



SPECIAL MEETING OF THE MILPITAS CITY COUNCIL

AGENDA

THURSDAY, OCTOBER 5, 2017
455 EAST CALAVERAS BOULEVARD, MILPITAS, CA
6:00 P.M. (CLOSED SESSION)
7:00 P.M. (PUBLIC BUSINESS)

SUMMARY OF CONTENTS

- I. **CALL TO ORDER** by Mayor and **ROLL CALL** by City Clerk
- II. **ADJOURN TO CLOSED SESSION** (6:00 PM)
 - (a) **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
Government Code Section 54956.9(d)(4) – City as Plaintiff
 - (b) **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
Government Code Section 54956.9(d)(2) – City as Defendant
- 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. **PUBLIC FORUM**

Those in the audience are invited to address City 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.

- VI. **ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**
- VII. **APPROVAL OF [AGENDA](#)**
- VIII. **UNFINISHED BUSINESS**
 1. **Receive Staff Report on City Budget Process (Staff Contact: Will Fuentes, 408-586-3111)**
 2. **Receive Report and Consider Introduction of Ordinance No. 289.1 Amending Chapter 2 and Chapter 4 of Title I of the Municipal Code to Relating to Purchasing and Contract Authority (Staff Contact: Will Fuentes, 408-586-3111)**
 3. **Review List for City Council of Items Due Back for Response from City Staff (Staff Contacts: Steve Pangelinan, 408-586-3051 and Mary Lavelle, 408-586-3001)**
 4. **Per Request of Mayor, Consider Approving More than 4 Hours of Staff to Return to Council with a Comprehensive Homeless Strategy (Contact: Mayor Tran, 408-586-3029)**

5. **Per Request of Councilmember Barbadillo, Update Discussion on the City's Inclusionary Housing Mandate and Housing Impact Fees (Contact: Councilmember Barbadillo, 408-586-3024)**
 6. **Receive Updated Information Responding to Council Input and Consider Adopting a Resolution to Amend the By-Laws of the Milpitas Planning Commission, and Discuss City of Milpitas Commissions and Process for Commission Appointments (Staff Contact: Steve Pangelinan, 408-586-3050)**
 7. **Adopt a Resolution Approving the Site Development Permit for Construction of a 1,072 square foot Carport with Rooftop Solar Photovoltaic System, Adjacent to an Existing Bungalow and Residence in the Hillside at 430 Evans Road (Staff Contact: Lillian Hua, 408-586-3073)**
 8. **Adopt a Resolution Amending the City's Classification Plan to Re-Assign Police Support Services Manager to Unrepresented and Adjust Salary Range (Staff Contact: Tina Murphy, 408-586-3086)**
 9. **Approve Amendment No. 1 to the Agreement with SCS Engineers to Extend the Term of the Agreement for On-Call Environmental Engineering and Testing Services for Various Capital Improvement Projects (Staff Contact: Steve Erickson, 408-586-3301)**
 10. **Approve and Authorize the City Manager to Execute Consultant Services Agreement with RMC Water and Environment for Support on the Bay Area Rapid Transit Project, CIP No. 4265 and Montague Expressway Widening Project, CIP No. 4179 (Staff Contact: Steve Chan, 408-586-3324)**
 11. **Approve and Authorize the City Manager to Execute Amendment No. 1 to the Common Interest, Privilege and Confidentiality Agreement with Tributary Agencies of San José/ Santa Clara Regional Wastewater Facility (Staff Contact: Nina Hawk, 408-586-2603)**
- IX. REPORTS OF MAYOR & COUNCILMEMBERS – from the assigned Commissions, Committees and Agencies**
- X. ADJOURNMENT**

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)

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Sister Cities Commission
Telecommunications Commission
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For assistance in the following languages, you may call:

Đối với Việt Nam, gọi 408-586-3122

对中国人来说, 请用 408-586-3263

Para sa mga Tagalog, tawagan 408-586-3051

Para español, llame 408-586-3232

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AGENDA REPORTS

UNFINISHED BUSINESS

1. **Receive Staff Report on City Budget Process (Staff Contact: Will Fuentes, 408-586-3111)**

Background: On August 28, 2017, the City Council Finance Subcommittee met with City staff to discuss the budget process and ideas for increasing Council and public input into that process. A copy of the meeting agenda is provided in the Council's agenda packet. Proposed ideas for increasing Council and public input into the budget process are discussed in this report. More detailed discussions regarding budget policy, such as use of potential annual operating surpluses, will occur in future reports. As a note, the City is still closing its accounting records for the prior fiscal year and staff tentatively plans to present the Fiscal Year (FY) 2016-17 unaudited financial report on October 17, 2017. Since the exact amount of a potential General Fund operating surplus for last fiscal year would be known then, it will allow for a more meaningful policy discussion regarding use of current and future potential operating surpluses.

The focus of this report is on the budget process. During the last budget preparation cycle for FY 2017-18, City Council had limited input into the process until April, May and June 2017, when a number of Capital Improvement Program (CIP) and Operating Budget community meetings, study sessions, and public hearings occurred. By this point, the budget was largely developed and significant changes were not possible; lest risk not adopting a budget by June 30. The City's fiscal year starts July 1 and a public agency may not spend funds without the legal authorization to do so. Council adoption of the budget legally authorizes those funds.

Thus, staff proposes several changes to the FY 2018-19 budget process which will increase Council and public input and allow staff to receive necessary direction prior to budget development. These changes are listed in staff recommended order of occurrence:

- ***Budget Education Workshop*** (November 2017) - Several members of City Council are new to the City of Milpitas or to city government. Since accounting and budgeting for city governments is different than that of the private sector or other governmental agency types, a budget education workshop provided by the Director of Financial Services and others is proposed for the benefit of Council. In this workshop, staff could discuss topics such as best practices for operating and capital budgeting, current City budget guidelines and fiscal policies, discretionary vs. non-discretionary funding, 5-year General Fund projections, methods for community engagement and a draft budget process calendar. A half-day workshop on November 4, 2017 is recommended, but the length and date could be modified based upon Council needs and availability.
- ***Increased Community Engagement*** (December 2017 – January 2018) - The second recommended change is to increase public input through use of both online tools and community meetings. In regards to online tools, there are several available externally and these can be used to poll a wide cross-section of Milpitas residents and businesses. An online poll could also be provided by internal City Information Services (IS), but it will be dependent upon current workload and the ability to provide demographic data, restrict polling to only Milpitas residents and businesses, and properly monitor submitted comments. If utilizing external resources is warranted, staff will come back to Council at a later date to discuss costs and a recommended choice. Online polling is recommended to occur in December and January.

In regards to community meetings, the City held several in the past and such meetings should still play a vital role in budget preparation. However, community meetings garnered limited participation and were not held early enough in the last budget process to make a meaningful impact. Thus, staff recommends that the first community meetings be held in December and January concurrent to online polling discussed above. So as to ensure success and participation by all appropriate interest groups, staff not only suggests that the meetings be publicized in traditional print and electronic mediums, but also that individual invitations be sent to as many business, faith, school, and community leaders as possible. While the first community meetings could be held in December or January, staff recommends that other community meetings, study sessions, and public hearings continue to be held in April and May. This will allow staff and all departments time to develop the budget based upon Council and public input received prior and present high quality draft CIP and Operating Budget documents for consideration and possible modification.

- ***Facilitator Led Budgetary Strategic Planning*** (late January or early February 2018) - The third recommended change is to hold an all-day facilitator led Budgetary Strategic Planning session with the City Council and Senior Management Team in late January or early February 2018; dependent on Council, staff, and facilitator availability. Staff reached out to several potential facilitators recommended by other cities, but not all are available due to current workload. Nevertheless, one facilitator is potentially available and staff likes the facilitator's recommended approach. This facilitator could also assist in the planning and facilitation of community budget workshops discussed previously. Therefore, the facilitator is preparing a proposal which will provide a detailed description of approach and costs.

City staff acknowledges the existing City of Milpitas Strategic Plan adopted in 2015. City Council may choose to review that plan and/or build upon that plan. Staff's desired facilitator recommends that approach. Alternately, Council may begin anew to create a new document.

As of this report date, staff's desired facilitator is proposing a two-step process to Budgetary Strategic Planning. This process could be modified if the desired facilitator is ultimately not available and another facilitator is chosen. If another facilitator that uses a different methodology is chosen, staff will provide an update to Council. Staff will work to secure a facilitator that offers a similar methodology; unless Council directs staff otherwise.

The first step in the tentatively proposed Budgetary Strategic Planning process will be to individually interview each member of the City Council and the Senior Management Team so as to determine the areas deemed most important to ensure the future success of the City. These pre-planning interviews could occur over one day or over several days prior to the Budgetary Strategic Planning session and will help the Council, staff and facilitator in developing an agenda for the second step in the process. The second step in the tentatively proposed process will be to hold an all-day facilitator led Budgetary Strategic Planning session. It is again recommended that this occur in late January or early February 2018. Staff had previously discussed holding this session prior to community engagement. However, after looking at best practices used in other agencies and talking to various facilitators, it is recommended that this session occur after community engagement. This will allow for the community to have a more meaningful voice in the process and sufficient time for pre-planning activities prior to the session so as to ensure success.

- ***Monthly Status Updates*** - The fourth and final recommended change is for the Director of Financial Services to provide monthly updates to the City Council during the internal development stage of the budget, which normally occur January through

April. These monthly updates will focus on new projects and programs being proposed by departments, potential changes in base revenue and expenditure projections, and any other items which impact the budget. This will allow the Council and public to provide continuous input during budget development and for staff to adjust course more quickly based upon that input. Thus, by the time the CIP and Operating Budget are scheduled to be adopted in May, they will encapsulate and represent as much Council and public input as possible.

Fiscal Impact: None

Recommendation: Per request of Council, receive staff report on the City's budget process and provide further feedback and recommendations.

Attachments: [Council Finance Subcommittee agenda + meeting minutes of 8/28/2017](#)

2. **Receive Report and Consider Introduction of Ordinance No. 289.1 Amending Chapter 2 and Chapter 4 of Title I of the Municipal Code to Relating to Purchasing and Contract Authority (Staff Contact: Will Fuentes, 408-586-3111)**

Background: At the August 1 City Council meeting, staff presented a report concerning City Manager Contract Authority. Findings of that staff report and presentation are summarized:

- Current City Manager Contract Authority is set at \$100,000 maximum per Chapter 4 (Contract Authority) of Title I of the Milpitas Municipal Code.
- To improve operational efficiency, limit was changed from \$20,000 on June 2, 2015 (Ordinance No. 289).
- Regular reporting was scheduled to occur after change, but has not occurred yet.
- 174 contracts, totaling \$5.6 million and averaging \$32,000 each, were approved last 3 Fiscal Years under City Manager authority.
- 72 of 174 or 41% of contracts were above prior \$20,000 limit.
- A survey of all cities in Santa Clara, San Mateo and Alameda County was performed.
 - Average City Manager Contract Authority of \$59,000 or \$1.23 per capita in San Francisco Bay Area.
 - Average City Manager Contract Authority of \$63,000 or \$1.21 per capita in San Santa Clara County.
 - Gilroy, Santa Clara, Sunnyvale, Burlingame, San Mateo, Fremont, and Livermore are all similar to Milpitas at \$100,000 total.
 - Cupertino is highest at \$175,000.
 - If Milpitas' population of 75,410 is multiplied by average per capita of \$1.23, it would equal a City Manager Contract Authority of \$93,000.

Additional considerations not discussed during the August 1 presentation:

- 140 contracts, totaling \$4.4 million and averaging \$31,000 have been approved since City Manager Contract Authority was increased to \$100,000 June 2, 2015.
- Reporting was not mandated by Ordinance No. 289. Nevertheless, it was planned and discussed during Ordinance adoption.

As a result of the August 1 presentation, Council requested several options for regular reporting on City Manager approved contracts and potentially modifying the level of City Manager Contract Authority.

Reporting

In regards to reporting, Councilmember Nuñez requested that contracts be brought forth to Council for ratification in the next regularly scheduled Council meeting immediately

following City Manager approval. Staff does not recommend this approach since it would effectively be lowering City Manager Contract Authority to \$0. The purpose of Council delegating a level of Contract Authority to the City Manager is so that the City Manager, in his or her assigned role of Chief Executive Officer for the organization, can use his or her managerial judgement to execute and legally enter into contracts without the need for additional approval or delay. This is standard practice in both the public and private sector to insure operational efficiency, with the only deviation being level of authority.

Nevertheless, transparency is very important and staff recommends regular monthly reporting to the Finance Sub-Committee of all contracts approved under City Manager Contract Authority during the prior month. This would be for review purposes only and to ask questions of staff on particular contracts of interest. Contracts that warranted additional review would be sent to the full body of the City Council at the next available meeting. Contracts could then be terminated by Council after additional review and inquiry, but only if the contracts in question a) violated federal, state, or local statutes or codes, b) presented a conflict of interest for City staff requesting contract and/or City Manager approving contract, or c) were to engage a vendor that has previously been found guilty of violating federal, state, or local statutes or codes as it relates to public or private sector procurement. These new requirements shall be detailed and added to Title 1 of the Milpitas Municipal Code as Section 5 (Reporting on Contract Authority of the City Manager) by Ordinance No 289.1.

Level of City Manager Contract Authority

On a per capita basis, Milpitas is very similar to other public agencies in terms of City Manager Contract Authority. Again, if Milpitas' population of 75,410 were multiplied by the average Bay Area City Manager Contract Authority of \$1.23 per capita, it would equal a City Manager Contract Authority of \$93,000. At \$100,000, the current level of City Manager Contract Authority is within an acceptable level of deviation and staff does not recommend lowering it at this time since operational efficiency would be diminished.

Nevertheless, if it is the desire of Council to modify the level of City Manager Contract Authority, Ordinance No. 289.1 (attached) will be revised to reflect whatever level is chosen. Whether the level of City Manager Contract Authority is kept the same or modified by Council, the City should also revise other sections of its Municipal Code which are out of alignment with Chapter 4 (Contract Authority) of Title I or don't reflect current practices as it relates to eProcurement and Cooperative Purchasing Agreements. These sections are detailed in the redlined version of Ordinance No. 289.1.

Fiscal Impact: None

Recommendations:

1. Receive staff report on City Manager Contract Authority.
2. If desired, direct the City Attorney to read the title of Ordinance No. 298.1.
3. Move to waive first reading beyond the title and introduce Ordinance No. 289.1 with the level of City Manager Contract Authority to remain the same or modified as directed by Council.

Attachment: [Draft Ordinance No. 289.1](#)

3. **Review List for City Council of Items Due Back for Response from City Staff (Staff Contacts: Steve Pangelinan, 408-586-3051 and Mary Lavelle, 408-586-3001)**

Recommendation: review list (in agenda packet) and provide additional input on the draft document, prepared by City Clerk for the Council.

Attachment: [List of Items Requested by City Council](#)

4. **Per Request of Mayor, Consider Approving More than 4 Hours of Staff to Return to Council with a Comprehensive Homeless Strategy (Contact: Mayor Tran, 408-586-3029)**

Recommendation: Consider Mayor's request and if desired, approve more than four hours of staff time toward a plan for a comprehensive homeless strategy for City of Milpitas.

Attachment: None

5. **Per Request of Councilmember Barbadillo, Update Discussion on the City's Inclusionary Housing Mandate and Housing Impact Fees (Contact: Councilmember Barbadillo, 408-586-3024)**

Recommendation: Councilmember Barbadillo requested to discuss the topic of affordable housing with his colleagues.

Attachment: None

6. **Receive Updated Information Responding to Council Input and Consider Adopting a Resolution to Amend the By-Laws of the Milpitas Planning Commission, and Discuss City of Milpitas Commissions and Process for Commission Appointments (Staff Contact: Steve Pangelinan, 408-586-3050)**

Background: Per request of the Milpitas Planning Commission in September 2016 to consider potential amendments to its rules and regulations, staff worked with Planning Commissioners to clean up existing language and draft a revised version of the by-laws. On August 1, 2017, the Planning Commission's recommendations were discussed by the Milpitas City Council. Council directed to staff to bring forward a Resolution to effectuate the proposed by-law amendments. Council is requested to adopt a resolution approving all amendments to the by-laws. Included in the agenda packet are copies of the Planning Commission by-laws showing all tracked changes and a final revised version.

In addition, Councilmembers have expressed an interest to discuss the 14 Council-appointed City of Milpitas Commissions, and the process for appointing residents to those bodies.

Recommendations:

- 1) If desired, adopt a resolution approving the updated By-Laws of the Milpitas Planning Commission.
- 2) Discuss City Commissions and process of appointments. Direct staff, as requested.

Attachments:

- a) [Resolution](#) + [Exhibit \(final copy of PC By-Laws\)](#)
- b) [Red-lined edition of Planning Commission By-Laws](#)

7. **Adopt a Resolution Approving the Site Development Permit for Construction of a 1,072 square foot Carport with Rooftop Solar Photovoltaic System, Adjacent to an Existing Bungalow and Residence in the Hillside at 430 Evans Road (Staff Contact: Lillian Hua, 408-586-3073)**

Background: The City received an application to construct a 1,072 square foot carport with rooftop solar photovoltaic system, adjacent to an existing bungalow and residence in the hillside. The project site is a developed 5.1 acre parcel located along Evans Road. The property is zoned as R1-H in the Hillside Combining District and the General Plan designation is Hillside Very Low Density.

The Planning Commission unanimously recommended approval of the Site Development Permit for the project on August 23, 2017. Commissioners determined the project is

consistent with the policies and guiding principles identified in the General Plan, and satisfies the requirements specified in the Zoning Ordinance. The project's architectural design and site planning is aesthetically compatible with the neighboring homes. The project meets the development standards set forth by the Zoning Code and incorporates earth tone colors, complementing the surrounding color palette.

Environmental: A categorical exemption pursuant to Section 15303(e) of the CEQA Guidelines – New Construction or Conversion of Small Structures, has been applied to this project. Section 15303(e) includes, but limited to, the construction of accessory structures including garages, carports, patios, swimming pools, and fences. The project's proposed new construction of a carport with a rooftop solar photovoltaic system are within a residentially zoned area.

Fiscal Impact: None.

Recommendation: Adopt a resolution approving Site Development Permit No. SD17-0009 to construct a new carport with rooftop solar photovoltaic system on a 5.1 acre site located at 430 Evans Road.

Attachments:

[a\) Resolution](#)

[b\) Planning Commission Meeting Minutes 8/23/2017](#)

[c\) Planning Commission Staff Report 8/23/2017](#)

[d\) Project Plans](#)

[e\) Milpitas Fire Department Memorandum 6/12/2017](#)

8. Adopt a Resolution Amending the City's Classification Plan to Re-Assign Police Support Services Manager to Unrepresented and Adjust Salary Range (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. The proposed amendment reflects the following change. The classification of Police Support Services Manager was approved in the Fiscal Year 2017-2018 Operating Budget. This classification was originally assigned to the Mid-Management and Confidential Unit ("Mid-Con") with an annual salary of \$104,237 - \$138,983.

The job description for Police Support Services Manager was recently finalized and job duties indicate that this position would be best served as an unrepresented position. The Police Support Services Manager classification will be assigned to oversee the 9-1-1 Communications Center and Records Unit at the Milpitas Police Department, which includes 24.5 positions. The classification has administrative and management oversight of employees in the Communications Center and Records Unit, and will prepare and monitor the operating budget for these two sections of the Police Department.

Fiscal Impact: The recommended annual salary range for the position of Police Support Services Manager is \$112,500 - \$157,500. Increasing the salary range to the proposed amount will result in an increase of \$18,517 for FY 2017-18. No change to the funding for this position will be needed since the increase can be covered by salary savings from the position not filled for the full fiscal year.

Recommendation: Adopt a resolution amending the Classification Plan to re-assign the Police Support Services Manager from the Mid-Con bargaining unit to the Unrepresented Employees group and adjust the annual salary range for Police Support Services Manager to \$112,500 - \$157,500.

Attachment: [Resolution + Exhibit \(job classification\)](#)

9. Approve Amendment No. 1 to the Agreement with SCS Engineers to Extend the Term of the Agreement for On-Call Environmental Engineering and Testing Services for Various Capital Improvement Projects (Staff Contact: Steve Erickson, 408-586-3301)

Background: On October 7, 2014, the City entered into a consultant agreement with SCS Engineers in the amount of \$250,000 to provide on-call environmental engineering and testing services for various capital improvement projects. Services provided include sampling and testing of soil, air and groundwater to verify if those contain contamination or hazardous substances, and to provide recommendation for clean-up and disposal. SCS also provides routine site assessments, and geotechnical review as required to assist staff with the design and construction of various Capital Improvement Projects such as the sports center synthetic turf sports field, and for repair of roadway damage due to wet subgrade. Of the original \$250,000 base contract, \$43,593 has been spent to date, leaving \$206,407 remaining for additional on-call services. Therefore, no additional funding is requested.

Staff recommends the SCS Engineers agreement be extended for an additional term of two years from October 7, 2017 to October 7, 2019 to allow SCS to continue providing on-call services to the City. Amendment No. 1 to the Agreement with SCS Engineers is proposed for these additional services.

Fiscal Impact: Amendment No. 1 is to extend the term of the agreement only and no additional funding is requested.

Recommendation: Approve Amendment No. 1 to the Agreement with SCS Engineers to extend the term of the Agreement for On-Call Environmental Engineering Services for various Capital Improvement Program projects from October 7, 2017 to October 7, 2019.

Attachment: [Amendment No. 1](#)

10. Approve and Authorize the City Manager to Execute Consultant Services Agreement with RMC Water and Environment for Support on the Bay Area Rapid Transit Project, CIP No. 4265 and Montague Expressway Widening Project, CIP No. 4179 (Staff Contact: Steve Chan, 408-586-3324)

Background: Santa Clara Valley Transportation Authority (VTA) continues to move forward on the construction of the BART Extension and Montague Expressway Widening projects. RMC Water and Environment had provided water and sewer utility installation and relocation design review for the City during the design stages of these projects. Water and sewer engineering support services are needed to complete the construction and project close-out phases of these projects. Since RMC Water and Environment is familiar with the project scopes, they are most suited to provide the needed water and sewer engineering services to complete these projects.

The proposed RMC Water and Environment consultant services agreement has a total not-to-exceed sum of \$10,000 and agreement term to December 31, 2018.

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

Alternative: If this agreement is not approved, staff will not be available to provide support to projects which will impact construction and inspection of City infrastructure.

Fiscal Impact: None. There are sufficient funds in the project budgets. The City’s Master Agreement with VTA allows reimbursement of City consultant costs for BART extension support services.

Recommendation: Approve and authorize the City Manager to execute Consultant Services Agreement with RMC Water and Environment for support on the Bay Area Rapid Transit Project, CIP No. 4265 and Montague Expressway Widening Project, CIP No. 4179.

Attachment: [Agreement with RMC](#)

11. Approve and Authorize the City Manager to Execute Amendment No. 1 to the Common Interest, Privilege and Confidentiality Agreement with Tributary Agencies of San José/ Santa Clara Regional Wastewater Facility (Staff Contact: Nina Hawk, 408-586-2603)

Background: The City of Milpitas currently discharges its wastewater effluent from the City owned and operated collection system to the San José/Santa Clara Regional Wastewater Facility (“RWF”). The City of San José is the majority owner of the RWF, the City of Santa Clara is a minority owner, with the following tributary agencies: West Valley Sanitation District, Burbank Sanitary District, Cupertino Sanitary District, County Sanitation District 2-3 and City of Milpitas (“Tributary Agencies”).

The RWF requires significant rehabilitation totaling \$2.2 billion over a 20 year period which is captured in a formal planning document known as the Plant Master Plan. To satisfy the Plant Master Plan, significant financial contributions from City of San José, City of Santa Clara and the Tributary Agencies are required. Milpitas is required to pay its fair share, which based on preliminary information provided by the City of San José, will fluctuate over the 20 year period. Three financing vehicles are being considered by the RWF including long term financing (e.g. Bonds), SRF (state revolving fund) loans, and short term financing (e.g. commercial paper). It is evident given these significant contributions, the City will need to consider these financing vehicles as a means to provide for rate stabilization and inter-generational rate equity among its sewer ratepayers. City of Santa Clara and the Tributary Agencies have been asked to confirm their participation in these financing vehicles so that City of San José can develop Master Agreement Amendments. The City has potential to finance with City of San José, independently or externally with other parties.

On August 11, 2015, City Council authorized the City Manager to enter into a Common Interest, Privilege and Confidentiality Agreement with the Tributary Agencies. City Council authorized litigation against the RWF on September 11, 2017. The proposed amendment updates the terms of the agreement to address the pending litigation as well as to make minor changes to the wording of the current agreement. The Agreement will allow the Parties to exchange legal information and advice regarding the RWF without the risk of waiving or diminishing any applicable privileges or protections. The Amendment No. 1 is currently being brought forward to respective governing bodies for approval during the month of October 2017.

Fiscal Impact: There is no fiscal impact associated with this Agreement amendment.

Recommendation: Approve Amendment No. 1 to the Common Interest, Privilege and Confidentiality Agreement with West Valley Sanitation District, Cupertino Sanitary District, County Sanitation District 2-3 and Burbank Sanitary District of the San José/Santa Clara Regional Wastewater Facility and direct the City Manager to execute the amendment in a form approved by the City Attorney.

Attachment: None

- IX. REPORTS OF MAYOR & COUNCILMEMBERS – from the assigned Commissions, Committees and Agencies**
- X. ADJOURNMENT**

NEXT REGULAR CITY COUNCIL MEETING
TUESDAY, OCTBER 17, 2017