



MILPITAS CITY COUNCIL AGENDA
TUESDAY, MARCH 18, 2014
455 EAST CALAVERAS BOULEVARD, 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 LABOR NEGOTIATORS - COLLECTIVE BARGAINING**
Pursuant to California Government Code Section 54957.6. City Negotiator: Tom Williams
Employee Groups: International Association of Fire Fighters (IAFF) Local 1699, Mid-management and Confidential Unit, and Professional and Technical Group (ProTech)
Under Negotiation: Wages, Hours, Benefits, and Working Conditions
 - 2. CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION**
Pursuant to California Government Code Section 54956.9(a)
City of Milpitas v. City of San Jose, Santa Clara County Superior Court case no. 112CV233069
- III. CLOSED SESSION ANNOUNCEMENTS:** Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote or abstention of each member present
- IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- V. INVOCATION (Councilmember Giordano)**
- VI. APPROVAL OF COUNCIL MEETING MINUTES – March 4, 2014**
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDARS – March and April 2014**
- VIII. PRESENTATION - Recognize Corporate Sponsors of the 60th Anniversary Gala and events**
- IX. PUBLIC FORUM**

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to three minutes. As an item not listed on the agenda, 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.
- X. ANNOUNCEMENTS**
- XI. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**
- XII. APPROVAL OF AGENDA**
- XIII. CONSENT CALENDAR (Items with asterisks*)**

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

XIV. PUBLIC HEARING

- 1. Hold a Public Hearing to Consider Introducing Ordinance No. 38.813 Defining Electronic Smoking Device and Head/Smoke/Tobacco Shops and other Related Amendments for Inclusion in the Zoning Ordinance and to Consider Introducing Ordinance No. 277.6 to Amend the Smoking Ordinance to Regulate the Use of Electronic Smoking Devices (Staff Contacts: Scott Ruhland, 408-586-3274 and Felix Reliford, 408-586-3071)**

XV. REPORTS OF MAYOR AND COMMITTEE

- * 2. Consider Mayor's Recommendation for Appointment to the Veterans Commission (Contact: Mayor Esteves, 408-586-3029)**

Public Art Committee:

- * 3. Receive Report of FY 2013-14 Public Art Projects (Staff Contact: Renee Lorentzen, 408-586-3409)**

XVI. NEW BUSINESS

- 4. Receive a Staff Report Regarding Utility Rate Increases and Impacts from a Regional Wastewater Treatment Plant Rehabilitation Program and Regional Water Supply Shortage (Staff Contact: Jeff Moneda, 408-586-3345)**

XVII. ORDINANCE

- * 5. Waive the Second Reading and Adopt Ordinance No. 277.1 Updating the Development Impact Fee Ordinance (Staff Contact: Steven McHarris, 408-586-3271)**

XVIII. RESOLUTIONS

- * 6. Adopt a Resolution Annexing Certain Real Property into Community Facilities District No. 2005-1; Approve a Subdivision Improvement Agreement for Tri-Pointe Homes, Inc., Final Map (Tract #10221), and Improvement Plans (2-1188) for 345 Los Coches (Cobblestone Development), Project No. 2792 (Staff Contact: Ahmed Aly, 408-586-3325)**
- * 7. Adopt a Resolution Authorizing the City Manager to Award and Execute a Construction Contract with Suarez & Munoz Construction Inc. for Pinewood Park Improvements, Projects No. 3412, No. 5095, No. 5096, and No. 7116 and Authorize the Director of Public Works to Negotiate and Execute Contract Change Orders (Staff Contact: Jeff Moneda 408-586-3345)**
- * 8. Adopt a Resolution Authorizing the Purchase of Fire Turnouts and Related Fire Equipment Through a Piggyback Contract with Municipal Emergency Services, Inc. in an Amount Not-to-Exceed \$96,000 for the First Year and Subject to Appropriation in Subsequent Years (Staff Contact: Chris Schroeder, 408-586-3161)**
- * 9. Adopt a Resolution Awarding and Approving a Contract with Alpha Analytical Labs, Inc. for Bacteriological Laboratory Analysis Services and Authorize the Purchasing Agent to Execute Up to Four Annual Renewal Options for a Total Amount Not to Exceed \$111,900 (Staff Contact: Chris Schroeder, 408-586-3161)**

- * 10. **Adopt a Resolution Awarding and Approving a Contract with Eurofins Eaton Analytical, Inc. for Unregulated Contaminant Monitoring Rule 3 (UCMR3) and Other Laboratory Analysis Services and Authorizing the Purchasing Agent to Exercise up to Four Annual Renewal Options for a Total Five Year Amount Not-to-Exceed \$59,500 (Staff Contact: Chris Schroeder, 408-586-3161)**

XIX. AGREEMENT

- * 11. **Approve the Consultant Agreement with Bartle Wells Associates for the Financial Utility Master Plan Update, Projects No. 7111 and No. 6106 in an Amount Not to Exceed \$41,040 (Staff Contact: Steve Machida, 408-586-3355)**

XX. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, APRIL 1, 2014 AT 7:00 P.M.**

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

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

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

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

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

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

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

APPLY TO SERVE ON A CITY COMMISSION

Current vacancies exist on the:

*Community Advisory Commission (regular and alternate members)
Recycling and Source Reduction Advisory Commission (institutional member)*

Commission application forms are available online at www.ci.milpitas.ca.gov or at Milpitas City Hall.
Contact the City Clerk's office at 408-586-3003 for more information.

If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, call the City Clerk at (408) 586-3001 or send an e-mail to mlavelle@ci.milpitas.ca.gov prior to the meeting. You may request a larger font agenda or arrange for mobility assistance. For hearing assistance, headsets are available in the Council Chambers for all meetings.

AGENDA REPORTS

XIV. PUBLIC HEARING

1. **Hold a Public Hearing to Consider Introducing Ordinance No. 38.813 Defining Electronic Smoking Device and Head/Smoke/Tobacco Shops and other Related Amendments for Inclusion in the Zoning Ordinance and to Consider Introducing Ordinance No. 277.6 to Amend the Smoking Ordinance to Regulate the Use of Electronic Smoking Devices (Staff Contacts: Scott Ruhland, 408-586-3274 and Felix Reliford, 408-586-3071)**

Background: Recently, staff has received inquiries about tobacco stores, electronic cigarettes, and other similar related uses. Specifically, those inquiries were from retail businesses regarding the sale of electronic cigarettes, nicotine vaporizers and similar devices. The Zoning Ordinance is unclear on the regulation and classification of these types of uses and to date, city staff has interpreted these uses to fall within the “Tobacco Shop” type of use, which is the general term referenced in the Zoning Ordinance. However, the Zoning Ordinance does not define “Tobacco Shop” or other tobacco related uses. The Zoning Ordinance, Live-Work provisions, also includes a use entitled “Head/Tobacco/Smoke Shop” that is not defined and does not exist anywhere else in the Zoning Ordinance.

Further, the U.S. Food and Drug Administration (“FDA”) and healthcare providers question the safety of electronic smoking devices to both users and those in close proximity to users, despite claims of harmlessness by manufacturers. The FDA has also raised concerns that electronic smoking devices, which are often marketed in appealing flavors, can increase nicotine addiction among young people and may lead youth to try conventional tobacco products. To address these issues and in order to clarify the intent and regulation of these types of uses, staff is proposing an amendment to the Zoning Ordinance to better define and classify tobacco and similar uses.

Ordinance No. 38.813- Tobacco Related Zoning Amendments

Recent new technology in tobacco and tobacco related products has resulted in new products and services that are not currently regulated by the City’s Zoning Ordinance. Although, retail tobacco stores require a Conditional Use Permit, there is not a definition for such use, or for other related uses in the Zoning Ordinance. The proposed zoning amendments consist of the following new definitions and related amendments:

1. Create a new definition for “Tobacco/Head/Smoke Shop”
2. Create a new definition for “Electronic Smoking Device”
3. Amend related Zoning Ordinance sections for consistency with the new terminology and definitions.

Ordinance No. 227.6 - Regulating Electronic Smoking Devices

The City of Milpitas Smoking Ordinance as codified in Chapter 215 of Title V of the Milpitas Municipal Code currently prohibits the smoking of cigarette, pipe, and cigar in certain public places, i.e. within 25 feet of any City building, playground and sport facility. Due to concerns described above, currently three states have laws restricting electronic smoking devices in 100% smoke-free venues, nine states have laws restricting electronic smoking devices use in other venues and 108 local laws across the country restrict electronic smoking device use 100% smoke-free venues including nineteen California cities.

California recently adopted Health and Safety Code 119405 making it unlawful for a person to sell or otherwise furnish an electronic cigarette, as defined under state law, to a person under age 18 years, and authorizing cities and counties to regulate the distribution of electronic cigarettes in a manner that is more restrictive than state law. The use of electronic smoking devices in smoke-free locations threaten to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places of employment.

The proposed ordinance amends the City's Smoking Ordinance to define Electronic Smoking Device, amends the definition of Smoke and Smoking to include the use of Electronic Smoking Devices, and allows for consistency in enforcement. If the proposed ordinance is adopted, the use of Electronic Smoking Device would be prohibited where the smoking of traditional tobacco is currently prohibited (within 25 feet of any City building, playground and sport facility).

California Environmental Quality Act: These projects are categorically exempt from further CEQA review under Section 15061(b)(3) of the CEQA Guidelines in that the project has no potential to cause a significant effect on the environment. Staff determined that creating definitions for these uses and related amendments for consistency has no potential to cause a significant effect on the environment since the amendment related to classification and regulations of certain uses. These are considered policy amendments and have no direct connection or effect on the environment.

Fiscal Impact: None.

Recommendations:

1. Open the public hearing to receive comments.
2. Move to close the public hearing following any comments.
3. Following City Attorney's reading of the titles of both Ordinance No. 38.813 and Ordinance No. 227.6, move to waive the first readings beyond the titles of both ordinances.
4. Move to introduce Ordinance No. 38.813 and Ordinance No. 227.6 regulating electronic smoking devices.

Attachments:

- A. proposed Ordinance No. 38.813
- B. proposed Ordinance No. 227.6

XV. REPORTS OF MAYOR AND COMMITTEE

- * 2. **Consider Mayor's Recommendation for Appointment to the Veterans Commission (Contact: Mayor Esteves, 408-586-3029)**

Background: Mayor Esteves recommends appointing Allen Thomas as Alternate No. 2 to a term that will expire in February 2016. Two current applications are included in the Council agenda packet.

Recommendation: Receive Mayor's recommendation and move to appoint Allen Thomas to the Veterans Commission as Alternate No. 2, with a term that will expire in February 2016.

Public Art Committee:

- * 3. **Receive Report of FY 2013-14 Public Art Projects (Staff Contact: Renee Lorentzen, 408-586-3409)**

Background: The 2013-2015 Public Art Master Plan was approved by the City Council on March 19, 2013. Since that date, the Public Art Committee recommended and the Council authorized the commissioning and completion of the following three projects: 1) Augustine Park "Sundial" project maintenance (existing piece repair of metal work and cement foundation cracking); 2) City Hall "Cartwheel Kids" move to Milpitas Library (existing piece removal from City Hall exterior to Milpitas Library exterior in front of historic building); and 3) City Hall "Minute Man" Statue (new piece installation with repair and update of existing lighting for piece in front of City Hall and dedication plaque).

The Public Art Committee and staff are currently working on the following two projects to recommend to the City Council for approval: 1) Cardoza Park “Art In Your Park” project (new piece design and installation); and 2) Murphy Park “Legends of Milpitas” project maintenance (existing piece cleaning and repainting).

All projects are within the Public Art Master Plan and their budgets were approved by City Council at the March 19, 2013 meeting. A budget appropriation of \$13,770 will conclude all public art projects affecting the FY 2013-14 budget.

Fiscal Impact: A budget appropriation of \$13,770 from Public Art Fund to Non-Department Contractual Services (a Budget Change Form included in agenda packet).

Recommendation: Receive the staff report of FY 2013-14 public art projects and approve the budget appropriation of \$13,770.

XVI. NEW BUSINESS

4. Receive a Staff Report Regarding Utility Rate Increases and Impacts from a Regional Wastewater Treatment Plant Rehabilitation Program and Regional Water Supply Shortage (Staff Contact: Jeff Moneda, 408-586-3345)

Background: The Milpitas City Council adopted - by ordinances - a four-year maximum water and sewer rate program in accordance with Proposition 218 on May 3, 2011. Ordinances No. 120.46 and No. 208.47 authorize staff to administratively review annual operational sewer and water expenses in order to confirm that the utility rates do not exceed the cost of providing the services, and to adjust the water and sewer rates for different categories of users within the maximum permitted ranges.

Sewer Rates: The four-year sewer rate program adopted on May 3, 2011 contemplated annual sewer rate increases of approximately seven percent. The first year (FY 2011-12) sewer rate increase was implemented. The second (FY 2012-13) and third (FY 2013-14) annual sewer rate increases were deferred as the City of San Jose delayed some of the planned rehabilitation work at the regional wastewater treatment facility. The following discussion provides new information about estimated costs and timing of rehabilitation work at the regional facility for the fourth and future years.

The recently completed San Jose/Santa Clara Regional Wastewater Facility (Facility) Master Plan recommends more than 114 capital improvement projects to be implemented over the next 30 years at an estimated cost of \$2.2 billion, with over \$1 billion to be invested in the next ten years. San Jose has implemented “pay as you go” financing for the work already underway and plans to issue bonds for some of the future work. Staff prepared several conceptual financing scenarios and determined that “pay as you go” would result in a large spike in sewer rates for the Milpitas community. Under the existing 1983 agreement between the City of Milpitas, City of San Jose, and City of Santa Clara, the City of Milpitas is responsible for approximately eight percent of the capital improvement cost.

Staff presented background information to the Finance Subcommittee, comprised of Mayor Esteves and Vice Mayor Polanski, on January 14, 2014. The Finance Subcommittee recommended a sewer rate increase of 14.5% or the maximum adopted rate, whichever is lower, and directed staff to present to the full City Council the impacts the Facility rehabilitation program will have on Milpitas sewer rates. The proposed increases would be within the maximum permitted ranges adopted by the City Council on May 3, 2011, and will require no further City Council approval since the Council had already approved the maximum rate to be implemented administratively by staff.

In February, staff received updated information on the Facility’s 2015-2019 five year capital improvement program. Staff evaluated the preliminary data and estimated that even with

maximum available bond financing issued by San Jose, several annual 10% rate increases must follow the proposed 14.5% increase to provide sufficient revenue to pay for the City's share of the capital improvement. The staff's recommendation is to proceed with the 14.5% sewer rate increase for FY 2014-15.

Water Rates: The four-year water rate program contemplated approximately seven percent to fourteen percent annual rate increases. Based upon the annual review, the first three annual water rate increases were implemented according to the adopted four year program. In January 2014, staff evaluated the proposed revenues and expenses and determined that it is necessary to implement the planned annual FY 2014-15 rate increase. This information was not provided to the Finance Subcommittee as it was deemed routine. In the meantime, the San Francisco Public Utility Commission (SFPUC) and the Santa Clara Valley Water District (SCVWD) have adopted 10% voluntary and 20% mandatory water use reductions, respectively. Staff has performed additional analysis of revenues and expenses in the event customer water use is reduced by 10%, 15%, and 20%. The Water Fund balance is expected to drop by \$700,000, \$900,000, and \$1.1 million respectively, and will be below the minimum reserve target established by Council policy. At this time, there is uncertainty in two primary variables affecting the fund balance estimate: customer water use reduction may or may not occur and there is no justification at this time to adjust water rates to include financial penalties. Therefore, staff recommends implementation of the planned fourth year water rate increase as proposed on May 3, 2011, of approximately seven percent to fourteen percent.

The water wholesalers are continuing to evaluate available water supplies on a monthly basis and may modify their water conservation requirements as new data becomes available. If there is a change to the conservation requirements, staff will inform the City Council at that time.

Staff has reviewed the proposed increases to the utility rates as discussed above and determined the proposed utility rates do not exceed the cost of providing the services.

Utility Rate Notification Mailer: A Proposition 218 vote occurred in conjunction with the FY 2011-12 utility rate program adoption. Upon completion of the past three annual reviews, staff sent a utility rate notification mailer to the community in accordance with Proposition 218 requirements. The utility rate notification mailer for FY 2014-15 will be sent shortly notifying the customers of the rate increases.

California Environmental Quality Act: Sewer and Water Rate activities are exempt from CEQA as there will be no physical change to the environment.

Fiscal Impact: None. There is sufficient funding in the engineering operating budget for the utility notification rate mailer.

Recommendation: Receive a staff report regarding utility rate increases and impacts from a regional wastewater treatment plant rehabilitation program and regional water supply shortage.

XVII. ORDINANCE

- * **5. Waive the Second Reading and Adopt Ordinance No. 277.1 Updating the Development Impact Fee Ordinance (Staff Contact: Steven McHarris, 408-586-3273)**

Background: The City Council introduced Ordinance No. 277.1 on March 4, 2014. The Ordinance creates language clarifying the timing and rate of development impact fees to be paid to the City. In this second reading, a minor variance from the language of the Ordinance as introduced is being proposed which will further clarify that the amount of development impact fee to be paid to the City will be based on the rate in effect at the time of building permit issuance.

Recommendations:

1. Waive the second reading of Ordinance No. 277.1.
2. Adopt Ordinance No. 277.1 including minor changes in the final version, implementing the update of the Development Impact Fee ordinance.

XVIII. RESOLUTIONS

- * **6. Adopt a Resolution Annexing Certain Real Property into Community Facilities District No. 2005-1; Approve a Subdivision Improvement Agreement for Tri-Pointe Homes, Inc., Final Map (Tract #10221), and Improvement Plans (2-1188) for 345 Los Coches (Cobblestone Development), Project No. 2792 (Staff Contact: Ahmed Aly, 408-586-3325)**

Background: On May 7, 2013, the City Council approved Vesting Major Tentative Map, Site Development Permit, Conditional Use Permit, and Environmental Impact Assessment for the construction of 28 new single family detached residential units and four live-work units on 2.7 acres located at 345 Los Coches Street. The development has on-site private utilities (potable water, sanitary sewer, storm drain, recycled water, etc.) and a pedestrian connection (with public access) to the new Wrigley Creek trail head on the adjacent development (Orchid). The public improvements consist of frontage improvements along Los Coches and S. Milpitas Blvd. (City utility connections, sidewalk, curb-and-gutter, paving, landscaping, etc.). On February 26, 2014, the Planning Commission approved an amendment to Site Development Permit No. SD12-003 authorizing certain site improvement changes and exterior façade modifications for the project.

Tri-Pointe Homes, Inc. (owner of Tract 10221) is required to annex the subject property into the Community Facilities District 2005-1 as a condition of the Tentative Map approved by the Council on May 7, 2013. Resolution No. 7521, adopted by City Council on May 17, 2005 forming CFD 2005-1, authorizes the City to annex properties to CFD 2005-1, which will be assessed only for eligible public services, without further public hearing or formal election upon receipt of written consent from the owners. Tri-Pointe Homes, Inc. has given consent and approval that this property be annexed to CFD 2005-1. Tri-Pointe Homes, Inc. has also agreed that such consent and approval constitutes election to annex to CFD 2005-1 and approval of the authorization for the levy of the special tax on the subject properties.

The developer has also submitted the Final Map and Public Improvement Plans and executed the Subdivision Improvement Agreement for the project. Staff reviewed the Final Map and found it is in substantial conformance with the approved Tentative Map. Additionally, staff reviewed the conditions of approval for the Tentative Map and Tri-Pointe Homes, Inc. has satisfied all of the conditions for a final map. The Public Improvement Plans and Final Map are available for review in the office of the City Engineer.

A Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program were previously adopted by the City Council on May 7, 2013. All previous mitigation measures and monitoring and reporting program adopted for the project are still applicable and no new conditions exist that invalidate the previous environmental determination or will not create a significant environment impact that require further analysis under the California Environmental Quality Act.

Fiscal Impact: None.

Recommendations:

1. Adopt a resolution annexing real properties located within Final Tract Map No. 10221 into Community Facilities District 2005-1.
2. Approve the Subdivision Improvement Agreement between the City of Milpitas and Tri-Pointe Homes, Inc. for public improvements associated with Final Tract Map No. 10221 (Cobblestone residential development).

3. Approve the Final Tract Map No. 10221 (Cobblestone) and Public Improvement Plans 2-1188 (construction documents for the associated public improvements).
- * 7. **Adopt a Resolution Authorizing the City Manager to Award and Execute a Construction Contract with Suarez & Munoz Construction Inc. for Pinewood Park Improvements, Projects No. 3412, No. 5095, No. 5096, and No. 7116 and Authorize the Director of Public Works to Negotiate and Execute Contract Change Orders (Staff Contact: Jeff Moneda 408-586-3345)**

Background: On January 7, 2014, the City Council approved project plans and specifications and authorized advertisement for construction bid proposals for the Pinewood Park Improvements, Projects No. 3412, No. 5095, No. 5096, and No. 7116 (collectively the “Project”). The Project provides for various improvements at Pinewood Park, including two new group picnic areas, complete replacement of the toddler play lot, replacing the tennis court backstop wall, rehabilitation of the existing irrigation and lighting systems, landscaping, and correct deficiencies at the park to comply with current regulations. The Project will also provide an all-weather pavement surfacing around the Pinewood Well structure to allow better access by Public Works staff. Also included is correction of sidewalk cross-slope and drainage issues at Lone Tree Court along with adding a vehicular driveway for maintenance access to Pinewood Well. To capitalize on economy of scale and efficiencies, this Project will also include the replacement of the tennis court backstop wall at Robert E. Browne Park and electrical repairs at Hall Memorial Park. The Engineer’s Estimate for the base bid project work was \$1,825,000.

The Project was advertised and three sealed bid proposals were received on February 24, 2014. Bid proposals ranged from \$1,677,000 to \$1,766,300, and the lowest responsible base bid was submitted by Suarez & Munoz Construction, Inc. in the amount of \$1,677,000. No protest was filed and staff therefore recommends the City Council award the contract to Suarez & Munoz Construction, Inc.

As was previously approved for the successful completion of recent projects with tight completion schedules, staff requests use of the same change order policy. This policy allows for the timely completion of the Pinewood Park Improvements Project, while addressing the need to respond swiftly to construction conditions and approving necessary change orders, in order to limit potential claims or risk to the City. The construction contingency established for this Project is \$200,000, and the change order authority would not exceed this amount and would not require additional appropriation.

California Environmental Quality Act: This project is categorically exempt under Sections 15301 (Existing Facilities), 15302 (Replacement or Reconstruction), and 15303 (New Construction or Conversion of Small Structures) of the California Environmental Quality Act.

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

Recommendations: Adopt a Resolution:

1. Authorizing the City Manager to award and execute a construction contract with Suarez & Munoz Construction, Inc. for the Pinewood Park Improvements, Projects No. 3412, No. 5095, No. 5096, and No.7116, in the amount of \$1,677,000.
 2. Authorizing Director of Public Works to negotiate and execute change order(s) for the Pinewood Park Improvements, Projects No. 3412, No. 5095, No. 5096, and No.7116, in the cumulative contingency amount not to exceed \$200,000 for the Project.
- * 8. **Adopt a Resolution Authorizing the Purchase of Fire Turnouts and Related Fire Equipment Through a Piggyback Contract with Municipal Emergency Services, Inc. in an Amount Not-to-Exceed \$96,000 for the First Year and Subject to Appropriation in Subsequent Years (Staff Contact: Chris Schroeder, 408-586-3161)**

Background: Staff recommends that the City Council adopt a resolution approving a contract with Municipal Emergency Services, Inc. for the purchase of Fire Turnouts and Fire Related Equipment for a period from March 18, 2014 to June 30, 2015 (the “Initial Term”) with four 1-year options to renew, in the amount not to exceed \$96,000 for the first year and subject to appropriation each year thereafter. The 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). 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 Municipal Emergency Services, Inc. contract is based on a national solicitation conducted by South Davis Metro Fire Agency, in the State of Utah, which is administered nationally by Fire Rescue Group Purchasing Organization. By piggybacking the aforementioned Municipal Emergency Services, Inc. contract, Milpitas will receive the benefit of a nationally bid contract with volume pricing based on that contract which exceeds what Milpitas could command as an individual city. The agreement has an annual increase capped at 3% per year. This piggyback procurement was reviewed and approved by the Milpitas Fire Department. Staff reviewed each of the findings required in Milpitas Municipal Code Section I-2-3.07 and determined the proposed contract is in full compliance with the code.

Fiscal Impact: None. Funding is available in the Fire Department’s operating budget.

Recommendation: Adopt a resolution:

1. Approving a contract with Municipal Emergency Services, Inc. for the period of March 4, 2014 to June 30, 2015 (the “Initial Term”) with four 1-year options to renew, in the amount not to exceed \$96,000 for the first year and subject to appropriation each year thereafter.
2. Authorizing the City Manager or designee to exercise annual option(s) with increases not exceeding 3%, subject to the appropriation of funds, and without further action by the City Council.

- * **9. Adopt a Resolution Awarding and Approving a Contract with Alpha Analytical Labs, Inc. for Bacteriological Laboratory Analysis Services and Authorize the Purchasing Agent to Execute Up to Four Annual Renewal Options for a Total Amount Not to Exceed \$111,900 (Staff Contact: Chris Schroeder, 408-586-3161)**

Background: The City’s Purchasing Agent worked with Engineering staff to develop specifications for the Invitation for Bids (IFB) soliciting Bacteriological Laboratory Analysis Services for water quality testing for the City’s water system. On February 14, 2014, the IFB was advertised in the local newspaper, on the City website, and through *Public Purchase*. On February 28, 2014, four bidders responded to IFB #2063.

Here is a summary of bids received:

Bidder	Base Bid Amount (Initial Term)	Total Five (5) Year Term Not-to-Exceed Amount
<i>Alpha Analytical Labs, Inc.</i>	\$22,380	\$111,900
San Mateo County Public Health Laboratory	\$75,700	\$378,500
McC Campbell Analytical, Inc.,	\$59,960	\$299,800
Nachtmann Analytical Laboratory, Inc.	\$30,098	\$150,490

The Purchasing Agent reviewed the apparent lowest responsible bid from Alpha Analytical Labs, Inc. and determined it is in conformance to the IFB and specifications for the project. There was no protest filed and staff therefore recommends the City Council award and approve a contract with Alpha Analytical Labs, Inc. for an initial term from April 1, 2014 to June 30, 2015 in the amount of \$22,380. Additionally, the Purchasing Agent is requesting authority to exercise up to

four annual options in the annual amount of \$22,380, for a total contract amount over five years of \$111,900, subject to appropriation of funds by the City Council.

Fiscal Impact: None. Funding for this purchase is available from the Utilities Engineering operating budget.

Recommendations: Adopt a resolution:

1. Approving and awarding a contract with Alpha Analytical Labs, Inc., a California Corporation for Bacteriological Laboratory Analysis Services with an initial term from April 1, 2014 to June 30, 2015, in an amount not-to-exceed \$22,380.
2. Authorizing the Purchasing Agent to exercise up to four annual options in the annual amount of \$22,380 for a total contract amount over five years of \$111,900, subject to appropriation of funds and without any further City Council approval.

*** 10. Adopt a Resolution Awarding to and Approving a Contract with Eurofins Eaton Analytical, Inc. for Unregulated Contaminant Monitoring Rule 3 (UCMR3) and Other Laboratory Analysis Services and Authorizing the Purchasing Agent to Exercise up to Four Annual Renewal Options for a Total Five Year Amount Not-to-Exceed \$59,500 (Staff Contact: Chris Schroeder, 408-586-3161)**

Background: The City's Purchasing Agent worked with Engineering staff to develop specifications for the Invitation for Bids (IFB) soliciting UCMR3 and other laboratory analysis services for water quality testing for the City's water system. On February 14, 2014, the IFB was advertised in the local newspaper, on the City website and through *Public Purchase*. On February 28, 2014, four bidders responded to IFB #2062.

Here is a summary of bids received:

Bidder	Base Bid Amount (Initial Term)	Total Five (5) Year Term Not-to-Exceed Amount
<i>Eurofins Eaton Analytical</i>	\$11,900	\$59,500
BSK Analytical Laboratories	\$14,440	\$72,200
Alpha Analytical Labs, Inc.	\$25,560	\$127,800
McC Campbell Analytical, Inc.	\$13,760	\$68,800

The Purchasing Agent reviewed the apparent lowest responsive bid from Eurofins Eaton Analytical, Inc., a Delaware corporation, and determined it is in conformance to the IFB and specifications for the project. There was no protest filed and therefore staff recommends the City Council award and approve a contract with Eurofins Eaton Analytical, Inc. for an initial term from April 1, 2014 to June 30, 2015 in the amount of \$11,900. Additionally, the Purchasing Agent is requesting authority to exercise up to four annual options in the annual amount of \$11,900 for a total contract amount over five years of \$59,500, subject to appropriation of funds by the City Council.

Fiscal Impact: None. Funding for this purchase is available from the Utilities Engineering operating budget.

Recommendations: Adopt a resolution:

1. Awarding and approving a contract with Eurofins Eaton Analytical, Inc. for unregulated contaminant Monitoring Rule 3 (UCMR3) and other laboratory analysis services with an initial term from April 1, 2014 to June 30, 2015, in an amount not-to-exceed \$11,900.
2. Authorizing the Purchasing Agent to exercise up to four annual options in the annual amount of \$11,900 for a total contract amount over five years of \$59,500, subject to appropriation of funds and without any further City Council approval.

XIX. AGREEMENT

- * 11. **Approve the Consultant Agreement with Bartle Wells Associates for the Financial Utility Master Plan Update, Projects No. 7111 and No. 6106 in an Amount Not to Exceed \$41,040 (Staff Contact: Steve Machida, 408-586-3355)**

Background: The City's Financial Utility Master Plan (FUMP) was developed in 2003 to address significant financial issues facing the City's water, sewer, and storm utilities. The work included three key elements: long-term water and sewer rate strategy, connection fee review, and discussion on developing a revenue stream for storm drain system operations and capital requirements. The FUMP is based on several assumptions, including wholesale rate projections, water consumption estimates, growth, and infrastructure replacement. The assumptions for the near-term years are more reliable than assumptions for later years.

The following information has substantial impacts on the City's utilities:

- The San Francisco Public Utility Commission's multi-year \$4.6 billion Seismic Reliability Program is near completion.
- The Santa Clara Valley Water District is planning several capital improvements.
- The South Bay Water Recycling Program is striving to achieve cost-recovery through increased revenues and decreased expenses.
- Water consumption and growth estimates have been affected by the economic downturn and planned higher densities in the Transit Area Specific Plan.
- The City of San Jose is initiating a \$2.2 billion rehabilitation program for the regional wastewater treatment plant.
- The City has increased funding for infrastructure replacement based upon the Water System Seismic Improvement Program and increasing number of major utility line failures.
- The recently adopted Storm Drain Master Plan Update identified both substantial aging infrastructure and increasing operational costs, due to regulatory requirements, and recommended the City develop a dedicated revenue stream rather than rely on availability of the General Fund.

Based on the new conditions and information, it is now essential to update the City's Financial Utility Master Plan. Staff recommends expediting the connection fee review due to the high level of development activity. Additional tasks to complete the water, sewer, and storm drain rate strategy will be presented to Council at a later date. Through the City's consultant selection process, Bartle Wells Associates was selected to provide the financial consulting services to update the plan. Staff negotiated a scope and fee for these services not to exceed \$41,040.

California Environmental Quality Act: The Agreement is exempt from CEQA as there will be no physical change to the environment.

Fiscal Impact: None. Sufficient funding exists for connection fee review in the project budget.

Recommendation: Approve a consultant agreement with Bartle Wells Associates for the Financial Utility Master Plan Update, Projects No. 7111 and No. 6106, in an amount not to exceed \$41,040 and for a term ending December 31, 2014.

XX. ADJOURNMENT