



**JOINT MEETING OF MILPITAS CITY COUNCIL,  
SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY,  
AND ECONOMIC DEVELOPMENT CORPORATION  
AGENDA  
TUESDAY, OCTOBER 15, 2013**

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

**SUMMARY OF CONTENTS**

- I. CALL TO ORDER/ROLL CALL by the Mayor (6:00 p.m.)**
- II. ADJOURN TO CLOSED SESSION**
  - 1. CONFERENCE WITH LEGAL COUNSEL**  
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 REAL PROPERTY NEGOTIATOR**  
Per CA Government Code Section 54956.8  
Property: APNs 86-22-029, 030, Under negotiation: price and terms of payment  
Person negotiating: Tom Williams
- 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 – October 1, 2013**
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDARS – October and November 2013**
- VIII. PRESENTATIONS**
  1. (a) Proclaim “*Hindu American Month*” for the month of October 2013
  - (b) Approve the Revised Memorandum of Understanding to Extend the Sister City Relationship between the City of Milpitas and Huizhou Municipality, China, for Five Years to October 15, 2018, and Conduct the Official Signing Ceremony with Vice Mayor Liu Guanxian, Vice Mayor Althea Polanski and Mayor Jose Esteves
  - (c) Special Presentation by the Dagupan (Philippines) City Delegation – City Hall Lobby
- IX. PUBLIC FORUM**

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

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**X. ANNOUNCEMENTS**

**XI. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**

**XII. APPROVAL OF AGENDA**

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

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

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**XIV. REPORTS OF OFFICERS**

- \* **2. Consider Mayor's Recommendations of Re-Appointments to Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)**
- 3. Consider Appointment of One Councilmember to County's Expressway Plan 2040 Policy Advisory Board (Contact: Mayor Esteves, 408-586-3029)**
- 4. Discussion of Possible Skate Park (Contact: Councilmember Montano, 408-586-3023)**

**XV. NEW BUSINESS**

- 5. Consider Approval of Amended Conceptual Design Plan, Maintenance Agreement, and Name for a New City Park Located at Great Mall Parkway and S. Abel Street (Staff Contact: Tiffany Brown, 408-586-3283)**
- \* **6. Approve the City Council Meeting Schedule for the Year 2014 (Staff Contact: Mary Lavelle, 408-586-3001)**
- \* **7. Consider a Request from the Milpitas Rotary Club to Waive All Fees for its Annual Pumpkin Patch to be held October 17-31, 2013 at 1331 E. Calaveras Blvd. Parking Lot (Staff Contact: Mary Lavelle, 408-586-3001)**

**XVI. RESOLUTIONS**

- \* **8. Adopt a Resolution Approving an Agreement with Office Max for Citywide Purchase of Office Supplies Not-to-Exceed \$95,000 Annually through May 31, 2016 (Staff Contact: Chris Schroeder, 408-586-3161)**
- \* **9. Adopt a Resolution Approving the First Amendment to the Letter of Understanding Between the City of Milpitas and the Association of Milpitas Battalion Chiefs (AMBC) (Staff Contact: Carmen Valdez, 408-586-3086)**
- \* **10. Adopt a Resolution Approving the Letter of Understanding Between the City of Milpitas and the Milpitas Police Officers Association (POA) (Staff Contact: Carmen Valdez, 408-586-3086)**

- \* 11. **Adopt a Resolution to Reclassify a Recreation Services Assistant IV to a New Classification of Case Manager (Staff Contacts: Carmen Valdez, 408-586-3086 and Stephanie Douglas 408-586-3226)**

**XVII. AGREEMENTS**

- \* 12. **Approve Amendment No. 4 to the Consultant Services Agreement with RMC Water and Environment for an Additional \$300,000 for Support on the Silicon Valley Rapid Transit Program Berryessa Extension CIP No. 4265 and Various City Capital Projects, and Approve a Budget Appropriation (Staff Contact: Jeff Moneda, 408-586-3345)**
- \* 13. **Approve Amendment No. 4 to the Consultant Agreement with Schaaf & Wheeler for an Additional \$20,000 for Storm Drain/Stormwater Program Documentation Review for the Silicon Valley Rapid Transit Program Berryessa Extension, Project No. 4265 (Staff Contact: Jeff Moneda, 408-586-3345)**

**XVIII. JOINT MEETING OF CITY OF MILPITAS, SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY, AND ECONOMIC DEVELOPMENT CORPORATION**

**SA1. Call to Order/Roll Call by the Mayor/Chair**

**SA2. Approval of Agenda/Consent Calendar**

**SA3. Consider Adoption of Resolution Removing 10.89 Acres (“the McCandless property”) from the Standstill Agreement with Milpitas Oversight Board (MOB) and Establishing a Funding Mechanism for Adoption by the Milpitas Oversight Board to Ensure a School will be Constructed (Staff Contact: Tom Williams, 408-586-3050)**

**SA4. Authority Adjournment**

**XIX. ADJOURNMENT**

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

**KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE**

Government's duty is to serve the public, reaching its decisions in full view of the public.

Commissions and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review.

For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035  
e-mail: [mogaz@ci.milpitas.ca.gov](mailto:mogaz@ci.milpitas.ca.gov) / Fax: 408-586-3056 / Phone: 408-586-3040

*The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I Chapter 310 and is available online at the City's website [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov) by selecting the Milpitas Municipal Code link.*

Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 3<sup>rd</sup> floor 455 E. Calaveras Blvd., Milpitas and on the City website.

All City Council agendas and related materials can be viewed online here:  
[www.ci.milpitas.ca.gov/government/council/agenda\\_minutes.asp](http://www.ci.milpitas.ca.gov/government/council/agenda_minutes.asp) (select meeting date)

**APPLY TO BECOME A CITY COMMISSIONER!**

Current vacancies exist on the:

*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](http://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](mailto:mlavelle@ci.milpitas.ca.gov) prior to the meeting. You may request a larger font agenda or arrange for mobility assistance. For hearing assistance, headsets are available in the Council Chambers for all meetings.*

## AGENDA REPORTS

### XIV. REPORTS OF OFFICERS

- \* 2. **Consider Mayor's Recommendations of Re-Appointments to Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)**

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

**Arts Commission/Public Art Committee:**

Re-appoint Robin Hays as a regular member to a term that will expire in October 2016.

Re-appoint Tess Santos as a regular member to a term that will expire in October 2016.

Re-appoint Marsha Tran as Alternate No. 2 to a term that will expire in October 2015.

**Recycling and Source Reduction Advisory Commission:**

Re-appoint Steve Ybarra as a regular member to a term that will expire in October 2016.

Re-appoint Echo Arthur as a regular member to a term that will expire in October 2016.

Re-appoint Eddie Inamdar as Alternate No. 1 to a term that will expire in October 2015.

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

3. **Consider Appointment of One Councilmember to County's Expressway Plan 2040 Policy Advisory Board (Contact: Mayor Esteves, 408-586-3029)**

**Background:** Santa Clara County staff contacted the City Engineer to inquire if there is an appointed member of the City Council for the newly established Expressway Plan 2040 Policy Advisory Board. The first meeting of five is scheduled on Monday, October 28 at 6:30 PM. The PAB is anticipated to meet four times after that over the next 18 months, and consists of representatives from cities throughout the County. Meetings will be held at the County Government Center in San Jose and no stipend will be paid for attendance.

**Recommendation:** Mayor Esteves may seek a volunteer or he may choose to appoint one member of the City Council to serve as the City of Milpitas representative to the Expressway Plan 2040 Policy Advisory Board (PAB).

4. **Discussion of Possible Skate Park (Contact: Councilmember Montano, 408-586-3023)**

**Background:** Councilmember Montano would like to bring forward the discussion anew of a possible skate park in Milpitas for the benefit of the city's youth.

**Recommendation:** Hear report of Councilmember Montano.

### XV. NEW BUSINESS

5. **Consider Approval of Amended Conceptual Design Plan, Maintenance Agreement, and Name for a New City Park Located at Great Mall Parkway and S. Abel Street (Staff Contact: Tiffany Brown, 408-586-3283)**

**Background:** The City Council approved a two-phased residential project at South Abel and Great Mall Parkway on August 16, 2005. It included an agreement that the developer would design and construct trails and parkland. Phase I of the project, known as Centria East, was built and completed in 2008 by D.R. Horton. The City used the park in-lieu fee amount from Centria East to purchase the half acre parcel that abuts Centria West for park use. In June of 2008, Lyon Milpitas, LLC ("Lyon") purchased the Centria West project, now known as Apex, from D.R. Horton. The parkland and open space required per the 2005 agreement for Apex is \$2,834.00 per unit or \$1,079,598.00 total. Lyon agreed to design, construct, and maintain the property that was

purchased by the City for a new public park. The maintenance agreement is included in the agenda packet. The design and construction costs will be deducted from the Centria West park in-lieu fee amount.

The proposed park is adjacent to the residential project, located at the southeast corner of the S. Abel and Great Mall Parkway intersection and is approximately 0.48 acres. Lyon presented an initial design that included a tennis court, tot lot, bocce ball court, barbecues with seating area, and a water feature along S. Abel Street, along with the amended agreement, including the maintenance of the park. The design of the park was presented to the Parks, Recreation and Cultural Resource Commission (PRCRC) on September 10, 2012, and received approval by City Council on September 18, 2012. Lyon now proposes a new Urban Plaza design that is passive and does not include a tennis court and other features listed. The park along Great Mall Parkway features a row of trees and a series of formal hedges designed to complement private seating areas along with a small fenced tot lot. The majority of the park is paved with 4'x4' tree wells and approximately 22 Red Maple trees that will be illuminated. An on-site PG&E easement precluded additional tree planting and improvements, but allows for the central pathway of the park, and areas for special tile artwork reflecting the historic significance of the park name. Bench seating and gaming tables will be dispersed underneath the Red Maple trees and near the center a large, up-lit, water fountain. PRCRC members recommended the new design for approval by the City Council on September 9, 2013.

At the same meeting, PRCRC Commissioners provided a list of historical names for consideration by the Council for the park name. Two names were considered:

- 1) **Jerry Arnold:** a rancher and farmer in the project development area who was a Milpitas Grammar School Trustee in the 1880s.
- 2) **Adlace Ashley:** the first agent for Sunset Telephone Company who brought first telephones to Milpitas in the 1890s and was a grocery store owner in the 1800s.

**Fiscal Impact:** None.

**Recommendations:** Move to approve the following, related to the new 0.48 acre park located at Great Mall Parkway and S. Abel Street:

1. Amended conceptual design plan removing a tennis court;
2. Maintenance agreement with Milpitas Centria West LLC for the long term maintenance of the newly constructed park at no cost to City;
3. Adopt "Jerry Arnold" as the name for the new park, as recommended by the Parks, Recreation and Cultural Resources Commission.

- \* **6. Approve the City Council Meeting Schedule for the Year 2014 (Staff Contact: Mary Lavelle, 408-586-3001)**

**Background:** The Milpitas Mayor and City Council are requested to consider and adopt their schedule of meetings for 2014. Regarding the City Council's summer time meeting dates, it has been recent tradition to cancel both of the July regular Milpitas City Council meetings.

City staff has begun to prepare year-long calendars for next year and have inquired of the City Council as to what schedule will be followed in 2014. Staff requests that the City Council act on an affirmative meeting schedule for 2014 for its regular business meetings.

**Recommendation:** Move to approve the 2014 regular City Council meeting schedule, including the cancellation of the July 2014 City Council meetings.

- \* **7. Consider a Request from the Milpitas Rotary Club to Waive All Fees for its Annual Pumpkin Patch to be held October 17-31, 2013 at 1331 E. Calaveras Blvd. Parking Lot (Staff Contact: Mary Lavelle, 408-586-3001)**

**Background:** The City Clerk received a “Donation or Fee Waiver/Reduction Request Application Form” from the Milpitas Rotary Club on October 2. The Rotary Club applied for a Special Event Permit from the Planning department, and it will be considered separately for approval by the Planning Commission Subcommittee. At this time, the club is requesting that the City Council waive all City fees charged for its annual Pumpkin Patch.

City Fees for Pumpkin Patch are:

|   |          |
|---|----------|
| Special Event permit application – Planning Dept. | \$250.00 |
| Fire Marshal’s inspection permit + fees:          | \$492.00 |
| Electrical Permit from Building official          | \$166.05 |

**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 fee waiver of \$908.05 is granted, then \$15,591.95 would be the remaining balance for the fiscal year.

**Recommendation:** Consider the request from Milpitas Rotary Club and move to waive the fees for Planning, Fire, and Building fees totaling \$908.50 related to the annual Pumpkin Patch held October 17 - 31, 2013.

## XVI. RESOLUTIONS

- \* **8. Adopt a Resolution Approving an Agreement with Office Max for Citywide Purchase of Office Supplies Not-to-Exceed \$95,000 Annually through May 31, 2016 (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background:** The City’s current contract with Office Max for the purchase of office supplies will expire on October 14, 2013. Staff recommends that the City Council approve a new contract with Office Max for the period from October 15, 2013 to May 31, 2016 in the amount not to exceed \$95,000 per year for a total contract amount of \$250,000. The City may enter into a “piggyback” agreement without going through its own competitive solicitation if the City makes all of the required findings, per Milpitas Municipal Code Section I-2-3.07 (Piggyback procurement). In general, the City must determine that solicitation conducted by another public agency meets the City’s Purchasing Ordinance and is in the City’s best interest.

The Office Max contract is based on a solicitation conducted by Oakland County, Michigan under the Public Sourcing Solutions/Office Max - America Saves program. The City of San Jose negotiated additional discounts of up to 70% on a list of 3,000 core products from the America Saves program. Because of our long standing customer relationship, Office Max has extended to the City of Milpitas, the same discounts enjoyed by San Jose, and which it has also extended to many other Bay Area cities. By piggybacking the aforementioned Oakland County, Michigan/ Office Max contract, Milpitas will receive the benefits of a nationally bid contract with volume pricing based on that contract and the additional discount of the San Jose core items either one of which exceeds what we could command as an individual city. Staff reviewed each of the findings required in the Municipal Code, and found the proposed agreement in full compliance with City requirements.

**Fiscal Impact:** None. Funding for this purchase is available from each department’s operating budget.

**Recommendation:** Adopt a resolution approving an agreement with Office Max for the period of October 15, 2013 to May 31, 2016 in the annual not-to-exceed amount of \$95,000 and total contract not to exceed amount of \$250,000.

- \* **9. Adopt a Resolution Approving the First Amendment to the Letter of Understanding Between the City of Milpitas and the Association of Milpitas Battalion Chiefs (AMBC) (Staff Contact: Carmen Valdez, 408-586-3086)**

**Background:** At the August 6, 2013 City Council meeting, approval was granted in the form of a side Letter of Understanding regarding the coverage of additional duty chief work periods for Battalion Chiefs in excess of a standard fifty-six (56) hour work week for the period of March 28, 2013 to October 8, 2013. This item was brought forward due to staffing deficiencies in the rank of Battalion Chief in the Milpitas Fire Department and the request was to compensate at a straight time hourly rate for any additional hours worked beyond 56 hours. These positions will continue in their current status as “exempt” employees.

To date, the parties have not completed meet and confer negotiations over the terms of an initial Memorandum of Understanding (MOU), but would like to extend the interim Letter of Understanding regarding AMBC compensation to be in effect until June 30, 2014, or earlier if replaced by an approved MOU. A copy of the recommended Letter of Understanding is included in the Council’s 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 First Amendment to the Letter of Understanding between the City of Milpitas and the Association of Milpitas Battalion Chiefs to approve the changes defined in the Understanding, extending the LOU to June 30, 2014.

- \* 10. **Adopt a Resolution Approving the Letter of Understanding Between the City of Milpitas and the Milpitas Police Officers Association (POA) (Staff Contact: Carmen Valdez, 408-586-3086)**

**Background:** The most recent Memorandum of Understanding with the Milpitas Police Officers Association (POA) expired on December 31, 2012. City representatives and representatives from POA met and conferred in good faith to negotiate a Letter of Understanding incorporating agreed changes. Agreement was reached with effective dates of January 1, 2013 to December 31, 2014. The Letter of Understanding is included in the Council agenda packet.

**Fiscal Impact:** Year One - \$418,000, and Year Two - \$1,180,000

**Recommendation:** Adopt a resolution approving the Letter of Understanding with the Milpitas Police Officers Association (POA) covering the period of January 1, 2013 through December 31, 2014.

- \* 11. **Adopt a Resolution to Reclassify a Recreation Services Assistant IV to a New Classification of Case Manager (Staff Contacts: Carmen Valdez, 408-586-3086 and Stephanie Douglas 408-586-3226)**

**Background:** Periodically employee classifications are studied to review proper classification placement due to a change of assignment(s), organizational structure, and alignment with other agencies and/or other related changes or conditions.

The Recreation Division currently has two employees holding the position of Recreation Services Assistant IV. At the request of the Human Resources Director a reclassification study on the duties performed by one employee in the Recreation Services Assistant IV position was conducted by the Human Resources Department. The study included a review of job assignments and internal/external compensation comparisons. The incumbent currently performs duties equivalent to a Case Manager. The analysis revealed significant replication of duties between incumbent’s current job duties and that of a case manager with higher compensation in neighboring agencies. The current needs of the senior community demand the performance of a Case Manager to provide ongoing in-depth support with social service information and support.

Therefore, a reclassification to a newly created Case Manager position would provide appropriate updated job specifications and comparable salary compensation for actual duties being

performed. This action would create a new salary range, effectively adjusting the annual salary range for the affected employee from \$47,309.08 - \$57,504.20 to \$57,051.96 - \$71,200.08. Sufficient funds are available in the Department's budget. A review of this change was conducted with the appropriate bargaining unit. Included in the City Council's agenda packet is the updated job specification for your review.

**Fiscal Impact:** None. There are sufficient funds in the Recreation Services 2013-2014 budget.

**Recommendation:** Adopt a resolution to reclassify one Recreation Services Assistant IV position to a new classification of Case Manager effective the first full pay-period following City Council adoption.

## XVII. AGREEMENTS

- \* 12. **Approve Amendment No. 4 to the Consultant Services Agreement with RMC Water and Environment for an Additional \$300,000 for Support on the Silicon Valley Rapid Transit Program Berryessa Extension CIP No. 4265 and Various City Capital Projects, and Approve a Budget Appropriation (Staff Contact: Jeff Moneda, 408-586-3345)**

**Background:** On August 3, 2010, the City entered into a Master Agreement with the Santa Clara Valley Transportation Authority (VTA) for reimbursement of City work on the Silicon Valley Berryessa Extension project. The Master Agreement also allows reimbursement of consultant costs for design review services. On March 1, 2011, Council approved a Consultant Services Agreement with RMC Water and Environment (RMC), a California Corporation, to work on either the BART project directly or work on other capital improvement projects, thereby freeing staff to work on the BART project. On August 16, 2011, Council approved Amendment No. 1 to the agreement with RMC for a total agreement amount not to exceed \$420,068 with extended expiration date of June 30, 2012, for engineering support associated with the BART project and various city capital projects. On May 10, 2012, the parties entered into Amendment No. 2 to extend the expiration date to October 31, 2012 with no changes to compensation. On August 7, 2012, Council approved Amendment No. 3 to the agreement with RMC for a total agreement amount not to exceed \$807,116 with extended expiration date of October 31, 2013, for engineering support associated with the BART project and various city capital projects.

Staff is currently reviewing 95% level plans for several subprojects. It is necessary to extend the RMC agreement to provide additional funding for consultant support, and move the expiration date to October 31, 2014. It is cost-effective to use consultants for the BART project and to use staff for the City CIP projects. Staff recommends shifting \$85,000 from the CIP task to the BART task, add a task to allow for private job reimbursement, and increase the consultant agreement by \$300,000. This will bring the total value of the agreement to \$1,107,116. A budget appropriation from the previously approved Master Agreement is required.

**Fiscal Impact:** Budget appropriation of \$500,000 to CP 4265 is anticipated to cover various consultant charges through October 31, 2014. Costs are fully reimbursable under the Master Agreement with Santa Clara VTA. City capital projects have sufficient funding for the remaining support.

**Recommendations:**

1. Approve Amendment No. 4 to the agreement with RMC Water and Environment in the amount of \$300,000, for a total agreement amount not to exceed \$1,107,116 and to extend the expiration date to October 31, 2014 for engineering support associated with the BART extension, Project No. 4265, various city capital projects, and related private job reimbursement.
2. Approve a budget appropriation of \$500,000 for the various consultant expenses for the Valley Transportation Authority BART project.

- \* 13. **Approve Amendment No. 4 to the Consultant Agreement with Schaaf & Wheeler for an Additional \$20,000 for Storm Drain/Stormwater Program Documentation Review for the Silicon Valley Rapid Transit Program Berryessa Extension, Project No. 4265 (Staff Contact: Jeff Moneda, 408-586-3345)**

**Background:** Santa Clara Valley Transportation Authority (VTA) continues to move forward on the design and construction of the Bay Area Rapid Transit (BART) extension project. The Milpitas BART station and parts of the BART alignment are within a floodplain. In addition, the work requires relocation of some City storm drain pipes and/or installation of additional storm drain pipes. On January 26, 2012, the City entered into a Consultant Services Agreement with Schaaf & Wheeler, a California corporation for professional engineering services for the BART extension project. On February 7, 2012, Council approved Amendment No.1 agreement with Schaaf & Wheeler for a total agreement amount not to exceed \$50,000 with extended expiration date of June 30, 2012. On May 11, 2012, Amendment No.2 extended the expiration dated to December 31, 2012 with no changes to compensation. On August 7, 2012, Council approved Amendment No.3 agreement with Schaaf & Wheeler for a total agreement amount not to exceed \$70,000 with extended expiration date of October 31, 2013. Staff is currently reviewing 95% level plans for several subprojects and has just learned that the City will be the lead reviewer for stormwater program requirements in lieu of the Regional Water Quality Control Board. It is necessary to extend the Schaaf & Wheeler agreement to provide additional funding for consultant support. Staff recommends increasing the Consultant Agreement by \$20,000 for a total not-to-exceed amount of \$90,000, and extending the expiration date to October 31, 2014.

**Fiscal Impact:** Consultant expenses and City staff labor are reimbursable under the VTA Master Agreement. This additional funding is included in the budget appropriation request included with the amendment to the Agreement with RMC on this Council agenda.

**Recommendation:** Approve Amendment No. 4 to the consultant agreement with Schaaf & Wheeler, a California corporation in the amount of \$20,000, for a total agreement amount of \$90,000 and to extend the expiration date to October 31, 2014 for Storm Drain/Stormwater Program Documentation Review, Project No. 4265.

## **XVIII. JOINT MEETING OF CITY OF MILPITAS, SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY, AND ECONOMIC DEVELOPMENT CORPORATION**

- SA3. Consider Adoption of Resolution Removing 10.89 Acres (“the McCandless property”) from the Standstill Agreement with the Milpitas Oversight Board (MOB) and Establishing a Funding Mechanism for Adoption by the MOB to Ensure a School will be Constructed (Staff Contact: Tom Williams, 408-586-3050)**

**Background:** Adoption of the City of Milpitas Transit Area Specific Plan (TASP) and associated policies is an award-winning example of transit oriented in-fill development implementing smart growth legislation and policies advanced at the local, regional and state government levels. Development of the TASP and the ultimate plan incorporate input received from all stakeholders within the community. Working closely with Santa Clara County, Santa Clara Valley Transportation Authority (VTA), Bay Area Rapid Transit, private property owners and the general public, the TASP was developed to incorporate input, goals and objectives of varied and competing interests.

Build out of the TASP will achieve the desired amount of development and corresponding ridership necessary to, and used by, VTA in its federal funding application. The TASP was an integral component in ensuring the BART project would be constructed and that VTA would receive full funding approval from the Federal Transportation Commission.

Incorporated in the TASP is an array of land uses to redevelop the area around the future BART station as a walkable and livable mixed-use community. An important element of the TASP is the incorporation of primary infrastructure to accommodate the new residential and employment

population at build out. Infrastructure planned and approved by the City includes streets, water, sewer, storm drains, parks and a school.

As far back as 2005, the City recognized the population demands and need for development of a new school early in the planning process. At that time, through City Council direction, City staff presented to MUSD representatives several conceptual site locations within the TASP for a park and school, as well as population forecasts. The City recommended that MUSD commence planning and site acquisition for a new school. Unfortunately, MUSD communicated to the City that the district was not in a position to pursue a new school site.

As time moved forward, the City Council continued to direct City staff to pursue its vision for a new school and appropriate park sites. The City approached several land owners in the TASP to negotiate a land purchase for a both a new school and park. In total, 34 acres of parkland are required by law and the City adopted service levels to serve future residents of the TASP area. The City narrowed in on 14 acres of “L” shaped land owned by two separate property owners. The property is located on the east side of McCandless Drive, south of Penitencia Creek East Channel and north of Montague Expressway. The City Council directed staff to conduct a “due diligence” review of the property to determine its feasibility for a new school and park. This property is now referred to as the McCandless Property.

The City hired an architect to prepare feasibility assessments and conceptual designs incorporating the City Council’s vision of a joint use school and park with the notion that the new school could share the parkland for sports and physical education purposes given financial constraints and limited land availability. As a result, the City’s architect developed six concept plans indicating the McCandless Property was feasible for a joint use park and school. These concepts were forwarded to MUSD representatives and as a result, became convinced that the vision of the City Council would work.

In partnership with the City, MUSD hired an architect to work with the City’s architect to further study the feasibility for a new school. Concurrently, City staff began detailed negotiations with the land owners and presented fair share land acquisition costs to MUSD. Given that land values were declining as a result of the housing bubble burst and “Great Recession,” the City desired to act quickly in acquiring land and take advantage of the declining land costs. MUSD communicated to the City that it did not want to pursue acquisition of its portion of the land, but nonetheless had its architect design a K-8, two-story school concept on approximately six acres. All eight of the MUSD concepts were shared with the City Council and MUSD Board, who jointly agreed on a preferred option.

The agreed upon plan included a 5.7 acre school site with a gym and adjacent public park that would serve the outdoor physical fitness requirements of the school through a joint use agreement. As such, the City pursued acquisition of a 10.89 acre site using its sole resources and financial capacity. The City reached agreement with the underlying property owner in the fall of 2010 to acquire the land for \$2 million/acre – paying a total price of \$21,780,000 for the 10.89 acre site. The City of Milpitas Economic Development Corporation formalized the transaction on February 15, 2011 and holds current title to the land.

#### **Changes in State Law and Impact to Development of the Site as Intended**

In June 2011, as a result of extraordinary budget deficits faced at the state level and in need of a significant funding source to balance the state budget and pay state debt obligations, Governor Brown signed AB X1 26, dissolving all redevelopment agencies throughout the state of California. Basically, the act diverts property tax revenues from cities and allocates this revenue to the state. The state retains some of this revenue and reallocates the remaining to counties, school districts, water districts and other taxing entities. In Milpitas, this is an annual redistribution of property tax revenue from the Milpitas Redevelopment Agency to the State of California in the amount of \$39 million (per annum). Specifically, under the new law, MUSD now receives an annual redistribution of 40% of the diverted revenue or \$15.6 million each year.

Santa Clara County receives approximately 14% of the \$39 million or \$5.5 million from the City every year. The City is redistributing 16%, or \$6.2 million, of its original \$39 million. This leaves a deficit to the City of \$32.7 million a year. It should be noted that during these down economic times, the City reduced its staffing levels, implemented pension reform and re-negotiated labor contracts to cut costs and live within its drastically reduced means to balance the City's annual budget.

The AB X1 26 tax diversion law became effective five months after the Milpitas Economic Development Corporation (MEDC) acquired the McCandless Property. The law granted the state and Santa Clara County the authority to conduct an audit of the City of Milpitas Redevelopment Agency to determine its obligated debt requirements and the amount of property tax necessary to fulfill its contractual obligations entered into prior to the law being signed. The law also conceived another level of governance by creating Oversight Boards. Each local entity is required to report to these new Oversight Boards its debt obligations. The Oversight Boards are charged with verifying the previous financial commitments of the defunct redevelopment agencies and either approving or denying property tax allocation payments of these outstanding debts. Again, as a result of these audits (conducted throughout the state as well as in the City of Milpitas), the state realized it had over-estimated the amount of revenue it would receive as a result of AB X1 26 and continued to suffer a significant budget shortfall.

In June 2012, a year and a half after the MEDC acquired the McCandless property, Governor Brown signed into law a second redevelopment dissolution law that retroactively seeks tax revenue from cities even though they had already committed this revenue and entered into agreements to pursue local projects - such as the park and school planned for the McCandless Property in the City of Milpitas. This retroactive law, known as AB 1484, in essence purports to make the McCandless land acquisition by the Milpitas Economic Development Corporation illegal. It should be noted that at the time of the McCandless purchase, no such law existed and it is the retroactive provisions used by the state and Santa Clara County to claim the MEDC acquisition of the park and school land an illegal use of tax dollars. There is no possible way of knowing at the time of the agreement to purchase the property that a future law would have attempted to make the transaction illegal.

Santa Clara County, realizing a significant windfall in annual revenue from the redistribution of local property taxes, positioned itself to work with the state against local municipalities to unwind as many local commitments as possible in order to capture more annual tax revenue and help solve the state's budget problems. As a result of this havoc created by the state and the overly aggressive and unfair implementation by the County to "clawback" financial commitments by Milpitas prior to June 11, 2011, the City had no choice but to litigate the matter in the interest of the local taxpayers and community needs to ensure public projects could be built as envisioned prior to the law being enacted.

As a result, the \$21.7 million used to purchase the McCandless property for a park and school is tied up in litigation due to the retroactive provisions of the law and Santa Clara County's desire to "clawback" this revenue for redistribution. In order to prevent additional litigation, the City and the Oversight Board entered into a Standstill Agreement while the lawsuits make their way through the courts. The Standstill Agreement freezes any ability to sell the McCandless site or significantly develop it for a school and park while the agreement is in force and effect.

**Current Disposition of McCandless Land:**

As previously noted, the goal of developing a park and school on the McCandless Property has been a vision of the City Council for several years. The City was recently approached by MUSD as it is now interested in acquiring the land needed for a new school. MUSD has offered to purchase the entire site at \$2 million an acre, stating this was the MEDC purchase price and that MUSD was being fair by keeping the MEDC whole. All prior negotiations and understandings to use the property for a joint school and park site were ignored by MUSD.

The problem with the offer from MUSD is that any funds received by MEDC for the purchase of the McCandless Property will be required by new law (AB X1 26 and AB 1484) to be transferred

to the State of California away from the MEDC for redistribution to Santa Clara County, MUSD and other taxing entities within the County. Milpitas would receive only \$3.4 million and most of that would have to be deposited in its Park In Lieu Fund. This is not acceptable, as the City must continue to pay for other services such as street maintenance, police and fire protection.

Given the complexities and the desire to keep Milpitas' local dollars local, it is prudent to agree with the MOB and remove the McCandless property from the Standstill Agreement so that a proper and fair agreement can be reached by all parties for the use of the site for a park and school. The City would like to work with MUSD officials, who have communicated that they do not have funding to actually build a school. Perhaps together, the City and District could build a park and school on the McCandless Property as that is in the best interests of the Milpitas community and the greater Santa Clara County and South Bay communities.

**Fiscal Impact:** A potential loss of local revenue in the amount of \$18 - \$34 million.

**Recommendation:** to adopt the proposed resolution removing the McCandless property from the Standstill Agreement and direct staff to work with the Milpitas Unified School District, Santa Clara County and the Oversight Board to develop a fair and economically viable park and school on the McCandless property in the Transit Area.

**XIX. ADJOURNMENT**

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



Mr. Rosen described the consumer mediation unit for customer interactions with business owners. He offered programs to prevent folks from being victims of crime, including financial ones, and suggested to watch for public service announcements on crime and prevention of fraud.

Mayor Esteves asked Mr. Rosen for his contact information. 408-299-3099 was the main phone line and 408-792-2855 was his phone number. The Mayor thanked the D.A. for coming to the Milpitas City Council meeting.

Next, Mayor Esteves proclaimed *Fire Prevention Week* for October 6 – 12, 2013 and the proclamation was accepted by Fire Marshal Albert Zamora. He emphasized carefully maintaining safety in the kitchen, where many house fires begin. Mr. Zamora asked residents to check smoke detectors and change the batteries at daylight savings end on November 3.

**PUBLIC FORUM**

Robert Marini, Milpitas resident, commented on sewer rate calculations for Milpitas.

Bonnie Mace, of Silicon Valley Housing Trust, invited all Councilmembers to attend the annual Turkey Trot event on Thanksgiving morning, November 28, 2013. Her colleague Kevin Zwick, CEO of the Housing Trust, encouraged participation in the Mayor’s Cup. This annual event benefits four local non-profit organizations, including the Housing Trust Silicon Valley.

**ANNOUNCEMENTS**

City Manager Tom Williams announced that the brand new “My Milpitas” iphone application launched the previous week and more than 200 people had already downloaded it. He invited City Engineer Jeff Moneda to the podium, who then introduced Steven Machida, the City’s new Principal Civil Engineer for Utilities in the Engineering department.

Mayor Esteves announced an event on Saturday, October 5, the 570<sup>th</sup> Hangeul Korean Alphabet Day ceremony and event in the City Hall lobby.

Councilmember Montano reported that the off-ramp off the Interstate 880 freeway to Great Mall Parkway (when traveling north) was dangerous, not well lighted, where drivers did not turn carefully. She saw lots of skid marks and would like someone to look into it, where there was a steep embankment and a ditch. City Manager Williams agreed staff would do so.

**ANNOUNCEMENT OF  
CONFLICT OF INTEREST  
AND CAMPAIGN  
CONTRIBUTIONS**

City Attorney Ogaz asked City Councilmembers if they had any personal conflicts of interest or reportable campaign contributions and the response to both was none.

**APPROVAL OF AGENDA**

Motion: to approve the agenda, as submitted

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

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

**CONSENT CALENDAR**

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

Councilmember Montano asked to remove Item 8 (Amendment to Agreement with UBS for Janitorial Services).

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

\* 1. September Odor Report Received odor report for the month of September 2013.

\* 2. Commission Appointments Confirmed the following appointments:

Sister Cities Commission:

Re-appointed Dana Arbaugh and Karen Serpa to terms that will expire in September 2016.

Youth Advisory Commission:

Appointed Raveena Chahal to a term that will expire in September 2014.

Appointed Riane Abaya to a term that will expire in September 2014.

Appointed Jacqueline Ajero to Alternate No. 1 to a term that expires in September 2014.

Appointed Clare Sern to Alternate No. 2 to a term that will expire in September 2014.

Newly appointed Jonathan Mendoza as Alternate No. 3 to a term that will expire in September 2014.

Newly appointed Crystal Tran as Alternate No.4 to a term that expires in September 2014.

- \* 4. Park Bench Donation      Approved the Parks & Recreation donation of a bench in honor of Mabel Mattos at Alviso Adobe Park by the Green Thumb Garden Club.
  
- \* 5. Veterans Plaque Donation      Approved a dedication plaque in memory of resident veteran Henry Mattos to be installed at the Milpitas Veterans Plaza.
  
- \* 7. Resolution Accepting Escuela Parkway project      Adopted Resolution No. 8301 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.
  
- \* 9. Resolution Annexing Property into CFD 2005-1      Adopted Resolution No. 8303 annexing real properties located within Final Tract Map No. 10192 into Community Facilities District No. 2005-1.  
Approved and authorized 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.  
Approved Final Tract Map No. 10192 for Orchid and Public Improvement Plans 2-1180 (construction documents for the associated public improvements).
  
- \*10. Agreement with CSG      Authorized 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. Amendment No. 2 with Prolific Holdings Inc.      Authorized 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. Amendment No. 8 with Hopkins & Carley law firm      Approved Amendment No. 8 to the agreement with the law firm of Hopkins & Carley for legal services, increasing the funding not to exceed \$50,000.
  
- \*13. Emergency Report of Repaired Water Mains      1. Received a report from the Public Works Director of emergency public works repairs to water mains on Daniel Court and on Hillview Drive.  
2. Approved a budget appropriation of \$83,106.21 from the Water Fund into the Public Works operating budget.  
3. Authorized staff to pay Preston Pipelines in an amount of \$83,106.21 for invoices for the emergency repair work.

**REPORT OF OFFICERS**

- 3. City 60<sup>th</sup> Anniversary      Vice Mayor Polanski described input from 17 members of the 60<sup>th</sup> Anniversary Committee to date. Members from each of the City's Commissions joined her and Councilmember Montano to hold several meetings to get started. She asked staff then to present the proposed plan for celebrating the City's 60<sup>th</sup> anniversary next year 2014.  
  
Recreation staff Renee Lorentzen described the proposed event schedule, starting in January with a gala kick-off and family day. Also the unveiling of the "Milpitas Minute Man" statue in front of City Hall would be part of the kick-off event in January 2014.

Vice Mayor Polanski stated that one mini-committee was focused on sponsorships for the 60<sup>th</sup> events, including gaining business sponsors for the main costly events. She was complimentary to staff about the design (displayed on screen) of the “60<sup>th</sup>” logo, to be used on all materials for all City events and activities in 2014.

Councilmember Giordano thanked her colleagues for the work done, and was glad for the progress on the Minute Man statue. She thought it was a great plan to unveil it at the 60<sup>th</sup> celebration in January.

Mayor Esteves was not comfortable to have an event as “invitation only” as the gala was described. He wanted it open to those first come, first served, up to the maximum capacity allowed in City buildings. Staff agreed that could be accommodated.

Motion: to approve 1) the 60th Anniversary plan drafted by the 60th Anniversary Planning committee, 2) a budget appropriation of \$50,000 from Contingency Reserve Fund to the City Council’s budget, and 3) 60<sup>th</sup> logo design and direct use of the logo as appropriate on all City-published materials, literature and paraphernalia during calendar year 2014.

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

City Manager Tom Williams complimented Recreation staff Renee Lorentzen and Dale Flunoy on all the work done so far on what would be a great year.

## NEW BUSINESS

### 6. Milpitas Emergency Operations Plan

The Fire Department’s Office of Emergency Services Coordinator Sean Simonson reviewed the City’s updated Emergency Operations Plan.

Vice Mayor Polanski noted the great deal of time and effort that went into the update and complimented Mr. Simonson and the Fire Chief. She was present at recent Emergency Preparedness Commission meetings when this was reviewed.

Councilmember Montano asked about public safety staff who live out of town. Mr. Simonson described SAFE Teams members who would get the ball rolling for emergency response along with local staff, and those on duty. Also the City would use spontaneous volunteers who would show up following a disaster.

Motion: to accept the staff report and approve the Milpitas Emergency Operations Plan, as presented by Milpitas Office of Emergency Services Coordinator

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

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

### 8. Resolution Extending Agreement with UBS

Councilmember Montano sought information about prevailing wages paid, or not, in the contract for janitorial service contract.

Purchasing Agent Chris Schroeder discussed appropriate rates, working with the local union, and defining what prevailing wage was in this area. City staff planned to re-submit the entire package for bid and return to City Council. Councilmember Montano wanted to know if the rate of pay for janitorial service would be “a living wage.” Staff replied there was no requirement for that in this City.

City Manager Tom Williams reported that the City had worked recently with the South Bay Labor Council on this topic in last two weeks. He said the City would pay a negotiated rate that would be part of the new RFP to be issued. Councilmember Montano replied that she simply wanted to ensure workers were paid a fair wage.

Motion: to adopt Resolution No. 8302 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 \$1224,348.36 for janitorial and custodial services at the City of Milpitas (corrected amount announced at the meeting); and, 3) direct staff to study the appropriate terms for a Request for Proposals for contracted janitorial and custodial services and return to the City Council with recommendations

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

## **JOINT CITY COUNCIL/ HOUSING AUTHORITY MEETING**

- HA1.** Call to Order Mayor/Chair Esteves opened the joint meeting at 8:23 PM, with all members present.
- HA2.** Approve Agenda The Council/Authority unanimously approved the agenda.
- HA3.** South Main Senior Lifestyles Project Principal Housing Planner Felix introduced the newly termed Continuum of Care Retirement Community proposed development for senior living. He gave an overview of the project status for South Main Senior Lifestyles at 1504 – 1620 South Main Street in Milpitas.
- Mr. Reliford then introduced Ms. Terry Freeman, who spoke on behalf of the developer Mr. Joe Callahan. Ms. Friedman addressed the City Council and was glad that the City staff worked successfully with Mr. Callahan to get the title transferred to the Housing Authority. They were happy to get started moving the project forward at this time.
- Ms. Freeman reviewed obstacles to implementation of the original two-phased project, significantly that the Housing Authority cannot fund the \$7.7 million of previously identified Redevelopment Agency funds for low income senior housing. The current plan was for a one building project - not in two phases, as originally designed - for 389 apartments for seniors aged 62 and older. The facility would be more like a hotel than an apartment building and would offer 48 units for very low income (50% of less of Area Median Income) seniors.
- Mr. Reliford summarized fiscal impacts to the City and Housing Authority of the development project, South Main Senior Lifestyles.
- Councilmember Giordano was really excited about the project. She served on the Board of Directors for Terrace Gardens Apartments and saw the great things done for seniors there, a place more than 20 years old. The new project here was very much needed in the City and the South Bay. She was very supportive.
- Councilmember Montano inquired why the senior age was determined at age 62 and older. Ms. Freeman replied it was related to fair housing law. She and Mr. Callahan offered to take the Mayor and Councilmembers on a tour of another facility the company developed that was open in Livermore. She also stressed that the average age was 83 for residents in congregate care facilities. Councilmember Montano asked design questions, focusing on adequate entrance and exit for emergencies, and parking.
- Councilmember Gomez thanked the development team for bringing this project to the City, to make a tremendous improvement in what was a run-down area on Main St.

Vice Mayor Polanski confirmed the transfer of land from the Housing Authority to the owners. She complimented the company on what would be a fantastic project that could really help families.

Mayor Esteves wanted to be clear with the public. The new Disposition and Development Agreement stated the City would give away a full acre of land. He asked about purchases by the Redevelopment Agency in the past, in terms of comparable land values, referring to figures in the state law-required Section 33433 report. The Mayor asked if this property would be included the Community Facilities District for this area, and the City Manager said yes. The Mayor asked financing questions and owner Mr. Callahan detailed the conservative FHA loan financing package for this unique property.

As a follow-up to this item, Mayor Esteves asked staff for a simple spreadsheet showing costs and benefits of the project for seniors, with details of the finances listed.

Councilmember Giordano inquired about perhaps a “virtual” tour of the Livermore senior facility. She would be interested in that, if not a live tour of the Livermore site built by the developer.

Motion: 1) to receive the oral staff report on the South Main Senior Lifestyles project, describing significant changes from original plan, 2) upon consideration of staff's report and presentation, comment to staff on the proposed senior retirement community South Main Senior Lifestyles project and proposed amendments to the Disposition and Development Agreement; and, 3) to direct staff to return on November 5, 2013 with a draft Amended and Restated Disposition and Development Agreement embodying those proposed amendments, in addition to the Assignment and Assumption of the DDA from the former Redevelopment Agency to the Housing Authority

Motion/Second: Vice Mayor Polanski/Councilmember Gomez

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

## **ADJOURNMENT**

Mayor Esteves adjourned the joint meeting of the City Council and Housing Authority at 9:21 PM.

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

| September 2013 |    |    |    |    |    |    |
|----------------|----|----|----|----|----|----|
| S              | M  | T  | W  | T  | F  | S  |
| 1              | 2  | 3  | 4  | 5  | 6  | 7  |
| 8              | 9  | 10 | 11 | 12 | 13 | 14 |
| 15             | 16 | 17 | 18 | 19 | 20 | 21 |
| 22             | 23 | 24 | 25 | 26 | 27 | 28 |
| 29             | 30 |    |    |    |    |    |

| November 2013 |    |    |    |    |    |    |
|---------------|----|----|----|----|----|----|
| S             | M  | T  | W  | T  | F  | S  |
|               |    |    |    |    |    | 1  |
| 3             | 4  | 5  | 6  | 7  | 8  | 9  |
| 10            | 11 | 12 | 13 | 14 | 15 | 16 |
| 17            | 18 | 19 | 20 | 21 | 22 | 23 |
| 24            | 25 | 26 | 27 | 28 | 29 | 30 |

# Council Calendar

## October 2013

| Sunday | Monday   | Tuesday   | Wednesday  | Thursday  | Friday | Saturday   |
|--------|--|---|--|---|--------|--|
|        |  | <b>6:00 PM</b> -Closed Session<br><b>7:00 PM</b> -City Council        | <b>7:30 AM</b> -VTA Northeast Group (JE)<br><b>5:30 PM</b> -Veterans Commission (DG)<br><b>7:00 PM</b> -Community Advisory Commission (AG) | <b>5:30 PM</b> -VTA Board of Directors (JE)   |        |  |
| 6      | <b>7:00 PM</b> -Parks, Recreation & Cultural Resources Commission (AP) |   | <b>6:30 PM</b> -Planning Subcommittee<br><b>7:00 PM</b> -Planning Commission<br><b>(Cancelled)</b>   | <b>4:00 PM</b> -VTA Policy Advisory Committee (AG)<br><b>4:30 PM</b> -Treatment Plant Advisory Committee (JE) (San Jose)<br><b>7:00 PM</b> -Youth Advisory Commission (DG)<br><b>7:00 PM</b> -Cities Assoc of Santa Clara County (JE) |        |  |
| 13     | <b>6:00 PM</b> -Economic Development Commission (CM)                   | <b>6:00 PM</b> -Closed Session<br><b>7:00 PM</b> -City Council        | <b>5:30 PM</b> -Veterans Commission (DG) Special Meeting   | <b>12:30 PM</b> -VTA Admin & Finance Committee (JE)   |        | <b>Milpitas Veterans Commission 1<sup>st</sup> Annual Car Show 10:00 AM-4:00 PM at Milpitas Civic Center Plaza</b> |
| 20     | <b>7:00 PM</b> -Telecommunications Commission (AP)                     | <b>6:00 PM</b> -Recycling & Source Reduction Advisory Commission (CM) | <b>12:00 PM</b> -Santa Clara Valley Water Commission (AG)<br><b>7:00 PM</b> -Planning Commission   | <b>7:00 AM</b> -Milpitas Chamber of Commerce Board (DG)<br><b>1:30 PM</b> -County Library JPA Board (CM)<br><b>6:00 PM</b> -Sister Cities Commission (CM)   |        |  |
| 27     |  | <b>1:30 PM</b> -Senior Advisory Commission (JE)                       | <b>5:30 PM</b> -Veterans Commission (DG) Special Meeting   | <b>12:00 PM</b> -Terrace Gardens Board of Directors (DG)  |        |  |

| October 2013 |    |    |    |    |    |    |
|--------------|----|----|----|----|----|----|
| S            | M  | T  | W  | T  | F  | S  |
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| 6            | 7  | 8  | 9  | 10 | 11 | 12 |
| 13           | 14 | 15 | 16 | 17 | 18 | 19 |
| 20           | 21 | 22 | 23 | 24 | 25 | 26 |
| 27           | 28 | 29 | 30 | 31 |    |    |

| December 2013 |    |    |    |    |    |    |
|---------------|----|----|----|----|----|----|
| S             | M  | T  | W  | T  | F  | S  |
| 1             | 2  | 3  | 4  | 5  | 6  | 7  |
| 8             | 9  | 10 | 11 | 12 | 13 | 14 |
| 15            | 16 | 17 | 18 | 19 | 20 | 21 |
| 22            | 23 | 24 | 25 | 26 | 27 | 28 |
| 29            | 30 | 31 |    |    |    |    |

# Council Calendar

## November 2013

| Sunday  | Monday   | Tuesday   | Wednesday  | Thursday   | Friday    | Saturday  |
|---|--|---|--|--|-----------|-----------|
|   |  |   |  |  | <b>1</b>  | <b>2</b>  |
| <b>3</b><br><b>Daylight Savings Time Ends – Turn Clocks Back 1 hour</b><br> | <b>4</b><br><b>7:00 PM</b> -Parks, Recreation & Cultural Resources Commission (AP)   | <b>5</b><br><b>6:00 PM</b> -Closed Session<br><b>7:00 PM</b> -City Council  | <b>6</b><br><b>7:30 AM</b> -VTA Northeast Group (JE)<br><b>7:00 PM</b> -Community Advisory Commission (AG)             | <b>7</b><br><b>4:00 PM</b> -Oversight Board (AG)<br><b>5:30 PM</b> -VTA Board of Directors (JE)  | <b>8</b>  | <b>9</b>  |
| <b>10</b>   | <b>11</b><br><b>City Holiday</b><br><b>Veterans Day</b><br><b>9:00 AM</b><br><b>Veterans Day Ceremony at City Hall, Veterans Plaza</b><br> | <b>12</b>   | <b>13</b><br><b>7:00 PM</b> -Planning Commission<br><b>9:30 AM</b> -Coyote Flood Protection & Watershed Committee (CM) | <b>14</b><br><b>4:00 PM</b> -VTA Policy Advisory Committee (AG)<br><b>4:30 PM</b> -Treatment Plant Advisory Committee (JE) (San Jose)<br><b>7:00 PM</b> -Cities Assoc. of SCC (JE)<br><b>7:00 PM</b> -Youth Advisory Comm. (DG)<br><b>7:00 PM</b> -Bicycle Pedestrian Advisory Commission (AG) | <b>15</b> | <b>16</b> |
| <b>17</b>   | <b>18</b><br><b>7:00 PM</b> -Telecommunications Commission (AP)<br><b>7:00 PM</b> -Library Advisory Commission (CM)  | <b>19</b><br><b>6:00 PM</b> -Closed Session<br><b>7:00 PM</b> -City Council | <b>20</b>  | <b>21</b><br><b>12:30 PM</b> -VTA Admin & Finance Committee (JE)<br><b>7:00 PM</b> -Bay Area Water Supply Consv. Agency (AG) (Foster City)<br><b>7:00 PM</b> -Emergency Prep. Commission (AP)  | <b>22</b> | <b>23</b> |
| <b>24</b>   | <b>25</b><br><b>6:00 PM</b> -Arts Commission (DG)<br><b>7:00 PM</b> -Public Art Committee (DG)   | <b>26</b>   | <b>27</b><br><b>7:00 PM</b> -Planning Commission (potential cancellation)  | <b>28</b><br><b>-----City Holiday-----</b><br>  | <b>29</b> | <b>30</b> |

**MEMORANDUM OF UNDERSTANDING**

[Shown in strikeout version. English & Chinese versions will be at the mtg.]

**AGREEMENT FOR THE CONTINUATION OF A SISTER CITY RELATIONSHIP  
BETWEEN THE CITY OF MILPITAS AND HUIZHOU MUNICIPALITY**

**WHEREAS**, the Cities of Milpitas and Huizhou **Municipal People's Government** executed a **their first** memorandum of understanding, ~~signed by Mayor Esteves of the City of Milpitas and Mayor Huang Yebin of Huizhou City,~~ on April 28, 2004, establishing a Sister City relationship between the City of Milpitas and Huizhou **Municipal People's Government** City to enrich cultural understanding, create adult and student exchange opportunities and broaden cooperation to encourage goodwill between the Cities, and;

**WHEREAS**, ~~the previously executed memorandums~~ of understanding incorporated, to the extent applicable and practical, the principles of the 1972 SINO-U.S. SHANGHAI COMMUNIQUE, presented jointly by the leaders of the People's Republic of China and the United States of America. The City of Milpitas acknowledges and affirms the 1972 SHANGHAI COMMUNIQUE in its entirety, and;

**WHEREAS**, the City of Milpitas and Huizhou **Municipal People's Government** City support the promotion of mutual understanding, expansion of official and non-governmental exchanges, and friendship through promotion of peace, stability and prosperity in the Asia-Pacific Region and the world at large, and;

**WHEREAS**, in order to consolidate and further develop the friendship and cooperation between Huizhou **Municipal People's Government** City and the City of Milpitas, both cities ~~have agreed~~ to continue the Sister City relationship established in the previously executed memorandum of understanding on the following terms:

1. To promote common prosperity and development, both cities will organize, on the basis of equality, mutual benefit and goodwill, cultural exchanges, **contacts to support an electronic "pen pal" program for students**, and other information sharing that may include art, business, commerce, science, technology, culture, history, education, sports, public health and administration.
2. Citizens, civic and business groups of each city are recognized as ambassadors of goodwill to organize cultural exchanges that may include art, history, education, health and sports interests, ~~study~~ of business and commerce, and other information sharing.

3. ~~At least~~ **To the extent possible**, ~~At least~~ one cultural exchange visit to each city shall be organized involving adults and students within the duration of this Memorandum of Understanding. Each visit shall be reviewed in advance between the Milpitas Sister Cities Commission and the **Foreign and Overseas Chinese Affairs Bureau of Huizhou Municipality** ~~Huizhou-Milpitas Sister Cities Committee~~.
4. Cultural exchange visit details and activities shall be cooperatively agreed upon by organizing citizens and civic and business groups. Activities shall be provided with the objective to deepen cultural awareness and friendship between citizens, **business leaders** and government officials.
5. The ~~Cities'~~ leaders and top-level department administrators **of both cities shall** ~~will~~ maintain and facilitate ~~constant~~ open channels of communication to expedite consultation, exchange and cooperation on questions and issues of common concern.
6. The effective term for this Memorandum of Understanding shall be for five years following the date of execution of the Memorandum. Prior to expiration of this Memorandum of Understanding, the Sister City Relationship shall be reviewed by the City of Milpitas Sister Cities Commission and ~~Huizhou City~~ Foreign and Overseas Chinese Affairs Bureau **of Huizhou Municipality** to evaluate the progress of the relationship, as well as recommend whether the relationship shall continue.
7. This agreement represents the entire agreement between the cities. It may not be changed or modified without a resolution signed by the leaders of both cities. It is written in duplicate in the languages of English and Chinese. Both texts are equally authentic.

These two Cities hereby execute this Memorandum of Understanding in both Chinese and English to expire five years from **September 17, 2013**.

Huizhou Municipality

City of Milpitas

On its behalf

On its behalf

---

Liu Guanxian, Vice Mayor

---

Jose S. Esteves, Mayor

September 17, 2013

September 17, 2013

RECORDING REQUESTED BY:

WHEN RECORDED, MAIL TO:

Attn:

(SPACE ABOVE FOR RECORDER'S USE)

APNs:

**AGREEMENT AFFECTING REAL PROPERTY FOR CENTRIA WEST (APEX) DEVELOPMENT**

THIS AGREEMENT AFFECTING REAL PROPERTY FOR CENTRIA WEST (APEX) DEVELOPMENT (“**Agreement**”) is made and entered into as of the \_\_\_\_ day of October 2013 by and between Milpitas Centria West, LLC, a Delaware limited liability company (“**Developer**”) and CITY OF MILPITAS, a municipal corporation of the State of California (the “**City**”). Developer and the City may collectively be referred to herein as the “**Party**” or the “**Parties**”.

RECITALS:

A. Developer is the owner of certain real property located in the City of Milpitas, County of Santa Clara, State of California, more particularly described on Exhibit “A” attached hereto and incorporated herein by reference (the “**Developer Property**”). Developer has or intends to construct residential dwelling units on the Developer Property for the purposes of leasing and operating apartments. For purposes hereof, Developer Property shall mean and refer to the real property described in Exhibit “A”.

B. Pursuant to that certain Subdivision Public Improvement Agreement between the Developer and the City dated as of August 19, 2011, the City and Developer have agreed that the Developer will construct certain improvements on a parcel owned by the City, which is immediately adjacent to Developer Property which as shall serve as a public park, as shown on Exhibit “B”, attached hereto and incorporated herein (the “**Park Land**”).

C. City seeks Developer to provide maintenance obligations and establish certain rights incidental to such efforts on the improvements that will be constructed on the Park Land, as further described herein.

NOW, THEREFORE, for value consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Grant of License. City grants Developer a non-exclusive license to maintain those improvements to be constructed on the Park Land as further described on Exhibit "C" attached hereto and incorporated herein by reference (the "**Park Improvements**"). The parties acknowledge that the Park Improvements once completed will be dedicated to the City. To the extent the description of the Park Improvements set forth in Exhibit C varies from the actual Park Improvements constructed and dedicated to the City, then Exhibit C shall be modified upon mutual consent of City and Developer.
2. Party Status. For purposes of this Agreement, Developer shall be considered solely as a licensee and not as an agent or subsidiary of the City; no possessory interest or right to own, lease, occupy or control the Park Improvements or the Park Land is granted herein.
3. Developer Defined. For purposes of this Agreement, the term "Developer" shall include any current owner of the Developer Property or successor in interest, including any Homeowner's Association or other common interest organization exercising control of or maintenance responsibility over all or a portion of Developer Property.
4. Maintenance Obligations of Park.
  - (a) Upon completion of the Park Improvements and dedication of the Park Improvements from Developer to City, Developer shall, at Developer's sole cost and expense, fully and timely perform and satisfy any and all terms, conditions, and maintenance obligations of this Agreement. Developer shall, at Developer's sole cost and expense, provide labor, supervision, supplies, materials, equipment, and any and all other tools and manpower necessary to clean, preserve, maintain and repair the Park Improvements, as further set forth herein. The maintenance services required herein is referred to as the "**Maintenance Services**" and shall be subject to City review and approval.
  - (b) Developer agrees and acknowledges that the Park Land will be a public park and open to the public during certain hours as determined by City. Nothing herein gives Developer the right to restrict or to exclude any person or entity from the Park Land. If Developer believes that any portion of the Park Land needs to be restricted or closed for public safety purposes to perform the Maintenance Services described herein, Developer shall obtain City's prior written approval of any restriction on access and also obtain City's prior written approval of the method of providing notice to the public.
  - (c) Developer shall ensure that all employees of Developer performing work under this Agreement pass a criminal background check and receive "live-scan" clearance through the database of the California Department of Justice, and an FBI criminal database or equivalent national database, as allowed by Federal, State and local laws. Developer shall cause that its contracts with its contractors and agents performing the Maintenance Services contain the same obligation upon such contractors and agents as set forth in the immediately preceding sentence in this Section 4(c). No employees, contractors, or agents shall perform any Maintenance Services unless each of those individuals meets the requirement

of this Agreement and all applicable local, state and federal requirements. Developer shall also require all employees, contractors, or agents performing work under this Agreement are at least eighteen (18) years of age on the first day of their employment.

- (d) Developer shall perform the Maintenance Services in substantial compliance with maintenance standards set forth by the City for the City's parks located in the City containing similar improvements as the Park Improvements (the "**City Standards**"). All maintenance performed under this Agreement shall be subject to City review and approval. After completion of the Park Improvements, City and Developer shall immediately meet to establish such maintenance obligations. Thereafter, City and Developer shall meet annually to confirm the scope of the maintenance obligations being performed by the Developer is consistent with City Standards. The costs of such maintenance shall be exclusively borne by Developer, provided, however, any costs associated with Capital Repairs for the Park Improvements shall be borne and paid by the City except as provided in Section 4(f) below. Subject to Section 4(f) below, Capital Repairs is defined for purposes of this Section as any repair or replacement above and beyond the standard monthly Maintenance Services required of the City's vendors pursuant to a fixed price landscape maintenance service contract in accordance with City Standards. In addition, if the City elects to change or modify any aspect of the design of the Park Improvements or the landscaping of the Park Improvements after completion and dedication of the Park Improvements, the costs associated with such changes or modifications shall be borne and paid by the City. In no way, shape, or form will Developer get any payments or tax credits from City for the performance of such maintenance.
  - (e) Service Requests. Developer shall respond to all special service requests within seven (7) days. Special service requests can include any aspect of duty under the Maintenance Services, including graffiti abatement and the repair of vandalism (e.g., turf damage and the scattering of broken glass). All potential safety hazards or dangerous condition as determined solely by City shall be addressed within the same day; all other repairs shall be worked within the regular maintenance schedule as soon as possible and within a maximum of seven (7) days.
  - (f) Developer acknowledges and agrees the Park Improvements will be constructed within existing third party utility and other easement areas. Developer shall be fully responsible for the cost, expense, and performing any repair and/or replacement of any turf, walkway, hardscape, asphalt, landscaping, tot lot or other Park Improvements that may be damaged or otherwise require repair and/or replacement arising from a third party exercising its existing easement rights, provided that the cost of such or repair and/or replacement work does not exceed \$2,500 for any single occurrence, or \$5,000 in any calendar year. Existing easement rights shall mean any easement, whether recorded or unrecorded, as of the date of this Agreement.
5. Insurance of Developer.
- (a) Before beginning any work under this Agreement, Developer shall procure "occurrence coverage" insurance against claims for injuries to persons or damages

to property that may arise from or in connection with the performance of the work consisting of the construction of the Park Improvements and the ongoing maintenance of the Park Improvements hereunder by the Developer and its agents, representatives, employees, and subcontractors. Developer shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Developer shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce copies of said policies to the City upon demand. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

- (b) **Workers' Compensation.** Developer shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Developer. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. The insurer shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled, except after thirty (30) days' prior written notice has been given to the City.

- (c) **Commercial General and Automobile Liability Insurance.**

- (1) General requirements. Developer, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from Developer's performance, or failure to perform, its obligations under this Agreement, including the use of owned and non-owned automobiles.

- (2) Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

- (d) Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:
- (1) City and its officers, officials, agents, and employees (the “City Additional Insureds”) shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed pursuant to this Agreement by or on behalf of Developer, including the insured’s general supervision of Developer; products and completed operations of Developer with respect to the Park Improvements; premises owned, occupied, or used by Developer to the extent the same pertain to Developer’s obligation under this Agreement; and automobiles owned, leased, or used by the Developer to the extent the same pertains to the Developer’s obligation under this Agreement.
  - (2) The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
  - (3) An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, agents, and employees, and that, except as otherwise provided herein, no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
  - (4) Any failure of Developer to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, officials, agents, and employees.
  - (5) An endorsement shall state that coverage shall not be suspended, voided, or canceled except after thirty (30) days' prior written notice has been given to the City.
- (e) Insurance coverage levels under this Agreement may be modified by the City, in its sole discretion, upon one (1) year’s advance notice to the Developer.
- (f) Developer shall provide to the City certificates of insurance upon acquisition and renewal of insurance coverage.
- (g) In no event shall Developer be obligated to insure the City Additional Insureds with respect to any loss to the extent such loss is caused by the sole negligence or willful misconduct of the City, its employees, representatives, or agents.
6. Duration. This contract is perpetual but can be terminated by agreement of both Parties.
7. Right of City to Remedy Failure of Maintenance Obligation. If Developer fails to comply with the provisions of this Agreement, then the City may deliver written notice to Developer identifying the specific defects regarding the maintenance of the Developer Maintained Improvements. Subject to this Section 6, Developer shall have fifteen (15) business days to correct the City’s concerns, provided that if such correction cannot be completed within such fifteen (15) business day time period, then Developer shall be afforded a reasonable amount of additional time to correct such City’s concerns provided Developer commences such correction during such fifteen (15) business day time period

and diligently pursues such correction. Notice provided by the City shall specify the date Developer must remedy the City's concerns in order to avoid action by the City. If the Developer disagrees in good faith with the City's concerns, Developer shall notify the City of such disagreement within seven (7) business days of receipt of such notice and the parties shall discuss in good faith the City's concerns and Developer's disagreement with such concerns. Notwithstanding the foregoing, if the City determines an emergency situation exists which must be remedied immediately, then the City will provide written notice to Developer specifying the emergency situation must be remedied within twenty-four (24) hours.

If after notice from the City, Developer fails to correct the specific defects identified in the City's notice within the specified time period set forth above, the City shall have the right to remedy the defects. The City may retain, at its election its own contractors, or the Developer's contractors, or other appropriate third party company to complete the work. Any costs incurred by the City for maintenance of the Park shall be solely borne by the Developer. The City shall provide an invoice for the maintenance cost incurred by the City to Developer. Developer shall remit payment to the City within thirty (30) days from receipt of the invoice. The Parties agree that any maintenance undertaken by the City under this section shall not terminate the maintenance obligation of Developer. In the event of non-compliance with the City's notice more than twice in any twelve (12) month period, or lack of prompt reimbursement, the City retains the right to terminate the contract in addition to any collection remedies it may have according to law.

8. Utilities. City shall be responsible for all utilities in connection with the operation of the Park and the Park Improvements. All utilities that are the responsibility of the City shall be metered separately and such utilities shall be in the account name of the City and the cost of the replacement of any such utilities shall be the responsibility of the City, subject to Section 4(f) above.
9. Indemnification.
  - a. Developer hereby covenants and agrees to indemnify, defend, and hold City, its officers, agents, and employees harmless from and against any and all claims, damages (including damage to property and injury to persons), demands, losses, obligations, judgments, liabilities, costs and expenses (including, without limitation, attorneys' and other fees) (collectively, "Losses") arising from or in any way connected with or related to any of the following: (i) any lawsuit, arbitration, administrative proceeding or other legal action directly concerning Developer's and/or its agents' maintenance or construction of the Park Improvements and, (ii), any breach by Developer of any of its obligations under this Agreement. However, in no event shall Developer be obligated to defend or indemnify the City with respect to Losses to the extent caused by the sole negligence or willful misconduct of the City, its employees, representatives, or agents.
10. Assignment. Developer may, upon written notification to the City and approved by City, such approval not to be unreasonably withheld, assign all of its rights and obligations set forth in this Agreement only to successors in interest to the ownership of the Developer Property. Developer hereby covenants and warrants for itself and its successors and assigns, that, except as otherwise provided for herein, conveyance of any interest in the

Developer Property to a common interest association, such as a homeowners' association, shall constitute an assumption by any successors, assigns or transferees of Developer, of the obligation under this Agreement. Upon a City-approved assignment, the successor or assign shall have all rights and obligations of Developer set forth in this Agreement, and Developer shall thereafter have no further rights, liabilities or obligations under the Agreement and shall be released from all such liability hereunder.

11. Notices. Unless otherwise provided in this Agreement, all notices, demands, or other communications given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been given upon personal delivery or as of the second business day after mailing in the United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows or to such other address or to such other person as either party may designate:

If to Developer:

Milpitas Centria West, LLC  
c/o Lyon Realty Advisors, Inc.  
4901 Birch Street  
Newport Beach, California 92660  
Attention: Frank T. Suryan, Jr.

With a copy to:

Lyon Management Group, Inc  
4901 Birch Street  
Newport Beach, California 92660  
Attention: General Counsel

If to City:

City Engineer  
City of Milpitas  
455 East Calaveras Boulevard  
Milpitas, CA 95035

12. Headings. The titles or headings of the sections of this Agreement are not a part of the Agreement and shall have no effect upon the construction of or interpretation of this Agreement.
13. Exhibits. This Agreement includes the following Exhibits that are attached hereto and incorporated herein:
  - Exhibit A Developer Property
  - Exhibit B Park Land
  - Exhibit C Park Improvements
14. General Provisions.

- (a) Hazardous Materials. Developer covenants and agrees that it shall not cause or permit any Hazardous Material (as defined by “Laws” below) to be brought upon, kept, used, stored, generated or disposed of in, on or about the Park Land except in compliance with applicable environmental laws.
- (b) Waiver. The waiver by one Party of any breach by any other Party of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement.
- (c) Entire Agreement. This Agreement, including all exhibits attached hereto, represents the entire understanding of the Parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may be modified only by a written amendment duly executed by the Parties to this Agreement.
- (d) Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be either invalid, void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect and unimpaired by the holding.
- (e) Compliance with Laws. Developer shall each comply with all applicable laws, ordinances, codes, and regulations (collectively “laws”) of the federal, state, and local governments, including without limitation, any and all laws specified elsewhere in this Agreement.
- (f) Governing Law. This Agreement shall be governed by and in accordance with the laws of the State of California.
- (g) Venue. In the event that suit shall be brought by either Party to this Agreement, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.
- (h) Time is Essence. Time is of the essence with respect to the performance of each and every provision of this Agreement.
- (i) Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. A copy, original or facsimile with all signatures appended together shall be deemed a fully executed Agreement.
- (j) Prevailing Wage. Maintenance Services performed under this Agreement are subject to the payment of prevailing wage in accordance with State Law. Developer shall comply and cause its contractors and agents to comply with all prevailing wage requirements under City and State Laws.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as set forth below.

Dated: \_\_\_\_\_

MILPITAS CENTRIA WEST, LLC,  
a Delaware limited liability company

By: Colony – LCV Venture, LLC, a Delaware  
limited liability company, its Sole Member

By: Lyon Housing (Horton Portfolio) XXXIX,  
LLC, a Delaware limited liability company, its  
Managing Member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_  
“DEVELOPER”

CITY OF MILPITAS,  
a municipal corporation

\_\_\_\_\_  
Thomas C. Williams  
City Manager

[INSERT NOTARY]

**EXHIBIT "A"**

**DEVELOPER PROPERTY**

Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MILPITAS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Lot 1, as shown on that certain Map entitled "Tract No. 9773 Centria" which was filed in the office of the Recorder of the County of Santa Clara, State of California, on July 24, 2006 in Book 804 of Maps, Pages 9 through 14.

APN: 086-12-021

**EXHIBIT "B"**

**PARK LAND**

**Legal Description**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MILPITAS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

**PARCEL ONE:**

All of that certain parcel of land designated and delineated as "Parcel B" upon that certain Map entitled "Record of Survey, being a portion of the Los Esteros and Milpitas Ranchos in the County of Santa Clara, California", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California on October 24, 1968 in Book 244 of Maps at Page 3.

Excepting therefrom that portion described as Parcel 506776-A in the Deed from the County of Santa Clara to the City of Milpitas, Recorded May 4, 1994 in Book N428, Page 657, Instrument No. 12481692, Official Records.

**PARCEL TWO:**

That portion of Parcel A as shown on the Record of Survey, being a portion of Los Esteros and Milpitas Ranchos, filed October 24, 1968 in Book 244 of Maps, Page 3, in the office of the Santa Clara County Recorder, lying Southwesterly of the Southwesterly line of Parcel 506776-A as described in the Deed from the County of Santa Clara to the City of Milpitas Recorded May 4, 1994 in Book N428, Page 657, Instrument No. 12481692, Official Records.

APN: 086-12-010

**City of Milpitas**

City Council Regular Meeting Dates  
Tuesdays at 7:00 PM

**2014**

|                    |
|--------------------|
| January 7 and 21   |
| February 4 and 18  |
| March 4 and 18     |
| April 1 and 15     |
| May 6 and 20       |
| June 3 and 17      |
| July – none        |
| August 5 and 19    |
| September 2 and 16 |
| October 7 and 21   |
| November 4 and 18  |
| December 2 and 16  |

\*7

City Clerk's Office

OCT 02 2013

RECEIVED

City of Milpitas  
Donation or Fee Waiver/Reduction Request Application Form  
for Non-Profit Organizations

Complete this form and return it to Milpitas City Clerk

Please provide a copy of the IRS tax-exempt letter with the application.

Name of Organization: ROTARY CLUB

Is there a Milpitas branch or affiliation? MILPITAS ROTARY CLUB

Mailing Address: P.O. BOX 360167  
MILPITAS, CA 95036

Contact Person: CYNTHIA RICH Telephone No. 408-439-0506

Email Address: cynthiajrich@comcast.net

What is your request? Donation Amount Requested permit fee waiver \$908.05 OR

Fee Requested to be waived (type and \$ amount) \_\_\_\_\_

Event date(s): 10/17/13 - 10/31/13

What is the purpose of the event? COMMUNITY PUMPKIN PATCH  
FUNDRAISER

How will the Milpitas community benefit from this event? FUN FAMILY EVENT WHERE  
KIDS CAN BUY PUMPKINS, SLIDE / PLAY IN JUMPHOUSE / MAZE

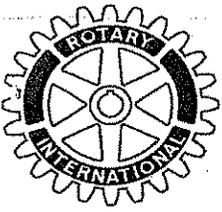
What % of the fund raising proceeds will benefit Milpitas community? 100%

How will the City's contribution (if granted) be recognized in any publicity? WILL BE POSTED  
AS A SPONSOR ON ADVERTISING / and Signage.

*Within 60 days after completion of the event for which a donation was received or a fee waiver/ reduction was granted by the City of Milpitas, your organization will provide a written report to the City Clerk to include at minimum: number of participants, copies of all publicity of the event, any benefit to the community, amount of funds raised and an accounting of how the proceeds of the event will be dispersed.*

Signature of Officer: Cynthia Rich Date: 9/25/13

Print Name & Title: CYNTHIA RICH / TREASURER



**Milpitas Rotary Club**  
**P. O. Box 360167**  
**Milpitas, CA 95036**

**Board of Directors & Officers**

Mark Tiernan, President  
Pete McHugh, President-Elect  
Doris Roth, Secretary  
Cynthia Rich, Treasurer  
Denny Weisgerber  
Deanna Melen  
Debbie Giordano  
Frank DeSmidt  
Todd Flesner  
Norm LaCroix  
Alan David  
John Jay

**Members**

Charlene Brooks  
Jimmy Chamoures  
Bill Cilker  
Jennifer Cullenbine  
Eric Emmanuele  
Germey Galvan  
Ola Hassan  
Robin Hays  
Michael Howard  
Jack Mackay  
Cary Matsuoka  
Tama Mumah  
Victor San Vicente  
Jeanne Serpa  
Eva Stone  
Brian Sturdivant  
Dan Youngs

September 24, 2013

City of Milpitas  
455 E. Calaveras Blvd.  
Milpitas, CA 95035

To Whom It May Concern:

The Milpitas Rotary Club is putting on their annual Community Pumpkin Patch located at 1331 E. Calaveras Blvd. in Milpitas from Saturday, October 19, 2013 through Tuesday, October 29, 2013.

Our hours of operation will be weekdays from 5 to 8 PM and weekends from 11 AM to 8 PM. The event includes, an inflatable slide, a jump house and hay maze for children of all ages. Portable restrooms are also available. The entire event is located at the Milpitas Education Center parking lot on Calaveras and North Park Victoria Drive and is entirely sectioned off from the remaining parking lot by a chain link fence.

We respectfully ask the City to waive the fees that you would normally charge us for this event as you have done in the past. The funds we raise from this event helps us to afford to send up to 10 juniors and seniors to leadership camp (Camp RYLA) which takes place in the summer after school lets out. It also helps us to honor our three scholastic scholarships we give to the Milpitas High School and one for Cal-Hills High School.

Respectfully,

A handwritten signature in cursive script, appearing to be "Cynthia Rich".

Cynthia Rich, Treasurer  
Milpitas Rotary Club  
(408) 439-0506



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY

Internal Revenue Service

TE/GE Division

1100 Commerce St., MC 4900 DAL

Dallas, TX 75242

AUG 7 2006

Rotary Club of Milpitas  
P.O. Box 360167  
Milpitas, CA 95035

Taxpayer Identification Number:

94-6108324

Form:

990

Tax Year(s) Ended:

June 30, 2004

Exemption under Section 501(c)(4)  
of the Internal Revenue Code

Person to Contact/ID Number:

Brad Holz / 94-11910

Contact Numbers:

Telephone: (415) 522-6072

Fax: (415) 522-6059

Dear Sir or Madam:

Our examination of the information return(s) indicated above disclosed that your organization continues to qualify for exemption from Federal income tax. Accordingly, we accept the return(s) as filed.

However, our examination identified certain deficiencies that we are addressing in the enclosed addendum. Noncompliance with the requirements set forth in the addendum could result in penalties and/or loss of exempt status.

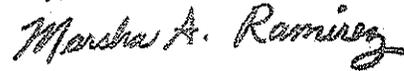
You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

IRS - Office of the Taxpayer Advocate  
55 S. Market Street, Rm. 900  
San Jose, CA 95113  
Phone: (408) 817-6850  
Fax: (408) 817-6851

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "Marsha A. Ramirez".

Marsha A. Ramirez  
Director, EO Examinations

Enclosure:  
Addendum

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS  
APPROVING AN AGREEMENT WITH OFFICE MAX FOR THE PURCHASE OF OFFICE  
SUPPLIES AND MATERIALS UNDER THE PUBLIC SOURCING SOLUTIONS/OFFICE MAX-  
AMERICA SAVES PROGRAM**

**WHEREAS**, the City of Milpitas (“City”) may enter into a “piggyback” agreement without going through its own competitive solicitation if the City’s Purchasing Agent makes all of the required findings set forth in Milpitas Municipal Code Section I-2-3.07 (“Piggyback Procurement”); and

**WHEREAS**, pursuant to Milpitas Municipal Code Section I-2-3.07, the City’s Purchasing Agent must determine that the Piggyback Procurement is in the City’s best interest and must find each of the following:

- a. There are no local suppliers or contractors who could provide the product or service at competitive rates;
- b. A copy of the solicitation has been obtained from the originating agency and reviewed for compliance with the City's Purchasing Ordinance;
- c. The specifications of the item or service required by the City are not materially different from those specified in the originating agency's solicitation;
- d. The price of the purchase is lower than that estimated for the purchase if made directly by the City;
- e. The contract resulting from the original solicitation is current;
- f. No more than a ten percent (10%) variation is allowed for customizing the order or for desirable options. In addition, a cost of living adjustment (using San Francisco-Oakland-San Jose Consumer Price Index—All Urban Consumers) can be added for up to two (2) years;
- g. The City enters into a separate contract with the vendor selected by the originating agency, and incorporates by reference the original solicitation, terms, conditions and prices; and

**WHEREAS**, Oakland County, Michigan conducted a competitive solicitation in 2011 for the purchase of office supplies and materials and awarded a contract to Office Max under the Public Sourcing Solutions/Office Max - America Saves program with national volume pricing for a term through March 31, 2016; and

**WHEREAS**, the City of San Jose negotiated additional discounts of up to 70% on a list of 3,000 core products from the America Saves program; and

**WHEREAS**, the City’s Purchasing Agent determined that by piggybacking on the aforementioned Oakland County, Michigan/Office Max agreement, the City will receive the benefits of a

nationally bid contract with volume pricing and the additional discount offered to the City of San Jose; and

**WHEREAS**, the City’s Purchasing Agent has reviewed each of the findings required in Milpitas Municipal Code Section I-2-3.07 and determined the proposed agreement with Office Max would be in full compliance with the City’s requirements as explained herein; and

**WHEREAS**, the City’s Purchasing Agent recommends the City Council approves the proposed agreement between the City and Office Max under the Public Sourcing Solutions/Office Max - America Saves program for a term from October 15, 2013 to May 31, 2016 in the amount not to exceed Ninety-Five Thousand Dollars (\$95,000.00) per year and not to exceed Two Hundred and Fifty Thousand Dollars (\$250,000.00) during the term of the agreement.

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council hereby approves the agreement between the City of Milpitas and Office Max for the period of October 15, 2013 to May 31, 2015 in the annual not-to-exceed amount of Ninety-Five Thousand Dollars (\$95,000.00) and the total contract not-to-exceed amount of Two Hundred and Fifty Thousand Dollars (\$250,000.00). A copy of the agreement is attached to this Resolution as **Exhibit A**.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney



## Exhibit A

### CITY OF MILPITAS CONTRACT

THIS CONTRACT, made this 15<sup>th</sup> day of October, 2013 (“Effective Date”), by and between the City of Milpitas a municipal corporation of the State of California hereafter referred to as “CITY” and **Office Max**, a Delaware corporation registered to do business in California, hereafter referred to as “VENDOR”.

#### RECITALS

WHEREAS, City’s current contract with Office Max for the purchase of office supplies expires on October 14, 2013; and

WHEREAS, City may enter into a “piggyback” agreement without going through its own competitive solicitation if the City makes all of the required findings set forth in Milpitas Municipal Code Section I-2-3.07 (Piggyback Procurement); and

WHEREAS, City may enter into a direct contract with a vendor using a solicitation conducted by another public agency that meets the City’s Purchasing Ordinance and is in the City’s best interest; and

WHEREAS, this Contract is based on a solicitation conducted by Oakland County, Michigan under the Public Sourcing Solutions/Office Max - America Saves program and the City has determined the solicitation meets all of the requirements in the City’s Purchasing Ordinance; and

WHEREAS, the City of San Jose has negotiated additional discounts of up to 70% on a list of 3,000 core products from the America Saves program; and

WHEREAS, the parties desire to enter into this Contract for the purchase of office supplies based on the terms and conditions set forth herein and the prices from the Oakland County Michigan Public Sourcing Solutions/Office Max – America Saves program and discounts provided to the City of San Jose as further provided herein;

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and for valuable consideration, receipt and sufficiency of which is hereby acknowledged, City and Vendor hereby agrees as follows:

#### **SECTION 1.**            **TERM OF CONTRACT.**

The term of this Contract shall begin on the Effective Date and expire on May 31, 2016, inclusive, subject to the provisions of termination provision of this Contract.

#### **SECTION 2.**            **COMPENSATION.**

The amount to be paid from CITY to VENDOR under this Contract shall not exceed Ninety-Five Thousand Dollars (\$95,000.00) each year and the total Contract amount shall not exceed Two Hundred and Fifty Thousand Dollars (\$250,000.00).

**SECTION 3. PRICING FOR OFFICE SUPPLIES.**

VENDOR agrees to offer City the same pricing for all office supplies, materials, and equipment as provided under the Oakland County Michigan Public Sourcing Solutions/Office Max – America Saves program and any and all additional discounts offered to the City of San Jose.

**SECTION 4. TERMS AND CONDITIONS.**

VENDOR agrees to comply with each of the terms, conditions, and obligations set forth in **Exhibit A**, attached and fully incorporated herein.

IN WITNESS WHEREOF, this contract has been executed on the day and year first above written.

City of Milpitas,  
A Municipal Corporation

Office Max

\_\_\_\_\_  
Thomas C. Williams, City Manager

\_\_\_\_\_  
Vendor's Authorized Signature

\_\_\_\_\_  
Vendor's Authorized Title

Business Tax Compliance: Certificate No. \_\_\_\_\_

Approved As  
To Form: \_\_\_\_\_  
Michael J. Ogaz, City Attorney

Approved As  
To Content: \_\_\_\_\_  
Chris Schroeder, Purchasing Agent

## EXHIBIT A

### TERMS AND CONDITIONS

1. **PAYMENT** - Invoices will be paid within thirty (30) days after receipt and acceptance of goods by City.
2. **OVERSHIPMENTS** - Over shipments necessary to adjust quantity ordered to nearest standard pack are acceptable provided such over shipments do not exceed five percent (5%) or Twenty-Five Dollars (\$25.00), whichever is smaller, of the line item involved.
3. **PACKING, SHIPPING AND INSURANCE** - No charges will be allowed for boxing, wrapping or cartage unless so authorized in writing by City. Vendor shall pack or otherwise prepare all articles for shipment so as to secure the lowest transportation rates consistent with timely delivery, meet carrier's requirements and safeguard against damage from weather and transportation. Vendor shall mark the purchase order number provided by City on each container and enclose a packing slip with the order number in an envelope on each container.
4. **TITLE AND RISK OF LOSS** - Except as otherwise expressly provided herein, title to and risk of loss on all items shipped by the Vendor to the City shall pass to the City at the F.O.B. point designated on the face of the order. Cost of all return shipments for whatever reason returned, shall be borne by the Vendor with title and risk passing at the City's facility.
5. **DELIVERY** - Time is of the essence. Delivery must be effected within the time stated in the Vendor's email response to the on-line order and shall not be made later or substantially earlier than the dates shown. If items are delivered substantially in advance of scheduled delivery dates, the City may return them at the Vendor's expense. Unless failure to meet delivery schedule is due to causes beyond the Vendor's control, the City may terminate an order without liability and may purchase elsewhere and charge the Vendor with any loss incurred thereby.
6. **WARRANTIES** - In addition to any warranty implied by fact or law, the Vendor expressly warrants all items covered by this Contract to be free from defects in workmanship and materials, to conform strictly to applicable specifications, drawings and approved samples, if any, and to be fit for the purpose for which purchased. Such warranties, together with all other service warranties of the Vendor, shall run in favor of the City. All warranties shall survive inspection, acceptance and final payment by the City.
7. **ASIGNMENTS** - This Contract shall not be assigned in any manner by the Vendor nor shall a subcontract be made with any other party for the furnishing of any of the completed or substantially completed articles, items, spare parts, work or services covered by this Contract without the City's prior written consent.
8. **TERMINATION** - This Contract may be terminated in whole or from time to time in part by City for convenience with seven (7) days notice to Vendor.
9. **TAXES** - All Federal, State or local taxes of any nature which are paid by the Vendor and billed or passed on to the City as part of the price for this Contract and shall be stated separately and clearly designated as such in the Vendor's invoices.

10. LIENS - All items to be delivered hereunder shall be free and clear of any and all liens and encumbrances whatsoever.
11. COMPLIANCE WITH LAWS - The Vendor shall in the performance of this Contract comply with all applicable Federal, State and local laws, government orders and regulations.
12. WAIVERS - The failure of the City to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Contract, or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition or the future exercise of such right, but the obligation of the Vendor with respect to such future performance shall continue in full force and effect.
13. INDEMNIFICATION AND INSURANCE - If the Vendor's agents, employees or subcontractors enter upon premises occupied by or under the control of the City or any of its customers or suppliers in the course of the performance of this Contract, then Vendor shall take all necessary precautions to prevent the occurrence of any injury (including death) to any person or any damage to any property arising out of any acts or omissions of the Vendor's agents, employees, or subcontractors and except to the extent that any such injury or damage is due solely and directly to the City's negligence or other fault. The Vendor shall indemnify and hold the City harmless from and against any suits, liabilities, losses, damages, claims, causes of action and expenses (including attorneys fees) arising out of or connected with any act or omission of the Vendor, its agents, employees or subcontractors. The Vendor shall maintain public liability, property damage and worker's compensation insurance policies. Upon request of the City, the Vendor shall furnish the City, certificates of insurance showing that the Vendor carries adequate insurance for such purposes with insurers and in amounts acceptable to the City which the certificates of insurance shall also provide that at least ten (10) days' notice in writing shall be given to the City at the address indicated on the face of this Contract of cancellation or reduction of coverage before such coverage is cancelled or reduced.

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS  
ADOPTING THE FIRST AMENDMENT TO LETTER OF UNDERSTANDING WITH THE  
ASSOCIATION OF MILPITAS BATTALION CHIEFS**

**WHEREAS**, the Association of Milpitas Battalion Chiefs (“AMBC”), a recently formed employee group, entered into a Letter of Understanding (“LOU”) with the City of Milpitas (“City”) which was adopted by City Council on August 6, 2013 by Resolution No. 8282; and

**WHEREAS**, said LOU was entered into as an interim agreement regarding AMBC compensation for a limited duration prior to the parties’ completion of meet and confer negotiations over the terms of an initial Memorandum of Understanding (“MOU”) to be entered into between them; and

**WHEREAS**, the parties have not yet completed the meet and confer negotiations over the terms of the initial MOU for AMBC, and therefore wish to now extend the terms of the LOU to be in effect for a further limited duration as set forth in the First Amendment to LOU attached hereto as Exhibit A.

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The First Amendment to Letter of Understanding between the City and AMBC is hereby adopted, conditioned upon ratification by the affected membership of AMBC.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

**EXHIBIT A**

**FIRST AMENDMENT TO LETTER OF UNDERSTANDING BETWEEN  
THE CITY OF MILPITAS  
AND  
THE ASSOCIATION OF  
MILPITAS BATTALION CHIEFS**

The City of Milpitas and the Association of Milpitas Battalion Chiefs (AMBC) execute this First Amendment to that Letter of Understanding regarding the coverage of additional duty chief work periods originally adopted by City Council Resolution No. 8282 on August 6, 2013.

WHEREAS, the parties have not yet completed the meet and confer negotiations over the terms of the initial Memorandum of Understanding (MOU) for AMBC, but wish to now extend the Letter of Understanding (LOU) regarding AMBC compensation to be in effect for limited duration as set forth below before a complete MOU is negotiated and approved and, therefore:

The City of Milpitas and the Association of Milpitas Battalion Chiefs agree:

1. The terms and provisions of the LOU are hereby extended through and including June 30, 2014, or until such earlier time as the LOU and any amendments thereto are replaced by a fully ratified and executed MOU.
2. This First Amendment to the LOU shall be retroactive to the date of expiration of the LOU, i.e., October 8, 2013, such that there shall be no lapse in continuity.
3. All other terms of the original LOU shall be in full force an effect concurrent with the term of this First Amendment to the LOU.

Dated: October \_\_\_\_, 2013

CITY OF MILPITAS

By: \_\_\_\_\_  
Thomas C. Williams, City Manager

Dated: October \_\_\_\_, 2013

ASSOCIATION OF MILPITAS BATTALION  
CHIEFS

By: \_\_\_\_\_  
Robert Mihovich, President

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS ADOPTING THE LETTER OF UNDERSTANDING WITH THE MILPITAS POLICE OFFICERS ASSOCIATION FOR THE PERIOD OF JANUARY 1, 2013 THROUGH DECEMBER 31, 2014**

**WHEREAS**, the City of Milpitas (“City”) and the Milpitas Police Officers Association (“POA”) have considered entering into a Letter of Understanding with the effective dates of January 1, 2013 through December 31, 2014 (“LOU”), a copy of which is attached hereto as Exhibit A.

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The LOU between POA and the City of Milpitas is hereby adopted to be effective from January 1, 2013 through and including December 31, 2014.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

**LETTER OF UNDERSTANDING BETWEEN CITY OF MILPITAS AND  
MILPITAS POLICE OFFICERS ASSCOCITATION**

**TENTATIVE AGREEMENT**

October 4, 2013

The City of Milpitas (City) and the Milpitas Police Officers Association (MPOA) agree as follows:

1. For the period of January 1, 2013, through the end of the pay period in effect on the date this Agreement is adopted by the City Council, the mandatory furlough agreement established by the April 1, 2011 Memorandum of Understanding shall continue in effect. Under this mandatory furlough plan, each employee's paycheck is reduced by 7% or 5.6 unpaid hours for each full-time employee per pay period (the number of hours shall be adjusted proportionally for employees working less than full time), and the employees shall receive an equivalent number of furlough hours deposited into their furlough time bank for this period. Except as modified by this paragraph 1, the furlough days shall be scheduled and used as specified in paragraph 2 of the April 1, 2011 MOU.

2. Effective October 20, 2013 the mandatory furlough agreement established by the April 1, 2011 Memorandum of Understanding, and paragraph 1 above shall cease, and the furlough-based 7% pay reduction shall be replaced by a 3.5% pay reduction for all employees in the bargaining unit represented by the MPOA, with no corresponding furlough time granted to employees. The revised salary schedule is attached to this Agreement as Appendix A-1.

3. Effective June 29, 2014 the 3.5% pay reduction described in paragraph 2 shall be eliminated, and employee salaries shall be restored to the Salary Schedule levels as set forth in Appendix A -1

4. Section 24.00 of the Memorandum of Understanding between the City and MPOA (dated January 1, 2009 – December 31, 2011, and extended to December 31, 2012) shall be revised as follows:

- Sworn employees hired by the City on or after April 8, 2012 shall receive the 3% at Age 55 Retirement Benefit Formula as set forth in Government Code Section 21363.1.
- Effective January 1, 2013, changes to retirement benefits and contributions required by the California Public Employees' Pension Reform Act, shall be implemented. This change is required by law, and not as a result of a negotiated agreement.

5. Except as specifically modified by this Agreement, all terms of the Memorandum of Understanding (MOU) between the City and the MPOA dated January 1, 2009 – December 31, 2011 shall be continued in effect until December 31, 2014.

6. This Agreement supersedes the 2011 Memorandum of Understanding (MOU) between the City and MPOA approved by the City Council on May 3, 2011 in Resolution No. 8085, and the terms of the 2011 MOU are no longer operative.

7. This Agreement supersedes the January 2012 Letter of Understanding (LOU) between the City and MPOA approved by the City Council in Resolution No. 8149 on January 3, 2012, and the terms of the January 2012 LOU are no longer operative except the provisions set forth in paragraphs 4 and 5 of the January 2012 LOU are continued.

8. This Agreement shall expire on December 31, 2014.

9. This Agreement is subject to ratification by the MPOA and approval by the City Council.

For the City:

For the MPOA:

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## APPENDIX A-1

| <u>Job Classification</u> | <u>Current Salary Range</u> |             |
|---------------------------|-----------------------------|-------------|
| Patrol Officer            | \$6,947.89                  | \$8,445.10  |
| Police Officer            | \$7,597.65                  | \$9,235.03  |
| Police Sergeant           | \$9,178.09                  | \$11,156.19 |
| Police Lieutenant         | \$10,657.10                 | \$12,953.81 |
| Patrol Officer Trainee    | \$6,798.70                  | \$8,263.71  |
| Police Officer Trainee    | \$7,434.42                  | \$9,036.73  |
| Communications Dispatcher | \$6,498.42                  | \$7,898.78  |
| Communications Supervisor | \$7,505.36                  | \$9,122.86  |
| Police Clerk I            | \$4,732.26                  | \$5,752.00  |
| Police Clerk II           | \$5,205.37                  | \$6,327.21  |
| Police Clerk Supervisor   | \$6,012.35                  | \$7,307.99  |
| Police Property Clerk     | \$5,520.43                  | \$6,710.12  |
| Police Assistant          | \$6,602.03                  | \$8,024.77  |

| <u>Job Classification</u> | <u>Salary Range – Effective October 20, 2013</u> |             |
|---------------------------|--|-------------|
| Patrol Officer            | \$6,704.71                                       | \$8,149.52  |
| Police Officer            | \$7,331.73                                       | \$8,911.80  |
| Police Sergeant           | \$8,856.86                                       | \$10,765.72 |
| Police Lieutenant         | \$10,284.10                                      | \$12,500.43 |
| Patrol Officer Trainee    | \$6,560.75                                       | \$7,974.48  |
| Police Officer Trainee    | \$7,174.22                                       | \$8,720.44  |
| Communications Dispatcher | \$6,270.98                                       | \$7,622.32  |
| Communications Supervisor | \$7,242.67                                       | \$8,803.56  |
| Police Clerk I            | \$4,566.63                                       | \$5,550.68  |
| Police Clerk II           | \$5,023.18                                       | \$6,105.76  |
| Police Clerk Supervisor   | \$5,801.92                                       | \$7,052.21  |
| Police Property Clerk     | \$5,327.21                                       | \$6,475.27  |
| Police Assistant          | \$6,370.96                                       | \$7,743.90  |

| <u>Job Classification</u> | <u>Salary Range – Effective June 29, 2014</u> |             |
|---------------------------|---|-------------|
| Patrol Officer            | \$6,947.89                                    | \$8,445.10  |
| Police Officer            | \$7,597.65                                    | \$9,235.03  |
| Police Sergeant           | \$9,178.09                                    | \$11,156.19 |
| Police Lieutenant         | \$10,657.10                                   | \$12,953.81 |
| Patrol Officer Trainee    | \$6,798.70                                    | \$8,263.71  |
| Police Officer Trainee    | \$7,434.42                                    | \$9,036.73  |
| Communications Dispatcher | \$6,498.42                                    | \$7,898.78  |
| Communications Supervisor | \$7,505.36                                    | \$9,122.86  |
| Police Clerk I            | \$4,732.26                                    | \$5,752.00  |
| Police Clerk II           | \$5,205.37                                    | \$6,327.21  |
| Police Clerk Supervisor   | \$6,012.35                                    | \$7,307.99  |
| Police Property Clerk     | \$5,520.43                                    | \$6,710.12  |
| Police Assistant          | \$6,602.03                                    | \$8,024.77  |

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS  
AMENDING THE CLASSIFICATION PLAN**

**WHEREAS**, the City of Milpitas has a Classification Plan adopted as Resolution No. 1626 on December 17, 1968, which has been from time to time previously amended, and which is in accordance with the Personnel Rules and Regulations of the City of Milpitas (Resolution No. 792, as amended); and

**WHEREAS**, amendments to the Classification Plan are necessary to account for changes within the organization, transfer of duties, new job responsibilities, and adjustments to salary ranges.

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

- 1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
- 2. Resolution No. 1626, as amended, is hereby amended effective October 20, 2013, as follows:
  - A. A new classification of "Case Manager" is created with an annual salary range established of \$57,051.96 - \$71,200.08. The Case Manager job specifications are attached as Exhibit A.
  - B. One (1) position of "Recreation Services Assistant IV" in the Recreation Services Department is reclassified to the position of Case Manager.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

## **EXHIBIT A**

CITY OF MILPITAS  
Effective: July 2000  
Revision: October 2013  
EEOC: Admin Support  
Unit: Protech  
FLSA: Non-Exempt  
Physical: 1

### **CASE MANAGER**

#### **DEFINITION**

To provide social service information and services to Milpitas senior adults and disabled persons. Interview at-risk clients to determine the type of services needed. Schedule social service seminars at the Senior Center, assist with senior and recreation related programs and events. Supervise a part-time Office Assistant and assign them their daily duties.

#### **DISTINGUISHING CHARACTERISTICS**

This is a full time equivalent journey level class position. Employees at this level receive only occasional instruction or assistance as new or unusual situations arise and are fully aware of operating procedures and policies within the department. Case Manager must be knowledgeable in the most up to date Medical, Medicare, Social Security, and assistance programs for senior adults. Case Manager must also effectively communicate and work with the public and City personnel.

#### **SUPERVISION RECEIVED AND EXERCISED**

Receives general supervision from Recreation Services Supervisor.

Exercises direct supervision over assigned recreational services personnel.

**EXAMPLES OF DUTIES** - Duties may include, but are not limited to, the following:

- Provide a comprehensive assessment of culturally diverse clients psychosocial, economic, and health status to determine their needs.
- Organize and accomplish all tasks related to assessing the client, developing the care plan, implementing the service plan, conduction follow up, and monitoring the plan.
- Provide direct services to clients so they are able to obtain benefits
- Direct work of part time staff and volunteers.

- Develop and coordinate promotional information for seminars and social service programs.
- Ensure compliance with City policies and procedures.
- Maintain supplies equipment and records as needed.
- Provide staff training in area of assignment.
- Maintain records on services provided and clients.
- Prepare reports, studies, special projects and other data that is required for presentation and review by Recreation Services Management, City Council, or any other official body.
- Performs other duties as assigned.

#### MIMIMUM QUALIFICATIONS

##### Knowledge of:

- Purposes and practices of social service programs.
- Local, State, and National social service programs to assist senior adults.  
Included, but not limited to:
  - Medicare, Medi-Cal
  - Social Security
  - State Disability Insurance
  - Supplemental Security Income
  - Housing Assistance Programs
  - Immigration & Naturalization Services
  - US Citizenship Procedures
  - Food Programs
  - Low-Income Assistance Programs
  - In Home Supportive Services
  - Transportation Services
- Safe work practices.
- Principles of supervision and training.

##### Ability to:

- Communicate and work effectively with the public and City personnel.

- Establish and maintain program procedures and policies.
- Establish and maintain training and staff appreciation procedures.
- Keep and maintain program records.
- Plan, organize and direct the work of others.
- Work independently.
- Assess program needs and implement policy changes when necessary.
- Prepare detailed reports and other written materials based on oral and written information.
- Assess community needs.

EDUCATION AND EXPERIENCE

*Any combination of experience and education that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:*

Experience:

Two years supervisory experience in social service programs or a related recreation field.

Education:

Social Service Degree or a related field or equivalent work related experience.

LICENSE AND CERTIFICATES

- Appropriate valid California driver’s license and satisfactory driving record. (DMV printout required)
- Certification in First Aid and CPR.

Approved by:

\_\_\_\_\_

City Manager

\_\_\_\_\_

Date

\_\_\_\_\_

Human Resources Director

\_\_\_\_\_

Date

**AMENDMENT NO. 4 TO THE AGREEMENT FOR  
CONSULTANT AND OTHER SERVICES**

**BETWEEN**

**CITY OF MILPITAS**

**AND**

**RMC WATER AND ENVIRONMENT, INC.**

This Amendment is entered into this 15th day of October, 2013, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and RMC Water and Environment, Inc. a California Corporation (hereafter referred to as "CONSULTANT").

**RECITALS**

**WHEREAS**, the parties entered into an agreement titled "Consulting Services Agreement" ("Agreement") for professional engineering services for BART Extension and Various City Capital Projects on March 1, 2011 with an expiration date of December 31, 2011 in the amount of One Hundred Fifty Four Thousand Four Hundred Sixty Eight Dollars (\$154,468); and

**WHEREAS**, on August 16, 2011, the parties entered into Amendment No. 1 to the Agreement to increase the scope of work, extend the term of the Agreement with an expiration date of June 30, 2012, and increase the compensation to an amount not to exceed Four Hundred Twenty Thousand Sixty Eight Dollars (\$420,068); and

**WHEREAS**, on May 10, 2012, the parties entered into Amendment No. 2 to the Agreement to extend the term of the Agreement with an expiration date of October 31, 2012 with no changes to compensation; and

**WHEREAS**, on August 7, 2012, the parties entered into Amendment No. 3 to the Agreement to increase the scope of work, extend the term of the Agreement with an expiration date of October 31, 2013, and increase the compensation to an amount not to exceed Eight Hundred Seven Thousand One Hundred Sixteen Dollars (\$807,116); and

**WHEREAS**, the parties desire to increase the scope of work and extend the term of the Agreement with an expiration date of October 31, 2014 for additional services.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree to amend the Agreement as follows:

1. Section 1, entitled "Term of Services" of the Agreement is amended by adding to additional scope of services as set forth in Exhibit A-4, which is attached hereto and incorporated by reference herein.
2. The first sentence in Subsection 1.1, entitled "Term of Services" of the Agreement is amended to read:

"The term of this Agreement shall begin on the date first noted above and shall end on October 31, 2014."

3. Section 2, entitled "Compensation" of the Agreement is amended to read as follows:  
"City hereby agrees to pay Consultant a guaranteed maximum price not to exceed One Million One Hundred Seven Thousand One Hundred Sixteen Dollars (\$1,107,116) for all services to be performed and reimbursable costs incurred under this Agreement as further set forth in Exhibit B-4, which is attached hereto and incorporated by reference herein."
4. The CONSULTANT agrees to maintain and pay for all insurance policies as stated in Section 4, entitled "Insurance Requirements" of the Agreement dated March 1, 2011, between CONSULTANT and CITY. The CONSULTANT shall provide CITY with renewal certificates of the current policies upon the expiration of the current policy.
5. All other provisions of the amended Agreement not amended by this Amendment No. 4 shall remain in full force and effect.

This Amendment is executed as of the date written on this page.

CITY OF MILPITAS

CONSULTANT

\_\_\_\_\_  
Thomas C. Williams, City Manager

\_\_\_\_\_  
Steve Bui, Vice President

APPROVED AS TO CONTENT

\_\_\_\_\_  
Jeff Moneda, Public Works Director

APPROVED AS TO FORM

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

## EXHIBIT A-4

### Scope of Services

The City of Milpitas desires Consultant support to assist with the BART Extension Project, and backfill for City staff on other various City Capital Improvement Projects. Consultant shall assign Isaac Serrano as one of the team members to perform this work and expect that his work shall be 40 hours per standard work week, excepting City holidays and personal leave and vacation, for the duration of the Agreement.

#### Task 1 - BART Extension Support Services

Consultant shall provide professional engineering support services for the BART project. Duties shall include:

- Review documents, such as plans, specifications, performance criteria, maps, submittals
- Coordinate City support services during construction activities. Review and responses to RFI and Submittals
- Research maps and records
- City support services on draft documents, such as plans, specifications, performance criteria, maps
- Attend coordination meetings
- Prepare documents, such as maps, charts, memos, meeting minutes
- Track utility relocations
- Manage and maintain documents
- Assist Milpitas staff as needed
- Water and Sewer system modeling as needed to support utility relocation work
- Contract management, including support, review, and invoicing

#### Task 2 - Various City Capital Improvement Projects

Consultant shall provide professional engineering support services for the City's various Capital Improvement Projects.

Duties shall include:

- Review documents, such as plans, specifications, performance criteria, maps, submittals
- Research maps and records

Project Name: BART Extension  
Project No.: GT 1063 and CP 4265

- Coordinate City responses on draft documents, such as plans, specifications, performance criteria, maps
- Attend coordination meetings
- Prepare documents, such as maps, charts, memos, meeting minutes
- Review CIP invoices
- Prepare change orders
- Manage documents
- Assist Milpitas staff as needed
- Contract management, including support, review, and invoicing

### Task 3 – Private Job Reimbursement

Consultant shall provide professional engineering support services for Private Job Reimbursement.

Duties shall include:

- Review documents, such as plans, specifications, performance criteria, maps, submittals
- Coordinate City support services during construction activities. Review and responses to RFI and Submittals
- Research maps and records
- Prepare documents, such as maps, charts, memos, meeting minutes, permits
- Manage and maintain documents

All work shall be completed by October 31, 2014.

Project Name: BART Extension  
 Project No.: GT 1063 and CP 4265

**EXHIBIT B-4**  
**COMPENSATION SCHEDULE**

|                       | Task 1           | Task 2           | Task 3          |                     |
|-----------------------|------------------|------------------|-----------------|---------------------|
| Agreement             | \$115,900        | \$38,568         |                 |                     |
| Amendment No.1        | \$233,296        | \$32,304         |                 |                     |
| Amendment No.2        | \$0              | \$0              |                 |                     |
| Amendment No. 3       | <u>\$327,304</u> | <u>\$59,744</u>  |                 |                     |
| Previously Approved   | \$676,500        | \$130,616        |                 |                     |
| <br>                  |                  |                  |                 |                     |
| Amendment No.4        | \$85,000         | <u>-\$85,000</u> |                 |                     |
|                       | <u>\$290,000</u> |                  | <u>\$10,000</u> |                     |
| Total Compens. Amount | \$1,051,500      | \$45,616         | \$10,000        | Total = \$1,107,116 |

|               | Principal |              | Senior Project Engineer |                | Project Engineer |                  | Senior Admin |                | Labor Cost | Expenses | Total            | Funding Source Reallocation |
|---------------|-----------|--------------|-------------------------|----------------|------------------|------------------|--------------|----------------|------------|----------|------------------|-----------------------------|
|               | Hours     | Cost         | Hours                   | Cost           | Hours            | Cost             | Hours        | Cost           |            |          |                  |                             |
| Task 1        | 2         | \$430        | 40                      | \$7,800        | 1800             | \$279,000        | 32           | \$2,770        | \$290,000  | \$0      | \$290,000        | +\$85,000                   |
| Task 2        | 0         | \$0          | 0                       | \$0            | 0                | \$0              | 0            | \$0            | \$0        | \$0      | \$0              | -\$85,000                   |
| Task 3        | 1         | \$215        | 8                       | \$1,560        | 50               | \$7,750          | 5            | \$435          | \$9,960    | \$40     | \$10,000         |                             |
| <b>Totals</b> | <b>3</b>  | <b>\$645</b> | <b>48</b>               | <b>\$9,360</b> | <b>1850</b>      | <b>\$286,750</b> | <b>37</b>    | <b>\$3,219</b> |            |          | <b>\$300,000</b> |                             |

City of Milpitas, California

**BUDGET CHANGE FORM**

| Type of Change  | From              |            | To               |            |
|---|-------------------|------------|------------------|------------|
|   | Account           | Amount     | Account          | Amount     |
| <b>Check one:</b><br><input checked="" type="checkbox"/> Budget Appropriation<br><input type="checkbox"/> Budget Transfer | 311-9514265153575 | \$ 500,000 | 311-951426524800 | \$ 500,000 |
|   |                   |            |                  |            |

**Explain the reason for the budget change:**

**Background:** On August 3, 2010, the City entered into a Master Agreement with the Santa Clara Valley Transportation Authority (VTA) for reimbursement of City work on the Silicon Valley Berryessa Extension project. The Master Agreement also allows reimbursement of consultant costs for design review services. On March 1, 2011, Council approved a Consultant Services Agreement with RMC Water and Environment (RMC), a California Corporation, to work on either the BART project directly or work on other capital improvement projects, thereby freeing staff to work on the BART project. On August 16, 2011, Council approved Amendment No. 1 to the agreement with RMC for a total agreement amount not to exceed \$420,068 with extended expiration date of June 30, 2012, for engineering support associated with the BART project and various city capital projects. On May 10, 2012, the parties entered into Amendment No. 2 to extend the expiration date to October 31, 2012 with no changes to compensation. On August 7, 2012, Council approved Amendment No. 3 to the agreement with RMC for a total agreement amount not to exceed \$807,116 with extended expiration date of October 31, 2013, for engineering support associated with the BART project and various city capital projects. Staff is currently reviewing 95% level plans for several subprojects. It is necessary to extend the RMC agreement to provide additional funding for consultant support. It is cost-effective to use Consultant Services for the BART project and to use staff for the City CIP projects. It is recommended to shift \$85,000 from the CIP task to the BART task, add a task to allow for Private Job reimbursement, and increase the Consultant Agreement by \$300,000. This will bring the total value of the agreement to \$1,107,116. It is necessary to extend the expiration date to October 31, 2014. A budget appropriation from the previously approved Master Agreement is required.

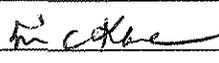
**Fiscal Impact:** A budget appropriation of \$500,000 to CP 4265 is anticipated to cover the various consultant charges through October 31, 2014. The charges are fully reimbursable under Master Agreement with VTA. The city capital projects have sufficient funding for the remaining support.

**Recommendation:**

1. Approve Amendment No. 4 with RMC Water and Environment in the amount of \$300,000, for a total agreement amount not to exceed \$1,107,116 and to extend the expiration date to October 31, 2014 for engineering support associated with the BART extension, Project No. CP4265, various city capital projects, and related Private Job reimbursement.
2. Approve a budget appropriation of \$500,000 for the various Consultant expenses for the Valley Transportation Authority BART project.

Check if City Council Approval required.

Meeting Date: October 15, 2013

|   |   |                       |
|---|---|-----------------------|
| Requested by:                               | Marilyn Nickel, Engineering   | Date: October 3, 2013 |
| Reviewed by:                                | Finance Director:  | Date: 10/4/13         |
| Approved by:                                | City Manager:   | Date:                 |
| Date approved by City Council, if required: |   | Confirmed by:         |

**AMENDMENT NO. 4 TO THE AGREEMENT FOR  
CONSULTATION AND OTHER SERVICES**

**BETWEEN CITY OF MILPITAS**

**AND**

**SCHAAF AND WHEELER**

This Amendment is entered into this 15 day of October, 2013, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and Schaaf and Wheeler, a California Corporation (hereafter referred to as "CONSULTANT").

**RECITALS**

**WHEREAS**, the parties entered into an agreement entitled "Consulting Services Agreement" for professional engineering services for BART Extension on January 26, 2012 in the amount of \$18,000.00 ("Agreement"); and

**WHEREAS**, on February 7, 2012, the parties entered into Amendment No. 1 to the Agreement to increase the scope of work, extend the term of the Agreement with an expiration date of June 30, 2012, and increase the compensation to an amount not to exceed Fifty Thousand Dollars (\$50,000.00); and

**WHEREAS**, on May 11, 2012, the parties entered into Amendment No. 2 to the Agreement to extend the term of the Agreement with an expiration date of December 31, 2012 with no changes to compensation; and

**WHEREAS**, on August 7, 2012, the parties entered into Amendment No. 3 to the Agreement to increase the scope of work, extend the term of the Agreement with an expiration date of October 31, 2013, and increase the compensation to an amount not to exceed Seventy Thousand Dollars (\$70,000.00); and

**WHEREAS**, the parties desire to increase the scope of work and extend the term of the Agreement with an expiration date of October 31, 2014 for additional services.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree to amend the Agreement as follows:

1. Section 1, entitled "Term of Services" of the Agreement is amended by adding additional scope of services as set forth in Exhibit A-4, which is attached hereto and incorporated by reference herein.
2. The first sentence in Subsection 1.1, entitled "Term of Services" is amended to read:

"The term of this Agreement shall begin on the date first noted above and shall end on October 31, 2014."
3. Section 2, entitled "Compensation" of the Agreement is amended to read as follows:

"City hereby agrees to pay Consultant a guaranteed maximum price not to exceed Ninety Thousand Dollars (\$90,000) for all services to be performed

Project Name: BART Extension  
Project No.: GT-1063 and CP 4265

and reimbursable costs incurred under this Agreement as further set forth in Exhibit B-4, which is attached hereto and incorporated by reference herein.”

4. The CONSULTANT agrees to continue to maintain and pay for all insurance policies as stated in Section 4, entitled “Insurance Requirements” of the Agreement dated January 26, 2012, between CONSULTANT and CITY. The CONSULTANT shall provide CITY with renewal certificates of the current policies upon the expiration of the current policy.
5. All other provisions of the amended Agreement not changed by this Amendment No. 4 shall remain in full force and effect.

This Amendment is executed as of the date written on this page.

CITY OF MILPITAS

CONSULTANT

\_\_\_\_\_  
Thomas C. Williams, City Manager

\_\_\_\_\_  
Charles D. Anderson, President

APPROVED AS TO CONTENT

\_\_\_\_\_  
Jeff Moneda, Public Works Director/City Engineer

APPROVED AS TO FORM

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

## **EXHIBIT A-4**

### Scope of Services

Task 7: Consultant shall review various storm drain, stormwater program, and/or floodplain-related documents necessary for the approval of the VTA SVBX project in Milpitas. Consultant may also be required to prepare reports, responses, or other documents. Consultant shall proceed only upon written authorization from the City.

All work shall be completed by October 31, 2014.

**EXHIBIT B-4**  
**COMPENSATION SCHEDULE**

|             | Principal |         | Senior Project Engineer |         | Project Engineer |          | Senior Admin |      | Labor Cost | Expenses | Total    |
|-------------|-----------|---------|-------------------------|---------|------------------|----------|--------------|------|------------|----------|----------|
| Hourly Rate | \$205     |         | \$180                   |         | \$160            |          | \$           |      |            |          |          |
|             | Hours     | Cost    | Hours                   | Cost    | Hours            | Cost     | Hours        | Cost |            |          |          |
| Task 7      | 10        | \$2,050 | 35                      | \$6,300 | 72               | \$11,520 |              | \$   | \$19,870   | \$130    | \$20,000 |
| Totals      | 10        | \$,2050 | 35                      | \$6,300 | 72               | \$11,520 |              |      | \$19,870   | \$130    | \$20,000 |

RESOLUTION NO. \_\_\_\_\_

**A JOINT RESOLUTION OF THE CITY COUNCIL OF THE CITY MILPITAS,  
THE MILPITAS SUCCESSOR AGENCY TO THE FORMER MILPITAS REDEVELOPMENT  
AGENCY, AND THE MILPITAS ECONOMIC DEVELOPMENT CORPORATION**

**WHEREAS**, the City of Milpitas had planned for over 10 years and envisioned a plan to bring Transit Oriented Development to the south area of Milpitas near the Great Mall of California where there currently exists a Santa Clara Valley Transit Authority Light Rail Line and Station and where there is also planned for operation in 2017, a Bay Area Rapid Transit Line and Station; and

**WHEREAS**, Transit Oriented Development calls for higher residential densities than otherwise exist in the City of Milpitas and its environs in order to take advantage of the aforementioned public rail transit systems and reduce the carbon footprint of residents within Milpitas and commuters within the greater Bay Area, meeting statewide pollution and transportation goals and to that end has developed and adopted the Transit Area Specific Plan, including plans for high density housing and attendant streets, sidewalks, landscaping and parks necessary for public convenience and livability; and

**WHEREAS**, the Transit Area Specific Plan is consistent with the General Plan for the City of Milpitas which calls for “providing a park and recreation system designed to serve the needs of all residents of the community” and consistent with City Ordinance requirements mandates the provision of 3.5 acres of parks for every 1000 residents within the Transit Area Specific Plan area; and

**WHEREAS**, according to the General Plan, the Transit Area Plan ensures the conservation, development and use of natural resources by providing “smart growth” through infill development and providing for the improvement of parks and creek-side trails designed to serve the needs of all residents of the community; and

**WHEREAS**, in fulfillment of these goals of the General Plan and State law as set forth in the Quimby Act, providing for setting aside land or the payment of fees to create open space, parks and recreational facilities to serve the community needs, the Transit Area Specific Plan requires parks within the plan area at a ratio of 3.5 acres per 1000 people, noting that “The amount of parkland in the Transit Area is treated as an overall total with the amount of acreage based on buildout projections of the future population on 20 years time”; and

**WHEREAS**, in calculating the amount of parkland necessary to meet the 20-year buildout of the Transit Area, “the Plan includes one or two public parks in each subdistrict, approximating the mandated minimum open space acreage per 1,000 residents...” and calculating that parkland need has determined that approximately 36 acres of parkland is necessary to meet the parkland requirements for the Transit Area Specific Plan Area as required by City Ordinance and the General Plan; and

**WHEREAS**, integral to this plan for parkland, constituting almost one-third of the park area designated in the Transit Area Specific Plan, is the McCandless Property (10.9 acres), subject of Resolution #25 of the Oversight Board to the Successor Agency of the Redevelopment Agency of the City of Milpitas, adopted at its meeting of September 12, 2013; and

**WHEREAS**, Oversight Board Resolution #25 seeks City and Milpitas Economic Development Corporation (MEDC) consideration of the draft First Amendment to the Standstill Agreement; and

**WHEREAS**, the draft First Amendment to the Standstill Agreement seeks to set aside the Standstill Agreement with regard to the McCandless Property on specific terms and conditions including the sale of the entire McCandless Property to the Milpitas Unified School District for school purposes; and

**WHEREAS**, the City, the Successor Agency and the MEDC are philosophically in agreement with setting aside the Standstill Agreement with regard to the McCandless Property as it is in the best interests of the community, but proposes it be done on terms and conditions not yet negotiated between the City, MEDC and the School District; and

**WHEREAS**, The City, the Successor Agency and the MEDC approve setting aside the Standstill Agreement, but do so on different terms and conditions than those proposed by the Oversight Board as follows.

**NOW, THEREFORE, BE IT RESOLVED** that the City of Milpitas, the Successor Agency and the MEDC hereby adopt the Modified First Amendment to the Standstill Agreement, as attached hereto as Exhibit A.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk/Agency Secretary/Secretary

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney/Agency Counsel/  
Corporate Counsel

**MODIFIED FIRST AMENDMENT  
TO  
AGREEMENT BETWEEN THE CITY OF MILPITAS, THE SUCCESSOR AGENCY TO  
THE CITY OF MILPITAS AND THE MILPITAS ECONOMIC DEVELOPMENT  
CORPORATION REGARDING PRESERVATION OF ASSETS PER OVERSIGHT  
BOARD REQUEST ("STANDSTILL AGREEMENT")**

**THIS MODIFIED FIRST AMENDMENT TO THE STANDSTILL AGREEMENT ("Modified First Amendment")** is entered into by the City of Milpitas ("**City**"), the Successor Agency to the Milpitas Redevelopment Agency ("**Successor Agency**") and the Milpitas Economic Development Corporation ("**MEDC**"), as a proposed alternative to that requested and approved by the Milpitas Redevelopment Oversight Board ("**Oversight Board**") on September 12, 2013.

**RECITALS**

- A. The City, the Successor Agency, the MEDC and the Milpitas Unified School District ("**MUSD**") agree that the McCandless Property (as hereafter defined) is an appropriate site upon which a joint use be constructed of a City Park and a MUSD school.
- B. The City's Milpitas Transit Area Specific Plan (adopted June 2008 and amended December 2011) designated properties with APN Nos. 86-41-016, -017 and -018 (collectively, "**McCandless Property**") as the site for a new City park and elementary school.
- C. The approximately 10.9 acre McCandless Property site is an ideal location for a joint use City Park and elementary school, since it lies within walking distance of the areas of highest population growth in the City.
- D. The McCandless Property is currently owned by the MEDC under a March 7, 2011 assignment of the "Agreement for Purchase and Sale and Joint Escrow Instruction for Real Property, APNs: 86-41-016, 017, and -018," dated February 15, 2011, between Mission West Properties, LLC ("**Mission West**") as the seller and the Milpitas Redevelopment Agency ("**MRDA**") as the buyer for a total price of Twenty One Million Seven Hundred Eighty Thousand Dollars (\$21,780,000) ("**Purchase Agreement**").
- E. The Purchase Agreement calls for: (1) an initial payment of Three Million Dollars (\$3,000,000); (2) annual payments of Three Million Dollars (\$3,000,000) on the anniversary of the effective date for four years; and (3) payment of the unpaid portion on the fifth anniversary of the effective date.
- F. On January 9, 2012, Mission West conveyed the McCandless Property to the MEDC in exchange for the initial Three Million Dollar (\$3,000,000) payment and a Promissory Note for the remainder Eighteen Million Seven Hundred Eighty Thousand Dollars (\$18,780,000).
- G. Currently there is litigation between the City, the MEDC, the Milpitas Housing Authority ("**MHA**") and the Successor Agency on one side and the California Department of Finance, the State Controller's Office, the County of Santa Clara and the County Office of Education on the other, which involves property and assets (Case Nos. 34-2013-80001436 and 34-2013-80001508 in Superior Court of California, County of Sacramento.) ("**Milpitas Litigation**").
- H. The McCandless Property is among the real property and cash assets listed in the February 25, 2013 "Standstill Agreement" requested and approved by the Oversight Board, and entered into by the Successor Agency, the City, and the MEDC. The Standstill Agreement prohibits the MEDC from transferring, encumbering, selling, or conveying the McCandless Property.

I. MUSD and City wish to negotiate a joint use of the McCandless Property for both a City Park and an elementary school, a joint project providing the greatest benefit to the Transit Area community and the greater Milpitas community for use of the site, as soon as possible to meet the pressing needs for Park and Recreation facilities and school facilities.

J. In order to consummate a joint use of the McCandless Property, it is necessary to release the McCandless Property from the list of properties subject to the Standstill Agreement.

K. The Oversight Board has agreed that an amendment to the Standstill Agreement is appropriate.

**NOW, THEREFORE**, the Standstill Agreement is amended as follows:

1. The above recitals are true and correct and shall be treated as appended to existing recitals in the Standstill Agreement.

2. At such time as negotiations for a joint use of the McCandless Property as both a Park of the City of Milpitas and an elementary school site of MUSD are completed and evidenced by a binding agreement between the MEDC and MUSD for that joint development of the McCandless Property, the Standstill Agreement shall no longer be a restraint upon the transfer, selling, encumbrance or conveyance of the McCandless Property nor shall that Agreement in any other way affect or limit the McCandless Property.

**IN WITNESS WHEREOF**, the Parties have executed this Modified First Amendment as of the date first above written.

**SUCCESSOR AGENCY TO THE MILPITAS REDEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Name:  
Title:

**CITY OF MILPITAS**

By: \_\_\_\_\_  
Name:  
Title:

**MILPITAS ECONOMIC DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

AS REQUESTED AND APPROVED BY:

**MILPITAS REDEVELOPMENT AGENCY OVERSIGHT BOARD**

By: \_\_\_\_\_  
Name:  
Title:

**Mary Lavelle**

**From:** Rob Means [rob.means@electric-bikes.com]  
**Sent:** Thursday, October 03, 2013 6:29 PM  
**To:** Mary Lavelle  
**Subject:** 10/15 Council agenda item on sale of property to MUSD

City Clerk's Office

OCT 04 2013

RECEIVED

Mary,

Please forward this e-mail to the Council members and include in the Council packet for the 10/15 meeting. Thanks.

--

Dear City Council,

Take the deal! The Milpitas Unified School District (MUSD) has offered to buy a critical property at the same price that you paid for it. Please agree to sell it to them at your October 15 meeting. Our city needs a new school on that property now. Further delay hurts our community.

Yes, I understand that the appraised market price has risen about 10%, and you would like to profit from that fact. But, how real is that estimate? One could argue that property values in the Transit Area are above-market partly because of the school and park that are planned there. Without the school and park, those values drop. Or one could point out that real estate prices generally have been artificially re-inflated. Either way, the City will not be able to sell that land for that price to any other buyer for many years to come. So, take the deal!

Take the money and run. Get it off the books of the Oversight Committee and courts. Remember, if (when) the courts rule against the City's arguments about RDA assets, fewer assets means less City liabilities. And we all know how much the City has bet on this court case. This deal is a chance to reduce our exposure to loss. So, take the deal!

Sincerely,  
Rob Means  
1421 Yellowstone Avenue  
Milpitas, CA 95035

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Rob Means, 1421 Yellowstone Ave., Milpitas, CA 95035-6913  
408-262-0420h, 408-262-8975w, [rob.means@electric-bikes.com](mailto:rob.means@electric-bikes.com)

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