



MILPITAS CITY COUNCIL MEETING AGENDA

TUESDAY, SEPTEMBER 1, 2015

455 EAST CALAVERAS BOULEVARD, MILPITAS, CA

5:00 P.M. CLOSED SESSION

7:00 P.M. PUBLIC BUSINESS

SUMMARY OF CONTENTS

I. CALL TO ORDER by the Mayor (5:00 p.m.)

II. ADJOURN TO CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Pursuant to California Government Code Section 54956.9(d)1 – cases:

- 1) County of Santa Clara, et al. v. Milpitas Economic Development Corporation, et al.; Sacramento County Superior Court, case no. 34-2013-80001436
- 2) Successor Agency to the Milpitas Redevelopment Agency, et al. v. John Chiang, et al.; Sacramento County Superior Court, case no. 34-2013-8001508

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

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

III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code §54957.1, including the vote or abstention of each member present

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

V. INVOCATION (Councilmember Giordano)

VI. APPROVAL OF COUNCIL MEETING MINUTES – August 18 and 25, 2015

VII. SCHEDULE OF MEETINGS – COUNCIL CALENDAR – September 2015

VIII. PUBLIC FORUM

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

IX. ANNOUNCEMENTS

X. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

XI. APPROVAL OF AGENDA

XII. CONSENT CALENDAR (Items with asterisks*)

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

XIII. PUBLIC HEARING

- 1. Conduct Public Hearing and Introduce Ordinance No. 287 Restricting Single-Use Carry-Out Bags (Staff Contact: Steven Machida, 408-586-3355)**

XIV. UNFINISHED BUSINESS

- 2. Receive Presentation on an Overview of the California Public Employees Retirement System (CalPERS) (Contact: Councilmember Marsha Grilli, 408-586-3031)**
- * 3. Receive Update of the Odor Control Report (Staff Contact: Steven Machida, 408-586-3355)**

XV. REPORTS OF MAYOR AND COMMISSION

- * 4. Consider Mayor's Recommendations for Re-appointments to Youth Advisory Commission (Contact: Mayor Esteves, 408-586-3029)**
- 5. Approve FY 2015-16 Annual Work Plan and Approve Change to By-laws of the Sister Cities Commission (Staff Contact: Leslie Stobbe, 408-586-3352)**

XVI. NEW BUSINESS

- * 6. Approve and Appropriate Funds for the Emergency Repairs of Six Storm Pump Stations and Receive Report on Emergency Repairs for Bellew Pump Station (Staff Contact: Nina Hawk, 408-586-2603)**
- * 7. Approve Fiscal Year 2014-15 Year End Budget Adjustments (Staff Contact: Emma Karlen, 408-586-3145)**

XVII. RESOLUTIONS

- * 8. Adopt a Resolution Approving the Annual Investment Policy (Staff Contact: Emma Karlen, 408-586-3145)**
- * 9. Adopt a Resolution Authorizing the Examination of Sales or Transactions and Use Tax Records (Staff Contact: Emma Karlen, 408-586-3145)**

XVIII. AGREEMENTS

- *10. Authorize the Director of Engineering to Issue a Bidder Pre-Qualification Package for the Milpitas Sports Center Sports Fields, Project No. 5104 (Staff Contact: Steve Erickson, 408-586-3301)**
- *11. Approve and Authorize the Director of Engineering to Execute Contract Change Order No. 2 for \$25,000 for the Automated Water Meter Replacement - Phase 1, Project No. 7121 (Staff Contact: Steve Erickson, 408-586-3301)**
- *12. Approve and Authorize the Director of Engineering to Execute Contract Change Order No. 2 for \$250,000 for Main Street Pavement Reconstruction, Projects No. 4277 and No. 3412 (Staff Contact: Steve Erickson, 408-586-3301)**

XIX. ADJOURNMENT

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review. For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035
Phone: 408-586-3040

The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I Chapter 310 and is available online at the City's website www.ci.milpitas.ca.gov by selecting the Milpitas Municipal Code link.

Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 3rd floor 455 E. Calaveras Blvd., Milpitas and on the City website.

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

APPLY TO SERVE ON A CITY COMMISSION

Seeking Applications for:

Arts Commission
Community Advisory Commission (alternate)
Economic Development Commission (alternate member and
Commercial/Residential Real Estate broker)
Veterans Commission (2 vacancies)
Youth Advisory Commission

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

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

AGENDA REPORTS

XIII. PUBLIC HEARING

1. Conduct Public Hearing and Introduce Ordinance No. 287 Restricting Single-Use Carry-Out Bags (Staff Contact: Steven Machida, 408-586-3355)

Background: At its April 26, 2011 meeting, the Recycling & Source Reduction Advisory Commission (RSRAC) recommended the City develop an ordinance to restrict the use of single-use carry-out plastic bags as a low cost alternative to reduce environmentally harmful trash in City storm drains and creeks and meet litter reduction requirements under the City's stormwater permit. In addition, using single-use carry-out bags by consumers is detrimental to the environment, public health and general welfare. Furthermore, the manufacture of single-use carry-out bags requires the production of non-biodegradable plastics and results in the generation of greenhouse gas emissions. RSRAC reaffirmed its approval of a ban on single-use plastic bags at its meeting on April 28, 2015.

The City of Milpitas participated in a Program Environmental Impact Report (EIR) with San Mateo County and the cities of Campbell, Cupertino, Los Altos, Los Gatos, and Mountain View that resulted in a uniform model ordinance that provides clear direction to businesses in the region. On October 23, 2012, the County of San Mateo certified the Program EIR. Based on recent court cases involving San Francisco and Marin County, California Environmental Quality Act (CEQA) categorical exemptions were upheld to restrict the use of single-use carry-out bags. It is therefore recommended the City of Milpitas find that a categorical exemption applies to the ordinance adoption.

The proposed ordinance (copy in the agenda packet) bans single-use carry-out plastic bags for all retail establishments. Paper bags with less than 40% post-consumer recycled material would also be prohibited. To help offset merchant costs, alternative paper bags with more than 40% post-consumer recycled material would be available for a 10 cents charge to the customer. The proposed ordinance does not ban plastic bags for produce, meat, pharmacies, restaurants, and charitable re-use outlets. In addition, the ordinance allows for free paper bags to various government support programs such as California Special Supplement Food Program for Women, Infants, and Children, the Supplemental Food Program and CalFresh.

The proposed ordinance requires elements of accountability to assure compliance with stormwater permit requirements and receive credits for trash load reduction in creeks. For example, merchants would be required to retain records of single-use paper bag sales for three years and, upon request, provide records to the City free of charge. The ordinance further requires merchants show the paper bag charge on invoices and receipts. These requirements are not intended to be cumbersome and City staff would accept simple recordkeeping methods, such as total paper bags sold and allow merchants to hand-alter invoices and receipts to show the single-use bag charge.

Various Bay Area regional organizations, including the Santa Clara County Recycling and Waste Reduction Commission (SCCRWRC) and Association of Bay Area Governments (ABAG), encourage local governments to restrict use of single-use bags because they are a source of litter and waste. Apart from joining the majority of California cities that have already adopted a plastic bag ban, restricting single-use bag distribution will help the City meet mandatory litter control requirements under its stormwater permit at lower costs and reduce environmentally harmful trash to storm drains and creeks.

California Environmental Quality Act: The ordinance is exempt from CEQA pursuant to CEQA Guidelines Sections 15307 (actions by a Regulatory Agency for protection of the natural resources) and 15308 (actions by a Regulatory Agency for Protection of the Environment) each of which provides a separate and independent basis for CEQA clearance and when viewed

collectively provide an overall basis for CEQA clearance. In addition, the City of Milpitas was a participating agency in the Countywide Environmental Impact Report analyzing the environmental impacts of an ordinance to restrict Single-use carry-out bags.

Alternative: Failure to adopt Ordinance No. 287 restricting single-use carry-out bags would result in the City facing higher costs to meet mandatory litter control requirements, according to its current stormwater permit and reduce environmentally harmful trash to City storm drains and creeks.

Fiscal Impact: None. Costs for code enforcement and community outreach will fall under current operating budget for the solid waste program.

Recommendations:

1. Open the public hearing, and then move to close the hearing, following any comments.
2. Move to find as a Responsible Agency that the adoption of an ordinance to restrict single-use plastic bags in Milpitas is exempt from CEQA under CEQA Guidelines Section 15307 (actions by a Regulatory Agency for protection of the natural resources) and 15308 (actions by a Regulatory Agency for Protection of the Environment) and that Milpitas was a participating agency in the County-wide Environmental Impact Report analyzing the environmental impacts of an ordinance to restrict single-use carry-out bags.
3. Move to waive the first reading beyond the title of Ordinance No. 287, following a reading of the title by the City Attorney.
4. Introduce Ordinance No. 287 to restrict the use of single-use carry-out bags.

XIV. UNFINISHED BUSINESS

2. **Receive Presentation on an Overview of the California Public Employees Retirement System (CalPERS) (Contact: Councilmember Marsha Grilli, 408-586-3031)**

Background: At the request of Councilmember Grilli, Mr. Ron Lind, a Milpitas resident and CalPERS Board Member, will provide a presentation to the City Council on the funding status of the state retirement agency CalPERS and how it relates to the City of Milpitas.

Recommendation: Receive a presentation by Ron Lind at the City Council meeting regarding CalPERS.

- * 3. **Receive Update of the Odor Control Report (Staff Contact: Steven Machida, 408-586-3355)**

Background: From July 13 through August 9, 2015, the Bay Area Air Quality Management District (BAAQMD) forwarded 118 complaints originating in Milpitas. 54 complaints identified a garbage odor, 15 complaints identified a sewage odor, and 49 complaints did not identify an odor source. As of the last Council update, the City's odor reporting website had received 24 reported complaints.

Recommendation: Receive the update of the odor control report.

XV. REPORTS OF MAYOR AND COMMISSION

- * 4. **Consider Mayor's Recommendations for Re-appointments to Youth Advisory Commission (Contact: Mayor Esteves, 408-586-3029)**

Background: Mayor Esteves recommends the following:

Youth Advisory Commission:

Re-appoint Alan Pham as a regular member to a term that will expire in September of 2016.

Re-appoint Clare Sern as a regular member to a term that will expire in September of 2016.

Re-appoint Jashandeep Chahal as Alternate No. 1 to a term that will expire in Sept. of 2016.
Re-appoint Ravit Sharma as Alternate No. 3 to a term that will expire in September of 2016.
Re-appoint Christie Maly as Alternate No. 4 to a term that will expire in September of 2016.

Recommendation: Receive Mayor's recommendation for re-appointments to the Youth Advisory Commission.

5. Approve FY 2015-16 Annual Work Plan and Approve Change to By-laws of the Sister Cities Commission (Staff Contact: Leslie Stobbe, 408-586-3352)

Background: Founded May 21, 1996. The Milpitas Sister Cities Commission (SCC) serves as an advisory body to the City Council on matters affecting sister cities relationships, programs, and activities. The Commission also reviews applications for sister city affiliations and forwards recommendations to the City Council for the establishment of future agreements. Commissioners are appointed to three-year terms and alternates are appointed to two-year terms. The Milpitas Unified School District has a non-voting member appointed to the Commission and there is one student non-voting member.

The City of Milpitas has three sister city relationships and one friendship city:

- Tsukuba, Japan – Sister City since March 1996
- Dagupan, Philippines – Sister City since April 2003
- Huizhou, China – Sister City since April 2004
- Seongnam City, North Korea – Friendship City since April 2015

The SCC offers the draft work plan for fiscal year 2015-16 (copy in Council's packet). The annual work plan follows the fiscal year to track expenses for sister city activities which are supported by a spending limit of \$6,240 from the Council's community promotions budget.

Work plan highlights include an upcoming recommended sister city relationship with Seongnam City, South Korea; continuing a second successful year of the electronic pen pal project with sister city students and students from the Milpitas High School's Digital Business Academy, and; begin recruiting home stays for October 2016 visits at the January 28, 2016 SCC meeting. Proposed projects to be completed with City staff include signage about sister cities in the City Plaza and a display of Memorandums of Understanding on the second floor rotunda area.

The FY 2014-15 year focused on the issue of fundraising and included Commissioner-led research and a two-meeting workshop with a non-profit consulting professional about the reasons to raise funds and possible events. The main reasons for fundraising are to provide stipends to teachers and students for travel to sister cities and for host families to help with costs of food and other expenses. Commissioners raised concerns about its capacity to host and sustain events that would support these activities. After a study of what other cities with affiliated associations accomplish through fundraising, the Commission determined events of this nature were beyond the scope of the SCC's abilities. It is the SCC's finding that large scale fundraising would require the formation of a non-profit association. However, the SCC also found that local, "ready-made" events, such as the International BBQ, would allow an opportunity for smaller-scale fundraising. This will be considered as part of this year's work plan.

The SCC also reviewed obtaining corporate sponsorships and involvement with sister city relationships and activities. It was determined that a seat on the Commission designated for a representative of a company with a significant corporate presence in Milpitas would provide an invaluable guide for the SCC. At its March 26, 2016 meeting, the SCC voted to recommend a change to the by-laws to reserve a seat for a corporate business representative. This change is consistent with other Commissions that reserve seats for representatives of institutions and businesses that are not required to be Milpitas residents.

Recommendation: Approve the FY 2015-16 Work Plan and approve one change to the By-laws of the Sister Cities Commission related to membership.

XVI. NEW BUSINESS

- * **6. Approve and Appropriate Funds for the Emergency Repairs of Six Storm Pump Stations and Receive Report on Emergency Repairs for Bellew Pump Station (Staff Contact: Nina Hawk, 408-586-2603)**

Background: In July 2013, a comprehensive update of the City's Storm Drain Master Plan ("SDMP") was completed by Schaaf & Wheeler Consulting Civil Engineers. This plan took a comprehensive approach in evaluating storm drain system performance and future storm water infrastructure needs. The SDMP focuses on the City's drainage system, including thirteen critical storm water pump stations. The City of Milpitas Public Works Department operates and maintains these thirteen storm water pump stations.

Six Pump Stations - Emergency Repairs:

In preparation for the 2015 winter season, City staff reviewed the SDMP and performed additional site condition assessment of each pump station, and determined six (6) of the thirteen (13) pump stations are in need of emergency repairs and service. The six pump stations needing emergency repair and service include: Minnis Pump Station, Jurgens Pump Station, Manor Pump Station, Bellew Pump Station, California Circle Pump Station and Spence Creek Pump Station. The repairs and service required for these sites include, but are not limited to: pump inspection, minor pump maintenance, pump bearing and seal replacement, automated control strategy, backup power retrofits, installation of new pumps, variable frequency drive repair/replacement and generator installation. Due to the short time frame before the start of the rainy season, staff requests that the City Council authorize the emergency repairs of these six pump stations. The Bellew Pump Station is already under emergency repair. Contracting for these emergency repairs and service through a competitive solicitation for bids would cause a delay that the project will not permit due to the short timeframe before the rainy season and would jeopardize the public health, safety and welfare.

Cost Estimate and Analysis:

The preliminary cost estimate for these emergency repairs are found in the document "Storm Water Pump Station – Fall 2015, Cost Estimates for Emergency Repairs and Service" included in the Council's agenda packet. The total estimated cost for emergency repairs required for these six pumps stations is \$557,086.00. The cost estimate includes a 20% contingency fee and a 10% project management fee to provide technical support for these repairs to ensure completion prior to winter. \$104,535.00 of the total estimate is for the emergency repair work currently underway at Bellew Pump Station.

Report on Emergency Repairs for Bellew Pump Station:

The Bellew Pump Station has an underground storage tank containing diesel fuel which is leaking into secondary contaminant and needs to be removed immediately. In the event that electrical power is lost to the site, this tank is used to provide back-up power to the storm pump station site. The work for this repair is currently underway to limit environmental dispersion and/or liability to the City. The emergency work for Bellew Pump Station includes removal of the fuel, the tank and retrofitting the existing generator.

Fiscal Impact: There are sufficient funds in the amount of \$557,086.00 in the General Government CIP Fund to fund these repairs. Staff is requesting \$557,086.00 be appropriated to the Public Works Utilities Maintenance - Repair and Maintenance budget as follows: 400-423-4241 (\$278,543) and 450-423-4241 (\$278,543).

Recommendations:

- 1) Approve the emergency repairs of six Storm Pump Stations for the not-to-exceed amount of \$557,086.00 and appropriate funds from the City's General Government CIP Fund to the Public Works Utilities Maintenance Repair and Maintenance budget.
- 2) Receive the report on emergency repairs of the Bellew Pump Station.

*** 7. Approve Fiscal Year 2014-15 Year End Budget Adjustments (Staff Contact: Emma Karlen, 408-586-3145)**

Background: Finance staff is in the process of closing the City revenue and expenditures accounts for the fiscal year 2014-15. To maintain conformity with the City's budgeting policies and to prepare for the annual external financial audit, staff examined all the expenditure accounts of various funds and determined that the following budget adjustments are necessary. The reason for the budget adjustments is primarily due to necessary expenditures made during the fiscal year that were not anticipated when the FY 2014-15 budget was developed.

The detail for each budget adjustment item is described below.

- 1) Increase the budget appropriations for Planning and Neighborhood Services Department by \$2,260. The City collected fees from developers to be used for a General Plan update. During the fiscal year, the Planning Department incurred expenditure to initiate the update by filing a notice for CEQA Document Declaration at the County Recorder's office. The source of funding for the budget appropriations is the Community Planning Fund.
- 2) Increase the budget appropriations for Non-department budget by \$6,937 for rental fees of a fence for the McCandless property. The source of funding for the budget appropriations is the Transit Area Impact Fee Fund.
- 3) Increase budget appropriations for non-department by \$2,495. The increased amount is related to audit fee incurred for the audit of projects funded by the Transportation Development Act grant. The source of funding for the budget appropriation is the Street Improvement Fund.

A Budget Change Form identifies the three items and budget codes associated with these increases in the budget, and is included in the Council's agenda packet.

Fiscal Impact: The budget adjustments reduce the fund balances of the various funds as follows: \$2,260 Community Planning Fund, \$6,937 Transit Area Impact Fee Fund and \$2,495 Street Improvement Fund.

Recommendation: Approve the Fiscal Year 2014-15 year-end budget appropriations, itemized in the budget change form.

XVII. RESOLUTIONS

*** 8. Adopt a Resolution Approving the Annual Investment Policy (Staff Contact: Emma Karlen, 408-586-3145)**

Background: Investment laws require all local agencies to develop an annual investment policy that must be considered by the legislative body of the local agency at a public meeting. The Annual Investment Policy (the Policy) for the City of Milpitas is submitted for Council review and approval. Finance staff continues to monitor the changes to the California Government Code in regards to investment parameters and allowable investments that may impact the City's investment policy.

Staff proposes a change to the Investment Policy to allow investments in Medium-term Corporate Note and Commercial Paper issued by corporations whose long-term debt are rated "A" or better by at least two nationally recognized statistical rating organizations. The City's current

Investment Policy is more restrictive as it limits investments in Medium-term Corporate Note and Commercial Paper issued by corporations whose long-term debt are rated “AA” or better. The proposed change is consistent with the California Government Code. Securities with an “A” rating by at least two nationally recognized statistical organizations are considered safe investments with low credit risk.

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

Fiscal Impact: None.

Recommendation: Adopt a resolution of the City of Milpitas approving the Annual Investment Policy for FY 2015-16.

*** 9. Adopt a Resolution Authorizing the Examination of Sales or Transactions and Use Tax Records (Staff Contact: Emma Karlen, 408-586-3145)**

Background: The City entered into an agreement with MuniServices LLC (formerly known as MBIA MuniServices Company) to provide financial consultant services that consist of sales and use tax audit, quarterly sales tax analysis and reporting, and property tax audit. In order to perform these services, it is necessary for the consultant to examine the sales or transactions and use tax records administered and maintained by the State Board of Equalization (“SBE”). The SBE required that the sales or use tax records obtained from the SBE can only be used for the purposes of revenue forecasting or detecting deficiencies or misallocations. The SBE requires the City to update the resolution to authorize the examination of sales or use tax records. The resolution also designates MuniServices LLC as the representative of the City specifically to examine these records.

Fiscal Impact: Potential revenue gains if sales tax misallocations are detected.

Recommendation: Adopt a resolution authorizing the examination of sales or transactions and use tax records.

XVIII. AGREEMENTS

***10. Authorize the Director of Engineering to Issue a Bidder Pre-Qualification Package for the Milpitas Sports Center Sports Fields, Project No. 5104 (Staff Contact: Steve Erickson, 408-586-3301)**

Background: Construction documents for construction of the Sports Center Sports Fields are being prepared, with start of construction anticipated in January of 2016. The project provides for installation of a new synthetic turf soccer field, multipurpose field that can be used for football and soccer, stadium lighting, and field furniture. The City budget for the work is \$2,300,000, and the goal is to fast track construction to June of 2016 for use by the 4th of July in 2016.

Installation of synthetic turf fields is a specialization that requires experience to install correctly to maintain the product warranty and its integrity. Due to the uniqueness of synthetic turf installation and the tight construction schedule, staff recommends use of a bidder pre-qualification process to establish a list of pre-qualified bidders that will be allowed to bid on the project later this fall. This process has been successfully used on other recent City projects including the Sports Center pool renovation, Barbara Lee Senior Center and the Milpitas Public Library.

Staff is preparing the bidder pre-qualification package for this project and seeks authorization to advertise the package in the fall. The process would allow interested bidders to submit their qualification materials to the City for review and approval. Only bidders that can prove recent relevant experience with synthetic turf installation and in the completion of successful projects will be approved.

Alternative: Denial of this request would result in not pre-qualifying the potential bidders. The pre-qualification process allows the City a better process for determining a responsible bidder and to fast track projects with a limited construction window.

Fiscal Impact: None. Sufficient funds will be available in the project budget at time of award.

Recommendation: Authorize the Director of Engineering/City Engineer to issue a bidder pre-qualification package for the Milpitas Sports Center Sports Fields, Project No. 5104.

- *11. Approve and Authorize the Director of Engineering to Execute Contract Change Order No. 2 for \$25,000 for the Automated Water Meter Replacement - Phase 1, Project No. 7121 (Staff Contact: Steve Erickson, 408-586-3301)**

Background: This project provides for replacement of old water meters servicing the Pioneer Mobile Home Park on Dixon Landing Road and Mobilodge on North Milpitas Boulevard. A total of three new automated water meters will be installed to increase efficiency and accuracy in tracking water usage. Existing water meters, valves, and plumbing systems at these locations are very old and detailed city records of what was originally installed are not available.

To complete the installation work, a water system shut down is required for a period of several hours and will affect many residents and businesses. The system outages will be along Washington Drive from North Milpitas Boulevard to Fountainbleu Avenue. Staff recommends installation of an additional water system isolation valve at North Milpitas and Washington Drive to allow the City more control over isolating the water main system during an emergency, and the new valve will reduce the number of residents affected by the water shut down for this project. The estimated cost to install this additional valve is not to exceed \$25,000, and staff requests authorization for the Director of Engineering/City Engineer to execute the Change Order for this work so that it may proceed. The construction contract was awarded to Preston Pipelines in the amount of \$308,600.

Alternative: Denial of this request would result in the City losing the opportunity to improve system operations, and impacting a greater number of residents during the water main shutdown to install the new meters.

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

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

Recommendation: Approve and authorize the Director of Engineering/City Engineer to execute change order No. 2 for the Automated Water Meter - Phase 1, Project No. 7121 cumulatively not to exceed \$25,000.

- *12. Approve and Authorize the Director of Engineering to Execute Contract Change Order No. 2 for \$250,000 for Main Street Pavement Reconstruction, Projects No. 4277 and No. 3412 (Staff Contact: Steve Erickson, 408-586-3301)**

Background: On April 7, 2015, the City Council awarded a construction contract to Ghilotti Construction Company for the Main Street Pavement Reconstruction Project, Project No. 4277. The \$3,046,388.75 contract provides for the reconstruction and overlay of portions of South

Main Street, Serra Way, Curtis Avenue, and Corning Avenue. Work includes the reconstruction of sidewalk, pedestrian ramps, curb gutter, driveways, traffic signal modifications, and installation of street trees. The roadway reconstruction work will correct the existing high roadway cross slope and allow for new crosswalks to be placed at the proper elevations as required by statute.

In the 1920s, South Main Street was constructed as State Route Highway 17. The old highway was constructed using narrow 6-inch thick concrete slab. In the 1950s, there were several projects to widen Highway 17 (South Main) to the width seen today and the concrete slab was over laid (buried) with asphalt concrete. The original concrete highway slab buried under the asphalt meanders within the limits of South Main Street. The exact location and depth of the concrete slab, as well as underground utilities installed in the 1950s and earlier, is not always located as shown on the plans (As-Builts.).

Work to reconstruct South Main Street commenced May 1, 2015 with installation of traffic signal facilities, sidewalk, curb and gutter improvements. The pavement removal and replacement work started on August 10. In the process of removing and replacement of the old pavement, several buried unforeseen conditions were discovered that require additional work to correct. Wet, unstable soils and utility trenches were discovered in various spots along South Main Street that are not supporting the new pavement. These soft spots will need to be re-excavated and plugged back with a larger deeper section of new asphalt concrete to bridge the poor soil conditions. The old highway concrete slab was also encountered in several locations, and its depth is such that it will prevent installation of the new road surface at the new elevation. Removal of the interfering portions of the concrete slab is required to proceed with installation of the improvements on South Main.

Staff negotiated change order for this work with a price not to exceed \$250,000. City Council is requested to approve this additional work and there are sufficient funds in the project budget for this work.

Alternative: Denial of this request would result not completing the improvement work to South Main Street.

California Environmental Quality Act: The project is exempt under Section 15301 (Existing Facilities) of the CEQA Guidelines.

Fiscal Impact: None. Sufficient funds are available in the project budgets of Projects No. 4277 and No. 3412.

Recommendation: Approve and authorize the Director of Engineering/City Engineer to execute contract change order No. 2 for \$250,000 for Main Street Pavement Reconstruction, Projects No. 4277 and No. 3412.

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, SEPTEMBER 15, 2015**

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MILPITAS CITY COUNCIL CALENDAR

September 2015

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1 5:00 PM-Closed Session 7:00 PM-City Council	2 7:30 AM-Santa Clara VTA Northeast Group (JE) 7:00 PM-Special Closed Session-City Council 7:00 PM-Community Advisory Commission (CM)	3 5:30 PM-Santa Clara VTA Board of Directors (JE) 7:00 PM-Bicycle Pedestrian Advisory Commission (CM)	4	5
6	7  LABOR DAY City Departments and Services Closed for Holiday	8	9 5:30 PM-Veterans Commission – Special Meeting (DG) 7:00 PM-Planning Commission	10 4:00 PM-Santa Clara VTA Policy Advisory Committee (CM) 4:30 PM-Treatment Plant Advisory Committee (JE) (San Jose) 7:00 PM-Cities Assoc of SCC (JE) 7:00 PM-Youth Advisory Commission (DG)	11	12
13	14 2:30 PM-Milpitas Oversight Board at Community Center 4:00 PM-Economic Development Commission (CM) 7:00 PM-Parks, Recreation & Cultural Resources Commission (GB)	15 6:00 PM-Study Session Closed Session 7:00 PM-City Council	16	17 10:00 AM-Santa Clara VTA Congestion Management Program & Planning Committee (JE) 7:00 PM-Emergency Preparedness Commission (MG) 7:00 PM-Bay Area Water Supply Conservation Agency (JE-Foster City)	18	19
20	21 7:00 PM-Telecommunications Commission (GB) 7:00 PM-Library Advisory Commission (CM)	22	23 5:30 PM-Veterans Commission – Special Meeting (DG) 7:00 PM-Planning Commission	24 5:30 PM-Milpitas Chamber of Commerce Board (DG) 6:00 PM-Sister Cities Commission (MG)	25	26
27	28 7:00 PM-Arts Commission (DG)	29	30			

**Draft MEETING MINUTES
CITY OF MILPITAS**

Minutes of: Regular & Special Meetings of Milpitas City Council
Date: Tuesday, August 18, 2015
Time: 5:30 PM Special Meeting Closed Session
6:00 PM Closed Session / 7:00 PM Open
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

CALL TO ORDER

Mayor Esteves called the meeting to order at 5:30 PM for the Special Meeting Closed Session, to be immediately followed by Closed Session of the Regular Meeting. City Clerk noted the roll.

PRESENT: Mayor Esteves, Vice Mayor Montano, Councilmembers Giordano and Grilli

ABSENT: Councilmember Barbadillo was absent at roll call. He arrived for Closed Session at 5:40 PM.

CLOSED SESSION

City Council convened in Closed Session to discuss Public Employee Hiring (City Attorney) at 5:30 PM and several litigation matters at 6:00 PM.

City Council then convened in Open Session at 7:16 PM.

ANNOUNCEMENT

No announcement out of closed session for the Special and Regular meeting items.

PLEDGE

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

INVOCATION

Vice Mayor Carmen Montano read a passage from the bible to start the meeting.

MEETING MINUTES

Motion: to approve the minutes of August 4, 2015 City Council meeting

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

SCHEDULE OF MEETINGS

Motion: to approve Council Calendars/Schedules of Meetings for August and September 2015

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

PRESENTATIONS

Mayor Esteves read from a Proclamation highlighting PG&E's *Call Before You Dig* program, which encouraged contractors or homeowners to call 811 before any property owners dig in their yard, in order to avoid damaging any gas or other utility lines. Mr. Anil Babbar, a PG&E representative, came to the podium to accept the proclamation.

A commendation was presented to the Milpitas Little League baseball team that recently played in the Big League Western Regional championship and placed second. Young men who played on the team appeared with several coaches and their manager to accept the commendation.

PUBLIC FORUM

Dan Manassau, Milpitas resident, asked to remove agenda Item No. 5 from the consent calendar about the Community Garden regulations. He and other participants did not receive notice of the rules changes as promised and he would like to comment.

Rob Means, 1421 Yellowstone resident, discussed transportation between BART and various parts of the City and neighborhoods. He described a transit loop that would help facilitate future transit.

Robert Marini, Milpitas resident, discussed fees and calculations for water and sewer charges and the Proposition 218 process along with hcf calculations for fees.

Don Funch, Milpitas resident, thanked City public works and building staff for quick response to work done on the sidewalk in front of his house. He talked about his involvement with sports in another City. He felt there was a problem with a prior response about senior rates for sewer service, and did not agree with not reducing rates when the number in a household was lower for seniors than others.

Voltaire Montemayor, Milpitas resident, congratulated the Little League players. He mentioned safety was important, especially regarding utilities, and preparation was needed for earthquakes.

Jezzell Marez, from the Crater Lake neighborhood, said it would be helpful to have signs at the entry of City Hall about this meeting. She made comments about several public school issues.

ANNOUNCEMENTS

Councilmember Giordano announced that the City Attorney Subcommittee met yesterday. The outcome was after they reviewed responses to the Request for Proposals from law firms for outside contract legal services was to proceed to interviews by the City Council. She gave a summary of potential cost savings - from \$670,000 to up \$940,000.

Vice Mayor Montano had attended CERT training class by the Milpitas Fire Department over several Saturdays, and graduated recently. She felt prepared for natural disaster response in her neighborhood and encouraged other residents to attend the valuable free training.

Councilmember Grilli mentioned the Emergency Preparedness Commission, and the excellent outreach effort that was done to urge residents to sign up for the CERT training.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

Interim City Attorney Baum asked Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. None were reported.

APPROVAL OF AGENDA

(1) Motion: to amend the agenda by removing agenda item no. 5 on the Community Gardens rules & regulations, and to bring it back two meetings from this evening (on September 15)

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

(2) Motion: to approve the meeting agenda, as amended

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

CONSENT CALENDAR

Motion: to approve the Consent Calendar (items noted with *asterisk), as amended

Vice Mayor Montano requested removal of agenda item No. 6 (Arts grant) from consent.

Mayor Esteves requested removal of agenda item No. 9 (contract for Sports Center Pools repair project) from consent.

Councilmember Grilli left the dais at 8:10 PM and returned shortly thereafter.

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Grilli)

- * 3. Commission Appointments Confirmed the following appointments recommended by the Mayor:
- Bicycle Advisory Commission:
Re-appointed Alternate No. 2 William Barnes to a term that will expire in August of 2018.
- Community Advisory Commission:
Appointed Evan Bell as Alternate No. 2 to a term to expire in January of 2017.
Newly appointed George Chen as Alternate No. 3 to a term that will expire in January of 2016.
- Library Advisory Commission:
Re-appointed Sonny Wang to a term that will expire in June of 2017.
Re-appointed Alternate No. 1 Hellie Mateo to a term that will expire in June of 2017.
- Parks, Recreation and Cultural Resources Commission:
Re-appointed Evelyn Ramirez as a regular member to a term that will expire in June 2018.
- * 4. Mabel Mattos Plaque Approved a memorial plaque to be installed near the Alviso Adobe Park's historical farm equipment in memory of Mabel Mattos.
- * 5. Community Garden Rules This item was removed from the agenda and would be heard on September 15.
- * 8. Donation Request Approved request from the Korean Language and Culture Foundation for a \$500 donation to the non-profit group for its Hangeul Day celebration on October 3 at Milpitas Library.
- *10. Agreement with Santa Clara VTA Authorized the City Manager to execute a Subordination and Release Agreement with Santa Clara Valley Transportation Authority along Dixon Landing Road.
- *11. Agreement with Verde Design Inc. Approved and authorized the City Manager to execute an agreement with Verde Design Inc. in the amount of \$325,000 for Project No. 5104, Sports Center Sports Fields Project, subject to approval as to form by the City Attorney.
- *12. Amend Agreement with CSG for Fire Dept. service Authorized the City Manager to execute Amendment No. 5 to the agreement with CSG Consultants, Inc. for Fire Department plan review and inspection services for Fiscal 2015-16 increasing the term of the agreement to September 30, 2015 for the additional amount of \$22,000.
- *13. Agreement with Harris & Associates – utility engineering Authorized the City Manager to execute a consultant agreement with Harris & Associates, Inc. for support services for Utility Engineering and approve a budget appropriation for Capital Improvement Program Projects No. 4265, No. 7076, No. 7118, No. 7123 and No. 7126.
- *14. Common Interest Agreement Authorized the City Manager to execute the Common Interest, Privilege and Confidentiality Agreement with West Valley Sanitation District, Cupertino Sanitary District, County Sanitation District 2-3, and Burbank Sanitary District of the San José/ Santa Clara Regional Wastewater Facility.

UNFINISHED BUSINESS

1. Strategic Plan City Manager Tom Williams introduced Dr. Shawn Spano, the City's consultant from Public Dialogue Consortium who'd been working with employees and the community to develop the draft Strategic Plan for City of Milpitas. Dr. Spano provided the history on

this effort in Milpitas to date, detailing meetings and the outreach he and employees had conducted inside the organization and within the community. He displayed and read aloud the “Community Vision.”

Five Organizational Values were displayed and defined: 1. Superior Services, 2. Open Communication, 3. Integrity & Accountability, 4. Trust & Respect and 5. Recognition & Celebration.

The City was onto Phase 3 of the Strategic Plan, strategic goals and objectives, currently underway. Goal 1: Superior Services. Goal 2: Public Safety. Goal 3: Growth & Economic Development. Goal 4: Community Connections. Goal 5: Regional Partnerships. Goal 6: Environment & Natural Resources. Goal 7: Fiscal Responsibility.

The next step was to identify objectives for those seven goals and finalize them into short, mid and long term stages. The Strategic Plan could enter a potential Phase 4, ongoing assessment with specific workplans (who does what, when in a working document).

Councilmember Giordano stated she was very pleased with the Community Vision statement. She asked about how to measure achievement of the listed goals. Dr. Spano replied that would be determined by the specific workplans for the goals.

Councilmember Grilli commented on building relationships across the organization. She asked about getting the objectives done and gaining momentum to keep going on the Strategic Plan efforts.

Vice Mayor Montano said the plan so far did not mention anything about families, per se, in the goals. She wanted fostering more youth programs and venues in the Strategic Plan. Hosting more multi-cultural events was needed, she felt. Public Safety was related to transportation and needed to focus on this, with a circulation study, since traffic congestion continued to be a big issue in Milpitas.

Mayor Esteves said priorities must be addressed. He asked if goals were mutually exclusive and could the goals be associated with the budget, especially when discussing programs. He asked about the term “Superior “ and how one would know, possibly by comparison to other cities as a measurement. He had concerns about applying this to goals that were long term, as the entire Strategic Plan ought to be.

Councilmember Barbadillo asked if there was a strategic plan done before. Dr. Spano replied no. City Manager Williams commented that there had been a written mission statement in the past (in the budget).

Next, Mayor Esteves invited comments from the audience.

Robert Marini, Milpitas resident, heard a comment on not enough diversity which he did not understand. Recent activity supported diversity and respected the residents of Milpitas. He had comments on traffic and felt some of the Council was just showboating.

Voltaire Montemayor, Milpitas resident, referred to the strategic plan goals. These go hand in hand with a need to measure or survey with field observers and to be in synch.

Rob Means, 1421 Yellowstone, had been interviewed in this process, and was quite pleased with the results. He remarked on where Personal Rapid Transit (PRT) would fit into the plan. Good infrastructure was necessary, he stressed.

Jezzell Marez, Milpitas resident, said God was really amazing her today and then remarked on technology and ethics.

Mayor Esteves mentioned several options for every aspect of the strategic plan goals. It was not able to satisfy every suggestion that the Council had received. Of course, the City

Council must decide ultimately, after addressing any issues.

Motion: to approve the City of Milpitas Community Vision, Organizational Values and Strategic Goals for the City of Milpitas Strategic Plan, as presented by the City Manager and consultant

Motion/Second: Councilmember Grilli/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

2. Milpitas Community Television RFP response

Information Services Director Mike Luu provided background history on the request for proposals (RFP) process for the operation of government cable television channel 26. One vendor responded to the request, KMTV from Mountain View. Mr. Luu stated the specified goals and objectives of the RFP.

Vice Mayor Montano asked how KMTV funded its station. Staff replied it managed stations for five cities, so those cities pay KMTV to broadcast the public meetings.

Councilmember Giordano asked Vice Mayor Montano about her concern regarding fundraising. Ms. Montano thought about the television station applying for grants to stay in existence.

Councilmember Barbadillo sought data on viewership. Mr. Luu explained that the City could not obtain that data from Comcast. He did report that on a monthly basis, the station got about six or seven DVDs with a request to broadcast. Demand for service was not really very high for a local cable station. Commercial paid advertising was not permitted on the local public cable channel.

Mayor Esteves asked who was behind MCTV. Staff explained that it was operated by a local non-profit corporation with a Board of Directors, a volunteer body. The Mayor asked if staff would return to the City Council with terms of a new agreement, and Mr. Luu said yes.

Councilmember Giordano left the dais 9:25 PM and returned a short while later.

Vice Mayor Montano inquired about the non-profit organization. Staff said that in the new agreement, the City could ask for an audit report or other data from the Board of the television station. The Vice Mayor thought the City should have a right to make sure money was spent properly.

Mayor Esteves asked about outreach for more viewers. Board members would go to events and to businesses to let more of them know about programming opportunities on the station.

Telecommunications Commission Chair Albert Alcorn addressed the Council about the existing agreement, when Comcast first funded the television studio from the start. The MCTV non-profit took over basic operation of the channel, following input from the Telecommunication Commissioners.

Telecommunications Commissioner Kurt Bohan pitched the idea of a public access station early on before he was a member. He had serious concerns now about making a deal with the current MCTV Board because significant reforms were needed, he stated.

Mayor Esteves then asked for comments from the audience.

Robert Marini, Milpitas resident, said he had been trying to schedule time to learn the equipment but could not do so. There was no momentum, while he believed there were ways to raise funds for the tv station.

Jezzell Marez, Milpitas resident, said this all goes along with the theatre. There was a need to stop raises on salaries and have money strategies. Money principles for the budget were important, and the city needed \$1 million for two theaters.

Voltaire Montemayor, Milpitas resident, said this was a big advantage for us. The City needed to renegotiate a contract for the public access station, which was good for students.

Vice Mayor Montano was perplexed about some of what the speakers brought to light. Reform or restructuring was needed in a new contract. She thought there was a need for more diversity on the Board of Directors of MCTV and better communication.

Motion: to approve the staff recommendation for the operation of the community access television channel 26 and to renegotiate a new agreement with MCTV, including additional goals and scope of work, as stated in the Request for Proposals

Vice Mayor Montano remarked that her motion was made with authority to make sure some of that language was there for internal safeguards and accountability (staff noted that was in MCTV By-laws), with cohesiveness and to restructure the Board of Directors.

Mayor Esteves stated he wanted a review of the by-laws of the MCTV organization.

Motion/Second: Vice Mayor Montano/Councilmember Barbadillo

Motion carried by a vote of: AYES: 4
NOES: 1 (Grilli)

Councilmember Grilli was reluctant to support the motion because there was enough concern expressed at this meeting.

REPORTS

Three items were approved on the consent calendar.

6. Arts Grant to Evelyn Chua

Vice Mayor Montano saw that grant applicant Evelyn Chua was in the audience, so Ms. Montano wanted to give Mrs. Chua a chance to advocate for the grant and her program.

Ms. Chua came to the podium to request a grant to help produce and promote her program for a movie showing of “Delano Manongs” at the Senior Center, a multi-cultural event during the Filipino-American month of October. She described the movie, about Filipino workers who lead the effort to form the United Farm Workers with Cesar Chavez in central California. She thanked Recreation staff Renee Lorentzen and Jaime Chew.

Motion: to approve the Milpitas Arts and Culture Grant application and award a grant for in-kind performance space and City staff support to Evelyn Chua for her movie screening event to be held on October 10, 2015 at the Barbara Lee Senior Center

Motion/Second: Vice Mayor Montano/Councilmember Grilli

Motion carried by a vote of: AYES: 5
NOES: 0

7. Telecommunications Commission workplan

Information Services staff Eliren Pasion provided an introduction and overview of the Milpitas Telecommunications Commission, first formed in 1994. He then introduced Chair Albert Alcorn, who presented the programs and projects for the coming year that Commissioners planned to address.

Councilmember Grilli was Council liaison to the Emergency Preparedness Commission, and so was pleased that the Android version of “MyMilpitas” application was nearly ready and asked when it would be available to the public. Also she noted that registering home security cameras (to help the police department) was a very simple process.

Mayor Esteves asked the status of wifi (wireless communication) service in the City. The most recent service offered here was dead, reported Chair Alcorn. The former Silicon Valley Unwired was no longer in existence and was not supported anywhere. So, the Mayor asked about the Commission's goal for a city-wide wifi program.

Staff Mike Luu responded that within the Request for Proposals for future service was the requirement for a very fast, new model. It would be "single hop" on a fiber network, unlike what most cities had available. Mayor Esteves pressed staff for a date when wifi would be available for residents, while staff explained there were many factors.

Councilmember Barbadillo fully supported the workplan. On the wifi topic, he'd heard a presentation on this topic at the Commission meeting and it included terms for a new RFP to require removal of old equipment still installed around the city. Planned paid service via ultra-fast fiber capacity was something to look forward to.

Vice Mayor Montano asked about the wifi being city-wide on all city streets and neighborhoods. She suggested a school partnership to help lower income families to have internet available at home for school kids.

Next, Mayor Esteves invited speakers from the audience.

Jezzell Marez, Milpitas resident, had been studying the bible, was marketing having a business with a community of investors. She discussed capacity for internet service and its speed.

Robert Marini, Milpitas resident, felt that new technology for the City was a good thing. He asked if the public could participate in the development in any way, in those efforts.

Motion: to receive a report on the Telecommunications Commission workplan for FY 2015-16 from the Commission Chair and Information Services Director

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

NEW BUSINESS

One item was approved on the consent calendar.

RESOLUTION

9. Resolution

Mayor Esteves wanted to know about the closing of the swimming pools at Milpitas Sports Center and whether there had been enough notice to current pool users. Recreation Services Manager Renee Lorentzen replied, describing the many manners in which notices had been up at the Sports Center since the spring and sent out to pool swimmers.

Councilmember Barbadillo asked how many pools this would affect, and staff replied three. He asked detailed questions about the costs for the project and sought information about transporting of the water from the pools and those costs. Staff responded.

Mayor Esteves asked for comments from the audience.

Jezzell Marez, Milpitas resident, talked about by-laws, the land, projects and engineering, projects and users, and the internet.

Motion: to adopt Resolution No. 8498 awarding a contract to California Commercial Pools, Inc. and authorize the City Manager to execute the contract for the Sports Center Pool Repairs Projects No. 3408 and No. 5103 in the amount of \$1,441,000; and, authorizing the Director of Engineering/City Engineer to execute contract change orders

for Milpitas Sports Center Pool Repairs in the cumulative amount not to exceed \$144,100

Motion/Second: Mayor Esteves/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

AGREEMENTS

Five items were approved on the consent calendar.

ADJOURNMENT

Mayor Esteves adjourned the City Council meeting at 10:58 PM.

*Meeting minutes respectfully submitted by
Mary Lavelle, City Clerk*

***Draft* MEETING MINUTES
CITY OF MILPITAS**

Minutes of:	Special Meeting of the Milpitas City Council
Date:	Monday, August 24, 2015
Time:	5:00 PM
Location:	Milpitas City Hall, 2nd Floor 455 East Calaveras Blvd., Milpitas

ROLL CALL

Mayor Esteves called the meeting to order in Council Chambers at 5:04 PM.

PRESENT: Mayor Esteves, Vice Mayor Montano, Councilmembers Giordano and Grilli

ABSENT: Councilmember Barbadillo was absent at roll call. He arrived in Closed Session at 5:15 PM.

City Manager Tom Williams and Interim City Attorney Gary Baum were also present in Council Chambers.

CLOSED SESSION

City Council convened to Closed Session to discuss the following:

PUBLIC EMPLOYEE APPOINTMENT/HIRING
Pursuant to California Government Code Section 54957
Position: City Attorney - interview of two law firms

There was no announcement out of the Closed Session, and no reportable action.

ADJOURNMENT

Mayor Esteves adjourned the special meeting at 7:18 PM.

*Minutes submitted by
Mary Lavelle, City Clerk*

NUMBER: 287

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS ADDING CHAPTER 5 OF TITLE III OF THE MILPITAS MUNICIPAL CODE RELATING TO SINGLE-USE BAGS

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, upon motion by _____ and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Gary Baum, Interim City Attorney

RECITALS AND FINDINGS:

WHEREAS, the use of single-use carryout bags by consumers is detrimental to the environment, public health and general welfare; and

WHEREAS, the manufacture and distribution of single-use carryout bags requires the production of non-biodegradable plastics and results in the generation of greenhouse gas emissions; and

WHEREAS, single-use carryout bags contribute to environmental problems, including litter in stormdrains, creeks, the bay and the ocean; and

WHEREAS, single-use carryout bags provided by retail establishments impose unseen costs on consumers, local governments, the State and taxpayers and constitute a public nuisance.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE

Chapter 5 of Title III of the Milpitas Municipal Code is hereby added with the text below to read as follows:

Chapter 5

SINGLE-USE BAGS

Sections:

III-5-1	Findings and Purpose
III-5-2	Definitions
III-5-3	Implementation Date
III-5-4	Single-use Carry-out Bag
III-5-5	Recordkeeping and Inspection
III-5-6	Enforcement

Section 1 Findings and Purpose

III-5-1.00

The City Council finds and determines that the regulation of single-use carry-out bags is necessary to protect the public health, safety and welfare based on the following reasons:

A. The use of single-use carry-out bags by consumers is detrimental to the environment, public health and general welfare;

B. The manufacture and distribution of single-use carry-out bags requires the production of non-biodegradable plastics and results in the generation of greenhouse gas emissions;

C. Single-use carry-out bags contribute to environmental problems, including litter in stormdrains, creeks, the bay and the ocean; and

D. Single-use carry-out bags provided by retail establishments impose unseen costs on consumers, local governments, the state and taxpayers and constitute a public nuisance.

This City Council does, accordingly, find and declare that it should restrict the provision of single-use carry-out bags.

Section 2 Definitions

III-5-2.00

- A. "Customer" means any person obtaining goods from a retail establishment.
- B. "Garment Bag" means a travel bag made of pliable, durable material with or without a handle, designed to hang straight or fold double and used to carry suits, dresses, coats, or the like without crushing or wrinkling the same.
- C. "Nonprofit charitable reuser" means a charitable organization, as defined in Section 501(c)(3) of the Internal Revenue Code of 1986, or a distinct operating unit or division of the charitable organization, that reuses and recycles donated goods or materials and receives more than fifty percent (50%) of its revenues from the handling and sale of those donated goods or materials.
- D. "Person" means any natural person, firm, corporation, partnership, or other organization or group however organized.
- E. "Prepared food" means foods or beverages which are prepared on the premises by cooking, chopping, slicing, mixing, freezing, or squeezing, and which require no further preparation to be consumed. "Prepared food" does not include any raw, uncooked meat product or fruits or vegetables which are chopped, squeezed, or mixed.
- F. "Public eating establishment" means a restaurant, take-out food establishment, or any other business that receives ninety percent (90%) or more of its revenue from the sale of prepared food to be eaten on or off its premises.
- G. "Recycled paper bag" means a paper bag provided at the check stand, cash register, point of sale, or other point of departure for the purpose of transporting food or merchandise out of the establishment that contains no old growth fiber and a minimum of forty percent (40%) post-consumer recycled content; is one hundred percent (100%) recyclable; and has printed in a highly visible manner on the outside of the bag the words "Reusable" and "Recyclable," the name and location of the manufacturer, and the percentage of post-consumer recycled content.
- H. "Retail establishment" means any commercial establishment that sells perishable or nonperishable goods including, but not limited to, clothing, food, and personal items directly to the customer; and is located within or doing business within the geographical limits of the City of Milpitas. "Retail establishment" does not include public eating establishments or nonprofit charitable reusers.
- I. "Reusable bag" means either a bag made of cloth or other machine washable fabric that has handles, or a durable plastic bag with handles that is at least 2.25 mil thick and is specifically designed and manufactured for multiple reuse. A garment bag may meet the above criteria regardless of whether it has handles or not.
- J. "Single-use carry-out bag" means a bag other than a reusable bag provided at the check stand, cash register, point of sale or other point of departure, including departments within a store, for the purpose of transporting food or merchandise out of the establishment. "Single-use carry-out bags" do not include bags without handles provided to the customer: (1) to transport prepared food, produce, bulk food or meat from a department within a store to the point of sale; (2) to hold prescription medication dispensed from a pharmacy; or (3) to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a reusable bag or recycled paper bag.

Section 3 Implementation Date

III-5-3.00

This Chapter shall not be implemented until January 1, 2016.

Section 4 Single-use Carry-out Bag

III-5-4.00

A. No retail establishment shall provide a single-use carry-out bag to a customer, at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment except as provided in this Section.

B. On or before January 1, 2016, a retail establishment may only make recycled paper bags or reusable bags available to customers if the retailer charges a minimum of ten cents.

C. Notwithstanding this Section, no retail establishment may make available for sale a recycled paper bag or a reusable bag unless the amount of the sale of such bag is separately itemized on the sale receipt.

D. A retail establishment may provide one or more recycled paper bags at no cost to any of the following individuals: a customer participating in the California Special Supplement Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the Health and Safety Code; a customer participating in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the California Welfare and Institutions Code; and a customer participating in CalFresh pursuant to Chapter 10 (commencing with Section 18900) of Part 6 of Division 9 of the California Welfare and Institutions Code.

Section 5 Recordkeeping and Inspection

III-5-5.00

Every retail establishment shall keep complete and accurate records or documents of the purchase and sale of any recycled paper bag or reusable bag by the retail establishment, for a minimum period of three (3) years from the date of purchase and sale, which record shall be available for inspection at no cost to the City during regular business hours by any City employee authorized to enforce this part. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be available at the retail establishment address. The provision of false information including incomplete records or documents to the City shall be a violation of this Chapter.

Section 6 Enforcement

III-5-6.00

In addition to any other remedy available at law, City may enforce any violation of this Chapter pursuant to Section I-1-4.09 of the Milpitas Municipal Code.

SECTION 3. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 4. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.

Milpitas Sister Cities Commission
July 2015 – June 2016 Work Plan Elements (dates are SCC meetings)
First Review: May 28, 2015 SCC Meeting

Activities & Projects with Timeline

1. City Council Report & Upcoming MOU – September 1, 2015
 - a. Decide on Presentation Topics: May 28 Meeting
 - b. Draft Presentation Review: August 27 Meeting
 - c. Seongnam, new MOU recommended to Council (9/15/15, tentative)
2. City Plaza Sign(s)
 - a. Discuss content and style – September 24
 - b. Review estimates – October 22
 - c. Recommend to City Council – November 3 or 17
3. MOU Display on 2nd Floor
 - a. Review layout and advise staff – September 24
4. E-pal Projects
 - a. Capacity with Milpitas High School: June 22 – August 28, 2015
 - b. Coordination: August 28 – September 25; February 26 – April 23, 2016
5. Fundraising
 - a. Research: Concludes at August 27, 2015 Meeting
 - b. Recommendation: August 27 Meeting
6. Focus Areas for Possible Sister City Relationships / Needs of Specific Relationships
 - a. City in Latin America: Research ongoing, lead is Council Liaison
 - b. San Juan, Philippines: City expressing interest, TBD
 - c. Dagupan, Philippines: Needs a Lead Commissioner
7. Existing Relationships
 - a. Student Visits to Milpitas (October, MHS Spirit Week)
 - i. 2015 Visits Cancelled
 - ii. Begin recruiting for 2016 visits as of January 28, 2016 meeting
 - b. Officials' Visits to Milpitas (as requested by a Sister City)
 - i. Tours
 - ii. Lead commissioners ask contacts if any planned in FY2015-16
8. Work Plan Review Meetings: January 28, June 23

Expectations of Commissioners / Ideas for Community Engagement

- Participate in open discussions
 - o Meetings are a safe communication zone
- Lead Commissioners
 - o Primary contact to sister city
 - o Responsible to assist with home-stay coordination
- For each proposed and existing sister city, form a community committee
 - o Acts as a touchstone for community support
 - o Advises lead commissioners

CITY OF MILPITAS SISTER CITIES COMMISSION

BYLAWS

This Sister Cities Commission was established by the Milpitas City Council on May 21, 1996.

Section 1. Purpose

The purpose of the Sister Cities Commission is to serve as an advisory body on matters affecting sister cities relationships, programs and activities. This Sister Cities Commission will also review applications for sister city affiliations and forward recommendations to City Council for the establishment of future agreements. Commissioners are expected to volunteer time to participate in Sister City events and projects outside the regular meetings.

Section 2. Membership

The Milpitas Sister Cities Commission is composed of seven (7) regular members and two (2) alternate members appointed by the Mayor and approved by the City Council. Commission membership shall consist of six Milpitas residents or residents within the boundaries of the Milpitas Unified School District. One member shall be an employee of a company with a significant corporate presence in Milpitas and is not required to be a Milpitas resident. ~~All members and alternates shall be Milpitas residents or residents within the boundaries of the Milpitas Unified School District.~~ In addition, the City Council may appoint a Council liaison, a representative from the Milpitas Unified School District Board of Education and/or a student of the Milpitas Unified School District to serve on the Sister Cities Commission in a non-voting capacity.

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Section 3. Term of Office and Removal

The term of office for Sister Cities Commission members will be three years, or until reappointed or a successor is appointed. The term of office for alternates is two years or until reappointed or a successor is appointed. Members and alternates are expected to attend all meetings. When any member or alternate has three or more unexcused absences in a 12-month period, the Commission shall forward this information to the City Council for review and possible removal of the member or alternate from the Commission. Any member or alternate of the Sister Cities Commission may be removed from office by a majority vote of the City Council at a regularly scheduled Council meeting.

Members may apply for reappointment by submitting a letter of interest or e-mail to the Mayor with a copy to the Commission Chair one month prior to the expiration of his/her term of office. Any member of the Commission who wishes to resign should submit a letter of resignation to the Mayor with a copy to the Commission Chair.

Section 4. Vacancies

Vacancies will be filled for the unexpired portion of the term in the same manner as the original appointment.

Section 5. Officers

A Chair and Vice Chair will be selected annually at the first meeting of the year from the appointed members for a term of one year. The Chair will call for meetings and preside over all sessions. In the absence of the Chair, the Vice Chair will preside. In the absence of both the Chair and Vice Chair, the member with longest continuous service on the Commission will preside.

Section 6. Meetings

The Sister Cities Commission shall hold regular meetings on the fourth Thursday of each month, at 6:00 p.m. All meetings shall be open to the public. Should a regularly scheduled meeting occur on a holiday, said meeting will be held on the third Thursday of the month or on a date agreed upon by a majority of the Commission. Special meetings of the Milpitas Sister Cities Commission may be called by a majority of the members, Chair, or City Council. Notice of any special meeting shall be given as required by law. Except as otherwise provided by these Bylaws, the Commission will follow the latest edition of Robert's Rules of Order for the orderly conduct of meetings.

Section 7. Quorum

Any four (4) members shall constitute a quorum for the transaction of business.

Section 8. Voting and Seating of Alternates

Voting authority is extended to seven (7) regular members. An alternate member shall vote only if seated in the absence of a regular member. In the event that a regular member is absent, alternate members shall be seated in order of their alternate position. If a member arrives after an alternate has been seated, the alternate shall remain as the voting member until the end of the meeting.

Section 9. Duties of Commission to be Advisory Only

It is intended that the Milpitas Sister Cities Commission shall be an advisory body to the City Council. Nothing herein contained shall be construed as a limitation on the power of the City Council of the administrative staff of the City in their supervision or authority over property or personnel which are under their jurisdiction.

Commissioners are also expected to actively participate in Sister City events and projects in addition to attending the regular meetings. When considering reappointments of Commission members, the City Council may review the member's service record on Commission activities and projects. At a minimum, Commissioners' should annually work on and attend at least two Sister City events and actively serve on at least one subcommittee.

Section 10. Assistance of Staff

The City Manager of the City of Milpitas shall provide the Sister Cities Commission with such information and staff assistance as the Milpitas Sister Cities Commission may from time to time request subject to the limitations imposed by the City Council. The staff member designated by the City Manager shall attend meetings of the Sister Cities Commission and submit such reports as said Sister Cities Commission may request and as deemed necessary or desirable, subject to limitations imposed by the City Council.

Section 11. Amendments

These by-laws and operating procedures may be amended by simple majority of those voting at any legal Sister Cities Commission meeting, subject to approval by City Council.

PASSED AND ADOPTED by the Milpitas City Council on the 18th day of June, 2013.

Minnis Pump Station

Concerns: No back up power, floods corporation yard, aging infrastructure, electrical safety issues (if raining concerns about worker exposure), Bart impacts/concerns unsure because and 18" overflow stormwater discharge pipe is now discharge into pump station wet well

Items	Cost Estimate	Total	Priority
Pull 2 pumps inspection	\$4000/pump	\$ 8,000	1
Rebuild pump(s) - bearing/seals	\$20000-25000/pump	\$ 25,000	1
Cost of new Pump	\$35,000	\$ 35,000	2
New Guiderails (both pumps)	\$4000-5000/pump	\$ 10,000	1
Motor Starter (both pumps)	\$2000/pump	\$ 4,000	1
Automatic Transfer Switch installation and configuration			
Peripheral Hook ups - size up for 2 -150 HP pumps	\$50,000	\$ 50,000	1
		\$ 132,000	

Genset rental (united rental) (Nov 2015-2016) 175-200 KW	\$5000/month	\$ 25,000	1
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Jurgens Pump Station

Concerns: Engines are overtemping and shutdown and we need all four when it rains. 2 of the 4 pumps are overheating and ventilation is poor causing additional temperature impacts. Unknown the impacts that Bart development has on this pump station as it is close proximity/upstream of this pump station. Jurgens pump station is only sized for 10 year flood, per the Stormwater Master Plan, the playground and surrounding ball fields are intended to be drainage and flood plains for the pump station. Therefore together the pump station and surrounding land meets the 100 year flood requirements. No back up power and needs to run in an emergency.

Items	Cost Estimate	Total	Priority
Complete engine service with hopes to fix overtemping	flat amount	\$ 10,000	1
Generator purchase and controls	\$5,000	\$ 5,000	1
		\$ 15,000	

Manor Pump Station

Concerns: 4 pumps total, (1 jockey), 3-4 pumps overtemping and as a result the pumps will shutdown until an operator goes to site and resets the pumps. This issue has gotten progressively worse, and if an operator is not there in a timely fashion, flooding will occur a jacklin and redwood. To complicate the pump station experience significant head pressure due to the creek since the discharge point is below the waterline during high creek levels due to rain.

Items	Cost Estimate	Total	Priority
Pull 3-4 pumps for inspection	\$4000/pump	\$ 16,000	1
Worse case - Rehab pumps	\$20000-25000/pump	\$ 100,000	1
		\$ 116,000	

Bellew Pump Station

Concerns: Removing Leaking UST (now) as that is fuel for back up power, hope to have done by mid November. Currently expereincing VFD (variable frequency drive) malfunction/failure on 1 pump.

Items	Cost Estimate	Total	Priority
UST Remove and retrofit back up power	\$97,035	\$ 97,035	1
VFD failure (pump is inoperable until fixed)	\$7,500	\$ 7,500	2
		\$ 104,535	

California Circle Pump Station

Concerns: Engine controls are aging and are currently on manual. There is automation however it is malfunctioning, and there is no jockey pump to help buy operations staff time to respond to the site.

Items	Cost Estimate	Total	Priority
Automation Controls -fixed	\$2500/pump	\$ 7,500	1
		\$ 7,500	

Spence Creek Pump Station

Concerns: Pump station is non-operational, has level control problems. Currently it identified as a high prioirty site in the Stormwater Master plan, since it has no back up power. We haven't experienced any flooding yet, but it is highly susceptible to flood.

Items	Cost Estimate	Total	Priority
Pull pumps and inspection	\$4000/pump	\$ 12,000	2
Level control strategy needs to be fixed	\$10,000	\$ 10,000	2
		\$ 22,000	

Contingency for Repairs (20%)	\$ 84,407
Project Management & Technical Support (10%)	\$ 50,644

TOTAL COSTS	\$ 557,086
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City of Milpitas, California**BUDGET CHANGE FORM**

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one:	330-2931	\$557,086	400-423-4241	\$278,543
☒ Budget Appropriation			450-423-4241	\$278,543
☐ Budget Transfer				

Explain the reason for the budget change:

Background: In July 2013, a comprehensive update of the City's Storm Drain Master Plan ("SDMP") was completed by Schaaf & Wheeler Consulting Civil Engineers. This plan took a comprehensive approach in evaluating storm drain system performance and future storm water infrastructure needs. The SDMP focuses on the City's drainage system, including thirteen critical storm water pump stations. The City of Milpitas Public Works Department operates and maintains these thirteen (13) storm water pump stations.

Six Pump Stations - Emergency Repairs:

In preparation for the 2015 winter season, City staff reviewed the SDMP and performed additional site condition assessment of each pump station, and determined six (6) of the thirteen (13) pump stations are in need of emergency repairs and service. The six pump stations needing emergency repair and service include: Minnis Pump Station, Jurgens Pump Station, Manor Pump Station, Bellew Pump Station, California Circle Pump Station and Spence Creek Pump Station. The repairs and service required for these sites include, but are not limited to: pump inspection, minor pump maintenance, pump bearing and seal replacement, automated control strategy, backup power retrofits, installation of new pumps, variable frequency drive repair/replacement, and generator installation. Due to the short time frame before the start of the rainy season, staff requests that the City Council authorize the emergency repairs of these six pump stations. The Bellew Pump Station is already under emergency repair.

Cost Estimate and Analysis:

The preliminary cost estimate for these emergency repairs are found in the attachment, "Storm Water Pump Station – Fall 2015, Cost Estimates for Emergency Repairs and Service". The total estimated amount of emergency repairs required for these six pumps stations is \$557,086.00. The attached cost estimate includes a 20% contingency and a 10% project management fees to provide technical support for these repairs to ensure completion prior to winter. \$104,535.00 of the total estimate is for the emergency repair work currently underway at Bellew Pump Station.

Report on Emergency Repairs for Bellew Pump Station:

The Bellew Pump Station has an underground storage tank containing diesel fuel which is leaking into secondary contaminant and needs to be removed immediately. In the event that electrical power is lost to the site, this tank is used to provide back-up power to the storm pump station site. The work for this repair is currently underway to limit environmental dispersion and/or liability to the City. The emergency work for Bellew Pump Station includes removal of the fuel, the tank and retrofitting the existing generator.

Fiscal Impact: There is sufficient funds in the amount of \$557,086.00 in the General Government CIP Fund to fund these repairs. Staff is requesting \$557,086.00 be appropriated to the Public Works Utilities Maintenance - Repair and Maintenance budget as follows: 400-423-4241 (\$278,543) and 450-423-4241 (\$278,543).

Recommendations:

- 1) Approve the Emergency Repairs of Six Storm Pump Stations for the not-to-exceed amount of \$557,086.00 and appropriate funds from the City's General Government CIP Fund to the Public Works Utilities Maintenance Repair and Maintenance Budget.
- 2) Receive the Report on Emergency Repairs of Bellew Pump Station.

☒ Check if City Council Approval required.

Meeting: Sept 1st 2015

Itemization of funds, if needed:		Amount
Requested by:	Department Head: Nina Hawk, Public Works Director	Date:
Reviewed by:	Finance Director: <i>[Signature]</i>	Date: 8/28/15
Approved by:	City Manager:	Date:
Date approved by City Council, if required:		Confirmed by:

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Form 30-222 (Rev. 1/92)

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one:	214-2909	2,260	214-512-4237	\$2,260
	350-2940	6,937	350-910-4237	\$6,937
☒ Budget Appropriation	310-2940	2,495	310-910-4239	\$2,495
☐ Budget Transfer				

Explain the reason for the budget change:

Background: Finance staff is in the process of closing the City revenue and expenditures accounts for the fiscal Year 2014-15. To maintain conformity with the City's budgeting policies and to prepare for the annual external financial audit, staff examined all the expenditure accounts of various funds and determined that the following budget adjustments are necessary. The reason for the budget adjustments is primarily due to necessary expenditures made during the fiscal year that were not anticipated when the FY 14-15 budget was developed.

The detail for each budget adjustment item is described below.

- 1) Increase the budget appropriations for Planning and Neighborhood Services Department by \$2,260. The City collected fees from developers to be used for a General Plan update. During the fiscal year, the Planning Department incurred expenditure to initiate the update by filing a notice for CEQA Document Declaration at the County Recorder's office. The source of funding for the budget appropriations will be from the Community Planning Fund.
- 2) Increase the budget appropriations for Non-department budget by \$6,937 for rental fees of a fence for the McCandless property. The source of funding for the budget appropriations will be from the Transit Area Impact Fee Fund.
- 3) Increase the budget appropriations for Non-department by \$2,495. The increased budget amount is related to audit fee incurred for the audit of projects funded by the Transportation Development Act grant. The source of funding for the budget appropriation will be from the Street Improvement Fund.

Fiscal Impact: The budget adjustments reduce the fund balances of the various funds as follows:

\$2,260 Community Planning Fund
 \$6,937 Transit Area Impact Fee Fund
 \$2,495 Street Improvement Fund

Recommendation: Approve the Fiscal Year 2014-15 year-end budget appropriations as itemized in the budget change form.

☒ Check if City Council Approval required.

Meeting: September 1st 2015

Itemization of funds, if needed:			Amount
Requested by:	Department Head: Emma Karlen, Assistant City Manager/Director of Financial Services <i>EC Karlen</i>	Date: 8/21/15 8/24/15	
Reviewed by:	Finance Director:	Date:	
Approved by:	City Manager:	Date:	
Date approved by City Council, if required:		Confirmed by:	

RESOLUTION NO. ____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE
ANNUAL INVESTMENT POLICY**

WHEREAS, the Legislature of the State of California has declared that the deposit and investment of public funds by local officials and local agencies is an issue of statewide concern; and

WHEREAS, the legislative body of a local agency may invest surplus monies not required for the immediate needs of the local agency in accordance with the provisions of California Government Code Section 53601 *et seq.*; and

WHEREAS, the Treasurer of the local agency shall annually prepare and submit a statement of investment policy and such policy, and any changes thereto, shall be considered by the legislative body at a public meeting; and

WHEREAS, the previous Annual Investment Policy was last reviewed and approved by the City Council pursuant to Resolution No. 8395 on August 5, 2014.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council has reviewed and considered the attached Annual Investment Policy, including any changes, and the attached Annual Investment Policy is hereby approved.

PASSED AND ADOPTED this ____ day of _____, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Gary M. Baum, Interim City Attorney

CITY OF MILPITAS

INVESTMENT POLICY

POLICY OVERVIEW

PURPOSE

The purpose of this policy is to establish overall guidelines for the management and investment of the City of Milpitas (the City) unexpended funds under authority granted by the City Council. This policy is in compliance with the provisions of the California Government Code, Sections 16429.1-16429.4, and 53600-53610, the authority governing investments for municipal governments.

INVESTMENT OBJECTIVES

The primary objectives of this investment policy, in order of priority, are safety, liquidity, and yield:

- 1) **Safety** - Safety of principal is the foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. This objective shall be accomplished by mitigating credit risk and market risk.
- 2) **Liquidity** - The investment portfolio shall remain sufficiently liquid to meet all operating requirements that may be reasonably anticipated. This objective shall be accomplished by structuring the portfolio so that securities mature concurrently with anticipated needs. The portfolio shall consist largely of securities with active secondary or resale market. Furthermore, a portion of the portfolio may be placed in money market funds or Local Agency Investment Fund (LAIF) which offer same day liquidity for short term investment.
- 3) **Yield** - The investment portfolio is designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into consideration the investment risk constraints and liquidity needs. Return on investment is of secondary importance compared to the safety and liquidity objectives described above. The core of investments is limited to relatively low risk securities in anticipation of earning a fair return relative to the risk being assumed. Nevertheless, investment performance shall be continually monitored and evaluated by the City Treasurer by comparison with other investment portfolio benchmark yields.

SCOPE

The investment policy applies to all financial assets of the City of Milpitas as accounted for in the Comprehensive Annual Financial Report (CAFR), including but not limited to the funds listed below:

- General Fund
- Special Revenue Funds
- Capital Projects Funds

- Debt Service Fund
- Enterprise Funds
- Internal Service Fund
- Trust and Agency Funds
- Any new fund created by the City Council unless specifically exempted with the exception of the following:
 - 1) The City's Deferred Compensation Plan is excluded because it is managed by a third party administrator and invested by individual plan participants.
 - 2) Proceeds of debt issuance shall be invested in accordance with the investment objectives of this policy. However, such proceeds are generally invested in accordance with permitted investment provisions of their specific bond indentures. If the City Treasurer determines that the matching of bond reserve fund with the maturity schedule of an individual bond issue is prudent, the investment policy authorizes extending beyond the five year maturity limitation as outlined in this document.

STANDARDS OF CARE

- 1) **Prudence** - The City investment officials shall act as a fiduciary subject to the Prudent Investor Standard. Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived. The City Treasurer and other individuals assigned to manage the investment portfolio, acting within the intent and scope of the investment policy and other written procedures and exercising due diligence, shall be relieved of personal responsibility and liability for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely manner and appropriate action is taken to control adverse developments.
- 2) **Ethics and Conflict of Interest** - Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or could impair their ability to make impartial investment decisions. City employees involved in the investment process shall disclose to the City Manager any material financial interest in financial institutions that conduct business within the jurisdiction. They shall further disclose any large personal financial/investment positions that could affect the performance of the investment portfolio.
- 3) **Delegation of Authority** - Authority to manage the investment program is granted to the City Treasurer and derived from Section VI-1-3.04 of the City of Milpitas Municipal Code. Under the oversight of the City Treasurer, responsibility for the operation of the investment program may be delegated to the Finance Administration staff, who shall act in accordance with established written procedures and internal controls consistent with the investment policy. The City Treasurer shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of the subordinate staff members. The system of internal controls includes separation of duties, custodial safekeeping, avoidance of physical delivery securities, development of wire transfer agreement, and clear delegation of authority to subordinate staff members.

INVESTMENT GUIDELINES

SAFETY OF PRINCIPAL

Safety of principal is the primary objective of The City. Each investment transaction shall seek to ensure that capital losses are avoided, whether from securities default, broker/dealer default or erosion of market value. The City shall seek to preserve principal by mitigating the two types of risk, credit risk and market risk:

Credit risk, defined as the risk of loss due to failure of the issuer of a security, shall be mitigated by investing in investment grade securities and by diversifying the investment portfolio so that the failure of any one issuer does not unduly harm the City's capital base and cash flow.

Market risk, defined as market value fluctuations due to overall changes in the general level of interest rates, shall be mitigated by limiting the average maturity of the City's investment portfolio to two years, the maximum maturity of any one security to five years, structuring the portfolio based on historic and current cash flow analysis eliminating the need to sell securities prior to maturity and avoiding the purchase of long term securities for the sole purpose of short term speculation.

LIQUIDITY

The City's financial portfolio shall be structured in a manner to ensure that the securities mature concurrent with anticipated cash demands. The portfolio should consist largely of securities with an active secondary or resale market to meet any unanticipated cash demands. A portion of the portfolio may be placed in money market funds or LAIF which offer same day liquidity for short term investment.

It is the full intent of the City to hold all investments until maturity to ensure the return of all invested principal. However, securities may be sold prior to maturity under the following circumstances:

- A security with declining credit may be sold early to minimize loss of principal,
- A security swap would improve the quality, yield, or target duration in the portfolio,
- or
- Liquidity needs of the portfolio require that the security be sold.

INVESTMENT PARAMETERS

1) Diversification - The investment shall be diversified by:

- limiting investments to avoid over concentration in securities from a specific issuer or business sector (excluding U.S. Treasury and Federal Agency securities),
- limiting investment in securities that have higher credit risks,
- investing in securities with varying maturities, and
- continuously investing a portion of the portfolio in readily available funds such as LAIF or money market funds to ensure that appropriate liquidity is maintained in order to meet unanticipated cash demands.

- 2) **Maximum Maturities** - To the extent possible, the City shall attempt to match its investments with anticipated cash flow requirements. Unless matched to a specific cash flow, the City will not directly invest in securities maturing more than five (5) years from the date of purchase. The intent to invest in securities beyond the five year maturity limitation shall be disclosed in writing to the City Council no less than 3 months prior to the investment. As a general rule, the weighted average maturity of the investment portfolio will not exceed two years. Reserve funds established by the issuance of bonds and other funds with longer-term investment horizons may be invested in securities exceeding five years if the maturity of such investments are made to coincide with the expected use of funds.
- 3) **Competitive Bidding** - It is the policy of the City to require competitive bidding for investment transactions that are not classified as "new issue" securities. For the purchase of non "new issue" securities and the sale of all securities, with the exception of U.S. Treasury securities, at least three bidders must be contacted. Competitive bidding for security swaps is also recommended, however, it is understood that certain time constraints and broker portfolio limitations exist which would not accommodate the competitive bidding process. If time or portfolio constraining condition exists, the pricing of the swap should be verified to current market conditions and documented for auditing purposes.

PERFORMANCE EVALUATION/BENCHMARK

- Investment performance is continually monitored and evaluated by The City Treasurer. Investment performance statistics and activity reports are prepared on a quarterly basis for presentation to the City Manager and City Council within 30 days of the end of the quarter.
- The investment portfolio benchmark yield shall be the 12 month average yield of the two-year U.S. Treasury note. This benchmark yield coincides with the City's intended weighted average maturity of two years.

SAFEKEEPING OF SECURITIES

- To protect against fraud or embezzlement or losses caused by collapse of an individual securities dealer, all securities owned by the City shall be held in safekeeping by a third party bank trust department, acting as agent for the City under the terms of a custody agreement or master repurchase agreement. All trades executed by a dealer will settle delivery vs. payment (DVP) through the City's safekeeping agent.
- Securities held in custody for the City shall be reviewed and verified quarterly by Finance staff who has not been assigned to the investment function.

INTERNAL CONTROL

The City Treasurer is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the City are protected from loss, theft or misuse. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that the cost of a control should not exceed the benefits to be derived and that the valuation of costs and benefits requires estimates and judgments by management.

The internal controls shall address the following points:

- Control of collusion
- Separation of transaction authority from accounting and record keeping
- Custodial safekeeping
- Avoidance of physical delivery securities
- Clear delegation of authority to subordinate staff members
- Written confirmation of transactions for investments and wire transfers
- Development of a wire transfer agreement with the lead bank and third party custodian

REPORTING

- The City Treasurer shall review and render quarterly reports to the City Manager and City Council which shall include the par and dollar amount of the investment, the classification of the investment, the percentage of the total portfolio which each type of investment represents, the name of the institution or entity, the rate of interest, the maturity date, the current market value, and the source of the market value.
- Statement that the projected cash flow is adequate to meet expected obligations over the next six months.
- The weighted average maturity of the investment portfolio.
- The average weighted yield to maturity of the portfolio as compared to the applicable benchmark.
- Statement of compliance with the investment policy.
- The report is due within 30 days of the end of the quarter.
- The City Manager may, at his discretion, require this reporting on a monthly basis based upon market conditions.

QUALIFIED BROKER/DEALERS

- The City shall transact business with financial institutions and security broker/dealers after careful review of their qualifications and creditworthiness. All dealers who desire to do business with the City shall provide the necessary information (e.g. audited financial statements, proof of state registration, proof of National Association of Securities Dealers certification, etc.) from which the City can determine their creditworthiness, the existence of any pending legal action against the firm or the individual broker as well as an understanding of the security markets that they service.
- The City Treasurer shall annually send a copy of the current investment policy to all financial institutions and broker/dealers approved to do business with the City. Confirmation of receipt of this policy shall be considered evidence that the dealer understands the City's investment policies and intends to sell the City only appropriate investments authorized by this investment policy.

COLLATERAL REQUIREMENTS

Collateral is required for investments in non-negotiable certificates of deposit and repurchase agreements. In order to reduce market risk, the collateral level shall be at least 102% of market value of principal and accrued interest and marked-to-market weekly. Securities acceptable as

collateral shall be the direct obligations of, or are fully guaranteed as to principal and interest by the United States or any agency of the United States.

AUTHORIZED INVESTMENTS

Investment of City funds is governed by the California Government Code Sections 16429.1-16429.4 and 53600 et seq. Within the context of the limitations, the following investments are authorized, as further limited herein:

- 1) **United States Treasury Bills, Bonds, and Notes** or those for which the full faith and credit of the United States are pledged for payment of principal and interest. There is no percentage limitation of the portfolio which can be invested in this category, though a five year maturity limitation is applicable.
- 2) **Federal Agency Obligations** - Obligations issued by the Federal Government agencies such as Government National Mortgage Association (GNMA), the Federal Farm Credit Bank (FFCB), the Federal Home Loan Bank (FHLB), the Federal National Mortgage Association (FNMA), the Student Loan Marketing Association (SLMA), and the Federal Home Loan Mortgage Corporation (FHLMC). There is no percentage limitation of the portfolio which can be invested in this category, although a five year maturity limitation is applicable.
- 3) **Bills of Exchange/Time Drafts** - Bills of exchange or time drafts drawn on and accepted by commercial banks, otherwise known as banker's acceptances. Purchase of banker's acceptances may not exceed 180 days maturity or 20% of the cost value of the portfolio. Furthermore, no more than \$5 million or 10% of the cost value of the portfolio may be invested in the banker's acceptances of any one commercial bank.
- 4) **Commercial Paper** of the highest letter and number rating as provided by at least two nationally recognized statistical rating organizations, issued by general corporations organized and operating within the United States, having assets in excess of \$500,000,000 and having an "A" or better rating on their long term debentures as provided by at least two nationally recognized statistical rating organizations. Purchases of eligible commercial paper may not exceed 270 days maturity nor represent more than 10% of the outstanding paper of the issuing corporation. Purchases of commercial paper may not exceed 15% of the cost value of the portfolio.
- 5) **Negotiable Certificates of Deposit** issued by nationally or state chartered banks, state or federal savings institutions, or state-licensed branch of foreign banks. Purchases of negotiable certificates of deposit may not exceed 30% of the cost value of the portfolio. A maturity limitation of five years is applicable.
- 6) **Repurchase Agreements** - Repurchase agreements may be made on any investment authorized by this investment policy. The maturity of the repurchase agreements shall not exceed one year. The market value of the securities used as collateral for the repurchase agreements shall be monitored by the investment staff weekly and shall not be allowed to fall below 102% of the value of the repurchase agreement. A Master Repurchase agreement is required between the City and the dealer for all repurchase agreements transacted.

- 7) **Time Deposits** - Time deposits, non-negotiable and collateralized in accordance with the California Government Code, may be purchased through banks or savings and loan associations. Since time deposits are not liquid, no more than 10% of the investment portfolio may be invested in this investment type. A maturity limitation of two years is applicable.
- 8) **Medium-Term Corporate Notes** issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States with a maximum maturity of five years may be purchased. Securities eligible for investment shall be rated “A” or better by at least two nationally recognized statistical rating organizations. Purchase of medium-term notes may not exceed 30% of the cost value of the portfolio and no more than 10% of the cost value of the portfolio may be invested in notes issued by one corporation. Commercial paper holdings should also be included when calculating the 10% limitation.
- 9) **Local Agency Investment Fund (LAIF)** - a State of California managed investment pool may be used up to the maximum permitted by California State Law.
- 10) **Money Market Funds** - Money Market funds invested in U.S. Government securities are permitted under this policy and under the California Government Code Section 53601. In order to be eligible for investment under this section, an investment objective of such a fund must be the maintenance of a price per share of \$1.00. Investment in such funds shall not exceed 20% of the City’s total portfolio and no more than 10% of the City’s total portfolio may be invested in any one money market fund. In addition, either one of the following criteria must be met:
- The fund shall have achieved a rating of “Aaa” by at least two nationally recognized statistical rating organizations, or
 - shall have retained an advisor who is registered or exempt from registration with the Security Exchange Commission with not less than five years’ experience managing money market funds with assets under management in excess of five hundred million dollars (\$500,000,000).

For both the LAIF and Money Market Funds investment, a thorough investigation of the investment pool is required on a continual basis. The types of investment and average maturity as reported by LAIF on their monthly investment reports and by the Money Market Mutual Funds on their semi-annual reports will be examined closely to ensure that the criteria for qualifying these investment pools remain unchanged.

11) **Security Swaps** - The City may take advantage of security swap opportunities to improve the overall quality, yield or target duration of the portfolio. A swap that improves the portfolio yield may be selected even if the transactions result in an accounting loss. Documentation for swaps will be included in the City's permanent investment file documents.

12) **Ineligible Investments** - Ineligible investments are those that are not described herein, including but not limited to, common stocks, reverse repurchase agreements, inverse floaters,

range notes, mortgage derived interest only strips, derivatives securities, or any security that could result in zero interest accrual.

MAXIMUM INVESTMENT MATURITY AND PERCENTAGE

The following matrix of maximum maturity and percentage limits, by instrument, are established for the City's total pooled funds portfolio:

Investment Type	Maturity	Percentage
Repurchase Agreements	1 Year	0 to 100%
Local Agency Investment Fund	Upon Demand	\$50,000,000 per account
U.S. Treasury Bonds/Notes/Bills	5 Years	0 to 100%
U.S. Government Agency Obligations	5 Years	0 to 100%
Bankers' Acceptances	180 Days	0 to 20%
Commercial Paper	270 Days	0 to 15%
Negotiable Certificates of Deposit	5 Years	0 to 30%
Time Certificates of Deposit	2 Years	0 to 10%
Medium-Term Corporate Notes	5 Years	0 to 30%
Money Market Funds	Upon Demand	0 to 20%

LEGISLATIVE CHANGES

Any State of California legislative action, that further restricts allowable maturities, investment type or percentage allocations, will be incorporated into the City's Investment Policy and supersede any and all previous applicable language.

INTEREST EARNINGS

All moneys earned and collected from investments authorized in this policy shall be allocated monthly to various fund accounts based on the cash balance in each fund as a percentage of the entire pooled portfolio.

POLICY CONSIDERATIONS

- 1) Exemption** - Any investment currently held that does not meet the guidelines of this policy shall be exempted from the requirements of this policy. At maturity or liquidation, such monies shall be reinvested only as provided by this policy.
- 2) Amendments** - The City's investment policy shall be adopted by resolution of the City Council on an annual basis. This investment policy shall be reviewed at least annually to ensure its consistency with the overall objectives of preservation of principal, liquidity and yield, and its relevance to current law and financial and economic trends. Any amendments to the policy shall be forwarded to City Council for approval.

GLOSSARY OF TERMS

Accrued Interest- Interest earned but not yet received.

Active Deposits- Funds which are immediately required for disbursement.

Amortization- An accounting practice of gradually decreasing (increasing) an asset's book value by spreading its depreciation (accretion) over a period of time.

Arbitrage- Transactions by which securities are bought and sold in different markets at the same time for the sake of the profit arising from a yield difference in the two markets.

Asked Price- The price a broker dealer offers to sell securities.

Banker's Acceptance- A high quality, short term money market instrument used to finance international trade. There has never been an instance of a failure to pay a banker's acceptance in full at its maturity date.

Basis Point- One basis point is one hundredth of one percent (.01).

Bid Price- The price a broker dealer offers to purchase securities.

Bond- A financial obligation for which the issuer promises to pay the bondholder a specified stream of future cash flows, including periodic interest payments and a principal repayment.

Book Value- The value at which a debt security is shown on the holder's balance sheet. Book value is acquisition cost less amortization of premium or accretion of discount.

Broker- Someone who brings buyers and sellers together and is compensated for his/her service.

Certificate of Deposit- A deposit insured up to \$250,000 by the FDIC at a set rate for a specified period of time.

Collateral- Securities, evidence of deposit or pledges to secure repayment of a loan. Also refers to securities pledged by a bank to secure deposit of public moneys.

Commercial Paper- Short-term, negotiable unsecured promissory notes of corporations.

Comprehensive Annual Financial Report (CAFR) The official annual financial report for the City, prepared in conformity with Generally Accepted Accounting Principles (GAAP).

Coupon- The annual rate of interest that a bond's issuer promises to pay the bondholder on the bond's face value.

Credit Risk - Defined as the risk of loss due to failure of the issuer of a security.

Current Yield- The interest paid on an investment expressed as a percentage of the current price of the security.

Custodian- A bank or other financial institution that keeps custody of stock certificates and other assets.

Defeased Bond Issues- Issues that have sufficient money to retire outstanding debt when due so that the agency is released from the contracts and covenants in the bond document.

Delivery vs. Payment (DVP)- Delivery of securities with a simultaneous exchange of money for the securities.

Derivative- Securities that are based on, or derived from, some underlying asset, reference date, or index.

Discount- The difference between the cost of a security and its value at maturity when quoted at lower than face value.

Diversification- Dividing investment funds among a variety of securities offering independent returns and risk profiles.

Duration- A measure of the timing of the cash flows, such as the interest payments and the principal repayment, to be received from a given fixed-income security. This calculation is based on three variables: term to maturity, coupon rate, and yield to maturity. The duration of a security is a useful indicator of its price volatility for given changes in interest rates.

Fannie Mae- Trade name for the Federal National Mortgage Association (FNMA), a U.S. sponsored corporation.

Federal Reserve System- The central bank of the U.S. which consists of a seven member Board of Governors, 12 regional banks and 5,700 commercial banks that are members.

Federal Deposit Insurance Corporation (FDIC) Insurance provided to customers of a subscribing bank which guarantees deposits to a set limit (currently \$250,000) per account.

Fed Wire- A wire transmission service established by the Federal Reserve Bank to facilitate the transfer of funds through debits and credits of funds between participants within the Fed system.

Freddie Mac- Trade name for the Federal Home Loan Mortgage Corporation (FHLMC), a U.S. sponsored corporation.

Ginnie Mae- Trade name for the Government National Mortgage Association (GNMA), a direct obligation bearing the full faith and credit of the U.S. Government.

Government Accounting Standards Board (GASB)-A standard-setting body, associated with the Financial Accounting Foundation, which prescribes standard accounting practices for governmental units.

Guaranteed Investment Contracts (GICS)- An agreement acknowledging receipt of funds, for deposit, specifying terms for withdrawal, and guaranteeing a rate of interest to be paid.

Inactive Deposits- Funds not immediately needed for disbursement.

Interest Rate- The annual yield earned on an investment, expressed as a percentage.

Investment Agreements- An agreement with a financial institution to borrow public funds subject to certain negotiated terms and conditions concerning collateral, liquidity and interest rates.

Liquidity- An asset that can easily and rapidly be converted into cash without significant loss of value.

Local Agency Investment Fund (LAIF)-A pooled investment vehicle for local agencies in California sponsored by the State of California and administered by the State Treasurer.

Local Agency Investment Pool- A pooled investment vehicle sponsored by a local agency or a group of local agencies for use by other local agencies.

Market Risk - Defined as market value fluctuations due to overall changes in the general level of interest rates.

Market Value- The price at which a security is trading and could presumably be purchased or sold.

Maturity- The date upon which the principal or stated value of an investment becomes due and payable.

Modified Duration-A measure of exposure to market risk of a security or a portfolio. It is the percent change in the price of a security (portfolio) or a 100 basis point change in the security's (portfolio's) yield.

Mutual Funds- An investment company that pools money and can invest in a variety of securities, including fixed-income securities and money market instruments.

Negotiable Certificate of Deposit-A large denomination certificate of deposit which can be sold in the open market prior to maturity.

New Issue- Term used when a security is originally "brought" to market.

Note- A written promise to pay a specified amount to a certain entity on demand or on a specified date.

Par Value- The amount of principal which must be paid at maturity. Also referred to as the face amount of a bond, normally quoted in \$1,000 increments per bond.

Perfected Delivery- Refers to an investment where the actual security or collateral is held by an independent third party representing the purchasing entity.

Portfolio- Combined holding of more than one stock, bond, commodity, real estate investment, cash equivalent, or other asset. The purpose of a portfolio is to reduce risk by diversification.

Primary Dealer- A group of government securities dealers that submit daily reports of market activity and security positions held to the Federal Reserve Bank of New York and are subject to its informal oversight.

Principal- The face value or par value of a debt instrument, or the amount of capital invested in a given security.

Prospectus- A legal document that must be provided to any prospective purchaser of a new securities offering registered with the SEC that typically includes information on the issuer, the issuer's business, the proposed use of proceeds, the experience of the issuer's management, and certain certified financial statements (also known as an "official statement")

Prudent Investor Standard- A standard of conduct where a person acts with care, skill, prudence, and diligence when investing, reinvesting, purchasing, acquiring, exchanging, selling and managing funds. The test of whether the standard is being met is if a prudent person acting in a similar situation would engage in similar conduct to ensure that investments safeguard principal and maintain liquidity.

Purchase Date- The date in which a security is purchased for settlement on that or a later date.

Rate of Return- The yield obtainable on a security based on its purchase price or its current market price. This may be the amortized yield to maturity on a bond or the current income return.

Repurchase Agreement (REPO)- A transaction where the seller agrees to buy back from the buyer (City) the securities at an agreed upon price on demand or at a specified date.

Reverse Repurchase Agreement (REVERSE REPO) A transaction where the seller (City) agrees to buy back from the buyer the securities at an agreed upon price on demand or at a specified date.

Risk- Degree of uncertainty of return on an asset.

Rule G-37 of the Securities Rulemaking Board Federal regulations to sever any connection between the making of political contributions and the awarding of municipal securities business.

Safekeeping Service- An arrangement under which a third party institution holds securities or valuables under safe, controlled conditions. A safekeeping arrangement is evidenced by a safekeeping receipt.

Sallie Mae- Trade name for the Student Loan Marketing Association (SLMA), a U.S. sponsored corporation.

Secondary Market- A market made for the purchase and sale of outstanding issues following the initial distribution.

Securities and Exchange Commission (SEC) The federal agency responsible for supervising and regulating the securities industry.

Settlement Date- The date on which a trade is cleared by delivery of securities against funds.

Tax and Revenue Anticipation Notes (TRANS) Notes issued in anticipation of receiving tax proceeds or other revenues at a future date.

Time Certificate of Deposit- A non-negotiable certificate of deposit which cannot be sold prior to maturity.

Treasury Bills- U.S. Treasury Bills which are short-term, direct obligations of the U.S. Government issued with original maturities of 13 weeks, 26 weeks and 52 weeks; sold in minimum amounts of \$10,000 in multiples of \$5,000 above the minimum. Issued in book entry form only. T-bills are sold on a discount basis.

Trustee or trust company or trust department of a bank A financial institution with trust powers which acts in a fiduciary capacity for the benefit of the bondholders in enforcing the terms of the bond contract.

Underwriter- A dealer which purchases a new issue of municipal securities for resale.

U.S. Government Agencies- Instruments issued by various US Government Agencies most of which are secured only by the credit worthiness of the particular agency.

U.S. Treasury Obligations- Debt obligations of the United States Government sold by the Treasury Department in the forms of Bills, Notes, and Bonds. Bills are short-term obligations that mature in 1 year or less and are sold on the basis of a rate of discount. Notes are obligations which mature between 1 year and 10 years. Bonds are long-term obligations which generally mature in 10 years or more.

Weighted Average Maturity (WAM)- The average maturity of all the securities that comprise a portfolio that is typically expressed in days or years.

Yield- The rate of annual income return on an investment, expressed as a percentage. It is obtained by dividing the current dollar income by the current market price of the security.

Yield to Maturity- The rate of income return on an investment, minus any premium or plus any discount, with the adjustment spread over the period from the date of purchase to the date of maturity of the bond, expressed as a percentage.

Yield Curve- A graphic representation that shows the relationship at a given point in time between yields and maturity for bonds that are identical in every way except maturity.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING
THE EXAMINATION OF SALES OR TRANSACTIONS AND USE TAX RECORDS**

WHEREAS, pursuant to Ordinance No. 55, the City of Milpitas entered into a contract with the State Board of Equalization to perform all functions incident to the administration and collection of local sales and use taxes; and

WHEREAS, pursuant to Resolution No. 153 and Section 7270 of the Revenue and Taxation Code, the City of Milpitas entered into a contract with the State Board of Equalization to perform all functions incident to the administration and collection of local transactions and use taxes; and

WHEREAS, the City Council of the City of Milpitas deems it necessary and desirable for authorized representatives of the City to examine confidential sales, transactions, and use tax records of the State Board of Equalization (hereinafter “the Board”) pertaining to sales, transactions, and use taxes collected by the Board for the City; and

WHEREAS, Section 7056 of the California Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of Board records and establishes criminal penalties for the unlawful disclosure of information contained in, or derived from sales, transactions, or use tax records of the Board; and

WHEREAS, Section 7056 of the California Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of Board records, including requiring the adoption of a resolution authorizing access to the sales, transactions, and use tax records.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

Section 1. That the Finance Director or other officer or employee of the City designated in writing by the Finance Director to the Board is hereby appointed to represent the City with authority to examine all of the sales, transactions, and use tax records of the Board pertaining to sales, transactions, and use taxes collected for the City by the Board pursuant to the contract between the City and the Board under the Bradley-Burns Uniform Local Sales and Use Tax Law or the Transactions and Use Tax Law. The information obtained by examination of Board records shall be used only for purposes related to the collection of City sales, transactions, and use taxes by the Board pursuant to the contract or the purposes designated in Section 2.

Section 2. That the Finance Director or other officer or employee of the City designated in writing by the Finance Director to the Board is also hereby appointed to represent the City with authority to examine those sales, transactions, and use tax records of the Board for purposes related to the following governmental functions of the City:

- a) functions related to sales, transaction, and/or use tax collection or administration; and
- b) functions related to budgeting and forecasting of revenue; and
- c) functions related to the detection of misallocations and deficiencies.

Section 3. That MuniServices, LLC, is hereby designated to examine the sales, transactions, and use tax records of the Board pertaining to sales, transactions, and use taxes collected for the City by the Board under the City’s local sales and use tax ordinance or under any future Transactions and Use Tax Ordinances that may be enacted in the City.

The person or entity designated by this section meets all of the following conditions:

- a) has an existing contract with the City to examine sales, transactions, and use tax records;
- b) is required by that contract to disclose information contained in, or derived from those sales, transactions, and use tax records only to an officer or employee authorized under Section 1 or Section 2 of this resolution to examine the information;
- c) is prohibited by that contract from performing consulting services for a retailer during the term of that contract; and
- d) is prohibited by that contract from retaining the information contained in, or derived from those sales, transactions, and use tax records after that contract has expired.

BE IT FURTHER RESOLVED that the information obtained by examination of Board records shall be used only for purposes related to the collection of the City's sales, transactions, and use taxes by the Board pursuant to the contracts between the City and the Board of Equalization or for purposes relating to the governmental functions designated in Section 2.

Section 4. That this Resolution supersedes all prior sales, transactions, and use tax resolutions of the City of Milpitas passed and adopted pursuant to subdivision (b) of Revenue and Taxation Section 7056.

PASSED AND ADOPTED this _____ day of _____ 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Gary M. Baum, Interim City Attorney

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
MUNISERVICES LLC**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas ("City") and MuniServices LLC ("Consultant") as of July 1, 2015.

AGREEMENT

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on June 30, 2018, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to complete Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant the fees as set forth in Exhibit B, as applicable to each service described in Exhibit A. Consultant shall be responsible for all costs and expenses incident to the performance of services for City, including but not limited to all costs of equipment provided by Consultant, all fees, fines, licenses, bonds or taxes required of or imposed against Consultant, salaries of Consultant employees and all other of Consultant's costs of doing business. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein.

The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on services rendered in accordance with Exhibit A. Invoices shall contain the following information:

- Serial identification of bills;
- The beginning and ending dates of the billing period;
- Documents to substantiate the reallocations by the County of Santa Clara related to the property tax audit findings;
- Documents to substantiate the corrections by the State Board of Equalization related to the sales tax audit findings;
- The Consultant's signature.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the City to pay Consultant. In the event that an invoice is not acceptable to the City, said invoice shall be returned to Consultant within thirty (30) days of the City's receipt of the invoice with a detailed explanation of the deficiency. City's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

2.3 Total Payment. City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work.

2.4 Payment of Taxes. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.

2.5 Payment upon Termination. In the event that the City or Consultant terminates this Agreement pursuant to Section 8, Consultant shall cease performing services as specified in the notice of termination. Consultant shall be obligated to maintain documentation sufficient to establish that Consultant's right to compensation arose from services that have an established Date of Knowledge, as defined in Exhibit A, prior to the effective date of termination. Because the services performed by Consultant prior to termination may result in City's receipt of revenue after termination which are subject to Consultant's fee in accordance with the Exhibits attached hereto, City shall remain obligated after termination

to provide to Consultant such information as is necessary for Consultant to calculate the compensation due as a result of this receipt of revenue by City and City shall remain obligated to pay Consultant's invoices therefore in accordance with the terms of this Agreement.

- 2.6 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the City.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

If the performance of the work specified in Exhibit A requires destructive testing or other work within the City's public right-of-way, Consultant, or Consultant's subconsultant, shall obtain an encroachment permit from the City.

Section 4. INSURANCE REQUIREMENTS. Consultant shall procure and maintain for the duration of this Agreement insurance policies against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Consultant, his or her agents, representatives, employees or subcontractors, as set forth in Exhibit C, attached hereto, which is incorporated herein by reference.

- 4.1 Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or

- Declare Consultant in material breach of the Agreement and terminate the Agreement.

4.2 Waiver. The Risk Manager of the City has the authority to waive or vary any provision of Exhibit C. Any such waiver or variation shall not be effective unless made in writing.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action, including but not limited to those for personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, arising from any acts or omissions of Consultant or his or her employees, subcontractors, or agents in performing services under this Agreement. The foregoing obligation of Consultant shall not apply when the injury, loss of life, damage to property, or violation of law arises solely from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers. For purposes of Section 2782 of the Civil Code, the parties hereto recognize and agree that this Agreement is not a construction contract. For purposes of Section 2782.8 of the Civil Code, the parties hereto recognize and agree that this Agreement is not for design professional services.

Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System

(PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

- 6.2 **Consultant Not Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement a valid business license from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** City may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein.

- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

- 8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.

- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:

8.6.1 Immediate cancellation of the Agreement;

8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and

8.6.3 Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. Reasonable attorney's fees of the City Attorney's Office, private counsel is not used, shall be based on comparable fees of private attorneys practicing in Santa Clara County. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the

state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.

- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

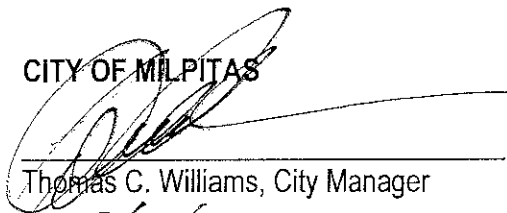
Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant were an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant

agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

- 10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 Contract Administration.** This Agreement shall be administered by Emma Karlen, Assistant City Manager/Director of Financial Services, who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 Notices.** Any written notice to Consultant shall be sent to:
Doug Jensen, SVP Client Services
7625 N. Palm Ave., Ste. 108
Fresno, CA 93711
- Any written notice to City shall be sent to:
Emma Karlen, Assistant City Manager/Director of Financial Services
455 East Calaveras Boulevard
Milpitas, California 95035
- 10.11 Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.12 Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 10.13 Exhibits.** All exhibits referenced in this Agreement are incorporated by reference herein.
- 10.14 Counterparts.** This Agreement may be executed in counterparts and each counterpart will have the same force and effect as an original

CITY OF MILPITAS

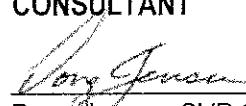

Thomas C. Williams, City Manager

8/14/15
Date

APPROVED AS TO CONTENT:


Emma Karlen, Assistant City Manager

CONSULTANT


Doug Jensen, SVP Client Services

8/17/15
Date

75-3078675
Taxpayer Identification Number

EXHIBIT A
SCOPE OF SERVICES
PROPERTY TAX SERVICES

MUNISERVICES, LLC (CONSULTANT) shall provide to the (City of Milpitas/RDA) (CITY), CONSULTANT's Property Tax Compliance Services which consists of Discovery, Audit and Recovery Services.

Objectives and Methods

CONSULTANT's Property Tax Audit service is designed to assist CITY in recovering the revenue to which it is entitled from its Property Tax and RDA Tax Increment. Administrative errors and omissions combined with general compliance problems are inevitable given the non-standard, complex nature of state and local property taxes. Error rates rise with respect to property tax applicability, rates, exceptions, exemptions, quirks and other inconsistencies.

Because there are time limitations on the CITY's ability to recover misallocated revenue, prompt correction of these errors and omissions is essential to maximizing revenue potential.

The following steps are taken in conducting CONSULTANT's Property Tax Audit:

- o Contact CITY's designated staff to review service objectives, scope, workplan schedule, public relations and logistical matters. CONSULTANT will also establish an appropriate liaison with the CITY's coordinator and logical checkpoints for progress reviews.
- o Represent the CITY for purposes of examining records pertaining to property tax and RDA successor agency tax increment to identify and confirm any errors/omissions that are resulting in deficient payment of tax revenues to the CITY.
- o For each error/omission identified and confirmed, prepare documentation to substantiate and facilitate recovery of revenue due from prior periods plus applicable interest and penalties (collectively "Misallocations").
- o Meet with designated CITY official(s) as necessary to review our findings and recommendations.
- o Prepare and forward to the appropriate parties requests for corrective action and revenue recovery for Misallocations. The date appropriate parties receive and acknowledge these requests is the Date of Knowledge.
- o Provide additional assistance as necessary to support the CITY in recovering and preventing tax allocation errors/omissions.

From the Date of Knowledge, the County Assessor's office will review the identified Misallocations, and for those Misallocations for which a correction is required, an Assessor's Roll Correction (ARC) will be processed by the County correcting those Misallocations, typically triggering a reallocation. The Roll Year in which the assessments first appear corrected is the Date of Correction. Corrected assessments result in proper allocations in subsequent Roll Years ("Corrected Allocations").

Specifically, CONSULTANT shall:

- o Establish a comprehensive inventory of every parcel located within the CITY and within the RDA project(s), including the database elements needed to facilitate a comparison analysis with County secured and unsecured taxable values.

- o Conduct an audit of the CITY local secured and unsecured valuations, on a parcel-by-parcel basis to determine tax rate area (TRA) miscoding errors and omissions.

Timing and Reporting

CONSULTANT shall commence the revenue enhancement audits and annual report services within 10 working days of authorization (unless instructed otherwise by the CITY) with the objective of delivering the initial audit reports within 90 to 120 working days. Thereafter, CONSULTANT shall provide the CITY with audit progress reports to include, but not be limited to, the following:

- o Actual revenue produced for the CITY by CONSULTANT's service on an annual and cumulative basis.
- o Projected revenue forthcoming to the CITY as a result of CONSULTANT's audit service, specified according to source, timing and one-time payment versus ongoing.
- o Listing of all errors/omissions detected for the CITY including, for each, the account number, correction status, payment amount received by the CITY, period to which payment is related and payment type (e.g. reallocation, deficiency assessment, etc.).
- o Status of the work including copies of reports provided by the County addressing each reporting error/omission individually, the Incorrect Parcel Number, Correct Parcel Number, Assessee, Correct TRA assignment, Business ID, Address, Secured and Unsecured Valuation, Exemptions, Net Total Valuation of misallocated assessments.

SALES AND USE TAX AUDIT (SUTA)

Objectives and Methods

CONSULTANT's Sales and/or Transactions and Use Tax Audit service is designed to maximize the CITY's income - and minimize the cost of lost revenue - by detecting and documenting misallocations of local district tax/transactions and use tax, Bradley-Burns sales tax and local use tax activity within the statute of limitations on recoverability.

In performing the sales, transactions and use tax audit program CONSULTANT shall:

- Identify and correct the sales/use tax reporting errors of businesses that, based on the nexus of their activities, are not properly registered with the CITY.
- Identify and correct the reporting of businesses that are improperly reporting tax to state and county pools (i.e. classifying sales tax as use tax) and thereby depriving the CITY of sales tax revenue.
- Detect, document and correct sales/use tax reporting errors/omissions and thereby generate new, previously unrealized revenue for the CITY.
- Ensure through comprehensive audit measures that the revenue information used for ongoing economic analysis includes all sales/use tax generators.
- Assist the CITY with strategies to preserve and even enhance sales and use tax revenue generated by existing businesses within the CITY.

CONSULTANT's proposed sales/use tax allocation audit services for the CITY includes five distinct types of audits:

Taxable Nexus Field Audits

CONSULTANT's initial and periodic taxable nexus field audits include a physical canvassing and evaluation of sales/use tax generating businesses located in the CITY. In the absence of this undertaking, significant misallocations will remain undetected. CONSULTANT's field audits focus on those businesses located in the CITY from which the CITY has not been receiving sales/use tax revenue. The result is new or 'found' revenue for the CITY.

Permitization Audits

Wholesalers, contractors, processors, manufacturers and other non-retail businesses will frequently not have a sales or use tax permit properly registered to the CITY in which they are located because their business operations do not include a point-of-sale qualifying activity. However, these companies will often generate local sales/use tax from the State Board of Equalization (SBE) audit deficiency assessments, occasional sales (i.e., mergers and acquisitions), and self-accrual of use tax on purchases. CONSULTANT's field audits facilitate the identification and correction of improperly registered permits for companies having point-of-sale operations in the CITY.

Deficiency Assessment Audits

When the California State Board of Equalization audits taxpayers for sales/use tax compliance, it is not uncommon for the taxpayer to receive a substantial deficiency assessment due to underpayments and/or

under-collections. In many cases, the local allocation portion of the deficiency assessment is distributed in error to the State pool, county pools, or other jurisdictions. Accordingly, CONSULTANT has developed proprietary criteria and techniques to detect and correct SBE deficiency assessment misallocations and thus expand the benefits produced by CONSULTANT's allocation audit service.

Accounts Payable Audits

When California taxpayers purchase tangible personal property for which title passes out-of-state, the transactions are subject to use tax (rather than sales tax) which is collected by the vendor who in turn remits it to the SBE, with the local allocation typically distributed statewide or countywide through the pools.

Under certain conditions, the seller may allocate the local tax by situs or the CITY may elect to self-accrue the use tax and remit it directly to the SBE, in which case the local portion will come back to the CITY in the same manner as sales tax.

CONSULTANT's accounts payable audit will include a review of the CITY's purchases to identify opportunities for the CITY to capture the 1% local allocation on purchases subject to use tax. In this regard, CONSULTANT will prepare the documentation to facilitate the election, including assistance in preparing and filing the tax returns.

Quarterly Distribution Report Audits

Every three months, the CITY and CONSULTANT receive a Quarterly Distribution Report (QDR) from the SBE with the local allocation amount reflected by permit number.

CONSULTANT's QDR audits detect and correct taxpayer reporting errors and thereby generate new, previously unrealized sales/use tax revenue for the CITY. CONSULTANT's QDR audits focus on those accounts where CONSULTANT observes a substantial decline in the sales/use tax revenue allocation for a particular business entity in a given quarter. In most cases, accounts showing zero balances have either relocated or simply reported late, in which case the payments will not be reflected until the next quarter's QDR. Therefore, six months must lapse before the QDRs indicate whether a zero balance account can be attributed to a late payment or a misallocation.

Cities and counties may only recover misallocated revenue for three quarters prior to the SBE being notified of the reporting error. Therefore QDR audits must be conducted in a timely manner in order to preserve the opportunity for the CITY to recover misallocated revenue. CONSULTANT shall conduct the QDR audit each and every quarter to minimize the potential of lost revenue to the CITY.

SUTA Detection and Documentation

CONSULTANT shall represent the CITY for purposes of examining SBE records pertaining to sales and use tax to identify errors and omissions. CONSULTANT's procedures for detecting and documenting misallocations are as follows:

- Review applicable provisions of the CITY's municipal code and ordinance adopted by the CITY.
- Procure a computer tape of sales/use tax permit records from the State Board of Equalization (SBE).

- Analyze sales tax distribution reports provided by the SBE for five or more of the most recent consecutive quarters.
- Clean-up, standardize and computerize data from CITY's quarterly sales tax distribution reports provided by SBE for previous quarters, current quarter and each future quarter service is provided.
- Prepare an aggregated list of business entities on electronic media; this list is derived from multiple private and public sources (hard copy and electronic), including specialized business listings and directories, and the CITY's revenue payment files.
- Clean, standardize and integrate, in address-order, each entity's business name, address and payment file information, to eliminate redundancies, using CONSULTANT's proprietary software.
- Physically canvas commercial/industrial area within the CITY's borders.
- Develop a target list of potential point of sale/use reporting errors/omissions based on:
 - An electronic comparison of CONSULTANT's comprehensive inventory against the SBE's quarterly distributions for the CITY, and
 - An analysis of each potentially misallocated account based on proprietary guidelines established by CONSULTANT.
- Meet with designated CITY official(s) to review service objectives and scope, CONSULTANT workplan schedule, public relations and logistical matters.
- Contact personnel in sales, operations and/or tax accounting at each target business to determine whether a point-of-sale/use reporting error exists. (Note: this is accomplished with the highest regard to discretion and professional conduct. CONSULTANT's allocation audits are predicated on a non-controversial, constructive public relations approach which emphasizes the importance of each business to the CITY and the mutual benefits of correcting reporting errors.)
- Provide to the CITY and SBE reports addressing each taxpayer reporting error individually, including the business name, address, telephone number, California sales tax permit number, individuals contacted, date(s) of contact, nature of business, reason(s) for error, recommended corrective procedure and, if available, estimated sales/use tax revenue which should be forthcoming to the CITY.
- CONSULTANT may also provide suggested language for letters to be sent to the taxpayers and/or SBE from the CITY (or from CONSULTANT on behalf of the CITY) urging cooperation in promptly correcting the distribution error.
- Respond to negative findings by SBE with timely reconfirmation documentation in order to preserve the CITY's original dates of knowledge.
- Receive and process registration control record information monthly.
- Receive and process sales tax distribution reports quarterly.
- Coordinate with the taxpayer and State Board of Equalization to make the necessary corrections and collect eligible back quarters amounts.
- Monitor and analyze the quarterly distribution reports with an audit focus on the following:
 - Accounts with previously reported point-of-sale/use distribution errors to ensure that the corrections are made for current quarters and all eligible back quarters.

- Major accounts comprising 90% or more of the CITY's total sales tax revenue to identify any irregularities or unusual deviations from the normal pattern (e.g. negative fund transfers, significant decreases, unusual increases, etc.) and ensure that the CITY is not receiving less revenue than it is entitled to.
- Those accounts receiving deficiency assessments to ensure that the CITY receives its local allocation
- Identify opportunities for the CITY to recover local allocation on purchase transactions subject to use tax. CONSULTANT will prepare the necessary documentation to facilitate recovery, including assistance in preparing and filing the returns.

For each misallocated account detected, CONSULTANT will coordinate with the business and SBE to make the necessary corrections plus retroactive adjustments for eligible amounts of sales/use tax improperly distributed in prior quarters. CONSULTANT coordinates and communicates between typically four parties; sales/operations personnel at the taxpayer's local operation, tax personnel at the company's corporate headquarters, and State Board of Equalization personnel and the in-state/out-of-state district offices. Correction of the account is considered to have been made once the payments on identified taxpayer accounts are being properly allocated by the taxpayer to the CITY in the period in which the payment was made.

As needed, CONSULTANT will represent the CITY before state officials, boards, commissions and committees for the purpose of correcting sales tax distribution errors that have deprived the CITY of revenue to which it is entitled.

Timing

CONSULTANT shall commence auditing the sales/use tax and preparing the sales tax Query System within 10 working days of receipt of a fully executed contract and Confidentiality Resolution designating CONSULTANT as the authorized CITY CONSULTANT to examine sales and use tax records.

Confidentiality Provisions

CONSULTANT is authorized by this Agreement to examine sales and use tax records of the State Board of Equalization provided to CITY pursuant to contract under the Bradley-Burns Uniform Sales and Use Tax Law.

CONSULTANT is required to disclose information contained in, or derived from, those sales and use tax records only to an officer or employee of the CITY who is authorized by resolution to examine the information.

CONSULTANT is prohibited from performing consulting services for a retailer during the term of this Agreement.

CONSULTANT is prohibited from retaining the information contained in, or derived from, those sales and use tax records, after this Agreement has expired.

SALES/USE TAX ANALYSIS & REPORTING SERVICE (STARS)

Objectives and Methods

CONSULTANT's STARS Reports provides a summary that features a general analysis regarding statewide trends that may affect the CITY's sales tax plus a specific analysis of the CITY's sales tax composition, changes and performance. Report graphically illustrates the data and analysis presented in the Summary. STARS Reports include the Quarterly Management Summary and specialized reports that provide analysis of the CITY's sales tax economic base and performance for the latest complete quarter and benchmark year.

Timing & Reports

CONSULTANT shall:

- Provide the CITY with quarterly updated STARS Reports.
- Install the STARS Query System on a CITY designated PC
- Update quarterly the CITY's sales tax registration and allocation data from the State Board of Equalization (SBE) from CONSULTANT's proprietary STARS Query System on IBM compatible PCs with Microsoft Access export capacity. (note: STARS is provided in encrypted formats)
- Train authorized CITY staff in the use of the STARS Query System.

Quarterly Stars Digest

CONSULTANT will provide the CITY with quarterly updated bound STARS Reports including accounts from which the CITY receives sales tax revenue. The primary reports included in the STARS Reports are:

- **Allocation Summary** - Reconciles SBE advances, cleanup payments and pool allocations with budget projections to assist the CITY with revenue forecasting and receipt monitoring.
- **Cash Analysis** - Quarterly aberrations due to SBE audits, fund transfers, and other causes are also identified and analyzed for budget planning and revenue forecasting purposes.
- **Top 100 Five-Year** - Historical performance of the top 100 accounts comparing current benchmark year ranking and sales tax produced with that of prior years.
- **Top 100 Detail** - Sales tax performance of the CITY's top 100 sales tax accounts is shown in order of sales tax produced with the results for the most recent five quarters prominently displayed. The proportion of CITY sales tax produced is also shown by each account.
- **Economic Category Performance** - An analysis of the changes that occurred by economic category and segment with the specific businesses responsible for the significant changes delineated.
- **Significant Change Analysis** - A report reflecting magnitude of change, indicating which key businesses grew or declined, measured in absolute dollars and percentages.
- **Business Code Classification** - This report shows the various business codes assigned by the SBE and the accounts assigned those codes in order of sales tax produced. Five quarters of sales tax data are shown for each significant account.
- **Historical Economic Composition** - Data are summarized by economic category and segment by quarters and benchmark years. Percentage of total sales tax generated by each category and segment is also shown to indicate trends in sales tax composition as well as performance.

- **Geo-Area Reports** - Tracks sales tax performance within designated areas of the CITY (e.g., key shopping centers, business parks, and downtown /business districts,). Charts and printed reports are included for each geo-area.
- **Cross-Reference Reports** - These reports allow the user to look up any account shown in the STARS Reports by name, address or account number.

Stars Query System

CONSULTANT shall install the STARS Query System (a software program) on a CITY designated, IBM-compatible PC. Each quarter, CONSULTANT shall provide the CITY with updated information from SBE on CD-ROM. The data shall be provided in an encrypted format allowing the CITY to export sales tax information from the Query System in an Access-compatible format.

The Query System enables CITY staff to analyze the contribution of sales/use tax revenue from each taxpayer in the CITY on an individual, grouped or sorted-order basis by business name, business type, permit number, size ranking, street address, development, shopping center or other geographic area. Reports may be generated by any year (i.e., calendar, fiscal, benchmark) or for any particular quarter for all periods stored in the historical database.

The initial STARS Reports and Sales Tax Query System shall be delivered and installed within 45 working days following receipt of a fully executed contract, confidentiality resolution and the SBE sales tax registration and payment data. Subsequent quarterly Query System updates and STARS reports will be delivered to the CITY within 30 days following receipt of the quarterly distribution reports from the SBE.

Quarterly Sales Tax Review Meetings & Consulting

The Quarterly Sales Tax Review Meetings allow staff to meet with their CONSULTANT's Client Services Manager/Project Manager on an individualized basis to provide consulting services – the capstone of STARS value. CONSULTANT will meet with staff as frequently as desired to discuss forecasts and consulting reports that explain the revenue received from the SBE, which includes cash receipts analysis, regional comparison report, quarterly changes report, per capita charts, historical trend analysis, top 100 businesses, legislative and regulatory updates, and related other topics.

License Agreement

The STARS Query System is licensed software provided by CONSULTANT. The terms and conditions of the STARS Query System End-User Notice and License Agreement are provided below. By installing and using the STARS Query System, the CITY agrees to be bound by the terms of the License Agreement.

Upcoming Improvements to STARS

MuniServices is nearing completion of a brand new STARS service. The New STARS, which will not only move the service online, add more robust features and replace the current books and inquiry system, but will enhance the service through optional services like GIS mapping and premium predictive analytics tools.

CONSULTANT proposes to provide the CITY with all its sales and use tax data through our new online STARS program and report portal with the new system allowing for exportation of sales tax to Microsoft

Excel or Adobe PDF formats. The Excel exports are true exports allowing the CITY to interact with the data and charts after export. The PDF exports include tables of content with hyperlinks to each section. The new system allows CITY staff to interact with sales tax data from the location level to citywide level; some up to 20+ years of history; on a cash or economic basis; by quarter or year; by classification grouping from NAICS to economic category; and, by geographic area. By interacting with the data across any combination of these parameters, the CITY will be able to quickly identify the information it needs for policy and performance analyses. Even though the new system delivers an impressive and powerful tool to the CITY, we will continue to offer a client relations team to conduct research and analysis for CITY staff.

The New STARS portal is will be accessible via the web and we will update the information available via the web-portal within 15 working days after we receive the data from the SBE.

Added Features in the New STARS platform include but are not limited to the following:

- Create and maintain subsets of the information based on geographic features
Once development and testing have been completed, MuniServices will release software capable of reporting and tracking sales tax information on a cash or economic basis, with historical geographic-based information and with enhanced reporting, charting and analysis tools. Additionally, MuniServices software and reports will contain NAICS codes, new economy business codes and enhanced economic development reports.
- Ability to define and print reports
CITY staff will be able to interact with your data to refine a document for export to PDF files. They will also be able to request new documents and receive the benefit of other clients' design requests. When CITY staff decides to export to PDF, they will have the opportunity to control the amount of information flowing to the PDF. The PDF will include a table of contents hyperlinked to each section in the PDF report.
- Ability to export all data to a spreadsheet
CITY staff will be able to interact with your data to refine a document for export to Excel files. The export to Excel is a true export, in that, the exported data and charts maintain the user's ability to customize the charts after export. Each section of the report will export to its own tab in the Excel file, with tab names to match the contents. As a result, the CITY will be able to tailor content to other documents or presentations in important ways image exports would not allow.
- Delivery Path – Approved CITY Staff
CITY staff will be able to interact with your data on each page of our new web-based analytical platform. The virtue of the new platform is the ability to instantly update content and tools. Examples of what authorized CITY staff will find on the site include:
 - Responsive charts and tables showing current and historical performance you can reconfigure and export as PDF or Excel spreadsheets. You can then use the content in presentations or reports.
 - Detailed business research to the location level and across economic classifications and owner's information.

- Feedback loop with our platform management team to design and incorporate new tools for the CITY.
- Interactive mapping tool you can use to visualize and configure information from a single business on up to streets, geographic areas,
- Predictive analytics guiding scenario planning and much, much more.

We look forward to demonstrating our proprietary platform to all interested CITY staff.

STARS END-USER NOTICE and LICENSE AGREEMENT

The STARS Query System is licensed software provided by CONSULTANT. The terms and conditions of the STARS Query System End-User Notice and License Agreement are provided below. By installing and using the STARS Query System, the CITY agrees to be bound by the terms of the License Agreement.

Notice to end-user: Installation or use of the STARS Query System software and associated Data (together "Software") on a computer system constitutes user's ("Your" et. al) acceptance of these terms. If You do not agree to the terms of this license, discontinue this installation and promptly delete the Software from the computer system, destroy any copies you made of the Software or any installation diskettes of the Software, and dispose of all written materials in Your possession regarding the Software. This License is effective until terminated. You may terminate it at any time by destroying the Software and all copies of it. It will also terminate if You fail to comply with any term or condition of this License. You agree upon termination to destroy the Software together with all copies of the Software.

License Grant: MuniServices, LLC grants to You a license to install and use one copy of the Software on a single computer. Your license to use the Software is conditioned upon Your compliance with the terms of this Agreement. A License is required for each installation of the Software. You may make one (1) copy of the Software for archival purposes only.

Copyright: The Software is protected by copyright laws and international treaty provisions. You acknowledge that no title to the intellectual property in the Software is transferred to You. You further acknowledge that title and full ownership rights to the Software will remain the exclusive property of MuniServices, LLC and You do not acquire any rights to the Software except as expressly set forth in this license. The Software in source code form remains a confidential trade secret of MuniServices, LLC and decompiling, disassembling, or otherwise reverse engineering the Software in any way is prohibited as a violation of those copyrights.

Prohibited Uses: You may not (a) use, copy, modify, alter, or transfer the Software or documentation except as expressly provided in this License; (b) translate, disassemble, decompile, reverse program or otherwise reverse engineer the Software; (c) sublicense or lease the Software or its documentation; or (d) use a single installation of the Software in a multi-user or multiple computer environment or in a rental, time sharing or computer service business. Without prejudice to any other rights, MuniServices, LLC may terminate this License if You fail to comply with its terms and conditions. In such event, You must destroy all copies of the Software.

Limited Warranty: MuniServices, LLC warrants that the Software will perform substantially in accordance with the accompanying written materials upon installation for a period of thirty (30) days from the date of purchase.

End-User Remedies: If the Software does not conform to the "Limited Warranty" section above, MuniServices, LLC's entire liability and Your sole and exclusive remedy shall be, at MuniServices, LLC's option, either to (a) correct the error, or (b) help You work around the error. The Limited Warranty is void if

failure of the Software has resulted from accident, abuse, or misapplication. Any replacement software will be warranted for the remainder of the original Limited Warranty period.

No other warranties: MuniServices, LLC does not warrant that the software is error free, except for the express limited warranty in the "limited warranty" section. MUNISERVICES, LLC DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO THE SOFTWARE, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. Some jurisdictions do not allow the exclusion of implied warranties or limitations of how long an implied warranty may last, or the exclusion of limitation of incidental damages, so the above limitations or exclusions may not apply to You. This warranty gives You specific legal rights and you may also have other rights which vary from jurisdiction to jurisdiction.

No Liability for Consequential Damages: In no event shall MuniServices, LLC or its licensors, suppliers, or licensees be liable to You for any consequential, special, incidental, or indirect damages of any kind arising out of the performance or use of the software, even if MuniServices, LLC has been advised of the possibility of such damages.

Governing Law: This Agreement is governed by the laws of the State of California, U.S.A. without regard to its conflict of laws principals.

U.S. Government Restricted Rights: Use, duplication or disclosure of the Software by any agency, department or other entity of the U.S. Government is restricted in accordance with FAR 12.212 for civilian agencies and DFARS 227.7202 for military agencies. The Software is a commercial product. Use of the Software by the U.S. Government is further restricted by the terms of this License.

EXHIBIT B

COMPENSATION SCHEDULE

PROPERTY TAX SERVICES (PTX)

CITY shall pay CONSULTANT a 25% contingency fee. This fee applies to all reallocations for the fiscal year during which the Date of Correction falls and all eligible prior period revenues corrected. The fee also applies to Corrected Allocations for three (3) subsequent Roll Years from the Date of Knowledge. CONSULTANT shall invoice CITY at least annually based on recoveries actually received by CITY.

- **CITY Assistance**

Because CONSULTANT's Property Tax Service may result in collection of deficiencies after termination of the Agreement, CITY's obligation to collect fees and notify CONSULTANT, and CONSULTANT's right to continue to receive payment, shall survive termination of this Agreement for any reason.

SALES/USE TAX ANALYSIS & REPORTING SERVICE (STARS)

The STARS Reports and Query System are available for \$6,166 per year, paid \$1,541.50 quarterly. The Annual Fee shall be adjusted at the beginning of each calendar year by the percentage change in the Consumer Price Index – West Urban (CPI-WU) as reported by the Bureau of Labor Statistics. The adjustments thereafter are based on the CPI-WU from the last month of the prior calendar year. Each annual CPI adjustment shall not be less than four percent (4%) or greater than ten percent (10%). The adjustment in the STARS Annual Fee shall be effective as of July 1 of each year.

SALES AND USE TAX AUDIT (SUTA)

CONSULTANT's compensation for the Sales and Use Tax Audit Service shall be a 25% contingency fee. This fee applies to six quarters after the Date of Correction and all eligible prior quarters back to and including the three quarters prior to the Date of Knowledge quarter. As used herein, the Date of Knowledge is the quarter during which CONSULTANT notifies the State Board of Equalization of the existence of a misallocation. As used herein, the Date of Correction refers to the quarter in which the taxpayer has correctly reported the local tax and the SBE distributes the local tax properly to CITY based on the taxpayer's reporting. For QDR Misallocations detected and corrected, CONSULTANT's compensation shall only include the quarters in which the misallocation actually occurred.

- **CITY Responsibilities**

In the event that CITY identifies, documents, and notifies the State Board of Equalization of a reporting error or misallocation as those terms are used herein, CITY agrees to notify CONSULTANT of CITY's discovery no later than ten (10) days after the Date of Knowledge. If CITY fails to so notify CONSULTANT and CONSULTANT later detects, documents, and reports the misallocation or reporting error to the State Board of Equalization, or if CONSULTANT has established a Date of Knowledge with the State Board of Equalization prior to notification to the

Board by CITY, then CONSULTANT shall be entitled to compensation for the affected account in accordance with this Agreement.

- **Completion of Services**

Notwithstanding any other provision of this Agreement, because CONSULTANT's services performed hereunder result in corrections of misallocations and other revenue after cessation of services by CONSULTANT for CITY, CITY agrees that with regards to misallocations identified to the SBE whose Date of Knowledge occurred during CONSULTANT's performance of services for CITY or for other revenue resulting from CONSULTANT's actions taken during the term of this Agreement, that CITY's obligation to pay CONSULTANT in accordance with the compensation language of this Agreement shall survive expiration or termination of this Agreement for any reason. Additionally, notwithstanding any other provision of this Agreement, if this Agreement is terminated or expires, CONSULTANT shall continue to pursue corrections of accounts identified during the term of this Agreement that have not been corrected by the SBE as of the effective date of termination or expiration. The period after termination during which CONSULTANT is pursuing correction of accounts identified before termination is referred to as the "completion period." CITY shall compensate CONSULTANT in accordance with the compensation language of this Agreement for corrected misallocations that result from CONSULTANT's efforts during the completion period. CITY will also take all necessary steps to allow CONSULTANT to continue to receive the required information from the SBE during this completion period.

EXHIBIT C

INSURANCE REQUIREMENTS - CONSULTANTS

Definition:

For purposes of this contract, the following definition applies: City of Milpitas includes the duly elected or appointed officers, agents, employees and volunteers of the City of Milpitas, individually or collectively.

Insurance Required:

Consultant must procure insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work under the contract and the results of that work by the consultant, his agents, representatives, employees or subconsultants and provide documentation of same prior to commencement of work. The insurance must be maintained for the duration of the contract.

Minimum Scope of Insurance: (Check Mark Indicates Required)

Coverage must be *at least as broad as*:

- (X) Insurance Services Office Commercial General Liability coverage (occurrence Form CG0001).
- (X) Insurance Services Office Form Number CA 0001 covering Automobile Liability.
- (X) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- (X) Professional Liability or Errors & Omissions Liability insurance appropriate to the consultant's profession.

Minimum Limits of Insurance:

Consultant must maintain limits no less than:

General Liability: (Including operations, products and completed operations, as applicable.)	\$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit.
Automobile Liability:	\$1,000,000 per accident for bodily injury and property damage.
Workers' Compensation Employer's Liability:	Statutory \$1,000,000 each accident \$1,000,000 disease-policy limit \$1,000,000 disease-each employee

Professional Liability or	\$1,000,000 each occurrence
Errors & Omissions	\$1,000,000 policy aggregate
Liability:	

Deductibles and Self-Insured Retentions:

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer will reduce or eliminate such deductibles or self-insured retentions as they pertain to the City, its officers, officials, employees and volunteers; or the consultant will provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Other Insurance Provisions:

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. **The City of Milpitas, its officers, officials, employees, and volunteers** are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the consultant; and with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85), or as a separate owner's policy.
2. For any claims related to this project, the **Consultant's insurance coverage shall be primary** insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the **Consultant's insurance and shall not contribute with it.**
3. The Insurance Company agrees to **waive all rights of subrogation** against the City, its elected or appointed officers, officials, agents and employees for losses paid under the terms of any policy which arise from work performed by the Named Insured for the City. This provision also applies to the Consultant's Workers' Compensation policy.
4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after **thirty (30) days' prior written notice (10 days for non-payment)** by certified mail, return receipt requested, has been given to the City. If Consultant's insurer refuses to provide this endorsement, Consultant shall be responsible for providing written notice to the City that coverage will be canceled thirty (30) days after the date of the notice or ten (10) days for non-payment.

Acceptability of Insurers:

Insurance is to be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of no less than A-VII. If insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A-X. Exception may be made for the State Compensation Fund when not specifically rated.

Verification of Coverage:

Consultant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on insurance industry forms, provided those endorsements or policies conform to the contract requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

Subconsultants:

Consultants must include all sub-consultants as insureds under its policies or furnish separate certificates and endorsements for each sub-consultant. All coverage for sub-consultants are subject to all of the requirements included in these specifications.

Absence of Insurance:

If the Consultant allows the insurance to lapse, be cancelled, or be reduced below the limits specified in this article, the Consultant shall cause all work in the Project to cease and any delays or expenses caused due to stopping of work and change of insurance shall be considered Consultant's delay and shall not be considered to increase cost to the City or increase time in which the Project shall be completed.

Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may immediately terminate this Agreement



DRAFT

REQUEST FOR PRE-QUALIFICATION STATEMENT

FOR

Milpitas Sports Center Sports Fields
Project No. 5104

CITY OF MILPITAS
CITY HALL
455 East Calaveras Boulevard
Milpitas, CA 95035



Notice
REQUEST FOR PRE- QUALIFICATION STATEMENT
FOR
Milpitas Sports Center Sports Fields
City of Milpitas Project No. 5104

By this Notice, the City of Milpitas is soliciting Prospective Bidders who may wish to submit a future bid for a public works construction contract for the Milpitas Sports Center Sports Fields Project ("Project") to be constructed at the Milpitas Sports Center, 1325 E. Calaveras Blvd. in the City of Milpitas, for the purpose of establishing a Pre-qualified Bidders List.

The City of Milpitas ("City") has determined that all prospective bidders for the Project shall be pre-qualified prior to submitting a bid on this Project. It is mandatory that all Contractors who intend to submit a bid fully complete the **Pre-Qualification Statement (PQS)**, provide all material requested herein, attend a **mandatory** pre-qualification meeting, and be approved by the City of Milpitas to be on the Pre-qualified Bidders List ("Bidders List"). The City will not accept bids from Contractors that are not on the Pre-Qualified Bidders List for this Project. If two or more business entities submit a bid as part of a Joint Venture, each entity within the Joint Venture must be on the Pre-qualified Bidders List.

The following is a summary of the PQS process for the Project. Prospective bidders are instructed not to rely upon the information in this summary to complete the PQS, but instead to read and follow the detailed instructions in the attached Pre-Qualification Statement package.

PRE-QUALIFICATION PROCESS AND SUBMISSION OF PQS RESPONSE FORMS

- a. **Pre-qualification Statement Response Forms** The PQS response sheets to be completed by prospective bidders are included Part 2 and Exhibits A, B, C, and D in the following Pre-qualification Statement. Prospective bidders must complete all required sections of these forms and must attach or append all requested information. Incomplete forms, statements lacking requested information, and Bidder not meeting the qualifications will disqualify prospective bidders. The City will maintain the confidentiality of information provided in the PQS to the extent permitted by law.
- b. **PQS Submission date, time, and place.** The latest date and time to submit a fully completed PQS is **TBD at 2:00 PM**. Any Prospective Bidder who does not submit a completed PQS by the required date and time will be disqualified. Three sets of the PQS, with all exhibits and additional information sheet attachments, shall be submitted. The completed PQS package shall be sealed in an envelope, marked "CONFIDENTIAL, Pre-Qualification Statement – Milpitas Sports Center Sports Fields, Project 5104" and addressed to the CIP Manager, City of Milpitas. The PQS shall be submitted to CIP Manager at the information desk in the lobby of Milpitas City Hall, located at 455 East Calaveras Boulevard, Milpitas, California 95035.
- c. **Mandatory Pre-qualification site meeting.** Prospective bidders must attend one of two scheduled **mandatory** pre-qualification meetings and site visits scheduled for **TBD at 2:00 PM and TBD at 10:00 AM**. The meetings will be held at the project site Milpitas Sports Center at 1325 E. Calaveras Blvd. (located behind Milpitas Unified School District Building). Any questions about these meetings should be directed to Sabeen Cochinwala, Project Manager, (408) 586-3303.
- d. **Contractor Licensing.** Only Contractors holding a **TBD** license issued by the State of California Contractors' Licensing Board shall be eligible to complete the PQS. Copies of California State Contractor's License do not need to be submitted with the PQS.
- e. **Prevailing Wage.** This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations pursuant to Section 1771.4(a)(1). No Contractor or subcontractor may be awarded a contract for a public works project on or after April 1, 2015 unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5. Commencing April 1, 2015, Contractors and Subcontractors shall furnish electronic certified payroll records to the State Labor Commissioner.

In accordance with Section 1773.2 of the Labor Code of the State of California, copies of the general prevailing rate of per diem wages in the locality in which the public work is to be performed for each craft, classification, as determined by the Director of the Department of Industrial Relations are on file in the Office of the City Engineer, and these will be made available upon request. It shall be mandatory upon the Contractor to whom a contract is awarded, and upon all subcontractors under the Contractor, to pay not less than the highest of the applicable rates set forth in either the federal or state schedules of prevailing wage rates.

- f. **Pre-qualified Bidders List** The City will use and verify the information provided in the PQS submittal to pre-qualify Prospective Bidders meeting the criteria of "Responsible Bidder" as defined by Public Contract Code §1103 (i.e., bidders who demonstrate the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract). The City will place all pre-qualified prospective bidders on the Bidders List and will notify each Prospective Bidder whether or not they have so placed. Prospective Bidders placed on the Bidders List will be eligible to receive a Project bid package and the City will only accept bids from pre-qualified bidders on the Bidders List.
- g. **Clarifications and Addenda** The City may issue addenda as appropriate for clarification or other reasons during the PQS process. All requests for clarification or interpretation must be submitted in writing to Sabeen Cochinwala, Project Manager, (408) 586-3303, scochinwala@ci.milpitas.ca.gov, no later than 5pm on TBD.
- h. **Information Available.** Prospective bidders may obtain additional information from the following sources:
- Excerpts of 90% Milpitas Sports Center Sports Fields Plans by Verde Design
 - Other information on the City's website at www.ci.milpitas.ca.gov
 - Pre-qualification and responsibility statement can be viewed and/or purchased at Prints Charles Reprographics, 1643 S Main St, Milpitas CA 95035, phone (408) 240-3330, www.printscharlesrepro.com or incoming@printscharlesrepro.com
 - When issued for bidding, plans and specifications will be available for viewing and/or purchase at the Prints Charles Reprographics, 1643 S Main St, Milpitas CA 95035, phone (408) 240-3330, www.printscharlesrepro.com or incoming@printscharlesrepro.com
 - The City anticipates that this project will bid in January 2016. With construction to start in late February or early March 2016.

CONSTRUCTION CONTRACT INFORMATION

- a. **PROJECT DESCRIPTION.** The Milpitas Sports Center Sports Fields Project includes but is not limited to the following: new synthetic turf football and soccer fields with stadium lighting and site furniture. The City anticipates offering the project for bid in January 2016.
- b. **ESTIMATED COST.** Project construction is estimated to cost approximately \$1.8 to 2.0 million dollars.
- c. **CONTRACT TIME.** Time to complete the Project (including all construction and improvements) is anticipated to be by June 20th, 2016.
- d. **CALIFORNIA STATE CONTRACTOR'S LICENSING REQUIREMENT.** All Prospective Bidders must possess a Class "TBD" California Contractor's License at the time of PQS submission and must maintain that license at the time of bid submission. The awarded Contractor must maintain the license throughout the contract period.

Please contact Sabeen Cochinwala, Project Manager, at (408) 586-3303 with any questions about the pre-qualification process, the pre-qualification application and response forms, or Milpitas Sports Center Sports Fields Project.

Issued by the City of Milpitas

Steven Machida
Director of Engineering/City Engineer

Date

**PRE-QUALIFICATIONS STATEMENT
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PRE-QUALIFICATIONS STATEMENT

MILPITAS SPORTS CENTER SPORTS FIELDS, PROJECT NO. 5104

PART 1 - GENERAL INFORMATION

1.01 PROJECT DESCRIPTION.

The Milpitas Sports Center Sports Fields Project includes but is not limited to the following: new synthetic turf football and soccer fields with stadium lighting and site furniture. The City anticipates offering the project for bid in January 2016.

1.02 INVITATION TO COMPLETE AND SUBMIT PRE-QUALIFICATION AND RESPONSIBILITY STATEMENTS/ MILESTONES

It is mandatory that all Prospective Bidders intending to submit bids for the Project submit the Pre-Qualifications Statement (PQS) and be pre-qualified by the City to be on the Bidders List.

Answers to questions contained in the attached PQS, information about current bonding capacity, notarized statement from surety, and the most recent reviewed or audited financial statements, with accompanying notes and supplemental information, are required. The City will use these documents as the basis for rating Contractors in respect to the size and scope of contracts upon which each Contractor is qualified to bid.

Prospective Bidders shall submit the sealed PQS application marked "CONFIDENTIAL, Pre-Qualification Statement – Milpitas Sports Center Sports Fields, Project 5104" no later than **2:00 p.m. on TBD**, addressed to the CIP Manager at the information desk in the lobby of Milpitas City Hall, located at 455 East Calaveras, Milpitas, California 95035. Three sets of the PQS application, with all exhibits and additional information sheet attachments, shall be submitted. The City expects to establish and make public the Bidders List for this Project on or before TBD. All information provided will be kept confidential to the extent permitted by law. In accordance with the California Public Records Act, much of the pre-qualification package (questionnaire answers and financial statements) submitted by Contractors is not a public record and will not be open to public inspection. However, the contents may be disclosed to third parties for purposes of verification, or investigation of substantial allegations, or in an appeal proceeding. State law requires that the names of contractors applying for pre-qualification status shall be public record subject to disclosure, and the first page of Part 2 of the PQS questionnaire will be used for that purpose.

Each PQS must be signed under penalty of perjury in the manner designated at the end of the form, by an individual who has the legal authority to bind the Contractor on whose behalf that person is signing. If any information provided by a Contractor becomes inaccurate, the Contractor must immediately notify City and provide updated accurate information in writing, under penalty of perjury.

The City may refuse to grant pre-qualification where the requested information and materials are not provided by the submission time listed above. **There is no appeal for the City's refusal to accept an incomplete or late application.** The closing time for PQS submission will not be changed to accommodate supplementation of incomplete submissions, or late submissions. However, the City reserves the right to waive minor irregularities and omissions in the information contained in the pre-qualification application, to make all final determinations, and to determine at any time that the pre-qualification procedures will not be applied to the Project.

The City will evaluate the information contained in each Prospective Bidder's PQS and may request additional pertinent information. The City's decision will be based on its evaluation of the information disclosed in the Prospective Bidder's PQS and other information available to the City. The sole and discretionary judgment of the City, and/or its designee, will determine if a Prospective Bidder is deemed qualified to bid on the Project. Should a Prospective Bidder be deemed to be ineligible to bid on this Project, the City will provide, upon request, the basis for the decision. During the evaluation of the PQS application, should any additional information be requested by the City, Prospective Bidders must provide that information within two (2) working days of the request. Failure to provide the information within the specified time period may result in disqualification from the process.

The City reserves the right to adjust, increase, limit, suspend or rescind a PQS rating based on information learned after a preliminary qualification decision but before contract award. Contractors whose rating changes sufficiently to disqualify them will be notified, and given an opportunity to respond consistent with the administrative appeal procedures described below for appealing a PQS rating.

It is the intent of the pre-qualification questionnaire and documents required therewith to assist City in determining bidder qualifications prior to bid and to aid City in selecting the lowest responsible bidder. Neither the fact of pre-qualification, nor any pre-qualification rating, will preclude City from a post-bid consideration and determination of whether a bidder has the quality, fitness, capacity and experience to satisfactorily perform the proposed work, and has demonstrated the requisite trustworthiness.

1.03 APPEAL PROCESS

A Prospective Bidder deemed ineligible to bid on this Project may appeal the original determination of the City within seven (7) calendar days from the date the list of pre-qualified Prospective Bidders is announced. A Prospective Bidder that wishes to appeal must do so by filing with the City Clerk a written request stating the basis for the appeal, and by supplying any new or additional documentation and/or evidence supporting the request within the stated time. City Engineer, and/or its designee, will review the matter within seven (7) calendar days of the close of the appeal period or longer, as is necessary, in order to adequately review appeal materials as determined by the City. City Engineer, and/or its designee, will review new evidence provided by the Prospective Bidder demonstrating qualifications to perform the contract. If the Prospective Bidder is deemed eligible after the new evidence is evaluated, the City will add the Prospective Bidder to the Bidder's List. If after review the review of the submitted appeal the City finds the Contractor remains ineligible to bid on the project that decision is final. Without submittal of a timely appeal, the Contractor waives any and all rights to challenge the decision of City whether by administrative process, judicial process or any other legal process or proceeding.

The City's evaluation of the Prospective Bidder's quality, trustworthiness, fitness and capacity to satisfactorily perform the proposed work applies only to this Project.

1.04 PROSPECTIVE BIDDER RESPONSIBILITY REQUIREMENTS.

- A.** Prospective Bidders shall submit all information and forms specified in Part 2, including Exhibits A, B, C, and D (Exhibit E is the screening criteria provided for Prospective Bidder information), and additional statements, reports, and explanation sheets.
- B.** Prospective bidders must attend one of two scheduled mandatory pre-qualification meetings **on TBD at 2:00 PM and TBD at 10:00 AM**. Meetings will be held at the project site at

Milpitas Sports Center 1325 E. Calaveras Blvd. (Located behind the Milpitas Unified School District Building). Questions about this meeting should be directed to Sabeen Cochinwala, Project Manager, (408) 586-3303.

Failure to provide required information at the time, date and location indicated in Section 1.02 or to attend one of the two mandatory site meetings shall constitute grounds for rejection of the PQS application and disqualification.

1.05 LICENSES.

Prospective Bidders must hold a valid Class TBD license issued by the State of California Contractor's License Board at the time of PQS submission. Prospective Bidders shall submit their license number and expiration date with this PQS application.

Failure to hold a valid Class TBD license at the time of the PQS application submission shall cause the Prospective Bidder to be disqualified from bidding the Project.

1.06 EXPERIENCE

- A. The City's criteria for evaluating a Prospective Bidder's qualifications shall be based upon the Prospective Bidder's overall experience and the experience of the key personnel assigned to this Project, and other criteria, as listed below, that the City deems necessary to ascertain the capabilities and past performance of each Prospective Bidder. The same project may be used to meet multiple requirements, if the project satisfies one or more of the key elements listed above.
- B. Key staff to be committed to the Project must have experience in project management, construction management, field supervision and coordination, and managing work where such staff was acting on behalf of a general contractor in a similar role on projects of scope and magnitude described above. Prospective Bidders shall provide resumes for the Project Manager and General Field Superintendent proposed for the Project showing evidence of the above; including a list of all projects they have managed, supervised or worked on within the last five (5) years. The following are the minimum requirements for each individual:
 1. Project Manager: A minimum of ten (10) years of construction experience with a minimum of five (5) years of experience managing similar public works projects, including two projects having a construction value over \$1.0 million. The Project Manager shall have managed the construction of at least one public government agency (not including school districts) pool deck installation with a construction value over \$500,000 in the last five years.
 2. On-Site General Field Superintendent: A minimum of eight (8) years of construction experience with a minimum of five (5) years of experience as a superintendent on similar projects, including two with a construction value over \$1.0 million. The Superintendent shall have been in charge of the installation of two synthetic athletic fields decks each with a construction value over \$500,000 in the last five years.

If the Prospective Bidder cannot meet these minimum experience requirements, the Prospective Bidder will be disqualified from bidding the Project.

1.07 FINANCIAL

- A. Prospective Bidder shall attach a copy of his latest reviewed or audited financial statements and balance sheet. The information provided will be treated confidentially. It is mandatory that this information be provided.
- B. Prospective Bidder shall list yearly volume of work and net income for each of the past five (5) years. Prospective Bidder shall list value of work currently on backlog, with percent complete as appropriate.

1.08 REFERENCES.

- A. Prospective Bidder shall provide a list of references to include at least three of each of the following (references shall be for projects within the last five years): Project owner, major supplier, and major trade subcontractor. At least two of the project owner references shall be from a Municipal Government Agency. The Prospective Bidder shall also provide a bank reference.
- B. The Prospective Bidder shall provide a list of the last three completed public works projects for a Municipal Government Agency (not including school districts) having a construction value over \$1.0 million.

1.09 SAFETY

Prospective Bidder shall complete and submit the attached Exhibit C. The EMR is established by the Prospective Bidder's insurance carrier based on his loss record. Prospective Bidders shall provide their intrastate EMR, which is used for evaluation of contractors in the State of California. **An EMR of 1.0 or less, averaged over the last three years is required for pre-qualification on this Project.**

1.10 LITIGATION

- A. Prospective Bidder shall list all history of claims, litigation disputes, and arbitration for cause associated with any work contracted on any project in the past ten (10) years.
- B. Prospective Bidder shall provide a list of any past judgments or current claims, and any termination(s) for cause over the past ten (10) years.

1.11 COMPLIANCE WITH ETHICAL STANDARDS.

As a condition precedent to submitting this PQS application for consideration, Prospective Bidder shall read and execute Exhibit D, titled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARD," which is attached hereto and incorporated herein by this reference.

1.12 OTHER CORPORATE OR BUSINESS FORMS.

For purposes of this prequalification procedure, the City reserves the right to consider the characteristics and history of a bidder's previous legal incarnations (e.g., partnership, Limited Liability Company, etc.) when the current application is submitted by personnel or a business entity headed or managed by the same or substantially the same personnel or principals.

**PRE-QUALIFICATION STATEMENT APPLICATION
MILPITAS SPORTS CENTER SPORTS FIELDS
PROJECT No. 5104**

PART 2 – PQS APPLICATION RESPONSE SHEETS

All information submitted for pre-qualification evaluation will be considered official information acquired in confidence and the City will maintain its confidentiality to the extent permitted by law. If an explanation and/or additional sheets are required for any responses, please attach additional pages signed by the preparer and identify clearly the question to which the attached page refers (with Prospective Bidder's name at the top of each page).

SECTION A – FIRM IDENTIFICATION, CONTACT INFORMATION, AND LICENSE

Firm Name: _____ Check One: ☐ Corporation
(as it appears on California Contractor's License Board license) ☐ Partnership
☐ Sole Proprietor

Contact Person: _____

Address: _____

Phone: _____ Fax: _____

If firm is a sole proprietor or partnership:

Owner(s) of Company _____

Contractor's License Number(s): List all California construction license numbers, classifications and expiration dates of the California Contractor License Board held by your firm(s):

If joint venture, each entity of the joint venture must be licensed by the California Contractor's License Board. Copy this sheet and fill out completely for each member of the joint venture.

SECTION B – LICENSE SUSPENSIONS, DEFAULTS, AND CRIMES

A “Yes” answer to any of the following seven questions is potentially disqualifying. Please provide an explanation with details about the occurrence and the reasons your firm was not at fault. Failure to disclose information requested will be cause for disqualification.

1. Has any California State License Board license held by your firm or its Responsible Managing Employee (RME) or Responsible Managing Officer (RMO) been suspended or revoked within the last five years?
☐ No ☐ Yes
2. Has a surety firm completed a contract on your behalf, or paid for completion because your firm was default terminated by the project owner within the last five (5) years?
☐ No ☐ Yes
3. At the time of submitting this form, is your firm ineligible to bid on or be awarded a public works contract, or perform as a subcontractor on a public works contract, pursuant to Labor Code Sections 1777.1 or 1777.7?
☐ No ☐ Yes
4. During the last five years, has your firm, or any of its officers been convicted of a crime involving the awarding of a contract of a government construction project, or the bidding or performance of a government contract?
☐ No ☐ Yes
5. Has your firm or any of its owners, officers or partners ever been found liable in a civil suit or found guilty in a criminal action for making any false claim or material misrepresentation to any public agency or entity?
☐ No ☐ Yes
6. Has your firm or any of its owners, officers or partners ever been convicted of a crime involving any federal, state, or local law related to construction?
☐ No ☐ Yes
7. Has your firm or any of its owners, officers or partners ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty?
☐ No ☐ Yes

SECTION C - EXPERIENCE

1. FIRM

- A. Provide information for current public works projects under construction with a construction value of \$1.0 million or more on Exhibit A (attached). Additionally, include all synthetic turf athletic field projects, regardless of project size.
- B. Provide information for all public works projects completed within the past five (5) years, which had a construction value of \$1.0 million or more on Exhibit B (attached). Additionally, include all synthetic turf athletic field projects, regardless of project size.

Using Exhibit B, each Prospective Bidder shall document its overall experience acting as a General Contractor on the following types of projects:

- 1. A minimum of four (4) completed projects, each with a construction value of \$500,000 or more in the last five (5) years, and a minimum of \$1.0 million in total completed construction work on average for each of the last five (5) years.
- 2. At least one of the four (4) projects must have been for a municipal government agency (for this prequalification school districts are not considered a municipal government agency) as the owner.

2. KEY PERSONNEL

- A. List the key personnel to be assigned to the Project. These individuals shall meet the required qualifications referenced in Paragraph 1.06 of Part 1-General Information.

Project Manager: _____

On-Site General Field Superintendent: _____

- B. Attach resumes for each of the above referenced personnel to satisfy the requirements of Part 1, Paragraph 1.06. For each person, submit a list of projects worked on within the last five years, including the most recent project to which he/she was assigned, demonstrating his/her field engineering, coordination, management, and scheduling experience. The following are the minimum requirements for each individual:
 - 1. Project Manager: A minimum of ten (10) years of construction experience with a minimum of five (5) years of experience managing similar public works projects, including two projects having a construction value over \$1.0 million. The Project Manager shall have managed the construction of at least one public government agency (not including school districts) pool deck installation with a construction value over \$500,000 in the last five years.
 - 2. On-Site General Field Superintendent: A minimum of eight (8) years of construction experience with a minimum of five (5) years of experience as a superintendent on similar projects, including two with a construction value over \$1.0 million. The Superintendent shall have been in charge of the installation of two commercial pool decks each with a construction value over \$500,000 in the last five years.

3. REFERENCES

- A. Attach a list of at least three current references (exclude references over five years old) for each of the following: Project owners, major suppliers, and major trade subcontractors. Include contact name, address, and phone number for each reference. Two of the owners should be a public agency (for this prequalification school districts are not considered a public agency).
- B. The Prospective Bidder shall provide a list of the last three completed public works projects for a Municipal Government Agency having a construction value over \$1.0 million.

- C. Provide one reference from your bank including contact name, address, and phone number for each reference.

SECTION D - FINANCIAL

1. Submit a list of all projects performed by your firm within the last five (5) years and their individual monetary value.
2. What is the average annual monetary value of work your firm performed in the past five (5) years: _____
3. Submit a list of projects currently on backlog, with monetary value and percent complete for each project.
4. Attach your latest copy of a reviewed or audited financial statement with accompanying notes and supplemental information. **A financial statement that is either not reviewed or audited is unacceptable.** A letter verifying availability of a line of credit may be attached; however, it will be considered supplemental information only, and will not substitute for the required financial statement.
5. Attach a notarized statement from an admitted surety insurer (approved by the California Department of Insurance and authorized to issue bonds in the State of California), which states that your current bonding capacity is sufficient for this Project. **Notarized statement must be from the surety company, not an agent or broker.**
6. **Surety Information**
 - A. Provide a certification from your bonding company for the accuracy of the following information:
Name of company issuing bond: _____
Address: _____
Surety is California admitted: Yes _____ No _____
Surety is listed in the current edition of the Federal Register: Yes _____ No _____
A.M. Best Rating: _____ Standard and Poor Rating: _____
Does surety comply with provisions of the Code of Civil Procedure, Section 995.660? Yes _____ No _____
Prospective Bidder's bonding rate per \$1,000: _____
Prospective Bidder's total bonding capacity: _____
Prospective Bidder's available bonding capacity: _____
 - B. Attach a notarized statement from the surety indicating its consent to bond the Project
7. **Previous Bond Experience.** Check applicable answers below and on a separate page, explain any "YES" answers in detail including dates of occurrence. Sign the explanation page.

Has your firm or any of its owner/principal or affiliated company ever:

NO YES

- A. Been unable to obtain a bond or been denied a bond for a contract?
- B. Defaulted on a contract forcing a surety to suffer a loss?
- C. Failed to complete a contract?
- D. Failed to complete a contract within the authorized contract time?

☐	☐
☐	☐
☐	☐
☐	☐

8. **Structure of Firm.** Complete the following where applicable to your firm.

A. CORPORATION

State and Date of Incorporation: _____

President's Name: _____

Vice-President's Name: _____

Secretary's Name: _____

Treasurer's Name: _____

B. PARTNERSHIP: General _____ Limited _____

Date of Organization: _____

Name and Address of Principals:

C. OTHER: If other than a Corporation or Partnership, describe firm and name of Principals.

D. How many years has your firm been in business as a General Contractor? _____ years.

E. How many years has your firm been in business under its present business name? _____ years.

F. Under what other or former name(s) has your firm operated? (Indicate name and duration in years.)

G. List the type of construction work normally performed with your own forces:

SECTION E – CLAIMS AND LITIGATION

The following questions will be scored as shown in Exhibit E. Prospective bidders must obtain a qualifying score of at least 16 points on these five questions to be eligible for placement on the prequalified bidders list. Please attach an explanation for any question answered "Yes."

1. Has your firm ever had a contract terminated for cause within the past five (5) years?
☐ No ☐ Yes
2. Are there any past, pending, or current judgments, claims, arbitration proceedings, or suits against your firm?
☐ No ☐ Yes
3. Has your firm been subject to judgments, claims, arbitration proceedings, or suits (whether pending or settled) based on workmanship and/or materials?
☐ No ☐ Yes
4. Has your firm filed any lawsuits, requested arbitration, or been involved in any litigation with regard to your contract activity within the last five (5) years?
☐ No ☐ Yes
5. Has your firm been involved in more than three (3) Government Code Claims and/or Public Works project I the last five years?
☐ No ☐ Yes

SECTION F - CERTIFICATION:

The Undersigned declares under penalty of perjury that all of the responsibility information submitted with this form is true and correct and that this Declaration was executed by a duly authorized officer of the Firm.

Signature _____

Typed or Printed Name and Title _____

Firm Name _____

Address _____

Telephone Number _____ Fax Number _____

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED. Attach a notary public's acknowledgment of the signature. If the PQS is submitted on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above.

EXHIBIT A - PROJECTS IN PROGRESS

(PHOTOCOPY THIS EXHIBIT AND SUBMIT A SEPARATE PAGE FOR EACH PROJECT)

Provide information for each project in progress with a construction value in excess of \$1.0 million/\$500,000, and for which the Prospective Bidder is acting as general contractor. Additionally, include all synthetic turf athletic field projects regardless of size.

PROJECT NAME: _____

LOCATION: _____

PROJECT DESCRIPTION: _____

OWNER:

NAME: _____ TELEPHONE: _____

CONTACT: _____

ARCHITECT:

NAME: _____ TELEPHONE: _____

CONTACT: _____

OWNER'S CONSTRUCTION MANAGER:

NAME: _____ TELEPHONE: _____

CONTACT: _____

CONTRACTOR'S PROJECT MANAGER: _____

FIELD SUPERINTENDENT: _____ PROJECT ENGINEER: _____

PERCENT COMPLETE TO DATE: _____ % as of _____, 2015.

DESCRIBE THE WORK PERFORMED BY PROSPECTIVE BIDDER'S FORCES AND SIMILARITIES TO MILPITAS SPORTS CENTER SPORTS FIELD PROJECT.

VALUE OF WORK PERFORMED BY PROSPECTIVE BIDDER'S FORCES: \$ _____

Base Bid \$ _____

Total number of Change Orders _____ Change Order as % of Base Bid _____
(For projects with Change Orders in excess of 10% of Base Bid, explain reasons on a separate sheet.)

Total number of claims _____ Total amount of claims _____
(Explain claims on separate sheet.)

Original Completion Date _____ Forecast Completion Date _____

(Explain difference between original and forecast completion dates. Attach separate sheet if necessary.)

EXHIBIT B- PROJECTS COMPLETED

(PHOTOCOPY THIS EXHIBIT AND SUBMIT A SEPARATE PAGE FOR EACH PROJECT)

Provide information for each completed project within the last five (5) years, with a value in excess of \$1.0 million/\$500,000. Additionally include all synthetic turf athletic fields projects regardless of size. Indicate which projects meet which of the requirements described in Paragraph 1.06 of Part 1.

PROJECT NAME: _____

LOCATION: _____

PROJECT DESCRIPTION: _____

OWNER NAME: _____ TELEPHONE: _____

CONTACT: _____

ARCHITECT NAME: _____ TELEPHONE: _____

CONTACT: _____

OWNER'S CONSTRUCTION MANAGER:

NAME: _____ TELEPHONE: _____

CONTACT: _____

CONTRACTOR'S PROJECT MANAGER: _____

FIELD SUPERINTENDENT: _____ PROJECT ENGINEER: _____

DESCRIBE THE WORK PERFORMED BY PROSPECTIVE BIDDER'S FORCES.

DESCRIBE SIMILARITIES WITH MILPITAS SPORTS CENTER SPORTS FIELD PROJECT.

FINAL CONSTRUCTION COST OF PROJECT: \$ _____

VALUE OF WORK PERFORMED BY PROSPECTIVE BIDDER'S FORCES: \$ _____

Base Bid \$ _____

Total number of Change Orders _____ Change Orders as % of Base Bid _____

(For projects with Change Orders in excess of 10% of Base Bid, explain reasons on a separate sheet.)

Total number of claims _____

Total amount of claims _____

(Explain claims on separate sheet.)

Original Completion Date _____

Actual Completion Date _____

(Explain difference between original and actual completion dates. Attach separate sheet if necessary.)

EXHIBIT C

SAFETY AND LOSS CONTROL DATA RESPONSIBILITY FORM

1. List your firm's experience modification rate (EMR) for the past three (3) years and current year. Provide a letter from your insurance carrier or state fund (on its letterhead verifying the EMR data).

Current year _____ 2014 _____ 2013 _____ 2012 _____

Are the above rates interstate or intrastate? If intrastate, which state? _____

2. Provide copies of your firm's injury experience for the past five (5) years using OSHA No. 200 logs. If you do not complete OSHA 200 forms, explain why.

3. Has your firm been cited by OSHA in the past five (5) years? Yes _____ No _____

If yes, how many times? _____;

For what reason(s)? _____

OSHA incident frequency rates: _____

4. The undersigned warrants and represents the data provided in this Exhibit C is accurate in all respects.

Signature _____

Typed or Printed Name and Title _____

Firm Name _____

EXHIBIT D

AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS

CITY OF MILPITAS ETHICAL STANDARDS FOR CONTRACTORS

1. City may, at its sole discretion, terminate any contract with Contractor if any of the following occurs:
 - A. If Contractor¹ does any of the following:
 - i. Is convicted² of operating a business in violation of any Federal, State or local law or regulation;
 - ii. Is convicted of a crime punishable as a felony involving dishonesty³;
 - iii. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or (3) performing a public contract or subcontract;
 - iv. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; or
 - v. Made (or makes) any false statement(s) or representation(s) with respect to the contract; or
 - B. If fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with Contractor can be imputed to Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of Contractor, with Contractor's knowledge, approval or acquiescence, Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.
2. City may also terminate any contract with Contractor if any one or more of the following occurs:
 - A. If Contractor becomes "insolvent"⁴;
 - B. If City determines that Contractor no longer has the financial capability or business experience including, without limitation, loss of personnel deemed essential by City to perform successfully the terms of, or operate under, any contract with City; or
 - C. If City determines that Contractor fails to submit information, or submits false information.
3. In the event a prospective Contractor (or Bidder) is ruled ineligible (debarred) to participate in a contract award process, or a contract is terminated pursuant to these provisions, Contractor may appeal City's action to the Milpitas City Council by filing a written request with the City Clerk within ten (10) calendar days of the notice given by City. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. Contractor shall have the burden of proof on the appeal. Contractor shall have the opportunity to present evidence, both oral and written.

1 For purposes of this document, the term "Contractor" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a person who owns more than ten percent (10%) of the outstanding stock of a corporation and who is active in the day to day operations of that corporation.

2 For purposes of this document, the terms "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

3 For purposes of this document, the term "dishonesty" includes, without limitation, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

4 For purposes of this document, Contractor is "insolvent" if it is unable to pay its debts as they become due, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of Contractor's assets.

AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS

I, _____, being first duly sworn, depose and say to the City of Milpitas ("City")
that:

1. I am the _____ *[insert title or capacity]*
of _____ *[insert entity name]* ("Bidder").
2. I hereby state that I have read and understood the City of Milpitas Ethical Standards for Contractors stated above, I have examined my appropriate business records, and I have made inquiry of those individuals potentially included within the definition of "Contractor" contained in Exhibit D. I have authority to make these representations on my own behalf and on behalf of the legal entity herein identified.
3. Neither (a) Bidder nor (b) any individual(s) belonging to a category identified in footnote no. 1 of Exhibit D has been convicted of any one or more of the crimes identified in Exhibit D within the past five (5) years.
4. Notwithstanding award of any contract by City or performance thereunder, the City shall have all rights and remedies described in Exhibit D.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

Name of Firm

Signature

Title

Note: Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

Subscribed and sworn to this _____ day of _____, 2015.

NOTARY PUBLIC _____

EXHIBIT E

Pre-Qualification Scoring System

Part 1 – General Information

1.04 – PQS – both conditions met	Pass/Fail
A. Submittal complete and on time	
B. Attended prebid site meeting	
1.04 – Contractor's License – Prospective Bidder has valid Class A license	Pass/Fail
1.05 – Experience	Pass/Fail
1.07 – Financial – submission complete	Pass/Fail
1.08 – References – submission complete	Pass/Fail
1.09 – Safety – EMR $\leq$ 1	Pass/Fail
1.11 – Ethical Standards – executed affidavit	Pass/Fail

Part 2 – Response Sheets

Section B – Suspensions, Defaults, Crimes	Pass/Fail
Section C - Experience	Pass/Fail
1. Firm – both conditions met:	Pass/Fail

1. General Contractor on at least 4, \$1M construction projects in past five years; and
2. At least two of these projects had public agency as owner

2. Key Personnel –both conditions met:	Pass/Fail
1. Project Manager has at least 10 years construction experience with 5 years managing similar PW projects with construction value over \$1M.	
2. On Site General Field Superintendent has at least 8 years construction experience with 5 years managing similar PW projects with construction value over \$1M.	

Section E – Litigation (16 or more points is passing)

1. Have you ever had a contract terminated for cause within the past five years?
☐ Yes = 0 points ☐ No = 6 points
2. Are there any past, pending, or current judgments, claims, arbitration proceedings, or suits against your firm?
☐ Yes = 0 points ☐ No = 3 points
3. Has your firm been subject to judgments, claims, arbitration proceedings, or suits (whether pending or settled) based on workmanship and/or materials?
☐ Yes = 0 points ☐ No = 3 points
4. Has your firm filed any lawsuits, requested arbitration, or been involved in any litigation with regard to your contract activity within the last five years?
☐ Yes = 0 points ☐ No = 3 points
5. Has your firm been involved in more than three (3) Government Code Claims and/or Public Works projects in the last five years?
☐ Yes = 0 points ☐ No = 6 points

Section F – Certification	Pass/Fail
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MEETING MINUTES CITY OF MILPITAS

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, September 1, 2015
Time: 5:00 PM Closed Session
7:00 PM Open Session
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

CALL TO ORDER

Mayor Esteves called the meeting to order at 5:01 PM for Closed Session.

PRESENT: Mayor Esteves, Vice Mayor Montano, Councilmembers Barbadillo and Grilli

ABSENT: Councilmember Giordano

CLOSED SESSION

City Council convened in Closed Session to discuss existing cases of litigation and one case of anticipated litigation.

City Council then convened in Open Session at 7:00 PM.

ANNOUNCEMENT

No announcement out of closed session.

PLEDGE

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

INVOCATION

Vice Mayor Montano read a passage from the bible to start the meeting.

MEETING MINUTES

Motion: to approve the minutes of August 18 and 24, 2015 City Council meetings

Motion/Second: Councilmember Grilli/Vice Mayor Montano

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Giordano)

SCHEDULE OF MEETINGS

Motion: to approve Council Calendar/Schedule of Meetings for September 2015

Motion/Second: Vice Mayor Montano/Councilmember Grilli

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Giordano)

PUBLIC FORUM

Rob Means, 1421 Yellowstone resident, talked about Personal Rapid Transit (PRT) and the potential costs to build and install.

Bob Nunez, Milpitas resident and School Board member, invited the City Council and all residents to go on Friday, September 18 to Levi Stadium in Santa Clara to watch the Milpitas High School football game. Tickets were available at the school district office.

Robert Marini, Milpitas resident, referred to a recent lawsuit about Proposition 218 and costs for utility services. Council must ask what were specific costs of service and thus, the fees charged.

Voltaire Montemayor, Milpitas resident, knew of everyone's concern for water. Highly combustible materials should be kept in the right place, he urged.

ANNOUNCEMENTS

None.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

Interim City Attorney Baum asked Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. None were reported.

APPROVAL OF AGENDA

Motion: to approve the meeting agenda

Motion/Second: Vice Mayor Montano/Councilmember Grilli

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Giordano)

CONSENT CALENDAR

Motion: to approve the Consent Calendar (items noted with *asterisk), as amended

Mayor Esteves asked to remove item no. 10 (Sports Center Fields project) and no. 12 (Main St. repavement construction) from consent.

Motion/Second: Vice Mayor Montano/Councilmember Grilli

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Giordano)

* 3. Odor Report update

Received the update of the odor control report.

* 4. Youth Advisory Commission

Per Mayor's recommendation, approved the following on Youth Advisory Commission: Re-appointed Alan Pham and Clare Sern as regular members to terms that will expire in September of 2016. Re-appointed Jashandeep Chahal as Alternate No. 1, Ravit Sharma as Alternate No. 3 and Christie Maly as Alternate No. 4 to terms that will expire in September of 2016.

* 6. Repairs Needed for Six Storm Pump Stations

Approved the emergency repairs of six Storm Pump Stations for the not-to-exceed amount of \$557,086.00 and appropriate funds from the City's General Government CIP Fund to the Public Works Utilities Maintenance Repair and Maintenance budget. Received the report on emergency repairs of the Bellew Pump Station.

* 7. Year End Budget Adjustments for FY 2014-15

Approved three Fiscal Year 2014-15 year-end budget appropriations:

- 1) Increase Planning and Neighborhood Services Department by \$2,260. The City collected fees from developers to be used for a General Plan update. During the fiscal year, the Planning Department incurred expenditure to initiate the update by filing a notice for CEQA Document Declaration at the County Recorder's office. The source of funding for the budget appropriations is the Community Planning Fund.
- 2) Increase non-department budget by \$6,937 for rental fees of a fence for the McCandless property. The source of funding for the budget appropriations is the Transit Area Impact Fee Fund.
- 3) Increase non-department budget by \$2,495. The increased amount is related to audit fee incurred for the audit of projects funded by the Transportation Development Act grant. The source of funding for the budget appropriation is the Street Improvement Fund.

* 8. Resolution

Adopted Resolution No. 8499 approving the Annual Investment Policy for FY 2015-16.

* 9. Resolution

Adopted Resolution No. 8500 authorizing the examination of sales or transactions and use tax records.

- *11. Water Meter Replacement Approved and authorized the Director of Engineering/City Engineer to execute change order No. 2 for the Automated Water Meter - Phase 1, Project No. 7121 cumulatively not to exceed \$25,000.

PUBLIC HEARING

1. Plastic Bag Ban Ordinance No. 287 Engineering staff Leslie Stobbe introduced two members of the Recycling and Source Reduction Advisory Commission (RSRAC), which had re-affirmed on April 28, 2105 its recommendation to City Council to adopt the proposed ordinance. Ms. Stobbe emphasized the primary reason was to reduce trash and debris in the waterways, creeks and streams throughout the City, and that would also help to meet statewide mandates on the City for its municipal stormwater discharge permit.

Mayor Esteves inquired about the 10 cents per bag charge for brown paper bags. Staff explained that was part of the ordinance and was designed to encourage use of cloth reusable bags that customers could bring from home. City staff would work with business owners on the requirement for tracking sales of single use paper bags by businesses.

Councilmember Barbadillo asked for comparative costs of paper bag to plastic bags. Ms. Stobbe replied that plastic bags could cost only pennies while paper bags could 10-14 cents per bag, though cooperative purchase was available to be cheaper for business.

Vice Mayor Montano asked about state legislation banning plastic bags that was adopted, and the ballot proposition in November 2016. She supported the fee of 10 cents per paper bag to encourage changing shoppers' behavior.

Councilmember Grilli inquired what the rationale was for exempting restaurants. Ms. Stobbe replied it was common in other cities to allow those. Milpitas had a high number rest and that the next action in some cities was to ban styrofoam take-out products in restaurants while allowing the plastic bags for the take-out food container.

Mayor Esteves asked Commissioners if they had any comments for the Council.

RSRAC Chair Eddie Inamdar noted that plastic bags floated in water ways and made the community dirty in addition to being non-compostible. He and the community wanted to keep Milpitas beautiful.

Mayor Esteves opened the public hearing.

Robert Marini, Milpitas resident, felt city was more concerned about plastic bags than getting a fine over incorrect charges for utilities. He did not favor a fee for shopping bags. It was imposing a service on the businesses to keep track of the data, too.

Andrea Ventura, of Clean Water Action with 50,000 members in the Bay Area including Milpitas, commented that plastic bags were "bad actor" trash, hurting wastewater systems. Another advantage of the ban was a fiscal one, helping ratepayers ultimately. The Council was acting sooner to help the pollution problem rather than waiting for the November 2016 ballot proposition. She remarked how well the ban was implemented in San Jose, where she lived.

Tim Howard, Milpitas resident and business owner, supported banning plastic bags to help with reducing trash. But, he strongly opposed the tally of the sale of paper bags to report to the City, especially by small businesses and storefronts. He requested that City Council exempt small businesses from the 10 cents per bag charge.

Alison Chan, from Save the Bay, a Bay Area organization with members in Milpitas, urged Council not to change the 10 cents per bag charge, as recommended. The fee for the paper bags does work to change behavior, she had seen in other communities.

Patty Sexton, Milpitas resident, was in support of banning plastic bags. She made a conscious effort not to use plastic single-use bags by re-using her cloth and synthetic material bags, including one distributed by the City. It helped the environment and beautified the City.

Chris Laffer, a Newark resident and member of Clean Water Action, worked to reduce trash throughout the Bay Area, especially those terrible plastic bags. He discussed the impacts of toxins in the water ways and effects on fish.

Michael Gardner, Fremont resident, shopped in Milpitas. He was willing and did buy the paper bags when needed. He was used to the change where he lived and encouraged having the same practice in Milpitas.

Voltaire Montemayor, Milpitas resident, shopped at WalMart and Grocery Outlet, where plastic bags were still available. He could be trained to change and would accept paper bags. He believed plastic bags were detrimental to the environment and general welfare. He had changed his mind.

Rob Means, Milpitas resident, said most corporations were driven by one single value: profit. They did not care about the environment, as discussed at this meeting. Corporations externalized costs while internalizing profits.

Carol Klein, 1421 Yellowstone resident, reported that where she shopped, some stores would give a credit of five cents or so when you bring your own bags. That was an incentive. Acting as a community was important to be kind and environmentally sensitive.

(1) Motion: to close the hearing, following comments from ten speakers

Motion/Second: Councilmember Grilli/Vice Mayor Montano

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Giordano)

Mayor Esteves asked staff more questions about the process for small businesses to track the bag sales. Ms. Stobbe responded they would report to the City annually and repeated that staff would work with those businesses on method to do so.

Councilmember Grilli said the purpose of the ordinance was to ban plastic bags, not to encourage sales of paper bags and to use re-usable cloth bags.

Councilmember Barbadillo asked if the Engineering staff talked to Economic about the impact to businesses. Economic Development Manager Edesa Bitbadal came forward to answer yes, that she had discussed this and how to communicate this change to businesses in the City, several tactics which she described.

Vice Mayor Montano thanked the City Manager for the explanation as to why businesses needed to track sales of the paper bags, in order to report to the state on efforts made towards the requirements for the City's stormwater permit and for waste reduction.

Councilmember Grilli felt removing the 10 cents fee for paper bags would weaken the ordinance, so she wanted to leave it in as an incentive for consumers to bring their own shopping bags from home.

Mayor Esteves stated that businesses were ready for this change and were expecting it, based on nearby cities. It was about time and he supported the ban last time it came before the City Council in Milpitas.

(2) Motion: to find as a Responsible Agency that the adoption of an ordinance to restrict single-use plastic bags in Milpitas is exempt from CEQA under CEQA Guidelines Section 15307 and 15308, and that City of Milpitas was a participating agency in the County-wide Environmental Impact Report analyzing the environmental impacts of an ordinance to restrict single-use carry-out bags

Motion/Second: Councilmember Grilli/Vice Mayor Montano

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Giordano)

Interim City Attorney Gary Baud read aloud the title of Ordinance No. 287, “An Ordinance of the City Council of the City of Milpitas Adding Chapter 5 of Title III of the Milpitas Municipal Code Relating to Single-Use Bags.”

(3) Motion: to waive the first reading beyond the title of Ordinance No. 287

Motion/Second: Councilmember Grilli/Vice Mayor Montano

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Giordano)

(4) Motion: to introduce Ordinance No. 287 restricting use of single-use carry-out bags

Motion/Second: Councilmember Grilli/Vice Mayor Montano

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Giordano)

UNFINISHED BUSINESS

2. Overview of CalPERS

Mr. Ron Lind, a CalPERS Board member and Milpitas resident, provided an overview on the current status of the retirement program and its funding status. He discussed the financial health of the retirement fund with \$300 billion in assets and 2700 employees statewide. He described the value of defined benefits pension plans in public employment. PERS was always dealing with systemic risk in investment of its funds.

Mayor Esteves thanked him for his informative presentation to the Council.

Vice Mayor Montano thanked him and found it enlightening. She asked about the effect of China and the global economy on CalPERS. Mr. Lind responded about many factors that did influence the PERS funds, including those she'd mentioned.

Mayor Esteves asked if the City and PERS could do something about the ever-increasing rate of contribution for the City to pay. The collective bargaining process was involved in terms of how much employees contribute to PERS, Mr. Lind responded.

The Mayor invited comments from the audience.

Robert Marini, Milpitas resident, asked how much was in the Safety plan. Mayor Esteves replied with the various PERS formulas that employees have negotiated for retirement.

No vote was taken and the Mayor again thanked Mr. Lind for coming.

REPORTS

5. Sister Cities Commission

Leslie Stobbe, City staff liaison to the Sister Cities Commission, introduced Commission Chair Dennis Grilli who then discussed activities and the workplan for Sister Cities. A new sister city in South Korea would be sought this year in the fall to add to the four current relationships now in place.

Commissioners recommended a change in the by-laws to have one voting member in a seat for a representative of a company with a corporate presence in Milpitas. This would be to a change to one existing seat on the Commission, not adding one. The goal was to seek help with fund raising activity and seeking corporate sponsors.

Vice Mayor Montano noticed he had not mentioned outreach for a Sister City in Latin America. Ms. Stobbe pointed out this was item no. 6 on the Commission work plan.

Mayor Esteves wanted to include city staff to be covered by any stipend for possible future travel. Staff replied in the past it was determined that that would not be allowed.

Next, the Mayor invited the public to speak.

Voltaire Montemayor, Milpitas resident, talked about visitors from foreign countries. It was an honor for Milpitas and the exchange of cultures.

Motion: to approve the FY 2015-16 Work Plan and approve one change to the By-laws of the Sister Cities Commission related to membership

Motion/Second: Councilmember Grilli/Vice Mayor Montano

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Giordano)

AGREEMENTS

10. Bidder Package for Sports Center Fields

City Engineer Steve Machida came to the podium to brief the Council and the public on the Milpitas Sports Center playing field updates.

Mayor Esteves asked if work would be done by July 4, 2016 as stated in report, and staff said yes. He asked the City Engineer about various dates and steps in the schedule and plans. Primarily, the Mayor was concerned that work got done on time because there was no way that the City could not have use of the field for July 4th festivities.

Councilmember Grilli asked if there was any impact on the area for a skateboard park and staff said no, as that area would not be disturbed at all.

Mr. Machida stated that staff would come back to City Council in the next meeting or two with the project architect to show the community what was planned at the sports fields.

Motion: to authorize the City Engineer to issue a bidder pre-qualification package for the Milpitas Sports Center Sports Fields, Project No. 5104

Motion/Second: Councilmember Barbadillo/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0
ABSENT: 1 (Giordano)

12. Main St. Reconstruction

Mayor Esteves asked Steven Machida to update the public on the project occurring along Main Street including the new trees. The Mayor asked staff about lights on the street or

adding to the project. Mr. Machida replied that staff had met with business owners this date to come up with a plan for attractive street lighting to go in along Main Street and to be prudent with underground lighting before any new street lights get installed.

Councilmember Grilli thanked the Mayor for bringing up this topic. Business improvement was needed all along Main Street so she was pleased with these efforts, including a plan for lighting.

Vice Mayor Montano mentioned that the Community Advisory Commission talked with an arborist about trees, and mentioned adding some trees to Main Street. Lights along the current project segment should match the style already installed along the more northern portion of Main (in the MidTown Plan area).

Councilmember Barbadillo asked about some of the financial details of the project, and the change order amount requested for approval here.

Mayor Esteves invited comments from the audience.

Voltaire Montemayor, Milpitas resident, lived close to the area and maybe it could extend further to the Milpitas Post building area, beyond the Milpitas Library.

Motion: to approve and authorize the Director of Engineering/City Engineer to execute contract change order No. 2 for \$250,000 for the Main Street Pavement Reconstruction, Projects No. 4277 and No. 3412

Motion/Second: Councilmember Grilli/Councilmember Barbadillo

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Giordano)

ADJOURNMENT

Mayor Esteves adjourned the City Council meeting at 10:05 PM.

The foregoing minutes were approved by the Milpitas City Council on September 15, 2015.

Mary Lavelle
Milpitas City Clerk