council's agenda packet) prepared by Economic Planning Systems Inc., this assistance is consistent with California Community Redevelopment Law (to which the HA is subject as Housing Successor to the former RDA) and is necessary to ensure the project's financial feasibility. Increased assistance is necessary to help cover the funding gap due to the higher costs entailed in developing and operating 12 additional very low income (50% AMI) units, the additional construction costs associated with building units adaptable to assisted living as residents "age in place" and higher financing costs caused by the replacement of lower cost debt and tax credit equity with higher cost investor equity.

Title to the entire 5.94 acre site will be conveyed to SMSL when the City has approved all entitlements for the project, including the Vesting Tentative Map and Final Map, and approved the construction plans, financing plan, operator and services plan for Phase 1. Conveyance of the entire 5.94 acre site at the time the Phase 1 project is ready to move forward, rather than just the Phase 1 portion of the site, is necessary to raise debt and equity on favorable terms to fund both projects, attract an operating partner with proven expertise and financial capacity to manage/operate the two-phased retirement community, and construct both efficiently and cost effectively. The DDA will have multiple remedies to return title of the Phase 2 site to the City if construction does not commence pursuant to the deadlines and conditions set forth in the DDA.

Project's Benefits to the City of Milpitas

A full service retirement community would be a unique, landmark asset for the City of Milpitas. No such product type exists within the City or surrounding communities. It would provide activity- and service-enriched housing for Milpitas' senior citizens, including 48 residences for very low (50% AMI) income seniors, and for the parents and grandparents of Milpitas residents. The retirement community would also complement and enhance the diversity of the multi-family residential development currently underway and planned for the Milpitas Transit Area.

In addition to providing much needed housing, according to the state law Section 33433 report, the retirement community would generate the following economic and financial benefits for the City of Milpitas:

- 400 construction jobs over the course of development of the community;
- 100+ full-time, on-site, permanent jobs to provide services to the residents of the community and to maintain it;
- Additional job growth in the retail and service sectors stimulated by spending by the 600-700 new residents, guests and staff of the retirement community and 400 construction workers;
- An estimated \$30,000 per year in retail sales tax revenue for the City generated by purchases by the new residents, guests and staff of the community;
- Approximately \$2.1 million in property tax revenue for the City (parcel currently generates no property tax revenue nor would it if it were developed/owned by a non-profit);
- An estimated \$1.8 million of revenue from special taxes for maintenance of parks and landscape medians (parcel currently generates no such revenue);
- As much as \$5.7 million in development impact fees.

“Benefits to the City of Milpitas” (in the Council’s agenda packet) provides more detail.

Proposed DDA Amendments

To implement the development concept and changes proposed above would require amendment of some terms in the original DDA. Table 1 (in agenda packet) compares terms of the original DDA and proposed amendments. If the HA concurs with, and approves in concept, the proposed senior retirement community and DDA amendments, staff will return to the HA on November 5 with an Amended and Restated DDA embodying the proposed amendments for its review and approval, and the Assignment and Assumption of the DDA from the former RDA to the HA.

There are no facilities in the City that offer a package of continuum of care and services for seniors allowing them to age in place within one location. Given the City’s aging population, a project providing such services is highly desirable. The project will provide 48 units of activity and service enriched rental housing for very low income (50% AMI) seniors, contributing towards the City Housing Plan’s target of construction of 344 very low income units. In lieu of a \$7.7 million grant/loan, the site (valued at \$12.4 million) will be conveyed to the developer at no cost. This financial assistance is consistent with California Community Redevelopment Law and is necessary to ensure the project’s feasibility. In addition, the project will help meet the City’s and HA’s objectives to stimulate economic development by creating 100+ full time jobs, indirect

employment and sales tax revenue generated by the spending by the 600-700 new residents, guests and staff of the project, and property tax, special tax, and sales tax revenue.

Fiscal Impact: The Housing Authority's obligation to fund a \$7.7 million grant/loan to the Phase 1 project would be eliminated in lieu of conveyance of the 5.94 acre site to SMSL. The City would receive \$330,000 annually to be offset through the conveyance of the land. City will collect property tax, special tax, and sales tax revenue but exact amount is unknown.

Recommendations:

1. Receive oral staff report at the meeting on the South Main Senior Lifestyles project.
2. Upon consideration of staff's report and presentation, provide comments to staff and direction on the proposed senior retirement community South Main Senior Lifestyles project and proposed amendments to the Disposition and Development Agreement, and direct staff to return on November 5, 2013 with a draft Amended and Restated DDA embodying those proposed amendments for review and consideration, in addition to the Assignment and Assumption of the DDA from the former Redevelopment Agency to the Housing Authority for consideration.

HA4. Authority Adjournment

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULE COUNCIL MEETING
TUESDAY, OCTOBER 15, 2013 AT 7:00 P.M.**