



**JOINT MEETING OF THE MILPITAS CITY COUNCIL  
AND SUCCESSOR AGENCY TO THE  
FORMER REDEVELOPMENT AGENCY**



**AGENDA**

**TUESDAY, OCTOBER 7, 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 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 Negotiators: Tom Williams, Carmen Valdez  
Employee Groups: International Association of Fire Fighters (IAFF) Local 1699, Milpitas Employees Association (MEA), Mid-management and Confidential Unit (Mid-Con), and Professional and Technical Group (ProTech)  
Under Negotiation: Wages, Hours, Benefits, and Working Conditions
  - 2. CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION**  
Pursuant to California Government Code Section 54956.9(c)  
City as Plaintiff
  - 3. CONFERENCE WITH REAL PROPERTY NEGOTIATOR**  
Pursuant to California Government Code Section 54956.8  
Property: McCandless Property APN 086-41-016 and APN 086-41-017  
Negotiating with: Milpitas Unified School District  
Under Negotiation: Purchase & Sale Agreement
- III. CLOSED SESSION ANNOUNCEMENTS:** Report on action taken in Closed Session, if required pursuant to Government Code §54957.1, including the vote or abstention of each member present
- IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- V. INVOCATION (Councilmember Montano)**
- VI. APPROVAL OF COUNCIL MEETING MINUTES – September 16, 2014**
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDARS – October 2014**
- VIII. PRESENTATIONS**
  - Proclaim *National Hispanic Heritage Month* from September 15 – October 15, 2014
  - Approve Memorandum of Understanding to Continue the Sister City Relationship with Dagupan, Philippines and Conduct Signing Ceremony (*reception following*)
- 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 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.

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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. UNFINISHED BUSINESS**

- \* 1. **Receive the Monthly Update of the Odor Control Report (Staff Contact: Jeff Moneda, 408-586-3345)**
- 2. **Receive Update from the City Manager of Strategic Planning Process (Staff Contact: Tom Williams, 408-586-3050)**
- 3. **Receive Update from the City Manager on the Park and School Designated for the McCandless Property in the Transit Area Specific Plan (Staff Contact: Tom Williams, 408-586-3050)**
- \* 4. **Consider Request from St. Elizabeth Catholic Church to Waive Additional Fees for Parish Festival Held on August 24, 2014 (Staff Contact: Tom Williams, 408-586-3050)**

**XV. REPORTS OF MAYOR AND COMMISSION**

- \* 5. **Consider Mayor's Recommendation for Re-appointments and Appointments to Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)**

**Sister Cities Commission**

- \* 6. **Approve Memorandum of Understanding to Continue the Sister City Relationship with Tsukuba, Japan (Staff Contact: Leslie Stobbe, 408-586-3352)**

**XVI. NEW BUSINESS**

- \* 7. **Consider a Request from the Milpitas Rotary Club to Waive Specified Fees for its Annual Pumpkin Patch to be held October 18-30, 2014 at 1331 E. Calaveras Blvd Parking Lot (Staff Contact: Mary Lavelle, 408-586-3001)**
- \* 8. **Approve Exemption of the Junior Giants Police Activities League Program from the Youth Sport User Fee (Staff Contact: Jaime Chew, 408-586-3234)**
- \* 9. **Approve Out of State Travel for Training on Lincoln Administer Software in Lincoln, Nebraska (Staff Contact: Charlotte Pang, 408-586-2432)**

**XVII. RESOLUTION**

- \* 10. **Adopt a Resolution Granting Initial Acceptance of, and Reducing the Performance Bond for Street Resurfacing Project 2013, Projects No. 4255, No. 4261, No. 4268 and No. 3403 and Granting Authorization to the City Engineer to File the Notice of Final Acceptance after the One-Year Warranty Period (Staff Contact: Steve Chan, 408-586-3324)**

**XVIII. AGREEMENTS**

- \* 11. **Approve Contract Amendment for Legal Services with Burke Williams & Sorenson, LLP for Mobile Home Case (Staff Contact: Michael Ogaz, 408-586-3040)**
- \* 12. **Approve Amendment No. 1 to the Consulting Services Agreement with Hatch Mott MacDonald, LLC to Increase Compensation in the Additional Amount of \$143,110, to Continue Support Services for the Land Development Engineering Division of the Public Works Department (Staff Contact: Jeff Moneda, 408-586-3345)**
- \* 13. **Approve Amendment No. 1 to the Consultant Agreement with HydroScience Engineers, Inc. for On-Call Support Services in an Amount not to Exceed \$30,000 and Approve a Budget Appropriation (Staff Contact: Steven Machida, 408-586-3355)**
- \* 14. **Approve Consultant Agreement with RMC Water and Environment, Inc. for Utility Engineering Support for a Not-To-Exceed Amount of \$27,734 and Approve a Budget Appropriation (Staff Contact: Steve Machida, 408-586-3355)**
- \* 15. **Approve Consultant Agreement with SCS Engineers for On-Call Environmental Engineering and Testing Services for Various Capital Improvement Projects (Staff Contact: Steve Erickson, 408-586-3301)**

**XIX. DEMAND**

- \* 16. **Receive Report of Emergency Response to Water Supply Reduction, Including Installation of Recycled Water Fill Stations For Construction, Approve a Budget Appropriation from the Water Fund and Authorize Staff to Pay Invoices Totaling \$47,275.71 (Staff Contact: Jeff Moneda, 408-586-3345)**

**XX. JOINT MEETING OF THE MILPITAS CITY COUNCIL AND SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY**

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

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

**\*SA3. Adopt a Joint Resolution of the City of Milpitas and the Successor Agency of the Redevelopment Agency of the City of Milpitas Approving a Bond Expenditure Agreement (Staff Contact: Emma Karlen, 408-586-3145)**

**SA4. Adjourn Joint Meeting**

**XXI. ADJOURNMENT**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING  
TUESDAY, OCTOBER 21, 2014**

**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) / 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**

Seeking Applications for:

Bicycle Pedestrian Advisory Commission

Recycling and Source Reduction Advisory Commission (Business and MUSD members)

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 City Council Chambers for all meetings in that facility.*

## AGENDA REPORTS

### XIV. UNFINISHED BUSINESS

- \* 1. **Receive the Monthly Update of the Odor Control Report (Staff Contact: Jeff Moneda, 408-586-3345)**

**Background:** From August 11 through September 15, 2014, Bay Area Air Quality Management District (BAAQMD) received eight odor complaints originating in Milpitas. Three complaints identified a garbage odor, one complaint identified a sewage odor, and four complaints did not identify an odor source. As of the last Council update, the City's odor reporting website has received forty reported complaints.

**Recommendation:** Receive the odor report update.

2. **Receive Update of Strategic Planning Process from City Manager (Staff Contact: Tom Williams, 408-586-3050)**

**Background:** Last fall, the City embarked on a comprehensive strategic planning process with the primary objectives of planning for sustainable fiscal health; maintaining a high quality of life; and governmental efficiency. Given the state of the economy, changes in state law significantly affecting the City, and commencement with the build out of the Transit Area and Mid-Town Specific Plans, the City has been progressing in a new direction.

The time has never been more appropriate to develop a plan whereby the City updates and identifies its vision, mission, and values and establishes agreed upon comprehensive goals and metrics by which the City's work programs, progress and performance are measured. To date, the strategic plan process has involved both internal city functions and employees, residents at large, community groups, neighborhood associations, businesses, Milpitas Unified School District, other governmental partners and the City Council.

The City's consultant and employee engagement team have analyzed all of the data and input received over the past months. The community engagement results and development of organizational values is provided (in the Council agenda packet). These results as well as a comprehensive update of the plan and next steps will be presented for further discussion at the Council meeting.

**Recommendation:** Receive the City Manager's update on the strategic planning process for the City, and provide comments.

3. **Receive Update from the City Manager on the Park and School Designated for the McCandless Property in the Transit Area Specific Plan (Staff Contact: Tom Williams, 408-586-3050)**

**Background:** As part of the comprehensive planning for transit oriented development around the future BART station (Transit Area Specific Plan), the City Council identified the need and had the vision to plan for a new school. Council took the bold step to acquire a 10.89 acre site on McCandless Avenue to ensure a future park and school would be built. Unfortunately, soon after the City's acquisition of the property in 2010, the State of California and Santa Clara County moved to dissolve local redevelopment agencies and divert millions of dollars, both in the future and retroactively, away from the City and other local agencies and into their coffers.

Although the City had already purchased the McCandless property prior to the dissolution of the Milpitas Redevelopment Agency, Santa Clara County and the State of California sued the City to retroactively require that the City pay the County and State the money used to acquire the McCandless property. As a result, the City was in essence forced to pay twice for the

McCandless property. In no way is the City profiting from the sale of the McCandless property to the School District.

After several years of delay due to the dissolution process of the City's Redevelopment Agency (RDA), and unnecessary delays caused by the County Board of Supervisors' appointed staff to the Milpitas Oversight Board, the City of Milpitas and Milpitas Unified School District now have the opportunity to turn a long-held community dream into reality. Together, the City and School District are working in earnest to construct a park and elementary school on the McCandless property. The City of Milpitas and the Milpitas Unified School District (MUSD) have reached a tentative agreement for a new elementary school and park site on McCandless Avenue in the emerging Transit Area. The acquisition of 6.7 acres of the total 10.89 acres by the School District now ensures that a new elementary school will be constructed along with a new City of Milpitas park. The agreement includes provisions for shared facilities, shared parking and circulation on the site. The report summarizes and provides citizens with accurate information and to assure that the City and School District are diligently working together to ensure the needs of the community are achieved.

The School District has determined a final concept plan locating the elementary school on the southern portion of the McCandless property. MUSD staff and consultants have worked with City staff including Planning, Fire, Engineering and Traffic on the final concept design for the school. The new park will be designed around the needs of the elementary school and will include an array of passive and active recreational uses that can be shared with the school. The school will also be designed with active recreational uses that will be shared with the City.

It is anticipated that the Milpitas Unified School District Board will approve a purchase and sale agreement for the 6.7 acres from the City on October 15, 2014. City staff will return to the City Council on October 21, 2014 for consideration and approval of the purchase and sale agreement. Upon these approvals, escrow will open and MUSD will continue to move forward with the permit and approval process for the new school as required by the State of California.

**Fiscal Impact:** A cost to the City of Milpitas of approximately \$20 million, due to the retroactive diversion of local revenue to the State of California as a result of the Agency's dissolution. In addition, the City of Milpitas was offered \$5 million/acre by private interest making the market value approximately \$14 million more than the land price agreed with the School District.

**Recommendation:** Receive the City Manager's oral report at the Council meeting.

\* 4. **Consider Request from St. Elizabeth Catholic Church to Waive Additional Fees for Parish Festival Held on August 24, 2014 (Staff Contact: Tom Williams, 408-586-3050)**

**Background:** The City Council approved a fee waiver for the \$359.77 Fire Permit Fee and a \$250 Planning initial deposit totaling \$609.77 at the August 19, 2014 Council meeting. The applicant for the Festival received an invoice from the City in the amount of \$500.89 for additional planning staff services required in processing the Special Event Permit. The request is within the \$1,500 maximum fee waiver allowed by City policy per organization per year.

**Additional City Fees charged to the church for Festival requested to be waived:**  
Planning Department staff fees for the review of the Special Event permit - \$500.89

**Fiscal Impact:** \$20,000 was approved and included in the FY 2014-15 City budget for City Council's Unallocated Community Promotions. If the current additional fee waiver amount is approved along with another on this agenda, then \$15,790.25 would be the remaining balance.

**Recommendation:** Consider the request from St. Elizabeth Church and move to approve an additional amount waived of \$500.89 for the Parish Festival held on Sunday, August 24, 2014.

## XV. REPORTS OF MAYOR AND COMMISSION

- \* 5. **Consider Mayor's Recommendations for Re-appointments and Appointments to Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)**

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

**Arts Commission:**

Re-appoint Becky Strauss as a regular member to a term that will expire in October 2017.

**Bicycle Pedestrian Advisory Commission:**

Re-appoint Chris Lee as a regular member to a term that will expire in August 2017.

**Community Advisory Commission:**

Appoint Jacqueline Holland (currently Alternate No. 1) as a regular voting member to a term that will expire in January 2018.

Appoint Dau Do (currently Alternate No. 2) to Alternate No. 1 to a term that will expire in January 2015.

Appoint Ashish Kathapurkar (currently Alternate No. 3) to Alternate No. 2 to a term that will expire in January 2015.

Appoint Ashok Sharma (currently Alternate No. 4) to Alternate No. 3 to a term that will expire in January 2015.

Newly appoint Mike Bilbao as Alternate No. 4 to a term that will expire in January 2016.

**Emergency Preparedness Commission:**

Newly appoint Roger Silveira as the Milpitas Unified School District representative to a term that will expire in June 2017.

**Recycling and Source Reduction Advisory Commission:**

Re-appoint Chris Salian as a regular member to a term that will expire in October 2017.

**Sister Cities Commission:**

Re-appoint Peter Chang as Alternate No. 1 to a term that will expire in September 2016.

**Youth Advisory Commission:**

Appoint Crystal Tran (former Alternate No. 4) as a voting member to a term that will expire in September 2015.

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

### **Sister Cities Commission**

- \* 6. **Approve Memorandum of Understanding to Continue the Sister City Relationship with Tsukuba, Japan (Staff Contact: Leslie Stobbe, 408-586-3352)**

**Background:** Tsukuba City, Japan is Milpitas' longest-standing sister city. In May 1996, the City of Milpitas formed a relationship with the Town of Kukizaki which was incorporated into Tsukuba City in 2000. The Memorandum of Understanding (MOU) between the two cities was updated in 2009 for a five year duration. Since that time, both cities maintained contact through exchanges that did not include visits but still brought people together over common interests. To celebrate the 15<sup>th</sup> anniversary of this relationship, the Sister Cities Commission facilitated a photo exchange of people and places in 2011 that resulted in an exhibition in the Milpitas Library. A corresponding exhibition was held in Tsukuba's civic center. It has also supported an annual "Electronics Pen Pal" project between Milpitas and Tsukuba high school students that connects young people with questions about culture, school and home life.

The Sister Cities Commission unanimously approved recommending to the City Council to extend the MOU for five years through October 2019 at its August 28, 2014 meeting. A letter from Mayor Kenichi Ichihara and a copy of the unsigned MOU is included in the agenda packet.

**Recommendation:** Approve the updated Memorandum of Understanding to continue the Sister City relationship with Tsukuba City, Japan for five years beginning October 7, 2014.

**XVI. NEW BUSINESS**

- \* **7. Consider a Request from the Milpitas Rotary Club to Waive Specified Fees for its Annual Pumpkin Patch to be held October 18-30, 2014 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 September 23, 2014. The Rotary Club applied for a Special Event Permit through 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 specific City fees charged for the Pumpkin Patch.

City Fees for Pumpkin Patch are:

Special Event permit application – Planning Dept.	\$375.44
Fire Marshal’s inspection permit + fees:	\$523.77
Building Dept. Electrical Permit	\$199.88

**Fiscal Impact:** \$20,000 was approved and included in the FY 2014-15 City budget for City Council’s Unallocated Community Promotions. If the current fee waiver of \$1,099.09 is granted, then \$16,291.14 would be the remaining balance for the fiscal year.

**Recommendation:** Consider the request from Milpitas Rotary Club and move to approve the fee waiver for Planning (\$375.44), Fire (\$523.77), and Building (\$199.88) fees totaling \$1,099.09 related to the Pumpkin Patch scheduled October 18-30, 2014.

- \* **8. Approve Exemption of the Junior Giants Police Activities League Program from the Youth Sport User Fee (Staff Contact: Jaime Chew, 408-586-3234)**

**Background:** The Milpitas Police Activities League (PAL) Junior Giants Program, in cooperation with and supported by the Giants Community Fund, provides a free summer baseball program to youth ages 5 – 12 at Dixon Landing Park. All children who sign up for the program are accepted, regardless of skill level. Currently, there are 285 participants in the Junior Giants with approximately 75% who are Milpitas residents.

Junior Giants is free to all participants and is designed to reach at-risk youth, teaching the importance of character, healthy living habits, education, and taking a stand against bullying. The Giants Community Fund provides caps, shirts and gloves to each player, coach and team parent. The organization also provides all safety equipment, bats, balls, tees, pitching machines, coaching clinics, coaching reference materials and training DVDs. In addition, the Junior Giants provides educational materials to promote weekly life lessons in health, confidence, the importance of reading and education, teamwork, leadership, striking out bullying and integrity.

Junior Giants has been active with Milpitas PAL for 16 years. All program commissioners, coaches and team parents are volunteers. The Giants Community Fund sponsors 90 Junior Giants leagues serving 200 cities throughout the west coast. By contract, all Junior Giants leagues are prohibited from charging any registration or participation fees. Any breach of contract will result in termination of the league and loss of this valuable outreach program for the City of Milpitas.

According to the Field Allocation Process & Priorities, approved by City Council in May 2012 and amended in January 2014, all affiliated youth sports organizations are subject to the Youth Sport User Fee in lieu of field rental fees. The current fee is \$10 per player, per season. The purpose of this fee is to support the maintenance of the sports fields.

The Milpitas PAL Junior Giants Program is requesting an exemption from the Youth Sport User Fee due to the fact that Junior Giants cannot charge registration/participation fees from the participants to assist with paying the Youth Sport User Fee.

**Fiscal Impact:** Loss of \$2,850 in revenue.

**Recommendation:** Approve the exemption of the Junior Giants Police Activities League Program from the Youth Sport User Fee.

- \* **9. Approve Out of State Travel for Training on Lincoln Administer Software in Lincoln, Nebraska (Staff Contact: Charlotte Pang, 408-586-2432)**

**Background:** Through the Council-approved Community Oriented Police Services (COPS) 2014 grant, the Milpitas Police Department was authorized to purchase investigative software and surveillance equipment to better enable officers to conduct surveillance and covert investigations more effectively and efficiently. The only available training for the use of the equipment is provided by the vendor at the company's location in Lincoln, Nebraska. There are no other product training courses available. The training course is a two-day technical and administrative course scheduled for October 14-15, 2014.

**Fiscal Impact:** None. All costs are covered by the COPS 2014 grant previously approved on April 15, 2014.

**Recommendation:** Authorize out-of-state travel for one Milpitas Police Department employee to attend Lincoln Administer software training in Lincoln, Nebraska on October 14-15, 2014.

## **XVII. RESOLUTION**

- \* **10. Adopt a Resolution Granting Initial Acceptance of, and Reducing the Performance Bond for Street Resurfacing Project 2013, Projects No. 4255, No. 4261, No. 4268 and No. 3403 and Granting Authorization to the City Engineer to File the Notice of Final Acceptance after the One-Year Warranty Period (Staff Contact: Steve Chan, 408-586-3324)**

**Background:** The City Council awarded the public works contract for the Street Resurfacing Project 2013 to Bay Cities Paving and Grading, Inc. on May 1, 2012. The project provides for the repair of base failures on the street, the installation of a 2-inch rubberized asphalt overlay, miscellaneous concrete work and roadway marking improvements. This project also includes the pavement improvement of the Fire Station No. 1 parking lot. The project was successfully completed on time and within budget.

Staff recommends that the City Council adopt a resolution granting initial acceptance of the project and authorize the reduction of the contractor's faithful performance bond to \$174,056, which is 10% of the final contract value. Additionally, staff recommends the City Council authorize the City Engineer to file the Notice of Final Acceptance after the one-year warranty period and to release and discharge the performance bond without further City Council action, provided all warranty work is completed to the satisfaction of the Engineer.

**Fiscal Impact:** None.

**Recommendation:** Adopt a resolution granting initial acceptance of Street Resurfacing Project 2013 Projects No. 4255, No. 4261, No. 4268 and No. 3403, subject to a one-year warranty period and reduction of the faithful performance bond to \$174,056; and granting authorization to the

City Engineer to file the notice of final acceptance after the one-year warranty period and to release and discharge the performance bond without further City Council action.

## **XVIII. AGREEMENTS**

- \* **11. Approve Contract Amendment for Legal Services with Burke Williams & Sorenson, LLP for Mobile Home Case (Staff Contact: Michael Ogaz, 408-586-3040)**

**Background:** In June of 2012, Friendly Village Mobile Home Park filed a lawsuit in federal court and a companion lawsuit in state court claiming the City's rent control ordinance constituted a taking of property without compensation since the rent control ordinance restricted the landlord's right to demand market rate rents in the park. The matter has been litigated since that time with the federal court ruling in the City's favor a month ago on all facets of the lawsuit. The mobile home park has filed an appeal to the Ninth Circuit Court of Appeal.

The law firm of Burke Williams & Sorensen, LLP handled the suit for the City and has done an excellent job. City Attorney's office advises that the firm also handle the appeal on behalf of the City. In order to do the work, an amendment to the firm's contract in the amount of \$30,000 will be necessary. In the City Attorney's experience, this is a reasonable amount to handle the appeal.

**Fiscal Impact:** None. The \$30,000 contract amendment amount is within the Department budget for outside counsel.

**Recommendation:** Approve assignment of the appeal in the case of *Milpitas Mobile Home Estates v. City of Milpitas* to the law firm of Burke Williams & Sorensen LLP and approve a contract amendment for services with that firm adding additional \$30,000 to handle the appeal.

- \* **12. Approve Amendment No. 1 to the Consulting Services Agreement with Hatch Mott MacDonald, LLC to Increase Compensation in the Additional Amount of \$143,110, to Continue Support Services for the Land Development Engineering Division of the Public Works Department (Staff Contact: Jeff Moneda, 408-586-3345)**

**Background:** On July 14, 2014, the City entered into a consulting services agreement with Hatch Mott MacDonald, LLC in the amount of \$19,850 to provide support services for the Land Development Engineering division of the Public Works Department for a period expiring on June 30, 2015. Staff now recommends that Hatch Mott MacDonald continue its support through the end of the current fiscal year at the current level of effort (approximately three days per week). Amendment No. 1 with Hatch Mott MacDonald is proposed for these continued services. Staff negotiated a fee for these services not to exceed \$143,110 at the same hourly rates. Approval of this agreement amendment brings the total agreement amount to \$162,960.

**Fiscal Impact:** None. Salary savings from the vacant Assistant Engineer position will fund a majority of these staff augmentation services. The remaining consultant expenses are reimbursable through the private development projects. Sufficient funds are available in the budget for these services.

**Recommendation:** Approve Amendment No. 1 to the agreement with Hatch Mott MacDonald in the additional amount of \$143,110 for Land Development Engineering services.

- \* **13. Approve Amendment No. 1 to the Consultant Agreement with HydroScience Engineers, Inc. for On-Call Support Services in an Amount not to Exceed \$30,000 and Approve a Budget Appropriation (Staff Contact: Steven Machida, 408-586-3355)**

**Background:** On January 7, 2014, Council approved an agreement with HydroScience Engineers, Inc. (HEI) to provide on-call support services related to the City's potable and recycled water systems in the amount of \$40,500 and for a term expiring on December 30, 2014. The recycled water technical support services include cross connection testing between the

City's potable water and recycle water systems, plan preparations and completion of compliance checklists. There are approximately 186 businesses currently receiving recycle water for on-site landscaping and cooling tower. When these businesses were originally connected to the recycle water system, there were no cross-connections. However over time, on-site plumbing changes occur where the two water systems could be inadvertently connected. To ensure the safety of the City's water systems, this work is needed to assess these situations and, if necessary, make the corrections to separate the potable and recycle water systems as required by the California Department of Public Health (CDPH) and the South Bay Water Recycling (SBWR).

The original fee of \$40,500 was to perform the cross-connection inspections on the 186 businesses. To minimize the impact to businesses during their operational hours, the inspections were deliberately scheduled to be conducted either late at night or prior to opening. Unfortunately, coordination between land owners and tenants was not seamless such that some of the scheduled inspections could not be performed. Rescheduling of the inspections and, in some cases, multiple re-inspections were required to fully assess and determine that there were no cross connections between the potable and recycled water systems. Because HEI spent additional time and effort to complete the required inspections, its budget was exhausted at a faster rate.

Approximately five of the 186 business cross connection inspections remain. It is expected to cost an additional \$30,000 to complete the balance of the work. Staff is also recommending an extension of the agreement to July 31, 2015 to complete the work.

**California Environmental Quality Act (CEQA):** The Amendment is not a Project under CEQA as there will be no physical change to the environment by the execution of the amendment.

**Fiscal Impact:** None. A budget appropriation of \$30,000 is required which will be reimbursed from South Bay Water Recycling for the work.

**Recommendations:**

1. Approve Amendment No. 1 to the agreement with HydroScience Engineers, Inc. in an amount not to exceed 30,000 and extend the term from December 30, 2014 to July 31, 2015.
2. Approve a budget appropriation of \$30,000 to the Engineering Operating Budget, to be reimbursed by South Bay Water Recycling.

**\* 14. Approve Consultant Agreement with RMC Water and Environment, Inc. for Utility Engineering Support for a Not-To-Exceed Amount of \$27,734 and Approve a Budget Appropriation (Staff Contact: Steve Machida, 408-586-3355)**

**Background:** Due to heavy workload from BART utility relocations, increased activity with new development, and drought activities, the Utility Engineering Section requires additional on-call support from RMC Water and Environment, Inc (RMC) for various tasks. The immediate need is to prepare a Water Supply Assessment for a large proposed development as required by State law. RMC staff prepared the City's Water and Sewer Master Plans and is familiar with the City's utility systems. Staff negotiated a scope of work and fees for the proposed work.

**California Environmental Quality Act (CEQA):** The action is not considered a project under CEQA as there will be no direct, or reasonably foreseeable indirect physical change in the environment.

**Fiscal Impact:** This work was not included in the FY 2014-15 Engineering Operating Budget. A budget appropriation of \$27,734 from the Water Fund and Sewer Funds is necessary. Some tasks, such as the Water Supply Assessments, are reimbursable by the developers.

**Recommendations:**

1. Approve a consultant agreement with RMC Water and Environment, Inc. for Utility Engineering support for a not-to-exceed amount of \$27,734 for a term from October 7, 2014 to June 30, 2015.
  2. Approve a budget appropriation of \$27,734 from the Water and Sewer Funds.
- \* 15. **Approve Consultant Agreement with SCS Engineers for On-Call Environmental Engineering and Testing Services for Various Capital Improvement Projects (Staff Contact: Steve Erickson, 408-586-3301)**

**Background:** The City of Milpitas issued a Request for Proposal (RFP) for on-call environmental engineering and geotechnical testing services to support the completion of the City's Capital Improvement Program (CIP). Several consultants submitted proposals and were interviewed and ranked in accordance with the City's policy on consultant selection. Staff recommends contracting with SCS Engineers for the required services. This would be a three year contract and services would be provided on a time and materials basis, for a total not to exceed amount of \$250,000. The respective CIP project budgets and cost plans are sufficient to fund the services to be provided.

**Fiscal Impact:** None. Sufficient funds are available in the project budgets for these services.

**Recommendation:** Approve a consultant agreement with SCS Engineers in the amount of \$250,000 and for a term from October 7, 2014 to October 31, 2017, for on-call environmental engineering and testing services for various capital improvement projects.

## **XIX. DEMAND**

- \* 16. **Receive Report of Emergency Response to Water Supply Reduction, Including Installation of Recycled Water Fill Stations For Construction, Approve a Budget Appropriation from the Water Fund and Authorize Staff to Pay Invoices Totaling \$47,275.71 (Staff Contact: Jeff Moneda, 408-586-3345)**

**Background:** Pursuant to State Public Contracting Law and Council Resolution No. 7779, the Director of Public Works must report all emergency public works repairs to the City Council. On July 14, 2014, the State Water Resources Control Board adopted a resolution requiring water retailers to implement their Water Shortage Contingency Plan. On August 19, 2014, the Milpitas City Council adopted an Urgency Ordinance and implemented Stage 2 of the Milpitas Water Shortage Contingency Plan. Ordinance No. 240.2 was effective upon adoption and included several provisions including prohibition of potable water for construction activities such as dust control, compaction and pad treatment.

The City is experiencing an increase in construction activity and issued approximately 35 construction water meters for use at construction sites. On August 20, staff required construction meters, used for dust control and compaction, to be removed from fire hydrants and returned to the City. An alternate water supply, suitable for construction activities, was necessary to avoid delays in construction and adhere to the ordinance. Therefore, staff evaluated the use of recycled water, Hidden Lakes detention pond, and Pinewood Well as alternative water supplies. Staff determined that there was not enough time to install the infrastructure required at Hidden Lakes and Pinewood Well, but continued to explore possible pump repair for Hidden Lakes. Staff determined that installation of five recycled water fill stations was feasible by the August 20 deadline, and proceeded with construction. In parallel, staff developed a recycled water permit system to allow recycled water use for construction activities. This emergency work included evaluation of the three alternative water supplies by Water Solutions Inc., installation of five recycled water fill stations by Preston Pipelines, conversion of 20 construction meters for recycled water use by MVP, and pump inspection by Xylem Water Solutions. The total cost of this work is \$47,275.71.

**California Environmental Quality Act (CEQA):** On April 25, 2014, the Governor suspended the California Environmental Quality Act's application to the State Water Board's adoption of emergency regulations pursuant to Water Code Section 1058.5 to prevent water waste and to promote water recycling or water conservation. Also, this project is categorically exempt from further CEQA review under Section 15303(e) of the CEQA Guidelines in that fill stations are located within urbanized areas providing easy access to encourage the use of recycled water.

**Fiscal Impact:** A budget appropriation in the amount of \$47,275.71 is needed from the Water Fund to the Utility Maintenance Operating Budget.

**Recommendations:**

1. Receive report of emergency response to water supply reduction, including installation of recycled water fill stations for construction,
2. Approve a budget appropriation from the Water Fund and authorize staff to pay invoices totaling \$47,275.71.

**XX. JOINT MEETING**

- \*SA3. Adopt a Joint Resolution of the City of Milpitas and the Successor Agency of the Redevelopment Agency of the City of Milpitas Approving a Bond Expenditure Agreement (Staff Contact: Emma Karlen, 408-586-3145)**

**Background:** The Successor Agency received a Finding of Completion from the State Department of Finance on June 27, 2014. The Finding of Completion specifically states that the Successor Agency may utilize proceeds derived from bonds issued prior to January 1, 2011 in a manner consistent with the original bond covenants per state Health & Safety Code section 34191.4(c).

The Successor Agency has unspent bond proceeds of \$3,989,878 from Redevelopment Agency Tax Allocation Bonds which were intended to be used for the reconstruction of Main Street. The project was specifically identified in the bond issuance documents and the City's Five Year Capital Improvement Plan. Main Street is one of the "backbone" streets located in the Redevelopment Midtown Area. The project was on hold pending resolution of the City entities' lawsuit with the County of Santa Clara and the State of California. With the receipt of the Finding of Completion, the Successor Agency is able to utilize the bond proceeds to fund the Main Street reconstruction project.

Staff requested that the Successor Agency enter into a Bond Expenditure agreement with the City of Milpitas in order for the City to undertake the project. Bond proceeds will be transferred to the City and will be expended in compliance with the bond covenants, Redevelopment Law and other applicable laws for purposes of implementing the Main Street Pavement Reconstruction Project identified in the 2014-19 Five Year Capital Improvement Program. The Bond Expenditure Agreement was approved by the Oversight Board on September 18, 2014, and was included as part of the Recognized Obligations Payment Schedule for the period January through June 30, 2015 and was submitted to the State Department of Finance for its final review.

**Fiscal Impact:** By executing the Bond Expenditure Agreement, \$3,989,878 in bond proceeds will be transferred to the City of Milpitas to implement the Main Street Reconstruction Capital Improvement Project.

**Recommendations:** Approve a joint resolution of the City of Milpitas and the Successor Agency of the Redevelopment Agency of the City of Milpitas approving a Bond Expenditure Agreement.

**XXI. ADJOURNMENT**