



**MILPITAS CITY COUNCIL MEETING AGENDA
APRIL 21, 2009**

**7:00 P.M.
455 E. CALAVERAS BOULEVARD**

SUMMARY OF CONTENTS

- I. CALL TO ORDER by the Mayor**
- II. ROLL CALL by the City Clerk**
- III. PLEDGE OF ALLEGIANCE**
- IV. INVOCATION (Councilmember Giordano)**
- V. APPROVAL OF COUNCIL MEETING MINUTES – March 31 and April 7, 2009**
- VI. SCHEDULE OF MEETINGS – Council Calendars for April and May 2009**
- VII. PRESENTATION**

Proclamation – National Garden Month for April 2009

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 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.

- IX. ANNOUNCEMENTS**
- X. ANNOUNCEMENT OF CONFLICT OF INTEREST**
- XI. APPROVAL OF AGENDA**
- XII. 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.

XIII. PUBLIC HEARINGS

- 1. Consider Approval of the Community Development Block Grant Funding for FY 2009-10 and Adoption of the One-Year Action Plan (Staff Contacts: Felix Reliford, 586-3071, and Gloria Anaya, 586-3075)**
- 2. Request for Bingo License for St. John the Baptist Catholic Church to Hold a Regular Bingo Game on Church Grounds Beginning in May 2009 (Staff Contact: Mary Lavelle, 586-3001)**

3. Request for Entertainment Event Permit for the Milpitas Rotary Club to Hold a Carnival at 1535 Landess Ave for the Dates of June 11 - 14, 2009 (Staff Contact: Mary Lavelle, 586-3001)

XIV. UNFINISHED BUSINESS

4. Receive Report on Blighted Conditions at 1556 South Main Street (Staff Contact: James Lindsay, 586-3273)

XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

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

RA2. Approval of Minutes – April 7, 2009

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

RA4. Receive Staff Report on Draft 2009-2014 Capital Improvement Program (Staff Contact: Greg Armendariz, 586-3317)

PUBLIC HEARING (RA5 Only)

RA5. Waive the First Reading and Introduce Ordinance No. 192.22, and Adopt a Joint Resolution for the Fifth Amendment to the Great Mall Redevelopment Plan (Staff Contact: Diana Barnhart, 586-3059)

RA6. Authorize the Agency Executive Director to Negotiate Agreements with CBS Outdoor and Milpitas Automotive Group for Three Electronic Freeway Signs, and with McCarthy Ranch and Clear Channel Outdoor for Three Electronic Freeway Signs and Return to Agency/Council for Approval of Agreements (Staff Contact: Diana Barnhart, 586-3059)

***RA7. Authorize the City Manager/Agency Executive Director to Execute Amendment No. 3 to the Agreement with Sugimura Finney Architects for Tasman Extension – Great Mall Parkway to I-880, Project No. 4133, and Approve a Budget Appropriation (Staff Contact: Greg Armendariz, 586-3317)**

***RA8. Authorize the City Manager/Agency Executive Director to Execute Amendment No. 4 to the Agreement with Noll & Tam Architects for the Milpitas Senior Center, Project No. 8176 (Staff Contact: Steve Erickson, 586-3301)**

RA9. Agency Adjournment

XVI. REPORTS OF OFFICER, SUBCOMMITTEES AND COMMISSIONS

City Council

5. Discussion and Recommendation on Possible November 2009 Ballot Measure Regarding a Local Tax Measure for the City of Milpitas (Contact: Mayor Livengood, 586-3051)

Rules Subcommittee

6. Waive the First Reading and Introduce Ordinance No. 262.6 for Amendments to the Open Government Ordinance Recommended by the Rules Subcommittee (Staff Contact: Michael Ogaz, 586-3040)

Transportation and Land Use Subcommittee

7. Receive Staff Report on the Valley Transportation Authority (VTA) Board Governance and Approve Staff Recommendations for VTA Board Governance Structure (Staff Contact: Jaime Rodriguez, 586-3335)

Community Advisory Commission

- * 8. Move to Remove One Member of the Community Advisory Commission Due to Lack of Attendance (Staff Contact: Mary Lavelle, 586-3001)

Youth Advisory Commission

- * 9. Move to Remove One Alternate Member of the Youth Advisory Commission Due to Lack of Attendance (Staff Contact: Mary Lavelle, 586-3001)

Sister Cities Commission

- * 10. Adopt a Resolution to Change Membership Requirements of the Sister Cities Commission (Staff Contact: Michael Ogaz, 586-3040)

XVII. NEW BUSINESS

- 11. Receive a Report from the Santa Clara Valley Water District (SCVWD) on the Lower Berryessa Creek Flood Protection Project Alternatives (Staff Contact: Fernando Bravo, 586-3328)
- 12. Receive the Monthly Economic Development Report (Staff Contact: Diana Barnhart, 586-3059)
- * 13. Approve One Youth Sports Assistance Fund Grant (Staff Contact: Aaron Bueno, 586-3226)
- * 14. Authorize the Purchasing Agent to Dispose of Five Surplus Ford Vehicles at Auction (Staff Contact: Chris Schroeder, 586-3161)

XVIII. ORDINANCES

- 15. Waive the First Reading Beyond the Title and Introduce Ordinance No. 23.12 Repealing Title I Chapter 2, Purchasing, of the Existing Milpitas Municipal Code, and Adopt Title I, Chapter 2, Sections 1 Through 12 (Staff Contact: Chris Schroeder, 586-3161)
- * 16. Waive the Second Reading and Adopt Ordinance No. 38.789 Amending the Zoning Ordinance (Staff Contact: Sheldon Ah Sing, 586-3278)

XIX. RESOLUTIONS

- * 17. Adopt Resolutions to Approve Recommended Subdivision Improvement Actions for Centria East Condominiums, Project No. 3178, and Centria West Condominiums, Project No. 2568 (Staff Contact: Fernando Bravo, 586-3328)

XX. BIDS AND CONTRACTS

- * 18. Authorize the City Manager to Execute Annual Agreements with the County of Santa Clara for Collection of AB 939 Implementation Fees and for Administering the Countywide Household Hazardous Waste Collection Program (Staff Contact: Kathleen Phalen, 586-3345)
- * 19. Award the Bid for McCarthy Ranch Plant Replacement to Commercial Environmental Landscape for the Not-to-Exceed Amount of \$30,482 (Staff Contact: Chris Schroeder, 586-3161)
- * 20. Authorize the City Manager to Execute an Agreement with Milpitas Community Television for the Operation of the Public Access Studio and Channel (Staff Contact: Bill Marion, 586-2701)

- * 21. **Approve Plans and Specifications and Authorize the Advertisement for Bid Proposals for Storm Drain Installation at Country Club Drive, Project No. 3700 (Staff Contact: Steve Erickson, 586-3301)**

XXI. ADJOURNMENT

**NEXT REGULAR MEETING
TUESDAY, MAY 5, 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, during normal business hours.

APPLY TO BECOME A CITY COMMISSIONER!

Current vacancies exist for the:
*Arts Commission and Public Art Committee
Community Advisory Commission
Economic Development Commission (Retail Rep and Hotel Rep.)
Emergency Preparedness Commission (Industry Rep)
Mobile Home Park Rental Review Board
Parks, Recreation & Cultural Resources Commission
Sister Cities Commission (alternates)
Youth Advisory Commission (alternate)*

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

XV. PUBLIC HEARINGS

1. Consider Approval of the Community Development Block Grant Funding for FY 2009-10 and Adoption of the One-Year Action Plan (Staff Contacts: Felix Reliford, 586-3071, and Gloria Anaya, 586-3075)

Background: The purpose of this public hearing is to establish funding levels and uses of the Community Development Block Grant (CDBG) Program for FY 2009-10 and to adopt the one-year Action Plan, which describes the eligible programs, projects and activities to be undertaken with CDBG funds in the next fiscal year. An application workbook was previously distributed to the Council that contains a memorandum discussing the general guidelines regarding the use of CDBG funds. A copy of each eligible application received was also distributed.

The City's estimated grant allocation for FY 2009-10 is \$579,000. There are 17 applicants for public services funding and a total of \$86,850 (15% of the grant) is available to fund this category. Five applications are requesting funding for non-public services funds in the amount of \$396,275 (\$376,350 plus \$19,925 of unspent prior year funds). As provided by federal regulations, 20% or \$115,800 of the total grant will be used for General Program Administration.

On November 6, 2007, the City Council adopted the two-year (2009-11) funding priorities as guidelines to assist the Community Advisory Commission (CAC) in evaluating the grant applications. For the public service category, the priorities established in order of preference were:

1. Senior Services
2. Youth/Teen Services
3. Homeless Sheltering/Services
4. Child Care
5. Battered Women Sheltering/Services

For the non-public service applications, the approved priorities were:

1. Home Repair / Rehabilitation
2. Affordable Housing
3. Rental Apartment Rehabilitation

On November 6, 2007, City Council also reaffirmed two established funding policies relating to the CDBG Program:

- 25% of all Public Service funds must be spent within the City of Milpitas. The CDBG Program allocation for public services this year is \$86,850, 25% of which would be \$21,712.
- Increase the allocation from \$15,000 to \$25,000 for Fair Housing Services. Traditionally, \$15,000 has been allocated from CDBG Program Administration; the balance of \$10,000 will come from the Redevelopment Agency 20% Low-Income Housing Set-Aside Funds.

On March 4, 2009 the Community Advisory Commission (CAC) continued the public hearing to the April 1, 2009 meeting hoping that the U.S. Department of Housing and Urban Development (HUD) would provide the allocation regulations for the American Recovery & Reinvestment Act (Stimulus Bill) funds that the City has been awarded. As of the CAC's April 1 meeting, HUD had not provided regulations for the Stimulus funds. Therefore, staff proceeded with the normal CDBG formula allocation process. At its April 1 meeting, the CAC recommended \$483,125 in total funding, including \$86,850 (\$10,000 from CDBG program Administration and \$15,000 from RDA for Project Sentinel Fair Housing Activities) for Public Services and \$396,275 (this

includes \$19,925 of prior year unspent funds) for Non-Public Services. The remaining \$115,800 of the grant is committed for program administration.

Included in the Council's agenda packets are the March 4, 2009 and April 1, 2009 CAC meeting minutes and funding recommendations.

Action Plan

The City of Milpitas One-Year Action Plan describes the eligible programs, projects and activities to be undertaken with the CDBG funds expected to be available during the 2009-10 program year and their relationship with the priority housing, homeless, and community development needs. The Action Plan is an addition to the required Five-Year Consolidated Plan previously approved in 2007 by the Department of Housing and Urban Development for continued funding as an Entitlement City.

In summary, the Action Plan identifies the federal, state and local resources that will be used to fund local programs and services, the strategic plan for implementation and the citizen participation process. As required by HUD, the Action Plan has been advertised for public review and comments for 30 days (March 20 through April 20, 2009).

Copies of the Action Plan were sent to eighteen CDBG funded applicants and agencies. Copies were also placed at City Hall, the Community Center, and the Milpitas library. Public comments received will be incorporated in the Action Plan and forwarded to HUD by May 15, 2009. The draft of the One-Year Action Plan is included in the Council's agenda packet.

Attachments:

- A. Community Advisory Commission Approved Minutes from March 4, 2009
- B. Community Advisory Commission Unapproved Minutes from April 1, 2009.
- C. Community Advisory Commission CDBG Funding Recommendations FY 2009-10.
- D. Draft Action Plan FY 2009-10.

Recommendations:

1. Open the public hearing and move to close the public hearing, following any comments.
 2. Approve the CDBG funding for FY 2009-10.
 3. Approve the One-Year Action Plan.
2. **Request for Bingo License for St. John the Baptist Catholic Church to Hold a Regular Bingo Game on Church Grounds Beginning in May 2009 (Staff Contact: Mary Lavelle, 586-3001)**

Background: St. John the Baptist Catholic Church at 279 S. Main St. submitted an application in March requesting to hold a weekly bingo game activity at the church's Pavalkis Hall every Monday from 5:00 – 10:00 PM, starting in May.

The application was reviewed by all necessary City department staff. Signed approval from Building, Planning, Engineering, Finance, Fire and Police departments is noted in the agenda packet materials. The public hearing was advertised in the local newspaper on April 9. Appropriate conditions were stated by the several city departments, as noted in the attachments.

For further information, there are presently two current bingo licenses issued in Milpitas at this time: one for the City's Senior Center and another for Pioneer Mobile Home Park.

Fiscal Impact: None. \$10 application fee received.

Attachments:

1. Bingo License application form and detailed information from St. John the Baptist Church.
2. Approved sign-off pages from six City departments, with one memo from Fire Department.

Recommendations:

1. Hold the public hearing, and move to close following any testimony.
 2. Move to approve the application for a Bingo License for St. John the Baptist Catholic Church to hold a weekly bingo game at Pavalkis Hall, starting in May 2009.
3. **Request for Entertainment Event Permit for the Milpitas Rotary Club to Hold a Carnival at 1535 Landess Ave for the Dates of June 11 - 14, 2009 (Staff Contact: Mary Lavelle, 586-3001)**

Background: The Milpitas Rotary Club submitted an application in March for an Entertainment Event Permit to hold a carnival at 1535 Landess Ave. parking lot for the dates of Thursday, June 11 through Sunday, June 14, 2009. Rotary Club contracted to hire Butler Amusements Inc., a company based in Fairfield, CA that has operated carnivals throughout the west, including carnivals at the Great Mall. Proposed hours of operation for the carnival are: from 4:00 PM – 10:00 PM on Thursday, from 4:00 PM – 11:00 PM on Friday, and from 11:00 AM to 11:00 PM on Saturday and Sunday.

The applicant requests a waiver of fees for cost of the Fire Marshal's inspection (\$537.00) and cost for a permit from the Building Department for an electrical generator (\$125.05).

The application was reviewed by all necessary City department staff. The public hearing was advertised in the local newspaper on April 9. Appropriate conditions were stated by several city departments, as noted in the agenda packet attachments.

Fiscal Impact: \$15 application fee received from Rotary Club. If fees are authorized to be waived, \$662.05 in revenues would not be collected.

Attachments:

3. Entertainment Event Permit application and detailed information from the Rotary Club.
4. Approved sign-off pages from six City departments, including conditions by memo from Fire, Police and Planning Departments.

Recommendations:

1. Hold the public hearing, and move to close following any testimony.
2. Move to approve the Entertainment Event Permit for the Milpitas Rotary Club to hold carnival at 1535 Landess Ave. in Milpitas on June 11-14, 2009, and authorize the requested waiver of \$662.05 in City fees.

XVI. UNFINISHED BUSINESS

4. **Receive Report on Blighted Conditions at 1556 South Main Street (Staff Contact: James Lindsay, 586-3273)**

Background: On March 17, the City Council directed staff to provide options to address the blighted conditions of the properties located on the east side of South Main Street near Montague Expressway. The property owner has been responsive in addressing the excessive graffiti and general clean up, but claims not to have the resources to demolish and remove the abandoned and partially destroyed Ooh La Lodge building located at 1556 South Main Street. The state of this building is a violation of the City's Neighborhood Beautification Ordinance (NBO), V-500-2.01. The owner was issued a Notice to Abate on March 24 and provided fifteen days to correct the violation. It is clear after several meetings that the owner, due to financial hardships, will not correct the violation by demolishing and removing the building. There are two options the City has now to address this nuisance:

1. Receive written authorization from the property owner to have a contractor hired by the City demolish and remove the abandoned building. The demolition and permitting costs incurred by the City for this work would be fully recovered.

2. Continue the NBO abatement procedure. This procedure, once all due process steps are completed, will allow the City to abate the nuisance and recover all costs including staff time, administrative costs, and attorney fees.

City staff is currently implementing both options in the event that staff is unable to reach an agreement (Option 1) with the property owner. An update on the abatement progress will be provided at the City Council meeting.

Fiscal Impact: Any funding advanced by the City to remediate the blighted condition is to be reimbursed.

Recommendation: Receive report on the blighted conditions at 1556 South Main Street.

XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

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

RA2. Approval of Minutes – April 7, 2009

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

RA4. Receive Staff Report on Draft 2009-2014 Capital Improvement Program (Staff Contact: Greg Armendariz, 586-3317)

Background: The draft 2009-2014 Capital Improvement Program (CIP) document has been prepared by staff and was distributed to the City Council/Redevelopment Agency on April 1, 2009. The projects are arranged into six main categories: Community Improvements, Parks, Streets, Water, Sewer, and Storm Drain. The document includes a summary by categories, and individual proposed project descriptions. Previously funded projects are also summarized.

Parks and Recreation projects have been reviewed and approved by PRCRC on March 2, 2009. The draft CIP document was presented to the Planning Commission on April 8, 2009, for a recommendation to find the document in conformance with the General Plan.

A staff presentation of the draft CIP highlights will be provided at the Council/Agency meeting. Based upon Council/Agency direction, the draft CIP will be finalized and prepared. The preliminary CIP will then be presented to Council at the May 2009 budget hearing.

Fiscal Impact: None.

Recommendation: Receive staff report on Draft 2009-2014 Capital Improvement Program.

PUBLIC HEARING (RA5 Only)

RA5. Waive the First Reading and Introduce Ordinance No. 192.22, and Adopt a Joint Resolution for the Fifth Amendment to the Great Mall Redevelopment Plan (Staff Contact: Diana Barnhart, 586-3059)

Background: On March 17, 2009 the Redevelopment Agency adopted the Report to the City Council on the proposed Fifth Amendment, submitted the Report to the City Council which then received the Report and together with the Redevelopment Agency called for a Joint Public Hearing on the proposed plan amendment on April 21, 2009. The proposed Plan Amendment will extend the Plan Effectiveness Date to November 2033, which allows the continuation of the existing freeway signs in accordance with the California Outdoor Advertising Act.

The Great Mall Redevelopment Project Area, comprised of 150 acres, was created in 1998 to facilitate the redevelopment of the vacated Ford Motor Plan. The Great Mall Project Area was amended in 2001 to add two non-contiguous parcels that would allow the continued use of

freestanding highway signs for the Great Mall Shopping Center. The Great Mall Redevelopment Project Area expires in 2010, as it was extended by two years as part of the SB 1096 extensions.

Extending the Plan Effectiveness Date of the Great Mall Project Area will allow for a new freeway sign to be installed, continuing the opportunity for redevelopment project area businesses to advertise along the freeway, regardless of their location. Tax increment is not collected from the Great Mall Project Area and the proposed plan amendment would not change this status.

Public Hearing Notification: The Joint Public Hearing notice was published once a week for four successive weeks in the Milpitas Post. In addition, the notice was mailed to all property and business owners and residents within the Great Mall Project Area. A copy of the notice was also sent to the governing bodies of each affected taxing entity within the Project Area. Staff only received a few inquiries from the notifications. Certificates of Notification are included in the agenda packet as Exhibit A.

Report to Council: Pursuant to California Health and Safety Code Section 33352, the Report to the City Council for the proposed Fifth Amendment to the Great Mall Redevelopment Plan has been prepared and is ready for submission by the Agency to the City Council. The purpose of the Report is to project the legally required information, documentation and evidence required by the law when a proposed amendment is submitted by the Agency to the Council. This information and documentation assists the City Council in its consideration of the proposed Amendment and in making the various findings associated with the adoption of the proposed Amendment.

In summary, the Report to the Council finds that the proposed Plan Amendment is consistent with the City's General Plan and that it does not require a Project Area Committee, consultation with outside agencies, a neighborhood impact report or a report to the County Fiscal Officer. The Agency Report to the City Council is Exhibit B, in the agenda packet.

CEQA Review: City Planning staff completed an Initial Study on the proposed Plan Amendment and found that the proposed project, the extension of the Plan Effectiveness Date, could not have a significant effect on the environment. As a result of this finding, a negative declaration was prepared.

On February 13, 2009, the Negative Declaration was circulated to the responsible entities for a 20-day review period beginning on February 16, 2009, and ending on March 4, 2009. A Notice of Intent was posted at the Great Mall property on February 13, 2009. All comments received on the Negative Declaration and the Agency responses will be provided under a separate cover, as part of the Negative Declaration presented to the Agency and City Council, prior to the adoption of the Amendment. No comments have been received as a result of the circulation of the Negative Declaration, as of publication of this agenda.

The Notice of Preparation/Initial Study and Negative Declaration are included in the Council agenda packet as Exhibit A to the resolution adopting the negative declaration for the Fifth Amendment.

The Agency/Council is requested to receive and consider the information provided, and to approve the Fifth Amendment to the Great Mall Redevelopment Plan.

Fiscal Impact: There is no fiscal impact associated with this action.

Recommendations:

1. Open the Public Hearing, and move to close, following any comments
2. Adopt a Joint Resolution of the City Council and Redevelopment Agency adopting the Fifth Amendment to the Great Mall Redevelopment Plan and approve the Negative Declaration.
3. Waive the first reading of the Ordinance No. 192.22 for the Fifth Amendment to the Great Mall Redevelopment Plan.

4. Introduce Ordinance No. 192.22, for the Fifth Amendment to the Great Mall Redevelopment Plan.

RA6. Authorize the Agency Executive Director to Negotiate Agreements with CBS Outdoor and Milpitas Automotive Group for Three Electronic Freeway Signs, and with McCarthy Ranch and Clear Channel Outdoor for Three Electronic Freeway Signs and Return to Agency/Council for Approval of Agreements (Staff Contact: Diana Barnhart, 586-3059)

Background: A Request for Proposals (RFP) for a new electronic freeway sign program was issued on July 11, 2008. A total of eight (8) responses were received, ranging from one to six freeway signs, with some including directional and electronic wayfinder signs.

In September 2008, the former Facilities Naming Subcommittee selected three firms, CBS Outdoor with the Milpitas Automotive Group, McCarthy Ranch with Clear Channel and Media Management Group to submit additional responses. The Subcommittee considered the responses at its November 19, 2008 meeting, but asked for a more “apple to apples” comparison of the three responses to clarify the significant differences in the responses.

At the February Economic Development Subcommittee meeting, staff recommended that exclusive negotiations with both Milpitas Automotive Group and McCarthy Ranch be undertaken with CBS Outdoor to develop one proposal for Milpitas area freeway signs. After presentations from all three proposers, the Subcommittee asked staff to work with both Milpitas Automotive Group and McCarthy Ranch to see if a better apple to apples comparison could be prepared for Subcommittee review and analysis. Over the following month, staff met with both McCarthy Ranch and Clear Channel, and Milpitas Automotive representatives to clarify their proposals to assist in the staff review. As a result, staff came to the conclusion that an apple to apples comparison was not achievable since the two proposals were so different and both parties agreed. The staff report to the Economic Development Subcommittee is included in the Council packet.

At its March meeting, the Economic Development Subcommittee recommended that both McCarthy Ranch with Clear Channel and Milpitas Automotive Group with CBS Outdoor be allowed to develop and operate three freeway signs each. The McCarthy signs would be located on McCarthy property and the Milpitas Automotive Group signs would be located on the Piercey Automotive site, the City’s I-880 freeway sign site and the existing freeway sign site on I-680.

Negotiation Points: If the Council/Agency accepts the Subcommittee recommendation, staff recommends that the following deal points be included in the negotiations with the two groups:

- Up front Payment
- Guaranteed Annual Payments
- Percentage Payment
- Free advertising space for the City of Milpitas
- Other aspects of negotiation will include sign design, specific site locations, technology application, and length of contract and implementation schedule.

Staff will return to the Redevelopment Agency for final action on the completed negotiations and with agreements so that the freeway sign program can be implemented in the near future.

Additional CEQA Review: If the Council/Agency approves the recommendation, the sign developers will need to complete additional environmental review. The environmental review for the Merger Amendments in 2006 covered five freeway sign sites within the two redevelopment project areas, split between I-880 and I-680 with up to two one-sided electronic message board signs. This work did not include sign sites on McCarthy property.

Staff requested a proposal from Wagstaff and Associates for additional environmental review that would allow additional two-sided electronic freeway signs since Wagstaff and Associates completed the Merger Amendment environmental review and is familiar with the sign project.

Additional environmental review could be completed separately by the sign developers or jointly, but the process would be a Supplemental Environmental Impact Report to the Merger Amendment environmental review.

The additional review will provide “before and after” color simulation viewpoints of potential sign sites as well as digital simulations. The total cost for the review of all the proposed signs, including the McCarthy site signs, will be the responsibility of the approved sign developers.

Fiscal Impact: There is no fiscal impact associated with the recommended actions.

Recommendation: Authorize the Agency Executive Director to negotiate agreements with CBS Outdoor and Milpitas Automotive Group for three electronic freeway signs and with McCarthy Ranch and Clear Channel Outdoor for three electronic freeway signs and return to Council/ Agency for approval of agreements.

***RA7. Authorize the City Manager/Agency Executive Director to Execute Amendment No. 3 to the Agreement with Sugimura Finney Architects for Tasman Extension – Great Mall Parkway to I-880, Project No. 4133, and Approve a Budget Appropriation (Staff Contact: Greg Armendariz, 586-3317)**

Background: On February 19, 2002, the City Council awarded a consultant agreement to Sugimura & Associates, now known as Sugimura Finney Architects (Sugimura), in the amount of \$71,900 for design services for Tasman Extension – Great Mall Parkway to I-880. The improvements include median landscape and irrigation along Great Mall Parkway, from I-880 to the southern City limits. The agreement has been amended twice to provide for the design of additional areas of median landscaping south of Montague Expressway, and to add design of approximately 4,000 linear feet of a new recycled water main to serve both the new median landscaping and future Transit Area Specific Plan developments. In order to irrigate all of the new landscaping with recycled water, additional design, field survey, permit applications for encroachments across Union Pacific Rail Road and Caltrans’ properties, a construction traffic control plan, and bid support are required. Staff negotiated a scope of work and fee not-to-exceed \$80,530, which is considered reasonable for this additional effort. The total contract amount including this amendment is \$553,138.

Fiscal Impact: A budget appropriation in the amount of \$70,000, from the Recycled Water Fund, to the Tasman Extension – Great Mall Parkway to I-880, Project No. 4133, is required. Sufficient funds are available in the Recycled Water Fund.

Recommendations:

1. Authorize the City Manager/Agency Executive Director to execute Amendment No. 3 to the Agreement with Sugimura Finney Architects for the Tasman Extension – Great Mall Parkway to I-880, Project No. 4133, in the amount not-to-exceed \$80,530, subject to approval as to form by the City Attorney/Agency Counsel.
2. Approve Budget Appropriation in the amount of \$70,000 from the Recycled Water Fund to the Tasman Extension – Great Mall Parkway to I-880, Project No. 4133.

***RA8. Authorize the City Manager/Agency Executive Director to Execute Amendment No. 4 to the Agreement with Noll & Tam Architects for the Milpitas Senior Center, Project No. 8176 (Staff Contact: Steve Erickson, 586-3301)**

Background: On August 1, 2006, the Agency approved a consultant agreement with Noll & Tam Architects in the amount of \$968,175 to provide professional design services for the Milpitas Senior Center. Subsequently, three agreement amendments have been approved in the amounts of \$49,975, \$289,000, and \$365,160 for additional design work and construction administration. Staff recommends that the agreement with Noll & Tam Architects again be amended to provide for additional services during project bidding, and to provide for the architect on site attendance to monitor and review the progress of construction for compliance with the

architect's drawings and specifications. The architect would be on site one day a week for the entire duration of the project. Amendment No. 4 with Noll & Tam Architects is proposed for these additional services. Staff negotiated a scope and fee for these services not to exceed \$33,190, which is considered reasonable.

Fiscal Impact: Approval of this agreement amendment brings the total contract amount to \$1,705,500. There are sufficient funds in the project budget for these consultant services.

Recommendation: Authorize the City Manager/Agency Executive Director to execute Amendment No. 4 to the agreement with Noll & Tam Architects for the Senior Center Project, Project No. 8176.

RA9. Agency Adjournment

XVI. REPORTS OF OFFICER, SUBCOMMITTEES AND COMMISSIONS

City Council

5. Discussion and Recommendation on Possible November 2009 Ballot Measure Regarding a Local Tax Measure for the City of Milpitas (Contact: Mayor Livengood, 586-3051)

Background: Mayor Livengood is requesting a City Council discussion and possibly a recommendation of the possible placement of a local tax measure on the November 2009 ballot.

Recommendation: Discuss recommendation from Mayor Livengood, and direct staff accordingly.

Rules Subcommittee

6. Waive the First Reading and Introduce Ordinance No. 262.6 for Amendments to the Open Government Ordinance Recommended by the Rules Subcommittee (Staff Contact: Michael Ogaz, 586-3040)

Background: At the Council meeting of March 3, 2009, proposed changes to the Open Government Ordinance were considered by the City Council. By informal vote, the Council approved 11 of the proposals without modification, approved one with modification, rejected one and sent back four to the Rules Subcommittee for further consideration.

On March 27, 2009, the Rules Subcommittee considered the unresolved recommendations and one new recommendation from the City Attorney. Items considered were:

1. To what extent should the requirement that the Council, Planning Commission and City Manager keep on-line calendars showing past events and appointments, be modified?

The Subcommittee recommended, in accord with comments made by Council, that the calendaring requirement be retained but to specifically exclude listing of purely social or personal events. Changes to the Ordinance have been made to implement this change. Other changes recommended were to delete language directing that calendar information be provided to the City Clerk and adding language reflecting the current practice of direct entry of calendar items on-line. Information Services will provide training to better enable this direct data entry.

2. Should the City Clerk continue to prepare a yearly "tally and report" to the City Council documenting all public records petitions and the result of any and all proceedings relating to the handling of those petitions?

The City Clerk commented that she does keep a running tally of these records requests but that the data reporting requirement seems of little value in light of the fact that the tally and report have never been requested by any member of the community. The Subcommittee determined that since the Clerk was already keeping the tally, she should continue to do so, but that the yearly reporting requirement could be eliminated so long

as the tally is available for public review. Changes implementing this recommendation have been made to the proposed amended Ordinance.

3. Should an Index of Records be created listing all public record categories available from the City in a single written document?

An Index of Records of all public records is required under the current Ordinance, but due to the extensive time commitment that would have been required for its completion, it has never been created. Moreover, no public requests for the Index have ever been submitted. The City Clerk noted that the availability of records on-line has been greatly increased over the years and has enhanced the public's access to records. The Rules Subcommittee discussed the possibility of changing the requirement to create a single location on the City website that could serve as a directory to access all documents available on-line, as well as providing general direction to the location of records that are not available on-line. The proposed amended Ordinance has been changed to implement this Subcommittee recommendation.

4. Current Ordinance requires a yearly report to the City Council of all Sole Source Contracts awarded by the City. Council was asked to consider eliminating this requirement. Further investigation indicates this function is already being undertaken by the Purchasing Division, but the report has inadvertently not been forwarded to Council. Staff recommends not changing the Ordinance, but simply having Purchasing staff forward the Sole Source Contract Report yearly to Council in accord with the existing Ordinance.
5. Finally, the City Attorney recommends that a new proposal be considered. It was noted that the broad language of the current Ordinance could be interpreted to mean that the City is required to keep all public records on-line. Per the Information Services Department, this would be virtually impossible with the current state of technology and budget constraints. The Subcommittee recommended that only "to the extent practical" should all public records be available on-line, but with the added requirement that direction be given on the website to where records not available on-line can be found. The proposed amended Ordinance has been changed to reflect that recommendation.

Included with this agenda item is a version of the Open Government Ordinance including all of the proposed amendments shown in "red line."

Fiscal Impact: None, if recommendations are implemented. Unknown additional costs for creating Public Record Index, Tally and Report of public record petitions would be required under the current Ordinance, due to the need for significant staff time to accomplish these tasks.

Recommendations:

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

Transportation and Land Use Subcommittee

7. **Receive Staff Report on the Valley Transportation Authority (VTA) Board Governance and Approve Staff Recommendations for VTA Board Governance Structure (Staff Contact: Jaime Rodriguez, 586-3335)**

Background: The Santa Clara Valley Transportation Authority (VTA) is reviewing alternatives to restructure its Board of Directors based on recommendations in 2008 from the Ad Hoc Governance Committee. The Governance Committee recommendations include regrouping the City of Milpitas with the City of Sunnyvale and City of Santa Clara in a new North East County Group. The City of Milpitas previously stated support for the regrouping at its April 15, 2008 meeting. Since then, staff has prepared alternative VTA Board Seat Configurations that better ensure ongoing representation for the City of Milpitas on the VTA Board.

The Milpitas-preferred VTA Board Governance Structure will be presented at the Council meeting and includes a grouping with the City of Sunnyvale and the City of Santa Clara, but as a group that shares three VTA Board Seats instead of two, as originally proposed by the Ad Hoc Governance Committee. The City of Milpitas currently serves as an alternate in the existing Milpitas-Gilroy-Morgan Hill (M-G-M) Board Seat; the existing VTA Board Structure is provided for reference in the Council Packet. This item was presented to the Council's Transportation and Land Use Subcommittee on April 6. The Subcommittee recommended presenting this topic to the full City Council.

Fiscal Impact: None. There is no fiscal impact.

Recommendations:

1. Receive staff report on Valley Transportation Authority Board Governance.
2. Move to approve the staff recommendation for the Valley Transportation Authority Board Governance Structure.

Community Advisory Commission

- * **8. Move to Remove One Member of the Community Advisory Commission Due to Lack of Attendance (Staff Contact: Mary Lavelle, 586-3001)**

Background: Community Advisory Commission Alternate member Bella Sangalang has never attended a meeting since her appointment as Alternate last October. Upon being notified of her lack of attendance, the City Clerk sent a letter of inquiry on March 17, to which Ms. Sangalang did not respond directly.

Ms. Sangalang did contact the Deputy City Clerk by e-mail regarding her time spent out of the country and at a new job located far from Milpitas. She has not been available to attend CAC meetings. Ms. Sangalang also phoned the CAC staff liaison indicating her unavailability to attend regular meetings at this time.

Commission By-Laws state: "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 Community Advisory Commission may be removed from office by a majority vote of the City Council at a regularly scheduled Council meeting."

Fiscal Impact: None.

Recommendation: Due to unexcused absences and per Community Advisory Commission by-laws, vote to remove Bella Sangalang as CAC Alternate No. 3, thus creating a vacancy that would expire in January 2010.

Youth Advisory Commission

- * **9. Move to Remove One Alternate Member of the Youth Advisory Commission Due to Lack of Attendance (Staff Contact: Mary Lavelle, 586-3001)**

Background: Youth Advisory Commission Alternate No. 4 Katherine Pita has never attended a meeting since her appointment as Alternate No. 4 last October. The YAC Staff liaison has made multiple attempts to reach her by phone and e-mail. Upon being notified of her lack of attendance, the City Clerk sent Ms. Pita a letter of inquiry on March 25, 2009 to which she did not respond.

Commission By-Laws state: "Youth Advisory Commission members and alternates shall be expected to attend all regular business meetings of the Youth Advisory Commission. When any member or alternate has three 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 from the Commission.”

Fiscal Impact: None.

Recommendation: Due to lack of attendance (unexcused absences) and per Youth Advisory Commission by-laws, vote to remove Katherine Pita as YAC Alternate No. 4. If approved, this vote would create a vacancy on the YAC with an expiration date of September 2010.

Sister Cities Commission

*** 10. Adopt a Resolution to Change Membership Requirements of the Sister Cities Commission (Staff Contact: Michael Ogaz, 586-3040)**

Background: Currently, the bylaws of the Sister Cities Commission require that all members - including alternates - must be Milpitas residents. In order to achieve a broader cross section of the community at large, Vice Mayor McHugh has proposed that the membership be changed to allow the members to be either residents of the City or persons residing within the boundaries of the Milpitas Unified School District. For instance, this would allow persons residing in the County who are in the Milpitas Unified School District to participate as Milpitas Sister Cities Commissioners or alternates. The Sister Cities Commission by vote has approved this change.

This change can be implemented by adopting a simple resolution directing the Commission Bylaws be changed to reflect the intended makeup of the Commission. The change would be effective immediately and applicable to any future Commission appointment.

Fiscal Impact: None.

Recommendation: Adopt a Resolution changing the Bylaws of the Sister Cities Commission to allow persons residing within the Milpitas Unified School District to become Commissioners.

XVII. NEW BUSINESS

11. Receive a Report from the Santa Clara Valley Water District (SCVWD) on the Lower Berryessa Creek Flood Protection Project Alternatives (Staff Contact: Fernando Bravo, 586-3328)

Background: The Santa Clara Valley Water District is under way with the Lower Berryessa Creek Flood Protection Project. The project will design and construct creek levee improvements that will provide protection from the 100-year flood event along Berryessa Creek between the Lower Penitencia Creek confluence and Calaveras Boulevard. Included in this project are improvements to both Calera and Tularcitos Creeks, which connect to Berryessa Creek. These improvements are needed due to the effect of raising the levee on Berryessa Creek.

The project includes coordination with the City of Milpitas Trails Master Plan, District maintenance requirements, and the Corps' Upper Berryessa project upstream of Calaveras Boulevard, managed by the US Army Corps of Engineers. The length of the project is 15,100 feet (2.9 miles). The creek is bordered by residential development on both sides, and traverses through the center of Milpitas in a highly developed area. Major project deliverables include Environmental Impact Report (EIR); regulatory permits; and plans, specifications, and estimates (PS&E) on an alternative for improving the channel to safely and aesthetically accommodate the 100-year flood protection.

Several public outreach meetings have been held to solicit input and inform the public on the progress:

- October 2003 – First public meeting to present the problems and discuss possible alternative solutions,

- March 2004 – Second public meeting to review the selected six alternatives for the lower Berryessa Creek reach,
- September 2005 – Third public meeting to review potential Solutions for Calera and Tularcitos Creeks,
- October 2007 – Fourth public meeting to review the selected four alternatives for lower Berryessa, Calera and Tularcitos Creeks.

The District and City staff met several times to discuss the selection of a potential Staff-Recommended Alternative, the last meeting taking place on February 17, 2009. The District would like to obtain the City Council's comments at this time, as the District will start to draft the Planning Study Report for the District's Board of Director's approval.

The major benefit to the City of Milpitas is to increase the flood protection to the adjacent areas of the creek, up to a 100-year flood storm event.

Fiscal Impact: None. There is no fiscal impact from the project at this time.

Recommendations:

1. Receive a report from Santa Clara Valley Water District (SCVWD) on the Lower Berryessa Creek Flood Protection Alternatives.
2. Provide Santa Clara Valley Water District (SCVWD) with any comments or recommendations on the Project alternatives.

12. Receive the Monthly Economic Development Report (Staff Contact: Diana Barnhart, 586-3059)

Background: The Council meeting this month reflects much of the staff work over the last month, with the Public Hearing on the proposed amendment to the Great Mall Redevelopment Plan and the recommendations on the electronic message board freeway signs.

Meeting Room Space: In response to declining hotel occupancies discussed at the Hotel Roundtable, staff is reviewing options to create meeting room space in key office vacancies. Currently, both the City of Santa Clara and City of San Jose have capacity for larger meetings and events. Typically they require users of their convention facilities to stay in hotels within their respective cities. However, as a result of the Milpitas hotel capacity and choices, it is not uncommon for the local hotels to still benefit from attendee stays, but less than if the City has its own space to market. Staff will organize another hotel meeting to determine meeting room capacity needs and how this fits into local hotel business plans, and will develop costs to move ahead if this approach is supported by the hoteliers.

South Bay Honda: The project is moving along with a projected opening in August/September. Car sales were strong in March as consumers purchased prior to the sales tax increase.

Solar Company Inquiries: The City was approached by two solar panel manufacturers regarding relocation and expansion into existing vacant or nearly vacant properties. One company indicates that it is ready to move into production and the other into pre-production fabrication. Both companies have requested financial assistance to offset tenant improvements and machinery retooling. The companies have been asked to provide additional information which will be evaluated for need prior to formal recommendations for Council/Agency action.

KLA-Tencor Agreement: The Sales and Use Tax Sharing Agreement was prepared and provided to KLA-Tencor earlier this month. The Development Review Team also met with KLA representatives to kick-start the tenant improvements that will need to be made to facilitate the consolidation of offices.

Mervyn's: Brokers for this property indicated that they were talking with a potential food market that would take the entire building, but the tenant pulled out of negotiations. Staff has conveyed

a desire that another supermarket located at this site would not be desirable and would prefer to see a mix of retailers, understanding that no one retailer is looking at properties the size of the Mervyn's site.

Use Tax Outreach: There appears to be good news on the Use Tax Outreach effort. Both companies the City worked with appear to be allocating use tax to Milpitas, increasing the revenues generated significantly – nearly \$400,000 for the 4th quarter of 2008.

Lucky/Marina Foods: No movement on this project at the date of this report.

Industrial Property Owner Roundtable: The next Roundtable will be held with industrial owners and brokers to get a better understanding of the issues they are facing and to get a temperature reading on how the City is performing for them in this economic downturn.

Great Mall News: The Forever 21 expansion will occur in early June for a fall opening, but stores are being relocated now to accommodate the expansion. Agaci, a national apparel store has recently opened and Shiekh, a men's and women's shoe store has opened its new brand. Finally, KettlePop opened in a new space.

Fiscal Impact: None. There is no fiscal impact associated with this action.

Recommendation: Receive the monthly economic development report.

* **13. Approve One Youth Sports Assistance Fund Grant (Staff Contact: Aaron Bueno, 586-3226)**

Background: On June 17, 2008, the City Council approved and appropriated \$8,000 for the Youth Sports Assistance Fund for the FY 2008-09 budget year. Included in the City Council packet for review and consideration is one Individual Youth Sports Assistance Fund application.

The application was received from Alexa Cacao in the amount of \$500 for competition fees and travel expenses for the 2009 USA Diving Spring Junior West Championships held in Houston, Texas on April 3-5, 2009.

Fiscal Impact: There is currently a balance of \$4,000 in the FY 2008-09 Youth Sports Assistance Fund. Approval of one Individual Youth Sports Assistance Fund Grant in the amount of \$500 will leave a balance of \$3,500 for the remainder of the fiscal year.

Recommendation: The Parks, Recreation and Cultural Resources Commission and staff reviewed the application on April 6, 2009 and recommend funding one Individual Youth Sports Assistance Fund grant, in the amount of \$500 to Alexa Cacao.

* **14. Authorize the Purchasing Agent to Dispose of Five Surplus Ford Vehicles at Auction (Staff Contact: Chris Schroeder, 586-3161)**

Background: The City has the following five vehicles for disposal:

- 2005 Ford E350 Van, VIN# 1FTSE34545HA51212
- 1995 Ford Crown Victoria, VIN# 2FALP71W6SX152802
- 1986 Ford F350 4x4 Diesel Pickup, VIN# 1FTHF3619GPB05687
- 1996 Ford Crown Victoria, VIN# 2FALP71W5TX168572
- 1994 Ford Ranger Super Cab, VIN# 1FTCR15X3RPA97794

All five vehicles have reached the end of their useful lives and the cost to maintain the vehicles exceeds their value. Consequently, they have been removed from service. The value of the vehicles at auction is estimated to be from \$1,200 to \$2,500 each. Staff requests authorization to dispose of the vehicles at auction pursuant to section I-2-8.03 of the Municipal Code "Disposal of more than \$1,000."

Fiscal Impact: None. Proceeds will be returned to the Equipment Replacement fund.

Recommendation: Authorize the Purchasing Agent to auction five surplus Ford vehicles.

XVIII. ORDINANCES

15. Waive the First Reading and Introduce Ordinance No. 23.12 Repealing Title I Chapter 2, Purchasing, of the Existing Milpitas Municipal Code, and Adopt Title I, Chapter 2, Sections 1 Through 12 (Staff Contact: Chris Schroeder, 586-3161)

Background: On December 6, 2005, City Council adopted the current version of Title I, Chapter 2, Purchasing, of the Municipal Code. This amendment further clarifies inconsistencies, includes a few substantive changes listed below, revises the Local Purchasing Preference Section, and adds a bid protest procedure.

Substantive changes include:

- Addition of terminology broadening and clarifying various terms and definitions.
- For purchases under \$5,000, add the requirement for obtaining three quotations to determine the best value, whenever possible.
- Establish the Purchasing Agent's ability to amend contracts under \$20,000.
- Clarify that employees may not accept reward points for personal purchases offered by suppliers due to employee's relationship with the City.
- Hold the employees personally liable for unauthorized procurements.
- Establish the Sole Source Procurement time limit to a maximum of five years.
- Establish the Standardization time limit to a maximum of ten years.

The most comprehensive amendment to the Purchasing Chapter is the revision of the Local Purchasing Preference. Previously, the "local preference" was only used to decide a tie between two bidders. The amendment allows the City to offer a local bidder, within 10% of the winning bid of a non-local bidder, the opportunity to reduce its price to an amount equal to the lowest bidder and thereby be deemed to be the lowest bidder and awarded the contract. This revised section of the ordinance was reviewed and recommended by the Economic Development Subcommittee.

Bid protest procedures have also been added detailing the time frame and protest hearing procedures. The amendment appoints the Purchasing Agent as the hearing officer. The hearing officer's decision on a bid protest shall be final for procurement under \$20,000. The bidder may appeal the Purchasing Agent's decisions for procurements over \$20,000 to the City Council.

Fiscal Impact: None.

Recommendations:

1. Waive the first reading beyond the title of Ordinance No. 23.12.
2. Introduce Ordinance No. 23.12 repealing Title 1, Chapter 2, Purchasing and adopt Title Chapter 2, Sections 1 through 12 as amended.

* 16. Waive the Second Reading and Adopt Ordinance No. 38.789 Amending the Zoning Ordinance (Staff Contact: Sheldon Ah Sing, 586-3278)

Background: On April 7, 2009, the City Council introduced Ordinance No. 38.789 approving changes to the City's Zoning Ordinance. The amendment finishes streamlining and reformatting the zoning ordinance and addresses non-industrial uses locating within the industrial zoning districts. The Ordinance remains unchanged and is now ready for adoption.

Fiscal Impact: None.

Recommendations:

1. Waive the second reading of Ordinance No. 38.789.
2. Adopt Ordinance No. 38.789 for Zoning Amendments by reformatting the Commercial and Industrial Sections, removing assembly uses not associated with businesses as conditional uses within the industrial districts, and adding ancillary text amendments for internal consistency.

XXI. RESOLUTIONS

- * 17. **Adopt Resolutions to Approve Recommended Subdivision Improvement Actions for Centria East Condominiums, Project No. 3178, and Centria West Condominiums, Project No. 2568 (Staff Contact: Fernando Bravo, 586-3328)**

Background: Centria East and Centria West residential development projects are located between Main St. and Abel St. on the south side of Great Mall Parkway. On June 6, 2006, the City entered into a Subdivision Improvement Agreement with Western Pacific Housing, Inc., for the construction of certain public improvements to serve Centria (east and west) residential developments. Due to financial difficulties related to the hard housing economic times, Western Pacific was only able to finish the Centria East project (Lot 2) and related public improvements. Additionally, Western Pacific sold the Centria West project (Lot 1) to Lyon Milpitas, LLC, a Delaware limited liability company. Because of the separation in ownership, the public improvements related to both projects were separated for bonding purposes and to clearly define the separate obligation of assigned improvements related to each project.

Centria East: Western Pacific has completed the public improvements for Centria East per the approved improvement plans (available in the City Engineer's Office) and the subdivision improvement agreement for the Centria East project. Staff recommends adoption of a resolution for initial acceptance of the public improvements and the reduction of developer's faithful performance bond to \$33,750.00, which is 10% of the engineer's estimate for the Centria East improvements.

Centria West: Lyon Milpitas, LLC is obligated to formally document its assigned public improvements that are required to be completed as agreed upon by both developers at the time of the close of escrow for the sale of the Centria West Project. Therefore, Lyon Milpitas LLC is obligated to construct and dedicate the subdivision improvements associated with its Centria West project (Lot 1), by entering into a new subdivision improvement agreement. Staff recommends adoption of a resolution approving this new subdivision improvement agreement. Staff also recommends approval of the amended plans and specifications delineating the respective improvement obligations of Western Pacific Housing, Inc. and Lyon Milpitas, LLC. These documents are available for review in the office of the City Engineer.

Fiscal Impact: None.

Recommendations:

Centria East:

1. Adopt a resolution granting initial acceptance and authorizing reduction in the penal sum of the subdivision improvement bond to \$33,750 for Tract No. 9773, Lot 2, Centria East Condominiums, Project No. 3178.

Centria West:

1. Approve the public improvement plans and specifications for the Centria West Project.
2. Adopt a resolution approving and authorizing the City Manager to execute the subdivision improvement agreement for Tract No. 9773, Lot 1, Centria West Condominiums, Project No. 2568.

XXII. BIDS AND CONTRACTS

- * 18. **Authorize the City Manager to Execute Annual Agreements with the County of Santa Clara for Collection of AB 939 Implementation Fees and for Administering the Countywide Household Hazardous Waste Collection Program (Staff Contact: Kathleen Phalen, 586-3345)**

Background: The City of Milpitas has two Countywide agreements with Santa Clara County that provide for funding and administration of solid waste and household hazardous waste programs that will terminate on June 30, 2009. These agreements govern the existing cooperative, regional approach to funding the services necessary to meet the State of California's solid waste and household hazardous waste diversion mandate (established by Assembly Bill 939).

The first agreement, *Agency Agreement for the Countywide AB939 Implementation Fee*, sets the terms for the collection of landfill surcharge fees. The Integrated Waste Management Program for Santa Clara County has collected landfill-tipping fees from waste haulers on behalf of all jurisdictions within the County since July 1992. Revenue from these fees funds County and local solid waste reduction activities. The proposed term of this agreement is from July 1, 2009 through June 30, 2010.

The second agreement, *Agency Agreement for the Countywide Household Hazardous Waste Collection Program*, set the terms the collection of household hazardous waste. The Santa Clara County Department of Environmental Health has administered a Countywide Household Hazardous Waste Collection Program since October 1991. The agreement sets the terms for the funding and administration of electronic waste (e-waste) and household hazardous waste collection at various locations in Santa Clara County available to Milpitas residents. The proposed term of this agreement is also from July 1, 2009 through June 30, 2010.

The County has recommended increasing the current AB 939 fee by \$0.55 from \$3.55 to \$4.10 per disposed ton to cover increased FY 2009-10 program costs. This fee would be used to cover programs associated with both of the agreements listed above. Since this fee is paid by the landfill operator, there is no direct impact to the City budget or to ratepayers.

Staff recommends that the City enter into new one-year agreements with the County to continue services under these programs. To comply with State law, the alternative would be for the City to provide its own AB 939 reporting and diversion efforts and operate its own household hazardous waste collection facility. The State may assess fines of up to \$10,000 per day on jurisdictions that fail to create and/or implement adequate waste management plans.

Fiscal Impact: None.

Recommendation: Authorize the City Manager to execute annual agreements with the County of Santa Clara for collection of AB 939 Implementation Fees and for administering the Countywide Household Hazardous Waste Collection Program.

- * 19. **Award the Bid for McCarthy Ranch Plant Replacement to Commercial Environmental Landscape for the Not-to-Exceed Amount of \$30,482 (Staff Contact: Chris Schroeder, 586-3161)**

Background: On March 6, 2009, the City of Milpitas went out to bid for the replacement of various plants, shrubs and wooden borders at McCarthy Ranch. Bids were sent to thirty-seven (37) regional and Bay Area landscape companies on Purchasing's bidders list. In addition, the bid was advertised in the local newspaper, on the City website and in the Blue Book. Five (5) bids were received and are summarized below:

Bidder

Total

Commercial Environmental Landscape	<u>\$30,482.00</u>
Del Conte's Landscaping	\$45,769.00
Jensen Landscape Services	\$52,141.00
Pacheco Brothers Gardening	\$57,714.00
Echo Landscaping	\$63,006.00

Fiscal Impact: None. The purchase is a programmed expense approved in the FY 08-09 budget for Public Works Trees and Landscapes.

Recommendation: Award the bid, and authorize the City Manager to execute a contract for McCarthy Ranch Plant Replacement, to Commercial Environmental Landscape for the not-to-exceed amount of \$30,482 including sales tax, subject to approval as to form by the City Attorney.

*** 20. Authorize the City Manager to Execute an Agreement with Milpitas Community Television for the Operation of the Public Access Studio and Channel (Staff Contact: Bill Marion, 586-2701)**

Background: As part of the City's cable television franchise agreement, Comcast Inc. provided a public access channel and funding to construct and equip a studio. The studio and channel were operational in May of 2007 and have been operated by an informal group of volunteers. It was suggested by the Telecommunications Commission that a private nonprofit organization be formed to operate the studio and provide public access television to the residents of Milpitas. A group of residents and volunteers incorporated Milpitas Community Television (MCTV) as a private nonprofit corporation in 2008. Staff has been working with MCTV on an agreement for the operation of the Milpitas Public Access Channel and studio.

Under this three year agreement, MCTV would staff the studio for a minimum of 20 hours per week as well as manage weekly programming. The City would provide the facilities and fund MCTV in these amounts: Year 1 - \$31,000; Year 2 - \$31,000; and Year 3 - \$29,500.

Funding for this agreement would come from the Public Educational and Government (PEG) support payments included in the franchise agreement with Comcast. The following figures represent the balance of PEG payments to date and the anticipated payments as per the City's franchise agreement.

Current Balance (3/31/2009)	\$42,915
Contractually Obligated Future Payments	\$50,000
Projected Total	\$92,915
Payments to MCTV Under This Agreement (3 years)	\$91,500

In addition to this funding, MCTV would be able to independently raise funds for public access support. Approval of this agreement would provide expanded access to a valuable community asset at no additional cost to the City. The agreement has been reviewed and approved as to form by the City Attorney's Office and recommended by the Telecommunications Commission and the Finance Subcommittee.

Fiscal Impact: None. Funding for this agreement would come from the Public Educational and Government programming support payments due the City under its franchise agreement with Comcast Inc. There is no general fund impact.

Recommendation: Authorize the City Manager to execute an agreement with Milpitas Community Television for the operation of the public access studio and channel.

- * 21. **Approve Plans and Specifications and Authorize the Advertisement for Bid Proposals for Storm Drain Installation at Country Club Drive, Project No. 3700 (Staff Contact: Steve Erickson, 586-3301)**

Background: Plans and specifications for the subject project have been completed in accordance with the approved five-year Capital Improvement Program. The project provides for the installation of a new storm pipe and storm catch basins along Country Club Drive near Calaveras Ridge Drive to eliminate the surface flow along the gutter. The Engineer's Estimate for the construction is approximately \$115,000. A copy of the project plan title sheet is included in the Council's agenda packets. Complete plans and specifications are available for review in the office of the City Engineer.

Fiscal Impact: None. Funds are available in the project budget.

Recommendation: Approve Plans and Specifications and authorize the advertisement for bid proposals for Storm Drain Installation at Country Club Drive, Project No. 3700.

XXI. ADJOURNMENT

**NEXT REGULAR MEETING
TUESDAY, MAY 5, 2009**