



## REGULAR MEETING OF THE MILPITAS CITY COUNCIL

For assistance in the following languages, you may call:

Đối với Việt Nam, gọi 408-586-3122

Para sa Tagalog, tumawag sa 408-586-3051

Para español, llame 408-586-3232

### AGENDA

**TUESDAY, SEPTEMBER 18, 2018**

**455 EAST CALAVERAS BOULEVARD, MILPITAS, CA**

**5:30 P.M. (CLOSED SESSION)**

**7:00 P.M. (PUBLIC BUSINESS)**

### SUMMARY OF CONTENTS

**I. CALL MEETING TO ORDER by Mayor and ROLL CALL by City Clerk**

**II. ADJOURN TO CLOSED SESSION (5:30 PM)**

**(a) CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING**

Pursuant to California Government Code Section 54957.6

City Negotiator: Liz Brown, Human Resources Director

Employee Group: 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)

Tom Williams v. City of Milpitas, et al. - American Arbitration Case No. 01-17-0003-5823

**(d) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Pursuant to California Government Code Section 54956.9(d)(1)

First Amendment Coalition v. City of Milpitas, et al. - Santa Clara County Superior Court Case No. 17CV309235

**(e) PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Pursuant to Government Code Section 54957

Employee Position: City Attorney

**(f) PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Pursuant to Government Code Section 54957

Employee Position: City Manager

**III. CLOSED SESSION ANNOUNCEMENT:** Report on action taken in Closed Session, if required per Government Code Section 54957.1, including the vote or abstention of each member present

**IV. PLEDGE OF ALLEGIANCE** (7:00 p.m.)

**V. INVOCATION** (Councilmember Nuñez)

**VI. PUBLIC FORUM**

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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 spoken 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. Council may instruct the City Manager to place the item on a future meeting agenda.

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**VII. ANNOUNCEMENTS**

**VIII. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**

**IX. APPROVAL OF [AGENDA](#)**

**X. CONSENT CALENDAR** (Items No. 1 through No. 12)

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

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<b>1.</b>	<b>Accept Schedules of Meetings/City Council Calendars - September and October 2018 (Staff Contact: Mary Lavelle, 408-586-3001)</b>
<b>2.</b>	<b>Approve City Council Meeting Minutes for September 4, 2018 (Staff Contact: Mary Lavelle, 408-586-3001)</b>
<b>3.</b>	<b>Receive Report from City Council Subcommittee on Commissions with Appointment Recommendations for Final Appointment by the Mayor to Two Commissions (Council Contacts: Councilmembers Nuñez, 408-586-3023 and Phan, 408-586-3032)</b>
<b>4.</b>	<b>Approve Response to the Santa Clara County Civil Grand Jury Report on "Affordable Housing Crisis: Density is Our Destiny" (Staff Contact: Hang Huynh, 408-586-3275)</b>
<b>5.</b>	<b>Approve Request from the Sunnyhills Neighborhood Association to Waive City Fees for a Neighborhood Event Held on Saturday, October 27, 2018 at Augustine Park (Staff Contact: Mary Lavelle, 408-586-3001)</b>
<b>6.</b>	<b>Adopt a Resolution Accepting Department of Homeland Security's Federal Emergency Master Agreement SAFER (Staffing for Adequate Fire and Emergency Response) Grant of \$1,520,523 to Cover Personnel Costs Including Salary and Benefits Associated with Hiring Four New Milpitas Firefighters, Appropriate Grant Funding to the FY 2018-19 Fire Department Operating Budget (Staff Contact: Geoff Maloon, 408-586-2818)</b>
<b>7.</b>	<b>Adopt a Resolution Granting Initial Acceptance of and Reducing the Performance Bond for Recycled Water Conversion Sites Phase 1, Projects No. 7126 and No. 3417, and Granting Authorization to the Public Works Director to Issue the Notice of Final Acceptance and Release of Performance Bond (Staff Contact: Tony Ndah, 408-586-2602)</b>

<b>8.</b>	<b>Adopt a Resolution Accepting County of Santa Clara Grant in the Amount of \$779,820 for an All-Inclusive Playground Project at McCandless Park and Designate City Manager as the Authorized Signer on the Grant Agreement with the County of Santa Clara, and Appropriate the Funds to McCandless Park, Capital Improvement Program Project No. 5102 (Staff Contact: Renee Lorentzen, 408-586-3409)</b>
<b>9.</b>	<b>Approve and Authorize the City Manager to Execute the Public Trail Maintenance Agreement with Orchid Homeowners Association - a Residential Development - at 31 Los Coches Street and Receive Three Parcels from DR Horton Bay, Inc. (Staff Contact: Steve Erickson, 408-586-3301)</b>
<b>10.</b>	<b>Approve Amendment No. 10 to the Consulting Services Agreement with Vali Cooper &amp; Associates, Inc. to Extend the Term to March 31, 2019 to Continue Support on the Silicon Valley Rapid Transit Program Berryessa Extension (SVBX) and Montague Expressway Widening Projects, Capital Improvement Program Projects No. 4265 and No. 4179 (Staff Contact: Steve Chan, 408-586-3324)</b>
<b>11.</b>	<b>Approve Amendment No. 2 to the Agreement Between the City of Milpitas and MuniServices LLC and Authorize the City Manager to Execute the Amendment to Extend the Term to June 30, 2020 for Sales and Use Tax Audit Services (Staff Contact: Will Fuentes, 408-586-3111)</b>
<b>12.</b>	<b>Approve and Authorize the City Manager to Execute an Agreement with Best Best &amp; Krieger LLP to Provide City Attorney Services for the Period of October 1, 2018 to September 30, 2020 and Appropriate \$97,350 into the City Attorney's Operating (Staff Contact: Julie Edmonds-Mares, 408-586-3050)</b>

**XI. PUBLIC HEARING**                      The following items No. 13 – 16 scheduled for discussion

- 13. Conduct a Public Hearing and Adopt the FY 2017-2018 Community Development Block Grant's Consolidated Annual Performance Evaluation Report (Staff Contact: Hang Huynh, 408-586-3275)**

**XII. NEW BUSINESS**

- 14. Receive Report on the Draft Sewer Rate Study and Provide Direction to Staff As Appropriate on the Sewer Rate Structure for a Five Year Period, FY 2018-19 to FY 2022-23 (Staff Contact: Tony Ndah, 408-586-2602)**
- 15. Consider Adopting the Updated City Council Handbook and Accept Staff Report Regarding the Updated City Council Agenda Management Process as Outlined in the City Council Handbook (Staff Contact: Ashwini Kantak, 408-586-3053)**

**XIII. RESOLUTION**

- 16. Adopt a Resolution Approving the Fiscal Year 2018-19 Central Services Full Cost Allocation Plan Update (Staff Contact: Julie Edmonds-Mares, 408-586-3050)**

**XIV. REPORTS OF MAYOR & COUNCILMEMBERS – from the assigned Commissions, Committees and Agencies**

**XV. ADJOURNMENT**

**NEXT REGULAR CITY COUNCIL MEETING**  
**TUESDAY, OCTOBER 2, 2018**

**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](mailto: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](http://www.ci.milpitas.ca.gov) by selecting the Milpitas Municipal Code link.*

Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 3<sup>rd</sup> floor 455 E. Calaveras Blvd., Milpitas and on the City website. All City Council agendas and related materials can be viewed online here: [www.ci.milpitas.ca.gov/government/council/agenda\\_minutes.asp](http://www.ci.milpitas.ca.gov/government/council/agenda_minutes.asp) (select meeting date)

**APPLY TO SERVE ON A CITY COMMISSION**

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

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

**AGENDA REPORTS**

**X. CONSENT CALENDAR**

<b>1.</b>	<p><b>Accept Schedules of Meetings/City Council Calendars – September and October 2018 (Staff Contact: Mary Lavelle, 408-586-3001)</b></p> <p><b><u>Recommendation:</u></b> Receive and accept City Council calendars of meetings for September and October 2018. Note any changes or additions, if needed.</p> <p><b><u>Attachments:</u></b> <a href="#">September</a> and <a href="#">October 2018</a> Calendars</p>
<b>2.</b>	<p><b>Approve City Council Meeting Minutes for September 4, 2018 (Staff Contact: Mary Lavelle, 408-586-3001)</b></p> <p><b><u>Recommendation:</u></b> Move to approve the September 4, 2018 City Council meeting minutes.</p> <p><b><u>Attachment:</u></b> <a href="#">Draft meeting minutes September 4, 2018</a></p>
<b>3.</b>	<p><b>Receive Report from City Council Subcommittee on Commissions with Appointment Recommendations for Final Appointment by the Mayor to Two Commissions (Council Contacts: Councilmembers Nuñez, 408-586-3023 and Phan, 408-586-3032)</b></p> <p><b><u>Background:</u></b> The City Council Subcommittee on Commissions was formed on December 19, 2017 to review and recommend applicants to serve as new Commissioners for final approval by the Mayor and Council. The Subcommittee recommended 28 successful Commission appointments and reappointments.</p> <p>The following appointments are recommended for final appointment by the Mayor:</p> <p><b><u>Energy and Environmental Sustainability Commission</u></b> Newly appoint Chia Ling Kong to serve as a Commissioner with a term to expire in October 2018. Newly appoint Patti Sexton to serve as a Commissioner (representing business) with a term to expire in October 2020. Copies of all applications on file for the Energy and Environmental Sustainability Commission are included in the agenda packet.</p> <p><b><u>Public Safety and Emergency Preparedness Commission</u></b> Newly appoint Paul Ellis as a Commissioner with a term to expire in June 2021. Newly appoint Aleck Bittencurt to serve as Alternate No. 1 with a term to expire June 2019. Copies of all applications on file for the Public Safety and Emergency Preparedness Commission are included in the agenda packet.</p> <p><b><u>Recommendation:</u></b> Approve recommendations for final appointment by the Mayor to these City of Milpitas Commissions: Energy and Environmental Sustainability Commission and the Public Safety and Emergency Preparedness Commission.</p> <p><b><u>Attachment:</u></b> <a href="#">Applications for two Commissions</a></p>
<b>4.</b>	<p><b>Approve Response to the Santa Clara County Civil Grand Jury Report on “Affordable Housing Crisis: Density is Our Destiny” (Staff Contact: Hang Huynh, 408-586-3275)</b></p> <p><b><u>Background:</u></b> On June 21, 2018 the Santa Clara County Civil Grand Jury issued a report entitled “Affordable Housing Crisis: Density is Our Destiny” to investigate the challenges</p>

faced by the County as related to affordable housing and suggested solutions to produce affordable housing or below market rate (BMR) housing. A copy is included in the agenda packet.

The Grand Jury interviewed more than 65 people for the report including elected and appointed government officials, leaders of nonprofits and developers. The investigation covered BMR challenges not only for the County and its 15 cities, but also nonprofits and other agencies such as the Housing Authority of Santa Clara County as well as the Santa Clara Valley Transportation Authority (VTA) and Santa Clara Valley Water District.

The Grand Jury researched each city's Housing Element and Regional Housing Needs Allocation (RHNA). The Grand Jury's review focused on topics ranging from RHNA, Inclusionary Housing Ordinances to Linkage and Impact Fees.

The Santa Clara County Civil Grand Jury under California Penal Code Section 933(c) requires that a governing body or department shall respond within 90 days to the Presiding Judge of the Superior Court on the findings and recommendations. The City of Milpitas is included in the report because it is a permitting authority for building permits and land use authority within the County of Santa Clara.

California Penal Code § 933.05 contains guidelines for the responses to Grand Jury findings and Recommendations. As stated in Penal Code § 933.05(a), public agencies are required to agree or disagree wholly or partially with each applicable finding. Further, as stated in Penal Code § 933.05(b), the City of Milpitas is required to respond to each applicable recommendation with one of four possible actions:

1. The recommendation has been implemented, with a summary regarding the implemented action;
2. The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation;
3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report; or,
4. The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation.

The Civil Grand Jury Report on "Affordable Housing Crisis: *Density is Our Destiny*" included 14 Findings and 12 associated Recommendations applicable to the City of Milpitas. The draft reply letter contains the City's responses to the Findings and Recommendations. In summary, the City generally agrees with the 14 Findings and all the responses to the Recommendations include an explanation. If a Recommendation requires implementation and consideration, it has been noted in the response.

The City's response letter will be submitted to the office of the Honorable Patricia Lucas, Presiding Judge, Santa Clara County Superior Court by Thursday, September 20, 2018.

**Fiscal Impact:** None

**Recommendation:** Approve and authorize staff to submit on behalf of the Mayor the City's written response to the Santa Clara County Civil Grand Jury Report on "Affordable Housing Crisis: *Density is Our Destiny*."

**Attachments:**

- a) [Civil Grand Jury Report](#)
- b) [Draft Letter of Response](#)

**5. Approve Request from the Sunnyhills Neighborhood Association to Waive City Fees for a Neighborhood Event Held on Saturday, October 27, 2018 at Augustine Park (Staff Contact: Mary Lavelle, 408-586-3001)**

**Background:** The City Clerk received a “Donation or Fee Waiver/Reduction Request Application Form” from the Sunnyhills Neighborhood Association on August 22. The group has applied for a Special Event Permit through the Planning Department, and applied through Recreation Services to rent Augustine Park for this special event. Sunnyhills Association requested that the City Council waive all City fees charged for its Halloween Neighborhood Watch Event from 2:00 to 4:00 PM on Saturday, October 27, 2018. Applicant submitted the application form along with the required IRS letter stating Sunnyhills’ non-profit status, as required.

**City Fees are:**

Park Rental fee – Recreation Services	\$180.00
Special Event permit application – Planning Dept.	\$250.00

**Fiscal Impact:** \$20,000 was approved and included in the FY 2018-19 City budget for City Council’s Unallocated Community Promotions. If the current fee waiver of \$430 is granted, then \$18,167.23 would be the remaining balance for the fiscal year.

**Recommendation:** Approve the request from Sunnyhills Neighborhood Association and direct staff to waive \$430 in city fees for Planning (\$250) and Recreation (\$180) fees for the Sunnyhills Halloween Neighborhood Watch Event scheduled on Saturday, October 27, 2018.

**Attachments:**

- a) [Fee Waiver application + IRS letter](#)
- b) [Event Flyer 2018](#)
- c) [Report from 2017 event](#)

**6. Adopt a Resolution Accepting Department of Homeland Security’s Federal Emergency Management Agency SAFER (Staffing for Adequate Fire and Emergency Response) Grant of \$1,520,523 to Cover Personnel Costs Including Salary and Benefits Associated with Hiring Four New Milpitas Firefighters, Appropriate Grant Funding to the FY 2018-19 Fire Department Operating Budget (Staff Contact: Geoff Maloon, 408-586-2818)**

**Background:** The City of Milpitas submitted a grant proposal to the US Department of Homeland Security requesting funding to assist with hiring four new firefighters. The SAFER grant application was approved on August 24, 2018. The three-year grant will fund 75% of the salary and benefits for each of the newly hired firefighters for the first two years and 35% in the final year of the grant. The total project cost is \$2,465,712. The federal grant funding totals \$1,520,523 and the local required cost match for the City totals \$945,189. Funding from the SAFER grant will help the City address service needs relating to anticipated population growth as well as the acquisition of new Fire apparatus.

**Fiscal Impact:** The grant mandated local cost match total for the three year term is \$945,189 based on salary and benefit costs for Step 1 firefighters. In addition, the City will be responsible for any costs above those for Step 1 firefighters, any salary or benefit increases during the term of the grant, and costs for retention of the four additional firefighters after the expiration of the grant. Thus, it is anticipated that the total fiscal

impact during the three year period of performance for the grant will total approximately \$1.15 million. The total fiscal impact includes the cost match requirement plus anticipated salary and benefit increases not covered by the grant. Salaries and benefit increases not covered by the grant include increases in health care costs, PERS rates, and salary step increases for the newly hired firefighters. The City is responsible for 100% of the costs after the third year, but is not required to maintain the positions after the third year as a condition of receiving SAFER grant funding. The projected cost to maintain four firefighters in year four, after the three-year grant term ends, is approximately \$907,000 for salary and benefits and will need to be incorporated into future operating budgets if the City wishes to maintain the positions.

The grant cost match by year is as follows. There are currently funds set aside in the operating budget for the local match for Year One and Year Two. Year Three will need additional funding of approximately \$257,000 and this will be requested as part of the FY 2020-21 Operating Budget process. The grant period of performance begins in February of 2019.

- Year One: Federal Share \$616,428 Local Match \$205,476
- Year Two: Federal Share \$616,428 Local Match \$205,476
- Year Three: Federal Share \$287,667 Local Match \$534,237

**Recommendation:** Adopt a resolution accepting the Department of Homeland Security's FEMA SAFER grant of \$1,520,523 awarded to City of Milpitas, approve and accept the grant terms, appropriate grant funding to the FY 2018-19 Fire Department operating budget, and transfer the City's local match to the Fire Department's FY 2018-19 operating budget from the Non-Departmental operating budget.

**Attachments:**

- a) [Award Package](#)
- b) [Resolution](#)
- c) [Budget Change Form](#)

7.

**Adopt a Resolution Granting Initial Acceptance of and Reducing the Performance Bond for Recycled Water Conversion Sites Phase 1, Projects No. 7126 and No. 3417, and Granting Authorization to the Public Works Director to Issue the Notice of Final Acceptance and Release of Performance Bond (Staff Contact: Tony Ndah, 408-586-2602)**

**Background:** On August 16, 2016, City Council awarded the Recycled Water Conversion Sites Phase 1, Projects No. 7126 and No. 3417 to Marina Landscape, Inc. The project provided for the conversion of 17 acres of City Park landscaping from potable water to recycled water irrigation, construction of a sink and drinking fountain at the Community Garden site, and construction of potable supply and a sanitary sewer service lateral to serve Community Garden water fixtures.

Marina Landscape, Inc. has successfully completed the work for this project. The construction contract was awarded in the amount of \$586,120 and approved a contingency fund of \$117,000.

Staff issued eight contract change orders during the course of the project for additional work required to complete the work. These changes include:

1. \$2,551.18 for additional work required to install lockable ball valves at each quick coupler assembly at the Community Garden site. This item was executed by staff as Charge Order No. 1.

2. An extension of 158 contract calendar days to complete all project work items per plans and specifications. No monetary compensation was provided. This item was executed by staff as Charge Order No. 2.
3. \$6,096.38 for additional work required to install a 48-station smart irrigation controller in lieu of a 30-station smart irrigation controller at the Sandalwood Park site. This item was executed by staff as Charge Order No. 3.
4. \$7,541.99 for additional work required to administer chlorination/dechlorination and provide disinfection testing services for main pipe installation. This item was executed by staff as Charge Order No. 4.
5. \$7,487.71 for additional work required to upsize irrigation piping at the Escuela Parkway medians and install additional irrigation appurtenances. This item was executed by staff as Charge Order No. 5.
6. \$33,076.56 for several additional work items including Community Garden restoration, sod replacement, disposal of chlorinated water, and compensation for contractor standby time due to unforeseen conditions. These items were executed by staff as Charge Order No. 6.
7. \$19,799.49 for additional work required for additional rototilling and restoration at the Community Garden site. This item was executed by staff as Charge Order No. 7.
8. \$7,000.00 for additional horizontal directional drill work required to install mainline piping. This item was executed by staff as Charge Order No. 8.

	<b>Contract Amount</b>	<b>Contingency Amount</b>
<b>Original Contract</b>	\$586,120.00	\$117,000.00
Change Order No. 1	\$2,551.18	\$114,448.82
Change Order No. 2	\$0.00	\$114,448.82
Change Order No. 3	\$6,096.38	\$108,352.44
Change Order No. 4	\$7,541.99	\$100,810.45
Change Order No. 5	\$7,487.71	\$93,322.74
Change Order No. 6	\$33,076.56	\$60,246.32
Change Order No. 7	\$19,799.49	\$40,446.83
Change Order No. 8	\$7,000.00	\$33,446.83
Contract Amount and Remaining Contingency	\$669,673.31	\$33,446.83
Savings due to Original Contract no longer pursued	(\$35,165.00)	
<b>Final Contract Amount and Remaining Contingency</b>	<b>\$634,508.31</b>	<b>\$33,446.83</b>

The proposed final contract amount is \$669,673.31, which includes \$83,553.31 in contingencies. However, due to specific Original Contract items no longer pursued during construction, the City has a savings of \$35,165.00, bringing down the proposed final contract amount to \$634,508.31.

Staff now recommends the City Council adopt a resolution granting initial acceptance of the project, authorize the reduction of the performance bond to \$63,450.81, which is 10% of the final contract value, and initiate the one-year warranty for the work. Acceptance of the work by Council will also allow for the release of \$31,725.00 in retention to the contractor.

Staff also recommends the City Council authorize the Public Works Director to issue the Notice of Final Acceptance after the one year warranty period without further City Council action, provided all warranty work is completed to the satisfaction of the Public Works Director.

**Alternative:** Failure to adopt the resolution would result in the project not being accepted and the Notice of Completion not being filed along with a potential delay claim by the contractor.

**Fiscal Impact:** None. Construction has been completed.

**Recommendations:**

1. Adopt a resolution granting initial acceptance of the Recycled Water Conversion Sites Phase 1 project, Projects No. 7126 and No. 3417, and authorize reduction of the performance bond to \$63,450.81, which shall be in effect for the duration of the one-year warranty period.
2. Grant authorization to the Public Works Director to issue the Notice of Final Acceptance and release of performance bond after the one-year warranty period and to release and discharge the maintenance bond without further City Council action.

**Attachment:** [Resolution](#)

8. **Adopt a Resolution Accepting County of Santa Clara Grant in the Amount of \$779,820 for an All-Inclusive Playground Project at McCandless Park and Designate City Manager as the Authorized Signer on the Grant Agreement with the County of Santa Clara, and Appropriate the Funds to McCandless Park, Capital Improvement Program Project No. 5102 (Staff Contact: Renee Lorentzen, 408-586-3409)**

**Background:** The City of Milpitas submitted on behalf of itself and the Milpitas Unified School District, a joint grant proposal for the County of Santa Clara's All-Inclusive Playground Grant program. On August 14, 2018, the Santa Clara County Board of Supervisors unanimously approved the joint grant application and awarded \$779,820 in grant funds for an inclusive playground project at the new McCandless Park and Mabel Mattos Elementary School sites.

This year-long grant application process included critical community-wide contributions including a City-led special needs programming focus group, community-based survey on accessible play importance, and heartfelt letters of support from Milpitas families advocating for the grant project. Funds from the grant will be used for two connected all-inclusive playgrounds that aim to serve people of all ages and all abilities. These monies will increase and enhance the scope of the park project, resulting in a greater and fully accessible experience for all residents.

The City of Milpitas will be entering into a contract with the County of Santa Clara for the acceptance of the grant, and will act as the grant administrator for the life of the grant.

**Fiscal Impact:** An appropriation of \$779,820 to the McCandless Park CIP Project No. 5102 Phase 7 (Construction) FY 2018-19 is required. The adopted five year CIP has \$10,375,000, of which \$779,820 will be counted as the 100% match required for the grant and be used specifically for the all-inclusive playground. If additional funding is needed to cover total project costs, a request will be made as part of the CIP 2019-2024 Funding Cycle.

**Recommendation:** Adopt a resolution accepting a County of Santa Clara grant in the amount of \$779,820 for an All-Inclusive Playground Project at McCandless Park and designate the City Manager as authorized signer on the Grant Agreement with the County of Santa Clara, and appropriate funds into McCandless Park CIP Project No. 5102 Phase 7.

**Attachments:** a) [Resolution with Agreement](#) and b) [Budget Change Form](#)

9. **Approve and Authorize the City Manager to Execute the Public Trail Maintenance Agreement with Orchid Homeowners Association - a Residential Development - at 31 Los Coches Street and Receive Three Parcels from DR Horton Bay, Inc. (Staff Contact: Steve Erickson, 408-586-3301)**

**Background:** On January 15, 2013, the City Council approved Vesting Major Tentative Map (MT12-0003), Environmental Impact Assessment (EA12-0004), Site Development Permit (SD12-0005) and Conditional Use Permit (UP12-0020) to allow for the construction of 80 single-family homes on 11.4 acres located at 31 Los Coches Street by DR Horton Bay, Inc.

As part of the approved final map for the project, Tract No. 10192, Parcel I and J along with an adjacent third triangular parcel are to be conveyed to the City of Milpitas for public trail purposes subsequent to the filing of the final map. The developer has completed construction of the trail improvements in accordance with the project conditions of approval, and the Orchid Homeowners Association will maintain the trails. The developer has finished construction of the trails and the HOA has executed the Public Trail Maintenance Agreement for perpetual maintenance of public trail improvements. Therefore, the three parcels are ready to be conveyed to the City via the grant deed (copy in agenda packet).

**California Environmental Quality Act:** Approval of the agreement and conveyance of land are not considered a project under CEQA as there will be no direct or reasonably foreseeable indirect physical change in the environment.

**Fiscal Impact:** None.

**Recommendations:**

1. Approve and authorize the City Manager to execute the Public Trail Maintenance Agreement between City of Milpitas and Orchid Homeowners Association.
2. Receive three parcels from DR Horton Bay, Inc. for the single family home development at 31 Los Coches Street in Milpitas.

**Attachments:**

- a) [Public Trail Maintenance Agreement](#)
- b) [Grant Deed](#)
- c) [Final Map Tract No. 10192](#)

10. **Approve Amendment No. 10 to the Consulting Services Agreement with Vali Cooper & Associates, Inc. to Extend the Term to March 31, 2019 to Continue Support on the Silicon Valley Rapid Transit Program Berryessa Extension (SVBX) and Montague Expressway Widening Projects, Capital Improvement Program Projects No. 4265 and No. 4179 (Staff Contact: Steve Chan, 408-586-3324)**

**Background:** On August 3, 2010, the City entered into a Master Agreement with the Santa Clara Valley Transportation Authority (VTA) for reimbursement of City work on the Silicon Valley Berryessa Extension (SVBX) BART project. The Master Agreement allows for reimbursement of City consultant costs for support services.

On November 20, 2013, the City entered into a consulting services agreement with Vali Cooper & Associates, Inc. in the amount of \$19,760 to provide support services for the SVBX BART project through June 30, 2014. There have been a total of nine amendments to the agreement with Vali Cooper & Associates totaling \$1,584,240, and the term of the agreement is set to expire September 30, 2018.

Several phases of the SVBX BART work are in progress simultaneously, including relocation of existing utilities, installation of new utilities, track installation, parking garage, roadway, frontage, and station construction. The Montague Expressway roadway widening project construction activities also require engineering support services from Vali Cooper & Associates.

The current agreement with Vali Cooper will expire on September 30, 2018. Staff recommends that the City Council approve Amendment No. 10 with Vali Cooper & Associates to extend the term of the agreement to March 31, 2019, with no change in the total compensation.

**Fiscal Impact:** Consultant expenses and City staff labor related to the SVBX BART Project No. 4265 are reimbursable per the City/VTA Master Agreement. Consultant expenses related to the Montague Expressway Widening are budgeted in the City's Capital Improvement Program Montague Expressway Widening Project No. 4179. Sufficient funds are available in the project budgets for the cost of the consultant services.

**Recommendation:** Approve Amendment No. 10 to the agreement with Vali Cooper & Associates to extend the term of the agreement until March 31, 2019 to provide support services for the Silicon Valley BART extension project.

**Attachment:** [Amendment No. 10 to the Agreement with Vali Cooper & Associates](#)

**11. Approve Amendment No. 2 to the Agreement between the City of Milpitas and MuniServices LLC and Authorize the City Manager to Execute the Amendment to Extend the Term to June 30, 2020 for Sales and Use Tax Audit Services (Staff Contact: Will Fuentes, 408-586-3111)**

**Background:** The City of Milpitas entered into a contingency fee agreement with MuniServices LLC on July 1, 2015 to provide Sales and Use Tax Audit (SUTA) services. Prior to the current agreement, MuniServices had provided SUTA services to the City since 1996. Sales Tax generators often misreport, underreport, report for the wrong jurisdiction, or fail to report sales tax transactions to the California Department of Tax and Fee Administration (CDTFA). This can cause the City to lose out on valuable sales and use tax revenue that is needed for critical public services and projects.

MuniServices is a leader in the field of discovering this potentially lost sales and use tax revenue and correcting issues with the CDTFA for the benefit of local municipalities. The use of such contractual services is common practice for local municipalities since they normally don't have the staffing resources, time, or expertise to address sales and use tax errors internally. The fees charged for these services are completely offset several times over by lost sales tax revenue recovered by the vendor. Through the 1<sup>st</sup> Quarter of 2018 and since 1996, MuniServices has recovered \$26.3 million in sales and use tax revenue for the City of Milpitas and has earned \$2.4 million in fees; thereby resulting in a net revenue gain to the City of \$26.9 million and a 978% return on investment.

On August 15, 2017, the City Council approved Amendment No. 1 with MuniServices to reduce the contingency fee rate charged from 25% for all sales and use tax errors recovered to a tiered rate model of 15% for the first \$2 million in sales and use tax errors recovered; 10% for recoveries \$2 million to \$3 million; and 5% on recoveries over \$3 million. Amounts discovered in any one year can vary greatly. However, staff estimated that the newly negotiated tiered rate model potentially will save the City \$50,000 to \$75,000 per fiscal year depending on amount of sales and use tax errors discovered and corrected by MuniServices.

Due to the tremendous success of MuniServices in recovering sales and use tax revenue for the City, as well as the services provided for quarterly sales and use tax revenue projections and legislative updates, staff recommends extending the current agreement to June 30, 2020. After this time, staff will explore a new agreement with MuniServices or initiate a Request for Proposal (RFP) process to ensure competitive procurement and the best pricing possible for the City of Milpitas. Note that Amendment No. 2 is a retroactive extension with a start date back to July 1, 2018 since the most recent agreement with MuniServices expired June 30, 2018. Staff intended to have this agreement extended for two years due to a high level of past performance, but the request for extension was inadvertently missed during year end activities.

**Fiscal Impact:** None. Funds for the agreement are fully offset by sales and use tax revenues generated. Over the next four quarters, it is projected that MuniServices will recover \$2.8 million for the City of Milpitas, while earning \$72,000 in fees. Both the revenue and cost are factored into the City's FY 2018-19 Adopted Budget and a budget change is not necessary at this time.

**Recommendation:** Approve Amendment No. 2 to the Agreement Between the City of Milpitas and MuniServices LLC and authorize the City Manager to execute the amendment extending the term to June 30, 2020 for Sales and Use Tax Audit (SUTA) services.

**Attachment:** [Amendment No. 2 to MuniServices Agreement](#)

12.

**Approve and Authorize the City Manager to Execute an Agreement with Best Best & Krieger LLP to Provide City Attorney Services for the Period of October 1, 2018 to September 30, 2020 and Appropriate \$97,350 into the City Attorney's Operating Budget (Staff Contact: Julie Edmonds-Mares, 408-586-3050)**

**Background:** On September 22, 2015, the City Council approved the Legal Services Agreement with Best Best & Kreiger LLP (BBK) for City Attorney services. Prior to this time, legal services were provided by an in-house City Attorney. The BBK agreement had an initial term of approximately three years and a termination date of June 30, 2018. The agreement was later extended to September 30, 2018. At this time and due to favorable performance over the last three years under the terms and conditions of the original agreement, staff as well as the City Council Subcommittee on City Attorney recommends a new two year agreement with BBK for City Attorney services to commence on October 1, 2018 and end on September 30, 2020. The maximum compensation limit for the agreement shall be \$663,000 per fiscal year plus annual adjustments to account for changes in the Consumer Price Index (CPI). Included in this compensation limit is a monthly retainer of \$33,000 and 150 hours; with 15 to 20 of those hours for City Attorney office hours directly at City Hall. BBK will also assist with labor negotiations and other employment related matters, as directed by the City. Such an agreement will ensure continuity of legal services and an enhanced level of service to City staff, City Council, and the public.

However, shortly before the expiration of the new agreement on September 30, 2020 and per best procurement practices, staff recommends initiating a request for proposal (RFP) for City Attorney services to ensure the best possible combination of pricing and service. BBK may submit a new proposal at that time and the City may decide that continuing the relationship with BBK for City Attorney services is in its best interests, but that will only be possible by performing the full due diligence that comes with an RFP process. Additionally, over the next two years and until the expiration of the new BBK agreement, staff will also analyze whether once again bringing City Attorney services in house would be cost efficient and in the best interests of the City.

**Fiscal Impact:** It is recommended that the City not exceed \$663,000 per fiscal year for these services plus annual adjustments to account for changes in the Consumer Price Index (CPI). The expiring BBK agreement has a not to exceed amount of \$550,000 per fiscal year plus CPI adjustments, but this is not sufficient given the trend of both regular City Attorney services and unexpected litigation needs over the past two fiscal years. The FY 2018-19 adopted budget for contractual City Attorney services is currently established at \$565,650. Thus, a budget adjustment of \$97,350 to the contractual services account in the City Attorney's Office is necessary in FY 2018-19 and can be absorbed by the General Fund Unassigned balance.

**Recommendations:**

1. Approve and authorize the City Manager to execute an Agreement with Best Best & Krieger LLP (BBK) to provide City Attorney services for the period of October 1, 2018 to September 30, 2020.
2. Approve appropriation of \$97,350 into the City Attorney's operating budget.

**Attachments:**

- a) [Agreement with Best Best & Krieger](#)
- b) [Budget Change Form](#)

**XI. PUBLIC HEARING** The following items No. 13 – 16 scheduled for discussion

**13. Conduct a Public Hearing and Adopt the FY 2017-2018 Community Development Block Grant's Consolidated Annual Performance Evaluation Report (Staff Contact: Hang Huynh, 408-586-3275)**

**Background:** In a typical Community Development Block Grant (CDBG) funding cycle, all funds spent must be consistent with the Consolidated Plan. The Consolidated Plan is the City's 5-year guiding CDBG document that prioritizes CDBG spending for the community. The Consolidated Plan was prepared with a community-wide dialogue to establish the community's development priorities.

The Consolidated Plan is then carried out through the Annual Action Plan – which provides the framework of how the jurisdiction will spend its annual CDBG allocation. The Annual Action Plan provides a concise summary of the funded federal and non-federal activities and programs that will be used in the upcoming year that addresses the goals identified in the Consolidated Plan. The Annual Action Plan is typically approved by the Council in April or May.

At the end of the CDBG program year, the last report prepared is the Consolidated Annual Performance Evaluation Report (CAPER). The CAPER summarizes all the accomplishments of the past funding cycle and the progress towards the goals identified in the Consolidated Plan.

The 2017-18 CAPER describes the City's activities for FY 2017-18 and accomplishments toward the goals from the 2017-2022 Consolidated Plan. Please note that this CAPER is the first progress report for the 2017-2022 Consolidated Plan that was approved by the City Council in 2017.

The CAPER (copy in agenda packet) describes the City's one-year CDBG programs and activities undertaken in the past program year FY 2017-18.

**The CAPER identifies some of the major accomplishments in 2017-18:**

- CDBG funds provided 26 children in the court-appointed, foster care system with long-term, steady, supportive volunteers throughout until adulthood.

- A total of 7 Milpitas residents received emergency shelter and supportive services through homeless shelters and/or emergency shelters for victims of domestic violence.
- A total of 25 low income homeowners and renters benefitted from safety, energy efficiency, rehabilitation and home modifications that help families to safely age in place by increasing accessibility and mobility.
- CDBG funds helped continue services for the Milpitas Food Pantry, serving 1,586 extremely-low to very low-income residents.
- Provided funds to provide supportive services for 69 domestic violence victims (women and children) with supportive & residential services.
- CDBG funds helped with increasing awareness and investigating complaints of fair housing and landlord/tenant services for 38 residents in Milpitas.
- A total of 45 disabled Milpitas residents was assisted in housing information and referrals.
- CDBG funds served 48 Milpitas elderly citizens with free legal services.
- Terrace Gardens Senior Housing had replaced outdated carpet in the common areas, updated lights to energy efficient LED lights, installed security cameras and installed tree grates to prevent tripping hazards.
- A total of 2,400 hot meals was delivered daily to 10 elderly, homebound Milpitas seniors.
- Funded 13 public and capital organizations with CDBG.
- A total of 2,077 individuals benefitted from CDBG funds for FY 2017-18.

While the above highlighted the accomplishments, some of the awarded agencies did not meet their submitted annual goals for funding. The agencies that did not meet some of their stated goals included the following:

1. Dress for Success did not meet its goal of assisting 30 underemployed women with professional attire. The organization was able to serve all clients that were referred to them. 21 women wanted assistance from Dress for Success. The organization attributes the inability to meet the goal due to the lack of public transit to the facility, lack of child care, and also the stigma related to accepting used clothes.
2. Next Door Solutions to Domestic Violence met one of its three goals. The organization met the goal of providing support for 84 crisis calls from the 24/7 crisis hotline with live support. However, it was unable to provide any women with emergency shelter and provided 47 women out of the goal of 50 with supportive services. The last two goals were not met due to the decrease of calls from residents seeking services which can be attributed to successful outreach and prevention with continued relationship with the Milpitas Police Department. Milpitas Police continues to work with victims of domestic violence and provide referrals and in some cases rides to the shelter.
3. Rebuilding Together Silicon Valley met one of its two goals. Rebuilding Together provided over 53 residents with repairs but was unable to provide 28 homes with repairs. Rebuilding Together did not receive the number of applications as prior years. All 25 applicants were served and provided with critical safety, accessibility and mobility housing repairs.
4. YWCA Silicon Valley exceeded one of its three goals. YWCA staff answered 30 crisis calls via their 24-hour crisis line. The agency provided 22 domestic violence victims with supportive services out of a goal of 30 and sheltered 7 women and their children out of a goal of 13. The organization noticed that fewer women asked for emergency shelter and those who did stayed longer. Also the organization participates with the County in the Repaid Rehousing Program to assist these women with permanent housing.

The CAPER was available for public review and comments for 15 days between August 24 and September 4, 2018. Copies of the CAPER were sent to all service providers that

received CDBG funding and other interested parties. Copies were made available at City Hall, City's website, and the Milpitas Public Library.

**Fiscal Impact:** None

**Recommendations:**

1. Open the public hearing for comments and move to close the hearing following any speakers.
2. Adopt the FY 2017-2018 Consolidated Annual Performance Evaluation Report (CAPER) regarding Community Development Block Grant (CDBG) funds for the City of Milpitas.

**Attachment:** [Draft CAPER 2017-2018](#)

## **XII. NEW BUSINESS**

### **14. Receive Report on the Draft Sewer Rate Study and Provide Direction to Staff As Appropriate on the Sewer Rate Structure for a Five Year Period, FY 2018-19 to FY 2022-23 (Staff Contact: Tony Ndah, 408-586-2602)**

**Background:** The City of Milpitas owns and operates its municipal sewer collection system consisting of 179 miles of gravity pipe and 5 miles of force main. The system also includes two pump stations, which lifts sewer out of a low-lying neighborhoods and pumps all City sewage through dual 2.5 mile force mains to the San Jose/Santa Clara Water Pollution Control Plant (WPCP).

The City of San Jose operates the WPCP and by a "Master Agreement," accepts sewage flow from the City for treatment. By the terms of the agreement, the City pays a proportionate share of the Plant's operations, maintenance, and capital improvement cost each year. The infrastructure at the WPCP is at or near the end of its useful life, and is overdue for renewal and modernization.

In August 2015, Council conducted a public hearing and adopted a new sewer rate structure for the City. The rates became effective on August 4, 2015. It has been more than three years since a formal cost of service/rate study has been performed for the City's sewer system, and major capital improvements have been made and will continue to be made.

In January 2018, the City contracted with Municipal and Financial Services Group (MFSG) to conduct a cost of service analysis for the sewer system. The purpose of the analysis was to evaluate the City's sewer system revenue requirements and prepare a comprehensive sewer rate and cost of service study, to include an update of the City's existing rate structure, and financial obligations, and to develop a rate structure that identifies and projects all revenue requirements and rate adjustments needed over the five year period between FY 2018-19 to FY 2022-23, to meet all wastewater related costs, operation and maintenance costs, capital improvement projects, capita and financial obligations, and reserve requirements for the sewer utility enterprise during this period.

The following findings were developed during the sewer rate study:

- The current rate structure does not generate sufficient revenue to fully fund the operating, capital, and cash reserve needs of the City's sewer system.
- The current rate structure collects 64% of the personnel services costs in the bi-monthly flat fee charged to users, and should be restructured to collect 100% of the personnel services costs.

- The current rate structure charges the mobile home park customer class based on a flow assumption that is less than the one used by the City of San José to allocate operating costs to the City.
- The Sewer Fund contains appropriate reserves given the operational and capital expenses of the City's system.
- The City's current planned reinvestment in its buried sewer assets is insufficient to fully fund the cost of rehabilitation and replacement needs of its buried assets.

The report recommends that the City update its rate structure as follows:

- Sewer rate structure should charge the mobile home park customer class based on the flow assumptions used by the City of San José to allocate operating costs to the City.
- Sewer rate structure should recover 100% of personnel services costs through the bi-monthly flat fee.
- City should adopt the proposed rates in the study for the next five fiscal years and implement rate increases through a multi-year financial plan that utilizes both increased rate revenues and the use of a portion of cash.

**Analysis:** The City's sewer system is operated as a self-supporting enterprise and the City must charge customers for these commodities at a rate that covers the City's costs. The revenue requirements for the sewer enterprise includes expenses for the City's operation and maintenance, capital improvements, existing debt service, and the City's share of the WPCP operations and capital expenses.

**Operating Expenses**

The projected operating cost for FY 2018-19 for the sewer enterprise is approximately \$12.7 million. This includes \$6,021,401 for the City's share of the operating cost for WPCP, which is about 5.7 % of the WPCP total operating expenses. WPCP treatment operating costs is about 65 % of the City's total wastewater service operating expenses. The remaining 35 % of the City's wastewater operating service cost is for operation and maintenance costs related to the City's wastewater collection and pumping. On average, sewer operating expenses are assumed to increase by 3.0% each year.

**Existing Debt Service**

In December 2006, the Milpitas Public Financing Authority issued Certificates of Participation, 2006 Series A (Sewer COPs), in the original principal amount of \$9,535,000 to finance certain sewer facilities within the City. The Sewer COPs are collateralized by net revenues from the City's Sewer System Installment Sale Agreement. In FY 2018, the City refinanced the 2006 COPs with new Wastewater Bonds with a principal balance of \$4,725,000. Annual principal and interest payments will continue through FY 2027.

**Capital Expenses**

The sewer rate study includes an analysis of the capital expenses needed to fund the City's capital improvement projects listed in the FY 2018–23 CIP. The City's planned capital expenses for the sewer system is about \$10 million over the next five years, which includes planned investments to update the City's Sewer Master Plan, modernize and rehabilitate sewer pumps, and improve the operation of equipment in the sewer system.

The sewer rate study also analyses the capital expenses for the City's share of capital expenses for the WPCP. Each year, the City of San Jose provides estimates of the City's share of operations cost for WPCP, and prepares a preliminary 10-year estimate of considerable capital costs necessary for the regional wastewater treatment facility.

The preliminary 10-year estimate for the City’s share of capital expenses at the WPCP is as follows:

FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	FY 24/25	FY 25/26	FY 26/27	FY 27/28
\$6.5 M	\$24.3 M	\$19.9M	\$5.9 M	\$8.8 M	\$4.5 M	\$10 M	\$3.6 M	\$3 M	\$1.4 M

It is necessary to finance costs of this magnitude and due to the variable nature of the City’s share of capital cost for the WPCP, the sewer rates study recommends the issuance of debt in years when the payments are disproportionately large (FY 2020 and FY 2021) to smooth out the cash flow impact on the City’s rate payers. Financing cost of this magnitude also maintains intergenerational equity, which ensures that each generation maintains the quality of the City’s assets so that on balance it is passed on in no worse condition than when received and gives each generation a right to the City’s assets in a quality comparable to that enjoyed by previous generations.

Cost of Service Allocation

The sewer rate study includes a description of the methodology used to allocate the revenue required for the sewer system amongst ratepayers. Each ratepayer falls into a customer class, which is based on the different levels of the flow and composition of the sewage discharged into the system.

Residential customers are billed bi-monthly on an equivalent dwelling unit (EDU) basis. Non-residential customers are billed monthly based on metered water consumption, with the unit of measurement being one hundred cubic feet (HCF), an amount equal to 748 gallons. Non-residential sewage rates vary based on the use of the property, with rates adjusted to reflect sewage strength (units of pollutants per quantity of sewage).

Because it is not possible to monitor the sewage flow from each residence, there are several generally accepted methods to estimate sewer flow. The partner agencies of WPCP estimate flow based upon an assumed average population per household and assumed flow per person. The difference between single family and multi-family rates is the number of people per household. In 2015, the City of San Jose completed a Residential Flow Study to update population per dwelling unit and per capita discharge for single family, multi-family and mobile homes.

Flow study recommendation for the City are shown below:

	No. of persons	Flow per person gallons per day (gpd)	People x flow per person = gpd per household
Single family	3.54	51	181
Multi-family	2.73	51	139
Mobile homes	2.24	63	141

The data above is used to determine the City’s share of operating expenses for the WPCP.

Capital costs, and operations and maintenance costs for the City are calculated based on four treatment parameters consisting of flow, biochemical oxygen demand (BOD), suspended solids (SS), and ammonia (NH3). Capital and operating costs are applied to each of the parameters. The total cost is divided by the four parameter units to get the unit rate. The unit rate is applied to each customer class to calculate their rate. Depending on customer class, values for BOD, SS, and NH3 are assigned by the City of San Jose based upon industry standards and State-accepted values. For example, sewage waste from residential customers contains more suspended solids than sewage waste from office

buildings. Unique customers, such as semiconductor manufacturers, are sampled by the City of San Jose to verify their parameters.

Water billing records for the non-residential customers are used to determine sewer flow. For most non-residential customers, the sewer discharge is equivalent to the water demand. This assumption is not true for customers who use water in their products, such as concrete manufacturing and food processing. These customers are eligible for the City's Sewer Flow Adjustment Program and a reduction factor is applied to their flow.

In addition, the study recommends allocating the City's full personnel service costs to a "Flat Fee," based on the number of dwelling units in each customer class. Residential customers account for 23,015 dwelling units, while non-residential customers account for 973 dwellings in the sewer system. The "Flat Fee" would be included in the bi-monthly fee charged to residential customers, while the "Flat Fee" would be collected as a separate charge, per bi-monthly bill, for each non-residential customer account.

Proposed Sewer Rates (FY 2018-19 to FY 2022-23)

The Sewer Rate Study proposes an update to the current rate structure to meet the revenue requirements of the sewer fund. Rates are allocated proportionally based on recognized cost of service principles as required under Proposition 218.

The proposed rates include a "Flat Fee" to recover the City's personnel services cost, and the fee is allocated between Residential and Non-Residential customers, based on dwelling units. The "Flat Fee" for residential customers would be added to the bi-monthly fee charged. The "Flat Fee" for Non-Residential customers in FY 2019 would be \$24.30, and the fee would increase by 3% in each fiscal year thereafter.

The proposed sewer rates realign the City's rate calculation for mobile home parks with the allocation recommended in the City of San Jose's Residential Flow Study (2015). This results in a rate based on 141 gallons per day per unit, as opposed to the 114 gallons per day per unit used in the City's 2015 sewer rate study.

The proposed sewer rates include several increases over time, instead of a one-time more significant rate increase. The standard residential (single and multi-family) bi-monthly service rate would increase by 7% in FY 2019. The City's proposed rate for FY 2019 is \$96.73 for single family residential, \$74.29 for multi-family residential, and \$75.36 for mobile home parks. A survey of wastewater agencies within 30 miles of the City found that the median single family sewer rate is \$104.81, which puts the City's proposed sewer rate below the median for the area. Residential customer sewer rates would increase by 5% in FY 2020, 8% in FY 2021, 6% in FY 2022, and 4% in FY 2023. Rate increases for the Non-Residential customer class will vary from year to year due to varying levels of the operating and capital cost requirement for the sewer system.

The proposed rates include the assumption that the City will utilize bond proceeds to pay for the City's contribution for the WPCP, which would help mitigate the rate impact on customers and allow for long-term planning of rate increases. The projected total debt service obligation for the City would result in two debt issues: a debt issuance in FY 2020 for \$20 million and a debt issuance in FY 2021 for \$15 million.

Policy Alternative

Mobile Home Park Subsidy: San Jose's 2015 Residential Flow Study notes that data provided by the City to determine sewer flows for mobile home park customers was disregarded due to inconsistencies in the data set. As a result, a weighted average of the San Jose and West Valley Sanitation District data was used to set the City's share for mobile home park contributions for the WPCP. The City's 2015 sewer rate study set rates

for mobile home parks to be equivalent to the flow of the City's single and multi-family values, due to the inconsistencies noted in San Jose's Residential Flow Study.

The proposed rate structure would realign the flow for the mobile home parks with the values recommended in San Jose's 2015 Residential Flow Study (i.e. 141 gallons per day per unit, as opposed to the 114 gallons per day per unit). This would increase the mobile home park bi-monthly service charge by 32% in FY 2019. This policy alternative would phase in the impact of this realignment over a 5-year period by subsidizing the mobile home park rate. The subsidy would cost \$45,000 in FY 2019, and would be reduced in each fiscal year, until it is eliminated in FY 2023. Funds for the subsidy would be introduced from outside the sewer fund, typically from the General Fund.

*Evaluation and Follow-up*

The sewer rate study includes an analysis of the replacement cost for the City's buried sewer infrastructure. The analysis is based on the year of installation and the assumed useful life of the sewer lines. The study notes that about 3.7% of the City's sewer lines have reached the end of their useful life, with an estimated replacement cost of about \$25 million. The study recommends the City invest an additional \$3.38 million each fiscal year to properly reinvest in the City's Sewer System.

Staff will prepare a Sewer Master Plan, which will provide a more detailed condition assessment of the buried sewer infrastructure, and will result in a prioritized and more accurate sewer line replacement plan for the City. The Sewer Master Plan is expected to be completed in FY 2020. Staff will return to Council with the recommendations from the Sewer Master Plan, and discuss any additional capital expenses needed for infrastructure replacement and the impact these expenses would have on sewer rates.

More accurate data will be collected from water meters and conduct sewer flow monitoring in order to update future rate analysis calculations for mobile home park customers.

**Public Outreach:** In addition to the required Proposition 218 process, an outreach plan was developed to inform residents and gather feedback on the proposed sewer rates. The outreach plan includes developing and distributing informational flyers to educate residents about the City's sewer system, developing website content for the proposed rates, and conducting community meetings. Feedback from these meetings will be incorporated into recommendations brought forward to Council as part of the sewer rate setting process.

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

**Fiscal Impact:** None. The sewer rate adjustments would pay for the costs of wastewater collection and the City's share of the San Jose/Santa Clara Water Pollution Control Plant collection system operation and capital costs. Funding options include pay-as-you-go and bonds to provide for the City's share of costs at the WPCP.

**Recommendations:**

1. Receive report on the Sewer Rate Study Draft Report.
2. Provide direction to staff as appropriate on the sewer rate structure for a five year period, FY 2019 – FY 2023.

**Attachment:** [Sewer Rate Study Draft Report September 2018](#)

15. **Consider Adopting the Updated City Council Handbook and Accept Staff Report Regarding the Updated City Council Agenda Management Process as Outlined in the City Council Handbook (Staff Contact: Ashwini Kantak, 408-586-3053)**

**Background:** The City Council handbook provides guidance to the City Council in conducting all City business. The handbook is designed to be periodically updated in order to reflect either changes in the law or in City Council procedure or policy. The proposed updated handbook includes clarifications on certain procedures and also reflects changes in agenda management that are discussed in the Analysis section.

Milpitas City Council meetings are held every first and third Tuesday except for the month of July and holidays. Per the City's Open Government ordinance, the City Council agenda is posted on the Wednesday before the Council meeting. This allows the City Council and the community to review the agenda in advance and for the community to provide feedback at the Council meeting on topics of interest. The City Clerk leads the publishing of the agenda packet and a significant amount of internal coordination among City departments, the City Manager's Office and the City Attorney is required in advance of the distribution of the agenda packet. In order to streamline the process and make it more efficient while simultaneously allowing for adequate coordination and oversight, staff wanted to explore technology and process improvements.

### **Analysis**

#### ***City Council Handbook***

As the Council is aware, there has not been a clear handbook in use by the City for a number of years. The new City Council handbook is intended to replace the prior versions that had been modified over the years in an effort to provide this Council with a simple handbook that can be modified when needed. Overall, the new City Council handbook includes some language from past versions of the handbook, but generally limits many other sections that may have been created in response to political situations. Overall, the new handbook lays out responsibilities of the Mayor and Council, addresses procedure, the Brown Act, and updates the Meeting Agendas chapter as outlined in the Agenda Management section below.

The updated City Council Handbook (Attachment A) includes the following sections:

1. Purpose and Overview
2. Duties of the City Council
3. Council Member Conduct
4. Meetings
5. Meeting Agendas
6. City Council Actions
7. Communication
8. Council Liaison Roles

#### ***Agenda Management***

The City Clerk and the Director of Information Services researched several software applications for the agenda management process starting in December 2017. Four software products were demonstrated for staff consideration: Peak Agenda and Legistar (Granicus), Legislative Management (Accela), Muni Code Meetings (formerly AgendaPal) and AgendaManager (Agenda Manager). Cost, ease of use, ease of implementation, and ongoing customer support and staff training were the primary criteria considered for selection of the most appropriate software tool for City of Milpitas. Staff also looked at opportunities for enhancing the current agenda package creation process. Staff has selected the MuniCode Meetings (MuniCode) agenda management software application and has begun working with the company on implementation. This service/application is hosted by Municode Corporation, a current City vendor, on the Microsoft Azure Cloud at the annual rate of \$7,000, with no increase in that fee for the first four years.

The new system will allow staff more easily to collaborate on agenda reports, track edits and comments, use a defined workflow, provide attachment documents and automatically populate the agenda packet with one click agenda package creation. The software will

bring the City Clerk's office into the more modern era of electronic production of the agenda and the Council's agenda packet. Use of the electronic packet is anticipated to be simplified for all users, particularly for the Mayor and City Council. Additional MuniCode Meetings tools will allow tracking of Council's votes by the City Clerk during the meeting and simplified production of meeting minutes. The additional voting will be implemented at a later time with no additional cost to the annual rate of \$7,000. The software allows for easy posting and updating of agenda packets, minutes, video, and later, if desired, electronic voting at the dais by City officials.

This new agenda management system will also be used to publish Commission and Committee agendas.

### Agenda Sections

Staff is proposing to better align the agenda categories with the City Service Areas outlined by the City Manager in the adopted budget. This will allow staff to collaborate on topics in their service areas and to present on related items to the City Council. The proposed agenda sections are:

1. **Opening**
  - a. Call to Order by Mayor and Roll Call by City Clerk
  - b. Adjourn to Closed Session
  - c. Closed Session Announcement
  - d. Pledge of Allegiance.
  - e. Invocation
2. **Ceremonial matters.** The presentation and receipt of proclamations and commendations not requiring formal legislative action.
3. **Public Forum.** Members of the public wishing to comment on any item not appearing on the agenda may address the City Council at this time.
4. **Announcements.** The Mayor and Council Members shall report on any meetings or conferences attended and paid for by the City and may also report on various assignments or other events. The City Manager may also make brief announcements.
5. **Announcements of Conflicts of Interest and Campaign Contributions.** City Attorney shall ask the Mayor and Council Members to declare any conflicts of interest or campaign donations related to items on the agenda, in accordance with the Milpitas Open Government Ordinance (Municipal Code I-310).
6. **Approval of Agenda**
7. **Consent Calendar.** All matters listed under the Consent Calendar, including minutes, are considered by the Council to be routine and will be enacted by one motion without discussion (except for simple clarifying questions). If discussion is desired, that item may be removed and considered separately.
8. **Public Hearing.** Duly noticed hearings as mandated by local, state, or federal law, providing an opportunity for public review and comment of a proposed action by the Council.
9. **Community Development.** This section will cover the Community Development City Service Area and will include items related to Building/Housing, Economic Development, Engineering (Land Development), and Planning.
10. **Community Services and Sustainable Infrastructure.** This section will cover the Community Services and Sustainable Infrastructure City Service Area and will include items related to Engineering (Capital Projects and Solid Waste), Public Works, and Recreation and Community Services,
11. **Public Safety.** This section will cover the Public Safety City Service Area and will include items related to Fire/Emergency Preparedness and Police.
12. **Leadership and Support Services.** This section will cover the Leadership and Support Services City Service Area and will include items related to the City

Clerk, City Council, City Manager, Finance, Human Resources, and Information Services,

13. **Reports.** This section will include special reports and any requests for staff work by the Mayor and Council.
14. **Commission Reports.** Reports and work plans from Commissions will be presented in this section
15. **Adjournment**

The following Council agenda sections are to be deleted: Unfinished Business, Reports of Officers and Commissions, New Business, Ordinances, Resolutions, and Agreements & Bids.

#### Workflow process

In order to ensure timely coordination with Finance, City Attorney and other departments, staff will be formalizing a workflow process and using the new agenda management system to facilitate the review and approval process. The proposed workflow process will require additional time for review and will necessitate adequate advance planning for items to be placed on City Council agendas.

#### Report Template

A new staff report style will be used to communicate an in-depth analysis, cost implications, and policy alternatives for any recommended Council action. A copy is included in the agenda packet.

#### Staff Presentations

In order to increase transparency and provide a complete record of any item discussed at City Council meetings, staff presentations will be published on the City's website subsequent to the City Council meeting.

**Fiscal Impact:** The cost of MuniCode Meetings software service is \$7,000 per fiscal year and is budgeted within the Information Services Department for FY 2018-19.

**Policy Alternative:** *Accept staff report and adopt City Council Handbook at a later date*

**Pros:** This will allow City Council more time to review and provide additional staff direction

**Cons:** This will not allow staff to implement the changes to the agenda sections in conjunction with the roll-out of the new agenda management system and process.

**Reason for Recommendation:** The City Council Handbook can be updated easily if Council has additional direction for staff, however, adoption of the handbook at this time will allow staff to more efficiently implement proposed changes to the agenda sections in conjunction with the roll-out of the new agenda management system and process.

**Recommendation:** Adopt the updated City Council Handbook. Accept the staff report regarding the new City Council agenda management process as outlined in the City Council Handbook.

**Attachment:** [City Council Handbook](#)

### **XIII. RESOLUTION**

16. **Adopt a Resolution Approving the Fiscal Year 2018-19 Central Services Full Cost Allocation Plan Update (Staff Contact: Julie Edmonds-Mares, 408-586-3050)**

**Background:** On January 21, 2014, the City Council reviewed and approved the City of Milpitas Cost Allocation Plan and methodology via adoption of Resolution No. 8338. The Plan identified the full cost of providing specific City services and included not only the

direct costs of servicing a program, but also administrative and overhead costs (also known as indirect costs) which are assigned to each program indirectly using cost allocation formulas. A cost allocation plan is a rational and accepted method to distribute indirect costs which support multiple activities within an agency and is used by most all public agencies. An alternative to using a cost allocation plan to charge indirect costs, such as those in Payroll, to direct cost functions, such as a water utility, would be to charge time in 15 minute increments using a timecard recording process. However, this would be neither a reasonable nor a cost effective manner to capture these costs and it not used by public agencies since the costs far outweigh the benefits.

Since 2014, there have been various changes in the City that include reorganizing City departments, taking services in-house which had been previously outsourced, and other organizational changes requiring a review and update of the Plan. In addition, recently, the Water Rates Task Force recommended and City Council directed staff to re-examine the Plan methodology and engage an experienced cost allocation plan consultant to validate the Plan and modify if necessary to meet industry best practices and ensure that the Water and Sewer utility funds are charged a fair, reasonable and justifiable portion of General Fund indirect costs.

Thus, after an informal, but competitive bidding process that saw three qualified vendors submit proposals, City staff selected ClearSource Financial Consulting to validate the Plan and modify if necessary at a not to exceed project cost of \$34,200. The adopted budget for this project is \$50,000. ClearSource, based in Aptos, CA was selected based on cost, proposed schedule, which best met City needs, approach, firm experience, quality of references, and close firm proximity to Milpitas to ensure an efficient, effective process.

An optional second phase of the agreement with ClearSource, which is included in the not to exceed project cost amount shown previously, is a fee study to 1) maintain full cost recovery of identified services such as those provided to developers, 2) simplify fee structures in currently invoiced services to a method more amendable to the needs of internal staff and external users, and 3) ensure fees are set in accordance to the requirements of Propositions 218 and 26. It is anticipated that the second phase of ClearSource's agreement will complement work requested by a recently issued Service Delivery Fee Study Request for Proposal (RFP). In this recently closed RFP, the City sought proposals from qualified vendors to perform and deliver a detailed service delivery/organizational assessment, fee studies, and a work in progress liability analysis. It is anticipated that outcomes from the described assessment and studies will serve as a new work plan identifying key improvements in permitting and inspections performance, customer service, organizational structure, staffing efficiencies, and advanced city-wide planning along with justification for added resources amongst relevant development related departments. Proposals for this RFP are still under review and evaluation and a vendor has not yet been selected.

Attached to resolution in the agenda packet, City Council will find the Fiscal Year 2018-19 Central Services Full Cost Allocation Plan Update ("FY 2018-19 Plan Update") prepared by ClearSource Financial Consulting. Representatives from ClearSource will present an overview of the FY 2018-19 Plan Update, the approach used to develop it, and the reasons for preparing and using a cost allocation during the September 18, 2018 City Council meeting. In summary, while it was determined by ClearSource that the previous Plan was based on sound methodology, it was in need of update for a variety of reasons. As a result, there are several important financial items to note, mainly relating to indirect costs charged to utility funds by the General Fund:

1. **Indirect charge to Water Fund** - The currently budgeted indirect charge from the Water Fund to the General Fund in FY 2018-19 is \$3,162,936. The FY 2018-19 Plan Update sets this at \$2,705,884; a difference and negative revenue impact to

the General Fund of \$457,052. For reference, the FY 2017-18 budget set this charge at \$2,593,705.

For any cost allocation plan it is important to choose reasonable drivers of cost that justifiably relate to the time and expense that an indirect cost area spends serving a direct cost area. For the Water Fund, total budgeted expenditures, which included large purchases of water, was used as the basis of allocating indirect costs in the prior Plan. The revised FY 2018-19 Plan Update before Council removes these large purchases and attempts to more reasonably and justifiably assign indirect costs to the Water Fund so that there is not an imbalance between effort and expense spent by indirect cost areas and the benefits received by the Water Fund.

2. **Indirect Charge to Sewer Fund** - The currently budgeted indirect charge from the Sewer Fund to the General Fund in FY 2018-19 is \$2,006,252. The FY 2018-19 Plan Update sets this at \$1,544,274; a difference and negative revenue impact to the General Fund of \$461,978. For reference, the FY 2017-18 budget set this charge at \$1,684,501.

Similar to the Water Fund, for the Sewer Fund, total budgeted expenditures, which included large purchases of capacity rights, was used as the basis of allocating indirect costs in the prior Plan. The revised FY 2018-19 Plan Update before Council removes these large purchases and attempts to more reasonably and justifiably assign indirect costs to the Sewer Fund so that there is not an imbalance between effort and expense spent by indirect cost areas and the benefits received by the Sewer Fund.

3. **Indirect Charge to Solid Waste Fund** - The currently budgeted indirect charge from the Solid Waste Fund to the General Fund in FY 2018-19 is \$286,244. The FY 2018-19 Plan Update sets this at \$99,748; a difference and negative revenue impact to the General Fund of \$186,496. This is due to decreased effort required by the Finance Department to provide solid waste billing services since the City transferred this function to Milpitas Sanitation in December 2017. There were some transition issues that City staff is still working through, but this indirect charge was inadvertently budgeted too high in FY 2018-19 and a downward adjustment is appropriate.

In total, due to the FY 2018-19 Plan Update, there is a \$1,105,526 negative revenue impact to the General Fund in FY 2018-19. However, staff believes that this can be fully mitigated for the following reasons:

- A. The FY 2018-19 Adopted Budget set aside \$465,483 in non-departmental General Fund accounts to protect against potential negative impacts as a result of the FY 2018-19 Plan Update; thereby leaving a remainder of \$640,043 to address.
- B. The recent Quill/Wayfair Supreme Court decision, which now requires online retailers to collect and remit sales tax, could mean \$587,000 to \$955,000 per year in additional revenues to the City based on initial estimates provided by the City's Sales tax consultants. However, the California Department of Tax and Fee Administration (CDTFA) has yet to develop and implement a manner to capture and remit this additional revenue and staff cautions against programming it until actual revenues are known and realized.
- C. The second phase of the ClearSource agreement will access user fees charged to developers and other parties. This fee study will look to capture the full cost of services and as a result, it is anticipated that development based fees could increase

since current fees charged do not always capture indirect overhead charges. This will ensure that developers and other parties pay a fair and reasonable share of City costs in relation to the services provided to them. The projected revenue increase as a result of the fee study is unknown at this time, but an increase in revenue realized could help to fully offset the remaining \$640,043 negative impact to the General Fund caused by the FY 2018-19 Plan Update.

In conclusion, while there is a negative impact to the General Fund, staff is confident that it can be fully mitigated and will return to Council at mid-year with any necessary budget adjustments for FY 2018-19. In addition, slightly lower indirect charges will also be a benefit to utility rate payers and could impact the Water and Sewer rate studies currently underway. However, staff must caution that there are a number of factors that go into a rate setting model and a cost allocation plan is only one of many. Thus, any new Water and Sewer rates proposed in the future could be higher or lower than current rates and the FY 2018-19 Plan Update will not be the only determining factor in those rates.

### **Next Steps**

The following list next steps in implement the FY 2018-19 Plan Update and mitigate any negative financial impacts:

1. If necessary, staff will return to City Council early-February 2019 with any adjustments to FY 2018-19 General Fund estimated revenues and adopted expenditures. A budget adjustment is not recommended at the current time since there are unknown variables, but by mid-year, staff will have additional information relating to the Quill/Wayfair Supreme Court decision and whether increased Sales Tax revenue resulting from that decision can be used to mitigate negative financial impacts arising from the FY 2018-19 Plan Update.
2. Staff will continue working with ClearSource Financial Consulting on the second phase of its agreement to ensure that fees charged to developers and other parties fully capture City costs; both direct costs of service and indirect overhead costs. This will be done in close coordination with the City's yet to be selected vendor for a Service Delivery Fee Study and Development Departments Organizational Assessment so as to make sure that each project compliments each other and is not a duplication of effort. If these projects result in revised recommended fees, they will be brought before Council for review and consideration in April/May 2019 and be included in revenue estimates for the FY 2019-20 Budget.

**Fiscal Impact:** As a result of the FY 2018-19 Plan Update, the General Fund will receive \$1,105,526 less indirect overhead cost revenue charged to the Water Utility, Sewer Utility, and Solid Waste Utility Funds in total. Staff has several solutions to address this shortfall and will formally present them to Council during mid-year budget adjustments and after as appropriate. However, at this time, no budget adjustment is proposed so staff may fully access all the options available to the City and get a clearer sense of any additional sales tax revenue received as a result of the recent Quill/Wayfair Supreme Court decision.

**Recommendation:** Adopt a resolution approving the Fiscal Year 2018-19 Central Services Full Cost Allocation Plan Update.

**Attachments:** [Resolution + Exhibit – Full Cost Allocation Plan FY 2018-2019](#)

## **XIV. REPORTS OF MAYOR & COUNCILMEMBERS – from the assigned Commissions, Committees and Agencies**

## **XV. ADJOURNMENT**