



**JOINT MEETING OF THE
MILPITAS CITY COUNCIL AND
HOUSING AUTHORITY COMMISSION
MEETING AGENDA**

TUESDAY, SEPTEMBER 6, 2016

455 EAST CALAVERAS BOULEVARD, MILPITAS, CA

5:00 PM CALL TO ORDER / TOUR

6:30 P.M. (CLOSED SESSION)

7:00 P.M. (PUBLIC BUSINESS)

SUMMARY OF CONTENTS

- I. CALL TO ORDER/ROLL CALL OF THE CITY COUNCIL and HOUSING AUTHORITY**
- II. Convene to Newby Island Landfill at 1601 Dixon Landing Road for Tour of the Site**
- III. ADJOURN TO CLOSED SESSION (6:30 p.m.)**
 - (a) CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION**
Pursuant to California Government Code section 54956.9(d)(1)
Montei v. Lee, et al., Case No. CV 16-2712 LHK, U.S. District Court, Northern District of CA
 - (b) CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION**
Pursuant to Government Code Section 54956.9(d)(2) – City as Defendant
 - (c) PUBLIC EMPLOYEE PERFORMANCE EVALUATION**
Pursuant to California Government Code Section 54957. Position: City Manager
 - (d) CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION**
Pursuant to California Government Code Section 54956.9(d)(1)
American Arbitration Association Case No. 01-16-00004753
- IV. 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
- V. PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- VI. INVOCATION (Councilmember Barbadillo)**
- VII. APPROVAL OF COUNCIL MEETING MINUTES July 18 and August 16 , 2016**
- VIII. SCHEDULE OF MEETINGS – COUNCIL CALENDARS September 2016**
- IX. PRESENTATIONS**
 - Proclaim October as Emergency Preparedness Month
 - Commend Ms. Liz Ainsworth, Outgoing President of the Milpitas Chamber of Commerce

X. 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.

XI. ANNOUNCEMENTS

XII. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

XIII. APPROVAL OF AGENDA

IX. 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.

XV. PUBLIC HEARINGS

- 1. Conduct a Public Hearing and Adopt a Resolution Making Certain Determinations and Authorizing Submittal of the Levy of Special Taxes to the Qualified Electors of Certain Territory (Lennar Homes) Proposed to be Annexed to Community Facilities District No. 2008-1 for Public Services; Conduct a Special Election and Adopt a Resolution Declaring the Results of the Special Election and Adding Annexation No. 8 to the Community Facilities District No. 2008-1 for Public Services (Staff Contact: Judy Chu, 408-586-3325)**
- 2. Conduct a Public Hearing and Adopt a Resolution Making Certain Determinations and Authorizing Submittal of the Levy of Special Taxes to the Qualified Electors of Certain Territory (The Edge) Proposed to be Annexed to Community Facilities District No. 2008-1 for Public Services; Conduct a Special Election and Adopt a Resolution Declaring the Results of the Special Election and Adding Annexation No. 9 to the Community Facilities District No. 2008-1 for Public Services (Staff Contact: Judy Chu, 408-586-3325)**

XVI. UNFINISHED BUSINESS

- *3. Receive Update of the Odor Control Report (Staff Contact: Steven Machida, 408-586-3355)**
- 4. Discuss a Proposal to Fund the Increase of Milpitas Library Hours (Staff Contact: Renee Lorentzen, 408-586-3409)**

XVII. REPORTS OF MAYOR AND COMMISSION

- *5. Consider Mayor's Recommendations for Appointments to City of Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)**
- 6. Approve the Sister Cities Commission FY 2016-17 Work Plan (Staff Contact: Leslie Stobbe, 408-586-3352)**

XVIII. NEW BUSINESS

7. **Consider Request of Councilmember Indihar Giordano to Form a Citizens Task Force on Water Rates (Contacts: Councilmember Indihar Giordano, 408-586-3032 and Tom Williams, 408-586-3051)**
8. **Discuss the Access to the New Milpitas Sports Center Artificial Turf Field (Staff Contact: Vice Mayor Montano, 408-586-3023)**
- * 9. **Receive a Report on Weeds Abatement Throughout the City (Staff Contacts: Nina Hawk, 408-586-2603 and Bradley Misner, 408-586-3273)**
10. **Receive Status Report on the General Plan Update Process and Provide Input on Formation of the General Plan Advisory Committee (GPAC) (Staff Contact: Sarah Fleming, 408-586-3278)**
- *11. **Approve Fiscal Year 2015-16 Year End Budget Adjustments (Staff Contact: Russell Morreale, 408-586-3111)**
- *12. **Approve Final Map Tract 10349 for a 257-unit Residential Development at 1401 South Milpitas Boulevard (Metro), and Authorize the City Manager to Execute the Subdivision Improvement Agreement (Staff Contact: Judy Chu, 408-586-3325)**
- *13. **Approve Final Map Tract 10305 for a 381-unit Apartment and 8,100 Square Feet Commercial/Office Development at 765 Montague Expressway (The Edge), and Authorize the City Manager to Execute the Subdivision Improvement Agreement (Staff Contact: Judy Chu, 408-586-3325)**
- *14. **Re-convey Six Permanent Easements to the Santa Clara Valley Water District for Flood Protection Facilities, and Authorize City Manager to Execute Associated Easement Deeds (Staff Contact: Steven Machida, 408-586-3040)**

XIX. RESOLUTIONS

- *15. **Adopt a Resolution Declaring Intention to Annex Real Properties within Tract No. 10363 (Centre Pointe by D. R. Horton) into Communities Facilities District No. 2008-1 (Annexation No. 10), and to Levy and Collect Special Tax for Public Services, and to Set Time and Place for Public Hearing (Staff Contact: Judy Chu, 408-586-3325)**
- *16. **Adopt a Resolution Awarding a Contract to Preston Pipelines, Inc., and Authorize Director of Engineering/City Engineer to Execute Contract Change Orders, and Approve Amendment No. 3 to the Agreement with Triple HS, Inc. doing business as H.T. Harvey & Associates, for the Wrigley-Ford Creek Erosion Repair Project No. 3700 (Staff Contact: Steve Erickson, 408-586-3301)**

XX. AGREEMENTS & BID

- *17. **Approve Amendment No. 4 to the Consultant Agreement with HF&H Consultants for Solid Waste Procurement Services in the Amount of \$138,160 and Approve a Budget Appropriation in the Amount of \$200,000 to CIP No. 3401 (Staff Contact: Steven Machida, 408-586-3355)**
- *18. **Approve and Authorize the City Manager to Execute the Joint Use Agreement and the Upper Berryessa Creek Flood Control Risk Master Agreement between the City and Santa Clara Valley Water District for the Removal, Construction and Modification of City Improvements and Allowing Use of District Property for Recreational Purposes (Staff Contact: Steve Erickson, 408-586-3301)**

- *19. **Reject All Bids and Authorize Staff to Repackage and Re-advertise Project for the Light Rail Median Landscaping Project No. 2001 (Staff Contact: Steve Erickson, 408-586-3301)**
- *20. **Authorize the City Manager to Execute, and Make Any Necessary Changes to, a Cost Sharing Agreement for Storm Water Facilities within the Piper/Montague Subdistrict of the Milpitas Transit Area Specific Plan (Staff Contact: Judy Chu, 408-586-3325)**
- *21. **Authorize the City Manager to Execute a Storm Water Management Operation and Maintenance Agreement for Amalfi Milpitas, LLC (Staff Contact: Judy Chu, 408-586-3325)**
- *22. **Authorize the City Manager to Execute a Storm Water Management Operation and Maintenance Agreement for Shapell Norcal Rental Properties, LLC (Staff Contact: Judy Chu, 408-586-3325)**

XXI. HOUSING AUTHORITY

- *23. **Authorize the Housing Authority Executive Director to Execute Operating Memorandum No. 2 to the First Amended and Restated Disposition and Development Agreement Concerning South Main Senior Lifestyles Project for Assignment of the Development and Disposition Agreement and Approval of Operator and Services (Staff Contact: Russell Morreale, 408-586-3111)**

XXII. ADJOURN JOINT MEETING OF THE CITY COUNCIL AND HOUSING AUTHORITY

NEXT REGULAR CITY COUNCIL MEETING: TUESDAY, SEPTEMBER 20, 2016

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: cdiaz@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 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 on:

- Economic Development Commission (hotel rep.)
- Sister Cities Commission and Veterans Commission

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 City Council Chambers for all meetings.

AGENDA REPORTS

XV. PUBLIC HEARINGS

- 1. Conduct a Public Hearing and Adopt a Resolution Making Certain Determinations and Authorizing Submittal of the Levy of Special Taxes to the Qualified Electors of Certain Territory (Lennar Homes) Proposed to be Annexed to Community Facilities District No. 2008-1 for Public Services; Conduct a Special Election and Adopt a Resolution Declaring the Results of the Special Election and Adding Annexation No. 8 to the Community Facilities District No. 2008-1 for Public Services (Staff Contact: Judy Chu, 408-586-3325)**

Background: On January 6, 2009, the City Council adopted Resolution No. 7815 enabling the establishment of City of Milpitas Community Facilities District (CFD) No. 2008-1 for public services. On June 21, 2016, the City Council approved the final map Tract No. 10324, a 489-unit residential development at 450 Montague Expressway. On August 2, 2016, Council adopted Resolution No. 8573 declaring intention to annex real properties within Tract No. 10324 into CFD No. 2008-1 (Annexation No. 8, Attachment 1), levy and collect special tax for public services, set the public hearing date for September 6, 2016 in the Council Chambers and directed the City Clerk to provide notice of the public hearing in accordance with Government Code Sections 53339.4, 53322 and 53322.4.

A Notice of Public Hearing (Attachment 2) was duly published in *The Milpitas Post* on August 26, 2016, as evidenced by the affidavit of the publication on file with the City Clerk.

Pursuant to Government Code Section 53339.8, City Council may determine to levy any special tax within Annexation No. 8, if two-thirds of the votes cast on the proposition are in favor of levying the special tax for public services. City has on file a Certificate of Registrar of Voters from the County of Santa Clara certifying that there are no registered voters residing within the boundaries of proposed Annexation No. 8 to the CFD 2008-1. Consequently, the qualified electors shall be the land owners within the Annexation No. 8. The land owners, Lennar Homes of California and LMC Milpitas Holdings I, LLC have consented and waived to shortening of time for noticing and conducting a special election to the proposed Annexation No. 8 (Attachment 3). Additionally, as required by the project condition no. 43, the land owners shall consent to annex their properties into CFD 2008-1 and pay the special taxes levied by CFD No. 2008-1 for public services.

California Environmental Quality Act: Annexation of real properties into the existing CFD No. 2008-1 is not a project pursuant to the CEQA section 15378(b)(4). Annexation of real properties within Tract No. 10324 into the CFD No. 2008-1 were requirements imposed through conditions of approval on the underlying development project, which was found to be consistent with the Transit Area Specific Plan Environmental Impact Report pursuant to CEQA Guideline 15168(c)(2).

Fiscal Impact: None. Annexation of real properties within Tract No. 10324 into the CFD No. 2008-1 will enable the City to levy special tax for the real properties within Tract No. 10324 to fund public services.

Attachments:

- A. City Council Resolution – Levy of Taxes
- B. City Council Resolution – election results
- C. Boundary Map for CFD Annexation No. 8
- D. Notice of Public Hearing
- E. Lennar Homes Property Owners' Consent and Waiver

Recommendations:

1. Open the public hearing for comments on the proposed Annexation No. 8 into the CFD No. 2008-1.
 2. Close the public hearing, after hearing any testimony.
 3. Adopt a resolution making certain determinations and authorizing submittal of the levy of special taxes to the qualified electors of certain territory (Lennar Homes) proposed to be annexed to CFD No. 2008-1 for public services.
 4. Conduct a special election.
 5. Adopt a resolution declaring the results of the special election and adding Annexation No. 8 to the CFD No. 2008-1 for public services.
 6. Direct the City Clerk to record notice of the annexation pursuant to Section 3117.5 of the California Streets and Highways Code.
2. **Conduct a Public Hearing and Adopt a Resolution Making Certain Determinations and Authorizing Submittal of the Levy of Special Taxes to the Qualified Electors of Certain Territory (The Edge) Proposed to be Annexed to Community Facilities District No. 2008-1 for Public Services; Conduct a Special Election and Adopt a Resolution Declaring the Results of the Special Election and Adding Annexation No. 9 to the Community Facilities District No. 2008-1 for Public Services (Staff Contact: Judy Chu, 408-586-3325)**

Background: On January 6, 2009, the City Council adopted Resolution No. 7815 enabling the establishment of City of Milpitas Community Facilities District (CFD) No. 2008-1 for public services. On August 2, 2016, Council adopted Resolution No. 8574 declaring intention to annex real properties within Tract No. 10305 into CFD No. 2008-1 (Annexation No. 9, Attachment 1), levy and collect special tax for public services, set the public hearing date on September 6, 2016 in the Council Chambers and direct the City Clerk to provide a notice of public hearing in accordance with Government Code Sections 53339.4, 53322 and 53322.4.

A Notice of Public Hearing (Attachment 2) was duly published in *The Milpitas Post* on August 26, 2016, as evidenced by the affidavit of the publication on file with the City Clerk.

Pursuant to Government Code Section 53339.8, City Council may determine to levy any special tax within Annexation No. 9, if two-thirds of the votes cast on the proposition are in favor of levying the special tax for public services. City has on file a Certificate of Registrar of Voters from the County of Santa Clara certifying that there are no registered voters residing within the boundaries of proposed Annexation No. 9 to the CFD 2008-1. Consequently, the qualified electors shall be the land owner within the Annexation No. 9. The land owner, SCS Development Company, has consented and waived to shortening of time for noticing and conducting a special election to the proposed Annexation No. 9 (Attachment 3). Additionally, as required by the project condition no. 59, the land owner shall consent to annex its properties into CFD 2008-1 and pay the special taxes levied by CFD No. 2008-1 for public services.

California Environmental Quality Act: Annexation of real properties into the existing CFD No. 2008-1 is not a project pursuant to the CEQA section 15378(b)(4). Annexation of real properties within Tract No. 10305 into the CFD No. 2008-1 were requirements imposed through conditions of approval on the underlying development project, which was found to be consistent with the Transit Area Specific Plan Environmental Impact Report pursuant to CEQA Guideline 15168(c)(2).

Fiscal Impact: None. Annexation of real properties within Tract No. 10305 into the CFD No. 2008-1 will enable the City to levy special tax for the real properties within Tract No. 10305 to fund public services.

Attachments:

- A. City Council Resolution – Levy of Taxes
- B. City Council Resolution – election results
- C. Boundary Map for CFD Annexation No. 9
- D. Notice of Public Hearing
- E. The Edge - Property Owners' Consent and Waiver

Recommendations:

1. Open the public hearing for comments on the proposed Annexation No. 9 into the CFD No. 2008-1.
2. Close the public hearing, after hearing any testimony.
3. Adopt a resolution making certain determinations and authorizing submittal of the levy of special taxes to the qualified electors of certain territory (The Edge) proposed to be annexed to CFD No. 2008-1 for public services.
4. Conduct a special election.
5. Adopt a resolution declaring the results of the special election and adding Annexation No. 9 to the CFD No. 2008-1 for public services.
6. Direct the City Clerk to record notice of the annexation pursuant to Section 3117.5 of the California Streets and Highways Code.

XVI. UNFINISHED BUSINESS

- *3. Receive Update of the Odor Control Report (Staff Contact: Steven Machida, 408-586-3355)**

Background: From July 19 through August 9, 2016, the Bay Area Air Quality Management District (BAAQMD) forwarded 80 complaints originating in Milpitas. 42 complaints identified a garbage odor, 3 complaints identified a sewage odor, 34 complaints did not identify an odor source, and 1 identified multiple odor sources. As of the last Council update, the City's odor reporting website has received 18 reported complaints.

Recommendation: Receive the latest update of the Odor Control report.

- 4. Discuss a Proposal to Fund the Increase of Milpitas Library Hours (Staff Contact: Renee Lorentzen, 408-586-3409)**

Background: At the August 2, 2016 City Council meeting, staff was directed to gather information for funding an increase in the hours of operation at the Milpitas Library. City of Milpitas staff worked with the Santa Clara County Library District and obtained a proposal of the restoration of hours from the current 54 hours per week to the pre-2012 schedule of 66 hours per week. These hours are the same as those before the great recession, and prior to the City reducing operating costs.

The proposed additional 12 hours would be distributed as follows:

- Adjust Monday, Tuesday, and Wednesday opening time from 1:00 PM to 10:00 AM = 9 hours/week
- Adjust Thursday closing time from 6:00 PM to 9:00 PM = 3 hours/week

Under the 66 hours scenario, the library would add one part-time Librarian, one full-time Library Assistant, and one full-time Library Clerk, plus additional hours for "extra help" positions and additional part-time staff.

The annual cost to increase Milpitas Library hours from 54 hours per week to 66 hours per week is \$361,361. The Santa Clara County Library District, with a desire to provide consistency for their patrons, have asked for a commitment of funding for at least two years.

Fiscal Impact: \$361,361 annually from the City of Milpitas Transient Occupancy Tax (TOT) fund. If approved, there will be an equal decrease/offset to the street maintenance budget.

Recommendation: Discuss proposal to fund an increase in the service hours of the Milpitas Library.

XVII. REPORTS OF MAYOR AND COMMISSION

*5. Consider Mayor's Recommendations for Appointments to City of Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)

Background: Mayor Esteves recommends the following:

Bicycle Pedestrian Advisory Commission

Re-appoint Cristine Sanchez to another three-year term that will expire in August of 2019.

Sister Cities Commission

Newly appoint Tiffany Dinh as the student non-voting representative to serve for a term of two years that will expire in September of 2018.

Youth Advisory Commission – all terms will expire in September 2017.

Re-appoint Sabina King, Crystal Tran, Jashandeep Chahal, Clare Sern, Alan Pham, Claudia Wang, Christie Maly and Ravit Sharma as voting members of the Commission.

Move Alternate No. 1 Emerald Gilana up to a seat as a voting Commissioner.

Move Alternates No. 2 Jenna Zarbis, No. 3 Madeline Cacao, No. 4 Amanda Jimenez up to the seats as Alternates No. 1, 2, and 3.

Newly appoint Isaac Chang as Alternate No. 4.

Copies of applications for new appointments are included in the agenda packet.

Recommendation: Receive Mayor's recommendations and approve re-appointments and two new appointments to City of Milpitas Commissions.

6. Approve the Sister Cities Commission FY 2016-17 Work Plan (Staff Contact: Leslie Stobbe, 408-586-3352)

Background: The Sister Cities Commission (SCC) was established by City Council on May 21, 1996 and serves as an advisory group to the City Council on matters affecting current and potential sister city relationships, programs, and activities.

Fiscal Year 2015-16 accomplishments include:

1. Reviewed application for sister city relationship from Seongnam City, South Korea.
2. Reviewed potential sign recognizing sister cities for placement in the City Plaza area.
3. Conducted second successful year of the ePal Project with the MHS Digital Business Academy.
4. Researched fundraising and outreach options.

Fiscal Year 2016-17 RSRAC Work Plan identifies the Commission's goals including:

1. Present Sister Cities sign request and costs for potential placement in the City Plaza to the Council at a future meeting.
2. Conduct community outreach campaign using social and local print media.
3. Establish relationship with the new administration at Milpitas High School.
4. Host City of Dagupan delegation October 10-14.
5. Host Huizhou Municipality delegation (TBD).
6. Continue research of a potential sister city in Latin America.

7. Continue ePal Project with 54 MHS students!

Fiscal Impact: No fiscal impact. The SCC has an annual spending limit of \$6,720 from the Council's Community Promotions Budget to support Sister City activities and ceremonial gifts.

Recommendation: Approve the Sister Cities Advisory Commission's Fiscal Year 2016-17 Work Plan.

XVIII. NEW BUSINESS

7. **Consider Request of Councilmember Indihar Giordano to Form a Citizens Task Force on Water Rates (Contacts: Councilmember Indihar Giordano, 408-586-3032 and Tom Williams, 408-586-3051)**

Background: At the August 16, 2016 Council meeting, Councilmember Indihar Giordano requested the City Council consider formation of a Citizens Task Force on Water Rates similar to the Citizens Budget Task of several years ago (2010).

The purpose of this item is to seek approval by the City Council to form the subject task force. If the City Council desires to move forward, staff recommends 7 to 11 members comprised of citizens and/or business representatives. If approved, each Councilmember could nominate 2 to 3 citizens for review and selection at the City Council meeting scheduled for either September 20 or October 4, 2016.

As understood, some of the task force objectives would be to discuss and identify alternative rate structures and possible revenue enhancements in lieu of current rates; recommend infrastructure priorities and identification of the risk associated by not investing in capital improvements; recommendations to ensure accurate information is communicated to the citizens.

Fiscal Impact: None.

Recommendation: Consider request of Councilmember Indihar Giordano to form the Citizens Task Force on Water Rates.

8. **Discuss the Access to the New Milpitas Sports Center Artificial Turf Field (Staff Contact: Vice Mayor Montano, 408-586-3023)**

Background: Vice Mayor Montano requests that the City Council discuss the access of the new Milpitas Sports Center artificial turf field.

The Milpitas Sports Center Sport Fields project was completed and officially opened on July 2, 2016. The new outdoor field facility is currently in use by both Milpitas youth football and soccer organizations, private rentals, and City sponsored events and programs. During the construction of the fields and after its opening, there have been multiple instances of vandalism and misuse, ranging from riding a motorcycle over the turf, spray painting/tagging the turf, hopping closed fences to gain access to the fields and breaking in the gates to walking dogs in the turf area.

Other outdoor field facilities, such as Gill Field and Dixon Landing Major Field, have experienced similar misuse and are locked when not in use by youth sport organizations. Currently, the Sports Center turf field facility is locked when not in use.

Open green space at all City parks is available for public use during park hours (Monday – Sunday, dawn to dusk).

Fiscal Impact: None.

Recommendation: Discuss the access of the Milpitas Sports Center fields.

- * 9. **Receive a Report on Weeds Abatement throughout the City (Staff Contacts: Nina Hawk, 408-586-2603 and Bradley Misner, 408-586-3273)**

Background: Due to unusually extreme cycles of heat and rain during the first half of 2016, the South Bay region has experienced an extraordinary amount of weed growth. Uncontrolled weed growth poses both a health and safety hazard and a nuisance to the public. Public Works and Neighborhood Services are responsible for ensuring that weeds throughout the City are abated in a timely and appropriate manner.

Utilizing reports from Fire, Police, and members of the public, Public Works identified more than 55 public locations throughout the City in need of weed removal. Multiple locations were found to be outside of the City's jurisdiction, and staff filed service requests with Caltrans, Santa Clara Valley Water District, and the County Department of Roads and Airports to request that those agencies address weeds in their respective areas. For the City-maintained rights-of-way, Public Works mobilized staff, streets and landscape contractors, and the San Jose Conservation Corps to manually remove weeds. Public Works has successfully addressed 50 of the reported weed abatement areas. Public Works is also maintaining observation of these areas and planning to prevent return of weed growth through the application of pre-emergent by contractors.

Neighborhood Services handles weed abatement on private property by enforcing the City's Neighborhood Beautification Ordinance (NBO). Calls and correspondence are received from the public informing Neighborhood Services of properties with overgrown weeds. When notified, Neighborhood Services staff contacts the property owner that there is a violation of the NBO and to abate the issue. From April 2016 to Aug 26, 2016, Code Enforcement has responded and or received 359 complaints related to weeds on private property in violation of the NBO. Neighborhood Services was able to close over 90% of the weed abatement cases with an average of approximately 20 days to achieve compliance.

Fiscal Impact: None.

Recommendation: Receive staff report regarding abatement of weeds throughout the City.

10. **Receive Status Report on the General Plan Update Process and Provide Input on Formation of the General Plan Advisory Committee (Staff Contact: Sarah Fleming, 408-586-3278)**

Background: The General Plan is a long-range planning document that defines a long-term vision for the City over the next 20 years, balancing growth, conservation, and quality of life.

The State of California requires every city and county in California to adopt a General Plan. The City of Milpitas adopted its current General Plan in 1994. While the City has made various amendments to incorporate new planning documents (2002, 2008, and 2010) and to update the Housing Element (2015), the City has grown and changed significantly since the 1994 update. Additionally, new laws affecting General Plans have been passed and new social and environmental issues have emerged, making the current update of the City's General Plan a critical component of the City's continued success.

The City released a Request for Qualifications (RFQ) in September 2015 for the General Plan Update project, and received six responses from various planning firms. All firms were

invited to interview, and the top two firms were asked to submit proposals. From those two, DeNovo Planning Group was selected for the project.

On October 6, 2015, Council approved \$1.2 million appropriation for this project, and on April 5, 2016, City Council approved a contract with DeNovo Planning Group for this same amount. DeNovo has begun and will report on the initial work on this project, which will include an in depth discussion on Land Use, Housing (already adopted, not a part of this work program), Circulation, Noise, Safety, Conservation and Open Space, Air Quality and Energy, Community Design, Economic and Fiscal Sustainability, Flood Management, Parks and Recreation, Water and Implementation. Several documents will be prepared and published throughout the course of this project, including an existing conditions report, issues and opportunities report, land use alternatives report, environmental impact report (EIR) and draft and final General Plan document. This process is expected to take two to two and a half years to complete.

The update process will include extensive public outreach and community participation, ensuring that the goals and values of the community are reflected. Public outreach will include multiple Community Visioning Workshops, City Council and Planning Commission hearings and workshops, a community open house meeting, newsletters, the General Plan website, and online surveys.

Another critical outreach component of this process is the formation of and participation of the General Plan Advisory Committee (GPAC). The GPAC will meet approximately 15 times over the course of the project and its primary role will be to provide input and guidance of the range of issues and topics covered in the General Plan. The GPAC will review draft goals, policies, and actions items developed for each General Plan element, and will serve as community liaisons and project ambassadors in order to ensure that the General Plan reflects the needs and concerns of the entire community.

Staff is seeking guidance from Council on the composition of and recruitment for the GPAC.

Fiscal Impact: None. On October 6, 2015, Council approved a \$2.1 million budget and \$1.2 million appropriation for this project.

Recommendation: Receive status report on the General Plan Update process and direct staff on the formation of the General Plan Advisory Committee (GPAC).

***11. Approve Fiscal Year 2015-16 Year End Budget Adjustments (Staff Contact: Russell Morreale, 408-586-3111)**

Background: Finance staff is in the process of closing the City accounts for Fiscal Year 2015-16 with a focus on expenditures. To maintain conformity with the City's budgeting policies and to prepare for the annual external financial audit, staff examined all expenditure accounts and identified the following budget adjustments. These adjustments recognize items arising during the fiscal year that were not included or vary from original FY 2015-16 budget estimates. This is a common annual "true-up" process that is critical to the year-end audit/close.

The detail for each budget adjustment item is described below.

1. Increase General Fund budget appropriations for the City Attorney Department by \$124,866 to record FY 2015-16 reimbursable expenditures incurred in the review of agreements related to the developers' project. The source of funding for the budget appropriation is from General Fund developer fees.

2. Increase the budget appropriations for the City Attorney Department by \$50,760 for expenditures incurred in reviewing agreements related to the Transit Area Specific Plan Area. The source of funding for the budget appropriation is from developer fees collected and recorded in the Transit Area Impact Fee Fund.
3. Increase General Fund budget appropriations for the Fire Department by \$253,033 for incurred overtime expenditures to respond to regional fires through the California Fire Service and Rescue Emergency Mutual Aid System. The source of funding for the budget appropriation is from reimbursements received from the State of California Office of Emergency Services (OES).
4. Increase the Planning Department operating budget within the Permit Automation and Community Planning Funds (both fee based funds) in the amounts of \$37,030 and \$55,062 respectively. This adjustment is needed to support an existing contract entered into in FY 2015-16.
5. A reallocation of employee leave cash-out amounts from General Fund Non-Departmental to the Policy, Planning and Implementation Department and Fire Department in the amounts of \$87,876 and \$483,491, respectively. The annual leave cash-out is routinely budgeted in non-departmental as a placeholder for employee separations as they occur.
6. Keeping the following projects open and roll them into FY 2016-17 (per from the Director of Engineering in the agenda packet)
 - Project No. 6110 Sewer System Hydraulic Modeling
 - Project No. 7070 Pressure Reducing Valve Replacement
 - Project No. 7114 Water Meter Replacement
7. The approved FY 2016-17 budget projected an increase in the PERs stabilization reserve using the collection of “state triple-flip” dollars originally estimated to be received at the end of August 2016. These dollars were remitted by the State earlier than expected, July 2016, making them subject to recognition in FY 2015-16. The actual amount received equals \$3,006,862. As such, staff is proposing an adjustment to recognize these collections in the current year as required by City audit policy. This action remains consistent with FY 2016-17 budget in using these one-time dollars to bolster the City’s CalPERS reserves as described in the budget message.

The Budget Change Form identifies the items and budget codes associated with these budget increases/reallocations and the PERS stabilization reserve funding.

Fiscal Impact: The budget adjustments above are fee based reimbursements by developers and/or OES. The cash-out reallocation has no overall appropriation impact. The increase in the PERs stabilization reserve will serve as intended to mitigate near to mid-term term rising pension costs.

Recommendation: Approve the Fiscal Year 2015-16 year-end budget appropriations and reallocations as itemized on the budget change form, increase the PERS stabilization reserve, as anticipated in the approved FY 2016-17 budget in the amount of \$3,006,862, and approve keeping open CIP Projects No. 6110, No. 7070 and No. 7114.

- *12. Approve Final Map Tract 10349 for a 257-unit Residential Development at 1401 South Milpitas Boulevard (Metro), and Authorize the City Manager to Execute the Subdivision Improvement Agreement (Staff Contact: Judy Chu, 408-586-3325)**

Background: On October 5, 2010, the City Council conditionally approved a Vesting Tentative Map (VTM) to allow for 303 new dwelling units on four lots located at 1425 South Milpitas Boulevard just north of Montague Expressway within the Transit Area Specific Plan area.

The initial developer, Milpitas Station (San Jose) Venture L.L.P., completed the 46 dwelling units on Lot 1 (Tract 10218) and sold the remaining project (Lots 2 to 4, Tract 10349) to Pulte Home Corporation (the “Developer”) on April 28, 2015. The Developer has assumed the responsibility of completing all public improvements.

The City Engineer has examined the final map Tract 10349 (Attachment 1) and determined that the final map Tract 10349 is substantially the same as the VTM pursuant to California Government Code (GC) Section 66442. The City Council shall not deny approval of a final map if it has previously approved a tentative map for the proposed subdivision and if it finds that the final map is in substantial compliance with the previously approved tentative map pursuant to GC Section 66474.1. Therefore, once the City Engineer certifies the final map, there are no additional discretionary grounds for the City Council to disapprove the final map.

The Developers have offered dedications to the City for public use, such as public service and public utilities, emergency vehicle access, waterline purposes and sidewalk, as required by the project condition and as depicted on the final map. City Council shall accept, accept subject to improvements, or reject any offer of dedication at the time of final map approval pursuant to GC Section 66477.1 and Milpitas Municipal Code (MMC) Section XI-1-5.05-2.

On August 8, 2016, the City’s Facilities and Streets Naming Subcommittee reviewed and recommended approval of the street names as shown on the final map. Those private street names are Primrose Place, Nightshade Road, Currant Road, Lavendary Loop, Mint Way and Cherry Circle without duplication. City Council shall approve all street names pursuant to MMC Section XI-1-7.01-8.

The City Engineer has also reviewed and approved public improvement plans (2-1183 and 2-1164) pursuant to MMC XI-1-7.09-2. The Developer have executed a Subdivision Improvement Agreement (Attachment 2) as approved by the City Attorney as to form and by the City Engineer as to substance pursuant to MMC XI-1-17.01, paid all development fees and provided improvement securities (\$1,200,000 for faithful performance and \$1,200,000 for labor and materials) to guarantee completion of required public improvements.

The final map Tract 10349 conforms to all of the requirements of the State of California Subdivision Map Act, and Milpitas Municipal Code Title XI, Chapter 1 *Subdivisions*.

California Environmental Quality Act: Approval of final subdivision map is a ministerial action exempt from CEQA pursuant to CEQA Guidelines Section 15268(b)(3).

Fiscal Impact: None.

Recommendations:

1. Approve the Final Tract Map No. 10349, including approval of street names and acceptance of all offers of dedications as stated and depicted on the final map upon completion and acceptance of improvements; and
2. Authorize the City Manager to execute the Subdivision Improvement Agreement.

- *13. **Approve Final Map Tract 10305 for a 381-unit Apartment and 8,100 Square Feet Commercial/Office Development at 765 Montague Expressway (The Edge), and Authorize the City Manager to Execute the Subdivision Improvement Agreement (Staff Contact: Judy Chu, 408-586-3325)**

Background: On June 17, 2014, the City Council conditionally approved a Vesting Tentative Map (VTM) to allow for 381 apartment dwelling units and 8,100 square feet of commercial and office development located at 765 Montague Expressway between Piper Drive and Milpitas Boulevard, within the Transit Area Specific Plan area.

The City Engineer has examined the final map Tract 10305 (Attachment 1) and determined that the final map Tract 10305 is substantially the same as the VTM pursuant to California Government Code (GC) Section 66442. The City Council shall not deny approval of a final map if it has previously approved a tentative map for the proposed subdivision and if it finds that the final map is in substantial compliance with the previously approved tentative map pursuant to GC Section 66474.1. Therefore, once the City Engineer certifies the final map, there are no additional discretionary grounds for the City Council to disapprove the final map.

The Developers have offered dedications to the City for public use, such as public service and sidewalks, public utilities, and emergency vehicle access, as required by the project condition and as depicted on the final map. City Council shall accept, accept subject to improvements, or reject any offer of dedication at the time of final map approval pursuant to GC Section 66477.1 and Milpitas Municipal Code (MMC) Section XI-1-5.05-2.

On April 22, 2016, the City's Facilities and Streets Naming Subcommittee reviewed and recommended approval of the street names as shown on the final map. Those private street names are Meridian Place and Border Way without duplication. City Council shall approve all street names pursuant to MMC Section XI-1-7.01-8.

The City Engineer has also reviewed and approved public improvement plans (2-1214) pursuant to MMC XI-1-7.09-2. The Developers have executed a Subdivision Improvement Agreement (Attachment 2) as approved by the City Attorney as to form and by the City Engineer as to substance pursuant to MMC XI-1-17.01, paid all development fees and provided improvement securities (\$400,000 for faithful performance and \$400,000 for labor and materials) to guarantee completion of required public improvements.

The final map for Tract 10305 conforms to all of the requirements of the State of California Subdivision Map Act, and Milpitas Municipal Code Title XI, Chapter 1 *Subdivisions*.

California Environmental Quality Act: Approval of final subdivision map is a ministerial action exempt from CEQA pursuant to CEQA Guidelines Section 15268(b)(3).

Fiscal Impact: None.

Recommendations:

1. Approve Final Tract Map No. 10305, including approval of street names and acceptance of all offers of dedications as stated and depicted on the final map upon completion and acceptance of improvements; and
2. Authorize the City Manager to execute the Subdivision Improvement Agreement.

***14. Re-convey Six Permanent Easements to the Santa Clara Valley Water District for Flood Protection Facilities, and Authorize City Manager to Execute Associated Easement Deeds (Staff Contact: Steven Machida, 408-586-3040)**

Background: At the May 17, 2016 meeting, City Council conveyed six permanent easements and two temporary construction easements to the Santa Clara Valley Water District (SCVWD) for flood protection facilities and authorized the City Manager to execute the associated easement deeds. On June 22, 2016 after the easements were conveyed, the SCVWD requested additional revisions to the language in the six permanent easement deeds regarding legal indemnification language. As a result, it is necessary for the City Council to re-convey the six permanent easement deeds with the language revisions to the SCVWD.

The language in the two temporary construction easement deeds are not affected so Council's action on these easements are not required.

The reason that the six permanent easements are needed is to allow improvements including floodwalls, levees and ramps designed in the SCVWD Lower Berryessa Creek Flood Protection Project (Attachment 1 – Lower Berryessa Creek Project) to be constructed on adjacent City properties (Attachment 2 – Easement Locations and Exhibits and Attachment 3 – SCVWD Letter of Request).

The current use of these easement areas are mostly for landscaping. The sizes of those permanent easements vary from approximately 0.37 acres, 0.16 acres, 666 square feet, 634 square feet, 633 square feet, to 390 square feet, respectively. City does not have any short-term or long-term future usage plan for these easement areas. The attached Easement Deeds have been reviewed by the City Attorney and the City Engineer for appropriateness and accuracy (Attachment 4 – Easement Deeds).

In consideration of City's conveyance to the SCVWD of the easements, the City requested SCVWD to convey an approximately 200-foot long and 10-foot wide public water line easement to the City for an existing 14 inch potable water line located on the SCVWD property. SCVWD's easement conveyance to the City would be presented to the City Council at a later date in accordance with the SCVWD's letter of intent to the City dated May 4, 2016 (Attachment 5).

California Environmental Quality Act: The conveyance of easements is exempt from CEQA as it does not cause any physical change to the environment.

Fiscal Impact: None. There is no fiscal impact to the proposed easement conveyance.

Recommendations:

1. Re-convey six permanent easements to the Santa Clara Valley Water District for flood protection facilities.
2. Authorize the City Manager to execute associated easement deeds.

XIX. RESOLUTIONS

- *15. Adopt a Resolution Declaring Intention to Annex Real Properties within Tract No. 10363 (Centre Pointe by D. R. Horton) into Communities Facilities District No. 2008-1 (Annexation No. 10), and to Levy and Collect Special Tax for Public Services, and to Set Time and Place for Public Hearing (Staff Contact: Judy Chu, 408-586-3325)**

Background: On January 6, 2009, the City Council adopted Resolution 7815 enabling the establishment of City of Milpitas Community Facilities District No. 2008-1 (the "CFD 2008") for public services. The boundary map of the initial CFD 2008 is on file in the office of the City Clerk. On January 15, 2009, the Notice of Special Tax Lien for the City of Milpitas CFD 2008 Formation (the "Notice of Special Tax Lien") was recorded, as document no. 20102888 with the County of Santa Clara Recorder's Office, to levy special tax for real properties within the initial CFD 2008 (Attachment 1).

Pursuant to California Government (GC) Code Section 53339, territory may be annexed to an existing CFD if the City Council determines that public convenience and necessity require that territory be added to the existing CFD. To date, nine territories have been annexed to into the CFD 2008.

On November 17, 2015, the City Council conditionally approved two Vesting Tentative Maps for a total of 241-unit residential development project at 1463 and 1515 Centre Pointe Drive, located within the Transit Area Specific Plan (TASP) area, by Lyon Capital Ventures, LLC.

The property was later sold to D. R. Horton, Inc. (the “Developer”). Project condition no. 23 requires that the Developer consents to annex their properties into CFD 2008 and pay the special taxes levied by CFD 2008 for public services (the “Annexation No. 10”) with boundary shown on Attachment 2.

Exhibit A of the Notice of Special Tax Lien provides descriptions of public services and Exhibit B of the Notice of Special Tax Lien provides descriptions of rate, method of apportionment and manner of collection of special tax. The public facilities and services provided for the proposed Annexation No. 10 are the same as the ones for the initial CFD 2008, as well as for the previous nine annexations. The rate, method of apportionment and manner of collection of special tax for the proposed Annexation No. 10 are the same as the ones for the initial CFD 2008, as well as for the previous nine annexations.

There is no alteration in the special tax rate to be levied within the initial CFD 2008 or within the nine previously annexed territories as a result of the proposed Annexation No. 10. The maximum tax rate in the initial CFD 2008 and in the nine previously annexed territories will not be increased as a result of the proposed Annexation No. 10.

Pursuant to GC Section 53339.3(f), the City Council shall fix a time and place for a public hearing. The public hearing date shall neither be less than 30 nor more than 60 days after City Council’s adoption of the resolution of intention to annex. The City Clerk shall give the notice of the public hearing in accordance with GC Sections 53339.4, 53322 and 53322.4.

California Environmental Quality Act: Annexation of real properties into the existing CFD 2008 is not a project pursuant to the CEQA section 15378(b)(4). Annexation of real properties within Tract No. 10363 into the CFD 2008 were requirements imposed through conditions of approval on the underlying development project, which was found to be consistent with the Transit Area Specific Plan Environmental Impact Report pursuant to CEQA Guideline 15168(c)(2).

Fiscal Impact: None. Annexation of real properties within Tract No. 10363 into the CFD 2008 will enable the City to levy special tax for the real properties within Tract No. 10363 to fund public services.

Recommendations:

1. Adopt a resolution declaring intention to annex real properties within Tract No. 10363 into Community Facilities District No. 2008-1 and to levy and collect special tax for public services.
2. Set a public hearing for 7:00 pm on Tuesday, October 18, 2016 in the City Council Chambers.
3. Direct the City Clerk to provide notice of public hearing per applicable state law.

- *16. Adopt a Resolution Awarding a Contract to Preston Pipelines, Inc., and Authorize Director of Engineering/City Engineer to Execute Contract Change Orders, and Approve Amendment No. 3 to the Agreement with Triple HS, Inc. doing business as H.T. Harvey & Associates, for the Wrigley-Ford Creek Erosion Repair Project No. 3700 (Staff Contact: Steve Erickson, 408-586-3301)**

Background: On June 21, 2016, the City Council approved the plans and specifications and authorized the advertisement for construction bid proposals for the Wrigley-Ford Creek Erosion Repair Project. The work on the project will include removal of the temporary drainage inlet and piping, removal of sediment washed into the creek during the December 2014 erosion event, repair of the erosion gullies, irrigation repair, and seeding of the erosion area. The Engineer’s Estimate for the project is \$59,500.

The project was advertised and one sealed bid proposal was received on July 27, 2016. The City received no bid protests. The lowest responsible bidder submitting a responsive bid is Preston Pipelines, Inc., with a bid in the amount of \$66,600.00. This amount is approximately 12% above the Engineer's Estimate and is considered to be within a reasonable range of deviation from the Engineers Estimate. The proposal price is likely higher than the Engineer's Estimate due to the heavy state and federal permitting requirements for the project resulting from its environmental sensitivity. Due to the environmental sensitivity, the contractor is only allowed to utilize small equipment in the area, which is less efficient than the heavy equipment that would be used to complete the work under normal conditions.

Staff recommends the contract be awarded to Preston Pipelines, Inc. to allow the work to proceed due to the tight completion schedule, as required by the project permits. The permits require this work be completed outside of the bird nesting season, which ends September 15 and before the wet weather season begins, which is generally considered to start October 15. Since time is of the essence, delaying the award or rebidding the contract would delay the project for approximately one year, and the City would not meet the scheduled completion for the work as required by the project permits.

As was previously approved for the successful completion of recent projects with tight completion schedules, staff is requesting the use of the same change order policy (copy of policy is included in the Council agenda packet). This policy allows for the timely completion of the 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 \$6,600.00; approximately 10% of the total contract value, and the change order authority would not exceed this amount and would not require an additional appropriation.

On February 19, 2013, the City entered into a consultant agreement with H.T. Harvey & Associates in the amount of \$97,000 to provide ecological monitoring and compliance reporting for State and Federal Agency permits issued for a City project completed within Wrigley-Ford and Ford Creek in 2012. The term of the agreement is from February 19, 2013 to February 19, 2023.

This City project provided for debris, vegetation, and sediment removal, and to restore the creek channel and improve conveyance capacity. Permits were issued by the Regional Water Quality Control Board (RWQCB), U.S. Department of the Army Corps of Engineers (ACOE), and Department of Fish & Game, and require ongoing ecological monitoring, compliance reporting, and maintenance of native plant species for a ten year period within the limits of the City's project.

The mid-December 2014 storms caused considerable erosion damage to the reach of the creek within the City's project limits. The City is required to make damage repairs, and temporary repair work was completed in October 2015 before the predicted El Niño wet season.

On February 17, 2015, the parties entered into Amendment No. 1 in the amount of \$21,055 to provide Professional Engineering Services to complete the design for the temporary repair work, and consultations with the permitting agencies, and construction support.

A more substantial long term erosion mitigation repair is required to stabilize the bank, and new updated agency Permits are required for this repair effort. The parties entered into Amendment No. 2 with H.T. Harvey & Associates on February 16, 2016 for these services, in the amount of \$30,000.

Staff has now secured the necessary permits for the permanent repairs. The new permits require pre-construction surveys for special status fish and wildlife species, nesting bird

surveys, and a worker education program, all required to be performed by a qualified biologist.

The firm of H.T. Harvey & Associates can provide the required qualified biologist and was used previously for permitting and construction support services for the original and temporary repair projects. Staff recommends amending the agreement to provide the services required for the permanent repairs to the creek channel. Amendment No. 3 to the Agreement with H.T. Harvey & Associates is proposed for these additional services. Staff negotiated a fee for these services not to exceed \$10,000. Approval of this Amendment No. 3 brings the aggregate agreement amount to \$158,055.

Alternative: Denial would result in the necessary work not being completed in the time frame required by the Project permits. This in turn would expose the City to potential fines from permitting agencies.

California Environmental Quality Act: This project has an approved Mitigated Negative Declaration.

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

Recommendations:

1. Adopt a resolution awarding a contract to Preston Pipelines, Inc. as the lowest responsible bidder submitting a responsive bid, for the Wrigley-Ford Creek Erosion Repair Project No. 3700 in the amount of \$66,600.00.
2. Authorize Director of Engineering/City Engineer to execute contract change orders for the Wrigley-Ford Creek Erosion Repair Project No. 3700 in an amount not to exceed a construction contingency of \$6,600.00.
3. Approve Amendment No. 3 to the Agreement with H.T. Harvey & Associates in the amount of \$10,000.

XX. AGREEMENTS & BID

- *17. Approve Amendment No. 4 to the Consultant Agreement with HF&H Consultants for Solid Waste Procurement Services in the Amount of \$138,160 and Approve a Budget Appropriation in the Amount of \$200,000 to CIP No. 3401 (Staff Contact: Steven Machida, 408-586-3355)**

Background: The City's 30-year solid waste collection and disposal agreements with Republic Services expires in September 2017. On December 2, 2014, the City entered into an agreement with HF&H Consultants (HF&H) for \$55,525 to identify and analyze the City's options for obtaining future services. On April 7, 2015, Council chose to conduct a competitive process. On May 5, 2015 and June 16, 2015 staff received Council direction regarding the policies governing and the content of the solid waste services Request for Proposal (RFP). Proposals were received on October 27, 2015 as required in the RFP schedule.

On June 16, 2015, Council approved Amendment No. 1 in the amount of \$49,925 to include the next phase of work, which involved developing a list of proposers, completing development of, and issuing the RFP including two draft agreements, posting the RFP to a dedicated website, responding to proposer questions, and receiving and conducting an initial review of the proposals. On November 17, 2015, Council approved Amendment No. 2 to the Agreement with HF&H in the amount of \$106,800 to allow continuation of work related to initial proposal review for both disposal and collection proposals and to perform most of the work necessary for the evaluation, negotiation and public presentation of information related

to the selection of disposal services contractor. On March 1, 2016, Council approved Amendment No. 3 in the amount of \$200,000 to complete the procurement process.

On June 21, 2016, the City Council directed staff to conduct negotiations and secure collection agreements with four of the collection proposers. It is now necessary to amend the consultant agreement to address the next phase of work, which includes additional effort for final contract negotiations and execution, developing an implementation plan, and providing implementation assistance during the next several months. Staff anticipates providing a status update to Council in approximately 6 months. Staff recommends increasing the contract amount by \$138,160, for a total not-to-exceed cost of \$550,410.

In each case, staff recommended use of a phased approach for the consultant work due to unknowns that have included the number and content of proposals that were to be submitted, the extent of the alternatives/exceptions proposed, needs for added public outreach, and Council direction in negotiating agreements with one or more finalist for disposal and for collection.

California Environmental Quality Act: The item is not considered a project under CEQA as there will be no direct, or reasonably foreseeable indirect physical change to the environment, as it merely provides for staffing needs to address solid waste procurement services.

Alternative: If the amendment is not approved, engineering staff will not receive additional consulting services to complete implementation of solid waste collection.

Fiscal Impact: A budget appropriation of \$200,000 from the Solid Waste Fund to CIP No. 3401 is necessary to perform this work.

Recommendations:

1. Approve Amendment No. 4 to the consultant agreement with HF&H Consultants for solid waste procurement services in the amount of \$138,160.
2. Approve a budget appropriation in the amount of \$200,000 from the Solid Waste Fund to CIP No. 3401.

- *18. Approve and Authorize the City Manager to Execute the Joint Use Agreement and the Upper Berryessa Creek Flood Control Risk Master Agreement between the City and Santa Clara Valley Water District for the Removal, Construction and Modification of City Improvements and Allowing Use of District Property for Recreational Purposes (Staff Contact: Steve Erickson, 408-586-3301)**

Background: The Santa Clara Valley Water District and the United States Army Corps of Engineers are moving forward with a project to widen and improve Upper Berryessa Creek for flood control purposes from Calaveras Boulevard south to upstream of Interstate 680. As part of the levee and flood control work, the project will include the relocation, removal, construction, and modification of City utilities and infrastructure along the creek corridor, including the removal of fitness exercise equipment located within District property adjacent to the Sinclair Horizons subdivision. The exercise equipment was installed by a developer in the early 1990's under a revocable District encroachment permit. The equipment has reached the end of its service life and is in poor condition. The District has requested its removal due to its location with respect to the widening of the creek.

Staff has reached an agreement with the District to provide reimbursement for City staff time for the review of the project design and for construction inspection. The District has also agreed to provide project outreach to the Milpitas Community, to install and maintain upgraded chain link right of way fencing adjacent to City Streets, and to install storm drain flap gates on City storm drains entering Berryessa Creek. Upon completion of project

construction, the District will allow and permit the City to utilize their levee maintenance access road from Calaveras Boulevard to Yosemite Drive as a walking trail/bike path. Pedestrian access points, trash receptacles, and trail usage/rules signage will be posted at trail intersections with Calaveras Boulevard, Los Coches Street, and Yosemite Drive. The City will be obligated to empty the trash cans, maintain the signage at the trail entry points, and provide routine oversight and security of the trails usage by the public. The District will maintain its access road including weed and litter control, fencing, and will provide graffiti removal for District flood control facilities.

Alternative: A denial of this request would result in not moving forward with the agreements with the District for use of their maintenance access road as a trail/bike path. A denial would also delay the implementation of the Army Corps/District flood control project.

California Environmental Quality Act: The Army Corps/District provided an Environmental Impact Report (EIR) for their project. The proposed use of the District levee as a trail/bike path is consistent with the City's Berryessa Creek Trail and Coyote Creek Trail Feasibility Report, and the VTA 2040 Plan as it provides a connection from Town Center to the future BART Station.

Fiscal Impact: The Army Corp/District project is federally funded. City annual maintenance costs to maintain signage, empty trash receptacles at the creek trail/bike path entry points, and to provide trail usage oversight and security is estimated at \$5,000 annually.

Recommendation: Approve and authorize the City Manager to execute the Joint Use Agreement and the Upper Berryessa Creek Flood Control Risk Master Agreement between the City and the Santa Clara Valley Water District.

***19. Reject All Bids and Authorize Staff to Repackage and Re-advertise Project for the Light Rail Median Landscaping Project No. 2001 (Staff Contact: Steve Erickson, 408-586-3301)**

Background: On June 7, 2016, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals for the Light Rail Median Landscaping Project No. 2001. The Engineer's Estimate for the project is \$1,889,000.

The project was advertised and three sealed bids proposal were received on July 19, 2016. The bid pricing ranged from \$1,578,817.00 to \$2,153,004.00. The lowest bid was submitted by Empire Landscaping, Inc. in the amount of \$1,578,817.00. Empires Landscaping's bid contained a bid irregularity in that two bid items (Bid Items #6 and #49) were incorrectly subtotaled (i.e., there was an arithmetical error in calculating the extended price of these items when taking into account the unit prices and the estimated quantities. The result of the error changes Empire Landscaping's bid to \$1,603,517.00, however the error does not change the ranking.

This project will provide median landscape improvements within the Great Mall Parkway median under the Light Rail viaduct from Montague Expressway to Highway 880. The duration of the Project is anticipated to be six months. Currently there is an extensive amount of construction within the Great Mall Parkway/TASP area due to BART, the County's widening of Montague Expressway with replacement of the Berryessa Creek Bridge, US Army Corp Berryessa Creek Improvement Project, and several large private development projects that are underway or scheduled to start. These projects will all contribute to significant traffic impacts and congestion during the Holiday Season. Staff has determined the Milpitas Community would be better served by delaying the project until after January 2017 to avoid increasing traffic congestion and delays, especially during the holiday season.

Therefore, staff recommends that the City Council reject all bids for the project in accordance with Public Contract Code section 20166 and authorize staff to revise, repackage, and re-advertise the project to allow it to commence in early 2017 after the holiday season.

Alternative: Denial would result in the requirement to award the contract for the project to the lowest responsible bidder submitting a responsive bid, and to allow the project to commence immediately.

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

Recommendations: Reject all bids and authorize staff to repackage and re-advertise the project.

***20. Authorize the City Manager to Execute, and Make Any Necessary Changes to, a Cost Sharing Agreement for Storm Water Facilities within the Piper/Montague Subdistrict of the Milpitas Transit Area Specific Plan (Staff Contact: Judy Chu, 408-586-3325)**

Background: The City and the property owners within the Piper/Montague Subdistrict of the Milpitas Transit Area Specific Plan - Milpitas Station, LLC, Southside Industrial Park and SCS Development Corporation, entered into a Cost Sharing and Reimbursement Agreement (the “Master Agreement”) dated August 18, 2009. The Piper/Montague Subdistrict is located close to the Great Mall and the future BART station and bounded by Piper Drive, Montague Expressway and Milpitas Boulevard.

Section 7.6 of the Master Agreement requires the property owners to enter into a separate cost sharing agreement for the on-going maintenance and repair of the storm water facilities constructed within the Piper/Montague Subdistrict, and to allocate the costs of such maintenance and repair obligations in accordance with allocations set forth in Section 3.2.2.2 of the Master Agreement.

Since the recordation of the Master Agreement, several properties have changed ownership. The current property owners are Amalfi Milpitas LLC, SCS Development Corporation, KB Home, Southside Industrial and Pulte Group.

The City and the current property owners have determined to substitute a project-wide Media Filter with several smaller Media Filters accompanied by several Bio-Retention Areas, and to amend allocations under Section 3.2.2.2 of the Master Agreement by providing for allocations through designation of eight (8) areas of responsibility as depicted in the Exhibit A (BMP Maintenance Reasonability Exhibit) of the attached Cost Sharing Agreement for Storm Water Facilities (Piper/Montague Subdistrict).

The Cost Sharing Agreement for Storm Water Facilities (Piper/Montague Subdistrict) has been reviewed by the City Attorney as to form and by the Director of Engineering and Director of Public Works as to content with recommended changes.

California Environmental Quality Act: Execution of the Cost Sharing Agreement is not considered a project under CEQA as there will be no direct, or reasonably foreseeable indirect physical change in the environment. Execution of the Agreement was a requirement of the Master Agreement and the Master Agreement was imposed through conditions of approval on the underlying development project, which was found to be consistent with the Transit Area Specific Plan Environmental Impact Report pursuant to CEQA Guideline 15168(c)(2).

Fiscal Impact: The City’s maintenance responsibility for the storm water facilities will be limited to within the park land, to be funded by the tax revenues from the Community Facilities District 2008-1.

Recommendation: Authorize the City Manager to execute, and make any necessary changes to, a Cost Sharing Agreement for Storm Water Facilities within the Piper/Montague Subdistrict of the Milpitas Transit Area Specific Plan.

- *21. **Authorize the City Manager to Execute a Storm Water Management Operation and Maintenance Agreement for Amalfi Milpitas, LLC (Staff Contact: Judy Chu, 408-586-3325)**

Background: On November 1, 2011, the City Council conditionally approved an amendment to the Vesting Tentative Map, Conditional Use Permit, and Site Development Permit (Resolution No. 8132) for a 94-unit townhomes and 638-unit apartments, totaling 732-unit residential development at 1200 Piper Drive. Project condition No. 14.E. requires the property owner to execute and record a Storm Water Management Operation and Maintenance Agreement with the City for the operation, maintenance and annual inspection of the storm water treatment facilities, prior to final building occupancy.

The agreement (copy in the agenda packet) has been reviewed by the City Attorney as to form and by the Director of Engineering as to content.

California Environmental Quality Act: Execution of the Agreement is not considered a project under CEQA as there will be no direct, or reasonably foreseeable indirect physical change in the environment. Execution of the Agreement was a requirement imposed through conditions of approval on the underlying development project, which was found to be consistent with the Transit Area Specific Plan Environmental Impact Report pursuant to CEQA Guideline 15168(c)(2).

Fiscal Impact: None.

Recommendation: Authorize the City Manager to execute a Storm Water Management Operation and Maintenance Agreement for Amalfi Milpitas, LLC.

- *22. **Authorize the City Manager to Execute a Storm Water Management Operation and Maintenance Agreement for Shapell Norcal Rental Properties, LLC (Staff Contact: Judy Chu, 408-586-3325)**

Background: On February 26, 2015, the Planning and Neighborhood Services Department conditionally approved a minor site development permit for the Orchard Supply Hardware at 125 North Milpitas Boulevard. As part of the permit conditions of approval for the Building Permit B-BP14-0362, the property owner shall execute and record a Storm Water Management Operation and Maintenance Agreement with the City for the operation, maintenance and annual inspection of the storm water treatment facilities.

The agreement (copy in agenda packet) has been reviewed by the City Attorney as to form and by the Director of Engineering as to content.

California Environmental Quality Act: Execution of the agreement is not considered a project under CEQA as there will be no direct, or reasonably foreseeable indirect physical change in the environment.

Fiscal Impact: None.

Recommendation: Authorize the City Manager to execute a Storm Water Management Operation and Maintenance Agreement for Shapell Norcal Rental Properties, LLC.

XXI. HOUSING AUTHORITY

- *23. Authorize the Housing Authority Executive Director to Execute Operating Memorandum No. 2 to the First Amended and Restated Disposition and Development Agreement Concerning South Main Senior Lifestyles Project for Assignment of the Development and Disposition Agreement and Approval of Operator and Services Plan (Staff Contact: Russell Morreale, 408-586-3111)**

Background: An approved Disposition and Development Agreement (“DDA”), fully amended and restated on November 19, 2013, concerns the disposition of a 5.94 acre site from the Milpitas Housing Authority (“MHA”) to South Main Senior Lifestyles (SMSL). The development involves a 389-unit senior rental continuum-of-care retirement community, with a total of 48 very low income units (12%). The retirement community will be constructed in two phases. The first phase (Phase One Development) will consist of 199 units whose senior residents will receive congregate care, assisted living, and/or memory care services as appropriate to their individual needs. The second phase (Phase Two Development) will consist of 190 independent living senior units. The Housing Authority approval in 2013 allowed Phase One of the project to move forward for entitlement consideration. The City Council subsequently approved the Vesting Minor Tentative Map (No. TP14-0001), Site Development Permit (No. SD14-0006) and Density Bonus (No. DB14-0001) for this first phase of the project on November 18, 2014. In 2015, Operating Memorandum #1 was introduced for a threefold purpose: (1) to extend project timelines (start and completion) for both phases; (2) transfer SMSL’s interest in both phases of the parcel and development under the DDA to joint venture entities to be formed by SMSL with investors for the purpose of obtaining equity for both phases; and (3) approve the operator for the Phase One Development.

By way of further background, the property is located on the east side of South Main Street with an address of 1504–1620 South Main Street, identified as Assessor Parcel Numbers 086-22-027, -028, -047 and -048. A graphic depiction of the site is included as Attachment 6. It lies within the Midtown Specific Plan Area with Multi-family Residential, Very High Density General Plan Designation. Zoning for the property is Multi-family Residential, Very High Density (R4) in the TOD Overlay (TOD). It is consistent with the adopted zoning and General Plan designations. As amended, the project completion timeline for Phase One extends to 2019 with commencement in 2017.

DDA Requested Updates

With the passage of time since 2014 and in recognition of changes in market demographics indicating a substantial and rapidly growing need for memory care services by Milpitas’ aging seniors, the operating memorandum on tonight’s agenda proposes a transfer of SMSL’s interest to a new entity and a change in operator. Furthermore, it presents in Attachment 5 the Services Plan for the Phase One Development detailing the nature of the congregate care and assisted living services that will be provided to the residents of the Phase One Development, and introducing “memory care” to the suite of senior services. These updates are codified as part of Attachment 2 - Operating Memorandum #2. These most recent developer requested changes further support their vision for this senior service facility site. In recent meetings with staff, the Developer expressed their continued intent and eagerness to move this project forward. The plans for on- and off-site public improvements for the Phase One Development have been submitted to the City for review, and the construction drawings are well underway.

As explained in Attachment 1, the addition of memory care services necessitated a change in SMSL’s investment/development partner and operator to a team with expertise in memory care, as well as congregate care and assisted living. SMSL originally entered into a Letter of Intent with an institutional equity investor – Wolff Real Estate Partners II, LP investment fund (Wolff), a major multifamily and senior housing investor and developer headquartered

in Scottsdale, Arizona. However, with the addition of memory care services, the Phase One Development no longer met Wolff's investment criteria and development expertise. As part of this staff report's recommended actions, SMSL is proposing new equity investors and development partners - Stone Rivard McGonigle Development, LLC ("SRM") and Westmont Living, Inc. (Westmont). Their combined background present major real estate development, construction and operations experience, with particular expertise in senior housing projects with a memory care component. Attachments 3 and 4 provide the background and experience levels of SMSL's new partners in this venture. From a financing standpoint, SRM, Westmont and SMSL investors are positioned to invest approximately \$31 million of equity capital in Phase One. The total cost of the Phase One Development (including all costs of development, construction and financing) approximates \$89 million leaving \$58 million of external bank financing for the developer.

SMSL will continue to be the lead development entity responsible for obtaining all project entitlements and all City/Housing Authority approvals and consents relating to the Phase One Development. SMSL will handle all interface with the City, and will remain a partner with an ownership interest in the Joint Venture Entity.

The DDA allows for administrative approval, at the staff level, of the type of actions noted above. It anticipated the need for a possible transfer of interest to a third party equity partner and operator for the congregate care and assisted living complex. With the importance of this development to the Community, staff deemed it appropriate to update the City Council/Housing Authority on the project status. Beyond actions recommended at this meeting, staff is working with SMSL to draft and execute a formal guaranty, to ensure construction completion of the project, as well as subordination agreements as allowed for in the executed DDA.

The DDA requires that the Finance Director assess the financial adequacy of (1) the proposed development/investment partners to carry out development of the project, as set forth in Section 7.1 of the DDA; and (2) the proposed operator to operate the Phase One Development, as outlined in Section 1.41 of the DDA under the caption "Operator and Operations Agreement." The developers and operator have complied with available informational requests from both a financial capacity and operational experience perspective and displayed adequacy and proficiency in these areas based upon the developer representations made therein. Although not uncommon for private investors, the financial reports submitted are unaudited, as such, they represent the good faith representations of each investor.

The next important step from a financial perspective for Housing Authority review will be submission of the Financing Plan for the Phase One Development. Per the DDA, the Developer shall submit the Financing Plan to the Housing Authority prior to commencement of construction of the first phase. The Financing Plan shall evidence all sources of funds necessary to pay, when due, the estimated costs of development (including without limitation hard and soft construction costs), and shall be accompanied by evidence that all such funds have been firmly committed by Developer, equity investors or lending institutions, subject only to commercially reasonable conditions. Housing Authority staff shall review the proposed Financing Plan, and acting through Housing Authority's Executive Director, Housing Authority shall approve such plan provided that the plan conforms to these requirements of Section 1.3.1 of the DDA. Financing information updates are required for all phases of the development – from project inception throughout completion. It anticipates substantial up-front financing, bank required reserve requirements and project contingencies. All items subject to future review by the MHA.

In summary, specifically, SMSL is requesting implementation of updated and refined DDA terms as follows:

1. A transfer of SMSL’s interest in the Phase One Parcel and the Phase One Development under the DDA to a Joint Venture Entity between SMSL, SRM and Westmont, and/or the affiliates of SRM and/or Westmont, whose managing general partner will be SRM and/or Westmont (or their affiliates), for the purpose of creating an ownership structure to obtain equity for development of the Phase One Development; and
2. A transfer of SMSL’s interest in the Phase Two Parcel and the Phase Two Development under the DDA to a Joint Venture Entity between SMSL, SRM and Westmont (or their affiliates), whose managing general partner will be SRM and/or Westmont (or their affiliates), for the purpose of creating an ownership structure to obtain equity for development of the Phase Two Development; and
3. The selection of Westmont as the Operator of the Phase One Development; and
4. Approval of the Services Plan for the Phase One Development.

Fiscal Impact: The following two elements of fiscal impact are relevant:

- (1) **Housing Authority** - The low-income housing component of the SMSL project, as originally approved, is critical and must be used for such purpose. It has been reported to the State Department of Finance as a Housing Asset and is subject to a project initiation timeline (3rd quarter of 2017). Additionally, complying with the original intent of the DDA is important to avoid any possibility of subjecting the site to “clawback” by the Oversight Board and the State. Under such a scenario, the City may be subject to a State order to sell the property at its highest and best use. The resulting proceeds would be distributed to other taxing entities. This has a potential cost, in terms of land value, to the City in the range of \$12 million to \$18 million per the agreed upon uses and agreement conditions.
- (2) **Completion Guaranty and Loan Subordination** – Beyond recommended actions at this Council meeting, staff will proceed to ensure that DDA conditions are met. From a finance perspective, two key conditions require action to facilitate project funding and continuity. The first is allowing for DDA subordination for purposes of securing a construction loan as outlined in Sections 8.1 and 8.11 of the DDA. The second is crafting and executing a completion guaranty, in-lieu of a performance/payment bond, as allowed in Section 5.10.2 of the DDA. Beyond this point, the developer is committed to providing evidence of a development Financing Plan and construction funds availability prior to building permit issuance.

Attachments

- A. Background Memo from South Main Senior Lifestyles
- B. Operating Memorandum No. 2 to First Amended and Restated Disposition and Development Agreement
- C. SFM Development - background and expertise memo
- D. Westmont - background and expertise memo
- E. Services Plan for Phase One development
- F. Site Maps

Recommendation: Authorize the Housing Authority Executive Director to execute the Operating Memorandum No. 2 to the First Amended and Restated Disposition and Development Agreement concerning South Main Senior Lifestyles project for assignment of the Development and Disposition Agreement and Approval of Operator and Services Plan.

XXII. ADJOURN JOINT MEETING OF THE CITY COUNCIL AND HOUSING AUTHORITY