



**MILPITAS CITY COUNCIL MEETING AGENDA
MARCH 3, 2009**

**6:30 P.M. (CLOSED SESSION) • 7:00 P.M. (PUBLIC BUSINESS)
455 E. CALAVERAS BOULEVARD**

SUMMARY OF CONTENTS

- I. CALL TO ORDER by the Mayor (6:30 p.m.)**
- II. ROLL CALL by the City Clerk**
- III. ADJOURN TO CLOSED SESSION OF CITY COUNCIL**
- 1) CONFERENCE WITH LABOR NEGOTIATOR - COLLECTIVE BARGAINING**
Pursuant to CA Government Code §54957.6 City Negotiator: Carmen Valdez
Employee Groups: MPOA (Milpitas Police Officers Association) and IAFF (International Association of Firefighters). Under Negotiation: Wages, Hours, Benefits, and Working Conditions
- 2) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
Pursuant to CA Government Code § 54956.9, Palladini vs. City of Milpitas, et al., U.S. District Court, Northern District, case no. C06-00779JW (HRL), State Court Complaint filed December 16, 2005; Federal Court removal filed February 3, 2006
- IV. CLOSED SESSION ANNOUNCEMENT:** Report on action taken in Closed Session, if required pursuant to CA Govt. Code §54957.1, including the vote on abstention of each member present
- V. PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- VI. INVOCATION (Councilmember Polanski)**
- VII. APPROVAL OF COUNCIL MEETING MINUTES – February 17, 2009**
- VIII. SCHEDULE OF MEETINGS – Council Calendar for March 2009**
- IX. PRESENTATIONS**
- Proclamation for Black History Month – February 2009
 - Commendation to Milpitas Parks, Recreation and Cultural Resources Commission on Receiving the California Association of Parks and Recreation Award for Outstanding Commission for 2008-2009
- X. PUBLIC FORUM**
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- Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to three minutes. As an unagendized item, 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 agendize the item for a future meeting.
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- XI. ANNOUNCEMENTS**
- XII. ANNOUNCEMENT OF CONFLICT OF INTEREST**

XIII. APPROVAL OF AGENDA

XIV. CONSENT CALENDAR (Items with asterisk*)

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.

XV. PUBLIC HEARINGS

- 1. Consideration of Appeal of Planning Commission Approval of Conditional Use Permit for a Tobacco Shop Located at 1307 Jacklin Road (Staff Contact: Sheldon Ah Sing, 586-3278) - Request to be Continued**
- 2. Introduce Ordinance No. 38.787 for First Amendment to the McCarthy Development Agreement and Adopt a Resolution Certifying the Environmental Impact Report and Approving the Campus at McCarthy Ranch Project (Staff Contact: Sheldon Ah Sing, 586-3278)**

XVI. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order/Roll Call by the Mayor/Chair

RA2. Approval of Minutes – February 17, 2009

RA3. Approval of Agenda and Consent Calendar (Items with asterisk*)

RA4. Receive Staff Report on Federal Economic Stimulus Program for City Infrastructure and Adopt a Resolution Authorizing Staff to file an Application for American Recovery and Reinvestment Act Funding for Project No. 8194 (Staff Contact: Greg Armendariz, 586-3317)

RA5. Receive Staff Report on the Senior Center, Reject Apparent Low Bid from C. Overaa & Co. and Award Construction Contract Including Four Add Alternate Items to Swenson & Associates for New Senior Center, and Authorize Staff to Execute Change Orders, Project No. 8176 (Staff Contact: Greg Armendariz, 586-3317)

***RA6. Approve Contract Extension for Audit Services with Maze & Associates Accountancy Corporation (Staff Contact: Emma Karlen, 586-3145)**

***RA7. Authorize the Agency Executive Director/City Manager to Execute Agreement with Nolte Engineers for Engineering Services for the Carlo Street Ramp Conversion, Project No. 8195 (Staff Contact: Jaime Rodriguez, 586-3335)**

RA8. Agency Adjournment

XVII. REPORTS OF OFFICER AND COMMISSIONS

City Council

- 3. Request from Mayor Regarding Funding for Milpitas Kiwanis for the Kohl's Cares for Kids Event (Contact: Mayor Livengood, 586-3051)**
- 4. Recommendation from Mayor for Appointment to Milpitas-Gilroy-Morgan Hill Grouping of the Valley Transportation Authority (Contact: Mayor Livengood, 586-3051)**

Community Advisory Commission

- * 5. Approve the Community Advisory Commission 2009 Work Plan (Staff Contact: Felix Reliford, 586-3071)

Parks, Recreation and Cultural Resources Commission

- * 6. Approve the Parks, Recreation and Cultural Resources Commission 2009 Work Plan (Staff Contact: Aaron Bueno, 586-3226)

XVIII. NEW BUSINESS

- * 7. Approve Fee Waiver and In-Kind Donation of Equipment, Supplies, and Staffing from Various City Departments for the American Cancer Society's 2009 Relay for Life Event at the Milpitas Sports Center Scheduled on June 19-20, 2009 (Staff Contact: Aaron Bueno, 586-3226)

XIX. ORDINANCE

- 8. Waive the First Reading and Introduce Ordinance No. 262.6 for Proposed Amendments to the Open Government Ordinance (Staff Contact: Michael Ogaz, 586-3040)

XX. RESOLUTIONS

- 9. Adopt a Resolution Approving Memorandum of Understanding with the Milpitas Professional and Technical Group (ProTech) (Staff Contact: Carmen Valdez, 586-3086)
- * 10. Adopt a Resolution Memorializing Appointments to Certain Regional Commissions and Agencies (Staff Contact: Bryan Otake, 586-3042)
- * 11. Adopt a Resolution Authorizing the Reduction of Faithful Performance Bond in Penal Sum of Subdivision Improvements for Western Pacific Housing's Paragon Tract 9775, Private Job No. 3204 (Staff Contact: Fernando Bravo, 586-3328)

XXI. BIDS AND CONTRACTS

- * 12. Approve a Standard Three-Year Agreement for a Debris Box with Pagnini's Inc. (Staff Contact: Kathleen Phalen, 586-3345)
- * 13. Approve Pre-Qualified Bidders List and Plans and Specifications, and Authorize Advertisement for Bid Proposals from Pre-Qualified Bidders for the Gibraltar Reservoir and Pump Station Improvements, Project No. 7101 (Staff Contacts: Greg Armendariz, 586-3317, and Kathleen Phalen, 586-3345)

XXII. ADJOURNMENT

**NEXT REGULAR MEETING
TUESDAY, MARCH 17, 2009**

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, boards, councils and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review. For

More Information On Your Rights Under The Open Government Ordinance

Or To Report A Violation, contact the City Attorney's office at

Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035

e-mail: mogaz@ci.milpitas.ca.gov / Fax: 408-586-3056 / 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/Redevelopment Agency after initial distribution of the agenda packet are available for public inspection at the City Clerk's Office/Information Desk at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, and at the Milpitas Library during normal business hours.

APPLY TO BECOME A CITY COMMISSIONER!

Current vacancies exist for the:

Arts Commission (alternate)

Public Art Committee

Emergency Preparedness Commission (Industry Rep)

Mobile Home Park Rental Review Board

Planning Commission (alternate)

Parks, Recreation & Cultural Resources Commission

Sister Cities Commission (alternates)

Telecommunications Commission (MUSD Rep.)

Applications are available online at www.ci.milpitas.ca.gov or at the City Hall Information Desk.

Contact the City Clerk's office (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 586-3001 or send an email 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 Council Chambers for all meetings. TDD phone number (408) 586-3013.

AGENDA REPORTS

XVI. PUBLIC HEARINGS

1. Consideration of Appeal of Planning Commission Approval of a Conditional Use Permit for a Tobacco Shop Located at 1307 Jacklin Road (Staff Contact: Sheldon Ah Sing, 586-3278) - Request to be Continued

Background: On January 28, 2009, the Planning Commission approved Conditional Use Permit No. UP08-0048 for a 1,080 square foot tobacco shop located at 1307 Jacklin Road. The tobacco shop proposes to operate between the hours of 9:00 AM to 8:00 PM daily and includes retail area for snacks, tobacco and tobacco related products. For additional project information and discussion from the Planning Commission meeting, refer to Planning Commission staff report and meeting minutes.

On February 6, 2009, Tanya Hussain appealed the project objecting to the overconcentration of tobacco shops in the area. There are two other stores selling tobacco products within 500 feet of the proposed store. Staff is requesting a continuance to ensure the public hearing notice is sent to all property owners, occupants and tenants within 1,000 feet of the project site within the required timeframe. A copy of her appeal is included in the Council agenda packet.

Recommendation: Move to continue to the City Council meeting of March 17, 2009.

2. Introduce Ordinance No. 38.787 for the First Amendment to the McCarthy Development Agreement and Adopt a Resolution Certifying the Environmental Impact Report and Approving the Campus at McCarthy Ranch Project (Staff Contact: Sheldon Ah Sing, 586-3278)

Background: This project is a request to further develop an existing office campus on 65 acres located along North McCarthy Boulevard by adding 424,814 square feet of new office space in six, five-story buildings and constructing an elevated parking deck. The applications for the project include a Major Tentative Map (MT08-0001), a Site Development Permit (SZ07-0002), a Conditional Use Permit (UP08-0045) and an Environmental Impact Report (EA08-004). When built out, the total square footage of the campus would be 1,415,814 square feet. The project also proposes amendments, consolidated as the First Amendment, to the McCarthy Development Agreement approved in 2000. The First Amendment will only affect the 65 acre project site and will not affect other properties covered by the original agreement. A detailed description of the project can be found in the Planning Commission staff report included in the Council's agenda packet. The Planning Commission recommended approval of the project to the City Council at its February 11, 2009 meeting.

Fiscal Impact: None.

Attachments:

1. Planning Commission Report and minutes from February 11, 2009 meeting
2. Resolution certifying final EIR
3. Resolution approving Campus at McCarthy Ranch development
4. Draft Ordinance No. 38.787
5. Draft Environmental Impact Report and Final EIR documents
6. Project Plans

Recommendations:

1. Close the public hearing after hearing public testimony.
2. Waive the first reading beyond the title of Ordinance No. 38.787 for the first amendment to the McCarthy Development Agreement.
3. Introduce Ordinance No. 38.787.

4. Adopt Resolution certifying the Environmental Impact Report.
5. Adopt Resolution approving the Campus at McCarthy project.

XVI. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order/Roll Call by the Mayor/Chair

RA2. Approval of Minutes – February 17, 2009

RA3. Approval of Agenda and Consent Calendar (Items with asterisk*)

RA4. Receive Staff Report on Federal Economic Stimulus Program for City Infrastructure and Adopt a Resolution Authorizing Staff to file an Application for American Recovery and Reinvestment Act Funding for Project No. 8194 (Staff Contact: Greg Armendariz, 586-3317)

Background: Staff has been working with various state and regional agencies including State Water Resources Control Board, Metropolitan Transportation Commission, California Department of Public Health, Valley Transportation Authority, and Caltrans to track the development of the process and eligibility criteria for obtaining funding from the Federal Economic Stimulus Program on City infrastructure projects which are “shovel ready.” The City developed and submitted a list of these projects to the various agencies involved. Application is still in progress, and staff will provide an update at the Council meeting.

For Streets and Transportation projects, the process in place requires the City to adopt a resolution authorizing staff to file an application for American Recovery and Reinvestment Act funding and stating the assurance to complete the project. Based on funding availability and project readiness, the South Park Victoria Drive Pavement Rehabilitation project is eligible. The design for this project is nearing completion, and will be ready for bidding by April. The federal funding available for Milpitas based on the total regional funding and city allocation formula is \$1,094,000.

Fiscal Impact: None.

Recommendations:

1. Receive staff report on Federal Economic Stimulus Program for city infrastructure.
2. Adopt a resolution authorizing staff to file an application for American Recovery and Reinvestment Act funding for South Park Victoria Drive Street Pavement Rehabilitation Project No. 8194.

RA5. Receive Staff Report on the Senior Center, Reject Apparent Low Bid from C. Overaa & Co. and Award Construction Contract Including Four Add Alternate Items to Swenson & Associates for New Senior Center, and Authorize Staff to Execute Change Orders, Project No. 8176 (Staff Contact: Greg Armendariz, 586-3317)

Background: On November 18, 2008, the Redevelopment Agency authorized the advertisement of bid proposals for the Milpitas Senior Center Project. The project provides for the expansion and renovation of the former Milpitas public library building located at 40 N. Milpitas Boulevard to convert it to the new Milpitas Senior Center. The renovation and expansion will provide for three classrooms, fitness and exercise rooms, game room, dining and community room, and catering kitchen. The Engineer’s Estimate for this work was \$9,851,986. The project was advertised and sealed bid proposals were opened on January 27, 2009. Eight bid proposals were received and the base bids, which are the basis of award, ranged from \$6,400,030 to \$7,162,000. Included in the Council’s packets is a bid summary listing the eight bids.

The apparent low bid was submitted by C. Overaa & Co. for an amount of \$6,400,030. However, Overaa’s base bid was submitted with three irregularities. Project staff and the City Attorney’s

office have reviewed these bid irregularities and determined that they are material and significant to the bid. The low bid irregularities consist of the following:

- The total dollar figure was not added correctly,
- The dollar figure for one of the major items of work was not provided in words,
- And, the bid did not list the percentages for work performed by subcontractors.

In addition, new information has been discovered disputing statements the low bidder made on its pre-qualification statement, which at the time of the preparation of this staff report leads City staff to conclude that the bidder does not comply with the prequalification program for this project. Accordingly, staff recommends that the Agency Board/Council reject the low bid submitted by C. Overaa & Co. and award the project to the second low bidder – Swenson & Associates, whose bid was found to be responsible, for the amount of \$6,538,531.

The bid package included a total of seven add alternate items, and staff recommends that four of these items be included with the award of the contract due to the good bid pricing received. These add alternate items will provide significant additional value to the Senior Center and will provide a more useable building for the proposed senior programs.

Add Alternate items recommended for inclusion with contract award are:

- 1) Provides an operable partition between two classrooms to allow for flexible use for an amount not to exceed \$14,000,
- 2) Provides four new windows near the front entry for an amount not to exceed \$15,000,
- 3) Provides an athletic wood flooring system in lieu of the base bid vinyl for an amount not to exceed –(\$1,500), and
- 4) Provides additional landscaping and trees for the west frontage for an amount not to exceed \$13,000.

The total cost for the four recommended add alternate items is \$40,500.

Awarding the project base bid and the four recommended alternates items to Swenson & Associates brings the total construction contract to \$6,579,031, which is below the engineer's estimate and is within the project's cost plan and budget.

Construction Change Order Policy for Senior Center Project

As was approved for the successful new Milpitas Library, Parking Garage, and Streetscape projects on North Main Street, staff is recommending the use of the same change order policy to allow for the timely completion of the Senior Center Project. This policy authorizes staff to execute change orders in order to address the need to respond swiftly to construction conditions in order to limit potential claims or risk to the City. Staff will report on any change orders after their execution at the next monthly progress report to the Transportation and Land Use Subcommittee and to the Agency/Council. The construction contingency established for this project is \$1,750,000 and the change order authority shall not exceed this amount.

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

Recommendations:

1. Receive Staff Report on the Senior Center Projects, No. 8176.
2. Reject apparent low bid from C. Overaa & Co. and award construction contract including four add alternate items to Swenson & Associates for the new Milpitas Senior Center, Project No. 8176.
3. Authorize staff to execute change orders for the Senior Center Project, provided that change orders do not exceed the established construction contingency amount for the project.

***RA6. Approve Contract Extension for Audit Services with Maze & Associates Accountancy Corporation (Staff Contact: Emma Karlen, 586-3145)**

Background: The City entered into a contract for audit services with Maze and Associates, a Certified Public Accounting firm on April 19, 2005. The scope of the service includes issuance of audit reports on the financial statements of the City, Redevelopment Agency, Milpitas Public Financing Authority, Single Audit, and Transportation Development Act. The contract covers the financial reporting period from fiscal years 2004-05 through 2006-07 with an option to extend the contract to include fiscal years 2007-08 and 2008-09, subject to the annual review and recommendation of the Director of Finance. The City exercised the option to extend the contract for fiscal year 2007-08. Maze and Associates has provided the City with an engagement letter to conduct audit services for fiscal year 2008-09 for a fee not to exceed \$89,770. Pursuant to the agreement, the fee is based on the FY 2007-08 audit fees adjusted by the Bay Area Consumer Price Index.

Fiscal Impact: None. Sufficient funds are available in the FY 2008-09 budget for this service.

Recommendation: Authorize the extension of the contract for audit services with Maze and Associates Accountancy Corporation for Fiscal Year 2008-09.

***RA7. Authorize the Agency Executive Director/City Manager to Execute Agreement with Nolte Engineers for Engineering Services for the Carlo Street Ramp Conversion, Project No. 8195 (Staff Contact: Jaime Rodriguez, 586-3335)**

Background: The City of Milpitas entered into a cooperative agreement with the Santa Clara Valley Transportation Authority (VTA) to help the City prepare both a Project Study Report (PSR) for the widening of Calaveras Boulevard and the design of the Carlo Street Ramp Conversion Project. The VTA led the design of both of these projects using Nolte Engineers as the design consultant, in close coordination with City of Milpitas and Caltrans staff. The Calaveras Blvd. Widening PSR project is nearing completion and ready to enter into the environmental phase. The design for the Carlo Street Ramp Conversion project has been completed, including the procurement of all necessary Caltrans encroachment permits to allow for construction. The Agency/City Council authorized staff to advertise the project for construction bids, at the November 4, 2008 Council meeting. Advertisement for bids of the Carlo St. Ramp Conversion project is being coordinated with potential economic stimulus funding opportunities for the project.

Staff recommends an agreement with Nolte Engineers to provide engineering services through the bidding and construction phases of the Carlo St. Ramp Conversion project. Staff negotiated an agreement based on time and materials for these engineering services, for an amount not to exceed \$30,000, which is considered reasonable for the work involved.

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

Recommendation: Authorize the Agency Executive Director/City Manager to execute an agreement with Nolte Engineers for Engineering Services for the Carlo Street Ramp Conversion Project, Project No. 8195, subject to approval as to form by the City Attorney.

RA8. Agency Adjournment

XVII. REPORTS OF OFFICER AND COMMISSIONS

City Council

3. Request from Mayor Regarding Funding for Milpitas Kiwanis for the Kohl's Cares for Kids Event (Contact: Mayor Livengood, 586-3051)

Background: Mayor Livengood received a letter on February 11 from the Milpitas Kiwanis requesting community contributions to the Kohl's Cares for Kids Event in August at the Great Mall. The letter is included in the Council agenda packet. In the past, this event was held at

Mervyn's and was known as the annual Mervyn's Child Spree. The City has historically contributed \$1,500 to this event.

Fiscal Impact: Funds for donations may be allocated from the City Council's Community Promotions Unallocated budget. Prior to this recommendation, \$3,000 was remaining in that fund. If this item is approved, the balance would be \$1,500.

Recommendation: Hear report from Mayor Livengood and consider his request to authorize a donation in the amount of \$1,500 to the Milpitas Kiwanis for the Kohl's Cares for Kids Event in August 2009 at the Great Mall.

4. Recommendation from Mayor for Appointment to Milpitas-Gilroy-Morgan Hill Grouping of the Valley Transportation Authority (Contact: Mayor Livengood, 586-3051)

Background: At the February 20 Rules Committee meeting, Vice Mayor McHugh requested this matter be heard at the next City Council meeting.

Recommendation: Hear report of Mayor Livengood, and consider for approval his recommendation to appoint Vice Mayor McHugh as the Milpitas representative to the VTA's MGM group.

Community Advisory Commission

*** 5. Approve the Community Advisory 2009 Commission Work Plan (Staff Contact: Felix Reliford, 586-3071)**

Background: The Community Advisory Commission (CAC) is advisory to the City Council on matters affecting residents that are related to community improvements. Since 2000, the CAC has developed an annual work plan to focus on projects and programs that benefit the Milpitas community. Past work plan accomplishments include implementing the Neighborhood Beautification Ordinance, participating in the Streetscape Master Plan, hosting a town hall meeting, and participating in creek cleanup, neighborhood cleanup and neighborhood tree planting events, and the Heritage Tree Ordinance.

The following tasks and short-term projects are included in the CAC Work Plan for 2009:

Annual Tasks

1. Heritage tree nominations
2. Community Development Block Grant public hearing
3. Arbor Day, Tree City USA
4. National Night Out
5. Neighborhood Beautification Awards
6. Holiday Tree Decorating

Short-Term Projects

1. Tree Planting - Promote tree planting through outreach and tree protection awareness.
2. Town Hall Meeting - Conduct a Town Hall Meeting in the fall of election years. Note: the Town Hall Meeting was conducted on February 5, 2009 at the Community Center. The topic was Earthquake Disaster Safety and Preparedness.
3. Outreach Program - Conduct an outreach program to the citizens of Milpitas to obtain feedback on community issues.
4. Volunteerism Program - Conduct a program to encourage Milpitas citizens to volunteer.
5. Cleanup Blight Areas - Determine blighted areas in Milpitas and encourage their redevelopment or conduct a program similar to the Adopt-A-Highway program.
6. Review of Shopping Carts Policy - Review of policy to determine community need to improve City's appearance.
7. Expand the Neighborhood Watch Program - Work with City staff to expand the Neighborhood Watch Program.

8. Front Yard Maintenance Policy - Review current policy and make recommendation to City Council, whether the City should be pro-active or complaint-driven and any necessary policy changes.

Fiscal Impact: None.

Recommendation: Approve the Community Advisory Commission 2009 Work Plan.

Parks, Recreation and Cultural Resources Commission

- * 6. **Approve the Parks, Recreation and Cultural Resources Commission 2009 Work Plan (Staff Contact: Aaron Bueno, 586-3226)**

Background: At the February 2, 2009 Parks, Recreation and Cultural Resources Commission meeting, the Commission approved its 2009 Work Plan. The Commission's 2009 Work Plan identifies the Commission's ongoing goals, projects and tasks. A copy of this work plan is included in the Council agenda packet.

Fiscal Impact: None.

Recommendation: Approve the updated Parks, Recreation and Cultural Resources Commission 2009 Work Plan.

XIX. NEW BUSINESS

- * 7. **Approve Fee Waiver and In-Kind Donation of Equipment, Supplies, and Staffing from Various City Departments for the American Cancer Society's 2009 Relay For Life Event at the Milpitas Sports Center Scheduled on June 19-20, 2009 (Staff Contact: Aaron Bueno, 586-3226)**

Background: For the past ten years, the American Cancer Society, with the volunteer support of numerous Milpitas community members and businesses, has hosted the annual Relay for Life fundraising event at the Milpitas Sports Center.

The City of Milpitas has a long history of supporting this annual event with services, staff support, and equipment on varying levels. A complete list of requested items for fee waiver or donation is included for consideration of Council approval.

Fiscal Impact:

Relay for Life is requesting that the City Council approve the waiver or donation of the following, for a total of \$3,724.

Here are the estimated departmental costs associated with each requested item:

Recreation Services:

- | | |
|--|------------|
| • Use of Football Field- June 19 to June 20 | \$1,125 |
| \$150.00 deposit | |
| \$960.00 rental fees (\$15 application fee, 48 hours @ \$20.00 per hour) | |
| • Use of white event fencing for Kids Camp area | \$ no cost |
| Volunteer's pickup, set-up and return | |
| • Use of City Marquee for event | |
| 6 week announcement (5/11/09 through 6/20/09) | \$ no cost |
| • Use of Mobile Stage* | \$775 |
| \$700.00 (2 days @ 350.00 per day) | |
| \$75.00 in part-time staff time (5 hrs @ \$15.00) | |
| *Towing to be paid by Relay for Life/ ACS | |

• Use of two EZ-Up shade structures	\$ no cost
Volunteers pickup, set-up, and return	
Total from Recreation Services	<u>\$1,900</u>

Park Services

• Trash cans/ Garbage cans	\$ no cost
• Field Prep and track dragging for event	\$ no cost
• Water/ irrigation turned off during event	\$ no cost
• Restrooms opened and secured as needed	
• Weekend Crew point of contact during the event	
Staffing (10 hours @ 40.00 per hr)	\$400
• Use of sand for luminaries	
• Use of two (2) John Deere tractors	<u>\$200</u>
Total from Park Services	<u>\$600</u>

Fire Department

• Fire site/event inspection & permits for tents/canopies	\$429
Site Plan and Review	
• Provision of First Aid by Fire Aides during event	\$ no cost
• Provide Safe House	\$50
\$50.00 Towing and fuel	
\$ 0 Volunteer Fire Aides	
• Use of four MFD generators	\$ no cost
Picked up and delivered by volunteers	
• Community Fire Aides supplies, food	\$250
• Two (2) Emergency Medical Technicians	<u>\$ no cost</u>
Total from Fire Department	\$729.00

Police Department

• Officers to escort funds during the evening	\$350
• Police Command RV for on-site banking (1 escort)	\$ no cost
• Use of two (2) 10 x 20 canopies	<u>\$ no cost</u>
Total from Police Department	\$350

Building Department:

• Temporary Electrical Permit	<u>\$145</u>
Total from Building Department	\$145

Recommendation: Approve the American Cancer Society's Milpitas Relay for Life request for fee waiver and in-kind donations of equipment, supplies and staffing totaling \$3,724 for the June 19-20, 2009 Relay for Life event at the Milpitas Sports Center.

XXIII. ORDINANCE

8. Waive the First Reading and Introduce Ordinance No. 262.6 for Proposed Amendments to the Open Government Ordinance (Staff Contact: Michael Ogaz, 586-3040)

Background: The Open Government Ordinance was originally adopted in April of 2005. Since that time, minor amendments have been adopted, but the main body of the Ordinance has not been revised. With almost four years of experience with the Ordinance, Councilmember Gomez, in conjunction with the City Attorney's Office and the City Clerk's Office, have worked together to draft an amended Open Government Ordinance which takes into account the real world experience all have garnered in applying its provisions.

Some of the changes are simply due to the original provisions being unwieldy or unduly time consuming for staff or because they were unused by the public. Others are more substantive and reflect policy perspectives that the Council may wish to reconsider. Attachment A to the Council packet is a list of the proposed changes and the reasoning for the change. Attachment B is a version of the proposed amended Ordinance showing the additions and deleted language.

Proposed Open Government Ordinance amendments were taken to the Rules Committee for review on February 6, 2009, and the proposed changes brought forward at this meeting reflect the Committee's recommendation.

Fiscal Impact: Ordinance changes should decrease demand for staff time. Full compliance without amendments may increase demands for staff.

Recommendations:

1. Move to waive the first reading of Ordinance No. 262.6 beyond the title.
2. Move to introduce Open Government Amendment Ordinance No. 262.6.

XXIV. RESOLUTIONS

9. Adopt a Resolution Approving Memorandum of Understanding with the Milpitas Professional and Technical Group (ProTech) (Staff Contact: Carmen Valdez, 586-3086)

Background: The most recent Memorandum of Understanding with the Milpitas Professional and Technical Group (ProTech) expired June 30, 2008. City representatives and representatives from ProTech met and conferred in good faith to negotiate a new contract. Agreement has been reached with a new successor Memorandum of Understanding with effective dates of July 1, 2008 through June 30, 2011, and a copy is included in the Council's agenda packet.

Fiscal Impact: Total cost for the three (3) year contract over current cost is approximately \$828,000.

Recommendation: Adopt a Resolution approving the Memorandum of Understanding with the Milpitas Professional and Technical Group (ProTech) covering the period of July 1, 2008 through June 30, 2011.

*** 10. Adopt a Resolution Memorializing Appointments to Certain Regional Commissions and Agencies (Staff Contact: Bryan Otake, 586-3042)**

Background: Some regional commissions and boards require the appointment of City representatives to be memorialized or made by formal City Council action. For purposes of legislative convenience and the provision of adequate documentation, a proposed resolution is included in the Council packet that memorializes the City's appointments to the Water Commission of the Santa Clara Valley Water District and the Boards of Directors for the San Francisco Bay Area Regional Water System Finance Authority and the Bay Area Water Supply and Conservation Agency.

Fiscal Impact: None.

Recommendation: Adopt a Resolution memorializing appointments to certain regional commissions and agencies.

*** 11. Adopt a Resolution Authorizing the Reduction of Faithful Performance Bond in Penal Sum of Subdivision Improvements for Western Pacific Housing's Paragon Tract 9775, Private Job No. 3204 (Staff Contact: Fernando Bravo, 586-3328)**

Background: On February 6, 2007, the City entered into a Subdivision Improvement Agreement (available for review in the City Engineer's office) with Western Pacific Housing, Inc.

(subdivider) for the construction of certain public improvements to serve Tract 9775, a residential development (Paragon) on S. Main Street. To date, the subdivider has completed more than 70% of the public improvements, consisting of water mains, sewer mains and paving. Due to current economic hardships, the subdivider is requesting that the faithful performance bond for the project be reduced from \$800,000 to \$485,547, in order to reduce the premium cost of the bond. The reduced bond amount of \$485,547 is 60% of the construction amount, which would be more than sufficient to complete the remaining 30% of the public improvements. The Subdivision Map Act allows the City the option to partially release performance bonds for partial performance of the work.

The completed public improvements will continue to be maintained by the developer until such time when all the required public improvements are completed and accepted by the City.

Fiscal Impact: None.

Recommendation: Adopt a resolution authorizing the reduction of the faithful performance bond in penal sum of the subdivision improvements by Western Pacific Housing Inc. Paragon for Tract 9775, Private Job No. 3204.

XXV. BIDS AND CONTRACTS

- * 12. **Approve a Standard Three-Year Agreement for a Debris Box with Pagnini's Inc. (Staff Contact: Kathleen Phalen, 586-3345)**

Background: Title V, Chapter 200 of the Milpitas Municipal Code allows the City to enter into non-exclusive agreements with debris box haulers desiring to collect and dispose of non-organic solid waste and/or construction and demolition debris generated within the City of Milpitas. The City's practice is to have such haulers desiring to do business in Milpitas enter into a standard three-year agreement with the City. In accordance with the municipal code, the standard agreement requires debris box haulers to pay twelve percent of their total gross receipts to the City for collections made within the City.

Pagnini's Inc. previously held a debris box agreement with the City that expired in November 2007. Pagnini's Inc. is now applying for a new standard debris box agreement with the City. Staff reviewed the application and, finding it in accordance with the municipal code requirements, recommends Council's approval to enter into a standard agreement.

Fiscal Impact: None.

Recommendation: Approve a standard three-year agreement for a debris box with Pagnini's Inc.

- * 13. **Approve Pre-Qualified Bidders List and Plans and Specifications, and Authorize Advertisement for Bid Proposals from Pre-Qualified Bidders for the Gibraltar Reservoir and Pump Station Improvements, Project No. 7101 (Staff Contacts: Greg Armendariz, 586-3317, and Kathleen Phalen, 586-3345)**

Background: The Gibraltar Reservoir and Pump Station Improvements project is included in the approved Capital Improvement Program. The project's scope of work includes installation of new turbine pumps, replacement of the primary pump diesel engines with new electric motors, updating the motor operational controls, and seismically upgrading the structures. The Gibraltar Pump Station, located at 641 Gibraltar Court, is the City's largest potable water pumping and storage facility. It is sited at the intersection of the San Francisco Public Utilities Commission Bay Pipeline and the Santa Clara Valley Water District regional transmission line and draws water from both wholesale sources for storage into two five-million gallon storage reservoirs for distribution to most of the City. This facility was identified as a critical water system facility in the City's Seismic Improvements Strategic Plan. Seismic retrofit work is included in these improvements.

The design work including the preparation of construction plans and specifications has been completed. The City's Fire and Building Departments have reviewed and approved these design documents. A copy of the project's plan title sheet is included in the Council agenda packet. A complete set of plans and specifications are available for review in the office of the City Engineer. The engineer's estimate for this construction work is approximately \$6,000,000, plus an additional \$1,500,000 for construction contingency, construction administration, inspection and testing.

On October 7, 2008, the City Council authorized staff to issue a request for pre-qualification statements from prospective bidders for this project. Staff reviewed the submitted qualification statements and determined that two of the prospective bidders meet the qualification criteria. If Council approves this pre-qualified bidders list and authorizes advertising for bid proposals for the Gibraltar rehabilitation project, only bidders on the approved list will be authorized to submit bids for the project. The list of prospective bidders meeting the pre-qualified criteria is included in the Council agenda packet. Staff is also submitting this project for Federal Economic Stimulus funding.

Fiscal Impact: The project budget has \$4,600,000 available. An anticipated budget appropriation of up to \$2,900,000 may be required, depending on bid results. Funds would be available from the Water Fund. A budget appropriation will be recommended with a contract award recommendation, after bid results are available.

Recommendations: Staff recommends the following actions for the Gibraltar Reservoir and Pump Station Improvements Project No. 7101:

1. Approve the pre-qualified bidders list.
2. Approve the plans and specifications for Project No. 7101.
3. Authorize advertisement for bid proposals from pre-qualified bidders.

XXII. ADJOURNMENT

**NEXT REGULAR MEETING
TUESDAY, MARCH 17, 2009**