



# **JOINT MEETING OF THE MILPITAS CITY COUNCIL AND HOUSING AUTHORITY**

## **AGENDA**

**TUESDAY, AUGUST 1, 2017**

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

**5:00 P.M. (CLOSED SESSION)**

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

## **SUMMARY OF CONTENTS**

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

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

Pursuant to California Government Code Section 54957.6

City Negotiator: Tina Murphy

Employee Groups: Milpitas Employees Association

Under Negotiation: Wages, Hours, Benefits, and Working Conditions

#### **(b) CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION**

Pursuant to California Government Code section 54956.9(d)(4) - City as Plaintiff

#### **(c) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

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

Tom Williams v. City of Milpitas, et al. - Santa Clara County Superior Court Case No. 17CV309235

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

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

First Amendment Coalition v. City of Milpitas – Santa Clara County Superior Court Case No. 17CV310994

#### **(e) 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

#### **(f) PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Pursuant to California Government Code Section 54957. Position: City Manager

#### **(g) PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE**

Pursuant to California Government Code Section 54957

Number of employee(s) affected: 1

### **II. 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

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

### **IV. INVOCATION (Vice Mayor Grilli)**

**V. SCHEDULE OF MEETINGS – COUNCIL CALENDAR - August 2017**

**VI. PRESENTATIONS**

- Recognize Milpitas International BBQ Volunteers
- Recognize Taiwanese American Chamber of Commerce – Northern California’s Incoming President Stanley Kuo

**VII. 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.

---

**VIII. ANNOUNCEMENTS**

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

**X. APPROVAL OF AGENDA**

**XI. 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.

---

**XII. APPROVE COUNCIL MEETING MINUTES - June 20, 2017**

**XIII. PUBLIC HEARINGS**

1. **Conduct a Public Hearing and Adopt a Resolution Confirming Weed Abatement Assessments to be Entered on Property Tax Assessments (Staff Contact: Albert Zamora, 408-586-3371)**
2. **Conduct a Public Hearing to Consider Request to Host a Flag Ceremony at City Hall Outside Plaza by Pakistan American Culture Center on August 14, 2017 (Staff Contact: Mary Lavelle, 408-586-3001)**
3. **Conduct a Public Hearing and Adopt Urgency Ordinance No. 294.1 Extending the Temporary Moratorium on Issuance of Demolition Permits for Structures Providing Affordable Housing (Staff Contact: Christopher Diaz, 408-586-3040)**

**XIV. UNFINISHED BUSINESS**

4. **Receive Presentation about Billing Changes and Outreach for New Residential Recycling & Garbage Program Starting December 1, 2017 (Staff Contact: Leslie Stobbe, 408-586-3352)**
- \*5. **Approve Recommendation for Appointment of the Finance Director to the Milpitas Oversight Board (Staff Contact: Will Fuentes, 408-586-3111)**
6. **Per Request of Councilmember Nuñez, Discuss the State of the City Address (Contact: Councilmember Nuñez, 408-586-3023)**
- \*7. **Receive Report on Commissioners’ Attendance (Staff Contact: Mary Lavelle, 408-586-3001)**

- 8. **Adopt a Resolution Approving a Censure Policy for the City Council (Staff Contact: Christopher Diaz, 408-586-3040)**
- \*9. **Approve Amendment No. 4 to the Agreement with Law Firm of Burke, Williams & Sorensen, LLP to Close Out Legal Services (Staff Contact: Christopher Diaz, 408-586-3040)**
- \*10. **Receive the Monthly Update of the Odor Control Report (Staff Contact: Greg Chung, 408-586-3355)**

#### **XV. REPORTS OF OFFICERS**

- 11. **Per Request of Mayor Tran, Authorize More Than 4 Hours of Staff Time to Return to Council with Stricter Regulations of Massage Establishments (Contact: Mayor Tran, 408-586-3029)**
- 12. **Per Request of Mayor Tran, Authorize More Than 4 Hours of Staff Time to Return to Council with a Residential Permit Parking Program for The Pines (Contact: Mayor Tran, 408-586-3029)**
- 13. **Per Request of Councilmember Nuñez, Discuss City of Milpitas Standard Operating Procedure No. 6-1, Relating to Travel and Expense Policy (Contact: Councilmember Nuñez, 408-586-3023)**

#### **XVI. NEW BUSINESS**

- 14. **HOUSING AUTHORITY: Consider Request for a Predevelopment Loan Commitment of \$150,000 from Milpitas Housing Authority to Resources for Community Development for Development at 355 Sango Court (Staff Contact: Bradley Misner, 408-586-3273)**
- 15. **Receive Staff Report on City Manager Signing Authority (Staff Contact: Will Fuentes, 408-586-3111)**
- \*16. **Receive City of Milpitas Investment Portfolio Status Report for the Quarter Ended June 30, 2017 (Staff Contact: Will Fuentes, 408-586-3111)**
- \*17. **Accept the 2016 Bulletproof Vest Partnership Grant and Appropriate Funds into the Police Department's Operating Budget (Staff Contact: Daryl Sequeira, 408-586-2434)**
- 18. **Discuss Recommendation to Amend the By-Laws of the Milpitas Planning Commission (Staff Contact: Bradley Misner, 408-586-3273)**

#### **XVII. ORDINANCES**

- 19. **Consider Introduction of Ordinance No. 65.146 Related to Expedited Permitting Procedures for Electric Vehicle Charging Stations, per Assembly Bill 1236 (Staff Contact: Keyvan Irannejad, 408-586-3244)**
- \*20. **Waive the Second Reading and Adopt Ordinance No. 260.2 Amending the Milpitas Municipal Code Relating to the Display of Flags on City-Owned Property (Staff Contact: Christopher Diaz, 408-586-3040)**

#### **XVIII. RESOLUTIONS**

- \*21. Adopt a Resolution Approving the Annual Investment Policy (Staff Contact: Will Fuentes, 408-586-3111)**
- \*22. Adopt a Resolution Approving Badger Meters as the Standard Brand of Water Meters Used by the City of Milpitas (Staff Contact: Chris Schroeder, 408-586-3161)**

#### **XIX. AGREEMENTS**

- \*23. Approve Amendment No. 1 to the Agreement with Best, Best & Krieger, LLP Law Firm for City Attorney Services in the Amount of \$150,000 (Staff Contact: Will Fuentes, 408-586-3111)**
- \*24. Approve the Agreement Between the City of Milpitas and Mobilitie to Install Small Cell Antennas on Municipal Facilities (Staff Contact: Mike Luu, 408-586-2706)**
- \*25. Approve Amendment No. 5 to the Cayenta Software Support and Maintenance Service Agreement for the Financial and Utility Billing System for Not-To-Exceed \$3,000 (Staff Contact: Chris Schroeder, 408-586-3161)**
- \*26. Authorize the City Manager to Execute Amendment No. 5 to the Agreement with G&K Services for Uniform Rental and Laundry Services for Not-To-Exceed \$46,000 Annually (Staff Contact: Chris Schroeder, 408-586-3161)**
- \*27. Approve an Amendment No. 11 to the Master Agreement with the Santa Clara Valley Transportation Authority Relating to the Silicon Valley Rapid Transit Berryessa BART Extension Project, Appropriate \$125,000 to CIP No. 4265, BART Extension Coordination and Planning, and Authorize Payment up to \$125,000 to VTA for Union Pacific Railroad Off-Quadrant Pedestrian Crossing Signal Improvements at Dixon Landing Road At-Grade Railroad Crossing (Staff Contact: Steve Chan, 408-586-3324)**
- \*28. Approve and Authorize the City Manager to Execute Amendment No. 4 to the Consulting Service Agreement with EOA, Inc. to Increase the Hourly Rate, to Increase the Compensation by \$35,000 and to Extend the Term to June 30, 2018, Associated with Municipal Regional Stormwater Permit C3 Reviews for Land Development Projects (Staff Contact: Judy Chu, 408-586-3325)**
- \*29. Authorize the City Manager to Execute a Storm Water Management Facilities Operation and Maintenance Agreement with KB Home South Bay, Inc. for Development at 1210 California Circle (Staff Contact: Judy Chu, 408-586-3325)**
- \*30. Approve Amendment No. 4 to the Agreement with RMC Water and Environment to Increase Compensation in the Additional Amount of \$183,868 and to Extend the term to June 30, 2021 for the Dempsey Road Water Line Replacement, Projects No. 7118, No. 7117, No. 7100, No. 7129 and No. 3709 (Staff Contact: Steve Erickson, 408-586-3301)**
- \*31. Approve Amendment No. 1 to the Agreement with West Yost Associates to increase Compensation in the Additional Amount of \$293,055 for the McCandless Well, Project No. 7076 (Staff Contact: Steve Erickson, 408-586-3301)**

#### **XX. DEMANDS**

- \*32. Authorize Payments to Cayenta and Portford for Annual Software Support and Maintenance Fees (Staff Contact: Mike Luu, 408-586-2706)**
- \*33. Receive a Report on Emergency Repairs of Storm Pumps at Penitencia Pump Station and Berryessa Pump Station and Authorize Payment of Invoices to Pump Repair**

Service Company in the Amount of \$10,062.50 and Peterson Power in the Amount of \$6,788.43 (Staff Contact: Nina Hawk, 408-586-2603)

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

**XXII. ADJOURN JOINT MEETING**

**NEXT REGULAR CITY COUNCIL MEETING:**  
**TUESDAY, AUGUST 15, 2017**

**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**

Currently 17 vacancies on:

Arts Commission  
Bicycle Pedestrian Advisory Commission  
Community Advisory Commission  
Economic Development Commission  
Emergency Preparedness Commission  
Library Commission  
Parks, Recreation & Cultural Resources Commission  
Recycling & Source Reduction Advisory Commission  
Sister Cities Commission  
Telecommunications Commission  
Youth Advisory 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.

*For assistance in the following languages, you may call:*

Đối với Việt Nam, gọi 408-586-3122

对中国人来说，请用 408-586-3263

Para sa mga Tagalog, tawagan 408-586-3051

Para español, llame 408-586-3232

*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](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**

### **XIII. PUBLIC HEARINGS**

- 1. Conduct a Public Hearing and Adopt a Resolution Confirming Weed Abatement Assessments to be Entered on Property Tax Assessments (Staff Contact: Albert Zamora, 408-586-3371)**

**Background:** On January 3, 2017, the Milpitas City Council adopted Resolution No. 8640 declaring noxious or dangerous weeds growing upon certain described property to be a public nuisance that must be abated by the removal of the weeds. If the public nuisance was not removed from the properties by the owner, the City contracted with the County Department of Agriculture and Environmental Management to remove the weeds and abate the nuisance. In accordance with Title V, Chapter 202, Weed Abatement, of the Milpitas Municipal Code, the County Department of Agriculture and Environmental Management filed with the City Clerk a report and assessment list on weeds abated within the City as nuisances. The report and notice of the public hearing was posted at City Hall, pursuant to Milpitas Municipal Code section V-202-9.00. Notice of the public hearing was advertised in the local newspaper on July 21.

The City's ordinance provides that the City Council "shall hear the report together with any objections of the property owner liable to be assessed and make such modifications on the proposed assessment as it deems necessary."

After adoption by the City Council, the resolution will be recorded and charges thereon become a lien on the property involved to be collected in the same manner as property taxes. A copy of the assessment list and the proposed resolution confirming the weed abatement report are included in the Council's agenda packet and posted on the City's website.

**Recommendations:**

1. Open the public hearing, and move to close the hearing, after hearing any testimony.
2. Adopt a resolution confirming assessments for weed abatement.

**Attachment:** Resolution and List of Properties (exhibit to resolution)

- 2. Conduct a Public Hearing to Consider Request to Host a Flag Ceremony at City Hall Outside Plaza by Pakistan American Culture Center on August 14, 2017 (Staff Contact: Mary Lavelle, 408-586-3001)**

**Background:** The Pakistan American Culture Center (PACC) of Milpitas filed two applications with the City Clerk in July: (1) to rent Milpitas City Hall outdoor plaza from 7:00–9:00 PM on Saturday, August 12, 2017 and (2) a request to hold a ground level flag ceremony on that date. Currently, Milpitas Municipal Code I-600-2.40 requires "all ground level ceremonies must be approved by the City Council . . . and . . . a public hearing will be held regarding each ground level ceremony application prior to its approval or denial by the City Council." Subsequent to the form being submitted, the organization amended the date for the event request to Monday, August 14, 2017, which is the actual date of Pakistan's Independence.

Mr. Syed Mohsin on behalf of Mr. Mohammad Aboobaker from PACC submitted proper forms along with application fees. The group would like to hold an outdoor flag ceremony to celebrate the independence of Pakistan and hear speeches outside, at the back patio of City Hall, to be followed by a brief outdoor reception where approximately 80 people are anticipated to attend. An insurance certificate will be submitted to the City Clerk along with proper rental fees for the event.

The City Council must hold a public hearing for any comments, and then following the hearing, Council shall determine if it will approve the request. The public hearing was noticed in the local newspaper on July 21, as required, more than 10 days in advance of this meeting.

**Fiscal Impact:** Fees will be appropriately collected for rental cost and staff time for the event.

**Recommendations:**

1. Hold a public hearing, and move to close it following any comments.
2. Consider the request and approve a flag ceremony held by the Pakistan American Culture Center at Milpitas City Hall outside plaza on Monday, August 14, 2017 from 7:00 to 9:00 PM.

**Attachments:**

- a) Rental facility and Flag Ceremony applications
- c) Current Municipal Code regarding flag ceremony
- d) Layout map

**3. Conduct a Public Hearing and Adopt Urgency Ordinance No. 294.1 Extending the Temporary Moratorium on Issuance of Demolition Permits for Structures Providing Affordable Housing (Staff Contact: Christopher Diaz, 408-586-3040)**

**Background:** On May 22, 2017, Milpitas City Council participated in a study session on affordable housing issues within the City. After hearing from staff and the public, Council directed staff to research and bring back options for City action to facilitate the preservation of existing and production of new affordable housing in Milpitas. As Council heard then, stable housing is a foundational need of families and individuals alike. Losing housing, especially affordable housing, can come at a high cost. Displacement from one's home can interrupt the education of children in the household; negatively impact tenants' finances, due to the need to relocate and pay new security deposits and rental application fees; degrade established neighborhoods and communities; and lead to increased commute times and traffic impacts, if displaced workers cannot find affordable housing within the city in which they work.

Subsequently, at the June 20, 2017 City Council meeting, the City Attorney's office gave a presentation on some options for protecting existing affordable housing, including an urgency ordinance imposing a temporary moratorium on the issuance of demolition permits to structures that provided affordable housing as of that date. In broad strokes, that ordinance (which was later numbered Ordinance No. 294):

- Imposed a moratorium on the issuance of demolition permits for structures that currently provide affordable housing units in order to preserve existing affordable housing stock while the City evaluates and takes action on comprehensive affordable housing preservation and production mechanisms.
- Applied to affordable housing units, which (for purposes of the ordinance) are defined as residential dwellings with rental rates either (1) restricted by a recorded document to levels affordable to extremely low, very low, lower, or moderate income households, or (2) subsidized by the state or federal government. It provided that no structure containing such units would be permitted to be demolished during the term of the urgency ordinance, with a few exceptions.
- Offered the potential for relief from the moratorium in four circumstances: where (1) projects were approved prior to the adoption of the ordinance, (2) structures were found to be unsafe or a public nuisance, (3) projects could demonstrate that the

issuance of a demolition permit would not result in the loss of affordable housing units (through, for example, the planned replacement of such units by a new development on the site of the existing affordable housing site), or (4) through the use of a petition process, an applicant demonstrated that the application of the ordinance to the applicant's project would be unlawful.

Approximately 45 members of the public shared their views on the subject of affordable housing measures at the June 20 City Council meeting. Ultimately, the Council unanimously voted to approve the demolition permit moratorium by adoption of Ordinance No. 294.

The temporary moratorium put in place on June 20 by Ordinance No. 294 will expire by operation of law 45 days after its adoption (August 4, 2017), per Government Code Section 65858. If the City Council wishes to extend the moratorium beyond that date, it must affirmatively vote to do so by a 4/5 majority. An extension may last for up to a maximum of ten months and fifteen days before it was subject to the need to extend again. In no event could an urgency ordinance last more than two years. Staff recommends the City Council extend the moratorium ten months and fifteen days. The extension presented provides that it would expire either at the end of said period, or earlier, if the City elects to take long-term action rendering further operation of the moratorium unnecessary.

The conditions that have led to the scarcity of affordable housing in the City are numerous and complex. Among the elements is a strong regional economy has added a wealth of new jobs, but not as much housing, particularly affordable housing. In order to meet this reality, staff continues to investigate steps that could be taken by the City in order to facilitate the production of new affordable housing and avoid existing affordable housing numbers from falling further behind the growing demand. This work includes internal research and consultation, outreach to other agencies, and legal analysis. Staff's goal, as directed by the City Council, is to prepare and bring to the Council a menu of possible options for the City to explore within the next few months. Extending Ordinance No. 294 would provide staff with additional time in which to complete this task.

The City Council is accordingly asked to determine whether it wishes to extend the moratorium for up to ten months and fifteen days while staff continues to work on longer-term solutions to the underlying problem of affordable housing preservation and creation in the City of Milpitas. The ordinance extension presented for the Council's consideration is meant to provide the community with certain protections while a comprehensive affordable housing policy is evaluated and enacted. Staff therefore recommends that City Council adopt Ordinance No. 294.1, extending Ordinance No. 294 for ten months and fifteen days.

**Fiscal Impact:** The fiscal impact of the demolition permit moratorium is limited to lost permit fees during the pendency of the ordinance.

**Recommendations:**

1. Open the public hearing, and move to close the hearing following any speakers.
2. Direct the City Attorney to read aloud the title of Ordinance No. 294.1.
3. Waive the reading beyond the title and adopt Interim Urgency Ordinance No. 294.1, extending the temporary moratorium on the issuance of demolition permits for structures providing affordable housing.

**Attachment:** Ordinance No. 294.1

#### **XIV. UNFINISHED BUSINESS**

4. **Receive Presentation about Billing Changes and Outreach for New Residential Recycling & Garbage Program Starting December 1, 2017 (Staff Contact: Leslie Stobbe, 408-586-3352)**

**Background:** On November 14, 2016, the City Council adopted Resolution No. 8602 to award the franchise agreement for collection of solid waste and the collection and processing of recyclable and organic materials to Garden City Sanitation, Inc., doing business as Milpitas Sanitation, Inc. New recycling and garbage collection services for residents and businesses will begin on December 1, 2017. The major steps to roll-out these services are described in more detail below. The steps and approximate timing are as follows:

1. Transfer of billing and route data to Milpitas Sanitation (April);
2. Determine billing schedule for single family households (August 1);
3. Provide information to all customers about the changes in services (August – November);
4. Conduct single family household subscription process of garbage/food waste cart (August – Sept.);
5. Deliver new equipment to customers (late November).

As part of this transition, Milpitas Sanitation will take over billing of solid waste related services for City of Milpitas customers. Currently, the City bills single family households for solid waste services along with water and sewer in a consolidated invoice. The City will continue to bill residents and businesses for water and sewer services.

Currently, single family households receive bi-monthly billings that are two months in arrears from the City. This is because the City's combined bill for water, sewer and solid waste services is based on water meter readings which measure prior period consumption. The new franchise agreement with Milpitas Sanitation separates solid waste service billing from the timing of water and sewer billing and calls for billing on a quarterly system organized by customer's last name (three groups of customers each receiving one bill per quarter). This means that solid waste billing will transition from billing two months in arrears to billing three months ahead of service.

To accomplish this billing transition with a December 1, 2017 start of service date and to minimize the number of bills that a customer would receive, Milpitas Sanitation will issue one bill to customers for the period of December 2017 through March 2018. This bill will be higher than a typical bill because it adds the month of December to the first quarter 2018 bill cycle. This bill would be received by customers no earlier than January 1, 2018. During this billing transition period, customers will also receive one to two bills from the City of Milpitas for solid waste services received prior to December 2017. To mitigate impacts, City is exploring options to establish a payment plan for any customer that experiences financial hardship due to the billing transition. Payment plan would pertain to solid waste payments only owed to the City.

Public outreach plans for single and multi-family households are included in Council's packet. A comprehensive approach for outreach to single family households uses the following methods:

- Two inserts in the City's utility bill. The first will appear August 7 and announces the change in billing and explains the transition period when customers will receive one to two bills from the City through March 2018 to account for prior service received before December 2017. The difference in number of bills from the City is due customers being on different billing cycles. The second bill insert starts October 2 and describes how to participate in the new program.
- As the first bill insert goes out, customers will receive a mailer in mid-August to help select a split cart that is priced by garbage size with the other side for food waste recycling. This mailer will have a unique identifier code for customers to subscribe online via computer or smart phone, or use the mail-in postcard, to select the

garbage/food waste cart size. Cart sizes and pricing will be reviewed during the staff presentation.

- Newspaper advertisements, information on the City's website and KMLP-15 will begin in mid-August to announce the mailer and cart subscription process, provide reminders to subscribe, detail the cart delivery process and other program information through November.
- Displays of garbage/food scraps and recycling split carts will appear at public events (including back-to-school nights) and locations (Milpitas City Hall, Public Library).
- A doorhanger will be distributed to single family households in early September with a reminder to subscribe to a cart size using the mailer. If customers no longer have the mailer, they can subscribe via Milpitas Sanitation's website or through its customer service call center.
- Three community meetings will be held during and after the subscription process to assist customers with choosing the right garbage/food waste cart size and to answer questions about cost, accepted recyclables, and alternate disposal options provided under the franchise agreement.
- Outreach will include information available in Spanish, Chinese, Vietnamese and Hindi including cart labels (single family), bin labels (commercial and multi-family), Milpitas Sanitation website with over 100 languages available to translate information, and a phone translation service used by customer service representatives.

After outreach for the initial start-up is completed and the program begins on December 1, Milpitas Sanitation will provide quarterly bill inserts with participation messages, holiday tree collection and schedules, an annual newsletter and street sweeping calendar. A customer satisfaction survey will also be used as a billing insert within three to six months of the program's start.

The Recycling & Source Reduction Advisory Commission was scheduled to review the billing transition and draft outreach plans at its July 25, 2017 meeting. Staff can provide comments that were given by members of the Commission on that date.

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

**Alternative:** Do not receive report and outreach will continue without City Council direction.

**Fiscal Impact:** None. Billing and outreach costs are included in the franchise agreement.

**Recommendation:** Receive presentation and review billing transition process and outreach for program outreach.

**Attachments:**

- a) Cart Sizes and Pricing illustration
- b) Billing – Single Family Residential Rates
- c) Billing Transition Guidelines (insert)
- d) Outreach Plan for Single Family Households
- e) Outreach Plan for Multi-family Households
- f) Outreach Plan for Commercial Businesses

- \*5. **Approve Recommendation for Appointment of the Finance Director to the Milpitas Oversight Board (Staff Contact: Will Fuentes, 408-586-3111)**

**Background:** ABX1 26 dissolved the Milpitas Redevelopment Agency (RDA) on February 1, 2012 and transferred all RDA assets and obligations to the Successor Agency (SA) to the Former Milpitas Redevelopment Agency. The Successor Agency is tasked with winding down former RDA activities, paying off any contractual obligations and debts, and disposing of properties when possible. The SA reports to the Milpitas Oversight Board which was formed on March 26, 2012. All Oversight Board actions are subject to review and approval by the State Department of Finance (DOF). Conforming to guidance provided by ABX1 26, the Oversight Board is comprised of seven appointment slots filled by the following persons:

1. One appointed by the Santa Clara County Board of Supervisors,  
Board Member: Bruce Knopf (Vice Chair)  
Alternate(s): Alan Minato and Michael Fogelstrom
2. One appointed by the Mayor of Milpitas,  
Board Member: Althea Polanski  
Alternate(s): Jane Corpus, Assistant Director of Financial Services
3. One appointed by the largest special district in Santa Clara County,  
Board Member: Glen Williams  
Alternate(s): None
4. One appointed by the Santa Clara County Superintendent of Education,  
Board Member: Matthew Tinsley  
Alternate(s): Suzanne Carrig
5. One appointed by the Chancellor of California Community Colleges,  
Board Member: Michael Mendizabal  
Alternate(s): None
6. One appointed by the Santa Clara County Board of Supervisors to represent the public, and  
Board Member: Mike McInerney (Chair)  
Alternate(s): Alan Minato and Michael Fogelstrom
7. One appointed by the Mayor of Milpitas to represent former RDA and current SA employees.  
Board Member: Vacant  
Alternate(s): Jane Corpus, Assistant Director of Financial Services

#### PROPOSED CHANGE

7. One appointed by the Mayor of Milpitas to represent former RDA and current SA employees.  
**Board Member: Will Fuentes, Director of Financial Services**  
Alternate: Jane Corpus, Assistant Director of Financial Services

Since inception of the Milpitas Oversight Board, the Director of Financial Services for the City of Milpitas has served as a board member in slot #7 above. Russell Morreale and Emma Karlen, the City's former Directors of Financial Services, previously served in this role. The City Manager acts as the Executive Officer to the Successor Agency and cannot serve as a board member since this would be a conflict of interest. With the recent hiring of Will Fuentes as Director of Financial Services, the Mayor recommends that he be appointed as a full Board member in slot #7 (listed above). Presently, Assistant Director of Financial Services Jane Corpus serves as an alternate board member for slots #2 and #7. Ms. Corpus will remain in this role should Althea Polanski or Will Fuentes be absent. Filling all allotted City seats is critical to ensure that the City's interests are protected and the Director of

Financial Services is best suited to speak to the complex financial issues which encompass Successor Agency activities and decisions.

**Fiscal Impact:** None

**Recommendation:** Per Mayor's recommendation, appoint Director of Financial Services Will Fuentes as a full board member on the Milpitas Oversight Board.

**Attachment:** None

**6. Per Request of Councilmember Nuñez, Discuss the State of the City Address (Contact: Councilmember Nuñez, 408-586-3023)**

**Background:** Councilmember Nuñez requested to discuss the topic of the State of the City speech by the City's Mayor. To date, such a speech has been given by the Mayor of the City of Milpitas in some years, but has not always been a routine event. The Mayor has given such a speech at the invitation and sponsorship of the Milpitas Chamber of Commerce. The last time the Milpitas Mayor gave a State of the City address was May 30, 2013 and it was held at the Community Center's auditorium. In years prior, the speech has been given in the City Hall Council Chambers, as reserved by the Milpitas Chamber.

In Santa Clara County, the following cities' Mayors do give or have given a State of the City speech (with notation of sponsoring group): Cupertino (Rotary Club); Gilroy (Chamber); Los Altos & Los Altos Hills - 2 Mayors together (Chamber); Morgan Hill (City); Mountain View (Chamber); Palo Alto (City); San Jose (City); Santa Clara (Chamber); Saratoga (City) and Sunnyvale (City).

**Recommendation:** Hear report of Councilmember Nuñez. Direct staff, as appropriate.

**Attachment:** none

**\*7. Receive Report on Commissioners' Attendance (Staff Contact: Mary Lavelle, 408-586-3001)**

**Background:** On May 16, City Council discussed attendance by some City Commissioners and requested a report back from staff on current policies. Members of City Commissions are guided by the by-laws of the Commission on which they serve. City Council is guided by the established City Council Handbook and one section of the handbook contains rules on Commissioner attendance.

The Milpitas City Clerk provides a quarterly report of Commissioners attendance to the City Council for its information. If a Commissioner has missed three or more meetings (unexcused), as noted on the report, or is notified by a Commission staff liaison of poor attendance, the Clerk may send a letter to the Commissioner. If no reply is received, the Clerk may report this information to the City Council for its consideration and possible vote to remove a Commissioner from service.

**Recommendation:** Receive report from City Clerk.

**Attachments:**

- 1) FY 2016-17 Commissioner attendance report
- 2) City Council Handbook (page 32)
- 3) Commission By-Laws excerpt
- 4) City Clerk letter to Commissioner

**8. Adopt a Resolution Approving a Censure Policy for the City Council (Staff Contact: Christopher Diaz, 408-586-3040)**

**Background:** Censure is defined as the “formal resolution of a legislative, administrative or other body reprimanding a person, normally one of its own members, for specified conduct.” (Black’s Law Dictionary.) Public censure of a City Councilmember is generally done in the form of a resolution of reproach that is adopted by the City Council and then read to the members of the public in attendance at that City Council meeting. The resolution of reproach thus becomes a public record of the City.

Notice of an intent to censure and an opportunity for the Councilmember to respond is recommended to protect the reputational interests of the Councilmember. The City Council must make supported factual findings before censuring a Councilmember. (*Braun v. City of Taft* (1984) 154 Cal. App. 3d 332, 348.) In addition, the California Attorney General has issued a written opinion concluding that complaints against elected officials may not be discussed in closed session. (61 Ops. Cal. Atty. Gen. 10 (1978).) Therefore, if the City Council wishes to censure one of its members, the Council should adopt a resolution containing findings as to why the City Council believes a censure is appropriate for consideration in open session.

It should also be noted that the Brown Act protects a member’s public criticism of policies, procedures, programs or services of the agency or acts or omissions of the legislative body. (See Gov. Code §54954.3(c).) Accordingly, a member cannot be reprimanded or censured for expressing his or her opinions regarding City policy or conduct.

In Milpitas, there are no rules or policies concerning the authority or procedures to follow when censuring members of the City Council. The draft policy, if adopted by Council, would provide such a procedure, while meeting the legal requirements described above.

**Fiscal Impact:** None.

**Recommendation:** Adopt a resolution approving a censure policy for the Milpitas City Council.

**Attachment:** Resolution with censure policy

**\*9. Approve Amendment No. 4 to the Agreement with Law Firm of Burke, Williams & Sorensen, LLP to Close Out Legal Services (Staff Contact: Christopher Diaz, 408-586-3040)**

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

This is the Fourth Amendment to the current contract to cover necessary legal services and associated representation related to the odor nuisance issues involving the Newby Island Landfill which has been performed through May 2017. No further work is anticipated by this firm on this project.

**Fiscal Impact:** The budget to fund the Fourth Amendment to the contract is a not-to-exceed amount of \$6,891.65. If approved, the funding will be transferred from the contingency reserve account into the City Attorney’s budget.

**Recommendation:** Approve the Fourth Amendment to the Agreement with Burke, Williams and Sorensen, LLP to close out legal services and direct the Acting City Manager to sign the Fourth Amendment.

**Attachment:** Amendment No. 4 to agreement with Burke, Williams & Sorensen, LLP

- \*10. Receive the Monthly Update of the Odor Control Report (Staff Contact: Greg Chung, 408-586-3355)**

**Background:** From May 12 through July 6, 2017, the Bay Area Air Quality Management District (BAAQMD) forwarded 129 complaints originating in Milpitas. 65 complaints identified a garbage odor, 4 complaints identified a sewage odor, 56 complaints did not identify an odor source and 4 complaints identified multiple sources. As of the last Council update, the City's odor reporting website received 29 reported complaints.

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

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

**Attachment:** none

## **XV. REPORTS OF OFFICERS**

- 11. Per Request of Mayor Tran, Authorize More Than 4 Hours of Staff Time to Return to Council with Stricter Regulations of Massage Establishments (Contact: Mayor Tran, 408-586-3029)**

**Recommendation:** Hear report of Mayor Tran, and direct staff, as requested.

**Attachment:** none

- 12. Per Request of Mayor Tran, Authorize More Than 4 Hours of Staff Time to Return to Council with a Residential Permit Parking Program for The Pines (Contact: Mayor Tran, 408-586-3029)**

**Recommendation:** Hear report of Mayor Tran, and direct staff, as requested.

**Attachment:** none

- 13. Per Request of Councilmember Nuñez, Discuss City of Milpitas Standard Operating Procedure No. 6-1, Relating to Travel and Expense Policy (Contact: Councilmember Nuñez, 408-586-3023)**

**Background:** Councilmember Nuñez brought this agenda item to request a discussion with the City Council regarding the current Standard Operating Procedure Policy No. 6-1, relating to Travel and Expense Policy.

**Fiscal Impact:** None at this time.

**Recommendation:** Hear report of Councilmember Nuñez, and direct staff appropriately.

**Attachment:** Standard Operating Procedure No. 6-1

## **XVI. NEW BUSINESS**

14. **HOUSING AUTHORITY: Consider Request for a Predevelopment Loan Commitment of \$150,000 from Milpitas Housing Authority to Resources for Community Development for Development at 355 Sango Court (Staff Contact: Bradley Misner, 408-586-3273)**

**Background:** Resources for Community Development (RCD), a not for profit affordable housing developer, has requested a commitment of \$150,000 for predevelopment expenses for a proposed 101 unit affordable rental development, located at 355 Sango Court. The 101 unit development would include 40 units for veterans, 18 which are homeless. The remaining units are for low or very low income households not to exceed 60% of Area Median Income (AMI). For reference, a 4-person household at 60% AMI earns approximately \$68,000 per year. At this time, RCD is only requesting a commitment of funds from the City. The actual transfer of funds will occur in the future and only when the Council would consider approving the predevelopment loan agreement.

**Project Site**

355 Sango Court is a 1.26 acre is zoned R-4 (High Density Multifamily Residential) with a Transit Oriented District (TOD) Overlay which requires a minimum unit density of 42 residential units per acre to a maximum of 60 units per acre. In the City's Density Bonus Ordinance, RCD can receive a 35% increase over the maximum allowable density of the base zoning in exchange for the provision of affordable housing. Since RCD is proposing a fully 100% affordable project, RCD would be eligible for the full 35% density bonus. Therefore the project could have a maximum density of 81 units per acre. This proposed project has a density of 80 units per acre.

Since 2015, RCD has been actively searching for potential affordable housing sites in Milpitas. In October 2016, RCD entered into a purchase agreement with the owner of 355 Sango Ct. As RCD continues to conduct their due diligence on the property, they are beginning to accrue predevelopment expenses in preparation of acquiring the site.

**Predevelopment Budget**

The predevelopment expenses include:

|                                            |           |
|--------------------------------------------|-----------|
| Environmental Review (Phase 1 and 2, NEPA) | \$33,250  |
| Architecture                               | \$100,000 |
| Civil Engineer/Surveyor                    | \$40,000  |
| Other                                      | \$29,000  |

The City's commitment of funds would allow RCD to show City support of the project to other potential lenders. Also, other lenders often require a local cash match as part of their funding approval. The local cash match requirement is used to demonstrate local acceptance of the proposed project.

A predevelopment loan poses a slightly higher risk of loss to the City since the loan is not secured against the property. However predevelopment funding is essential in the development of affordable housing. Non-profit affordable housing developers do not have the larger cash reserves of its for-profit housing counterparts to pay for predevelopment costs. Predevelopment loans help share in the risk of developing affordable housing between affordable housing developers and the local jurisdiction.

The overall development budget is estimated to be about \$67 million. Possible sources of financing may include Santa Clara County Measure A funds, Federal low income housing tax credits and State of California Veterans Housing and Homelessness Prevention funds.

**Housing Authority Fund**

The source of funding for the predevelopment loan would be from the City's Housing Authority Fund. The City's Housing Authority Fund was created from loan repayments and

other sources of program income from past redevelopment agency loans. The fund balance is approximately \$7 million. Since the Milpitas Housing Authority is the “housing successor” to the City’s Redevelopment Agency, the state has passed new rules on how housing successors may spend their housing funds. Effective January 1, 2014, the state passed legislation that had stricter rules for expenditures. Some of the stricter requirements include:

- No expenditures for moderate income housing
- 30% must be spent on extremely low income households (ELI), defined as households earning less than 30% of Area Median Income (AMI)
- No more than 20% of the funds can be spent on housing for households earning between 60-80% of AMI
- Funds need to be spent within five years of passage of the legislation.

Next Steps

Request is solely for a commitment of predevelopment funds. Based on RCD’s development schedule and its need for the predevelopment funds, staff will present the predevelopment loan agreement to the Council for final approval. A Budget Change Form would also be included as part of the loan if authorized by the Council. The predevelopment loan would be structured with performance standards to insure performance in a timely fashion.

**Fiscal Impact:** Funds for a predevelopment loan would come from the City’s Housing Authority Fund which has a current fund balance of approximately \$7 million.

**Recommendation:** to approve the request from Resources for Community Development and approve a \$150,000 predevelopment loan commitment from the Milpitas Housing Authority for a new development at 355 Sango Court in Milpitas.

**Attachment:** None

**15. Receive Staff Report on City Manager Signing Authority (Staff Contact: Will Fuentes, 408-586-3111)**

**Background:** At the June 27, 2017 City Council meeting, Councilmember Nuñez requested a report on City Manager Signing Authority and the contracts approved under this authority the last three fiscal years. Title 1, Chapter 4 (Contract Authority) of the Milpitas Municipal Code provides the City Manager authorization to enter into and execute contracts on behalf of the City up to \$100,000 for funds that have already been appropriated by the Council. This level of authority was approved by Council on May 19, 2015 via Ordinance No. 289 and went into effect June 2, 2015. Prior to this date, the level of City Manager contract Authority was set at \$20,000. The change was made to improve day-to-day operating efficiency since Council only meets twice a month and was recommended by the Council Finance Subcommittee after a survey of other local municipalities. Reasons of efficiency remain today and day-to-day operations of the City would slow if the level of authority were reduced in the future. Nevertheless, while not specifically required by Municipal Code, regular reporting to Council on contracts approved within City Manager authority was scheduled to commence after the 2015 increase. That has not started as of yet and thus, quarterly reporting will commence henceforth.

Included in the Council agenda packet is a list of contracts approved under the City Manager’s authority over the last three fiscal years. Note that all contracts approved in Fiscal Year (FY) 2015-16 and FY 2016-17 were done so up to the \$100,000 City Manager authority level. And most all contracts approved in FY 2014-15 were done so up to the \$20,000 City Manager authority level, with the exception of those contracts approved after the implementation of Ordinance No. 289 on June 2, 2015. The list provides Contract Creation Date, Purchase Order (PO) Number, PO Purpose, PO Line Number, Vendor Number, Vendor Name, Cost, Commodity Description, and Additional Description. 174 contracts, totaling

\$5.6 million and averaging \$32,000 each, were approved in the past three Fiscal Years under City Manager authority. Note that some contracts on the list have multiple lines. In addition, some contracts may have been approved by the Assistant City Manager as delegated by the City Manager or Acting City Manager in the absence of the City Manager.

Deviations from approved City Manager Contract Authority are noted below. Reasons for deviations are also explained:

- **\$20,000 City Manager Contract Authority Level Prior to June 2, 2015**
  - o 11/13/2014 – DP26505 **\$23,888** total (Burton's Fire) – Necessary repairs to Fire Truck T-86. Original quote was for \$12,521 and additional \$11,367 in work was needed after repairs started. City had no choice but to proceed.
  - o 12/16/2014 – FY15437 **\$100,000** total (Cal Recovery, Inc.) – Original contract of \$15,000 for work related to odor sources, management, and control. Amendment 1 for \$35,000 was approved by Council on January 20, 2015. Amendment 2 raised total contract amount to \$100,000 on July 1, 2015. This was within City Manager Contract Authority at that time.
- **\$100,000 Contract Authority Level June 2, 2015 and After**
  - o 7/29/2015 – DP16200 **\$155,000** total (Law Offices of Gary G. Baum) – Original contract of \$95,000 for Interim City Attorney services. Amendment 1 for \$60,000 was approved by Council on September 15, 2015.
  - o 8/21/2015 – DP16800 **\$225,000** total (ABAG Insurance) – Original purchase order of \$60,000 for legal services related to General Liability pool insurance plan. Additional purchase orders of \$75,000 for General Property Damage Claims and \$90,000 for Sewer and Water Related Property Damage Claims. Section 12 I-2-12.01-5 of the City of Milpitas Municipal Code excludes the purchase and payment of insurance from purchasing requirements set forth in other areas of the Municipal Code.
  - o 1/6/2016 – DP16104 **\$160,000** total (De La Rosa, Richard) – Original contract of \$40,000 for consulting services related to Successor Agency to Milpitas Redevelopment Agency. Amendment 1 for \$120,000 was approved by Council on February 16, 2016. Previous contract of \$89,995 total as Forest Consulting (vendor 18073).
  - o 8/19/2016 – FY17302 **\$165,000** total (ABAG Insurance) – Purchase orders of \$75,000 for General Property Damage Claims and \$90,000 for Sewer and Water Related Property Damage Claims. Section 12 I-2-12.01-5 of the Milpitas Municipal Code excludes purchase and payment of insurance from purchasing requirements set forth in other areas of the Municipal Code.

Also included in the Council agenda packet is a recent survey of City Manager Contract Authority for cities within Santa Clara, San Mateo, and Alameda County. Oakland, San Jose and San Francisco are not included in the survey due to their large population size and vastly different operations which make comparison to Milpitas inappropriate. Atherton, Brisbane, Monte Sereno, Colma, Piedmont, Portola Valley, and Woodside were also removed as outliers due to low population size and high City Manager Contract Authority per capita. As the survey listing shows, the average level of City Manager Contract Authority in the San Francisco Bay Area is approximately \$59,000 total and \$1.23 per capita. Milpitas, at a City Manager Contract Authority level of \$100,000 total and \$1.33 per capita, is above the average in both areas of comparison, but within an acceptable level of deviation and not the highest in the Bay Area. Cupertino is the highest in the Bay Area at \$175,000. Gilroy, Santa Clara, Sunnyvale, Burlingame, San Mateo, Fremont, and Livermore are all similar to Milpitas at \$100,000 total. In addition, Milpitas fares well in comparison with other cities in Santa Clara County, which have an average City Manager Contract Authority of approximately \$63,000 total and \$1.21 per capita. Milpitas is \$100,000 total and \$1.33 per capita.

**Fiscal Impact:** None

**Recommendation:** Per request of Councilmember Nuñez, receive staff report on City Manager Signing Authority and provide any input or recommendations.

**Attachments:**

- a) List of City Manager Contracts approved in last 3 Fiscal Years
- b) Survey of Bay Area Cities in 3 Counties

**\*16. Receive City of Milpitas Investment Portfolio Status Report for the Quarter Ended June 30, 2017 (Staff Contact: Will Fuentes, 408-586-3111)**

**Background:** In compliance with the State of California Government Code and the City's Investment policy, the City of Milpitas Investment Report for the quarter ended June 30, 2017 is submitted for the Council's review and acceptance.

The Portfolio Summary Report included in the Council's packet provides a summary of the City's investments by type. It lists the par value, market value, book value, percentage of portfolio, term, days to maturity and the equivalent yields for each type of investment. The Portfolio Details Report provides the same information for each individual investment in the City's portfolio as of June 30, 2017

As of June 30, 2017, the principal cost and market value of the City's investment portfolio was \$257,727,788 and \$257,153,378 respectively. When market interest rates increase after an investment is purchased, the market value of that investment decreases. Conversely, when market interest rates decline after an investment is purchased, the market value of that investment increases. If the investments are not sold prior to the maturity date, there is no market risk. Therefore, in accordance with the City's investment policy, all investments are held until maturity to ensure the return of all invested principal.

The City's effective rate of return for the period ended June 30, 2017 was 1.13%. The comparative benchmarks for the same period were 0.98% for LAIF (Local Agency Investment Fund) and 1.09% for the 12-month average yield of the 2-year Treasury Note. The weighted average maturity of the portfolio was 429 days. Please note that several changes to the Investment Policy are also being proposed at the August 1, 2017 Council meeting. These changes will allow Finance staff responsible for the City's investment portfolio a greater ability to earn return while also addressing social concerns. Nevertheless, changes proposed do not exceed State allowable limits for public investment of funds and meet the City's primary investment goals of safety, liquidity, and return; in that order.

The investment portfolio is in compliance with the City's investment policy and will be in compliance with any future revisions to that policy if approved. A combination of securities maturing, new revenues, and tax receipts will adequately cover the anticipated cash flow needs for the next six months. Cash flow requirements are continually monitored and are considered paramount in the selection of maturity dates of securities.

The market values of the securities were provided by BNY Mellon, the safekeeping bank of the City's securities. All the securities owned by the City are held in the trust department of BNY Mellon under the terms of a custody agreement.

Four charts are included with the agenda packet that show investment by maturity levels, comparison of the City's portfolio yields to other benchmark yields as well as a trend of the type of securities in the City's portfolio, weighted average maturity and average yield.

**Fiscal Impact:** None

**Recommendation:** Receive the investment report for the quarter ended June 30, 2017.

**Attachments:** 4 charts

**\*17. Accept the 2016 Bulletproof Vest Partnership Grant and Appropriate Funds into the Police Department's Operating Budget (Staff Contact: Daryl Sequeira, 408-586-2434)**

**Background:** The United States Department of Justice, Office of Justice Programs, Bureau of Justice Assistance has allocated a Bulletproof Vest Partnership (BVP) grant in the amount of \$7,847.97 to the Milpitas Police Department towards the purchase of ballistic vests. The grant will reimburse the City of Milpitas fifty percent (50%) of the cost for each ballistic vest purchased by the Milpitas Police Department after April 1, 2017. The grant funds must be utilized by August 31, 2018. The Milpitas Police Department has been participating in the BVP Grant Program consecutively since 2008.

**Fiscal Impact:** None. The City's matching funds are already budgeted in the police department's annual supply account. This grant will help offset the total costs of future ballistic vest purchases during the time period.

**Recommendation:** Accept the 2016 Bulletproof Vest Partnership (BVP) grant and approve an appropriation in the amount of \$7,847.97 into the Police Department's operating budget.

**Attachments:**

- a) Staff memo
- b) Budget Change Form

**18. Discuss Recommendation to Amend the By-Laws of the Milpitas Planning Commission (Staff Contact: Bradley Misner, 408-586-3273)**

**Background:** Per the Planning Commission's request in September 2016 to consider potential amendments to its rules and regulations, staff worked with Commissioners to clean up existing language and draft a revised version. The Planning Commission has recommended the City Council amend the Commission bylaws.

Changes to the bylaws include the following:

- An amendment tracker was added as an introductory paragraph listing the bylaws adoption and amendment dates in an effort to trace the history of the document.
- Chapter 500 (this reference was added to Section I of the By-Laws) of the Municipal Code governs the Planning Commission, and several sections of language in the bylaws that were included verbatim and also reside in the municipal code were deleted because staff felt they were redundant to include in both locations.
- The subcommittee language was edited, as there were references to subcommittees that no longer exist, and the term for service for the PC Subcommittee was extended from three months to six months. Staff also removed the Subcommittee rotation table since staff currently monitors this.
- Changes have also been made to the Standard Operating Procedures for the Planning Commission, which include:
  1. Meeting minutes will show absences as either "excused" or "unexcused" in the future
  2. A line item will be added to the agenda to prompt commissioners to disclose ex parte communications

Included as an attachment is a copy of revised, redlined by-laws showing all tracked changes.

**Fiscal Impact:** None

**Recommendation:** Discuss proposed amendments to the By-Laws of the Milpitas Planning Commission and direct staff, as appropriate.

**Attachment:** Red-lined version of Planning Commission By-Laws

## XVII. ORDINANCES

**19. Consider Introduction of Ordinance No. 65.146 Related to Expedited Permitting Procedures for Electric Vehicle Charging Stations, per Assembly Bill 1236 (Staff Contact: Keyvan Irannejad, 408-586-3244)**

**Background:** Assembly Bill (AB) 1236 added Section 65850.7 to the Government Code (GC) to require jurisdictions with a population of less than 200,000 to adopt an ordinance for expedited, streamlined processing for permitting of electric vehicle charging stations on or before September 30, 2017. The ordinance shall include the requirement that a jurisdiction adopt a checklist of requirements with which a permit application for an electric vehicle charging station will be eligible for expedited review.

An electric vehicle charging station is any level of electric vehicle supply equipment which delivers electricity from a source outside an electric vehicle into a plug-in electric vehicle. Assembly Bill 1236 suggests that the City's checklist may be based on the "Plug-In Electric Vehicle Infrastructure Permitting Checklist" of the "Zero-Emission Vehicles in California: Community Readiness Guidebook" of the Governor's Office of Planning and Research.

The City currently expedites the review of such applications by reviewing and issuing applications for Electric Vehicle Charging Stations permits through its express plan checking services. In addition, the City currently has the ability to accept and approve such applications electronically through the City's website. However, the City still needs to adopt formal guidelines per AB 1236 and GC Section 65850.7. The proposed ordinance is intended to satisfy that requirement by: codifying the requirements of GC Section 65850.7 allowing for expedited processing for permitting and inspections of electric vehicle charging stations, directing the City's Building Official to develop a checklist of all requirements with which Electric Vehicle Charging Stations must comply in order to be eligible for expedited review, and authorizing the Building Official to administratively approve such applications.

**Fiscal Impact:** None. As noted, the Building and Safety Department is already providing expedited review of applications for Electric Vehicle Charging Stations. The ordinance merely codifies the requirement under state law.

**Recommendations:**

1. Receive staff report.
2. Following a reading of the title by the City Attorney, move to waive the first reading beyond the title of Ordinance No. 65.146.
3. Introduce Ordinance No. 65.146 to add new Section 1.6 to Title II of the Milpitas Municipal Code to include provisions relating to Expedited Permitting Procedures for Electric Vehicle Charging Stations.

**Attachment:** Ordinance No. 65.146 for introduction

**\*20. Waive the Second Reading and Adopt Ordinance No. 260.2 Amending the Milpitas Municipal Code Relating to the Display of Flags on City-Owned Property (Staff Contact: Christopher Diaz, 408-586-3040)**

**Background:** Ordinance No. 260.2 was introduced following waiving of the first reading beyond the title at the June 20, 2017 City Council meeting. This Ordinance is now ready for its second reading and adoption. This Ordinance changes the existing limited public forums into non-public forums. With this change, the City Council may determine what types of flags are flown on certain City flagpoles as an expression of the City's official sentiments.

**Recommendation:** Waive the second reading and adopt Ordinance No. 260.2 amending the Milpitas Municipal Code relating to the display of flags on City-owned property.

**Attachment:** Ordinance No. 260.2 for adoption

## **XVIII. RESOLUTIONS**

### **\*21. Adopt a Resolution Approving the Annual Investment Policy (Staff Contact: Will Fuentes, 408-586-3111)**

**Background:** California State law regarding the investment of public funds requires 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. The following changes to the Investment Policy are recommended this year:

- **Divestment from Publicly-Traded Fossil Fuel Companies**

In previous meetings, Council expressed concerns regarding City investment in fossil fuel companies. Thus, this provision would restrict investment in those companies. The City currently has investment holdings in Chevron and Exxon. These investments would be held until maturity so as to not incur a market loss, but would be replaced by other allowable investments in the future. In addition, future new investment of City funds in fossil fuel companies would not be allowed.

- **Changes to Allowable Investments, Average Portfolio Maturity, and Benchmarks**

Investment in fossil fuel companies offers the City attractive returns. Therefore, to offset potential decreases in return for the City's investment portfolio, the following changes to the Investment Policy are proposed. All changes move the City up to State allowable limits for investment of public funds. This allow staff responsible for the investment of City funds greater ability to increase returns. Nevertheless, changes proposed will continue to meet the City's primary investment goals of safety, liquidity, and return; in that order:

- o Increasing Weighted Average Maturity limit of investment portfolio from two years to three years.
- o Changing Performance Evaluation/Benchmark from 12 month average of the two year U.S. Treasury Note to the 12 month average of the three year U.S. Treasury Note.
- o Increasing allowable investment in the Local Agency Investment Fund (LAIF) from \$50,000,000 per City account up to State allowable limits (currently \$65,000,000 per City account and can be adjusted by the State).
- o Increasing the allowable percentage of investment portfolio for Banker's Acceptances from 20% to 40%.
- o Increasing the allowable percentage of investment portfolio for Commercial Paper from 10% to 40% for Pooled Funds and 25% for Non-Pooled Funds.
- o Increasing the allowable percentage of investment portfolio for Time Certificates of Deposit from 10% to 100%.
- o Increasing maximum maturity for Time Certificates of Deposit from 2 years to 5 years.

- **Including Correct California Government Code Sections for Investment of Public Funds**

California laws regarding the investment of public funds change periodically. The current sections of the California Government Code that govern these investments are 16340, 16429.1-16429.4, and 53600-53686. These are now fully reflected in the revised Investment Policy before Council.

The FY 2017-18 Policy is in compliance with the provisions of the California Government Code, Sections 16340, 16429.1-16429.4, and 53600-53686, 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 2017-18.

**Attachments:** Resolution and Investment Policy

**\*22. Adopt a Resolution Approving Badger Meters as the Standard Brand of Water Meters Used by the City of Milpitas (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background:** In May of 1999, the City issued a request for bids for water meters. Badger was the only company that met the City's requirements for quality, service and anti-tampering protection. On May 15, 2007, the Council approved Badger water meters as the standard brand of water meter for use in the City. The City currently has over 17,000 Badger meters installed city-wide. Badger meters are currently installed in all new construction and whenever the replacement of non-standard water meters is required. Switching to another brand of water meter would not be in the City's best interest.

The current term of standardization expired on May 16, 2017. As such, the city would like to have a new 10-year standardization period for Badger water meters to be the sole water meter used in the City as allowed, per Milpitas Municipal Code.

Section I-2-3.13 **Standardization** of the Milpitas Municipal Code authorizes the City Council to approve the standardization of supplies, materials or equipment based on the determination of the Purchasing Agent that: (a) Repair or maintenance costs would be minimized; (b) Training of user and/or repair and maintenance personnel would be simplified; (c) Supplies or spare parts would be readily available; (d) Modifications to existing equipment would not be necessary; and/or (e) Matching existing supplies, materials, or equipment is required for proper operation of a particular piece of equipment or City program.

The City's Purchasing Agent has determined that Badger water meters are the most advantageous for the City regarding overall quality and anti-tampering protection, and that standardization of Badger water meters will minimize repair and maintenance costs. Badger water meters would also simplify training of City repair and maintenance personnel, result in readily available supplies and spare parts, and match existing equipment required for proper operation of the City's water metering program

**Fiscal Impact:** None

**Recommendation:** Adopt a resolution approving Badger meters as the standard brand of water meter for the City of Milpitas for ten years.

**XIX. AGREEMENTS**

- \*23. Approve Amendment No. 1 to the Agreement with Best, Best & Krieger, LLP Law Firm for City Attorney Services in the Amount of \$150,000 (Staff Contact: Will Fuentes, 408-586-3111)**

**Background:** At the September 22, 2015 City Council meeting, Council approved the Legal Services Agreement with the law firm Best, Best & Krieger, LLP for City Attorney services. The Agreement specified a maximum amount of \$550,000 per fiscal year. Third party reimbursable legal services are not included in the \$550,000 per fiscal year compensation limit. The amendment before City Council is for an additional \$150,000 for Fiscal Year 2016-17 only for non-reimbursable legal services that were not originally anticipated when the Agreement was approved.

**Fiscal Impact:** Total fiscal impact to the General Fund is \$109,700. A budget appropriation of \$150,000 is requested; which includes \$109,700 from the General Fund and \$40,300 from the Water fund. In addition, a budget appropriation of \$142,300 is requested for third party reimbursable legal services that will be reimbursed by developers and other third parties.

**Recommendation:** Approve Amendment No. 1 to the Agreement for Legal Services with Best, Best & Krieger, LLP in the amount of \$150,000, and approve a total budget appropriation of \$292,300, of which \$142,300 will be reimbursed by developers/third parties, \$109,700 will come from the General Fund and \$40,300 will come from the Water Fund.

**Attachments:**

- a) Amendment No. 1 to Agreement with Best, Best & Krieger LLP
- b) Budget Change Form

- \*24. Approve the Agreement Between the City of Milpitas and Mobilitie to Install Small Cell Antennas on Municipal Facilities (Staff Contact: Mike Luu, 408-586-2706)**

**Background:** Mobilitie requested a Conditional Use Permit for the construction of a new small cell site within the public right of way of existing street light pole. The equipment associated with the cellular antenna would be installed to the pole between seven and 24 feet above ground level. Planning Commission approved four Resolutions 16-025, 16-026, 16-027, 16-029 for four sites. These small cell sites do not necessarily provide WiFi capability. The proposed agreement will allow for the installation of four small cell antennas at four municipal facilities. Any future small cell antenna installation by Mobilitie will be requested via additional site supplement.

**Fiscal Impact:** As part of the agreement, Mobilitie LLC agreed to pay an annual fee of \$1,500 for the use of each authorized installation of Small Cell Equipment.

**Recommendation:** Approve the Agreement between the City of Milpitas and Mobilitie LLC for the use of municipal facilities to install small cell antennas and associated equipment.

**Attachment:** Small Cell License Agreement Milpitas Mobilitie

- \*25. Approve Amendment No. 5 to the Cayenta Software Support and Maintenance Service Agreement for the Financial and Utility Billing System for Not-To-Exceed \$3,000 (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background:** In 2015, the City of Milpitas entered into an agreement with Cayenta to implement a wireless Beacon Meter Reading Interface for the City of Milpitas. Cayenta is the

developer of the software, and there is no other source for support and maintenance of this application. The City desires to amend the agreement by \$3,000 to receive continued on-site, in-person training for City staff for a new combined maximum compensation amount of \$115,784.

**Fiscal Impact:** None. Funds for this purchase are available from the Capital Improvement Program Project No. 7121 Automatic Meter Replacement Program budget and the Finance Department Fiscal Year 2017-18 operating budget.

**Recommendation:** Approve Amendment No. 5 to the Cayenta Software Support and Maintenance Service Agreement for the financial and utility billing system for an amount not-to-exceed \$3,000.

**Attachments:**

- a) Amendment No. 5 to the Agreement with Cayenta
- b) Quote from Cayenta (Exhibit F)

- \*26. Authorize the City Manager to Execute Amendment No. 5 to the Agreement with G&K Services for Uniform Rental and Laundry Services for Not-To-Exceed \$46,000 Annually (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background:** On March 5, 2012, the City of San Jose went out to bid for uniform rental and laundry service. The contract was awarded to G&K Services. On August 8, 2012, the City of Milpitas entered into a five-year piggyback contract with G&K based on the terms and conditions of the San Jose contract for uniform rental and laundry service, which also includes towels, mats and cleaning equipment such as mops, aprons and shop towels. The City of San Jose contract was competitively bid and met City of Milpitas procurement policies. Currently, the year five annual contract amount is at \$30,000. However, over the last year of the contract, adjustments to service levels and quantities due to increased staffing, replacement of damaged or lost garments, as well as a mandatory 3% annual increase included in the contract have resulted in an average monthly cost of \$3,000 and a projected year-end total of \$35,000. As such, staff requests an increase of \$5,000 to cover the additional cost for services rendered and to be rendered through the existing term of the contract, August 7, 2017.

In addition, the city is currently in the process of switching to a new cooperative procurement contract and staff is reviewing terms, conditions, and pricing with a number of available cooperatives, such as the National Joint Powers Alliance (NJPA), US Communities, National Intergovernmental Purchasing Alliance, Los Angeles World Airports (LAWA) and the County of Alameda.

A transition to a new vendor will require the removal and return of all G&K lockers, roll towel dispensers, uniforms, towels, mats, mops, and other rental goods from multiple City locations while concurrently planning and scheduling garment fittings for staff and delivery of new rental goods and supplies with the proposed vendor; all of which requires a high degree of coordination among G&K Services, the proposed new vendor and City administrative and field staff.

To accomplish this, staff requests a contract extension of three months, from August 8, 2017 to November 7, 2017, and an additional increase of \$11,000 (on top of \$5,000 requested above) to cover rental costs during the period and any unforeseen close-out costs of the G&K contract; thereby bringing the total amended contract for the period of August 7, 2016 to November 7, 2017 to \$46,000. The total of the five year contract would increase from an original amount of \$140,000 to an amended amount of \$156,000.

As soon as staff has determined the best value vendor and negotiated the proposed contract, the recommendation for award will be presented to City Council.

**Fiscal Impact:** None: The cost for this service is included in the individual department operating budgets.

**Recommendation:** Authorize the City Manager to execute Amendment No. 5 to the uniform rental and laundry service contract with G&K Services for the annual not to exceed amount of \$46,000.

**Attachment:** Amendment No. 5 to the Agreement with G&K Services

- \*27. Approve an Amendment No. 11 to the Master Agreement with the Santa Clara Valley Transportation Authority Relating to the Silicon Valley Rapid Transit Berryessa BART Extension Project, Appropriate \$125,000 to CIP No. 4265, BART Extension Coordination and Planning, and Authorize Payment up to \$125,000 to VTA for Union Pacific Railroad Off-Quadrant Pedestrian Crossing Signal Improvements at Dixon Landing Road At-Grade Railroad Crossing (Staff Contact: Steve Chan, 408-586-3324)**

**Background:** The extension of the Bay Area Rapid Transit (BART) system into Santa Clara County is being implemented by Valley Transportation Authority's (VTA) Silicon Valley Rapid Transit (SVRT) program. The City and VTA executed a Master Agreement in 2010, which created a cooperative frame work between VTA and the City for the design and construction of the BART line extension through Milpitas. This agreement allows for reimbursement of City expenses for a variety of coordination efforts, including but not limited to design approval and inspection of City facilities, encroachment permit oversight, easements, utility maintenance operations, meetings, resolution of construction issues, and consultant support. The agreement also establishes a mechanism for reimbursement to VTA for upgrades to City infrastructures within the work area.

Lennar Homes' Waterstone residential development project located on California Circle by I-880 northbound off-ramp is required to make off-quadrant pedestrian crossing signal improvements to Union Pacific Railroad's (UPRR) Dixon Landing Road at-grade railroad crossing to enhance pedestrian safety as part of its project Conditions of Approval.

VTA currently has an existing UPRR permit to implement other improvements at the same Dixon Landing Road at-grade rail crossing as part of BART project. Lennar Homes wishes to expedite completion of Waterstone's required UPRR improvements by incorporating this work in VTA's existing UPRR permit for Dixon Landing Road at-grade railroad crossing.

Waterstone's required off-quadrant pedestrian crossing signal improvements at Dixon Landing Road at-grade railroad crossing has an engineer's estimate cost of \$100,161. UPRR will only accept funds from the VTA, the current UPRR permit applicant, for rail crossing improvements at Dixon Landing Road. VTA is agreeable to incorporating Waterstone's UPRR improvements into VTA's current UPRR permit provided VTA is fully reimbursed for the improvement cost.

VTA will only accept funds from City of Milpitas for UPRR railroad crossing improvements at Dixon Landing Road and not from a private developer such as Lennar Homes.

Lennar Homes has deposited \$125,000 (\$100,161 engineer's estimate for off-quadrant pedestrian crossing signal improvements and an approximately additional 25% construction cost contingency) with the City for UPRR off-quadrant pedestrian crossing signal improvement at Dixon Landing Road at-grade railroad crossing

City staff desires Lennar Homes to implement Waterstone's required UPRR off-quadrant pedestrian crossing signal improvements at Dixon Landing Road at-grade railroad crossing without delay. Amendment No. 11 to the Master Agreement with the Santa Clara Valley Transportation Authority Relating to the Silicon Valley Rapid Transit Berryessa BART Extension Project and proposed budget appropriation will be used to reimburse VTA with Lennar Homes' deposited fund for off-quadrant pedestrian crossing signal improvements at Dixon Landing Road at-grade railroad crossing expenditures.

**Alternative:** If Amendment No. 11 to the Master Agreement with the Santa Clara Valley Transportation Authority Relating to the Silicon Valley Rapid Transit Berryessa BART Extension Project is not approved, off-quadrant pedestrian crossing signal implementation at Dixon Landing Road Railroad Crossing may be delayed.

**California Environmental Quality Act:** Dixon Landing Road at-grade crossing off-quadrant pedestrian crossing signal improvement is covered under VTA's BART Silicon Valley Extension Project environmental documents.

**Fiscal Impact:** None. Lennar Homes, the developer of Waterstone, has deposited sufficient funds to reimburse VTA for the Dixon Landing Road at-grade railroad crossing off-quadrant pedestrian crossing signal improvement.

**Recommendations:**

1. Approve Amendment No. 11 to the Master Agreement with the Santa Clara Valley Transportation Authority (VTA) relating to the Silicon Valley Rapid Transit Berryessa BART Extension Project (GT-1063).
2. Appropriate \$125,000 of Lennar Homes deposited funds with the City to CIP No. 4265, BART Extension Coordination and Planning.
3. Authorize a payment up to \$125,000 to VTA for off-quadrant pedestrian crossing signal improvements at Dixon Landing Road At-Grade railroad crossing from CIP No. 4265, BART Extension Coordination and Planning.

**Attachments:**

- a) Amendment No. 11 to Master Agreement with VTA
- b) Budget Change Form

- \*28. Approve and Authorize the City Manager to Execute Amendment No. 4 to the Consulting Service Agreement with EOA, Inc. to Increase the Hourly Rate, to Increase the Compensation by \$35,000 and to Extend the Term to June 30, 2018, Associated with Municipal Regional Stormwater Permit C3 Reviews for Land Development Projects (Staff Contact: Judy Chu, 408-586-3325)**

**Background:** To comply with Provision C.3. of the Municipal Regional Stormwater Permit, City entered into an agreement with EOA, Inc. on January 6, 2015 for Permit-mandated reviews associated with the new development and redevelopment projects.

A list of the amendments to the agreement with EOA, Inc. is summarized here.

| Agreement       | Date of Agreement | Term of Agreement | Aggregate Amount (NTE = not to exceed) | Approval Authority                    |
|-----------------|-------------------|-------------------|----------------------------------------|---------------------------------------|
| Original        | 1/6/2015          | 1/5/2017          | NTE \$120,000 (with NTE \$60,000/year) | City Council on 1/6/15                |
| Amendment No. 1 | 10/16/2015        | 1/5/2017          | NTE \$120,000                          | City Manager (eliminate NTE per year) |

|                 |           |           |               |                                                              |
|-----------------|-----------|-----------|---------------|--------------------------------------------------------------|
| Amendment No. 2 | 12/6/2016 | 6/30/2017 | NTE \$220,000 | City Council on 12/6/16                                      |
| Amendment No. 3 | 6/30/2017 | 9/30/2017 | NTE \$220,000 | City Manager (extend the term by 3-months)                   |
| Amendment No. 4 | 8/1/2017  | 6/30/2018 | NTE \$255,000 | City Council (extend the term and increase the compensation) |

Amendment No. 4 is needed based upon the projected demands from the development projects. The average service expenditure for EOA, Inc. is approximately \$7,000 per month. All the costs associated with EOA's service are to be reimbursed to the City by the developers.

Staff recommends that the City Council approve Amendment No. 4 with an additional compensation in the amount of \$35,000 with the total compensation not-to-exceed \$255,000, and to extend the term to June 30, 2018.

**Alternative:** Denial will lead to non-compliance with the Permit. There is no City staff currently trained to perform the subject Permit-mandated task.

**California Environmental Quality Act:** This action is not considered a project under CEQA as there will be no direct, or reasonable foreseeable indirect physical change in the environment as this item concerns merely staff augmentation at the City.

**Fiscal Impact:** The proposed amendment is within the approved budget for Fiscal Year 2017-18 for Engineering Department - Land Development. All costs associated with the proposed amendment will be reimbursed by the developers through their private job accounts.

**Recommendation:** Approve and authorize the City Manager to execute amendment No. 4 to the Consulting Service Agreement with EOA, Inc. to increase the hourly rate, to increase the compensation by \$35,000 and to extend the term to June 30, 2018, associated with Municipal Regional Stormwater Permit C3 Reviews for Land Development projects.

**Attachment:** Amendment No. 4 to the Consulting Services Agreement with EOA, Inc.

**\*29. Authorize the City Manager to Execute a Storm Water Management Facilities Operation and Maintenance Agreement with KB Home South Bay, Inc. for Development at 1210 California Circle (Staff Contact: Judy Chu, 408-586-3325)**

**Background:** On November 18, 2014, the City Council conditionally approved a Planned Unit Development Permit, a Site Development Permit and a Major Tentative Map for a 144-unit residential development at 1210 California Circle south of Dixon Landing Road between Highway 880 and Lower Penitencia Creek.

Project condition no. 63e requires the property owner to execute and record a Storm Water Management Operation and Maintenance Agreement with the City for the operation, maintenance and annual inspection of the storm water treatment facilities, prior to final building occupancy. The Agreement (copy in the agenda packet) was reviewed by the City Attorney as to form and by the Director of Engineering as to content.

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

**Fiscal Impact:** None.

**Recommendation:** Authorize the City Manager to execute a Storm Management Facilities Operation and Maintenance Agreement for KB Home South Bay, Inc. for its new residential development at 1210 California Circle.

**Attachment:** Storm Water Management Operation and Maintenance Agreement

- \*30. **Approve Amendment No. 4 to the Agreement with RMC Water and Environment to Increase Compensation in the Additional Amount of \$183,868 and to Extend the term to June 30, 2021 for the Dempsey Road Water Line Replacement, Projects No. 7118, No. 7117, No. 7100, No. 7129 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 agreement amendment No. 1 with RMC Water and Environment in the amount of \$575,000 to perform additional design services to design a recycled waterline along the alignment of the Dempsey area utilities project. The addition of the recycled water line to the project was made to take advantage of the opportunity to install the recycled water line under the I680 freeway and through the Dempsey area at the same time as the potable water line which should result in a significantly reduced construction cost and the ability to provide recycled water to the east side of the City much sooner than was previously anticipated. Amendment No. 2 was approved on August 16, 2016 in the amount of \$86,278 for additional potholing work. Amendment No. 3 was approved on February 29, 2017 to increase time available to complete the work.

Revised project funding, outside of staff's control, required changes to the project design and value engineering modifications to be made. Value engineering (VE) included removal of a portion of storm drain replacement, and the inclusion of water line replacement from Los Coches to the Ayer pump station as part of the base bid project. These changes require changes to 90% of the 77 plan sheets including the removal of a portion of the storm drain work and additional design work to extend the water line design an additional 3,555 linear feet.

Staff recommends that RMC Water and Environment perform these additional design engineering services to revise the project plans and specifications to match the project scope and available funding. Amendment No. 4 with RMC Water and Environment is proposed for these additional services. Staff negotiated a fee for these services not to exceed 183,868, which is considered reasonable for the work. Approval of this amendment brings the total agreement amount to \$1,745,146.

**Alternate:** Failure to proceed with this work will result in delays to completion of this project and potential future utility line breaks and maintenance repairs.

**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 and in 2016 for the recycled water line installation.

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

**Recommendation:** Approve Amendment No. 4 to the Agreement with RMC Water and Environment to increase compensation in the additional amount of \$183,868 and extend the term to June 30, 2021 for the Dempsey Road Water Line Replacement, Projects No. 7118, No. 7117, No. 7100, No. 7129 and No. 3709.

**Attachment:** Amendment No. 4 to the Agreement with RMC Water and Environment

- \*31. Approve Amendment No. 1 to the Agreement with West Yost Associates to increase Compensation in the Additional Amount of \$293,055 for the McCandless Well, Project No. 7076 (Staff Contact: Steve Erickson, 408-586-3301)**

**Background:** On March 7, 2017, the City entered into a consultant agreement with West Yost Associates in the amount of \$435,000 to prepare plans and specifications, obtain regulatory permits, and hire a contractor to drill a potable water test well within the future McCandless Park.

During the design process several unforeseen conditions were found that affect the design and increase the well driller's price to install the test well. The water aquifer conditions within Milpitas are currently under high pressure artesian conditions. This means the water will flow from the test well hole without the use of a pump, and at a high rate of flow and pressure. This condition requires additional care during the design and construction phase to ensure the test well does not destroy itself during drilling, and to account for the disposal of a large volume of water during well installation and testing. Due to the artesian conditions, the drilling operation will need to continue 24 hours per day non-stop for up to a week, and this type of construction could generate noise complaints from the residents along McCandless Drive. To mitigate this noise, the installation of a temporary 24 foot high noise barrier curtain surrounding the well construction site is recommended.

It was also determined the native soil onsite includes naturally occurring asbestos (NOA) which originates from the rock Serpentine. Serpentine is the official State rock of California and NOA soils are frequently found within the State, however the presence of asbestos does require special handling and disposal.

Staff negotiated a fee for the additional design and well installation services not to exceed \$293,055, which is considered reasonable for the desired services. Approval of Amendment No. 1 to the agreement with West Yost Associates to perform these additional services is recommended. Approval of this amendment brings the total agreement cost to \$728,055.

**Alternate:** Failure to proceed with this work will result in not moving forward with installation of the McCandless test well or the future permanent potable water well.

**California Environmental Quality Act:** This project is categorically exempt under CEQA guidelines.

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

**Recommendation:** Approve Amendment No. 1 to the agreement with West Yost Associates for Project No. 7076 and increase the agreement amount by \$293,055.

**Attachment:** Amendment No. 1 to the Agreement with West Yost Associates

## **XX. DEMANDS**

- \*32. Authorize Payments to Cayenta and Portford for Annual Software Support and Maintenance Fees (Staff Contact: Mike Luu, 408-586-2706)**

**Background:** The City utilizes a number of automated systems for critical functions such as utility billings, human resources management and financial management. These systems require payment for annual support and maintenance fees in order to continue vendor support. This generally included telephone support, software fixes and new software versions. The following annual maintenance payments are now due and require payment in order to continue support through the fiscal year 2017-18: Cayenta (Finance and Human Resources management system) for \$190,336.36; and Portford Solutions Group, Inc. (Document Management) for \$23,836.00.

**Fiscal Impact:** Funding for these annual maintenance payments is included in the Information Services Department budget.

**Recommendation:** Authorize payment of annual support and maintenance to two vendors: Cayenta for \$190,336.36 and Portford Solutions Group, Inc. for \$23,836.00.

**Attachments:** Invoices from Cayenta and from Portford Solutions

**\*33. Receive a Report on Emergency Repairs of Storm Pumps at Penitencia Pump Station and Berryessa Pump Station and Authorize Payment of Invoices to Pump Repair Service Company in the Amount of \$10,062.50 and Peterson Power in the Amount of \$6,788.43 (Staff Contact: Nina Hawk, 408-586-2603)**

**Background:** On March 20, 2017, the jockey pump at Penitencia Storm Pump Station experienced critical mechanical failure. The Penitencia Storm Pump Station is responsible for maintaining the water level of the Hall Park lagoon. Failure to repair the pump increased the potential for flooding of the Hall Park lagoon, placing lives and property at risk. Because the jockey pump failed during the rainy season, it was essential that staff have the pump repaired as soon as possible in order to mitigate the potential risk of flooding. Due to the seriousness of the mechanical failure, staff determined the pump could not be repaired in house. In order to protect public health and prevent property damage from potential flooding, staff contacted Pump Repair Service Company to make necessary repairs to the Penitencia Storm Pump Station jockey pump.

On March 13, 2017, the jockey pump at Berryessa Storm Pump Station experienced a critical mechanical failure. Failure to repair the pump increased the potential for flooding. Due to the seriousness of the mechanical failure, staff determined the pump could not be repaired in house. In order to protect public health and prevent property damage from potential flooding, staff contacted Peterson Power to make necessary repairs to the Penitencia Storm Pump Station jockey pump.

**Fiscal Impact:** None. There are sufficient funds in the Capital Improvement Project No. 3710 – Penitencia Pump Station and Utilities Operating Budget.

**Recommendations:**

1. Authorize City Manager to approve payment in the amount of \$10,062.50 to Pump Repair Service Company from Capital Improvement Project 3710, Penitencia Station.
2. Authorize the City Manager to approve payment in the amount of \$6,788.43 to Peterson Power from the Utilities Operating Budget.

**Attachment:** none

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

**XXII. ADJOURN JOINT MEETING**