



REGULAR MEETING OF THE MILPITAS CITY COUNCIL

AGENDA

TUESDAY, DECEMBER 6, 2016

455 EAST CALAVERAS BOULEVARD, MILPITAS, CA

6:00 P.M. (CLOSED SESSION)

7:00 P.M. (PUBLIC BUSINESS)

SUMMARY OF CONTENTS

- I. CALL TO ORDER/ROLL CALL OF THE CITY COUNCIL**
- II. ADJOURN TO CLOSED SESSION (6:00 p.m.)**
 - (a) CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING**
Pursuant to California Government Code Section 54957.6
City Negotiators: Tom Williams, Tina Murphy
Employee Groups: (1) Milpitas Police Officers Association; and (2) International Association of Fire Fighters
Under Negotiation: Wages, Hours, Benefits, and Working Conditions
 - (b) CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION**
Pursuant to California Government Code Section 54956.9(d)(1)
American Arbitration Association Case No. 01-16-00004753
 - (c) CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION**
Pursuant to California Government Code Section 54956.9(d)(4). City as Plaintiff.
 - (d) CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION**
Pursuant to California Government Code section 54956.9(d)(1)
City of Milpitas' appeal of City of San Jose Planning Director Decision, San Jose Planning Commission, file no. PD 14-014
- III. CLOSED SESSION ANNOUNCEMENT:** Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote or abstention of each member present
- IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- V. INVOCATION (Mayor Esteves)**
- VI. APPROVE COUNCIL MEETING MINUTES - November 15, 2016**
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDAR - December 2016**
- VIII. PRESENTATION**
 - Proclaim Month of Helping People with Intellectual Disabilities by the Knights of Columbus: St. Elizabeth Council #8747 and St. John Council #5796

- Presentation of 2016 Exemplary City Award to the City of Milpitas for the Healthy Cities Campaign from Santa Clara County Public Health

IX. PUBLIC FORUM

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

X. ANNOUNCEMENTS

XI. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

XII. APPROVAL OF AGENDA

XIII. CONSENT CALENDAR (Items with asterisks*)

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

XIV. PUBLIC HEARINGS

- 1. Conduct a Public Hearing and Adopt a Resolution Approving a Site Development Permit, Conditional Use Permit, Tentative Tract Map and Environmental Assessment for an 18-residential Unit Condominium Project at 1316 South Main Street (Staff Contact: Michael Fossati, 408-586-3274)**
- 2. Conduct a Public Hearing and Adopt a Resolution Approving a Specific Plan Amendment, Site Development Permit, Vesting Tentative Tract Map, and Environmental Assessment for the 25-Residential Unit Condominium Project with 2,000 Square Feet of Commercial Space at 260 South Main Street (Staff Contact: Michael Fossati, 408-586-3274)**
- 3. Conduct a Public Hearing and Approve the City of Milpitas 2016 Public Health Goals Report on Water Quality (2013-2015) (Staff Contact: Nina Hawk, 408-586-2603)**

XV. UNFINISHED BUSINESS

- * 4. Receive the Monthly Update of the Odor Control Report (Staff Contact: Greg Chung, 408-586-3355)**
- 5. Receive Report from Mayor Esteves of Those Persons Appointed to the General Plan Advisory Committee (Staff Contact: Brad Misner, 408-586-3273)**
- 6. Receive Reports Regarding Feasibility of Rate Offset to Retain Nonexclusive Debris Box Hauling and Alternate Landfill Disposal Sites, and then Direct Staff Accordingly (Staff Contact: Greg Chung, 408-586-3355)**

XVI. REPORTS OF MAYOR & COUNCIL

- * 7. Consider Mayor's Recommendations for New Appointments and Re-appointments to City of Milpitas Commission (Contact: Mayor Esteves, 408-586-3029)**

- * 8. **Per Recommendation of Councilmember Grilli, Move to Cancel Regular City Council Meeting of December 20, 2016 (Contact: Councilmember Grilli, 408-586-3031)**
- 9. **Receive Presentation on National Heritage Area from Santa Clara County Staff (Contact: Mayor Esteves, 408-586-3029)**

XVII. NEW BUSINESS

- *10. **Approve the Upgrade of Five Bullard Thermal Imaging Cameras Through an Exchange Program with L.N. Curtis & Sons for \$21,750 and Approve a Budget Appropriation from the Equipment Replacement Fund (Staff Contacts: Chris Schroeder, 408-586-3161 and Brian Stelling, 408-586-2822)**
- *11. **Accept the 2017 Citizen Options for Public Safety (COPS) Grant and Plan for Expenditure of Funds (Staff Contact: Henry Kwong, 408-586-2419)**
- *12. **Receive Financial Status Report for the Three Months Ended September 30, 2016 (Staff Contact: Jane Corpus, 408-586-3125)**

XVIII. ORDINANCE

- 13. **Waive First Reading Beyond the Title and Introduce Ordinance No. 227.7 Amending Title V, Chapter 215 of the Milpitas Municipal Code to Ban Smoking in Outdoor Dining Establishments (Staff Contact: Edesa Bitbadal, 408-586-3052, and Chris Diaz, 408-586-3041)**

XIX. RESOLUTIONS

- *14. **Adopt a Resolution Setting Tuesday, January 3, 2017 as the Public Hearing Date to Determine Whether Public Necessity, Health, Safety or Welfare Requires the Formation of Underground Utility District No. 6 on Portions of South Main Street and on Corning Avenue, Project No. 3425 (Staff Contact: Steve Erickson, 408-586-3301)**
- *15. **Adopt a Resolution Setting Tuesday, January 3, 2017 as the Public Hearing Date to Determine Whether Public Necessity, Health, Safety or Welfare Requires the Formation of an Underground Utility District No. 7 on Portions of the South Milpitas Boulevard and on Portions of Montague Expressway, Project No. 4281 (Staff Contact: Steve Erickson, 408-586-3301)**
- *16. **Adopt a Resolution Awarding a Contract to Goodland Landscape Construction, Inc. and Authorize City Engineer to Execute Contract Change Orders, and Approve Amendment No. 1 to the Agreement with SSA Landscape Architects, Inc. for the Higuera Adobe Park Renovations Project No. 5097 (Staff Contact: Steve Erickson, 408-586-3301)**
- *17. **Waive Immaterial Bid Irregularity and Adopt a Resolution Awarding a Contract to Marina Landscape Inc. for the Light Rail Median Landscaping Project No. 2001, and Authorize City Engineer to Execute Contract Change Orders (Staff Contact: Steve Erickson, 408-586-3301)**
- *18. **Adopt a Resolution Certifying Election Results and Adding Tract No. 10372 to Community Facilities District 2008-1 (Annexation No. 11), Approve Final Map Tract 10372 for a 114-unit Residential Condominium Development at 1757 Houret Court, 231, 247 and 271 Houret Drive, and Approve and Authorize the City Manager to Execute the Subdivision Improvement Agreement (Staff Contact: Judy Chu, 408-586-3325)**

- *19. Adopt a Resolution Certifying Election Results and Adding Tract No. 10359 to Community Facilities District 2005-1 (Annexation No. 17), Approve Final Map Tract 10359 for a 144-unit Residential Condominium Development at 1210 California Circle, and Approve and Authorize the City Manager to Execute the Subdivision Improvement Agreement (Staff Contact: Judy Chu, 408-586-3325)**
- *20. Adopt a Resolution Re-certifying the City of Milpitas' Sewer System Management Plan Including Revisions to the Overflow Emergency Response Plan (Staff Contact: Nina Hawk, 408-586-2603)**
- *21. Adopt a Resolution Approving Standardization of Bendix King Fire Radios as the Standard Radio for use in Wildland Urban Interface Fire Incident Communications by the City of Milpitas Fire Department (Staff Contact: Chris Schroeder, 408-586-3161 and Brian Stelling, 408-586-2827)**
- *22. Adopt a Resolution Approving the Purchase of Motorola Solutions, Inc. APX 8000 Radios for the Fire Department for the Not-To-Exceed Amount of \$157,000 Through a Cooperative Procurement Contract (Staff Contacts: Chris Schroeder, 408-586-3161 and Brian Stelling, 408-586-2827)**
- *23. Adopt a Resolution Amending the Classification Plan to Adjust Salary Ranges for City of Milpitas Unrepresented Classifications (Staff Contact: Tina Murphy, 408-586-3086)**
- *24. Adopt a Resolution Amending the Classification Plan to Adjust City of Milpitas Part-Time Temporary Classifications to Reflect the California Minimum Wage Law (Staff Contact: Tina Murphy, 408-586-3086)**

XX. AGREEMENTS

- *25. Approve Final Map Tract No. 10375 for a 308-unit Residential Condominiums at 1256 Piper Drive, and Approve and Authorize the City Manager to Execute the Subdivision Improvement Agreement (Staff Contact: Judy Chu, 408-586-3325)**
- *26. Authorize the City Manager to Execute Amendment No. 2 to the Cost Sharing Agreement with West Valley Sanitation District, Cupertino Sanitary, County Sanitation District No. 2-3 and Burbank Sanitary District in an Amount Not To Exceed \$420,000 (Staff Contact: Nina Hawk, 408-586-2603)**
- *27. Approve Project Plans and Specifications, and Authorize Advertisement for Bid Proposals and Approve and Authorize City Manager to Execute Agreement with David J. Powers & Associates, Inc. for Marylinn Drive Sanitary Sewer Rehabilitation, Projects No. 6115 and No. 6116 (Staff Contact: Steve Erickson, 408-586-3301)**
- *28. Approve Amendment No. 1 to the Agreement with Quality Assurance Engineering Inc. doing business as Consolidated Engineering Laboratories (Staff Contact: Steve Erickson, 408-586-3301)**
- *29. Approve and Authorize the City Manager to Execute Amendment No. 2 to the Consultant Services Agreement with EOA Inc. for Review of Compliance with the Municipal Regional Permit Provision C.3 Associated with Development Projects to Extend the Term to June 30, 2017 and Increase the Compensation by \$100,000 (Staff Contact: Judy Chu, 408-586-3325)**
- *30. Approve Amendment No. 3 to the Agreement with Law Firm of Burke, Williams & Sorensen, LLP for Legal Services (Staff Contact: Christopher Diaz, 408-586-3040)**

- *31. **Approve Amendment No. 9 to the Master Agreement with the Santa Clara Valley Transportation Authority Related to the Silicon Valley Rapid Transit Program Berryessa Extension BART Project Extending the Term to January 31, 2018; Increase the Agreement Amount by \$750,000; Approve Revised Capital Improvement Program BART Water Improvements, Project No. 7125; and Approve Budget Appropriations of \$150,000, \$1,200,000, \$184,563, and a Reduction of \$600,000 (Staff Contact: Greg Chung, 408-586-3355)**

XXI. ADJOURN CITY COUNCIL MEETING

NEXT CITY COUNCIL MEETINGS:

TUESDAY, DECEMBER 13, 2016 (Special)

TUESDAY, JANUARY 3, 2017 (Regular)

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 Sister Cities 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

XIV. PUBLIC HEARINGS

1. Conduct a Public Hearing and Adopt a Resolution Approving a Site Development Permit, Conditional Use Permit, Tentative Tract Map and Environmental Assessment for an 18-residential Unit Condominium Project at 1316 South Main Street (Staff Contact: Michael Fossati, 408-586-3274)

Background: The City received an application to demolish all existing vacant structures, slabs, and vegetation and develop 18 residential condominiums within one, four-story building at 1316 South Main Street. The site design includes a common, central courtyard area that would contain landscaping open to all floors, under a centrally located sky light. Parking will be provided on-grade within the first floor of the building.

The project proposes to address the Parkland Fee requirement through a combination of private recreation space, payment of Milpitas Transit Area Specific Plan (TASP) fees and payment of a parkland fee, all totaling in the amount of approximately \$437,328.

The residential project as proposed is consistent with the policies and guiding principles identified in the General Plan, the Milpitas Transit Area Specific Plan and, as modified by conditions of approval recommended by the Planning Commission, satisfies the requirements specified in the Municipal Code. The proposed project will contribute towards the City's housing stock and improve a vacant and underutilized lot along Main Street.

On November 9, 2016, the Milpitas Planning Commission approved the Site Development Permit, Conditional Use Permit, Tentative Tract Map, and Environmental Assessment Permit for the project including the Conditions of Approval.

Environmental Review: The City evaluated environmental issues based on the environmental checklist contained in Appendix G of the CEQA Guidelines. The responses to the checklist questions confirm that potential project impacts were considered and mitigated in TASP Final Environmental Impact Report, certified by City Council in 2008, and no new impacts are identified, and no new mitigation measures are required for the Project. Consequently, no additional CEQA review is required pursuant to §15183 and §15332 of the CEQA Guidelines.

Fiscal Impact: The developer of the project will pay all TASP fees and other assorted development fees to the City.

Attachments:

- A. City Council Resolution
- B. Planning Commission Meeting Minutes 11/09/2016
- C. Planning Commission Staff Report 11/09/2016
- D. Project Plans
- E. CEQA Analysis

Recommendations:

- 1. Open the public hearing, take public comment, and close the public hearing
- 2. Adopt a resolution approving the Site Development Permit (P-SD14-0021), Conditional Use Permit (P-UP14-0022), Tentative Tract Map (P-MT14-0005), and Environmental Assessment (P-EA16-0007), pursuant to CEQA Guidelines 15183 and 15332 for the 18-residential unit condominium project located at 1316 South Main Street (Zhang Condos project).

2. **Conduct a Public Hearing and Adopt a Resolution Approving a Specific Plan Amendment, Site Development Permit, Vesting Tentative Tract Map, and Environmental Assessment for the 25-Residential Unit Condominium Project with 2,000 Square Feet of Commercial Space at 260 South Main Street (Staff Contact: Michael Fossati, 408-586-3274)**

Background: The City received an application to demolish three existing, vacant structures in order to develop a mixed-use building with 25 townhome-style condominium units within four, three-story buildings. The project also includes approximately 2,000 square feet of commercial space within one of the proposed buildings facing Main Street. The application also proposed amending the Midtown Specific Plan in regards to the creation for a Precise Plan for certain properties.

The project proposes to address the Parkland Fee requirement through a combination of private recreation space and payment of a parkland fee in the amount of approximately \$607,401.

The residential project as proposed is consistent with the policies and guiding principles identified in the General Plan, the Milpitas Midtown Specific Plan and, as modified by conditions of approval recommended by the Planning Commission, satisfies the requirements specified in the Municipal Code. The project will contribute towards the City's housing and commercial space stock and improve a vacant and underutilized lots along Main Street.

On November 9, 2016, the Milpitas Planning Commission approved the Specific Plan Amendment, Site Development Permit, Vesting Tentative Tract Map, and Environmental Assessment Permit including Conditions of Approval.

Environmental Review: The City evaluated environmental issues based on the environmental checklist contained in Appendix G of the CEQA Guidelines. The responses to the checklist questions confirm that potential project impacts were considered and mitigated in the Milpitas Midtown Specific Plan Final Environmental Impact Report ("FEIR"), certified by the Milpitas City Council in March of 2002, and no new impacts are identified, and no new mitigation measures are required for the Project. Consequently, no additional CEQA review is required pursuant to §15168 of the CEQA Guidelines.

Fiscal Impact: The developer of the project will pay all development fees to the City.

Attachments:

- A. City Council Resolution
- B. Planning Commission Meeting Minutes 11/09/2016
- C. Planning Commission Staff Report 11/09/2016
- D. Project Plans
- E. CEQA Analysis

Recommendations:

- 1. Open the public hearing, take public comment, and close the public hearing
- 2. Adopt a Resolution approving Specific Plan Amendment (P-ST16-0001), Site Development Permit (P-SD16-0001), Vesting Tentative Tract Map (P-TP16-0001), and Environmental Assessment (P-EA16-0006) per CEQA Guideline 15168(c)(2) for the City Ventures townhouse-style condominium project (City Ventures) at 260 South Main St.

3. **Conduct a Public Hearing and Approve the City of Milpitas 2016 Public Health Goals Report on Water Quality (2013-2015) (Staff Contact: Nina Hawk, 408-586-2603)**

Background: California Health and Safety Code requires all California water retailers serving more than 10,000 service connections to prepare a report every three years to inform

consumers of water quality constituents that exceeded the Public Health Goals (PHGs). PHGs are non-enforceable water quality goals established by the California Office of Environmental Health Hazard Assessment and are based solely on public health risk considerations. Maximum Contaminant Level Goals (MCLG), established by the U.S. Environmental Protection Agency (USEPA), are the federal equivalent to California’s PHGs. Public water systems are also required to hold a public hearing for the purpose of accepting and responding to public comment on the report, which may be done as part of a regularly scheduled Council meeting. The PHG Report covers calendar years 2013-2015. The report is presented to Council to satisfy the public hearing requirements and to obtain Council approval.

Fiscal Impact: None.

Recommendations:

1. Receive public comments, and then move to close the public hearing.
2. Accept and approve the City of Milpitas 2016 Public Health Goals Report on Water Quality (2013-2015).

XV. UNFINISHED BUSINESS

- *4. Receive the Monthly Update of the Odor Control Report (Staff Contact: Greg Chung, 408-586-3355)**

Background: From October 5 through November 1, 2016, the Bay Area Air Quality Management District (BAAQMD) forwarded 91 complaints originating in Milpitas. 33 complaints identified a garbage odor, 5 complaints identified a sewage odor, and 53 complaints did not identify an odor source. As of the last Council update, the City’s odor reporting website has received 20 reported complaints.

At the November 1, 2016 Council meeting, City Council requested to be provided additional information on previous odor complaints. Here are additional statistics obtained from the BAAQMD for the period from December 1, 2014 through June 30, 2016:

Total complaints originating in Milpitas:	4,762
Complaints confirmed by BAAQMD:	249
Number of days of confirmed complaints:	114 (some dates had multiple complaints)
Confirmed complaints for Newby Island Landfill:	233
Confirmed complaints for the San Jose/ Santa Clara RWF (Wastewater Treatment Facility)	10
Confirmed complaints for Zero Waste Energy facility	6
Notices of Violations issued:	16

The City of Milpitas receives information from BAAQMD on odor complaints originating in Milpitas. The information provided does not include information on whether or not the odor complaints were confirmed or if any action was taken. The additional information above on confirmed odor complaints and Notice of Violations can be obtained through a request for additional information from BAAQMD. The enforcement agency for the Newby Island Landfill is the City of San Jose Local Enforcement Agency (LEA). This entity is responsible for requesting corrective action and subsequent follow up actions that may be taken to address odor issues.

As a result of the odor violations, on April 29, 2016 City of San Jose LEA requested Republic Services to prepare an Odor Best Management Practices Feasibility Report (OBMPFR) for the Newby Island Compost Facility. The OBMPFR was due to the LEA on May 13, 2016. As of October 2016, City staff understands that the report has not been completed due to pending State regulatory requirements.

On October 14, 2016, the City of San Jose Planning Commission issued a staff report and an odor study titled Newby Island Resource Recovery Park – Odor Assessment Report, dated September 2016, which included odor reduction measure recommendations. City of Milpitas staff anticipates the San Jose Planning Commission will take action on this issue at the scheduled December 7, 2016 meeting.

Recommendation: Receive the monthly update of the odor control report.

5. Receive Report from Mayor Esteves of Those Persons Appointed to the General Plan Advisory Committee (Staff Contact: Brad Misner, 408-586-3273)

Background: On September 6, 2016, City Council directed staff to proceed with the selection process of the General Plan Advisory Committee to help facilitate the General Plan Update. Specifically, two nominations from each Councilmember and nominations from the Chamber of Commerce, Bicycle Pedestrian Advisory Commission, Community Advisory Commission, Economic Development Commission, the Milpitas Unified School District and from residents at-large were to be sent to the Mayor for consideration. All nominations have been received and forwarded to the Mayor for consideration and selection.

Recommendation: Receive report and finalize selection of those appointed by the Mayor and Council to serve on the General Plan Advisory Committee.

6. Receive Reports Regarding Feasibility of Rate Offset to Retain Nonexclusive Debris Box Hauling and Alternate Landfill Disposal Sites, and then Direct Staff Accordingly (Staff Contact: Greg Chung, 408-586-3355)

Background: The City's contract for solid waste collection and disposal expires in September 2017. The Milpitas City Council on March 15, 2016 awarded the disposal contract to Waste Management, Inc. The Milpitas City Council on November 14, 2016 awarded the collection agreement to Garden City Sanitation, Inc., dba Milpitas Sanitation, Inc.

Feasibility of Maintaining a Non-Exclusive Debris Box Hauling System:

The awarded collection agreement includes all debris box services within the franchise. The Council also considered, but did not approve a scenario that would maintain the non-exclusive debris box system with an added 6.3% increase to City-wide collection customer rates.

At its November 14, 2016 meeting, the Council noted the benefit of retaining a competitive market for debris bin hauling services through maintaining the non-exclusive system, and directed staff to determine whether it would be feasible to maintain the relatively lower rates approved by Council, and to maintain the non-exclusive system by using other sources of funding to offset what would otherwise be higher City-wide collection customer rates. Any such funding source would need to ensure guaranteed, sustained payments over the 15 year term of the approved collection agreement in order to avoid any risk to the General Fund. The options include reduction in franchise fees paid to the City or substantially higher payments from the non-exclusive debris box system. Reducing franchise fees that Garden City would remit to the City in order to avoid an increase in solid waste collection fees, is not recommended by City staff as franchise fee revenues are already dedicated to supporting General Fund activities such as street repairs. Funding the rate shortfall with guaranteed annual payments from the non-exclusive haulers would require collection of about \$1.11 M

annually (about \$900,000 in lost revenue, \$160,000 in staff time, and \$50,000 in 3rd party auditing services). Revenues generated through the system are a function of construction project development and are extremely volatile. While construction activity is currently high, it will not remain so throughout the 15 year term of the approved collection agreement, as the City's planned build-out is completed. Each hauler would need to make very substantial guaranteed and fixed annual payments, regardless of their actual revenues. Further, these payments would have to be guaranteed in the context of short agreements that are commonly two to three years in length. It is staff opinion that this option is not viable either.

A meeting was held on November 29, 2016 between the City and some of the debris bin hauling companies to discuss the feasibility of such guaranteed, sustained payments over the fifteen years of the collection agreement.

The haulers noted that there are other non-exclusive debris program models that could be used to improve the City's ability to improve revenue collection, increase diversion levels, and reduce undocumented hauling that may be occurring in the City. These programs would require a fee deposit with each demolition permit based upon the estimated amount of material to be generated. Some fees may be reimbursable depending on code requirements and submittal of documentation demonstrating appropriate disposal/diversion. One possible program model that was suggested is currently being used by the City of San Jose.

Staff anticipates that implementation of this type of program will require a change to the City's demolition permit process, solid waste ordinance, and fee/penalty structure. Staff recommends that the City Council not modify its November 14, 2016 decision to proceed with entering into an exclusive debris bin program with Garden City Sanitation Inc. Staff will, however, proceed with investigating the feasibility of generating enough revenue from a non-exclusive debris bin program described above and will report back to the City Council within the next 6 months on the economic feasibility to implement this system and what it would involve for City staff implementation.

Alternate Landfill Disposal Sites:

On March 15, 2016, the Milpitas City Council adopted a resolution approving an agreement with Waste Management Inc. (WMI) for disposal of Milpitas solid waste. After a referendum, approval of the agreement was placed on the November 8, 2016 general election ballot as Measure "L". The Milpitas community approved Measure L, upholding the WMI disposal agreement. At its November 14, 2016 meeting, the Milpitas City Council directed staff to hold discussions with WMI regarding use of alternate landfill sites and how the use of an alternate landfill site would impact solid waste collection rates. Staff will provide a verbal report on the possibility and impact of using alternate landfill disposal sites at the December 6 meeting.

Alternative:

Debris Box Hauling Exclusivity: The City Council could choose to direct staff not to further investigate the feasibility of generating enough revenue from a non-exclusive debris bin program.

Alternate Landfill Disposal Sites:

Milpitas solid waste may be disposed at the Guadalupe Landfill in accordance with the existing WMI agreement.

Fiscal Impact: Any fiscal impacts will be addressed in the verbal report..

Recommendation: Receive staff report and take actions, as necessary.

XVI. REPORTS OF MAYOR & COUNCIL

- * 7. **Consider Mayor's Recommendations for New Appointments and Re-appointments to City of Milpitas Commission (Contact: Mayor Esteves, 408-586-3029)**

Background: Mayor Esteves recommends the following:

Community Advisory Commission

Re-appoint Alternate No. 1 Michael Lee to a 2-year term to expire in January of 2019.

Re-appoint Alternate No. 2 Evan Bell to a 2-year term to expire in January of 2019.

Economic Development Commission

Newly appoint Jeffrey Chen as the hotel representative on the Commission to a currently vacant seat with a term that will expire in April of 2018.

Emergency Preparedness Commission

Move current Alternate No. 1 Jonathan Nakapalau up to a vacant voting seat as Commissioner to a term of 3 years that will expire in June of 2019.

Move current Alternate No. 2 Christine Tran up to the Alternate No. 1 seat to a 2-year term that will expires in June of 2017.

Newly appoint Vicki Young as Alternate No. 2 to a 2-year term that will expire in June 2017.

Planning Commission

Move up Alternate Member Zeya Mohsin into a vacant voting member seat to a 3-year term that will expire in December of 2018.

Newly appoint Evelyn Chua as Alternate Member to a 3-year term that will expire in December of 2018.

Recycling and Source Reduction Advisory Commission

Re-appoint Alternate No. 2 Yue George Liu to a term of 2 years that expire in October of 2018.

Sister Cities Commission

Re-appoint Dennis Grilli to a term of 3-years that will expire in September of 2017.

Newly appoint Michael Tsai as a voting member to a vacant 3-year term that will expire in September of 2017.

Newly appoint Jennifer Strohfus as a voting member to a vacant 3-year term that will expire in September of 2019.

Newly appoint Jim Li as Alternate No. 1 to a vacant 2-year term that will expire in September of 2018.

Telecommunications Commission:

Re-appoint members William Lam, Kurt Bohan, Ernesto Bautista and Alternate No. 1 Anh Bao to 2-year terms that will expire in January of 2019.

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

- * 8. **Per Recommendation of Councilmember Grilli, Move to Cancel Regular City Council Meeting of December 20, 2016 (Contact: Councilmember Grilli, 408-586-3031)**

Recommendation: Upon the recommendation of Councilmember Marsha Grilli, move to cancel the regularly scheduled meeting of the City Council on December 20, 2016.

9. Receive Presentation on National Heritage Area from Santa Clara County Staff (Contact: Mayor Esteves, 408-586-3029)

Background: On November 22, 2016, Mayor Esteves received a request from the Office of Santa Clara County Executive to provide a presentation explaining what a National Heritage Area is and its benefits to the City. County's email and meetings flyer are included in the agenda packet.

Fiscal Impact: None

Recommendation: Receive a presentation from a Santa Clara County representative on National Heritage Area and direct staff accordingly.

XVII. NEW BUSINESS

***10. Approve the Upgrade of Five Bullard Thermal Imaging Cameras Through an Exchange Program with L.N. Curtis & Sons for \$21,750 and Approve a Budget Appropriation from the Equipment Replacement Fund (Staff Contacts: Chris Schroeder, 408-586-3161 and Brian Stelling 408-586-2822)**

Background: The Milpitas Fire Department utilizes five specialized Bullard thermal imaging cameras during firefighting operations to search for trapped victims and sources of heat while in smoke filled conditions. These cameras have been in service for six years and are halfway thru their life expectancy, no longer under warranty, have longer refresh times and outdated software. The manufacturer of these units, Bullard, is providing an exchange program through its exclusive California distributor L.N. Curtis & Sons, for these units at a substantially reduced cost versus purchasing new units. The Bullard Thermal Imager Upgrade Program expires at the end of this current year December 31, 2016. Taking advantage of the exchange program will give the City upgraded software, quicker refresh times and a new 5 year warranty on each camera. This will provide the City with a safer product increasing visibility and situational awareness in a hazardous fire environments. The upgrade will extend the working life span of the units by approximately seven years. The cost of the upgrade for each of the five Thermal Imaging Cameras will be \$4,350, a total cost of \$21,750 as opposed to purchasing new which would cost \$40,351; a savings of \$18,601.

Fiscal Impact: The Equipment Replacement fund has an available balance of \$14,668, combined with savings in the Fire Department operational budget of \$7,082, for a total of \$21,750.

Recommendations:

1. Approve the upgrade of five Bullard Thermal Imaging Cameras for the Milpitas Fire Department via an exchange program through L.N. Curtis & Sons for \$21,750.
2. Approve a budget appropriation of \$14,668 from the Equipment Fund to the Fire Department budget for the purchase of five thermal imaging cameras.

***11. Accept the 2017 Citizen Options for Public Safety (COPS) Grant and Plan for Expenditure of Funds (Staff Contact: Henry Kwong, 408-586-2419)**

Background: The California state legislature awarded \$116,306 to the City of Milpitas through the Citizen Options for Public Safety (COPS) Grant as authorized by Government Code sections 30061-30063. No City matching funds are required. Government Code section 30062 specifies that these funds must be used exclusively for front line law enforcement services. Funds shall be appropriated pursuant to a written request from the Chief of Police.

Milpitas Police Department recommends the following list of front line municipal police services, or equivalent, to be purchased with the 2017 COPS Grant monies for fiscal year 2017:

1. Firearms Program Equipment
2. In-Field Cameras
3. WRAP Safe Restraint Systems
4. Surveillance Equipment
5. Interview Room Recording Equipment

Fiscal Impact: None. 2017 Citizen Options for Public Safety Grant of \$116,306 will fully cover the cost of the front line services listed above.

Recommendations:

1. Accept the 2017 Citizen Options for Public Safety (COPS) Grant in the amount of \$116,306.00.
2. Approve a budget appropriation in the amount of \$116,306 into the Police Department's operating budget.

***12. Receive Financial Status Report for the Three Months Ended September 30, 2016 (Staff Contact: Jane Corpus, 408-586-3125)**

Background: As of September 30, 2016, the General Fund received approximately \$18.2 million in total revenue. This amount is \$9 million more than the revenues received for the same period in FY 15-16 primarily due to the \$7.2 million reimbursement for the purchase of the property sold to the Milpitas Unified School District. Other areas of increases were in the sales tax revenue, building and fire permit fees, and transient occupancy tax revenue. Sales tax revenue was up by about \$1.3 million from the same period last year. However, it is too early to predict how much sales tax revenue will exceed above budget as there may be one-time revenues or corrections that may not recur in future quarters. Transient Occupancy Tax (hotel tax) increased over last year by about \$84,000. Building and fire permits increased by \$668,000 over last year due to increased development. Staff anticipated that the overall General Fund revenue will be on track with the budget projection.

City departments' expenditures in the first quarter were also on track with their budgets. Overall expenditures were at about 24% of the operating budget. Typically for the first quarter and as noted, expenditures for some departments exceeded 25% for the first three months. However, these spending patterns are typical due to various invoices that need to be paid at the beginning of each fiscal year instead of being able to spread expenditures evenly throughout the year. Examples of such expenditures include workers compensation insurance premium which was paid from the Human Resources budget and software license maintenance fees which were paid from the Information Services Department budget. Other types of expenditures that caused a couple of departments to exceed the 25% are due to retirement leave cash outs in Engineering and overtime in Fire that will be reimbursed from the State for mutual aid. In Non-departmental there was a one-time reimbursement of \$1.3 million for soil remediation completed by Milpitas Unified School District prior to the sale of the property.

Fiscal Impact: None.

Recommendation: Receive the financial status report for the three months ended September 30, 2016.

XVIII. ORDINANCE

13. **Waive First Reading Beyond the Title and Introduce Ordinance No. 227.7, Amending Title V, Chapter 215 of the Milpitas Municipal Code to Ban Smoking in Outdoor Dining Establishments (Staff Contacts: Edesa Bitbadal, 408-586-3052 and Chris Diaz, 408-586-3041)**

Background: According to the Centers for Disease Control and Prevention, cigarette smoking is the single most preventable cause of premature death in the United States. The U.S. Department of Health and Human Services reports that nonsmokers who are exposed to secondhand smoke at home or at work increase their heart disease risk by 25-30%. Tobacco use and exposure to secondhand smoke is a major public health concern in Santa Clara County. The cost of smoking is an economic issue as well. An estimated \$280 million a year is spent on tobacco-related health care costs in Santa Clara County. State law prohibits smoking in many enclosed places of employment, inside publicly-owned buildings, and within 20 feet of a main entrance or operable window or door of a public building. State law also prohibits smoking within 25 feet of tot lot sandbox areas and playground areas.

In an attempt to reduce impacts of secondhand smoke, a number of communities in Santa Clara County have enacted indoor/outdoor smoking ordinances that prohibit smoking in areas beyond those controlled by state law. The City of Milpitas enacted an ordinance on April 1, 2014 prohibiting smoking in public playground areas, athletic facilities, and certain places of employments, except in designated smoking areas.

On November 15, 2016, City Council directed staff to prepare an ordinance to prohibit smoking in outdoor dining areas throughout the City. Since that meeting, staff coordinated with Breathe America organization on an outreach plan and implementation to inform stakeholders, such as businesses, with outdoor dining areas. Outreach efforts concluded that the ordinance will not have a negative impact to Milpitas businesses. Additionally, most of those businesses affected by the ordinance already ban smoking in the patio areas or would support a City-wide ban on outdoor dining areas. The proposed ordinance also includes updates that further clarify the ordinance's purpose and mission.

Fiscal Impact: None. The Ordinance will have no fiscal impact.

Recommendation: Following the City Attorney's reading aloud of the title, move to waive the first reading beyond the title and introduce Ordinance No. 227.7.

XIX. RESOLUTIONS

- *14. **Adopt a Resolution Setting Tuesday, January 3, 2017 as the Public Hearing Date to Determine Whether Public Necessity, Health, Safety or Welfare Requires the Formation of Underground Utility District No. 6 on Portions of South Main Street and on Corning Avenue, Project No. 3425 (Staff Contact: Steve Erickson, 408-586-3301)**

Background: Project No. 3425 Utility Undergrounding 2017 is included in the City's 2016-2021 Capital Improvement Program. This project provides for the creation of new South Main Street utility Underground District No. 6 for the purpose of removing existing pole mounted overhead utility service wires and converting them to underground services.

The establishment of the underground utility district is a necessary step towards removal of overhead power, telecommunications and related equipment and poles. Placing these utilities underground increases public safety, particularly during and after seismic events and weather storms, and makes the area more attractive for commerce and community activities. Undergrounding of utilities on portions of South Main Street, and on portions of Corning Avenue supports the City's Midtown Specific Plan improvements, including installation of

new decorative street lighting. Pacific Gas and Electric Company, AT&T, and Comcast have electric distribution, telecommunication, and cable television service wires atop wooden poles along this corridor.

Pacific Gas & Electric has a Rule 20A program that is intended to help communities convert portions of their existing electric utility lines from traditional overhead lines to underground lines. Rule 20A credits are allocated at a rate of \$139,317 to the City annually, and the City currently has approximately \$4.0M in credits available for use toward this new underground district. The program also allows for the use of up to 5-years of future annual Rule 20A credit allocations toward a current project.

When a PG&E Rule 20A Underground District is formed, properties within the new district having existing overhead utility service lines to their buildings will be required to convert them to underground service. The conversion work requires the installation of new service conduits and wire from the street to the building. The electrical service panel and meter on the building are changed or modified to receive service from the ground. In some cases, commercial establishments may require the installation of above ground transformers, and the dedication of new utility easements and right-of-way may be required for the installation of above ground transformers or where underground utility conduits cross property lines.

All building modifications and service panel conversions to underground services must conform to the City's Building Code, and will require an electrical permits and related inspections at each building. PG&E Rule 20A credits can be used to fund these building service conversions for an amount not to exceed \$1,500 per property. The City would be required to fund any conversion work that exceeds the \$1,500 per property limit. The City would also be required to acquire and provide any new easements and right-of-way for the new underground utilities. The cost to purchase and acquire the easements are not eligible for Rule 20A funding and will require separate funding by the City.

The proposed South Main Street Underground Utility District No. 6 boundary map, draft resolution, and list of affected property owners is included in the City Council Agenda packet. The new underground district will utilize PG&E's Rule 20A credits for most of the construction. However, the removal or mitigation of contaminated or hazardous soils, the establishment of new easements and right-of-way, and service conversions exceeding the Rule 20A limits are not eligible for use of Rule 20A credits, and would be required to be funded separately by the City. It is estimated that approximately \$550,000 in City funding will be required to complete construction of the new district to cover cost items not eligible for use of Rule 20A credits. These additional costs will be programmed into the City's Capital Improvement Program this next cycle.

To establish the new South Main Street Underground Utility District No. 6 in accordance with the Milpitas Municipal Code, Title VII, Chapter 3 requires the City to send notice of the public hearing to all affected property owners and utility companies, and for the City Council to hold a public hearing and to adopt a resolution establishing the new District. Once the new utility district is established by resolution, Pacific Gas & Electric Company will commence with design and construction of the overhead to underground conversion. PG&E estimates that it will require 39 months to complete their design and construction of the undergrounding.

Alternative: Denial would result in not moving forward with the creation of a new utility underground district along South Main Street and Corning Avenue.

Fiscal Impact: An additional \$550,000 in City funds will be required to be programmed into CIP Project. Staff will program the required additional funding during the CIP next cycle.

Recommendation: Adopt a resolution setting Tuesday, January 3, 2017 as the date for a public hearing to determine whether Public Necessity, Health Safety or Welfare requires the formation of an Underground Utility District, and authorize the City Manager or his designee to notify all affected property owners as shown on the last equalized assessment roll, and all concerned utility companies of the time and place of such public hearing.

- *15. Adopt a Resolution Setting Tuesday, January 3, 2017 as the Public Hearing Date to Determine Whether Public Necessity, Health, Safety or Welfare Requires the Formation of an Underground Utility District No. 7 on Portions of the South Milpitas Boulevard and on Portions of Montague Expressway, Project No. 4281 (Staff Contact: Steve Erickson, 408-586-3301)**

Background: Project No. 4281 TASP Underground Utility District is included in the City's 2016-2021 Capital Improvement Program. This project provides for the creation of new South Milpitas Boulevard-Montague Expressway Utility Underground District No. 7 within the City's Transit Area Specific Plan (TASP) for the purpose of removing existing pole mounted overhead utility service wires and converting them to underground services.

The establishment of the South Milpitas Boulevard-Montague Expressway Underground Utility District No. 7 is a necessary step towards removal of overhead power, telecommunications and related equipment and poles. Placing these utilities underground increases public safety, particularly during and after seismic events and weather storms, and makes the area more attractive for commerce and community activities. Undergrounding of distribution service utilities on portions of South Milpitas Boulevard and on portions of Montague Expressway supports the City's Transit Area Specific Plan (TASP). Pacific Gas and Electric Company has both electric distribution and higher voltage transmission services along this corridor, and AT&T and Comcast has communication and cable television facilities atop wooden poles. The high voltage transmission facilities are located atop the tall steel pole structures. Only the lower voltage distribution facilities are proposed to be underground due to the high cost.

Pacific Gas & Electric Company (PG&E) has a Rule 20A program that is intended to help communities convert portions of their existing electric utility lines from traditional overhead lines to underground lines. Rule 20A credits are allocated at a rate of \$139,317 to the City annually, and the City currently has approximately \$4.0M in credits available for use toward this new underground district. The program also allows for the use of up to 5-years of future annual Rule 20A credit allocations toward a current project.

When a PG&E Rule 20A Underground District is formed, properties within the new district having existing overhead utility service lines to their buildings will be required to convert them to underground service. The conversion work requires the installation of new service conduits and wire from the street to the building. The electrical service panel and meter on the building are changed or modified to receive service from the ground. In some cases, commercial establishments may require the installation of above ground transformers, and the dedication of new utility easements and right-of-way may be required for the installation of above ground transformers or where underground utility conduits cross property lines.

The proposed South Milpitas Boulevard-Montague Expressway Underground Utility District No. 7 boundary map and list of affected property owners is included in the City Council Agenda packet. The proposed district will utilize PG&E's Rule 20A credits for most of the construction. However, the removal or mitigation of contaminated or hazardous soils, the establishment of new easements and right-of-way, and service conversions exceeding the Rule 20A limits are not eligible for use of Rule 20A credits, and would be required to be funded separately by the City. The existing structures within this proposed underground district are already serviced underground from poles at their street frontage. As a result,

building service conversions are not anticipated to be required. The need to mitigate hazardous or contaminated soils is also not anticipated.

Currently, the Santa Clara Valley Transportation Authority (VTA) is managing construction of the roadway widening and bridge construction on Montague Expressway from Gladding Court to Great Mall Parkway. This road widening includes work on South Milpitas Boulevard from Montague Expressway to the UPRR rail crossing. The VTA has agreed to install underground utility conduits and substructures for the City's proposed utility underground district. The County Roads & Airports has also agreed to share in the cost for the underground district work occurring in Montague Expressway, which is County right-of-way.

To establish the new South Milpitas Boulevard-Montague Expressway Underground Utility District No. 7 in accordance with the Milpitas Municipal Code, Title VII, Chapter 3 requires the City to send notice of the public hearing to all affected property owners and utility companies, and for the City Council to hold a public hearing and to adopt a resolution establishing the new District. Once the new utility district is established by resolution, and after installation of the conduit substructure by the VTA, Pacific Gas & Electric Company will commence with design and construction of the overhead to underground conversion. PG&E estimates that it will require 34 months to complete their design and construction of the undergrounding. Staff anticipates the need for an additional \$25,000 to be programmed into the Capital Improvement Project No. 4281 for design support and mapping costs associated with the completion of construction.

Alternative: A denial of this request would result in not moving forward with the creation of a new utility underground district along a portion of South Milpitas Boulevard and Montague Expressway.

Fiscal Impact: An additional \$25,000 in City funds will be required to be programmed into CIP Project, and will be programmed into the CIP during the next cycle.

Recommendation: Adopt a resolution setting Tuesday, January 3, 2017 as the date for a public hearing to determine whether Public Necessity, Health Safety or Welfare requires the formation of an Underground Utility District (UUD No. 7), and authorize the City Manager or his designee to notify all affected property owners as shown on the last equalized assessment roll, and all concerned utility companies of the time and place of such public hearing.

- *16. Adopt a Resolution Awarding a Contract to Goodland Landscape Construction, Inc. and Authorize City Engineer to Execute Contract Change Orders, and Approve Amendment No. 1 to the Agreement with SSA Landscape Architects, Inc. for the Higuera Adobe Park Renovations Project No. 5097 (Staff Contact: Steve Erickson, 408-586-3301)**

Background: On June 7, 2016, the City Council approved the plans and specifications and authorized the advertisement for construction bid proposals for the Higuera Adobe Park Renovations Project. The work on the project will renovate various park elements including replacement of the playground structure, and upgrade and improvement of picnic areas with new tables and barbecue grills, improved paving, lighting, drainage, landscape and installation of shade trees and installation of a shade structure. The project will include ADA accessibility improvements to pathways and restriping and reconstruction of the parking lot to include ADA parking stalls. The Engineer's Estimate for the project is \$1,767,862.

The project was advertised on October 7 and 14, 2016. Two sealed bid proposals were received on November 1, 2016 and the City received no bid protests. The lowest responsible bidder submitting a responsive bid is Goodland Landscape Construction, Inc. with a bid in the amount of \$1,861,453. This amount is above the Engineer's Estimate by \$93,591

(approximately 5.3%). The higher than anticipated bid proposal is most likely due to the short 148-day contract period, required work during the winter and wet weather, and the amount of competing projects in the area. The bid package included one add alternate item (Item A) for consideration of submitted pricing after bid opening in the amount of \$32,500. The add alternate item will provide for a 1.5" asphalt concrete overlay of the existing parking lot to provide a longer pavement life.

Staff recommends awarding the project base bid plus alternate bid item A bringing the total construction contract amount to \$1,887,053, which is within the Project's budget and will not require additional budget appropriation.

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 \$188,705; 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 December 1, 2015, the City entered into a consultant agreement with SSA Landscape Architects, Inc. in the amount of \$198,896 to provide design and construction support services. The term of the agreement is from December 1, 2015 to October 31, 2017. Staff recommends amending the agreement with SSA to provide for additional design services and permitting as required by the City Building and Fire Departments, and to extend the term of the agreement to October 31, 2019 to cover the anticipated duration of construction. Additional design services included the relocation and upgrade of the existing propane fuel tank and service line feeding the Adobe Building to create a larger more usable picnic area, design and incorporate an access road for City Fire and public safety vehicles, design the relocation and upgrade of the picnic area located under the Olive grove, and provide additional plan submittals required for Building and Fire Permit issuance. Amendment No. 1 with SSA Landscape Architects, Inc. is proposed for these additional services. Staff has negotiated a fee for these services not to exceed \$20,000. Approval of this agreement amendment brings the total agreement amount to \$218,896.

Alternative: Denial would result in not completing needed repairs resulting in further deterioration of the park and potential unsafe conditions.

California Environmental Quality Act: This project is categorically exempt under Section 15301 of the California Environmental Quality Act guidelines for maintenance of existing facilities.

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

Recommendations:

1. Adopt a resolution awarding a contract including one add alternate bid item to Goodland Landscape Construction, Inc. as the lowest responsible bidder submitting a responsive bid for the Jose Higuera Adobe Park Renovations Project No. 5097, in the amount of \$1,887,053.
2. Authorize Interim Director of Engineering/City Engineer to execute contract change orders for the Jose Higuera Adobe Park Renovations, Project No. 5097, in an aggregate amount not to exceed a construction contingency of \$188,705.
3. Approve Amendment No. 1 to the Agreement with SSA Landscape Architects, Inc. in the amount of \$20,000.

Attachments:

- A. City Council Resolution
- B. Bid Summary
- C. Construction Change Order Policy
- D. SSA Landscape – Amendment No. 1 to Agreement

***17. Waive Immaterial Bid Irregularity and Adopt a Resolution Awarding a Contract to Marina Landscape Inc. for the Light Rail Median Landscaping Project No. 2001, and Authorize City Engineer to Execute Contract Change Orders (Staff Contact: Steve Erickson, 408-586-3301)**

Background: On June 7, 2016, the City Council approved the 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 \$1,893,175.25.

The project was advertised on October 7 and 14, 2016 and two sealed bid proposals were received on November 2, 2016. The bid pricing ranged from \$1,793,504 to \$2,414,924 and the lowest bid was submitted by Marina Landscape Inc. in the amount of \$1,793,504. Marina Landscape’s bid, however, contained a bid irregularity in that one bid item (Bid Item #49) was incorrectly subtotaled. The City has broad discretion to determine responsiveness and accept a responsive bid even if there are minor irregularities or mistakes, as long as such mistakes are immaterial. (See *Menefee v. County of Fresno* (1985) 163 Cal. App. 3d 1175; *Ghilloti Construction Co. v. City of Richmond* (1996) 45 Cal.App.4th 897.) The bid documents for the Project include provisions for addressing inconsistencies between the unit price and the extended price, which resolved the bid error thus rendering it immaterial. Accordingly, City staff recommends the Council waive the immaterial bid irregularity and award the construction contract to Marina Landscape Inc., as the lowest responsible bidder submitting a responsive bid. No bid protests were filed with the City in regards to this project.

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 \$358,220; approximately 20% of the total contract value, and the change order authority would not exceed this amount and would not require an additional appropriation.

Alternative: Denial would result in not completing the City’s plan to enhance Great Mall Parkway consistent with the City’s Transit Area Specific Plan.

California Environmental Quality Act: This project is exempt under Section 15301 (Existing Facilities) of the CEQA guidelines.

Fiscal Impact: None. Adequate funds are available in the project budget for construction.

Recommendations:

1. Waive immaterial bid irregularity for Project No. 2001.
2. Adopt a resolution awarding a contract to Marina Landscape Inc. as the lowest responsible bidder submitting a responsive bid for the Light Rail Median Landscaping Project in the amount of \$1,791,104.
3. Authorize the Interim Director of Engineering/City Engineer to execute contract change orders for the Light Rail Median Landscaping Project No. 2001 in an aggregate amount not to exceed the construction contingency of \$358,220.

Attachments:

- A. City Council Resolution
- B. Bid Summary
- C. Construction Change Order Policy

- *18. Adopt a Resolution Certifying Election Results and Adding Tract No. 10372 to Community Facilities District 2008-1 (Annexation No. 11), Approve Final Map Tract 10372 for a 114-unit Residential Condominium Development at 1757 Houret Court, 231, 247 and 271 Houret Drive, and Approve and Authorize the City Manager to Execute the Subdivision Improvement Agreement (Staff Contact: Judy Chu, 408-586-3325)**

Background: On November 17, 2015, the City Council conditionally approved a Vesting Tentative Map (VTM) to allow for 114-unit residential condominium development at 1757 Houret Court, 231, 247 and 271 Houret Drive, west of Montague Expressway and south of Penitencia Creek, within the Transit Area Specific Plan area.

The final map Tract No. 10372 is subject to annexation to the Community Facilities District No. 2008-1 (“the CFD 2008-1”) as required by the project conditions. City has a Certificate of Registrar of Voters from the County of Santa Clara on file certifying there are no registered voters residing within the boundaries of proposed Annexation No. 11 to the CFD 2008-1. On December 2, 2016, property owner(s) unanimously approved Annexation No. 11.

The City Engineer has examined the final map Tract 10372 (Attachment 2) and determined that the final map Tract 10372 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, except where certain conditions may have not been met. All conditions necessary to approve the final map have been met.

The Developer has offered dedications to the City for public use, such as public service and utilities, public storm drain, bicycle and pedestrian access, 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. In approving the Final Map, the City Council will also be approving the offers of dedication as stated and depicted on the final map upon completion and acceptance of improvements.

On October 21, 2016, the City Council’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 Bluebell Way and Ironwood Drive 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 (2-1220) pursuant to MMC XI-1-7.09-2. The Developer has executed a Subdivision Improvement Agreement (Attachment 3) as approved by the City Attorney as to form and by the City Engineer as to substance pursuant to MMC XI-1-17.01 and provided improvement securities (\$799,000 for faithful performance and \$799,000 for labor and materials) to guarantee completion of required public improvements.

The final map Tract 10372 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 the CEQA pursuant to CEQA Guidelines Section 15268(b)(3). Approval of the Subdivision Improvement Agreement implements the Project for which CEQA review has already been completed through the City Council's adoption of Resolution No. 8509 adopting an addendum to the previously certified Transit Area Specific Plan EIR.

Fiscal Impact: None.

Recommendations:

1. Adopt a resolution certifying election results and adding Tract No. 10372 to Community Facilities District 2008-1 (Annexation No. 11).
2. Approve Final Map Tract No. 10372, 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.
3. Approve and authorize the City Manager to execute the Subdivision Improvement Agreement.

- *19. Adopt a Resolution Certifying Election Results and Adding Tract No. 10359 to Community Facilities District 2005-1 (Annexation No. 17), Approve Final Map Tract 10359 for a 144-unit Residential Condominium Development at 1210 California Circle, and Approve and Authorize the City Manager to Execute the Subdivision Improvement Agreement (Staff Contact: Judy Chu, 408-586-3325)**

Background: On November 28, 2014, the City Council conditionally approved a Vesting Tentative Map (VTM) to allow for 144 condominium dwelling units located at 1210 California Circle, south of Dixon Landing Road and west of Penitencia Creek.

The final map Tract No. 10359 is subject to annexation to the Community Facilities District No. 2005-1 ("the CFD 2005-1") as required by the project conditions. City has a Certificate of Registrar of Voters from the County of Santa Clara on file certifying that there are no registered voters residing within the boundaries of proposed Annexation No. 17 to the CFD 2005-1. On December 2, 2016, property owner(s) unanimously approved Annexation No. 17.

The City Engineer has examined the final map Tract 10359 (Attachment 2) and determined that the final map Tract 10359 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, except where certain conditions may have not been met. All conditions necessary to approve the final map have been met.

The Developer has 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 conditions 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. In approving the Final Map, the City Council will also be approving the offers of dedication as stated and depicted on the final map upon completion and acceptance of improvements.

On September 27, 2016, the City Council Facilities and Streets Naming Subcommittee reviewed and recommended approval of the street names as shown on the final map. Those private street names are Milkweed Street, Desert Holly Street, Snap Dragon Street, Sage Brush Street and Camas Street 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 (2-1219) pursuant to MMC XI-1-7.09-2. The Developer has executed a Subdivision Improvement Agreement (Attachment 3) as approved by the City Attorney as to form and by the City Engineer as to substance pursuant to MMC XI-1-17.01 and provided improvement securities (\$1,310,000 for faithful performance and \$1,310,000 for labor and materials) to guarantee completion of required public improvements.

The final map Tract 10359 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). Approval of the Subdivision Improvement Agreement implements the Project for which CEQA review has already been completed with the City Council's adoption of a Mitigated Negative Declaration on November 10, 2014. The scope of the proposed improvements contemplated under the Subdivision Improvement Agreement are found to be within the scope of the project analyzed in the original Mitigated Negative Declaration. Finally, pursuant to CEQA Guideline 15162, 15163, and 15164, no further environmental review in the form of a subsequent or supplemental negative declaration, or addendum, is necessary as no substantial changes are proposed to the project, no substantial changes have occurred with respect to circumstances under which the project is undertaken, and no new information of substantial importance that was not known and could not have been known at the time the mitigated negative declaration was adopted shows any of the information detailed in CEQA Guideline 15162(a)(3)(A)-(D).

Fiscal Impact: None.

Recommendations:

1. Adopt a resolution certifying election results and adding Tract No. 10359 to Community Facilities District 2005-1 (Annexation No. 17).
2. Approve Final Map Tract No. 10359, 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.
3. Approve and authorize the City Manager to execute the Subdivision Improvement Agreement.

***20. Adopt a Resolution Re-certifying the City of Milpitas' Sewer System Management Plan Including Revisions to the Overflow Emergency Response Plan (Staff Contact: Nina Hawk, 408-586-2603)**

Background: The State Water Resources Control Board ("SWRCB") Order# 2006-003 requires all entities that own and operate sanitary sewer systems that convey untreated wastewater to a publicly-owned treatment plant, to prepare a Sewer System Management Plan ("SSMP"). The SSMP is a document that addresses procedures to operate, maintain and manage wastewater collection systems. Utilization of the SSMP provides the guidelines and procedures to reduce the number and frequency of sanitary sewer overflows ("SSOs") and thereby decrease the risk to human health and the environment in our community. The City Council is required to update and re-certify the SSMP every five years, or when significant updates to any element are made. The City prepared and adopted the current SSMP on August 18, 2009. The five year SSMP re-certification occurred August 19, 2014. This 2016 re-certification includes a significant update to the City's Overflow Emergency Response Plan ("OERP"), which is SSMP Element 6. The City's OERP needs revision to improve SSO response procedures and be consistent with current SSO reporting requirements. Other less significant revisions and corrections have also been included in the updated SSMP.

As the SWRCB considers this update significant, re-certification by the City Council is required. The re-certification process includes Council approval of the updated SSMP at a public meeting, after which, authorized staff will re-certify the updated SSMP online per SWRCB instructions.

Significant updates to the 2016 Plan include:

1. Updating the OERP to improve SSO response procedures and be consistent with current SSO reporting requirements;
2. Amending the SSO categories to include the four level of spill categories from the previous three level spill categories;
3. Updating the Chain of Communication Flow Chart and Contact List for emergency response; and
4. Amending the City's LRO who are responsible to record and report SSO's to the SWRCB as required by the Board Order.

The draft 2016 version of the SSMP is available for review in the City Clerk's office. After the City Council re-certifies the 2016 SSMP, the final 2016 SSMP will be posted on the City's website.

California Environmental Quality Act: The action is not considered a project under CEQA Guideline 15061(b)(3) as there will be no direct, or reasonably foreseeable indirect physical change in the environment as this is a plan level document with no specific project identified that could cause any change in the environment. Instead, the plan document details provisions to provide proper and efficient management, operation, and maintenance of sanitary sewer system that will further protect the environment. To that end, the action is also exempt under CEQA Guideline 15301 to the extent that it applies to existing sanitary sewer collection systems that constitute "existing facilities" as that term is used in Section 15301. It is also exempt under CEQA Guideline 15302 to the extent that it results in the repair or replacement of existing systems involving negligible or no expansion of capacity.

Fiscal Impact: None.

Recommendation: Adopt a resolution re-certifying the City of Milpitas' Sewer System Management Plan, including revisions to the Overflow Emergency Response Plan.

- *21. Adopt a Resolution Approving Standardization of Bendix King Fire Radios as the Standard Radio for use in Wildland Urban Interface Fire Incident Communications by the City of Milpitas Fire Department (Staff Contact: Chris Schroeder, 408-586-3161 and Brian Stelling, 408-586-2827)**

Background: The City of Milpitas Fire Department is a participant in many of the State and Federal Fire Incidents that occur throughout the year with agencies such as Cal-Fire and the U.S. Department of Forestry. These agencies have already standardized the use of Bendix King Fire Radios statewide. The Fire Department currently has 8 Bendix King Radios and wishes to purchase 34 more. While another manufacturers' radio could communicate with State and Federal agency radios, the advantage of using the same radio is instant compatibility. Bendix King Radios have a unique cloning option that allows the City Fire Department's Team to automatically download all the frequencies being used during a fire incident. This time saving feature allows instant updated programming by simply cloning the frequencies from their radios to ours. Maintaining communications is vital during incident response and other manufacturers' radios would have to be manually programmed every time a new frequency is assigned or updated by zone. This is very time consuming and takes away time from the firefighters' ability to perform their duties. Bendix King Radios are also the only radio that operate at 6 watts for greater range and clearer communications. No other manufacturers' radio has been considered as the advantages of using the same radio as State and Federal agencies is in the City's best interest.

Section I-2-3.13 **Standardization** of the Milpitas Municipal Code authorizes the City Council to approve the standardization of supplies, materials or equipment based on the determination of the Purchasing Agent that the standardization of the supplies, materials or equipment is required for purposes of matching existing supplies, materials or equipment for proper operation of a particular piece of equipment or a City program. Standardization is also essential to the health and safety of the citizens of Milpitas and City Fire Fighters due to the need for inter-changeability and interoperability of radios among City Fire Fighters with State and Federal Agencies.

Section I-2-3.13 **Standardization** of the Municipal Code allows standardization for up to 10 years based on the recommendation of staff and with the approval of the City Council.

Once the City Council approves standardization, the Purchasing Department will solicit a competitive bid with the many Bendix King distributors to gain the lowest cost.

Fiscal Impact: None.

Recommendation: Adopt a resolution approving standardization of Bendix King Fire Radios as the standard radio for Wildland Urban Interface Fire Incident Communications for the City of Milpitas Fire Department.

- *22. **Adopt a Resolution Approving the Purchase of Motorola Solutions, Inc. APX 8000 Radios for the Fire Department for the Not-To-Exceed Amount of \$157,000 Through a Cooperative Procurement Contract (Staff Contacts: Chris Schroeder, 408-586-3161 and Brian Stelling, 408-586-2827)**

Background: The City of Milpitas is a participant in the Silicon Valley Regional Interoperability Authority (SVRIA). In 2001, the Santa Clara County/City Managers Association agreed to jointly fund a countywide radio interoperability and public safety radio and data communications network to improve public safety and emergency services. In 2012 a cooperative procurement was conducted for SVRIA by the City of Sunnyvale Department of Public Safety for all Santa Clara County Fire Agencies. As a result, a contract was awarded to Motorola Solutions, Inc. Section I-2-3.08 of the Milpitas Municipal Code authorizes the City Council to award contracts without competition when the purchase is pursuant to a cooperative agreement by another public agency in California that used competitive negotiation or bidding procedures at least as restrictive as those of the City of Milpitas. The City of Milpitas is an Eligible Purchaser on the Motorola Solutions, Inc. contract which is still current. Completion of the countywide infrastructure is expected during FY 2017-18.

In order to effectively communicate with Milpitas Fire and Police units as well as our mutual aid partners while transitioning from the current Milpitas communications system to the new SVRIA system, the Fire Department needs radios that are capable of functioning on multiple radio bands (i.e. VHF, UHF and 700/800 MHz). This purchase will allow the Fire Department to begin to make that transition while maintaining effective communications.

For purposes of health and safety of the citizens of Milpitas and City fire fighters safety during fire suppression and emergency mitigation, inter-changeability of radios among City fire fighters is essential. On May 17, 2016 the City Council approved resolution No. 8546 Pursuant to Section I-2-3.13 **Standardization** of the Municipal Code, the City Council designated Motorola Solutions, Inc. APX Radios as the Standard radio for the Fire Department of the City of Milpitas. At this time staff plans to purchase twenty (20) Motorola Solutions, Inc. APX 8000 portable radios and two (2) APX 8500 mobile radios; as well as ancillary equipment, as part of that infrastructure project.

Fiscal Impact: The funding for this purchase is available from CIP No. 3419, earmarked for public safety communications equipment. The total cost of the equipment will total \$157,000.

Recommendation: Adopt a resolution approving the purchase of Motorola Solutions, Inc. APX 8000 series radios for the Fire Department for the not-to-exceed amount of \$157,000 through a cooperative procurement contract.

***23. Adopt a Resolution Amending the Classification Plan to Adjust Salary Ranges for City of Milpitas Unrepresented Classifications (Staff Contact: Tina Murphy, 408-586-3086)**

Background: Amendments to the Classification Plan are periodically required to account for organizational changes and changes in job responsibilities, as well as changes in salary ranges for represented and unrepresented classifications.

The City is conducting a comprehensive Classification and Compensation Study for all non-Public Safety positions with the help of an outside consulting firm. The study will evaluate the City's current job descriptions, then compare total compensation to comparable agencies with the same jobs. In preparation for the study, the City would like to bring the salary ranges for unrepresented classifications to a consistent salary spread of 40% between the minimum and maximum pay range for the City of Milpitas unrepresented management classifications. In addition, the City would like to bring the top of the pay range to the average top step pay range for the same classification in comparable agencies. The Human Resources Department anticipates that additional changes may be needed for unrepresented and represented classifications upon completion of the classification and compensation study. Making incremental changes now will assist in attraction and retention of employees to the unrepresented management classifications for which the City needs to recruit.

Fiscal Impact: None. Changing the salary ranges will not result in an automatic pay increase for incumbents in unrepresented classifications, which will continue to be at the discretion of the City Manager.

Recommendation: Adopt a resolution amending the Classification Plan to adjust salary ranges for City of Milpitas unrepresented management classifications and allowing the City Manager to increase salaries at his discretion.

***24. Adopt a Resolution Amending the Classification Plan to Adjust City of Milpitas Part-Time Temporary Classifications to Reflect the California Minimum Wage Law (Staff Contact: Tina Murphy, 408-586-3086)**

Background: Amendments to the Classification Plan are periodically required to account for organizational changes and changes in job responsibilities, as well as changes in salary ranges for represented and unrepresented classifications. Part-time temporary job classifications are used to augment City staff and are not represented by labor agreements.

The minimum wage in California will increase from \$10.00 per hour to \$10.50 per hour on January 1, 2017, then up to \$11.00 per hour effective January 1, 2018. From there, the California minimum wage will increase \$1.00 per year until reaching \$15.00 per hour by January 1, 2022. The Classification Plan will need to be updated annually to reflect the new minimum wage for certain Part-Time Temporary classifications. The City will implement the January 2017 minimum wage increase effective December 25, 2016 for Part-Time Temporary classifications earning less than \$10.50 per hour. There are no represented classifications that earn less than \$10.50 per hour.

Fiscal Impact: The fiscal impact on the current budget was considered in the adopted funding levels for Part-Time Temporary staff. Potential future impacts due to the January

2018 minimum wage increase will be incorporated in the Fiscal Year 2017-18 budget for temporary staffing.

Recommendation: Adopt a resolution amending the Classification Plan to adjust salary ranges for City of Milpitas Part-Time Temporary Classifications effective December 25, 2016 to reflect the California minimum wage law.

XX. AGREEMENTS

***25. Approve Final Map Tract No. 10375 for a 308-unit Residential Condominiums at 1256 Piper Drive, and Approve and Authorize the City Manager to Execute the Subdivision Improvement Agreement (Staff Contact: Judy Chu, 408-586-3325)**

Background: On April 5, 2016, the City Council conditionally approved a Major Vesting Tentative Map (VTM) to allow for a 308-unit residential condominiums located at 1256 Piper Drive between Garden Street and Montague Expressway, within the Transit Area Specific Plan area. The final map Tract No. 10375 is within the formation area of Community Facilities District No. 2008-1 and is therefore already located in and subject to payment into CFD 2008-1.

The City Engineer has examined the final map Tract No. 10375 (Attachment 1) and determined that the final map Tract No.10375 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, except where certain conditions may have not been met. All conditions necessary to approve the final map have been met.

The Developer has offered dedications to the City for public use, such as Garden Street, public service and utility, and emergency vehicle access, as required by the project conditions 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. In approving the Final Map, the City Council will also be approving the offers of dedication as stated and depicted on the final map upon completion and acceptance of improvements.

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 Thistle Place, Clover Circle and Myrtle Lane, 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 (2-1212) pursuant to MMC XI-1-7.09-2. The Developer has 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, and provided improvement securities (\$695,000.00 for faithful performance and \$695,000.00 for labor and materials) to guarantee completion of required public improvements.

The final map Tract 10375 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 the CEQA pursuant to CEQA Guidelines Section 15268(b)(3). Further, approval of the Subdivision Improvement Agreement will implement the Project for which

CEQA review has been conducted and the City previously determined that the Project fits within the confines of the Transit Area Specific Plan EIR pursuant to CEQA Guideline 15168(c) and no further environmental review is required.

Fiscal Impact: None.

Recommendations:

1. Approve final map Tract No. 10375, for a 308-unit Residential Condominiums at 1256 Piper Drive 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.
2. Approve and authorize the City Manager to execute the Subdivision Improvement Agreement.

- *26. Authorize the City Manager to Execute Amendment No. 2 to the Cost Sharing Agreement with West Valley Sanitation District, Cupertino Sanitary, County Sanitation District No. 2-3 and Burbank Sanitary District in an Amount Not To Exceed \$420,000 (Staff Contact: Nina Hawk, 408-586-2603)**

Background: On August 25, 2015, the City of Milpitas formed a Common Interest Group with West Valley Sanitation District, Cupertino Sanitary District, County Sanitation District No. 2-3, and Burbank Sanitary District pursuant to a Common Interest, Privilege, and Confidentiality Agreement. This Common Interest Group was established to advance the interests of the parties' common interests in negotiating amendments to their respective Master Agreements for Wastewater Treatment with the Cities of San Jose and Santa Clara.

A Cost Sharing Agreement executed on March 7, 2016 divides the costs for professional services rendered to the Common Interest Group parties in their negotiations with the Cities of San Jose and Santa Clara.

Fiscal Impact: There are sufficient funds in Capital Improvement Program Fund 6118 SJ/SC Regional Waste Water Facility.

Recommendation: Authorize the City Manager to execute Amendment No. 2 with West Valley Sanitation District, Cupertino Sanitary District, County Sanitation District No. 2-3, and Burbank Sanitary District Cost Sharing Agreement for the Common Interest Group in an amount not-to-exceed amount of \$420,000.

- *27. Approve Project Plans and Specifications, and Authorize Advertisement for Bid Proposals and Approve and Authorize City Manager to Execute Agreement with David J. Powers & Associates, Inc. for Marylinn Drive Sanitary Sewer Rehabilitation, Projects No. 6115 and No. 6116 (Staff Contact: Steve Erickson, 408-586-3301)**

Background: Capital Improvement Projects No. 6115 and No. 6116 are included in the approved Capital Improvement Program. These projects will provide for the replacement, rehabilitation, and lining of City sanitary sewers located on Marylinn Drive between Heath and Smithwood Streets. A copy of the plan cover sheet is included in the Council's agenda packet and a complete set of plans and specifications are available for review in the office of the City Engineer. The Engineers estimate for this work is \$750,000.

During construction, the existing sewer lines to be repaired will have their sewer flows diverted and pumped around the repair area in order to maintain sewer service. The above ground sewage flow diversion pipeline (highline) will be located along the Lower Penitencia Creek levee maintenance road where it will be protected from vehicles and out of conflict with the general public. The location of the highline requires permits from the Santa Clara Valley Water District (SCVWD) and the California Department of Fish and Wildlife (DFW). The DFW has determined the project requires a Lake or Streambed Alteration Agreement due

to the potential for adverse effects on fish and wildlife within the Penitencia Creek corridor. The DFW agreement requires the City provide biological, fish, and wildlife surveys, monitoring, staff training, revegetation inspections, and annual reporting for a two year period.

Through the City's consultant selection process, David J. Powers & Associates Inc. has been selected to provide the services required by the DFW permit. Staff negotiated a scope and fee for these environmental monitoring and plan and animal survey services not to exceed \$30,000, which is considered reasonable for the work.

California Environmental Quality Act: This project is categorically exempt under Section 15301(d) existing facilities.

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

Recommendations:

1. Approve project plans and specifications and authorize advertisement for bid proposals, for Marylinn Drive, Sanitary Sewer Rehabilitation Projects No. 6115 and No. 6116.
2. Approve and Authorize the City Manager to execute an agreement with David J. Powers & Associates, in the amount of \$30,000, for Marilynn Drive, Sanitary Sewer Rehabilitation Projects No. 6115 and No. 6116, subject to approval as to form by the City Attorney.

- *28. Approve Amendment No. 1 to the Agreement with Quality Assurance Engineering Inc. doing business as Consolidated Engineering Laboratories (Staff Contact: Steve Erickson, 408-586-3301)**

Background: On June 2, 2015, the City entered into a consultant agreement with Quality Assurance Engineering Inc. doing business as Consolidated Engineering Laboratories (CEL) in the amount of \$1,000,000 for a five year contract. CEL provides on-call special construction inspection and materials testing services to support the completion of the City's Capital Improvement Program and private development projects.

CEL provides required special construction testing and inspection services where the use of specialty tools and materials lab work is necessary. This is a vital part of the project construction phase to ensure the City is receiving the products and services installed by contractors at the specified quality. Examples of routine special inspection and testing duties include asphalt pavement density testing, concrete strength testing, nuclear gauge density testing, and welding inspection.

Staff now recommends amending CEL's agreement to add staff augmentation services by providing two full-time professional construction inspectors to fill anticipated inspection staff vacancies for the completion of inspection duties for capital and private development projects. It is anticipated the inspection staff augmentation services would be for a period not to exceed three months while the City recruits two full-time inspectors. Staff negotiated a fee for these staff augmentation services at a not to exceed amount of \$100,000, which is considered reasonable.

Alternative: The approval of this request will ensure sufficient construction inspection staffing for the remainder of the year.

Fiscal Impact: None. Sufficient funds are available in the previously approved Project budgets for the required inspection and materials testing services.

Recommendation: Approve Amendment No. 1 to the agreement with Quality Assurance Engineering Inc. doing business as Consolidated Engineering Laboratories (CEL) in the amount of \$100,000.

- *29. Approve and Authorize the City Manager to Execute Amendment No. 2 to the Consultant Services Agreement with EOA Inc. for Review of Compliance with the Municipal Regional Permit Provision C.3 Associated with Development Projects to Extend the Term to June 30, 2017 and Increase the Compensation by \$100,000 (Staff Contact: Judy Chu, 408-586-3325)**

Background: On January 6, 2015, the City Council approved a two-year Consultant Service Agreement with EOA Inc. for on-call review of compliance with the Municipal Regional Permit (MRP) provision C.3 associated with development projects for a total amount not to exceed \$120,000 with an annual amount of \$60,000. On October 16, 2015, the City Council approved Amendment No. 1 to the Agreement to remove the annual compensation limitation. The Agreement will expire in January 7, 2017.

Amendment No. 2 to the Agreement with EOA Inc. is proposed to continue service based on the demands brought on by various development projects. Staff recommends that the expiration date be extended to June 30, 2017 and that the compensation be increased by \$100,000 for a total not-to-exceed amount of \$220,000.

California Environmental Quality Act: Amendment No. 2 is exempt from CEQA under CEQA Guideline 15061(b)(3) as the amendment is for services and the services alone will not lead to any direct or indirect impact on the environment. Although the amendment will facilitate the review of various development projects, those respective projects have undergone or will undergo independent CEQA review at the time of any discretionary decision.

Alternative: Denial of this request will result in the delay of development project review for regulatory compliance.

Fiscal Impact: None. Funds are programed in the FY 2016-17 Engineering's Land Development budget, and the review of development projects for regulatory compliance will be reimbursed by developers through private job accounts.

Recommendation: Approve and authorize the City Manager to execute Amendment No. 2 to the Consultant Services Agreement with EOA Inc. for review of compliance with the Municipal Regional Permit Provision C.3 associated with development projects, with extended term and increased compensation by \$100,000 for a total amount not-to-exceed \$220,000.

- *30. Approve Amendment No. 3 to the Agreement with Law Firm of Burke, Williams & Sorensen, LLP for Legal Services (Staff Contact: Christopher Diaz, 408-586-3040)**

Background: Since 2011, the City has been engaged in efforts opposing the expansion of the Newby Island landfill. At Council direction, the City Attorney's office conducted a nation-wide search to find an attorney firm to advise on all potential means by which to eliminate the offensive odors plaguing the community. Burke, Williams & Sorensen was selected to advise and represent the City regarding the odor problem.

This is the Third Amendment to the current contract to continue with necessary legal and associated representation related to the odor nuisance issues involving the Newby Island Landfill. The scope of services included in the amendment to continue with legal services to abate the odor nuisance is provided with the amendment.

Fiscal Impact: The budget to fund the Third Amendment to the current contract is a not-to-exceed amount of \$55,000. If approved, the funding will be transferred from the contingency reserve account into the City Attorney's budget.

Recommendations: Approve the Third Amendment to the current Agreement with Burke, Williams and Sorensen for Legal Services regarding elimination of odors and direct the City Manager to sign the Third Amendment.

- *31. Approve Amendment No. 9 to the Master Agreement with the Santa Clara Valley Transportation Authority Related to the Silicon Valley Rapid Transit Program Berryessa Extension BART Project Extending the Term to January 31, 2018; Increase the Agreement Amount by \$750,000; Approve Revised Capital Improvement Program BART Water Improvements, Project No. 7125; and Approve Budget Appropriations of \$150,000, \$1,200,000, \$184,563, and a Reduction of \$600,000 (Staff Contact: Greg Chung, 408-586-3355)**

Background: The extension of the Bay Area Rapid Transit (BART) system into Santa Clara County is being implemented by Santa Clara Valley Transportation Authority's (VTA) Silicon Valley Rapid Transit (SVRT) program. The City and VTA executed a Master Agreement in 2010, which created a cooperative framework between VTA and the City for design and construction of the BART line extension through Milpitas. This agreement allows for reimbursement of City expenses for a variety of coordination efforts, including but not limited to design approval and inspection of City facilities, encroachment permit oversight, easements, utility maintenance operations, meetings, resolution of construction issues, and consultant support. The Master Agreement and Amendments No. 1-8 included a work plan which described reimbursement of the City's support effort with a total agreement amount of \$5,332,888 through February 28, 2017.

Several phases of the work are in progress simultaneously, including relocation of existing utilities, installation of new utilities, track installation, parking garage, roadway, frontage, and station construction. It is now necessary to extend the work plan duration and increase the contract amount for continued staff support.

Staff negotiated a work plan extension with VTA and recommends increasing the Master Agreement amount by \$750,000 for the additional work for a not-to-exceed total amount of \$6,082,888; and extending the term to January 31, 2018. The requested budget appropriation will place \$150,000 of this funding into project budget account No. 4265 to allow payment for consultant support to the BART project. The remaining \$600,000 will be used for City Staff. As with previous amounts in the Master Agreement, the entire \$750,000 will be reimbursed by VTA.

Several City utilities must be relocated to accommodate this work at VTA's expense. City staff identified several utility upgrades that have been incorporated into the project at City's expense. Projects No. 7125 (water), No. 6121 (sewer), and No. 3711 (storm) were created based upon preliminary information to provide a source of funding and tracking for the City's expenses. Coordination with adjacent developer projects enables the BART project to extend existing or install new service laterals in conjunction with the overall utility construction, thus avoiding a developer trenching through new pavement to install these services at a later date. The BART project has also installed planned recycled water pipelines identified in the Transit Area Specific Plan that are funded through the Transit Area Developer Impact Fees (TADIF). In addition, non-utility upgrades such as streetlight poles, fencing, and landscape are being installed by VTA. Now that construction is in progress, staff has updated the cost estimates and calculated TADIF and Developer shares. It is now necessary to update Project No. 7125 to increase the project total funding to \$2,984,563. The Developers will contribute \$184,563, the TADIF will contribute \$1,200,000, and the Water Fund contribution is \$1,600,000, which

is \$600,000 less than the anticipated water fund contribution of \$2,200,000. The project total includes a contingency of \$300,000.

California Environmental Quality Act: The City is not the lead agency for the Silicon Valley Rapid Transit Program Berryessa Extension BART Project with the VTA serving as lead agency under both CEQA and the National Environmental Policy Act. The City Council hereby relies on the CEQA and NEPA documents prepared by VTA in making its decision to approve this amendment.

Alternative: If the amendment is not approved, staff will not be available to provide support to the project which will impact construction and inspection of City infrastructure. If the budget appropriations are not approved, the existing budget is insufficient to complete the City's requested upgrades.

Fiscal Impact: The Master Agreement requires VTA to establish a deposit account with the City to fund the City's work related to the BART extension project. This amendment provides for an additional deposit of \$750,000 for reimbursable costs in accordance with the Master Agreement; and \$150,000 is appropriated to Project No. 4265. A budget appropriation of \$1,200,000 from TADIF to Project No. 7125 is necessary to address the water system work. A budget appropriation of \$184,563 from Developers is needed to complete the utility work. The existing Water Fund contribution of \$2,200,000 is recommended to decrease by \$600,000 to \$1,600,000.

Recommendations:

1. Approve Amendment No. 9 to the Master Agreement with the Santa Clara Valley Transportation Authority related to the Silicon Valley Rapid Transit Program Berryessa Extension BART Project to extend the term to January 31, 2018 and increase the agreement amount by \$750,000.
2. Approve revised Capital Improvement Program Project No. 7125.
3. Approve a budget appropriation of \$150,000 for Project No. 4265 – BART Extension Coordination and Planning.
4. Approve budget appropriations of \$1,200,000 from TADIF, \$184,563 from developers, a reduction of \$600,000, and Water Fund contribution of \$1,600,000 for Project No. 7125.

XXI. ADJOURN CITY COUNCIL MEETING

NEXT CITY COUNCIL MEETINGS:

TUESDAY, DECEMBER 13, 2016 (Special)

TUESDAY, JANUARY 3, 2017 (Regular)