



# **JOINT MEETING OF THE MILPITAS CITY COUNCIL AND PUBLIC FINANCE AUTHORITY**

## **AGENDA**

**TUESDAY, JUNE 20, 2017**

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

**6:00 P.M. (CLOSED SESSION)**

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

## **SUMMARY OF CONTENTS**

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

#### **(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 - 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

#### **(c) 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

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

Pursuant to California Government Code section 54956.9(d)(2) - City as Defendant

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

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

### **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 (Mayor Tran)**

### **V. SCHEDULE OF MEETINGS – COUNCIL CALENDAR - June and July 2017**

### **VI. PRESENTATIONS**

- Proclaim Filipino Independence Remembrance Day on June 20, 2017
- Recognize Milpitas Librarian Steve Fitzgerald as Honoree for Employee Excellence
- Award Larry Voellger Scholarships - a Milpitas Arts Commission program
- Proclaim July 2017 as Parks & Recreation Month
- Commend Milpitas Swoosh Achievements – Milpitas Community Youth Basketball Team

## **VII. PUBLIC FORUM**

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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.

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## **VIII. ANNOUNCEMENTS**

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

### **X. APPROVAL OF AGENDA**

### **XI. CONSENT CALENDAR (Items with asterisks\*)**

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Consent calendar items are considered to be routine and will be considered for adoption by one motion. There will be no separate discussion of these items unless a 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.

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### **XII. APPROVE COUNCIL MEETING MINUTES - May 22 and June 6, 2017**

## **XIII. PUBLIC HEARINGS**

- 1. Conduct a Public Hearing and Adopt a Resolution Approving the Annual Engineer's Report, Confirming Diagram and Assessment, and Ordering Levy of Assessment for Fiscal Year 2017-18 for the Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch (Staff Contact: Judy Chu, 408-586-3325)**
- 2. Conduct a Public Hearing and Adopt a Resolution Approving the Annual Engineer's Report, Confirming Diagram and Assessment, and Ordering Levy of Assessment for Fiscal Year 2017-18 for the Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon (Staff Contact: Judy Chu, 408-586-3325)**
- 3. Conduct a Public Hearing, Adopt the Annual Action Plan for 2017-18 and Adopt the Five-Year Consolidated Plan for 2017-2022 related to the Community Development Block Grant Program (Staff Contact: Tim Wong, 408-586-3286)**
- 4. Conduct a Public Hearing and Consider Adoption of Ordinance No. 240.6, Lifting Water Shortage Emergency and Easing Supplemental Water Use Restrictions (Staff Contact: Nina Hawk, 408-586-2603)**

## **XIV. REPORTS OF OFFICERS**

- \* 5. Approve Recommendation for Appointment of the Director of Financial Services 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 by Elected Official(s) (Contact: Councilmember Nuñez, 408-586-3029)**

## **XV. NEW BUSINESS**

- 7. Receive a Report from the Metropolitan Transportation Commission and the Association of Bay Area Governments Regarding the Draft Plan Bay Area 2040 (Contact: Councilmember Nuñez, 408-586-3023)**

- \*8. Receive Staff Report on Commissioners' Attendance (Staff Contact: Mary Lavelle, 408-586-3001)**
- \*9. Consider Requests from American Cancer Society and St. Elizabeth Catholic Church to Waive Fees for the Annual Relay for Life and for the Church's Parish Festival (Staff Contact: Mary Lavelle, 408-586-3001)**

## **XVI. ORDINANCES**

- 10. Waive the First Reading and Introduce 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)**
- 11. Receive Staff Presentation of Urgency Ordinances Pertaining to the Preservation of Affordable Housing (Staff Contact: Christopher Diaz, 408-586-3040)**

## **XVII. RESOLUTIONS**

- \*12. Adopt a Resolution Authorizing the Purchase of Avolve ProjectDox Software from Insight Public Sector in the Amount of \$334,656.20 Through a Cooperative Procurement Contract Through US Communities (Staff Contacts: Chris Schroeder, 408-586-3161 and Mike Luu, 408-586-2706)**
- \*13. Adopt Resolutions of the Milpitas City Council and Milpitas Public Financing Authority Board Authorizing Investment of Monies in the Local Agency Investment Fund and Updating Officers Information (Staff Contact: Will Fuentes, 408-586-3111)**
- \*14. Adopt a Resolution Rescinding Resolution No. 8292 and Appointing Certain Employees to the Association of Bay Area Government Pooled Liability Assurance Network (ABAG PLAN) Board of Directors (Staff Contact: Will Fuentes, 408-586-3111)**
- \*15. Adopt a Resolution Awarding a Contract to O'Grady Paving, Inc. for the Street Resurfacing 2017, Project No. 4284, and Authorize the Director of Engineering/City Engineer to Execute Contract Change Orders (Staff Contact: Steve Chan, 408-586-3324)**
- \*16. Adopt a Resolution Granting Approval to Submit a Grant Application to County of Santa Clara Historical Heritage Grant Program for the Alviso Adobe, Phase 5 Interior Restoration, Project No. 5055 (Staff Contact: Steve Erickson, 408-586-3301)**
- \*17. Waive Immaterial Bid Irregularity, Adopt a Resolution Awarding a Contract to D & D Pipelines Inc., Authorize Interim Director of Engineering/City Engineer to Execute Contract Change Orders, and Approve Amendment No. 1 to the Agreement with Mott MacDonald, LLC for the Daniel Court Water Main and Services Replacement, Projects No. 7110 and No. 7131 (Staff Contact: Steve Erickson, 408-586-3301)**
- \*18. Adopt a Resolution Authorizing the Purchase of Three City Vehicles from the National Auto Fleet Group for the Not-To-Exceed Amount of \$117,616.82 Through a Cooperative Procurement Contract Through the National Joint Powers Alliance (Staff Contacts: Chris Schroeder, 408-586-3161 and Robert Hill, 408-586-2626)**
- 19. Adopt a Resolution for Exception to the 180-Day Wait Period in Accordance with California Government Code Sections 7522.56 and 21224 Related to Hiring in the Police Department (Staff Contact: Tina Murphy, 408-586-3086)**

20. **Adopt a Resolution Approving a Technical Correction to Resolution No. 8668 Appointing Steve Pangelinan as Acting City Manager Pursuant to Government Code Sections 7522.56 and 21224 (Staff Contact: Tina Murphy, 408-586-3086)**
21. **Adopt a Resolution Approving a Censure Policy for the City Council (Staff Contact: Christopher Diaz, 408-586-3040)**

#### **XVIII. AGREEMENTS**

- \*22. **Approve and Authorize the City Manager to Execute Amendment No. 1 to the Joint Use Agreement for Portions of Lower Penitencia Creek and Penitencia East Channel for Pedestrian/Bicycle Trail and Bridge Improvements (Staff Contact: Greg Chung, 408-586-3355)**
- \*23. **Authorize the City Manager to Execute a Fee Reimbursement Agreement for a Parkland Associated with a Residential Development Located at 450 Montague Expressway by Lennar Homes (Staff Contact: Bradley Misner, 408-586-3273)**
- \*24. **Approve Plans and Specifications and Authorize Advertisement for Bid Proposals for Park Access Improvement and Resurfacing, Project No. 5105 and Americans with Disabilities Act Curb Ramp Transition Program, Project No. 4283 (Staff Contact: Steve Chan, 408-586-3324)**
- \*25. **Approve an Agreement with Biggs Cardosa Associates, Inc. for the Lower Penitencia Creek Pedestrian Bridge, Project No. 2005 (Staff Contact: Greg Chung, 408-586-3335)**
- \*26. **Approve Amendment No. 2 to the Consulting Services Agreement with HydroScience Engineers, Inc. in the Amount of \$75,000 to Continue Staff Augmentation Services for the Utility Engineering (Staff Contact: Nina Hawk, 408-586-2603)**
- \*27. **Approve Amendment No. 2 to the Agreement with Matthew W. Adams, an Individual Doing Business as All-Line Uniform Sales, to Expand the Scope of Services and Increase the Total Compensation by \$30,585 (Staff Contract: Chris Schroeder, 408-586-3161)**
- \*28. **Approve Amendment No. 4 to the Cayenta Software Support and Maintenance Service Agreement for the Financial and Utility Billing System for the Not-To-Exceed Amount of \$23,550 (Staff Contact: Chris Schroeder, 408-586-3161)**
- \*29. **Authorize the City Manager to Execute a Bridge Contract with Terracare Associates LLC for Four Months in the Amount of \$383,333 to Allow Time to Rebid the Agreement for Parks Maintenance (Staff Contacts: Chris Schroeder, 408-586-3161 and Robert Hill, 408-586-2626)**
- \*30. **Approve Amendment No. 4 to the Agreement with Law Firm of Burke, Williams & Sorensen, LLP for Legal Services Regarding Elimination of Odor (Staff Contact: Christopher Diaz, 408-586-3040)**
- \*31. **Approve an Agreement with City of San Jose to Provide Fats, Oils and Grease (FOG) Inspection and Plan Check Services and Transitional Training through December 31, 2017 in the Amount of \$66,267, and Direct the City Manager to Execute the Agreement in a Form Approved by the City Attorney (Staff Contact: Nina Hawk, 408-586-2603)**

#### **XIX. DEMAND**

- \*32. Receive a Report on Emergency Repair of Yosemite Drive Water Main, and Authorize Payment of Invoices in the Amount up to \$200,000 to Suuluutaaq and \$30,000 to R&B Company (Staff Contact: Nina Hawk, 408-586-2603)**

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

**XXI. ADJOURN JOINT MEETING**

**NEXT REGULAR CITY COUNCIL MEETING:**  
**TUESDAY, AUGUST 1, 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**

Current vacancies on:

Arts Commission  
Bicycle Pedestrian Advisory Commission  
Community Advisory Commission  
Economic Development Commission  
Emergency Preparedness Commission  
Library 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.

*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 Approving the Annual Engineer's Report, Confirming Diagram and Assessment, and Ordering Levy of Assessment for Fiscal Year 2017-18 for the Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch (Staff Contact: Judy Chu, 408-586-3325)**

**Background:** On June 6, 2017, the City Council adopted Resolution No. 8675 approving annual Engineer's Report, declaring its intention to levy and collect assessment for Fiscal Year (FY) 2017-18, and setting a public hearing date on June 20, 2017 for the Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch (LLMD 95-1).

The total net assessment for LLMD 95-1 is \$325,877. The assessment rate is \$0.02761 per square foot, which is a 5.77% increase from the prior year being \$0.02611 per square foot. The increased rate is due to adjustment for inflation, increased operation and maintenance needs and to fund for future Capital Improvement Program project. The assessment rate increases have been 5.97% for FY 2016-17 and 5.07% for FY 2015-16. The assessment rate is under the maximum authorized range (\$0.0431 per square foot) previously approved by the owners of the LLMD 95-1. Section 7 of the Engineer's Report provides the FY 2017-18 assessment for each of the parcels located within the LLMD 95-1.

The Notice of Public Hearing was published twice in the *Milpitas Post* on June 9 and 16, 2017, online on the newspaper's website, and posted to the City website.

**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 environment.

**Fiscal Impact:** Levy and collection of assessment for LLMD 95-1 would provide funding resource for the City to improve and maintain public landscaping, irrigating and pedestrian lighting.

**Recommendations:**

1. Open the public hearing to receive comments and move to close the public hearing following any speakers.
2. Adopt a resolution approving the annual Engineer's Report, confirming the diagram and assessment, and ordering levy of assessment for Fiscal Year 2017-18 for the Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch.

**Attachments:**

- a) Resolution
- b) Annual Engineer's Report for LLMD No. 95-1 McCarthy Ranch

2. **Conduct a Public Hearing and Adopt a Resolution Approving the Annual Engineer's Report, Confirming Diagram and Assessment, and Ordering Levy of Assessment for Fiscal Year 2017-18 for the Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon (Staff Contact: Judy Chu, 408-586-3325)**

**Background:** On June 6, 2017, the City Council adopted Resolution No. 8676 approving annual Engineer's Report, declaring its intention to levy and collect assessment for Fiscal Year (FY) 2017-18, and setting a public hearing date on June 20, 2017 for the Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon (LLMD 98-1).

The total net assessment for LLMD 98-1 is \$40,473. The assessment rate is \$412.994 per lot, which is a 3.46% increase from the prior year being \$399.2 per lot. The increased rate is due

to adjustment for inflation and increased operation and maintenance needs. The assessment rate increases have been 2.8% for FY 2016-17 and 4% for FY 2015-16. The assessment rate is under the maximum authorized range (\$445.064 per lot) previously approved by the owners of the LLMD 98-1. Section 7 of the Engineer's Report provides the FY 2017-18 assessment for each of the 98 lots located within the LLMD 98-1.

The Notice of Public Hearing was published twice in the *Milpitas Post* on June 9 and 16, 2017, online on the newspaper's website, and posted to the City website.

**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 environment.

**Fiscal Impact:** Levy and collection of assessment for LLMD 98-1 would provide funding resource for the City to improve and maintain public landscaping and irrigating.

**Recommendations:**

1. Open the public hearing to receive comments and move to close the public hearing following any speakers.
2. Adopt a resolution approving the annual Engineer's Report, confirming the diagram and assessment, and ordering levy of assessment for Fiscal Year 2017-18 for the Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon.

**Attachments:**

- a) Resolution
- b) Annual Engineer's Report for LLMD No. 98-1 Sinclair Horizon

**3. Conduct a Public Hearing, Adopt the Annual Action Plan for 2017-18 and Adopt the Five-Year Consolidated Plan for 2017-2022 related to the Community Development Block Grant Program (Staff Contact: Tim Wong, 408-586-3286)**

**Background:** The federal Department of Housing and Urban Development (HUD) administers the Community Development Block Grant (CDBG) program. The CDBG program allocates funds directly to State or entitlement communities (cities with populations over 50,000) to fund local community development activities such as housing, infrastructure development or antipoverty programs. The City receives approximately \$400,000 a year directly from HUD as an entitlement community. The allocation amount from HUD will vary year to year.

Typically the CDBG funding starts at the beginning of January with staff releasing a Notice of Funding Availability for all eligible service providers to apply. The application period is usually open for at least 30 days, through the month of January. In February, after the application period has closed, City staff will vet each application and make funding recommendations for Commission Advisory Commission (CAC) review. In March, at the CAC hearing, each applicant presents their project and CAC makes their funding recommendations to the Council. Usually, HUD allocates the CDBG funds in March or April, however this year the City has not received their amount due the uncertainty of the Federal budget. Therefore the City still has not received its CDBG allocation from HUD. The City Council reviews the CAC recommendations and makes final approval of the recommendations, generally with a public hearing in April.

In order for projects to receive funding, each project must meet at least one of the national objectives: 1) activities that benefit low-and moderate income people, 2) prevention of slum and blight or 3) community activity to address an urgent health or safety. Historically, all of the City's funded applications have met the first objective.

### **Annual Action Plan and Consolidated Plan Adoption Process**

At the June 6, 2017 Council meeting, the Council approved the FY 2017-18 CDBG funding recommendations and began its initial review of the draft 2017-22 Consolidated Plan. The approved CDBG funding recommendations will be incorporated into the Annual Action Plan. This meeting is the second of two required public hearings for the Consolidated Plan.

### **Annual Action Plan for Program Year 2017-2018**

The draft Annual Action Plan describes the anticipated CDBG activities and expenditures to be undertaken for fiscal year 2017-18 and how these activities relate to meeting the goals and objectives identified in the Five-Year Consolidated Plan. The draft Annual Action Plan was advertised for public review and comments for 15 days (from June 5 to June 19, 2017) and the draft was sent to CDBG applicants for their review. The draft Annual Action Plan was also made available at the Milpitas Public Library, City Hall and online on the City's website ([www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov)). Any significant public comments received will be incorporated in the final Action Plan prior to the submittal to HUD. HUD the reviews and approves the Action Plan prior to releasing CDBG funds.

The Annual Action Plan includes the approved CDBG funding recommendations from the June 6, 2017 City Council meeting. The Annual Action Plan lists all the organizations approved for CDBG funding, what projects they will undertake and how it will meet the goals and objectives outlined in the Consolidated Plan.

On a procedural note, technically the Action Plan is part of the Consolidated Plan, therefore the request is to adopt the Annual Action Plan for FY 2017-18 prior to considering adopting the Five Year Consolidated Plan.

### **2017-2022 Five-Year Consolidated Plan**

The Consolidated Plan is required to have two Public Hearings. The City Council began the review of the Consolidated Plan at its June 6, 2017 meeting. This is the second required public hearing.

As part of receiving CDBG funds, the Consolidated Plan is a document required by the Department of Housing and Urban Development (HUD). The required report, due to HUD every five years, lays out the framework of the needs and priorities of the community for a five year period. The Consolidated Plan is implemented through two annual reports, the Annual Action Plan and the Consolidated Annual Performance and Evaluation Report (CAPER). The Annual Action Plan is described above.

In preparing the Consolidated Plan, City staff expanded the scope of its public outreach activities compared to the outreach activities of previous years. A more proactive approach was taken to solicit community input. The City made presentations to five commissions, a Milpitas Adults English as a Second Language (ESL) class and also the Sunnyhills Neighborhood Association. Staff also conducted five community meetings throughout the City which included City Hall, Milpitas Library, Milpitas Police Department, and Sinnott Elementary School. All community meetings were advertised in three different languages (English, Spanish and Vietnamese) in the Milpitas Post, San Jose Mercury, and the City Website. In addition, staff prepared an online survey for individuals who could not make any of the meetings or for meeting attendees who wanted to provide additional input.

In the development of the Consolidated Plan, HUD requires that the Consolidated Plan analyze the following areas:

1. Needs Assessment Analysis – This section is an analysis to determine if there is a need for affordable housing. Identifies if there is a segment of the population that is more adversely affected by the housing market.

2. Housing Market Analysis – Analysis to determine if there is sufficient housing inventory to meet the housing needs of the community and to identify the most significant housing needs of the lower income populations, including the homeless.
3. Strategic Plan – Based on the previous analyses, it is the City’s plans of how to meet the housing needs of the community.

Based on the analysis and in addition to the community input, a number of goals were identified. Identified goals are summarized as follows:

- Affordable Housing Development and Preservation
- Maintain and preserve existing housing
- Support public services that serve lower income persons that include these groups:
  - The homeless
  - Children and youth
  - Special needs populations
  - Seniors
- Public Improvements including increasing accessibility and improving public facilities.

With the establishment of the Consolidated Plan goals, the Consolidated Plan will be used to guide and prioritize the City’s CDBG recommendations for the next five years.

**Fiscal Impact:** None

**Recommendations:**

1. Open the public hearing, then move to close the hearing following any testimony.
2. Approve the FY 2017-18 Action Plan.
3. Approve the five year 2017-2022 Consolidated Plan for the Community Development Block Grant program.

**Attachments:**

- a) FY 2017-18 Action Plan
- b) 5-Year Consolidated Plan (2017-2022)

**4. Conduct a Public Hearing and Consider Adoption of Ordinance No. 240.6, Lifting Water Shortage Emergency and Easing Supplemental Water Use Restrictions (Staff Contact: Nina Hawk, 408-586-2603)**

**Background:** On January 17, 2014, Governor Brown issued a proclamation declaring a State of Emergency in the State of California due to severe drought conditions. Subsequent to the January 14, 2014 proclamation, the State issued five (5) executive orders that remained in full force and effect in response to the California drought. The Orders directed the State Water Board to adopt, by resolution, revised regulations to allow individual suppliers, to self-certify and implement a “stress test”. “Stress test” is the State’s way of calculating water supply conservation targets by giving urban water agencies the ability to set their own conservation standards based on a “stress test” of supply reliability. Water suppliers must demonstrate that they have sufficient supplies to withstand three years of continuous drought or take additional measures that include mandatory conservation target. The City of Milpitas through diligent drought conservation practices has met and exceeded the “stress test”.

On April 7, 2017 Governor Brown issued Executive Order B-40-17, terminating the January 17, 2014 drought State of Emergency for most counties in California. The Order also directs the State Water Board to rescind the water supply “stress test” for urban water suppliers as well any remaining mandatory conservation standards. The Order does however direct the Water Board to continue “Making Water Conversation a California Way of Life” and has kept certain restrictions to prohibit wasteful practices such as:

- Hosing off sidewalk, driveways and other hardscapes;
- Washing automobiles with hoses not equipped with a shut-off nozzle;
- Using non-circulated water in a fountain or other decorative water feature;
- Water lawns in a manner that causes run-off, or within 48 hours after measurable precipitation; and
- Irrigating ornamental turf on public street medians.

Continued prohibition of wasteful and/or unreasonable water use practices are prudent to address water supply needs and the lingering impacts of prolonged droughts, and to provide a bridge to making water conservation a “California way of life”. During the recent drought, Milpitas residents and businesses took conservation a step further and made it a “Milpitas way of life.”

Per the directive of Executive Order B-40-17, staff prepared Ordinance No. 204.6 to amend Chapter 6 of Title VIII of the Milpitas Municipal Code and recommends terminating the water shortage emergency restrictions and water shortage stage 2 of the City’s water shortage contingency plan. The amended ordinance will keep the restrictions mandated by the State Water Board and keep the following “lifestyle” restrictions on potable water use, not mandated by the State, to continue to promote water conservation as a “Milpitas way of life.”

These restrictions include prohibitions on:

- Watering outside plants, lawn, landscape and turf with hoses not equipped with a shut-off nozzle (Ord. 240.1, 8/16/05 );
- Use through broken or defective plumbing, sprinkler, watering or irrigation system (Ord. 241.1, 8/16/05);
- Except upon the request of a customer, service of water by any establishment including but not limited to restaurants, hotels, cafes, cafeterias, bars, or other public places where food or drink are served and/or purchased (Ord. No. 240.2, 8/19/14);
- New constructed homes and buildings shall be designed with drip or microspray irrigation; (Ord. No. 240.3, 6/16/15); and
- Pools and spas shall be covered when not in use to prevent evaporation (Ord. No. 240.3, 6/16/15).

Staff is also proposing amendments to Section 5 and Section 6 of Chapter 6 of Title VIII by deleting these sections as they are redundant with Section 3 of Chapter 6 of Title VIII. Staff is also proposing to allow the City Council to declare any future water shortage stage or water use restrictions and reductions in water use by the adoption of a resolution.

**California Environmental Quality Act:** The action is not considered a project under CEQA as there will be no direct, or reasonably foreseeable indirect physical change in the environment. Furthermore, the Governor suspended the California Environmental Quality Act’s application to the State Water Board’s adoption of emergency regulations, pursuant to Water Code Section 1058.5, promoting water conservation and water recycling.

**Fiscal Impact:** None

**Recommendations:**

- 1) Open the public hearing
- 2) Move to close the hearing following any comments.
- 3) Adopt Ordinance No. 240.6 pursuant to Water Code sections 375 and 376.

**Attachments:**

- a) Ordinance No. 240.6 – red-lined copy
- b) Ordinance No. 240.6

#### **XIV. REPORTS OF OFFICERS**

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

**Background:** The City of Milpitas has the right to have two voting members represented on the Milpitas Oversight Board. Presently, resident Althea Polanski is a voting member and Assistant Finance Director Jane Corpus serves as one alternate voting member should Ms. Polanski be absent. Thus, there is only ever one voting member currently and a new voting member is necessary to be appointed. The Mayor recommends that Finance Director Will Fuentes serve in that capacity. The Assistant Finance Director will remain as the alternate voting member should either Ms. Polanski or Mr. Fuentes be absent from a Board meeting.

**Fiscal Impact:** None

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

**Attachment:** None

- 6. Per Request of Councilmember Nuñez, Discuss the State of the City Address by Elected Official(s) (Contact: Councilmember Nuñez, 408-586-3029)**

**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 some years, but has not always been a routine event in Milpitas. It has taken place in some years 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 was held at the Community Center's auditorium. In years prior, the speech had been given in the City Hall Council Chambers, as reserved by the 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): Campbell (City), Cupertino (Rotary Club); Gilroy (Chamber); Los Altos & Los Altos Hills - 2 Mayors together (Chamber); Los Gatos (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

#### **XV. NEW BUSINESS**

- 7. Receive a Report from the Metropolitan Transportation Commission and the Association of Bay Area Governments Regarding the Draft Plan Bay Area 2040 (Contact: Councilmember Nuñez, 408-586-3023)**

**Background:** The Metropolitan Transportation Commission and the Association of Bay Area Governments have prepared the Draft Plan Bay Area 2040, a long-range transportation and housing plan. City Council and the public's comments and input are sought by the two agencies. Regional staff will make a presentation and receive any comments. The draft plan is available at [www.planbayarea.org](http://www.planbayarea.org).

The City has received a request from Metropolitan Transportation Commission (MTC) staff to present to the Milpitas City Council the Draft Plan Bay Area 2040. In accordance with

Senate Bill 375 (SB375), the Association of Bay Area Governments (ABAG) and MTC need to present the Draft Plan and Draft Environmental Impact Report (EIR) and to solicit and consider input and recommendations from the City Council. Based on feedback MTC receives, the Draft Plan and Draft EIR will be finalized for MTC/ ABAG consideration for adoption in the summer of 2017.

**Fiscal Impact:** None

**Recommendation:** Per request of Councilmember Nuñez, receive a report from staff of MTC and ABAG on the Draft Plan Bay Area 2040 and provide any input or recommendations.

**Attachment:** overview from Plan Bay Area website

**\*8. Receive Staff Report on Commissioners' Attendance (Staff Contact: Mary Lavelle, 408-586-3001)**

**Background:** On May 16, 2017, 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 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 3 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:**

- a) Copy of Quarterly Commissioner Attendance report
- b) Commission By-Laws – BPAC; Sample letter to Commissioner – BPAC; and City Council Handbook (page 32)

**\*9. Consider Requests from American Cancer Society and St. Elizabeth Catholic Church to Waive Fees for Annual Relay for Life and for the Church's Parish Festival (Staff Contact: Mary Lavelle, 408-586-3001)**

**Background:** On June 5, 2017, the City Clerk received two Fee Waiver/Reduction Request Application Forms from St. Elizabeth Catholic Church and from American Cancer Society for its annual Relay for Life fundraising walk event. Both groups submitted the application form along with the required IRS letter demonstrating their non-profit status.

The first request is for the City Council to waive two fees for the upcoming Parish Festival at St. Elizabeth Catholic Church on church grounds on Sunday, August 13, 2017. Volunteers for the Festival applied for a Special Event Permit from the Planning Department. Fees to be waived are Special Event Permit (Planning Dept.) \$250.00 and Fire Marshal's Temporary Fire Assembly permit (Fire Dept.) \$523.77. No generator will be in use at the festival, so there is no associated fee charged by Building Dept. as had been done in prior years.

The second request is for the City Council to waive several Recreation Services fees for the upcoming Relay for Life fundraising walk sponsored by the American Cancer Society each year at Murphy Park on July 8-9, 2017. Staff and volunteers for the Relay for Life applied for a Special Event Permit from the Planning Department. The location has been reserved, the

park rental requested along with use of the City's mobile stage. Relay for Life requests fees to be waived in total up to \$1,500.

Specific fees recommended to be waived for the Relay event are: application fee (\$20), picnic area (\$360), use of fields (\$1080), and \$40 of total \$240 attendant fees for mobile stage (\$40). Total waived would be the maximum allowed amount of \$1500.

**Fiscal Impact:** \$20,000 was approved and included in the FY 2016-17 City budget for City Council's Unallocated Community Promotions. Prior to this meeting, \$13,200 was the balance in this section of the Council's budget. If the two fee waivers requested in this report are approved on June 20, there would be \$10,926.23 remaining.

**Recommendations:** (1) Waive \$1,500 in fees for costs related to the annual American Cancer Society's Relay for Life walkathon event scheduled at Murphy Park for July 8-9, 2017. (2) Waive \$773.77 in fees for costs related to the annual St. Elizabeth Catholic Church Parish Festival scheduled on Church grounds on Sunday, August 13, 2017.

**Attachments:**

- a) Fee waiver application – ACS Relay for Life
- b) Fee waiver application - St. Elizabeth's Church

## **XVI. ORDINANCES**

### **10. Waive the First Reading and Introduce 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:** The City's current policy for flying flags on City-owned property is located in Milpitas Municipal Code, Chapter 600. Under Chapter 600, most City flagpoles are required to fly the Flags of the United States, State of California, and City of Milpitas. However, there are two locations in the City where citizens may fly flags of other nations.

The first location is at Higuera Adobe Park, where flags of other nations in existence since 1954 may be ceremonially flown on one of the two flagpoles, subject to City Council approval. The second set of locations are ground-level ceremonies, where flags of other nations in existence since 1954 may be flown in the City Hall Rotunda, the area adjacent to the City Hall Pond, the Community Center/Cesar Chavez Plaza, and the City Council Chambers, subject to City Council approval.

To date, the City has never adopted an ordinance, resolution, or policy which restricts the flying of flags based upon the specific nation a flag represents. However, the Council is considering a resolution similar to what the City of San Jose adopted on January 12, 2017. The resolution does fundamentally two things. First, it recognizes the Vietnam Heritage and Freedom (VHF) Flag as the official flag of the City's Vietnamese-American community. Secondly, it expresses opposition to the flying of the Socialist Republic of Vietnam (SRV) flag in the City.

At its April 18, 2017 meeting, the City Attorney made a presentation to the Council discussing the First Amendment implications of Milpitas' current flag policy. Under the current policy, the Higuera Adobe flagpoles and ground level ceremony areas are a "limited public forum" for free expression under the First Amendment. While the forum is "limited" to one category of speech – the flying of national flags - the Supreme Court has stated that within that category, the City may not engage in viewpoint discrimination. Therefore, under the current policy, the City would not be able to prohibit the flying of the SRV flag at the

Higuera Adobe flagpoles or at ground-level ceremonies, offensive as that flag may be to the community.

The City Attorney then presented various legal options for the Council's consideration:

- A. Adopt a resolution similar to San Jose's, but only prohibiting the flying of the SRV flag on flagpoles and at locations that haven't yet been opened up as a "limited public forum" for free expression under City Code. For example, this would have prohibited flying the SRV Flag on a City Hall flagpole (a non-public forum) but not at Higuera Adobe or as part of a ground-level ceremony (limited public forum).
- B. Amend Chapter 600 to change the current limited public forums at Higuera Adobe Park and at ground level ceremony locations into non-public forums. As non-public forums, the City will have more legal leeway to prohibit certain speech at these locations, including flying of the SRV flag. Once the ordinance is amended, the City Council would be free to adopt a resolution similar to San Jose's resolution.
- C. Adopt a resolution only recognizing the VHF Flag and not prohibiting the flying of the SRV flag. The City Council's recognition of the VHF Flag does not raise any First Amendment issues. It is the prohibition on the flying of the SRV Flag that raises potential "viewpoint discrimination" issues in a limited public forum.

After considering its options, the City Council gave staff direction to draft an ordinance amending the City's Municipal Code to change the existing limited public forums at Higuera Adobe Park and at ground level ceremony locations into non-public forums (Option B).

Staff is presenting Ordinance No. 260.2 amending Chapter 600 of the Milpitas Municipal Code consistent with the Council's direction. The ordinance makes the following amendments:

- Includes findings consistent with the First Amendment declaring that the City's flagpoles (including those at Higuera Adobe and at ground level ceremonies) are a non-public forum and not an avenue for free expression by the public.
- Consistent with being a non-public forum, eliminates the application, hearing and Council approval process for citizens to fly a flag on certain City flagpoles. Instead, the City Council may determine what types of flags are flown on certain City flagpoles as an expression of the City's official sentiments.
- On most days, the Code will still require City flagpoles to fly the flags of the United States, State of California, City of Milpitas and the POW/MIA Flag at their respective locations. However, the City Council, by resolution, may authorize the flying of certain other flags on (i) the City's flagpoles to the rear of City Hall, (ii) at Cesar Chavez Plaza, (iii) at Higuera Adobe and (iv) at ground level ceremonies. These include national and city flags of Sister/Friendship Cities as well as "Commemorative Flags."
- Provides an expansive definition of "Commemorative Flags" that the City Council may authorize to be flown on certain City flagpoles. These are flags which identify "with a specific date, historical event, cause, nation or group of people, whereby the City honors or commemorates the date, event, cause, nation or people by flying the flag." By providing an expansive definition, this will allow the City to fly highly significant but non-national flags, as the Council may direct. Examples include Tibetan Freedom flags, Gay Pride flags and Pearl Harbor Remembrance Day flags. The VHF Flag would clearly qualify under the Ordinance on multiple grounds - as identifying with a nation, people, cause and historical event. As a non-public forum, the City Council would have the legal authority to prohibit the flying of the SRV flag on any of the City's flagpoles as being contrary to the City's official sentiments.
- Provides that the Council may order the flying of any Commemorative Flag at a designated location for up to 30 days.

The City Attorney's Office believes that the attached Ordinance changes the existing limited public forums into non-public forums. This change will provide the City Council with maximum editorial control allowed under the First Amendment over the message conveyed through the display of flags on the City's flagpoles. With this change, the Council will have the legal authority to prohibit the flying of the SRV flag.

**Fiscal Impact:** None.

**Recommendations:**

1. Following a reading of the title by the City Attorney, move to waive the first reading of the ordinance beyond the title.
2. Introduce Ordinance No. 260.2.

**Attachment:** Ordinance No. 260.2

**11. Receive Staff Presentation of Urgency Ordinances Pertaining to the Preservation of Affordable Housing (Staff Contact: Christopher Diaz, 408-586-3040)**

**Background:** As the demand for affordable housing continues to grow, the City Council has tasked staff with researching and preparing mechanisms to preserve existing affordable housing and produce new affordable housing in the future. This work will take some time, however, and existing affordable units may be lost while it is completed. The Council thus indicated at its May 22, 2017, study session that it wanted staff to prepare an urgency ordinance to address these issues. Staff has drafted two urgency ordinances. The first is a 'just cause' eviction ordinance that limits the bases upon which landlords may evict tenants. The second is a demolition permit moratorium that will pertain to all structures that currently provide affordable housing.

As expressed by the City Council at its May 22, 2017 study session on the topic, the preservation of existing and production of new affordable housing is a topic of vital concern in Milpitas, as it is in many California cities. Stable housing is a foundational need of families and individuals alike. 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.

The challenges of maintaining existing and incentivizing the creation of new affordable housing are considerable, with many divergent forces bearing on the matter. Currently, the City's inclusionary housing policy is largely found in Resolution 841, passed in 2015, and meant as an interim regulation. Staff is undertaking the work of exploring the mechanisms that are available to the City, including the possible adoption of an affordable housing impact fee. In the meantime, in order to protect the public peace, health, safety, and welfare, staff has prepared two urgency ordinances for the Council's consideration. Unlike typical ordinances, urgency ordinances do not undergo a first and second reading and then require the passage of 30 days before going into effect. Rather, they can be introduced and adopted at a single meeting and become effective immediately upon passage.

Urgency ordinances can arise under one of two Government Code sections. Ordinances subject to Government Code Section 36937 are effective immediately if they (1) necessary for the immediate preservation of the public peace, health or safety, (2) contain a declaration of the facts constituting the urgency, and (3) are passed by a four-fifths vote of the city council. Such ordinances can cover any of a number of subjects. Ordinances subject to Government Code 65858, on the other hand, are appropriate when they "prohibit any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or

studying or intends to study within a reasonable time.” They must also be passed by a 4/5 vote and must document the reasons giving rise to the urgency. Unlike Section 36937 urgency ordinances, they are of limited duration, and must be extended if they are to remain in effect.

*Just-Cause Eviction Urgency Ordinance.* The first urgency ordinance presented for the Council’s consideration is a just cause eviction ordinance. As a general matter, these types of ordinances limit the grounds upon which a residential landlord may evict a tenant. The goal of such ordinances is to increase housing stability, which can have the added benefits of maintaining established communities, offering educational continuity to children living in affected units, and avoiding increased traffic and environmental degradation associated with longer commutes that can arise if displaced workers find replacement housing further from their profession or trade, among other things.

Many Bay Area communities have adopted just cause eviction protections within the past few years. These include Alameda, Oakland, Emeryville, Berkeley, East Palo Alto, Mountain View, Richmond and San Jose.

As proposed by staff, the just cause eviction ordinance would protect tenants in covered units from no cause evictions by requiring that landlords wishing to terminate the rental relationship to show that the eviction is either ‘for cause’ or ‘no fault.’ For purposes of the ordinance, ‘covered units’ are all residential housing units in the City, except for hotels (with stays of 30 days or less), owner-occupied units (unless the owner rents out three or more bedrooms), nonprofit cooperatives, and dwellings subject to regulation or restriction by the state or federal government (for the life of the governmental regulation).

An eviction ‘for cause’ might arise under one of ten possible circumstances: (1) tenant’s failure to pay rent, (2) tenant’s breach of the rental agreement, (3) tenant’s illegal activities, (4) tenant’s violation of the City’s Solid Waste Management Code, which can pose a health and safety hazard, (5) tenant’s failure to allow the landlord lawful access, (6) tenant’s rejection of a written lease extension, (7) tenant’s violation of an occupancy restriction in the rental agreement, (8) landlord’s return from sabbatical (up to one year), (9) landlord’s return from deployment in the service of the United States armed forces, or (10) landlord’s decision to seek a condominium conversion. Such ‘for cause’ circumstances would permit the landlord to end the tenancy without violation of the ordinance.

‘No fault’ evictions could arise in one of four circumstances: (1) landlord decides to remove the rental unit from the housing market, (2) landlord decides to occupy the unit, or to allow landlord’s parents or children to occupy the unit, (3) the rental unit is found to be temporarily unfit for human habitation, or (4) the unit will be substantially renovated. If any of these reasons give rise to the tenant’s eviction, the landlord would be required to pay relocation assistance to the tenant and would likewise be required to allow the tenant the right to return to the unit when and if it is returned to the rental market. Relocation assistance is set at different levels for differently-situated landlords: large landlords (those owning four or more rental units in the City) have a greater relocation requirement than would small landlords (those owning three or fewer rental units).

Any landlord desiring to end a tenancy would be required to provide a notice of termination to the affected tenant, informing them of the grounds of their eviction. This notice would also be provided to the City. If a landlord violated the ordinance, the aggrieved tenant would be empowered to begin a civil lawsuit seeking monetary damages or injunctive relief (in other words, a stop to the eviction) on their own behalf or the City could do so on the tenant’s behalf.

The just cause eviction ordinance is brought to the Council under Government Code Section 36937 for the immediate preservation of the public peace, health or safety. If passed, it would

become effective immediately, with no termination date. It is possible, however, that the long-term affordable housing regulations currently being prepared by staff could result in changes to this ordinance over time.

*Demolition permit moratorium.* The second urgency ordinance presented to the Council for its consideration is a moratorium on the issuance of demolition permits for structures that currently provide affordable housing units. The purpose of the ordinance is to preserve existing affordable housing stock while the City evaluates and takes action on comprehensive affordable housing preservation and production mechanisms. The failure to adopt the ordinance could result in the loss of existing affordable housing while this work continues.

This urgency ordinance covers affordable housing units, which (for purposes of this 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. No structure containing such units would be permitted to be demolished during the term of this urgency ordinance, with a few exceptions.

Per the terms of the urgency ordinance, relief from the moratorium could be granted on four possible grounds. First, exceptions would be granted to (1) projects approved prior to the adoption of this ordinance, (2) structures found to be unsafe or a public nuisance, (3) projects that 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, if an applicant could demonstrate that the application of the ordinance to the applicant's project would be unlawful.

This ordinance is brought to the Council under Government Code Section 65858, as it would prohibit the issuance of a demolition permit for affordable housing units, which may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City Council and its planning staff are considering or studying. Ordinances passed through this Government Code Section are effective for 45 days following their adoption and may be extended thereafter, if necessary.

**Fiscal Impact:** The fiscal impact of the demolition permit moratorium is limited to lost permit fees during the pendency of the ordinance. The fiscal impact of the just cause eviction ordinance depends on the degree to which the City becomes involved in the adjudication of tenants' rights.

**Recommendation:** Receive a presentation about two urgency ordinances related to affordable housing, and determine whether to enact either or both ordinances.

**Attachments:**

- a) Urgency Ordinance to be Enacted Pursuant to CA Government Code Section 36937 Adding Title V, Chapter 1300 ('Just Cause Eviction')
- b) Urgency Ordinance to be Enacted Pursuant to CA Government Code Section 65858 Adopting a Moratorium on the Issuance of Demolition Permits for Structures Providing Affordable Housing Units

## **XVII. RESOLUTIONS**

- \*12. Adopt a Resolution Authorizing the Purchase of Avolve ProjectDox Software from Insight Public Sector in the Amount of \$334,656.20 Through a Cooperative Procurement Contract Through US Communities (Staff Contacts: Chris Schroeder, 408-586-3161 and Mike Luu, 408-586-2706)**

**Background:** ProjectDox is the only electronic plan review solution with a proven two way integration with CRW Systems. The City of Milpitas currently uses CRW TrakIT for its permitting tracking system. Avolve Software is the sole maker of ProjectDox. Avolve is the only company authorized to license ProjectDox and provide support, maintenance and upgrade to the software.

ProjectDox is a web-based technology solution that will enable the City to transition to electronic plan submittal and plan review. ProjectDox will allow staff to reduce plan review, process time and paper, which will benefit both staff and customers. The software solution will allow developers to electronically submit and monitor development projects as they go through the city's review for building, zoning, and planning compliance. It will allow city departments and other agencies to review projects simultaneously, which helps to resolve conflicting reviewer commentary and reduce review time, all the while ensuring an efficient and transparent review process.

Electronic plans submittal using ProjectDox will reduce traditional plan processing time by 20 to 50 percent by reducing or eliminating the number of physical trips to and from City Hall and by making these services available 24/7/365. Other benefits:

- Reduce physical trips for plan drop off/pick up and associated costs
- Reduce printing of hard copies
- Eliminate rescanning of final plan back into digital format for archival
- Potentially improve review turnaround time through more efficient communication non-linear plan review processes
- Reduce or eliminate space, retrieval problems associated with paper blueprints

Staff recommends a cooperative purchase through the US Communities. Cooperative purchasing through US Communities is specifically authorized pursuant to Municipal Code Section I-2-3.08 "Cooperative Procurement." The Purchasing Agent reviewed all of the documentation from the US Communities Request for Proposal (RFP) #2000001701 entitled "Technology Products Service Solutions" and has determined that the underlying purchase was made using competitive bidding procedures at least as restrictive as the City of Milpitas. The price for the software is the same as that offered in the original agreement. The contract is current through April 30, 2019. The initial cost of the software and first year's maintenance and support is \$216,630.00. The cost for maintenance and support for years two through five is \$29,506.55 per year, for a total contract amount-not-to-exceed of \$334,656.20.

**Fiscal Impact:** Funding for the project is in the 2017-2022 Capital Improvement Program Permitting Technology Improvement Project, CIP No. 3434.

**Recommendation:** Adopt a resolution authorizing the purchase of Avolve ProjectDox software from Insight Public Sector in the amount of \$334,656.20 through a cooperative procurement contract through US Communities.

**Attachments:**

- a) Resolution
- b) Insight Quote

**\*13. Adopt Resolutions of the Milpitas City Council and Milpitas Public Financing Authority Board Authorizing Investment of Monies in the Local Agency Investment Fund and Updating Officers Information (Staff Contact: Will Fuentes, 408-586-3111)**

**Background:** The City of Milpitas and the Milpitas Public Financing Authority have been participating in the State's Local Agency Investment Fund (LAIF) since 1977. LAIF periodically requests participants to update their investment resolutions. Staff reviewed the

existing resolutions of the two entities and determined that these resolutions need to be updated due to administration and personnel changes.

**Fiscal Impact:** None.

**Recommendation:** Adopt resolutions of the Milpitas City Council and the Milpitas Public Financing Authority Board authorizing investment of monies in the Local Agency Investment Fund (LAIF) and updating officers' information.

**Attachments:** Two Resolutions (a) City Council + (b) Public Financing Authority

**\*14. Adopt a Resolution Rescinding Resolution No. 8292 and Appointing Certain Employees to the Association of Bay Area Government Pooled Liability Assurance Network (ABAG PLAN) Board of Directors (Staff Contact: Will Fuentes, 408-586-3111)**

**Background:** The City of Milpitas has participated in the ABAG PLAN since 1986. ABAG PLAN is a joint risk sharing insurance program that provides general liability coverage among various member cities. The PLAN is governed by a Board of Directors consisting of one representative from each member agency. Resolution No. 8292, adopted in 2013, appointed the Director of Financial Services and the Assistant City Attorney as the alternate to serve as the City's appointee to the Board of Directors of ABAG PLAN.

Due to personnel changes, staff recommends that City Council rescind Resolution No. 8292 and adopt a new resolution to appoint the Director of Financial Services as Director and the Assistant Director of Financial Services as the alternate to serve as the City's appointees to the ABAG PLAN Board of Directors.

**Fiscal Impact:** None

**Recommendation:** Adopt a resolution rescinding Resolution No. 8292 and appoint certain employees to the Association of Bay Area Government Pooled Liability Assurance Network Board of Directors.

**Attachment:** Resolution

**\*15. Adopt a Resolution Awarding a Contract to O'Grady Paving, Inc. for the Street Resurfacing 2017, Project No. 4284, and Authorize the Director of Engineering/City Engineer to Execute Contract Change Orders (Staff Contact: Steve Chan, 408-586-3324)**

**Background:** On April 4, 2017, the City Council approved the plans and specifications and authorized the advertisement for construction bid proposals for the Street Resurfacing Project 2017, Project No. 4284. Work will include localized repair of failed asphalt concrete pavement, resurface asphalt concrete pavement, install Americans with Disabilities Act-compliant sidewalk ramps, repair damaged sidewalk, curb and gutter and reinstall pavement delineation on the following street segments:

1. Milpitas Boulevard between Hanson Court and northerly City limit
2. Dixon Landing between Milpitas Boulevard and 400 feet east of Milmont Drive.

This project will also include localized repair of failed asphalt concrete pavement on the following street segments:

1. McCarthy Boulevard between Ranch Drive and northerly City limit
2. Abbott Avenue between Calaveras Boulevard and Rudyard Drive
3. Main Street between Corning Avenue and Curtis Avenue

4. Yosemite Drive between Milpitas Boulevard and Vista Way
5. Dempsey Road between French Court and Landess Avenue
6. Tasman Drive between Alder Drive and I-880 Overpass.

Project No. 4284 was advertised in the local newspaper for two consecutive weeks and Notices Inviting Bids along with bid documents were also sent out to 13 Builder Exchanges. Two contractors picked up bid document packages. One sealed bid proposal was received on May 31, 2017 in the amount of \$3,296,097.00 from O'Grady Paving, Inc., which qualifies it as the lowest responsible bidder submitting a responsive bid. The Engineer's Estimate for the project is approximately \$3,300,000.00. No bid protests were filed with the City in regards to this project.

Staff also requests the use of the change order policy (a copy of which is included in the Council agenda packet) previously approved to complete recent projects with tight completion schedules. This policy allows for the timely completion of the project, swift responses to construction conditions and necessary change order approvals in order to limit potential claims or risk to the City. The construction contingency established for this project is \$300,000.00, approximately 10% of the total contract value. The change order authority is not anticipated to exceed this amount and would not require an additional appropriation.

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

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

**Recommendations:**

1. Adopt a resolution awarding a contract to O'Grady Paving, Inc. for the Street Resurfacing 2017, Project No. 4284 in the amount of \$3,296,097.
2. Authorize the Director of Engineering/City Engineer to execute contract change orders for Street Resurfacing 2017, Project No. 4284 in an aggregate amount not to exceed the construction contingency of \$300,000.

**Attachments:**

- a) Resolution
- b) Bid Results
- c) Construction Change Order Policy

**\*16. Adopt a Resolution Granting Approval to Submit a Grant Application to County of Santa Clara Historical Heritage Grant Program for the Alviso Adobe, Phase 5 Interior Restoration, Project No. 5055 (Staff Contact: Steve Erickson, 408-586-3301)**

**Background:** The Alviso Adobe Renovation Project is included in the approved five year Capital Improvement Program. The Project provides for the restoration of the interior of the historic Alviso Adobe home. The Project meets the requirements for grant funding through the Santa Clara County Historical Heritage program. The grant program has \$348,208 in available funding for FY 2018 to be shared among qualifying projects after extensive review and consideration by the County Historical Heritage Commission. Staff requests approval to submit an application for this grant and to accept funding if authorized for the Alviso Adobe Interior Restoration.

**Alternate:** Not proceeding with this grant application will result in a loss of a potential funding source for the procurement and installation of the exhibits proposed for the Alviso Adobe.

**California Environmental Quality Act:** This project has an approved Mitigated Negative Declaration.

**Fiscal Impact:** None.

**Recommendation:** Adopt a resolution granting approval to submit a grant application to the County of Santa Clara Historical Heritage Grant Program for the Alviso Adobe, Phase 5 Interior Restoration, Project No. 5055.

**Attachment:** Resolution

- \*17. Waive Immaterial Bid Irregularity, Adopt a Resolution Awarding a Contract to D & D Pipelines Inc., Authorize Interim Director of Engineering/City Engineer to Execute Contract Change Orders, and Approve Amendment No. 1 to the Agreement with Mott MacDonald, LLC for the Daniel Court Water Main and Services Replacement, Projects No. 7110 and No. 7131 (Staff Contact: Steve Erickson, 408-586-3301)**

**Background:** On May 2, 2017, the City Council approved the plans and specifications and authorized the advertisement for construction bid proposals for the Daniel Court Water Main and Service Replacement, Projects No. 7110 and No. 7131. The project provides for the replacement of aging and problematic water mains and services along both legs of Daniel Court. The completion of this project is a high priority due to recent line breaks and the existence of corroding metallic fittings. The Engineer's Estimate for the project is \$796,020.

The project was advertised on May 19 and 26, 2017. Bid opening was on June 5, 2017, and one sealed bid proposal was received. A bid price of \$1,050,750.00 was submitted by D & D Pipelines, Inc. However, the bid contained a bid irregularity in that unit prices for each item were provided, however, the total pricing for each bid item was not calculated and listed. The total bid price was also incorrectly reported.

The City has broad discretion to determine responsiveness and accept a responsive bid even if there are minor irregularities or mistakes, as long as such mistakes are immaterial. (See *Menefee v. County of Fresno* (1985) 163 Cal. App. 3d 1175; *Ghilloti Construction Co. v. City of Richmond* (1996) 45 Cal. App. 4th 897.) The bid documents for the Project include provisions for addressing inconsistencies between the unit price and the extended price and total bid amount, which resolved the bid error thus rendering it immaterial. Accordingly, City staff recommends the Council waive the immaterial bid irregularity and award the construction contract to D & D Pipelines, Inc., as the lowest responsible bidder submitting a responsive bid. Correction of the bid error increased the amount of the bid to \$1,058,850.00. No bid protests were filed with the City in regards to this project.

The correct bid price exceeds the Engineer's Estimate by \$262,830. Staff believes the reason for receiving a single bid and the higher than estimated price is due to a heightened economic climate in the Santa Clara Valley. Contractors are busy at this time and tend to submit higher pricing or not bid on projects due to competing work schedules. Due to the urgency in replacing the water main and services on Daniel Court and because it is believed a lower price would not be received on a re-bid, staff recommends the contract be awarded to D&D Pipelines Inc., rather than rejecting the bid and re-advertising for new bid proposals. Staff has also interviewed the owners of recent projects that were completed by D&D Pipelines Inc. All owners contacted relayed a favorable review of the contractor and stated they would rehire this contractor again in the future. There are sufficient funds in the project budget to cover the additional cost.

As was previously approved for the successful completion of recent projects with tight completion schedules, staff is requesting the use of the same change order policy (copy of policy is included in the Council agenda packet). This policy allows for the timely

completion of the project, while addressing the need to respond swiftly to construction conditions and approving necessary change orders, in order to limit potential claims or risk to the City. The construction contingency established for this project is \$211,770; approximately 20% of the total contract value, and the change order authority is not anticipated to exceed this amount and would not require an additional appropriation.

City Council is requested to approve Amendment No. 1 to the Consulting Services Agreement with Mott MacDonald, LLC for construction support services and assistance to City staff with the resolution of unforeseen conditions during construction. A scope and fee for these additional services was negotiated for an amount not to exceed \$33,840, which is considered reasonable for the scope of services.

**Alternative:** Denial of this request would result in not completing needed water main and service replacement resulting in further deterioration and more potential water service outages.

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

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

**Recommendations:**

1. Waive immaterial bid irregularity.
2. Adopt a resolution awarding a contract to D & D Pipelines, Inc. as the lowest responsible bidder submitting a responsive bid, for the Project, in the amount of \$1,058,850.00.
3. Authorize the Director of Engineering/City Engineer to execute contract change orders for the Daniel Court Water Main and Services Replacement, Projects No. 7110 and No. 7131 in an aggregate amount not to exceed the construction contingency of \$211,770.
4. Approve Amendment No. 1 to the Consulting Services Agreement with Mott MacDonald, LLC in the amount of \$33,840.

**Attachments:**

- a) Resolution
- b) Bid Results
- c) Construction Change Order Policy
- d) Amendment No. 1 to Agreement with Mott McDonald

- \*18. Adopt a Resolution Authorizing the Purchase of Three City Vehicles from the National Auto Fleet Group for the Not-To-Exceed Amount of \$117,616.82 Through a Cooperative Procurement Contract Through the National Joint Powers Alliance (Staff Contacts: Chris Schroeder, 408-586-3161 and Robert Hill, 408-586-2626)**

**Background:** Beginning July 1, 2017 the Public Works department is staffing up a new Street Trees and Landscape Division. To support the operation the City needs to purchase two Ford F250 Crew Cab trucks for \$45,163.58 each and one Ford F150 Regular Cab truck for \$27,289.66 for a not-to-exceed total amount of \$117,616.82. The vehicles are necessary to transport crews and equipment to various locations around the City to complete restoration and maintenance of the existing street landscaping medians and streetscapes.

Staff recommends a cooperative purchase through the National Joint Powers Alliance (NJPA). Cooperative purchasing through NJPA is specifically authorized pursuant to Municipal Code Section I-2-3.08 "Cooperative Procurement." The Purchasing Agent reviewed all of the documentation from the National Joint Powers Alliance Request for Proposal (RFP) #120716 entitled "Vehicles, Cars, Vans, SUVs, and Light Trucks with Related Equipment, Accessories and Services" and determined that the underlying purchase was made using competitive bidding procedures at least as restrictive as the City of Milpitas.

The price for the vehicles is the same as that offered in the original agreement. The City had used this contract in the past and it is still current.

**Fiscal Impact:** None. Sufficient funding for the purchase is in CIP No. 4273 Landscape Irrigation.

**Recommendation:** Adopt a resolution authorizing the purchase of three City vehicles from the National Auto Fleet Group for the not-to-exceed amount of \$117,616.82 through a cooperative procurement contract through the National Joint Powers Alliance.

**Attachments:**

- a) Resolution
- b) National Auto Fleet Group Quote

**19. Adopt Resolution for Exception to the 180-Day Wait Period in Accordance with California Government Code Sections 7522.56 and 21224 Related to Hiring in the Police Department (Staff Contact: Tina Murphy, 408-586-3086)**

**Background:** The California Public Employees Reform Act of 2013 requires a 180-day “wait” period before a retiree can return to work for a public agency; however, the 180-day “wait” period can be waived if: The employer certifies that the appointment is necessary to fill a critically needed position before 180-days has passed and the appointment has been approved by the governing body of the employer in a public meeting and not on a consent calendar.

Police Officer Joseph Minton retired on June 1, 2017. Prior to his retirement, Officer Minton served as a Milpitas Communications Dispatcher for approximately four years and nearly 28 years as a Police Officer.

Officer Minton developed a unique skillset in creating custom electronic reports for the Police Department’s Records Management System (RMS) and he participated in two prior RMS implementations. In addition, he has acquired significant experience and knowledge in the police department’s radio project and Computer-Aided Dispatch (CAD) software.

The Milpitas Police Department is currently implementing a new RMS, in addition to two separate CAD projects with the City of Campbell and the County of Santa Clara. After July 1, 2017, the Police Department will be funded to procure equipment to transition to the Silicon Valley Regional Communication System (SVRCS), which will enhance the City of Milpitas’ interoperability capabilities.

The RMS project and the CAD projects are scheduled to finish prior to the end of calendar year 2017. The City of Milpitas’ transition to the SVRCS is expected to be completed by the end of June 2018. The schedule will be dependent upon equipment procurement and the cooperation of other entities.

Staff recommends hiring Retired Officer Minton on a part-time basis to perform specific duties related to the transition to the SVRCS, support the implementation of the new RMS, and participate in the open CAD projects. Considering the need for specific and unique skillsets for successful project implementations, staff recommends hiring Retired Officer Minton on a part-time basis through June 30, 2018.

Included in the Council’s agenda packet is the required resolution to rehire a retiree pursuant to the California Public Employees Reform Act (PEPRA) of 2013, Government Code Sections 7522.56 and 21224 and the employment agreement.

**Fiscal Impact:** None. The Police Department can absorb this expense in its operating budget and is funded to absorb the expense in the Police Department Communications Capital Improvement Project (CIP) No. 3415.

**Recommendation:** Adopt a resolution for exception to the 180-day wait period in accordance with the California Government Code Sections 7522.56 and 21224 and approve and authorize the City Manager to execute an employment agreement with Police Officer A.J. Minton.

**Attachment:** Resolution

**20. Adopt a Resolution Approving a Technical Correction to Resolution No. 8668 Appointing Steve Pangelinan as Acting City Manager Pursuant to Government Code Sections 7522.56 and 21224 (Staff Contact: Tina Murphy, 408-586-3086)**

**Background:** The City Manager is currently on administrative leave effective May 19, 2017. Steve Pangelinan currently serves as the City's Interim Chief of Police and previously served as Chief of Police. Mr. Pangelinan retired from the City effective December 30, 2016.

At a special meeting on May 30, 2017, the City Council approved the appointment of Mr. Pangelinan on a part-time, interim basis to perform specific duties of the City Manager position while the City Manager is on leave pursuant to Government Code Sections 7522.56 and 21221(g). However, CalPERS has indicated that Government Code Section 21221(g) is no longer operative despite the fact that it remains codified under the Public Employees' Retirement Law. Instead, the operative section of the Government Code for this appointment is Section 21224. As such, a technical correction to the resolution is necessary.

Included in the Council's agenda packet is the required corrective resolution to appoint a retiree pursuant to Government Code Sections 7522.56 and 21224. All aspects of the appointment previously approved by the City Council remain the same, and the effective date of the appointment remains May 30, 2017.

**Fiscal Impact:** None.

**Recommendation:** Adopt a resolution approving a technical correction to Resolution No. 8668 appointing Steve Pangelinan as acting City Manager pursuant to Government Code Sections 7522.56 and 21224.

**Attachment:** Resolution

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

**Background:** On May 16, 2017, by a majority vote at a regular meeting, the City Council directed staff to prepare and bring back a policy for censure of the City Council. The City Attorney has prepared a resolution and policy for the Council's consideration.

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 City 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 City Council.

**Attachment:** Resolution and policy

## **XVIII. AGREEMENTS**

- \*22. Approve and Authorize the City Manager to Execute Amendment No. 1 to the Joint Use Agreement for Portions of Lower Penitencia Creek and Penitencia East Channel for Pedestrian/Bicycle Trail and Bridge Improvements (Staff Contact: Greg Chung, 408-586-3355)**

**Background:** The Transit Area Specific Plan (TASP) Policy 6.41 requires construction of a continuous trail network through land dedication and improvements by property owners in coordination with the Santa Clara Valley Water District (SCVWD) and the City. Improvements or payment for improvements of pedestrian/bicycle trails and bridges are required as part of the conditions for development project approval.

On March 17, 2015, the City Council approved a Joint Use Agreement (JUA) between the City and the SCVWD for pedestrian/bicycle trail and bridge improvements on SCVWD property. The JUA allows the construction of pedestrian/bicycle trails and bridges on Lower Penitencia Creek (between Montague Expressway and Great Mall Parkway) and Penitencia East Channel (between Lower Penitencia Creek and 240' East of McCandless Drive), and establishes City's responsibility to maintain those pedestrian/bicycle trails and bridges.

As developments continue to grow within the TASP area, the 2015 JUA would need to be amended to extend the limits on SCVWD property. Amendment No. 1 of the JUA would extend the limits on Penitencia East Channel easterly to Lundy Place.

**California Environmental Quality Act:** On June 3, 2008, City Council certified the TASP Environmental Impact Report (EIR). On March 17, 2015, City Council approved two addendums to the TASP EIR with determination that the 2008 TASP EIR remains sufficient to address the potential impacts resulting from the trail and bridge projects. The scope of Amendment No. 1 is included within the scope of the 2008 TASP EIR and associated addendums.

**Fiscal Impact:** Expenses for the operation and maintenance of pedestrian/bicycle trails and bridges on SCVWD property within TASP will be funded by the Community Facilities District No. 2008-1 assessment.

**Recommendation:** Approve and authorize the City Manager to execute Amendment No. 1 to the Joint Use Agreement for portions of Lower Penitencia Creek and Penitencia East Channel for pedestrian/bicycle trail and bridge improvements.

**Attachments:**

- a) Amendment No. 1 to the Joint Use Agreement
- b) 2015 Joint Use Agreement between City and SCVWD

**\*23. Authorize the City Manager to Execute a Fee Reimbursement Agreement for a Parkland Associated with a Residential Development Located at 450 Montague Expressway by Lennar Homes (Staff Contact: Bradley Misner, 408-586-3273)**

**Background:** On May 5, 2015, the City Council adopted Resolution No. 8467 approving the Vesting Tentative Map No. MT14-0002, Site Development Permit No. SD14-0014, and Conditional Use Permit No. UP14-0023 and Exception to Urgency Ordinance No. 240.2 for a 489-dwelling unit project located at 450 Montague Expressway.

Pursuant to the Transit Area Specific Plan (TASP), fee reimbursements for public parkland and improvements are permissible. Furthermore, Condition of Approval No. 41 acknowledges that fee adjustments are also permissible. The project site includes a park dedication requirement pursuant to TASP Figure 3.6 of .91 acres. The developer is entitled to reimbursement of that portion of the TASP fee earmarked for parkland in the actual verifiable amount of all costs associated with constructing the park, including reimbursement for the value of the Public Park Easement to be dedicated to the City, and costs for any proposed improvements on the Public Park Easement. For the Public Park Easement, a total of \$2,536,934 would be reimbursed and \$1,152,640 would be reimbursed for the estimated value of improvements.

The Agreement has been reviewed by the City Attorney as to form and to content. Any subsequent modifications that may be required shall be reviewed and approved by the City Attorney prior to execution of the Agreement. A copy of the proposed fee reimbursement agreement is provided in the Council's agenda packet.

**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 Fee Reimbursement Agreement with Lennar Homes, Inc. related to its development at 450 Montague Expressway in a final form as approved by the City Attorney.

**Attachment:** Fee Reimbursement Agreement

**\*24. Approve Plans and Specifications and Authorize Advertisement for Bid Proposals for Park Access Improvement and Resurfacing, Project No. 5105 and Americans with Disabilities Act Curb Ramp Transition Program, Project No. 4283 (Staff Contact: Steve Chan, 408-586-3324)**

**Background:** Staff completed plans and specifications for Park Access Improvement and Resurfacing, Project No. 5105 and Americans with Disabilities Act (ADA) Curb Ramp Transition Program, Project No. 4283. The work will include repair and resurfacing of park parking lots, walking pathways and installation of ADA compliant access ramps on the following parks:

- 1) Dixon Landing Park
- 2) Peter Gill Memorial Park
- 3) Milpitas Sport Center
- 4) Murphy Park

This project will also include localized repair of failed asphalt concrete pedestrian pathways adjacent to the Able Street Overpass. The project is categorically exempt under CEQA Article 19 Section 15301 for maintenance of existing public streets.

The Engineer's Estimate for the project is \$700,000. A copy of the title sheet of the project plans is included in the Council's agenda packet, and the complete set of plans and specifications are available for review in the office of the City Engineer

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

**Recommendations:**

1. Approve plans and specifications for the Park Access Improvement and Resurfacing, Project No. 5105 and American with Disabilities Act Curb Ramp Transition Program, Project No. 4283.
2. Authorize advertisement for bid proposals.

**Attachment:** Plan Title Sheet

**\*25. Approve an Agreement with Biggs Cardosa Associates, Inc. for the Lower Penitencia Creek Pedestrian Bridge, Project No. 2005 (Staff Contact: Greg Chung, 408-586-3335)**

**Background:** The Lower Penitencia Creek Pedestrian Bridge Project is funded through developer contributions and is included in the 2016-2021 Capital Improvement Program. The project will provide for the design and construction of a pedestrian bridge to cross over the Penitencia East Channel, from the Centre Pointe housing development to the new McCandless Park site. The bridge will connect the residential housing and multi-use trail on the north side of the channel to the park and school sites on the south side of the channel.

Staff has negotiated a fee for the design, inspection, and construction support services in the amount not to exceed \$249,650, which is considered reasonable for the work involved. There are sufficient funds in the project budget to cover this additional expense.

**Alternative:** A denial of this request would result in not proceeding with the pedestrian bridge design and construction work.

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

**Recommendation:** Approve an agreement with Biggs Cardosa Associates, Inc. for the Lower Penitencia Creek Pedestrian Bridge, Project No. 2005.

**Attachment:** Design Services Agreement

**\*26. Approve Amendment No. 2 to the Consulting Services Agreement with HydroScience Engineers, Inc. in the Amount of \$75,000 to Continue Staff Augmentation Services for the Utility Engineering (Staff Contact: Nina Hawk, 408-586-2603)**

**Background:** On December 19, 2016, the City entered into an agreement with HydroScience Engineers, Inc., in the amount of \$95,000, to manage and provide Utility Engineering staff support services encompassing the drinking water, recycled water and sanitary sewer, as needed. Subsequently, on March 21, 2017 Amendment No.1 to the agreement was approved to allocate an additional \$75,000 to the contract for staff augmentation support.

Staff augmentation is needed to maintain the level of service in Utility Engineering until vacancies are filled and new City staff can be transitioned into their new positions. Amendment No. 2 to the agreement with HydroScience Engineers, Inc. in the amount of \$75,000 is proposed to continue staff support services while vacancies are filled. Amendment No. 2 will also provide for staff training by HydroScience as work is transitioned from the staff augmentation staff to permanent City staff. Approval of this agreement brings the agreement amount to a total to not exceed \$245,000.

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

**Alternative:** Denial of this request will result in delayed completion of some Utility Engineering tasks. Tasks include but are not limited to: regulatory compliance reporting and assessments for water and sewer programs, developer project plan checking, implementing new water conservation requirements, and participating in and reviewing documentation for regional water and sewer programs. Delayed compliance can result in disciplinary action by means of a fine or termination of service by the regulatory body which the City can ill afford.

**Fiscal Impact:** None. There are sufficient funds available in FY 2017-18 Utility Engineering operations budget for staff augmentation.

**Recommendation:** Approve Amendment No. 2 to the Consulting Services Agreement with HydroScience Engineers, Inc. in the amount of \$75,000 to continue staff augmentation services for Utility Engineering.

**Attachment:** Amendment No. 2 to HydroScience Agreement

**\*27. Approve Amendment No. 2 to the Agreement with Matthew W. Adams, an Individual Doing Business as All-Line Uniform Sales, to Expand the Scope of Services and Increase the Total Compensation by \$30,585 (Staff Contract: Chris Schroeder, 408-586-3161)**

**Background:** The City of Milpitas issued an Invitation For Bid to provide Annual Clothing Requirements for City Employees on May 30, 2014. All-Line Uniform Sales was selected as the successful bidder and entered into an agreement with the City on August 6, 2014 for \$14,434 per year for a total contract amount of \$72,170. The parties entered into Amendment No. 1 on July 1, 2015 which increased the annual amount of the contract to \$15,500.00 for all five years of the contract, due to changes in City staffing levels, cost increases, and seasonal changes in garment availability. Staff now wishes to expand the scope of services to provide Recreation Services with t-shirts for lifeguards, the After the Bell program and the Summer Camp programs. To accommodate this increased scope, Staff now desires to amend the agreement to increase the annual amount of the contract for Contract Year 3 by \$7,585, Contract Year 4 by \$11,500, and Contract Year 5 by \$11,500 for a total contract not-to-exceed amount of \$108,085.

**Fiscal Impact:** None. Funds for this purchase are available from the Public Works and Recreation Services budgets beginning in Fiscal Year 2016-17.

**Recommendation:** Approve Amendment No. 2 to the agreement with Matthew W. Adams, doing business as All-Line Uniform Sales, for annual clothing requirements for City employees including Recreation Services for the not-to-exceed amount of \$30,585.

**Attachment:** Amendment No. 2

- \*28. Approve Amendment No. 4 to the Cayenta Software Support and Maintenance Service Agreement for the Financial and Utility Billing System for the Not-To-Exceed Amount of \$23,550 (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 to receive continued product support, additional upgrades, and trainings for City staff.

**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 2016-17 operating budget.

**Recommendation:** Approve Amendment No. 4 to the Cayenta Software Support and Maintenance Service Agreement for the financial and utility billing system for the not-to-exceed amount of \$23,550, and extend the Agreement through June 30, 2018.

**Attachments:**

- a) Cayenta Amendment No. 4
- b) Cayenta Exhibit E

- \*29. Authorize the City Manager to Execute a Bridge Contract with Terracare Associates LLC for Four Months in the Amount of \$383,333 to Allow Time to Rebid the Agreement for Parks Maintenance (Staff Contacts: Chris Schroeder, 408-586-3161 and Robert Hill, 408-586-2626)**

**Background:** On April 5, 2017, the City of Milpitas requested to bids via Request For Proposal (RFP) No. 2190 City of Milpitas Parks Maintenance Service. Four qualified bids were received. However, all four were priced significantly above the available budget amount. After reducing the number of line items and allowing the four bidders to submit revised pricing, it was still not possible for the City to award the contract, because - although the bid amounts were reduced - those were still not within the allowable budget. Staff issued a four month bridge contract to the current provider Terracare Associates, LLC. Four months will allow staff time to completely rewrite and reissue the RFP for park maintenance services.

**Fiscal Impact:** None. \$383,333 is budgeted to pay for the four months' contract. Funding for the purchase is available in the Public Works operating budget for FY 2017-18.

**Recommendation:** Authorize the City Manager to execute a bridge contract with Terracare Associates LLC (current contractor) in the amount of \$383,333 for four months to allow staff additional time to rebid the agreement for city parks maintenance.

**Attachment:** Parks Maintenance Service Bridge Contract with Terracare Associates

- \*30. Approve Amendment No. 4 to the Agreement with Law Firm of Burke, Williams & Sorensen, LLP for Legal Services Regarding Elimination of Odor (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 current 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 current Agreement with Burke, Williams and Sorensen for Legal Services regarding elimination of odors and direct the Acting City Manager to sign the Fourth Amendment.

**Attachment:** Amendment No. 4

- \*31. Approve an Agreement with City of San Jose to Provide Fats, Oils and Grease (FOG) Inspection and Plan Check Services and Transitional Training through December 31, 2017 in the Amount of \$66,267, and Direct the City Manager to Execute the Agreement in a Form Approved by the City Attorney (Staff Contact: Nina Hawk, 408-586-2603)**

**Background:** The City of Milpitas (City) participates in a regional program to control the discharge of FOG into the sanitary sewer system. The FOG program is administered by the City of San Jose's Environmental Services Division (ESD) This program fulfills the requirements of the Environmental Protection Agency (EPA) and the State of California Regional Water Quality Control Board (RWQCB) as a part of the City of Milpitas' Sewer System Management Plan to prevent Sanitary Sewer Overflows. These inspections are authorized by the Milpitas Municipal Code, Section VIII-2-5.50. The City of Milpitas delegates inspections to ESD.

The City currently has approximately 374 sites on its inspection list and averages about 180 site inspections per year. These sites include restaurants, grocery stores, convenient stores or any other establishment that produces grease. The ESD inspections primarily focus on a review of the facilities and implementation of Best Management Practices to keep fats, oil and grease out of the sewer system. An examination of the condition of the grease removal devices will be conducted as a part of the initial inspection. ESD also has a number of information pamphlets that are provided to sites to educate them on the FOG program. Each site must be inspected once every three years to ensure the devices are being maintained in proper working order and are being serviced. ESD also administers criteria for the size and recommended design of new devices and provides plan check services for remodels or new construction of FSEs.

The City of Milpitas was notified in May 2017 by the City of San Jose ESD that they would no longer provide FOG services as of July 1, 2017. ESD has offered to transition the FOG program to the tributary agencies per the attached agreement. At present time, the City of Milpitas' role in the FOG program is limited in capacity. Subsequent to the FOG inspections by ESD, ESD provides the City of Milpitas a list of noncompliant sites. The City will then send letters to the sites ESD identifies as non-complaint and City will coordinate with the property owner and ESD to bring the site into compliance. The transition of the FOG program to the City will require the City to manage the list of sites that require inspection, administer the inspection program annually and perform plan checks for new and remodeled FSEs.

The City is currently unable to perform these services in-house on such short notice. Therefore a transition is necessary, which would require training, coordination, a municipal code update, an update to the sanitary sewer management plan and the identification of appropriate City resources. Staff has negotiated an agreement with the City of San Jose for

FOG services at a not to exceed amount of \$66,267.00. The agreement will provide the City of Milpitas FOG inspection services for 91 FSE's, plan check services and transitional training beginning July 1, 2017 through December 31, 2017. This will ensure the program is not interrupted as the City of Milpitas develops the program.

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

**Alternative:** Denial of this request will result in program backlog, increase in grease in the sanitary sewer system which can increase the risk of overflows and may put the City at risk of violating EPA and RWQCB mandated requirements.

**Fiscal Impact:** There are sufficient funds in the FY 2017-18 Public Works Utility Engineering Operating Budget.

**Recommendation:** Approve Agreement with City of San Jose in the amount of \$66,267.00 to provide Fats, Oils and Grease (FOG) inspection and plan check services and transitional training, and direct the City Manager to execute the Agreement in a form approved by the City Attorney.

**Attachment:** Agreement to Provide Agreement for FOG Inspection Services

## **XIX. DEMAND**

- \*32. Receive a Report on Emergency Repair of Yosemite Drive Water Main, and Authorize Payment of Invoices in the Amount up to \$200,000 to Suuluutaaq and \$30,000 to R&B Company (Staff Contact: Nina Hawk, 408-586-2603)**

**Background:** Pursuant to state public contracting law and Council Resolution No. 7779, the Director of Public Works must report all emergency work to the City Council. On June 1, 2017 the Public Works Department responded to a call concerning a water main break on Yosemite Drive. A contractor retained by the Army Corps of Engineers for the Upper Berryessa Creek project was drilling a dewatering well when it struck the City's 16-inch diameter water pipe on Yosemite Drive, causing a failure of the water main. Upon examination of the pipeline for repair, it was determined that the steel had reached the end of its useful life and that an emergency pipeline should be relocated on the bridge. Due to the size of the repair and the urgent need to restore water supply to impacted businesses, the Public Works Director authorized Suuluutaaq to complete the water main line repair and the emergency procurement of materials from R&B Company.

Repair of Yosemite Drive water main qualifies as an emergency repair due to the critical health and safety role that water distribution system performs for the City. The damage to the line was significant and limited the delivery of water to impacted businesses. Due to the seriousness of the damage, the water line needed to be fixed immediately in order to protect public health, prevent property damage, and reduce significant impact to the businesses on Yosemite Drive.

**Fiscal Impact:** There are sufficient funds in the Fiscal Year 2016-17 Public Works Utility Maintenance Operating Budget, FY 2016-17 Capital Improvement Project No. 7123 Minor Water Projects, and FY 2017-18 Capital Improvement Project Annual Water Distribution Rehabilitation Program for this emergency repair work.

**Recommendations:**

1. Receive a report from the Public Works Director on the emergency repair of Yosemite Drive Water Main.

2. Authorize staff to pay invoices in the amount up to \$200,000 to Suuluutaaq.
3. Authorize staff to pay invoices in the amount up to \$30,000 to R&B Company.

**Attachment:** None

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

**XXI. ADJOURN JOINT MEETING**

**NEXT REGULAR CITY COUNCIL MEETING:**  
**TUESDAY, AUGUST 1, 2017**