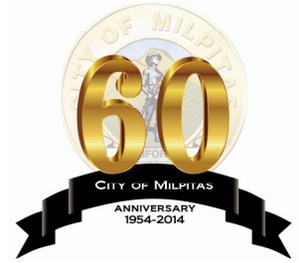




**MILPITAS CITY COUNCIL AGENDA**  
**TUESDAY, FEBRUARY 18, 2014**  
**455 EAST CALAVERAS BOULEVARD, MILPITAS, CA**  
**6:30 P.M. (CLOSED SESSION) • 7:00 P.M. (PUBLIC BUSINESS)**



**SUMMARY OF CONTENTS**

- I. CALL TO ORDER/ROLL CALL by the Mayor (6:30 p.m.)**
- II. ADJOURN TO CLOSED SESSION**  
**CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION**  
Pursuant to California Government Code Section 54956.9(a)  
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
- III. CLOSED SESSION ANNOUNCEMENT:** 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 – February 4, 2014**
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDARS – February 2014 and March 2014**
- VIII. PRESENTATION**
  - Barbara Lee Senior Center Calligraphy Group will present an art piece to the City honoring the City's 60<sup>th</sup> Anniversary year
- 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 place the item on a future meeting agenda.

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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**

- \* 1. Consider Vote to Remove Community Advisory Commissioner (Staff Contact: Michael Ogaz, 408-586-3040)
- \* 2. Consider Mayor's Recommendation for Appointments to Two Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)
- 3. Response to Request of Councilmember Montano to Discuss Requiring a Public Art Program on Private Development Projects within the City of Milpitas (Staff Contact: Steve McHarris, 408-586-3273)

**XV. NEW BUSINESS**

- \* 4. Accept the 2013 Bulletproof Vest Partnership Grant and Appropriate the Funds into the Police Department's Operating Budget (Staff Contact: Charlotte Pang, 408-586-2432)
- \* 5. Approve the 2014 Commissioners' Recognition Event (Staff Contact: Dale Flunoy, 408-586-3228)
- \* 6. Accept Donation from JDS Uniphase to City of Milpitas for Milpitas Volunteer Partners Community Garden Beautification Day (Staff Contact: Rosana Cacao, 408-586-3207)
- 7. Reaffirm the Request from the Milpitas Chamber of Commerce to Co-Sponsor the International BBQ and Festival Event Scheduled May 31–June 1, 2014 (Staff Contact: Tom Williams, 408-586-3050)

**XVI. ORDINANCES**

- 8. Waive the First Reading and Introduce Ordinance No. 65.143 Amending the Building Ordinance for Corrections to Sections II-3-2.09 and II-3.5-2.03 (Staff Contact: Keyvan Irannejad, 408-586-3244)
- 9. Waive the First Reading and Introduce Ordinance No. 208.49 Amending the Milpitas Sanitary Code (Staff Contact: Steve Machida, 408-586-3355)
- \* 10. Waive the Second Reading and Adopt Ordinance No. 38.812 Amending the Zoning Code to Create Implementing Guidelines for the Citywide Freeway Corridor Overlay and Amending the Zoning Map for the Pacific Mall and Hotel Project (Staff Contact: Sheldon Ah Sing, 408-586-3278)

**XVII. RESOLUTION**

- \* 11. Adopt a Resolution Granting Initial Acceptance of, and Reducing the Performance Bond for, Street Resurfacing Project 2014, Projects No. 3412, No. 4254 and No. 4268 (Staff Contact: Steve Chan, 408-586-3324)

**XVIII. BID AND AGREEMENTS**

- \* 12. Approve Plans and Specifications and Authorize Advertisement for Bid Proposals, Pending State Department of Transportation Project Approval, for 2014 Road Rehabilitation, Projects No. 4270, No. 4264 and No. 3412 (Staff Contact: Steve Chan, 408-586-3324)

- \* 13. **Approve Amendment No. 3 to the Agreement with ACCO Engineered Systems to Extend the Term to June 30, 2014 for Not-To-Exceed \$34,000 for a Total of \$238,854 for City Hall HVAC Maintenance and Repair (Staff Contact: Chris Schroeder, 408-586-3161)**
- \* 14. **Approve Amendment No. 2 Extending the Professional Services Agreement with Dr. Howard Michaels to Provide Medical Director Services to Milpitas Fire Department through December 31, 2015 for Not-To-Exceed \$31,500 (Staff Contact: Chris Schroeder, 408-586-3161)**
- \* 15. **Approve Amendment No. 2 to the Agreement with Frank Szeto, an Individual Doing Business As New Orient Restaurant, for Senior Nutrition Services in the Amount of \$12,300 (Staff Contact: Chris Schroeder, 408-586-3161)**
- \* 16. **Approve Amendment No. 9 to the Agreement with ThyssenKrupp Elevator for Platinum Maintenance for a One Time Increase of \$5,010 for State Required Five Year Load Tests (Staff Contact: Chris Schroeder, 408-586-3161)**
- \* 17. **Approve an Amendment to the Agreement with Renne Sloan Holtzman Sakai LLP for Legal Services (Staff Contact: Michael Ogaz, 408-586-3040)**
- \* 18. **Approve an Agreement with Stubbs & Leone for Legal Services (Staff Contact: Michael Ogaz, 408-586-3040)**
- \* 19. **Authorize the City Manager to Execute an Agreement with Perata Consulting, LLC for Consulting Services (Staff Contact: Tom Williams, 408-586-3050)**

**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 SERVE ON A CITY COMMISSION**

Current vacancies exist on the:  
*Community Advisory Commission*  
*Recycling and Source Reduction Advisory Commission*  
*Telecommunications Commission*

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

- \* 1. **Consider Vote to Remove Community Advisory Commissioner (Staff Contact: Michael Ogaz, 408-586-3040)**

**Background:** The City Council Handbook provides that any Commissioner on a City Commission may be removed by majority vote of the City Council. Commissioners serve at the pleasure of the Council. At the request of Mayor Esteves, the Council is asked whether the services of Jenifer Lind shall be retained by the City as a Community Advisory Commissioner. Her current term will expire in January 2016. No cause has been cited, nor is it required for removal of a Commissioner. Simply a vote of a majority of the Council is needed.

**Fiscal Impact:** None.

**Recommendation:** Remove Commissioner Lind as a member of the Community Advisory Commission.

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

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

**Community Advisory Commission:**

Appoint Dau Do as Alternate No. 3 (currently Alternate No. 4) to a term that will expire in January 2016.

**Sister Cities Commission:**

Newly appoint Tim Chang as Alternate No. 2 to a term that will expire in September 2015. A copy of his application form is included in the agenda packet.

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

3. **Response to Request of Councilmember Montano to Discuss Requiring a Public Art Program on Private Development Projects within the City of Milpitas (Staff Contact: Steve McHarris, 408-586-3273)**

**Background:** At a recent City Council meeting, Councilmember Montano requested that the topic of requiring public art on private development projects be discussed by the City Council. Staff prepared a review of the City's current public art policies and ordinance along with a brief analysis to facilitate the City Council discussion and direction.

The City's General Plan and Transit Area Specific Plan do not contain policies on public art. The Midtown Specific Plan contains two policies on public art:

- Policy 5.10: Integrate public art, including sculpture, mosaics, murals, and decorative water features into new office, civic, public institutional, and public spaces in the Midtown Area.
- Policy 5.11: Consider adoption of a "Percent for Arts" or similar financial incentives to support art in public places. "Percent for Arts" is a fee program that requires new development to provide public art or an in-lieu fee equivalent to 1% of the value of the project. This is a program that should be considered for the Midtown Area.

The Milpitas Municipal Code currently contains the City of Milpitas Public Arts Policy adopted by the City Council in 2005 that defines “public art,” established a Public Art Committee, and sets parameters for the planning for and implementation of public art, including the funding of public art. A provision for Capital Improvement Program funding was suspended as a result of the Great Recession. Lastly, this ordinance required the Public Art Committee to evaluate and recommend to the City Council the potential extension of the public art program to the private sector in fiscal year 2005-06. There is no record of this item being completed. A copy of the Milpitas Public Arts Policy is included in the agenda packet.

### **Analysis**

Many cities have a public art policy, or in some cases, a public art ordinance that regulates the provision of funds allocated to public art, and the procedure for procuring and installing art pieces within that city. Cities use various approaches for collecting funds and determining the use of funds for art. Some cities direct public funding as part of capital improvement projects for the creation and display of art, as is the case with the Milpitas Public Arts Policy, while other cities require funding from private developers. Some cities use both methods for funding public art. Common examples for implementing public art policies include:

- Allocating a percentage, typically 1-2 percent, of construction value for public art;
- Collecting fees such as a public art impact fee;
- Requiring public art to be incorporated into a development project at the developer’s cost;
- Providing options for a public art in-lieu fee; or
- Incorporating public art into a public benefit requirement of development projects.

Where funds are collected, they are typically placed in a public art fund until used for the design and development of the public art in public places. Many cities have an art review body, similar to the Milpitas Public Art Committee, appointed by the City Council, which reviews and advises the City Council on public art design, location, and use of funds. In cases of private development projects, it is common for a public arts review body to make recommendations to the Planning Commission.

**Fiscal Impact:** None.

**Recommendations:** Receive the staff report and provide direction as appropriate.

## **XV. NEW BUSINESS**

- \* 4. **Accept the 2013 Bulletproof Vest Partnership Grant and Appropriate the Funds into the Police Department’s Operating Budget (Staff Contact: Charlotte Pang, 408-586-2432)**

**Background:** The United States Department of Justice, Office of Justice Programs, Bureau of Justice Assistance has allocated a Bulletproof Vest Partnership (BVP) grant in the amount of \$4,835.98 to the Milpitas Police Department towards the purchase of ballistic vests. The grant will reimburse the City of Milpitas for fifty percent (50%) of the cost of each ballistic vest purchased by the Milpitas Police Department after April 1, 2013. The grant funds must be utilized by August 31, 2015.

**Fiscal Impact:** None. The City’s matching funds are already budgeted in the Police Department’s supplies account.

**Recommendations:** Accept the 2013 Bulletproof Vest Partnership (BVP) grant and approve an appropriation in the amount of \$4,835.98 into the Police Department’s operating budget.

- \* 5. **Approve the 2014 Commissioners’ Recognition Event (Staff Contact: Dale Flunoy, 408-586-3228)**

**Background:** The City of Milpitas recognizes its Commissioners in April at the annual Commissioners recognition event. The event celebrates the volunteerism of City of Milpitas Commissioners and committee members and their accomplishments. Positive comments on the theme and venue were received from Commissioners on last year's recognition lunch event.

In the past, Commissioner Recognition events have been held at Dave & Buster's on a Saturday morning for brunch. Last year, Commissioners were recognized at a catered lunch held at the Milpitas Community Center. Typically at this event, the Mayor and Councilmembers thanked Commissioners for their volunteer service and acknowledged their service with certificates.

Staff polled the Commission Chairs and Vice Chairs and asked what type of recognition event they would prefer to attend in 2014.

**Commissioners were asked to choose from the following options:** Recognition Lunch, Recognition brunch, Recognition Ceremony during a City Council meeting, something else (other) or nothing at all.

**Twenty responses were received, with the following results:**

Recognition Lunch – 8; Recognition Brunch – 3; Recognition Ceremony during a City Council meeting – 2; Something else (other) – 5 (this varied from volunteering to donating the money to city programs); and, nothing at all – 2.

Staff recommends that the City Council approve Commissioners Recognition this year as a catered luncheon to be held at the Milpitas Community Center on Saturday April 26, 2014 from 11:30 am to 1:30 pm. The catered luncheon would cost approximately \$8,000.

**Fiscal Impact:** None. \$8,000 is included in the City Council's 2013-14 operational budget for the event.

**Recommendation:** Approve the 2014 Commissioners Recognition Event as a catered luncheon on Saturday, April 26, 2014 at Milpitas Community Center, in an amount not to exceed \$8,000.

\* **6. Accept Donation from JDS Uniphase to City of Milpitas for Milpitas Volunteer Partners Community Garden Beautification Day (Staff Contact: Rosana Cacao, 408-586-3207)**

**Background:** The Milpitas Recreation Services Division received a donation in the amount of \$1,008.98 from the JDS Uniphase for the Milpitas Volunteer Partners "Community Garden Beautification Day" held on November 16, 2013. Through this program, employees of JDS Uniphase spent four hours cleaning garden plots, replacing old plot borders and picking up trash in the neighboring Augustine Park. This work day provided an opportunity for a Milpitas business to make a difference in the community they work in.

Per the Donation Policy, all donations greater than the \$1,000 threshold must be accepted by City Council.

**Fiscal Impact:** None. An increase in MVP supply budget will be offset by the donation.

**Recommendation:** Accept the JDSU donation in the amount of \$1,008.98 to be incorporated into the Milpitas Recreation Division budget for Milpitas Volunteer Partners (MVP) Program.

**7. Reaffirm the Request from the Milpitas Chamber of Commerce to Co-Sponsor the International BBQ and Festival Event Scheduled May 31–June 1, 2014 (Staff Contact: Tom Williams, 408-586-3050)**

**Background:** The Milpitas Chamber of Commerce requested a waiver of City fees and staff overtime cost related to the International BBQ and Festival special event, which includes traffic

control, event security staffing, mobile stage rental, permits, and inspections. The proposed event is scheduled for May 31 and June 1, 2014 between the hours of 10:00 AM and 8:00 PM on Saturday and 10:00 AM to 6:00 PM on Sunday, on South Milpitas Boulevard between Los Coches and Turquoise Drive. The Chamber’s letter of request, event description, and layout are provided in the Council agenda packet.

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

The Chamber of Commerce has requested that the City co-sponsor this event. As a co-sponsor, the City may contribute the total contribution request of the Chamber which would include assistance with implementation of the traffic handling, event security, and waiver of permits and inspection fees as itemized (see chart in the Council agenda packet) without overtime for a total amount of \$14,612.14. Staff suggests that co-sponsoring the event with the Chamber will increase recognition of the City as a desirable destination to visit and conduct business.

The City Council has the option to: 1) authorize the Fee Waiver request for the maximum amount of \$1,500; or, 2) allow the City to participate as a “co-sponsor” of the event in an amount of \$14,612.14.

**Fiscal Impact:** Either \$1,500 (fee waiver maximum) or \$14,612.14 (co-sponsor and waive all costs).

**Recommendation:** Approve the option for the City of Milpitas to serve as co-sponsor of the Milpitas Chamber of Commerce’s International BBQ and Festival to be held May 31 and June 1, 2014, and to waive all itemized fees totaling \$14,612.14.

**XVI. ORDINANCES**

**8. Waive the First Reading and Introduce Ordinance No. 65.143 Amending the Building Ordinance for Corrections to Sections II-3-2.09 and II-3.5-2.03 (Staff Contact: Keyvan Irannejad, 408-586-3244)**

**Background:** The Milpitas City Council adopted the 2013 Building Code update on November 19, 2013 (Ordinance No. 65.142). A clerical error was recently discovered in Sections II-3-2.09 and II-3.5-2.03 of the Municipal Code (per adopted Ordinance No. 65.142).

Sections are to be revised as follows:

MMC Section II-3-2.09:

Hillside construction - construction in hillside areas shall be designed for a minimum wind speed (Vasd) ~~80~~ **95** mph and exposure C.

MMC Section II-3.5-2.03:

Ground Snow Load	Wind Design		Seismic Design Category	Subject to Damage From			Winter Design Temp	Ice Barrier Underlay ment Required	Flood Hazard	Air Freezing Index	Mean Annual Temp
	Speed (mph)	Topographic Effects		Weathering	Frost line depth	Termite					
N/A	<del>70</del> <b>85</b> <sup>a</sup>	No	D <sub>2</sub>	Negligible	N/A	Yes	32F	No	See Flood Zone Map	0	59.7F

a. Hillside construction - construction in hillside areas shall be designed for minimum wind speed (Vasd) ~~80~~ **95** mph and exposure C. All structures located in the hillside shall conform to minimum requirements of Section R802.11.

**Fiscal Impact:** None.

**Recommendations:**

1. Following the City Attorney's reading of the title of Ordinance 65.143, move to waive the first reading beyond the title of Ordinance No. 65.143.
2. Introduce Ordinance No. 65.143, relating to Building Code updates.

**9. Waive the First Reading and Introduce Ordinance No. 208.49 Amending the Milpitas Sanitary Code (Staff Contact: Steve Machida, 408-586-3355)**

**Background:** The City of Milpitas contracts for sanitary wastewater treatment at the San Jose/ Santa Clara Water Pollution Control Plant (WPCP) under the 1983 "Master Agreement for Wastewater Treatment between City of San Jose, City of Santa Clara, and City of Milpitas." This agreement requires that the City of Milpitas and other tributary agencies adopt, amend, and revise their sewer ordinances whenever City of San Jose amends its ordinance to comply with current regulatory requirements established by the Plant's National Pollutant Discharge Elimination System (NPDES) permit.

The City of San Jose revised its sewer ordinance initiated by a combination of recommendations and audit requirements from the Environmental Protection Agency. San Jose's ordinance revisions were adopted by the San Jose City Council on August 13, 2013. Based on the revisions, City of Milpitas's sewer ordinance now requires the revisions to comply with the City's agreement with the City of San Jose. The following sections of the Milpitas Sewer Use Ordinance are proposed to be added and revised with minor changes and/or clarifications:

- Added definitions to VIII-2-5.04:
  - Pollutant Not Present (43);
  - Slug Control Plan (56);
  - Upset (65)
- Revised definitions VIII-2-5.04:
  - Significant Change (53);
  - Significant Industrial User (54)
- Added following Sections:
  - Upset-Rebuttal (VIII-2-5.51);
  - Waiver of Pollutants Not Present (VIII-2-5.52)
- Clarification or minor revisions to following Sections:
  - Delinquent Fees (VIII-2-5.33);
  - Permit Conditions (VIII-2-5.36);
  - Denial of Permit (VIII-2-5.39);
  - Termination of Service and Permit Revocation (VIII-2-5.40);
  - Discharge Reports (VIII-2-5.46)

**California Environmental Quality Act requirements:** The ordinance is exempt from CEQA since there will be no physical change to the environment.

**Fiscal Impact:** None. There are no fiscal impacts for the recommended action.

**Recommendations:**

1. Following the City Attorney's reading of the title of Ordinance 208.49, move to waive the first reading beyond the title of Ordinance No. 65.143.
2. Introduce Ordinance No. 208.49 to repeal and replace Title VIII, Chapter 2, Article V of the Milpitas Sanitary Code.

- \* 10. **Waive the Second Reading and Adopt Ordinance No. 38.812 Amending the Zoning Code to Create Implementing Guidelines for the Citywide Freeway Corridor Overlay and Amending the Zoning Map for the Pacific Mall and Hotel Project (Staff Contact: Sheldon Ah Sing, 408-586-3278)**

**Background:** On February 4, 2014 the City Council introduced Ordinance No. 38.812 to amend the Zoning Code to include provisions for a Citywide Freeway Corridor Overlay which allows properties within 300 feet of a freeway to request an increase in floor area ratio of up to twenty percent (20%) above the maximum permitted under the General Plan and Zoning Code and to amend the zoning map for the Pacific Mall and Hotel Project. Ordinance No. 38.811 is now ready for second reading and adoption.

**Fiscal Impact:** None.

**Recommendations:**

1. Waive the second reading of Ordinance 38.812.
2. Adopt Ordinance No. 38.812 for Zone Change No. ZA13-0001 related to the new Pacific Mall and Hotel Project at McCarthy Ranch.

**XVII. RESOLUTION**

- \* 11. **Adopt a Resolution Granting Initial Acceptance of, and Reducing the Performance Bond for, Street Resurfacing Project 2014, Projects No. 3412, No. 4254 and No. 4268 (Staff Contact: Steve Chan, 408-586-3324)**

**Background:** The City Council awarded the Street Resurfacing Project 2014 to O'Grady Paving, Inc. on June 18, 2013. The project consists of placing asphalt rubber cape seal, slurry seal, removal and replacement of asphalt concrete pavement and new roadway marking treatments on City streets. The project was successfully completed on time and within budget. Staff recommends that Council adopt a resolution granting initial acceptance of the project and authorize the reduction of the contractor's faithful performance bond to \$189,870, which is 10% of the final contract value.

**Fiscal Impact:** None.

**Recommendation:** Adopt a resolution granting initial acceptance of the Street Resurfacing Project 2014, Projects No. 3412, No. 4254 and No. 4268, subject to a one-year warranty period and reduction of the faithful performance bond to \$189,870.

**XVIII. BID AND AGREEMENTS**

- \* 12. **Approve Plans and Specifications and Authorize Advertisement for Bid Proposals, Pending State Department of Transportation Project Approval, for 2014 Road Rehabilitation, Projects No. 4270, No. 4264 and No. 3412 (Staff Contact: Steve Chan, 408-586-3324)**

**Background:** Staff completed plans and specifications for the 2014 Road Rehabilitation, Projects No. 4270, No. 4264 and No. 3412. The work will include localized repair of failed asphalt concrete pavement, resurface asphalt concrete pavement, replacement of traffic detector loops, and installation of Americans with Disabilities Act (ADA) compliant sidewalk ramps, repair damaged sidewalk, curb and gutter and reinstalling pavement delineation on the following street segments:

- 1) Arizona Avenue between Washington Drive and Tiny Street;
- 2) Dixon Road between Milpitas Boulevard and Arizona Avenue;
- 3) Washington Drive between Milpitas Boulevard and Escuela Parkway;

- 4) Escuela Parkway between Jacklin Road and Washington Drive;
- 5) Abel Street between Corning Avenue and Calaveras Boulevard;
- 6) Abel Street between Great mall parkway and 600 feet south of Capitol Avenue;
- 7) Main Street between Cedar Way and Abel Street.

The Engineer's Estimate for the project is \$2,300,000. The City obtained grant funding in the amount of \$1,652,000 from the Federal Surface Transportation Program (STP) Funds. This grant required local matching fund to be at least 11.47 percent of project cost. A copy of the title sheet of the project plans is included in the Council's agenda packet and the complete set of plans and specifications are available for review in the office of the City Engineer.

Staff also seeks authorization to bid the project upon obtaining Caltrans approval, referred to as an E-76 clearance, for federally funded projects.

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

**Recommendations:**

1. Approve the Plans and Specifications for 2014 Road Rehabilitation, Projects No. 4270, No. 4264 and No. 3412.
  2. Authorize advertisement for bid proposals, pending Caltrans project approval and issuance of an E-76 clearance for this road rehabilitation project.
- \* **13. Approve Amendment No. 3 to the Agreement with ACCO Engineered Systems to Extend the Term to June 30, 2014 for Not-To-Exceed \$34,000 for a Total of \$238,854 for City Hall HVAC Maintenance and Repair (Staff Contact: Chris Schroeder, 408- 586-3161)**

**Background:** ACCO Engineered Systems was the lowest responsible bidder for the original installation of the Heating, Ventilation, and Air Conditioning (HVAC) system when City Hall was built. Due to the customized and proprietary nature of the software used in the HVAC control system, on February 17, 2009, Council adopted Resolution No. 7838 approving ACCO Engineered Systems maintenance and repair services as a Sole Source purchase pursuant to Municipal Code section I-2-3.09 "Sole Source Procurement" for a period of five years. On June 18, 2013, Council approved Amendment No. 2 to extend the document's date to coincide with the end of the Sole Source designation on February 17, 2014 at which time staff planned to return to Council with a new Sole Source request. However, it recently came to light that there is now competition for this service. Staff now requests that the ACCO agreement be extended to June 30, 2014 and increase the contract amount by \$34,000, allowing time to develop a specification to bid the service.

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

**Recommendation:** Approve Amendment No. 3 to extend the agreement with ACCO Engineered Systems from February 17, 2014 to June 30, 2014 for the not-to-exceed amount of \$34,000 for a total value of \$238,854 for City Hall HVAC maintenance and repair.

- \* **14. Approve Amendment No. 2 Extending the Professional Services Agreement with Dr. Howard Michaels to Provide Medical Director Services to Milpitas Fire Department through December 31, 2015 for Not-To-Exceed \$31,500 (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background:** As a provider of first responder Advanced Life Support (Paramedic) Services, the Milpitas Fire Department is required by Santa Clara County EMS Agency to maintain a Medical Director (physician) to provide medical oversight for documentation, quality assurance and improvement, public access defibrillation, controlled drugs administration, medical device purchases, dispatch center, and infectious disease control policy and consultation. Staff

previously planned to bid this service for the City of Milpitas only. However, because of the cost and complexity of the service and the availability of qualified candidates, staff now recommends extension of the current agreement for 21 months for the period April 1, 2014 to December 31, 2015 at the rate of \$1,500 per month for a total not-to-exceed amount of \$31,500 for a total amount not to exceed \$85,500.

This will allow time to explore the formation of a cooperative procurement through the Santa Clara County Emergency Medical Services Chiefs Group, which represents every fire agency in Santa Clara County, to work jointly to develop a specification and issue a Request for Proposals for Medical Director Services to be used by all the members of the cooperative. Pursuant to Municipal Code Section 1-2-3.11, the Purchasing Agent is authorized to enter into cooperative contracts with other public agencies.

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

**Recommendation:** Approve Amendment No. 2 to extend the Professional Services Agreement with Dr. Howard Michaels to provide Medical Director Services to the Milpitas Fire Department from April 1, 2014 to December 31, 2015 for the not-to-exceed amount of \$31,500 for a total value of \$85,500.

- \* **15. Approve Amendment No. 2 to the Agreement with Frank Szeto, an Individual Doing Business as New Orient Restaurant for Senior Nutrition Services in the Amount of \$12,303 (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background:** On July 1, 2013, the City entered into an agreement with Frank Szeto, an individual doing business as New Orient Restaurant, to provide senior nutrition meals to eligible seniors over age 60. Total cost for these services was \$18,744. On December 4, 2013, the agreement value was increased by \$6,500 bringing the total to \$25,244 and extending the agreement two months to February 28, 2014 to allow time to bid the service. Staff began working with the Santa Clara County Senior Nutrition Program staff to develop a specification.

Specification was near completion when the City was informed of a program requirement that the Santa Clara County Senior Nutrition Program staff be included in the vendor selection process. Therefore, staff requests that the agreement amount be increased by \$12,303 to a total not-to-exceed \$37,547 and extend the agreement from February 28, 2014 to June 30, 2014 to allow additional time for staff to go through a competitive process which is being rewritten to include the Santa Clara County Senior Nutrition Program requirements.

**Fiscal Impact:** None. There are sufficient funds in the Recreation Services FY 2013-14 budget for this service.

**Recommendation:** Approve Amendment No. 2 to the agreement with Frank Szeto, an individual doing business as New Orient Restaurant for Senior Nutrition Services in the amount of \$12,303 and extending the term from February 28, 2014 to June 30, 2014.

- \* **16. Approve Amendment No. 9 to the Agreement with ThyssenKrupp Elevator for Platinum Maintenance for a One Time Increase of \$5,010 for State Required Five Year Load Tests (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background:** The City previously entered into an automatically renewing Platinum Maintenance Agreement with ThyssenKrupp Elevator Corporation on July 1, 2005 to maintain the elevators in the City Hall, Police, and Public Works buildings. The technology to maintain the City's elevators is proprietary and in September of 2011, the City Council approved a Sole Source designation pursuant to Milpitas Municipal Code Section I-2-3.09 for five years. The agreement entered into July 1, 2005 is for maintenance only and does not include the California

State required five year load tests. This Amendment will allow for a one time increase of \$5,010.00 to cover the cost of the load tests. This proposed Amendment No. 9 will increase the annual value of the contract to \$31,678.72 for the period of July 1, 2013 to June 30, 2014.

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

**Recommendation:** Approve Amendment No. 9 to the agreement with ThyssenKrupp Elevator for a Platinum Maintenance Agreement with a one-time increase of \$5,010 for the California State required five year load tests for a total annual amount of \$31,678.72 for the period of July 1, 2013 to June 30, 2014.

\* 17. **Approve an Amendment to the Agreement with Renne Sloan Holtzman Sakai LLP for Legal Services (Staff Contact: Michael Ogaz, 408-586-3040)**

**Background:** This law firm has provided legal advice and representation of the City in personnel matters and in labor relations litigation during the past several years. At this time, it is necessary to augment the firm's agreement to continue such services through the end of the fiscal year.

**Fiscal Impact:** None. This item is within existing appropriations approved by City Council.

**Recommendation:** Approve an amendment to the agreement with Renne Sloan Holtzman Sakai LLC for legal services, increasing the agreement amount by \$75,000 and authorize the City Attorney to execute the amendment.

\* 18. **Approve an Agreement with Stubbs & Leone for Legal Services (Staff Contact: Michael Ogaz, 408-586-3040)**

**Background:** This law firm is experienced in representing public entities in a variety of contexts. It represents the City currently in matters falling under the City's Association of Bay Area Governments Pooled Liability Assurance Network (ABAG PLAN) coverage. Under this agreement, the firm will provide general litigation and advice services on personnel, contract and general law matters. The \$50,000 amount for this agreement is expected to fund services through the end of the fiscal year.

**Fiscal Impact:** None. This item is within existing appropriations approved by City Council.

**Recommendation:** Approve the agreement with Stubbs & Leone for legal services in the amount of \$50,000 and authorize the City Attorney to execute the agreement.

\* 19. **Authorize the City Manager to Execute an Agreement with Perata Consulting, LLC for Consulting Services (Staff Contact: Tom Williams, 408-586-3050)**

**Background:** The City continues to pursue viable and legal options in implementing the dissolution of redevelopment, asset management and economic development programs. At this time, the City is seeking closer communication and improved collaboration with the state legislature.

The scope of services that Perata Consulting, LLC will provide for the benefit of the City, are:

- Advise and recommend strategy to the City Manager on specific potential legislative options to offset funding lost from the repeal of redevelopment;
- Develop, organize, and direct legislative strategy for required statutory changes needed for City to pursue its economic development plans;
- Advise City to spearhead a coalition to support its economic development initiative; and
- Liaise with the Governor's Office, especially the Department of Finance and Go Biz, to negotiate its cooperation on the City's redevelopment initiative.

**Fiscal Impact:** Fees will not exceed \$100,000 and will be funded from Milpitas Housing Authority and Contingency Reserve.

**Recommendations:** Authorize the City Manager to execute an agreement with Perata Consulting, LLC for consulting services.

**NEXT REGULARLY SCHEDULE COUNCIL MEETING  
TUESDAY, MARCH 4, 2014 AT 7:00 P.M.**