



MILPITAS CITY COUNCIL REGULAR MEETING AGENDA

TUESDAY, AUGUST 16, 2016

455 EAST CALAVERAS BLVD, MILPITAS, CA
6:00 P.M. (CLOSED SESSION) • 7:00 P.M. (PUBLIC BUSINESS)

SUMMARY OF CONTENTS

- I. **CALL TO ORDER/ROLL CALL** by the Mayor (6:00 p.m.)
- II. **ADJOURN TO CLOSED SESSION**
 - (a) **CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION**
Pursuant to California Government Code Section 54956.9(d)(1)
American Arbitration Association Case No. 01-16-00004753
 - (b) **CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION**
Pursuant to California Government Code Section 54956.9(d)(1)
DFEH No. 747353-213391/EEOC No. 37A-2016-01947-C
 - (c) **PUBLIC EMPLOYEE PERFORMANCE EVALUATION**
Pursuant to California Government Code Section 54957.
Position: City Manager
- III. **CLOSED SESSION ANNOUNCEMENT:** Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote or abstention of each member present
- IV. **PLEDGE OF ALLEGIANCE** (7:00 p.m.)
- V. **INVOCATION** (Councilmember Giordano)
- VI. **APPROVAL OF COUNCIL MEETING MINUTES** – August 2, 2016
- VII. **SCHEDULE OF MEETINGS – COUNCIL CALENDARS** August and September 2016
- VIII. **PUBLIC FORUM**

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

- IX. **ANNOUNCEMENTS**
- X. **ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**
- XI. **APPROVAL OF AGENDA**

XII. CONSENT CALENDAR (Items with asterisks*)

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

XIII. UNFINISHED BUSINESS

- 1. Receive Report Regarding Water Rates Economics (Staff Contact: Steven Machida, 408-586-3355)**
- 2. Receive Update on Capital Projects in the Transit Area Specific Plan Area (Staff Contact: Steven Machida, 408-586-3355)**

XIV. REPORTS OF OFFICERS and COMMISSIONS

- * 3. Consider Mayor's Recommendation for Re-appointment to City of Milpitas Commission (Contact: Mayor Esteves, 408-586-3029)**
- 4. Approve Allocation of Funds from the City Council Unallocated Community Promotions Budget for Veterans Luncheon on November 12 (Staff Contact: Councilmember Debbie Indihar Giordano, 408-586-3032)**
- 5. Approve the Recycling and Source Reduction Advisory Commission's 2016-17 Work Plan (Staff Contacts: Leslie Stobbe, 408-586-3352 and Elizabeth Koo, 408-586-3353)**
- 6. Approve the Arts Commission 2016-17 Work Plan (Staff Contact: Rosana Cacao, 408-586-3207)**
- * 7. Per Recommendation of the Milpitas Arts Commission, Approve the 2016 Public Art Electrical Box Painting Project and Designs in the Amount of \$7,500 (Staff Contact: Rosana Cacao, 408-586-3207)**

XV. NEW BUSINESS

- 8. Receive International Park Feasibility Report and Alternate Locations (Staff Contact: Renee Lorentzen, 408-586-3409)**

XVI. ORDINANCE

- *9. Waive the Second Reading and Adopt Ordinance No. 240.5 Relating to the Continued Water Shortage Emergency and Supplemental Water Use Restrictions (Staff Contact: Nina Hawk, 408-586-2603)**

XVII. RESOLUTIONS

- *10. Adopt a Resolution Approving the Annual Investment Policy (Staff Contact: Russell Morreale, 408-586-3111)**
- *11. Waive Minor Bid Irregularity and Adopt a Resolution Awarding a Contract to Empire Landscaping Inc. for the Light Rail Median Landscaping Project No. 2001, and Authorize the Director of Engineering/City Engineer to Execute Contract Change Orders (Staff Contact: Steve Erickson, 408-586-3301)**

- *12. Adopt a Resolution Awarding a Contract to JDI Electrical Services, Inc. for the Milpitas Library Parking Garage Roll-up Door Modification Project and Authorize City Manager to Execute the Contract for the Library Parking Garage Roll-Up Door Modification Projects No. 3407 and No. 4276 (Staff Contact: Steve Erickson, 408-586-3301)**
- *13. Adopt a Resolution Awarding a Contract to American Civil Constructors West Coast LLC for the Bridge Improvements Project, Project No. 4271, and Authorize Director of Engineering/City Engineer to Execute Contract Change Orders (Staff Contact: Steve Erickson, 408-586-3301)**
- *14. Adopt a Resolution Granting Initial Acceptance of the Bob McGuire Park and Granting Authorization to the Director of Engineering to Issue the Notice of Final Acceptance after the One-Year Warranty Period and Accept Land Dedication to the Bob McGuire Park (Staff Contact: Steven Machida, 408-586-3355)**
- *15. Adopt a Resolution Approving Amendment No. 2 to the Purchase and Sale Agreement Between the City of Milpitas and the Milpitas Unified School District to Implement an Installment Payment Plan to Extend through October 2017 and Approve the Related Budget Adjustment for the Anticipated Fiscal Year 2016-17 Sales Proceed (Staff Contact: Russell Morreale, 408-586-3111)**

XVIII. AGREEMENTS & BID

- *16. Approve and Authorize the City Manager to Execute an Agreement with Page & Turnbull for the Alviso Adobe, Phase 5, Building Interior Renovation Project No. 5055 (Staff Contact: Steve Erickson, 408-586-3301)**
- *17. Approve and Authorize City Manager to Execute an Agreement with HMM Inc. for the Midtown Street Light and Utility Underground 2017 Projects No. 3430 and No. 3425 (Staff Contact: Steve Erickson, 408-586-3301)**
- *18. Approve Amendment No. 2 to the Agreement with RMC Water and Environment Increasing Compensation in the Additional Amount of \$86,278 for the Dempsey Road Water Line Replacement, Projects No. 7118, No. 7117, No. 7100 and No. 3709 (Staff Contact: Steve Erickson, 408-586-3301)**
- *19. Approve Project Plans and Specifications, Authorize Advertisement for Bid Proposals for Recycled Water Conversion of City Park/Trails Phase 1, and Authorize the City Manager to Execute the First Amendment to the Milpitas Community Garden Agreement with Milpitas Unified School District, Projects No. 7126 and No. 3417 (Staff Contact: Steven Machida, 408-586-3355)**

XIX. DEMAND

- *20. Approve the Purchase of Mobile Computer Terminals and Accessories for the Police Department from Data911 for \$196,784.62 (Staff Contact: Chris Schroeder, 408-586-3161)**

XX. ADJOURN MEETING

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, SEPTEMBER 6, 2016**

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review.

For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035

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. Phone 408-586-3040

All City Council agendas and related materials can be viewed online here:
www.ci.milpitas.ca.gov/government/council/agenda_minutes.asp (select meeting date)

APPLY TO SERVE ON A CITY COMMISSION

Current Vacancies on

Economic Development Commission (hotel rep.)

Sister Cities Commission (two alternates)

Youth Advisory Commission (one member)

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

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

AGENDA REPORTS

XIII. UNFINISHED BUSINESS

1. Receive Report Regarding Water Rates Economics (Staff Contact: Steven Machida, 408-586-3355)

Background: The City of Milpitas owns and operates a safe drinking water distribution system in accordance with state regulations. As a result, water system revenues and expenses are tracked through the Water Enterprise Fund for operations and maintenance to ensure safe, clean and reliable water. Periodically, the City Council sets water rates to pass on wholesale water purchase prices and to ensure sufficient revenues to operate the water distribution system. The purpose of this report is to explain the factors affecting water rates, which are broadly grouped as operating and capital expenses.

Water Utility Expenses: Water system operation requires weekly water quality sampling; system flushing; response to customer complaints; purchasing sufficient water supply for the community; providing adequate water flow for firefighting; monitoring and controlling pressure and flow throughout the distribution system; conducting maintenance on pumps, motors, generators, controls, valves, hydrants, pipes; State reporting; long-term planning; financial solvency; and coordinating with wholesalers. The single largest operating expense is the cost to purchase treated water.

The capital program is responsible to replace aging infrastructure; upgrade and incorporate new technology; address water system deficiencies, and expand water supply options. The City relies heavily on imported water that could suffer interruptions or reductions due to large seismic events or drought conditions. The City Council approved a program to expand local water supplies such as groundwater and recycled water. These two water supplies benefit the entire community whether each site is connected to it or not. Groundwater supply (wells) would be under City control, meets State drinking water requirements, and is available all of the time to supplement the drinking water supply. This new water supply will provide operational flexibility and provide an opportunity to reduce purchases of more expensive wholesale water. The recycled water system will be used for non-drinking purposes such as irrigation and cooling towers, freeing up precious drinking water for the entire community and helping to meet State City-wide conservation goals on drinking water. Other projects include replacing valves, hydrants, water meters with Smart Meters, installing real-time control system, and constructing a strengthened backbone pipeline.

Water Rate Calculations: In its simplest form, a unit water rate is calculated by dividing water system expenses by the water volume consumed. For example, if expenses are \$100 and the volume is 25 units, then the cost per unit of water would be \$4. This uniform rate is applied to each unit of water consumed whether it is the first unit or the 50th unit. The City's current fixed charges refer to a rate imposed regardless of the volume of water consumed and are typically dependent upon the water meter size. Tiered rates, the City's previous rate structure, charged a higher unit water rate as more water was consumed. Tiered rate systems were called into question by a recent court decision against the San Juan Capistrano tiered rates. In response to this court decision, the City of Milpitas adopted a uniform rate. The consequence of this rate change increased the previous lower tiered rates and decreased the higher rates. This change has caused some controversy in the community but was affirmed through the approved Proposition 218 vote.

The water rate structure in place from 2011 to December 2015 included fixed charges and tiered rates that increased as more water was consumed. Lines 1 and 2 on the table below show the cost to purchase water from the City's wholesalers. Lines 3 through 8 show the retail water rates for

the past four years. All units are hundred cubic feet (hcf), which is equal to 748 gallons. As noted, the high tiered rates were in essence subsidizing the lower tiered rates.

Historical Water Rate History

Line #	Customer Category	FY 11-12	FY 12-13	FY 13-14	FY 14-15
1	SFPUC*	\$2.63	\$2.93	\$2.45**	\$2.93
2	SCVWD*	\$1.54	\$1.66	\$1.79	\$1.94
3	Residential Tier 1	\$1.77	\$2.02	\$2.30	\$2.62
4	Residential Tier 2	\$2.76	\$2.98	\$3.22	\$3.48
5	Residential Tier 3	\$3.72	\$4.02	\$4.34	\$4.69
6	Residential Tier 4	\$4.17	\$4.50	\$4.86	\$5.29
7	Commercial, Industrial, Institutional	\$4.32	\$4.62	\$4.94	\$5.29
8	Irrigation	\$4.79	\$4.97	\$5.16	\$5.29

* These values represent the volumetric wholesale cost of water charged to the City of Milpitas. Fixed costs are not included.

** Beginning with FY 13-14, SFPUC capital costs were shifted from the wholesale volumetric cost to fixed costs.

The wholesale cost to purchase water is the single largest expense at 60% of the total expenses. It is important to note that most residential customers are located in the SFPUC service area. It is also important to note that most residential customers use 17 hcf per billing period, which is billed at Tier 1 and Tier 2 rates.

In response to the San Juan Capistrano decision against tiered rates, the City retained Bartle Wells Associates (BWA) to recommend a water rate structure in conformance with the final Proposition 218 requirements. BWA assigned 100% of wholesale water purchase costs and 25% of staffing, services, and supplies to be recouped by variable charges. Fixed charges were assigned to recoup 75% of staff, services and supplies.

Overall, 30% of water system costs are paid by fixed charges and 70% are paid by variable charges. The water rate report prepared by BWA documents these costs. The updated wholesale costs are shown in Lines 9 and 10 in the table below. The resulting uniform water rate and capital surcharge are shown in Lines 11-13.

Milpitas Potable Uniform Water Rates Adopted by City Council (cost per hcf)

Line #	Customer category	FY 2015-16		FY 2016-17	
		Variable	Capital surcharge	Variable	Capital surcharge
9	SFPUC	\$3.75		\$4.10	
10	SCVWD	\$2.28		\$2.69	
11	Residential	\$4.75	\$0	\$5.13	\$1.30
12	Commercial, Industrial, Institutional	\$4.75	\$0	\$5.13	\$1.30
13	Irrigation	\$4.75	\$0	\$5.13	\$1.30

The total wholesale cost of water is the largest single expense, accounting for 60% of the rate. Other expenses include salaries, administration, operations, repairs, and maintenance and capital improvements. The cost of 1 hcf of water = \$6.43. The cost of 1 gallon of water = \$0.0086. Adequate water program revenue is necessary to ensure safe, clean and reliable water.

Fiscal Impact: None.

Recommendation: Receive a report from City Engineering staff on Water Rates Economics.

2. **Receive Update on Capital Projects in the Transit Area Specific Plan Area (Staff Contact: Steven Machida, 408-586-3355)**

Background: The City Council requested a presentation on the Capital Improvement Projects (CIP) in the Transit Area Specific Plan (TASP). The Council specifically wanted to review the project descriptions and project delivery schedule.

Staff prepared the schedule in two parts segregating the projects that are development driven and will be funded and constructed by developers building in the TASP and the projects that are funded in the CIP and will be delivered by City staff. Staff will discuss the projects and present the City CIP schedule at the meeting. The schedule will ultimately be expanded to include all CIP projects throughout the City. The CIP schedule is web based and it will be placed on the City's web site for easy viewing.

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

Recommendation: Receive report on capital projects in the Transit Area Specific Plan area.

XIV. REPORTS OF OFFICERS and COMMISSIONS

- * 3. **Consider Mayor's Recommendation for Re-appointment to City of Milpitas Commission (Contact: Mayor Esteves, 408-586-3029)**

Recommendation: Receive Mayor's recommendation to re-appoint Jose Leon to the Bicycle Pedestrian Advisory Commission for another two-year term that will expire in August of 2019, and move to approve that re-appointment.

4. **Approve Allocation of Funds from the City Council Unallocated Community Promotions Budget for Veterans Luncheon on November 12 (Staff Contact: Councilmember Debbie Indihar Giordano, 408-586-3032)**

Background: The Veterans Commission, per the adopted work plan, has planned a free lunch for Milpitas veterans on November 12, 2016. Currently, the Veterans Commission budget is allocated for promotions and supplies for its upcoming Car Show. Funds for the Veterans lunch in the amount of \$1,800 are requested from the City Council Unallocated Community Promotions Budget.

Fiscal Impact: \$1,800 from City Council Unallocated Community Promotions line item in the FY 2016-17 adopted budget.

Recommendation: Per recommendation of Councilmember Indihar Giordano, approve the allocation of \$1,800 from the City Council Unallocated Community Promotions funds in the FY 016-17 budget for the Veterans Commission-hosted Veterans lunch on November 12, 2016.

5. **Approve the Recycling and Source Reduction Advisory Commission's 2016-17 Work Plan (Staff Contacts: Leslie Stobbe, 408-586-3352 and Elizabeth Koo, 408-586-3353)**

Background: The Recycling and Source Reduction Advisory Commission (RSRAC) was established by City Council on February 5, 1991 and serves as an advisory group to the City Council on matters pertaining to recycling and solid waste management. The Commission

recommends programs designed to reduce solid waste and monitor the City's achievement of State-mandated diversion goals.

Recent accomplishments include providing input to City Council on potential future solid waste program options, implementing a plastic bag ban, and receiving updates on new State mandates regarding organics recycling (AB 1826).

The Fiscal Year 2016-17 RSRAC Work Plan identifies the Commission's goals for the next year:

- a. Review elements of the solid waste disposal and collection contracts
- b. Pursue an expanded polystyrene ban

Recommendation: Approve the Recycling and Source Reduction Advisory Commission's Fiscal Year 2016-17 Work Plan.

6. Approve the Arts Commission 2016-17 Work Plan (Staff Contact: Rosana Cacao, 408-586-3207)

Background: The Arts Commission was founded in October 17, 2000. The Commission serves as an advisory body to the City Council on matters pertaining to the Arts, performance or visual in the City of Milpitas. The Arts Commission continues to review Phantom Art Gallery artist applications for both the Milpitas Library and the Milpitas Community Center. They also continue to provide support to the arts community through in-kind space through the Milpitas Arts and Culture Grant Program.

In addition, the Commission continues to select and award the Artist of the Year award to a deserving artist on a yearly basis. The Arts Commission also continues to implement the Public Art Program through various new, ongoing and maintenance projects.

Fiscal Impact: None.

Recommendation: Approve the Arts Commission Fiscal Year 2016-17 Work Plan.

*** 7. Per Recommendation of the Milpitas Arts Commission, Approve the 2016 Public Art Electrical Box Painting Project and Designs in the Amount of \$7,500 (Staff Contact: Rosana Cacao, 408-586-3207)**

Background: At May 23 and July 25, 2016 Arts Commission meetings, Commissioners reviewed and unanimously recommended, six (6) art submissions by local students and professional artists for six (6) electrical boxes to be painted in Milpitas. This project continues the first successful phase of 12 electrical boxes in 2015 that are very popular with residents and visitors of Milpitas.

The recommended project budget of \$7,500 allows for project supplies (paint, brushes, anti-graffiti treatment, etc.) and an honorarium for each artist. The painting will begin this fall and be completed by the end of the year.

Fiscal Impact: None. Sufficient funds are available in the Public Art Fund.

Recommendation: Approve the Arts Commission's recommended 2016 Public Art Electrical Box Painting Project and Designs in the amount of \$7,500.

XVI. NEW BUSINESS

8. **Receive International Park Feasibility Report and Alternate Locations (Staff Contact: Renee Lorentzen, 408-586-3409)**

Background: On May 11, 2015 City Council directed staff to conduct a feasibility study on creating an International Park at the current Tom Evatt Park that runs linear from Abel Street to Main Street. Staff hired consultant firm Callander Associates Landscape Architecture, Inc. to work with staff to conduct community meetings with interested cultural groups and residents, draft conceptual park designs based on that input, and meet with the staff review committee San Francisco Public Utility Commission (SFPUC) as Tom Evatt Park is located over SFPUC utilities lines.

After completing two community meetings and meeting with the SFPUC, findings conclude that an International Park at the current Tom Evatt Park location is not feasible.

Two potential alternate locations for an International Park were identified as:

- 1) *Starlite Park* – currently listed in the CIP Plan for design and construction in 2018-19 & 2019-20. An international theme or section(s) could be incorporated as part of the park renovation.
- 2) *Main Street* – “Urban Parklets” representing varying cultures could work in tandem with the Midtown Street Light Project listed in the CIP Plan for design and construction in 2016-17 & 2018-19 which runs from Carlo Street to Great Mall Parkway.

Staff will make a presentation at the City Council meeting to include conceptual designs for both alternate locations. Depending on Council direction, staff will assess the costs of the preferred project location and return for final project budget approval. There is currently \$444,384 in the CIP Plan for an International Park Project.

Fiscal Impact: Unknown

Recommendation: Direct staff to pursue the Main Street parklet location and design concept in tandem with the Midtown Street Light Project.

XVII. ORDINANCE

*9. **Waive the Second Reading and Adopt Ordinance No. 240.5 Relating to the Continued Water Shortage Emergency and Supplemental Water Use Restrictions (Staff Contact: Nina Hawk, 408-586-2603)**

Background: Ordinance No. 240.5 was introduced at the August 2, 2016 City Council meeting. This Ordinance has been updated and is now ready for its second reading and adoption. This ordinance includes regulations related to supplemental water use restrictions. At the direction of City Council on August 2, the City Attorney included language defining the goal of reducing consumption by twenty percent (20%), is the version of the ordinance presented for adoption.

Fiscal Impact: None.

Recommendation: Waive the second reading and adopt Ordinance No. 240.5 amending Chapter 6, Section 5.0 (Supplemental Water Use Restrictions) of the Milpitas Municipal Code, relating to the Continued Water Shortage Emergency and Supplemental Water Use Restrictions.

XVII. RESOLUTIONS

***10. Adopt a Resolution Approving the Annual Investment Policy (Staff Contact: Russell Morreale, 408-586-3111)**

Background Investment laws require all local agencies to develop an annual investment policy that must be considered by the legislative body of the local agency at a public meeting. The Annual Investment Policy (the Policy) for the City of Milpitas is submitted for Council review and approval. Finance staff continues to monitor the changes to the California Government Code in regards to investment parameters and allowable investments that may impact the City's investment policy. This year the in-force policy was distributed to and reviewed by the City's investment brokers to ensure compliance with all existing state regulations. No changes to the Investment Policy are recommended this year.

The FY 2016-17 Policy is in compliance with the provisions of the California Government Code, Sections 16429.1-16429.4 and 53600-53610, the authority governing investments for municipal governments.

Fiscal Impact: None

Recommendation: Adopt a resolution of the City of Milpitas approving the Annual Investment Policy for FY 2016-17.

***11. Waive Minor Bid Irregularity and Adopt a Resolution Awarding a Contract to Empire Landscaping Inc. for the Light Rail Median Landscaping Project No. 2001, and Authorize the Director of Engineering/City Engineer to Execute Contract Change Orders (Staff Contact: Steve Erickson, 408-586-3301)**

Background: On June 7, 2016, the City Council approved the plans and specifications and authorized the advertisement for construction bid proposals for the Light Rail Median Landscaping Project No. 2001. The Engineer's Estimate for the project is \$1,889,357.25.

The project was advertised and three sealed bids proposal were received on July 19, 2016. The bid pricing ranged from \$1,578,817.00 to \$2,153,004.00. The lowest responsible bidder submitting a responsive bid is Empire Landscaping Inc., in the amount of \$1,578,817.00. Empire Landscaping's bid, however, contained a bid irregularity in that two bid items (Bid Items #6 and #49) were incorrectly subtotaled (i.e., there was an arithmetical error in calculating the extended price of these items when taking into account the unit prices bid by Empire Landscaping and the estimated quantities).

The City has broad discretion to determine responsiveness and accept a responsive bid even if there are minor irregularities or mistakes, as long as such mistakes are immaterial. (See *Menefee v. County of Fresno* (1985) 163 Cal. App. 3d 1175; *Ghilloti Construction Co. v. City of Richmond* (1996) 45 Cal.App.4th 897.) Bid documents for the project include provisions for addressing inconsistencies between the unit price and the extended price, which resolved the bid error thus rendering it immaterial. Accordingly, City staff recommends the Council waive the immaterial bid irregularity and award the construction contract to Empire Landscaping Inc., as the lowest responsible bidder submitting a responsive bid. No bid protests were filed with the City in regards to this Project.

As was previously approved for the successful completion of recent projects with tight completion schedules, staff is requesting the use of the same change order policy (copy of policy is included in the Council agenda packet). This policy allows for the timely completion of the project, while addressing the need to respond swiftly to construction conditions and approving necessary change orders, in order to limit potential claims or risk to the City. The construction contingency established for this project is \$320,000; approximately 20% of the total contract value, and the change order authority would not exceed this amount and would not require an additional appropriation.

Alternative: Denial would result in the loss of grant funds from the Valley Transportation Authority and the opportunity to enhance Great Mall Parkway, one of the main arterials in the Transit Area Specific Plan.

California Environmental Quality Act: Project is categorically exempt under Section 15304(b) for new landscaping, including the replacement of existing conventional landscaping with water efficient landscaping.

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

Recommendations:

1. Waive immaterial bid irregularity.
2. Adopt a resolution to award a contract to Empire Landscaping Inc. and authorize the City Manager to execute the contract for the Light Rail Median Landscaping Project No. 2001, in the amount of \$1,603,517.00.
3. Authorize Director of Engineering/City Engineer to execute contract change orders for the Light Rail Median Landscaping Project No. 2001 in an aggregate amount not to exceed \$320,000.

- *12. Adopt a Resolution Awarding a Contract to JDI Electrical Services, Inc. for the Milpitas Library Parking Garage Roll-up Door Modification Project and Authorize City Manager to Execute the Contract for the Library Parking Garage Roll-Up Door Modification Projects No. 3407 and No. 4276 (Staff Contact: Steve Erickson, 408-586-3301)**

Background: On June 7, 2016, the City Council approved the plans and specifications and authorized the advertisement for construction bid proposals for the Milpitas Library Parking Garage Roll-up Door Modification Project, Project No. 3407 & No. 4276 (“Project”). The Engineer’s Estimate for the Project is \$159,000. The Project was advertised and one (1) sealed bid proposal was received on July 18, 2016. The bid price submitted by JDI Electrical Services Inc, is \$100,808.23. No bid protests were filed.

Alternative: A denial of this request would result in not completing needed repairs resulting in further deterioration and potentially unsafe conditions.

California Environmental Quality Act: This Project is categorically exempt under Section 15301(d) for maintenance and/or rehabilitation of deteriorated structures to meet current standards of public health and safety.

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

Recommendation: Adopt a resolution to award a contract to JDI Electrical Services, Inc. and authorize the City Manager to execute the contract for the Project, in the amount of \$100,808.23.

- *13. Adopt a Resolution Awarding a Contract to American Civil Constructors West Coast LLC for the Bridge Improvements Project No. 4271, and Authorize Director of Engineering/City Engineer to Execute Contract Change Orders (Staff Contact: Steve Erickson, 408-586-3301)**

Background: On June 7, 2016, the City Council approved the plans and specifications and authorized the advertisement for construction bid proposals for the Bridge Improvements Project No. 4271. The Engineer’s Estimate for the project is \$803,000. The project was advertised and three sealed bids were received on July 14, 2016. The City received no bid protests, and the bid pricing ranged from \$728,000.00 to \$891,567.28. The lowest responsible bidder submitting a responsive bid was American Civil Constructors West Coast LLC in the amount of \$728,000.00.

As was previously approved for the successful completion of recent projects with tight completion schedules, staff is requesting the use of the same change order policy (copy of policy is included in the Council agenda packet). This policy allows for the timely completion of the Project, while addressing the need to respond swiftly to construction conditions and approving necessary change orders, in order to limit potential claims or risk to the City. The construction contingency established for this Project is \$73,000; approximately 10% of the total contract value, and the change order authority would not exceed this amount and would not require an additional appropriation.

Alternative: Denial of this request would result in not completing needed repairs resulting in further deterioration and potentially unsafe conditions.

California Environmental Quality Act: This project is categorically exempt under CEQA Section 15301(d) for maintenance and/or rehabilitation of deteriorated structures to meet current standards of public health and safety.

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

Recommendations:

1. Adopt a resolution awarding a contract to American Civil Constructors West Coast LLC and authorize the City Manager to execute the contract for the Bridge Improvements Project No. 4271, in the amount of \$728,000.00.
2. Authorize Director of Engineering/City Engineer to execute contract change orders for the Bridge Improvements Project No. 4271 in an aggregate amount not to exceed \$73,000.

***14. Adopt a Resolution Granting Initial Acceptance of the Bob McGuire Park and Granting Authorization to the Director of Engineering to Issue the Notice of Final Acceptance after the One-Year Warranty Period and Accept Land Dedication to the Bob McGuire Park (Staff Contact: Steven Machida, 408-586-3355)**

Background: On August 18, 2009 a cost sharing and reimbursement agreement was executed by Milpitas Station LLC (MS), Southside Industrial Park (SI), SCS Development Co. (SCS) and the City of Milpitas. The three developments, (MS, SI, and SCS) are in the Transit Area Specific Plan (TASP) and form the Piper-Montague Sub-district. The Sub-district is bounded by South Milpitas Boulevard to the east, the Union Pacific Railroad Spur Line to the south, Piper Drive to the west and the PG&E substation and Gibraltar Drive to the north.

The intent of this agreement is to document the cost sharing for the common infrastructure improvements, land dedication, reimbursements for constructed improvements and required construction timelines for the park improvements for each of the three developments. The agreement expressed the desire to have the public park constructed in advance of the full build-out in the Sub-district. SCS constructed the public park improvements, commonly known as the Bob McGuire Park, located on Garden Street and Merry Loop. The improvements in the park include a community center, tennis courts, amphitheater, barbeque/picnic area, tot lot and playground and a natural turf field.

The City Council is also being asked to accept the land dedication/fee title for the park land. On July 8, 2015 Pulte Homes purchased the MS project and PH is required to comply with all the development conditions and the conditions in their cost sharing and fee credit reimbursement agreement. That process remains ongoing as the development progresses. SCS and PH have submitted an irrevocable offer of dedication for the park land which is the subject of the acceptance action this evening. The document which the City Council is to accept the irrevocable offer of dedication for the park land is by the Grant Deeds that SCS and PH submitted.

Staff recommends the City Council grant initial acceptance of the park improvements and accepts fee title to the park site. For clarification, Council's action is only accepting the park improvements. Staff is not recommending acceptance of the streets, sidewalks, lights, underground utilities or any other public improvements until the developments in the Sub-district are complete.

Fiscal Impact: Park improvements reimbursements have been disbursed to SCS in accordance with all laws and agreements governing the improvements. Staff has reviewed and reconciled to the reimbursement agreement supporting documents placing the value of the improvements at approximately \$5M, including retention. The \$5M construction cost is under the original TASP estimate budget for the park. The subject work has been completed in accordance with the approved improvement plans. Furthermore, the City has reimbursed SCS for the value of the subject park land at approximately \$3.1M. Although the true-up of the final improvements and retention remain pending, there is sufficient money in the TASP funds to finalize all reimbursements.

Recommendations:

1. Adopt a Resolution Granting Initial Acceptance of the Bob McGuire Park and Granting Authorization to the Director of Engineering to Issue the Notice of Final Acceptance after the one-year Warrantee Period.
2. Accept the Fee Title to the Bob McGuire Park

***15. Adopt a Resolution Approving Amendment No. 2 to the Purchase and Sale Agreement Between the City of Milpitas and the Milpitas Unified School District to Implement an Installment Payment Plan to Extend through October 2017 and Approve the Related Budget Adjustment for the Anticipated Fiscal Year 2016-17 Sales Proceed (Staff Contact: Russell Morreale, 408-586-3111)**

Background: On October 21, 2014, the City of Milpitas and the Milpitas Unified School District ("District") entered into a Purchase and Sale Agreement dated October 21, 2014, and amended by the First Amendment to Purchase and Sale Agreement dated October 6, 2015 (as amended, the "Purchase and Sale Agreement") for the District to purchase 6.7 acres of City owned property on McCandless Drive. The District's intended use for this particular site is to construct a new elementary school. Amendment #1 formalized a one year extension of the close of escrow date to October 21, 2016 to address the completion of a required Environmental Impact Report. The EIR has been completed and along with any required site remediation work.

Amendment #2, the subject of this staff report action, was presented and discussed in a meeting held with the City of Milpitas – Milpitas Unified School District Joint Communications Committee on August 9, 2016. The items were reviewed and unanimous concurrence obtained from all voting members of both agencies to bring the item forward to City Council.

Amendment #2 solidifies the District's desire to complete the land purchase on or before the same date of October 21, 2016. In fact, the District expressed an interest to close in September if at all possible. The essence of the amendment is as follows: (1) it introduces a revised payment plan to allow for the purchase price per acre (remaining unchanged at \$3,100,000/acre) to be paid in two installments over a 12 month term (50% at the close of Escrow and 50% 12 months thereafter); (2) it includes the requirement of a zero-interest Promissory note between the District and the City secured by a secured deed of trust on the underlying subject property; (3) it adjusts the purchase price to the final map acceptance of 6.668 acres, or a value of \$20,670,800 (see attached updated site map); and (4) it allows for the reimbursement (subject to the City's review of supporting cost documentation) to the District, out of sales proceeds, of costs they incurred for site remediation work performed (valued at \$1,151,347.72).

Fiscal Impact: The former redevelopment agency purchased the McCandless land to be developed into a park and elementary school using former RDA funds. Upon the dissolution of

the RDA, the City paid for the part of the site to be sold to the District using General Fund dollars. As such, proceeds of the subject sale will reimburse the General Fund. The anticipated proceeds of the sale, including both installments, will amount to the \$20,670,800 less remediation cost reimbursements to the District and resulting escrow fees.

Recommendations: Adopt a resolution approving Amendment No. 2 to the Purchase and Sale Agreement Between the City of Milpitas and the Milpitas Unified School District to implement an installment payment plan to extend through October, 2017 and approve the related budget adjustment for the anticipated 2016-17 sales proceeds (Staff Contact: Russell Morreale, 408-586-3111)

XVIII. AGREEMENTS & BID

- *16. Approve and Authorize the City Manager to Execute an Agreement with Page & Turnbull for the Alviso Adobe, Phase 5, Building Interior Renovation Project No. 5055 (Staff Contact: Steve Erickson, 408-586-3301)**

Background: The Alviso Adobe project is included in the approved FY 2016-17 Capital Improvement Program. Phase 5 of this Project includes restoring the first floor of the interior structure of the Alviso Adobe to reflect the Spanish-Mexican era and the Monterey style architecture of the historic period of the Alviso Adobe. In addition to the interior restoration, the Project will provide improvements for compliance with Americans with Disabilities Act (ADA) and other necessary building code upgrades to allow public access to the interior of the Adobe. Code upgrades which include lighting, electrical, utility connections, and installation of a ventilation system are required to allow the adobe to operate as a museum open to the public. Display exhibits and furnishings for the interior of the Adobe are not a part of this contract. These items will be provided through grants and dedications.

Following the City's consultant selection process and in accordance with Government Code section 4525 et seq., Page & Turnbull has been selected on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the design services for the Project. Staff negotiated a scope and fee for these design services not-to-exceed \$350,000, which is considered a fair and reasonable price for the work.

Fiscal Impact: None. Sufficient funds are available in the Project budget to complete the design services. Upon completion of design, staff anticipates requesting funds required to complete construction.

Recommendation: Approve and authorize the City Manager to execute an agreement with Page & Turnbull in the amount not-to-exceed \$350,000 to provide project design services, subject to approval as to form by the City Attorney.

- *17. Approve and Authorize City Manager to Execute an Agreement with HMM Inc. for the Midtown Street Light and Utility Underground 2017 Projects No. 3430 and No. 3425 (Staff Contact: Steve Erickson, 408-586-3301)**

Background: The Midtown Street Light Project No. 3430 and Utility Underground 2017 Project No. 3425 are included in the approved 2016-2021 Capital Improvement Program. The Midtown Street Light project provides for the phased installation of Midtown standard decorative street lighting along South Main Street from Carlo Street to Great Mall Parkway. The first segment of lighting design and installation will be from Carlo to just north of Corning Avenue, and is to be funded through developer contributions. Future segments of street light design and installation will be dependent upon available funding and following the undergrounding and removal of existing overhead utility wires along portions of South Main Street.

The Utility Underground 2017 Project provides preliminary engineering, support services, and coordination with Pacific Gas & Electric Co. for the creation of a new Rule 20A Utility Underground District (UUD) on South Main Street from Corning Avenue to East Curtis Avenue. The new Underground District will utilize PG&E's Rule 20A funds for undergrounding of existing overhead pole mounted electric and utility wires along South Main Street. The City will provide funding for any construction activities that are not eligible for Rule 20A funding such as street lighting installation, disposal of hazardous materials, and providing new utility easements related to the undergrounding work. HMH Incorporated will provide the preliminary engineering, estimating, right-of-way mapping services for the creation and coordination of the new Underground District. PG&E will provide the underground conduit design and will install the new conduits and conductor wire to underground the existing pole mounted utilities. The installation of new underground services to serve existing properties is required and is included as part of the underground work. In accordance with PG&E Rule 20A requirements, the City will acquire any new utility easements on private property as required for the new Underground District. The extent of the new utility easements will be better understood as the design proceeds and right-of-way and title searches are completed. Staff anticipates the need to amend the HMH contract in the future to provide right-of-way and property acquisition services once the extent of the need is determined.

Through the City's consultant selection process and in light of their participation in the design of the reconstruction of South Main Street, HMH Incorporated has been selected to provide the design services for these projects on the basis of demonstrated competence and on the professional qualifications necessary to satisfactorily perform the design services. Staff negotiated a scope and fee for these design services in an amount not-to-exceed a total of \$325,100 (\$172,560 for Project No. 3430 and \$152,540 for Project No. 3425), which is considered reasonable for the work associated with each project.

Alternative: Denial of this request would result in not moving forward with these projects.

Fiscal Impact: None. Sufficient funds are available in the project budgets to complete the current design services as shown in the agreement. An amendment to the agreement may be required for utility easement acquisition services once the extent of the right-of-way needs is better understood as the design proceeds. Upon completion of design, staff anticipates requesting the additional funds required to acquire any necessary utility easements and to cover construction activities that are not covered by the PG&E Rule 20A program.

Recommendation: Approve and authorize the City Manager to execute an agreement with HMH Incorporated, the amount of \$325,100 to be split between Project No. 3430 and Project No. 3425, as specified, subject to approval as to form by the City Attorney.

- *18. Approve Amendment No. 2 to the Agreement with RMC Water and Environment Increasing Compensation in the Additional Amount of \$86,278 for the Dempsey Road Water Line Replacement, Projects No. 7118, No. 7117, No. 7100 and No. 3709 (Staff Contact: Steve Erickson, 408-586-3301)**

Background: On June 17, 2014, the City entered into a consultant agreement with RMC Water and Environment in the amount of \$900,000 to prepare plans and specifications and obtain easements and regulatory permits for the installation of replacement water and storm drain lines in the Dempsey Area. On December 16, 2014 Council approved Amendment No. 1 to the Agreement with RMC Water and Environment, which added \$575,000 to the agreement and authorize RMC Water and Environment to perform additional design services to design a recycled waterline along the alignment of the Dempsey area utilities project.

The agreement and Amendment No. 1 included a task for RMC to provide 164 utility potholes to locate existing underground utilities along the alignments of the storm, water, and recycled water lines. RMC Water and Environment has completed the number of potholes specified under the

agreement as amended by Amendment No. 1, and many of the utilities along the alignment were located. However, the underground utility corridor in the Dempsey area is very congested, and additional potholing efforts to locate and document existing utilities is recommended. Locating existing utilities during the design phase will avoid utility alignment re-design, costly delays, and construction contract change orders during the construction phase.

Staff recommends that the Council approve Amendment No. 2 to the agreement with RMC Water and Environment to perform additional services to provide 40 utility potholes to locate existing underground utilities estimated to be in conflict with the new water, storm and recycled water lines. Staff has negotiated a fee for these additional services under Amendment No. 2 in the amount not-to-exceed \$86,278, which is considered reasonable for the work. Approval of this Amendment No. 2 brings the total aggregated value of the agreement to \$1,561,278.

Alternate: Not proceeding with this work will potentially result in costly delays and change orders during the construction phase.

California Environmental Quality Act: The water line is categorically exempt under CEQA guidelines and a Notice of Exemption has been filed for that work. A mitigated Negative Declaration was completed in 2013 for the storm drain work. The CEQA clearance for the recycled water line installation is underway and will be completed prior to plan approval for the project.

Fiscal Impact: None. Sufficient funds are available in the project budget for these consulting services.

Recommendation: Approve Amendment No. 2 to the agreement with RMC Water and Environment, Projects No. 7118, No. 7117, No. 7100 and No. 3709 and increase the agreement amount by \$86,278.

- *19. Approve Project Plans and Specifications, Authorize Advertisement for Bid Proposals for Recycled Water Conversion of City Park/Trails Phase 1, and Authorize the City Manager to Execute the First Amendment to the Milpitas Community Garden Agreement with Milpitas Unified School District, Projects No. 7126 and No. 3417 (Staff Contact: Steven Machida, 408-586-3355)**

Background: On June 16, 2015, City Council approved Capital Improvement Project No. 7126 titled Water Conservation Program and authorized staff to begin efforts to convert some City parks and trails to recycled water. Conversion of irrigation to recycled water helps meet short-term City-wide water conservation goals and enhances long-term water supply reliability and flexibility.

Plans and specifications have been completed for the recycled water conversion of City Park/Trails Phase 1 Project, which includes recycled water conversion at Augustine Park, Community Garden, Escuela median trail, Sandalwood Park, Hetch Hetchy Trail, and Gill Park. The combined area of the sites is approximately 17 acres (740,000 square feet). Irrigation system work on the project includes installing recycled water meters, additional irrigation piping, controllers, and components, site signage, and tagging of all visible plumbing fixtures. The State Department of Drinking Water (DDW) requires removal of spray heads in the vicinity of picnic tables and the installation of a separate potable water service and sewer lateral for a drinking fountain and washing basins for the gardeners at the Community Garden.

The project is being coordinated with the Community Gardeners, Milpitas Unified School District (MUSD), San Francisco Public Utilities Commission (SFPUC), South Bay Water Recycling (SBWR), and DDW. An Amendment to the Community Garden Agreement between City and MUSD is necessary since the Community Garden is located on school district property and the proposed sewer lateral will cross MUSD property. SFPUC has reviewed the plans for

project work within their right of way and will issue an encroachment permit for construction. SBWR and DDW are regulatory agencies overseeing the use of recycled water. The estimated cost of construction of the project is approximately \$600,000. A copy of the front cover of the project plans is included in the Council's agenda packet and a complete set of the contract documents is available for review in the office of the City Engineer. A copy of the First Amendment to the MUSD Agreement is also included in the Council's agenda packet.

After the Community Garden Agreement Amendment was sent to MUSD for approval, staff identified an opportunity to extend an on-site recycled water main across MUSD property parallel to the sewer lateral. This recycled water main would enable the irrigation system serving the SFPUC right of way north of Dixon Road to be converted to recycled water in the future. Since the project construction window is tightly scheduled to minimize disruption to the Community Gardeners, staff recommends Council approve the plans at this time. Staff is working with MUSD, SBWR, and DDW to get approval of this additional 225 linear feet of 4 inch diameter recycled water pipe in parallel with the bidding process. The recycled water main extension is shown as a revocable alternate bid item in the bid documents and can be awarded if all required approvals are received.

Alternative: A denial of this request would not convert parks/trails to recycled water consistent with the overall drought response plan of June 16, 2015 Council meeting.

California Environmental Quality Act: The project is exempt under Section 15302c (Replacement of Existing Facilities) of the CEQA Guidelines.

Fiscal Impact: Capital Improvement Project No 7126 provided funding for the design of the site conversions and will provide funding for some of the construction costs. Additional funds are available for construction in Capital Improvement Project No 3417.

Recommendations:

1. Approve project plans and specifications for CIP Projects No. 7126 and No. 3417.
2. Authorize advertisement for bids for the project.
3. Authorize City Manager to execute the First Amendment to the Milpitas Community Garden Agreement with the Milpitas Unified School District.

XIX. DEMAND

***20. Approve the Purchase of Mobile Computer Terminals and Accessories for the Police Department from Data911 for \$196,784.62 (Staff Contact: Chris Schroeder, 408-586-3161)**

Background: The Police Department currently uses Data911 Mobile Computer Terminals (MCT) in each police vehicle. Over the years the Police Department and the Information Services Department have examined and field tested various makes and models of MCTs, including Panasonic Tough Book CF-30 and CF-74, Dell Latitude 12, Dell Laptops, and Getac V110. Staff concluded that the Data911 product offered superior features, product support, monitor features, computer performance, heat and vibration resistance, and extended warranty. As a result, on March 18, 2008 pursuant to Municipal Code Section I-2-3.09 "Sole Source Procurement", the City Council approved the purchase of eighteen MCTs from Data911. Then on May 5th of 2009 City Council adopted Resolution #7866 pursuant to Municipal Code section I-2-3.13 related to "Standardization", and designated the Data911 product as the brand of choice for Police mobile computer hardware and authorized the purchase of twelve more Data911 MTCs.

The City currently has 30 Data911 MCTs all of which are seven to eight years old and have reached the end of useful life. The equipment purchase will include monitors, keyboards, central processing units, cables and mounting solutions. The quote from Data911 for this purchase is \$194,284.62. Because the mounting solution may vary from vehicle to vehicle staff requests a contingency of \$2,500 be added to the purchase authorization for a total of \$196,784.62

Fiscal Impact: No General Fund or General CIP Fund Impact. This project was approved in the FY 2016-2021 Capital Improvement Program (CIP) for an original estimated total of \$190,000 (\$100,000 from the General Government CIP fund and \$90,000 through the FY 2015 and FY 2016 State Citizen Option for Public Safety grants [COPS]). The additional funding of \$6,784.62 is available from the same COPS grant and a budget adjustment is proposed to allocate these grant dollars to the subject adopted CIP Public Safety Equipment.

Recommendation: Approve the purchase of Mobile Computer Terminals and accessories for the Milpitas Police Department from Data911 for \$196,784.62 and a related budget adjustment of \$6,784.62 to allocate available COPS grant dollars to the FY 2016-17 Public Safety Equipment CIP.

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, SEPTEMBER 6, 2016**